OUTDATED AND UNCONSTITUTIONAL: RETHINKING DURATION OF RESIDENCY REQUIREMENTS FOR JURY SERVICE

By Barry C. Edwards, J.D., Ph.D.†

ABSTRACT

This article addresses a critical, yet largely overlooked, defect in the jury selection process: the categorical exclusion of new residents from jury service. Federal and state laws imposing one-year residency requirements violate the constitutional right to an impartial jury and undermine the legitimacy of the jury system. Rooted in outdated assumptions about community attachment and juror competence, these requirements persist without empirical support or meaningful judicial scrutiny. Courts have upheld them based on contradictory rationales and outdated analysis from the 1970s, leaving this area of law stagnant, despite evolving juror selection procedures and increasing societal mobility. Affecting roughly five percent of the population, one-year residency requirements arbitrarily exclude fresh and unbiased perspectives from all federal jury trials and jury trials in five states, compromising the representativeness of jury pools and eroding public confidence in the justice system. This article argues for a long-overdue reassessment of these exclusions and advocates for constitutional standards that reflect modern realities, ensuring that juries embody a true cross-section of the communities they serve.

I. INTRODUCTION 31
II. BACKGROUND OF ONE-YEAR RESIDENCY REQUIREMENT FOR JURORS 34
III. CATEGORICAL EXCLUSIONS MUST BE NARROWLY TAILORED TO SERVE COMPELLING STATE INTERESTS 39
A. Jury Pool Should Be Fair Cross-Section of Entire Community 39

---

† Barry C. Edwards is the founder and director of Fair Trial Analysis, a non-profit organization that supports the right to a fair trial with research. He received his B.A. from Stanford University, a J.D. from New York University, and a Ph.D. from the University of Georgia. He is co-author of a popular series of political science research methods textbooks and continues to teach part-time for the University of Georgia. He sincerely thanks Eli Little, Ryan Cody, and staff editors at *Creighton Law Review* for their thoughtful feedback, diligent cite checking, and helpful suggestions.

B. Selecting Impartial and Qualified Jurors 41
C. Some Exclusions are Narrowly Tailored to Serve Compelling State Interests 43
D. Distinguishing Equal Protection Claims by Excluded Jurors 48
IV. THE EXCLUSION IS NOT NARROWLY TAILORED TO SERVE COMPELLING STATE INTERESTS 49
A. The "Unfamiliar with Community" Rationale is not Supported by Any Evidence 50
B. Jurors Do Not Need to Be Familiar with Local Norms, Customs, and Mores 53
C. The Exclusion is Not Narrowly Tailored 55
D. Exclusion Does Not Help Courts Conduct Trials Efficiently 57
E. The Exclusion is Rooted in Prejudice and Discrimination 58
F. Excluding New Residents Undermines the State's Legitimate Interests 61
V. CATEGORICAL EXCLUSIONS SHOULD NOT BE JUDGED BASED ON *DUREN* STANDARDS 64
A. Intentional Exclusion by State is Different than Underrepresentation 65
B. Appropriate Applications of the *Duren* Standards 70
C. The Seventh Circuit's Approach is a Dangerous Precedent 72
VI. THE YEAR RESIDENCY REQUIREMENT IS ALSO INVALID UNDER *DUREN* CRITERIA 77
A. Distinctiveness Should be Assessed in Context of Jury Service 78
B. Distinctiveness as Jurors is the Justification for Exclusion 80
C. New Residents Are Distinctive Group Based on Other Criteria 81
1. New Residents Are a Defined and Limited Group 81
2. Common Thread and Basic Similarities 82
3. Not Adequately Represented by Long Term Residents 84
4. New Residents Have Distinct Viewpoints, Opinions, and Attitudes 85
D. Exclusion is Not Justified by Any Compelling State Interest 86
VII. CONCLUSION 87

I. INTRODUCTION

Anticipating the challenge of assembling an impartial jury for the Boston Marathon bombing trial of Dzhokhar Tsarnaev, the U.S. District Court for Massachusetts summoned nearly 1,400 prospective jurors to Boston's federal courthouse in early 2015.[1] They completed one hundred question questionnaires, covering their backgrounds, social media usage, exposure to pretrial publicity, and opinions about the death penalty.[2] From there, the court narrowed the field to 256 qualified jurors.[3] Prosecutors and defense attorneys questioned prospective jurors for three weeks about their backgrounds, their social media usage, and anything they posted or read about the case. Tsarnaev's attorneys discovered that Juror number 286 shared #BostonStrong posts celebrating Tsarnaev's capture and mourning his victims.[4] They moved the court to dismiss Juror number 286 for cause because her "community allegiance" showed potential bias; they also filed four motions to move the trial to a venue with less pretrial publicity.[5] The trial judge denied the motions to change venue and refused to dismiss Juror number 286 for cause.

Given the challenge of finding jurors for Tsarnaev's trial who had not been prejudiced by pretrial publicity and community sentiment, it is stunning that the court automatically disqualified all those who had recently moved to Massachusetts.[6] Individuals residing in a district court's jurisdiction for less than a year are categorically excluded from serving on federal juries.[7] The rationale for exclusion is unclear, but it has been suggested that new residents lack familiarity with local conditions and values.[8] Thus, the court automatically dismissed prospective

---

1. *See* United States v. Tsarnaev, 968 F.3d 24, 46 (1st Cir. 2020); *see also* United States v. Tsarnaev, 595 U.S. 302, 309 (2022).
2. *Tsarnaev*, 968 F.3d at 46.
3. *Id.* at 47.
4. *Id.* at 51.
5. Tsarnaev asked the court to dismiss other jurors for cause, but for brevity, this discussion focuses on Juror number 286. The defense did not use a peremptory challenge against Juror number 286, who ultimately served as the jury foreperson.
6. According to recent data from the U.S. Census Bureau, 3.3% of adults in Massachusetts have lived in the state less than one year. *See* U.S. Census Bureau, American Community Survey B07001 (2023), https://data.census.gov/table/ACSDT1Y2023.B07001?t=Age and Sex:Residential Mobility&g=010XX00US$0400000&y=2023&moe=false&tp=false. Applied to the District Court's 1,373 summons, it is estimated that forty-five prospective Tsarnaev jurors were eliminated from consideration simply due to their duration of residency.
7. 28 U.S.C. § 1865(b)(1).
8. There is more evidence of Juror number 286's social media activity than there is regarding the ability of new residents to serve on juries. This seems like missing the forest for trees. If Juror number 286 were dismissed for cause, she could have been reassigned to another trial. In contrast, new residents cannot be assigned to any federal trial, civil or criminal, in the United States.

jurors who were uniquely qualified to make impartial judgments, and then struggled to find jurors who could be impartial.[9] Tsarnaev was found guilty and sentenced to death. The process, however, did not end there. Tsarnaev's attorneys continued to scrutinize the jurors who sentenced their client to death for bias and local prejudice; they continue to investigate two of the trial jurors to this day.[10]

The American jury remains a cornerstone of our democracy. By protecting the rights of ordinary citizens, legitimizing trial outcomes, and embodying our shared responsibility for self-government, juries play a critical role in our justice system. Tsarnaev's situation underscores the importance of selecting a fair jury, even for defendants charged with the most heinous crimes. Accordingly, categorically excluding any specific group of people from jury service is permissible only when it is necessary to serve a compelling state interest.

The categorical exclusion of new residents is based on unsubstantiated assumptions about American citizens who have recently relocated.[11] The one-year residency requirement lacks a reasoned basis and appears to have been enacted incidentally, without a clear statement of its purpose. Not a single court opinion has cited empirical evidence—such as facts, figures, or studies—to substantiate the exclusion of new residents. The suggested reasons for categorically excluding new residents are not only contrived but also self-contradictory. Courts have justified the rule by asserting that new residents possess characteristics that warrant distinct treatment. Yet, courts have also maintained that new residents are not distinct from long-term

---

9. A similar situation arose in the Virginia trials of Lee Malvo and John Allen Muhammad, the D.C. snipers. Defense attorneys moved to change trial venues due to extensive pretrial publicity in Northern Virginia. Malvo's trial and Muhammad's second trial were moved to Virginia Beach to minimize juror bias. *See* Adam Liptak, *Trial Site of Older Sniper Defendant Is Moved*, N.Y. Times, July 17, 2003, at A16. Given the change of venues, it is ironic that prospective jurors who moved from Virginia Beach to Northern Virginia, the original trial venue, would have been automatically disqualified under Va. Code § 8.01-337.

10. *Tsarnaev*, 968 F.3d at 52–53. The U.S. Court of Appeals for the First Circuit would later vacate Tsarnaev's sentence, citing among other errors, the court not asking prospective jurors more detailed questions about what they had seen on social media and not further vetting Juror number 286. *See Tsarnaev*, 968 F.3d at 121–22 (noting that although jurors declared they would be impartial, "little weight can be given to such declarations by community members so impacted by the crimes and the pretrial publicity"). The U.S. Supreme Court reinstated the death sentence in 2022, holding that the trial court exercised proper discretion in managing jury selection. *See Tsarnaev*, 595 U.S. at 316-17. Without vacating the death sentence, the First Circuit agreed to further investigate whether Juror number 286 should have been dismissed due to evidence of bias. *See also* United States v. Tsarnaev, 96 F.4th 441, 458–65 (1st Cir. 2024).

11. *See*, *e.g.*, United States v. Duncan, 456 F.2d 1401, 1406 (9th Cir. 1972); Reed v. Wainwright, 587 F.2d 260, 264 (5th Cir. 1979).

residents, undermining the rationale for their exclusion.[12] Thus, courts have upheld the exclusion on contradictory grounds: that new residents are both different and not different.

This article is organized into five sections. Section I traces the historical origins of one-year residency requirements for jurors, revealing their roots in outdated assumptions about community attachment and social stability. Section II maintains that statutes which categorically exclude specific groups from jury service—such as felons, non-citizens, and new residents—must be narrowly tailored to serve compelling state interests. Section III demonstrates that one-year residency requirements are not narrowly tailored to serve any legitimate state interests. Instead, they undermine multiple important state interests. Section IV distinguishes the legal standards that govern direct and statutory exclusions from those that govern indirect exclusion and disparate representation of groups in jury pools. Recognizing the conflicting approaches of federal circuits, Section V analyzes the categorical exclusion of new residents with standards created to evaluate indirect exclusions from flawed selection procedures. Together, these sections build the case that the categorical exclusion of new residents from jury service is unconstitutional and undermines the legitimacy of the jury system.

This article argues that key precedents from the 1970s upholding residency requirements were wrongly decided and should be overturned.[13] Because jury qualification laws affect constitutional rights and the fundamental role of juries, it is wrong to ask whether any ground "can be conceived to justify them."[14] Instead, we should ask whether these laws are narrowly tailored to serve a compelling state interest. Residency duration requirements fail to serve any compelling

12. *See*, *e.g.*, Adams v. Super. Ct., 524 P.2d 375, 378–79 (Cal. 1974); Van Arsdall v. State, 486 A.2d 1, 12 (Del. 1984).

13. It is not unusual for statutes to be held unconstitutional decades after they were enacted. *See generally* Robert A. Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker*, 6 J. PUB. L. 279, 286 tbl. 2, 291-93 (1957); Alvin Padilla-Babilonia, *The Age of Statutes and Judicial Review*, 54 REV. JURIDICA U. INTER. P.R. 53, 65-66 (2019) (noting that the average age of statutes declared unconstitutional by the Roberts Court is over 25 years, with six invalidated statutes exceeding 32 years old).

14. *See*, *e.g.*, *Adams*, 524 P.2d at 380 (holding that duration of residency requirement should be upheld if there is any conceivable basis for it). Laws which disqualify certain groups from serving on jurors affect the constitutional right to an impartial jury as well as the basic purpose of juries in democratic government. Therefore, rational basis review is inappropriate. *See* Taylor v. La., 419 U.S. 522, 534 (1975) ("The right to a proper jury cannot be overcome on merely rational grounds."); Nina W. Chernoff, *Wrong About the Right: How Courts Undermine the Fair Cross-Section Guarantee by Confusing It with Equal Protection*, 64 HASTINGS L.J. 141 (2012); Jon M. Van Dyke, *Jury Service is a Fundamental Right*, 2 HASTINGS CONST. L.Q. 27, 27 (1974). Moreover, as discussed in Section IV, the various rationales conceived by courts are not based on any evidence and bear no relation to modern jury selection methods.

state interest. They are a relic of discriminatory jury practices, out of place in modern America.

II. BACKGROUND OF ONE-YEAR RESIDENCY REQUIREMENT FOR JURORS

Federal law establishes the minimum qualifications for jury service. To serve on a federal jury, an individual must be a U.S. citizen, at least eighteen years of age, and proficient in English.[15] They must also be free from disqualifying mental or physical conditions, have no pending felony charges, and must not have been convicted of a felony.[16] State jury qualification laws vary but generally require jurors to reside in the state and summoning jurisdiction, be at least eighteen years old, and have no disqualifying criminal convictions.

In addition to these common requirements, prospective jurors for trials in federal district courts are required to have resided in the jurisdiction for at least one year. New residents are also barred from serving on juries in five southern states: Alabama,[17] Louisiana,[18] Mississippi,[19] Virginia,[20] and Georgia.[21] At the federal level and in these five states, new residents are categorically excluded from serving on juries.[22]

The categorical exclusion of new residents from juries has a substantial impact. The typical American moves 11.7 times in their life.[23]

15. 28 U.S.C. § 1865(b)(1)–(5).

16. 28 U.S.C. § 1865(b)(4)-(5). These standard qualifications are not without controversy, but they are common requirements, supported by reasoned arguments about the juror abilities and judicial efficiency.

17. Ala. Code § 12-16-60(a)(1) (2025) (requiring more than one year of residence in the summoning county).

18. La. Code Crim. Proc. Ann. art. 401(A)(1) (2021) (requiring at least one year of residency in the summoning county or parish).

19. Miss. Code Ann. § 13-5-1 (2024) (requiring one year of residency in the summoning county).

20. Va. Code Ann. § 8.01-337 (2024) (requiring one year of state residency and six months of residency in the summoning county).

21. Ga. Code Ann. § 15-12-60 (2024) (requiring jurors to live in the jurisdiction at least six months prior to serving on grand juries). Although the statutory requirement applies specifically to grand juries, some Georgia courts appear to extend the six-month residency requirement to all juries. *See, e.g.*, *Superior Court: Jury Duty,* Fulton County, https://www.fultoncountyga.gov/inside-fulton-county/fulton-county-departments/superior-court/jury-duty (last visited Feb. 10, 2025).

22. Montana, and Wyoming impose shorter duration of residency requirements. *See* Mont. Code Ann. § 3-15-301 (2023) (30-day jurisdiction residency); Wyo. Stat. Ann. § 1-11-101 (2024) (90-days state and county residency). Such short duration of residency requirements may have little or no effect given time it takes new residents to appear in motor vehicle and voter registration records.

23. *See* U.S. Census Bureau Calculating Migration Expectancy Using ACS Data (Aug. 22, 2024), https://www.census.gov/topics/population/migration/guidance/calculating-migration-expectancy.html.

Americans relocate for a variety of reasons.[24] According to the U.S. Census Bureau, 12.1% of American adults live in a different place than they did a year ago.[25] Most people move short distances: 6.0% of American adults moved within the same county;[26] 3.2% of adults moved from another county within the same state; 2.4% moved from another state; and 0.7% moved from abroad.[27]

The impact of excluding new residents varies by state and type of court. At the federal level, adults who lived in a different state or abroad a year ago are disqualified, while those who relocated within the same state may be eligible, depending on district boundaries. The impact in federal courts depends on the level of residential mobility and the number of districts in the state. Nationwide, I estimate that 4.8% of American adults are categorically excluded from federal juries because they have lived in their current district for less than one year.[28] The percentage excluded is higher than average in some jurisdictions and lower than average in others.[29]

At the state level, adults who lived in a different county, state, or country a year ago are disqualified. Based on the 2023 American Community Survey, duration of residency rules disqualify 6.0% of adults in Alabama, 4.0% in Georgia,[30] 5.3% in Louisiana, 6.3% in Mississippi, and 9.1% in Virginia.[31]

---

24. *See generally* Larry Long, Migration and Residential Mobility in the United States 233-39 (Russell Sage Foundation, 1988) (main reasons include job-related reasons, attending school, entering or leaving armed forces, family reasons, and seeking different weather/climate); Peter J. Mateyka, *Desire to Move and Residential Mobility: 2010-2011*, U.S. Census Bureau's Household Economic Studies, Mar. 2015, at 4.

25. *See* U.S. Census Bureau United States Migration/Geographic Mobility at a Glance: American Community Survey 1-Year Estimates, (Sept. 9, 2024), https://www.census.gov/topics/population/migration/guidance/acs-1yr.html.

26. *Id.* This subset of movers would not be disqualified under the federal or state residency requirements.

27. *Id.* This group of movers is also disqualified under both federal and state residency requirements. Because non-citizens may not serve on juries, the residency requirement only affects U.S. citizens returning home after living abroad.

28. This estimate based on geographic mobility of Americans ages 18 years and older. *See* U.S. Census Bureau, *supra* note 6. For states with multiple districts, estimates assume residency is evenly distributed among districts. For two-district states, half of residents lived in the same district; for three-district states, one-third; for four-district states, one-fourth. Single-district states have no such division.

29. For example, 6.5 percent of potential jurors are disqualified in Georgia, Florida, North Carolina, and Virginia district courts. The requirement excludes 11.5 percent of adults in the District of Columbia.

30. Georgia has a six-month residency requirement for grand juries. The effect of its six-month exclusion is estimated as half of the 8.0% of Georgian adults who did not live in their current county a year ago, according to Census Bureau data. *See* U.S. Census Bureau, *supra*, note 6.

31. According to Census Bureau data, the states with the highest percentages of adults who resided in a different county, state, or country a year ago are Colorado (9.9%), Virginia (9.1%), and North Dakota (9.3%). The states with the lowest percentages are

At both the federal and state levels, one-year residency requirements substantially affect the composition of jury pools. If not for the requirement, nearly all jury pools would include new residents. Moreover, if new residents make up five percent of the jury pool, roughly half of twelve-person trial juries would include at least one new resident.

Why are new residents prohibited from serving on juries? The legislative history of the one-year residency requirement for federal juries reveals no specific purpose. The requirement was added incidentally to the Civil Rights Act of 1957, a law aimed at advancing voting rights. During the legislative debate, Senators O'Mahoney and Kefauver proposed an amendment that granted individuals held in contempt under the Act the right to a jury trial. This poison pill amendment undermined the Act's enforcement and facilitated local resistance.[32] During debate on the jury trial amendment, Senator Church proposed an amendment to the amendment which called for juries to be selected according to new federal rules, rather than those of the state where the district court is located.[33] Senator Church's contribution to the amendment essentially disguised the enforcement-killing provision, making it less obvious and more palatable.[34] Senator O'Mahoney accepted Senator Church's amendment to his amendment.[35] The one-year residency requirement, incorporated into the O'Mahoney-Kefauver-Church amendment, was not discussed by the Senate, except for the following exchange between Senators Case and O'Mahoney:

> Mr. CASE of South Dakota. I happen to have a copy of what purports to be a mimeographed copy of the amendment which I think the Senator from Idaho [Church] offered for himself

California (4.8%), Illinois (5.1%), and New York (5.2%). *See Id.* The Census Bureau does not record data with federal court jurisdiction as relevant geography.

32. All-white juries, handpicked by local jury commissioners based on state laws, would support local officials.

33. *See* 103 CONG. REC. 13153-54 (1957).

34. *See* Rabinowitz v. United States, 366 F.2d 34, 48 (5th Cir. 1966). As Senator William Knowland stated, "I sincerely believe that the effect of a vote for the pending O'Mahoney-Kefauver-Church amendment will be a vote to kill for this session of Congress an effective voting rights bill." 103 CONG. REC. 13354 (1957).

Some argued the amendment would establish "an additional civil right" and prevent discrimination in jury selection. *See* 103 CONG. REC. 13355 (1957) (comments by Senator Jackson). However, the Civil Rights Act of 1958 had little effect on the discriminatory "key man" system of selecting federal jurors. Federal courts still used some type of "merit" selection system, though no longer bound by state laws for juror competency, as federal districts judges could still set jury qualification rules for their districts. The Act displaced state jury qualification laws for federal jury selection but it did not require comprehensive master jury lists or random selection of jurors. *See* Charles A. Lindquist, *An Analysis of Juror Selection Procedure in the United States District Courts*, 41 TEMP. L.Q. 32 (Fall 1967).

35. The Senate did not vote on Church's amendment because O'Mahoney and Kefauver accepted it as amendment to their amendment. The Senate passed the amendment by a 51-42 vote on August 2, 1957.

> and on behalf of other Senators. As I read it . . . the effect of the amendment which the Senator has now incorporated in his amendment would be to make it impossible for a State to disqualify a person to serve on a grand or petit jury. Is that correct?
>
> Mr. O'MAHONEY. That is precisely correct. The States would have no authority whatsoever to prescribe the qualifications of a Federal juror.
>
> Mr. CASE of South Dakota. That is the principal effect of the amendment offered by the Senator from Idaho to the amendment originally offered by the Senator from Wyoming. Is that correct?
>
> Mr. O'MAHONEY. The Senator from South Dakota is quite correct. There is another modification, however, to which I ought to draw his attention. There is a provision, in the first paragraph of the new language, with respect to a citizen of the United States who has attained the age of 21 years and who has resided in the vicinage for a period of 1 year. That is new language. The present language of the Federal statute is "who resides." The new language is "who has resided for a period of 1 year."
>
> Mr. CASE of South Dakota. I think that would be an important change, and a desirable one, so far as I can see, but the principal change would be in the other respect.[36]

The congressional record shows that the one-year residency requirement was introduced in the Senate without extensive deliberation or justification, leaving its rationale unclear. The requirement garnered no more attention in the House of Representatives.[37] The legislative history of the federal one-year residency requirement provides no substantive discussion of its merits.

This is not to say that the one-year residency requirement was invented in the Senate. The requirement existed, and still exists, as a component of some state laws.[38] The one-year residency requirement remains an artifact of discriminatory jury selection practices. It embodies the outdated notion that jury service should be reserved for

---

36. 103 CONG. REC. 13156-13157 (1957).

37. House debates "centered on the question of under what circumstances a jury trial should be accorded in contempt cases with almost no attention being given to the change in juror qualifications." *Rabinowitz*, 366 F.2d at 72.

38. As of 1977, eleven states had duration of residency requirements. *See* JON M. VAN DYKE, JURY SELECTION PROCEDURES: OUR UNCERTAIN COMMITMENT TO REPRESENTATIVE PANELS 71, 272–79 (1977) (listing Alabama, Florida, Georgia, Kentucky, Montana, New Jersey, Tennessee, Utah, Virginia, Washington, and Wyoming). Since then, the number has dropped to five.

individuals who have demonstrated their character and good judgment to influential members of the community.[39]

In the 1970s, federal and state courts repeatedly addressed the constitutionality of excluding new residents from juries.[40] These precedent-setting decisions, which upheld one-year resident requirements, echoed the rationale behind key man jury selection methods. It is suggested that the rule is justified by new residents' alleged "unfamiliarity with community values, norms, and mores."[41] Courts have also argued that communities need time to assess the fitness of new residents for jury service.[42]

To date, no defendant has successfully demonstrated that excluding new residents violates his right to an impartial jury. In dissenting opinions, several judges have argued that one-year residency requirements are unconstitutional.[43] Courts often adhere to earlier precedents without much critical analysis.[44] When courts address one-year residency requirements, they generally conclude that new residents are not a distinct group whose representation in the jury pool is necessary to achieve a fair cross-section of the community.[45]

---

39. The key man system for selecting jurors was a method used in the United States during the 19th and early 20th centuries. Under this system, the sheriff or other court official responsible for selecting jurors would ask a prominent member of the community to recommend people for jury duty. This "key man" was often a wealthy, white male landowner or businessman, who would select jurors from their personal acquaintances. *See* 103 CONG. REC. 13293-94 (1957) (remarks of Senator Carroll describing the key man system of selecting jurors).

40. *See* United States v. Arnett, 342 F. Supp. 1255, 1261 (D. Mass. 1970) (one paragraph analysis); United States v. Duncan, 456 F.2d 1401, 1406 (9th Cir. 1972) (two paragraph analysis); Williams v. State, 282 So.2d 349, 351 (Ala. 1973); Adams v. Super. Ct., 524 P.2d 375, 377 (Cal. 1974) (4-3 vote); Craig v. Wyse, 373 F. Supp. 1008, 1011 (D. Colo. 1974); Reed v. State, 292 So.2d 7, 8 (Fla. 1974) (4-2 vote); United States v. Armsbury, 408 F. Supp. 1130, 1134 (D. Or. 1976); Hampton v. State, 569 P.2d 138, 149 (Alaska 1977); *Wainwright*, 587 F.2d at 263-64. In more recent years, the practice is challenged sporadically, typically in shotgun-style appeals alleging many trial errors. *See*, *e.g.*, United States v. Fell, No. 5:01-cr-12-01, 2018 WL 7254852, at *5 (D. Vt. Aug. 6, 2018); United States v. Bowers, No. 2:18-CR-00292-RJC, 2022 WL 1032735, at *12 (W.D. Pa. Jan. 20, 2022).

41. *See infra*, Section III.A.

42. *See* Gibson v. State, 226 S.E.2d 63, 68 (Ga. 1976); *see also* Reed, 292 So. 2d at 10 (suggesting one year residency requirement helps administrators prepare jury lists and serve summons efficiently).

43. *See Adams*, 524 P.2d at 380-84 (Mosk, J., dissenting); *Reed*, 292 So.2d at 11–15 (Ervin, J., dissenting); s*ee also* Van Dyke, *supra* note 14 (arguing that duration of residency requirements for jurors fail an appropriate level of scrutiny).

44. *See*, *e.g.*, United States v. Ross, 468 F.2d 1213, 1215–16 (9th Cir. 1972) (reaffirming the *Duncan* decision); United States v. Gast, 457 F.2d 141, 143 (7th Cir. 1972) (no discussion of due process); United States v. Perry, 480 F.2d 147, 148 (5th Cir. 1973) (cursory assumption that new residents are not a distinguishable or cognizable class); United States v. Palacio, 477 F.2d 560, 561 (5th Cir. 1973) (no substantive discussion); United States v. Grey, 355 F. Supp. 529, 533 (W.D. Okla. 1973) (no substantive discussion); United States v. Owen, 492 F.2d 1100, 1109 (5th Cir. 1974) (no substantive discussion).

45. *See*, *e.g.*, Van Arsdall v. State, 486 A.2d 1, 12 (Del. 1984) (holding that newer residents are not a distinctive or cognizable class).

III. CATEGORICAL EXCLUSIONS MUST BE NARROWLY TAILORED TO SERVE COMPELLING STATE INTERESTS

The Sixth Amendment to the U.S. Constitution guarantees the right to an impartial jury in criminal prosecutions.[46] Juries are essential to ensuring fair trials for criminal defendants. Beyond their role as impartial factfinders, juries act as a check against government overreach and abuse of power.[47] Juries provide ordinary people with a voice in the justice system.[48] A jury of ordinary citizens, deliberating in private, offers the defendant some protection from the influence of privileged and powerful interests. The unique role of juries in American democracy is underscored by the fair cross-section requirement, carefully designed selection procedures, and qualifications that are narrowly tailored to serve compelling state interests.[49]

A. Jury Pool Should Be Fair Cross-Section of Entire Community

To ensure impartiality, the jury pool (or jury venire) must reflect a fair cross-section of the community where the trial is held.[50] Jurors must be drawn from all walks of life and segments of society. A jury assembled in this manner is an instrument of public justice, "a body truly representative of the community."[51] Consistent with this premise, one should presume that all adult citizens are competent and qualified to serve on juries and demand substantial justification to exclude or disqualify any member of the community.[52] The state may not summarily exclude specific groups of people from jury service unless the exclusion is narrowly tailored to achieve a compelling state interest.

The Supreme Court's ruling in *Thiel v. Southern Pacific Railroad* illustrates the essence and purpose of the constitutional right to an impartial jury.[53] While Thiel's trial jurors were ostensibly drawn at random from "a box containing the names of not less than 300 persons,"[54]

---

46. *See* U.S. Const. amend. VI; *see also* U.S. Const. amend. VII (right to jury in civil trials).
47. Taylor v. La., 419 U.S. 522, 530 (1975).
48. *See generally* Robert C. Walters et al., *Jury of Our Peers: An Unfulfilled Constitutional Promise*, 58 SMU L. Rev. 319, 320 (2005).
49. *Id.* at 335-39.
50. Thiel v. So. Pac. Co., 328 U.S. 217, 220 (1946) (citations omitted).
51. Smith v. Tex., 311 U.S. 128, 130 (1940).
52. There must be specific and compelling reasons to exclude any person from jury service. The party seeking exclusion must demonstrate juror partiality through questioning. The judge must then determine whether challenge is proper. *See* Wainwright v. Witt, 469 U.S. 412, 423 (1985) (trial court judge may not presume that those who opposed death penalty are incapable of being impartial); United States v. Salamone, 800 F.2d 1216, 1225 (3d Cir. 1986) (cannot assume NRA members will fail to be impartial in a gun violation case); Tinsley v. Borg, 895 F.2d 520, 529 (9th Cir. 1990) (refusing to presume juror bias due to occupation).
53. 328 U.S. 217 (1946).
54. Thiel v. So. Pacific Co., 149 F.2d 783, 786 (9th Cir. 1945).

the selection process was flawed because the jury administrator excluded daily wage workers from consideration and did not add their names to the box.[55] The Supreme Court ruled that the exclusion of daily wage workers violated Thiel's constitutional right to an impartial jury. The exclusion of specific segments of the community taints the jury pool and undermines the fundamental fairness of jury trials.

> [T]hose eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.[56]

Excluding specific segments of the community—such as longshoremen, ironworkers, bricklayers, carpenters, and machinists—even for seemingly benign reasons, compromises the integrity and authority of the jury.

> Were we to sanction an exclusion of this nature we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We would breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged.[57]

Since *Thiel*, the Supreme Court has consistently maintained that jury pools must reflect a fair cross-section of the community.[58] In line with this principle, the Court, in *Taylor v. Louisiana*,[59] held that restricting jury service to select groups or excluding identifiable segments of the community violates the defendant's due process rights, and compromises the jury's authority to act on behalf of the community.[60] Categorical exclusions erode public confidence in the belief that juries

---

55. He expected that daily wage workers would, if summoned to serve, claim financial hardship and be dismissed. "'If I see in the directory the name of John Jones and it says he is a longshoreman, I do not put his name in, because I have found by experience that that man will not serve as a juror, and I will not get people who will qualify.'" *Thiel*, 328 U.S. at 222.

56. *Id.* at 220.

57. *Id.* at 223–24.

58. The same year as *Thiel*, the Court opined that the purpose of a representative jury is not merely to represent viewpoints in deliberation, but rather to avoid "purposeful and systematic exclusion" of groups that are an inextricable part of the community. *See* Ballard v. United States, 329 U.S. 187, 193-94 (1946) (holding that the exclusion of women from juries in the Southern District of California was improper); *see also* Peters v. Kiff, 407 U.S. 493, 497–98 (1972) (striking down exclusion of jurors based on race).

59. Taylor v. La., 419 U.S. 522 (1975). In *Taylor*, the Supreme Court addressed a Louisiana statute that excluded women from jury service, unless they actively petitioned to serve. *Id.* at 523. As a result, only 1% of Louisiana jurors were women. *Id.* at 524.

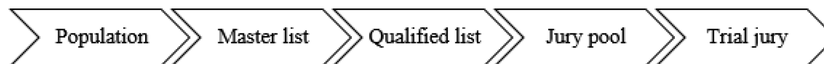
60. *Id.* at 530 (internal citations omitted).

give everyone—from the lowly town drunk to the richest person in town—a fair opportunity at trial.[61]

B. Selecting Impartial and Qualified Jurors

The jury selection process involves a series of steps aimed at selecting a qualified and impartial trial jury from a large population (see Figure 1).[62] At every stage of the process, the defendant's right to an impartial jury must be protected. The jury selection process generally begins with the creation of a master list of adults in a jurisdiction. Courts create master jury lists by compiling names from various official sources, such as voter registration rolls, driver's license and state ID records, tax rolls, and other relevant datasets.[63]

Figure 1: Steps of Jury Selection Process



When jurors are needed for trials, the court's jury administrator randomly selects individuals from the master list and sends them notifications of their selection for jury duty. The jury notice includes a questionnaire addressing basic service qualifications, which recipients must complete and return to the court.[64] Based on the returned questionnaires, the court excludes individuals who do not meet the service requirements, resulting in the qualified jury list.[65] From the qualified jury list, the court randomly selects a pool of jurors to serve

61. *See Salamone*, 800 F.2d at 1232 (Stapleton, J., concurring) (arbitrary exclusions based on group membership "necessarily undermine the confidence of the defendant and the public in the fairness of the process" and create the appearance that the court is stacking the desk against the defendant).

62. S*ee* Hayward R. Alker Jr. & Joseph J. Barnard, *Procedural and Social Biases in the Jury Selection Process*, 3 Just. Sys. J. 220, 223–24 fig. 1 (Spring 1977) (sequential analysis of juror selection in Eastern District of Massachusetts).

63. Most states use two or more sources to create a master jury list. Five states restrict to a single source list: Florida and Michigan (licensed drivers, state ID holders only), Massachusetts (municipal census only), and Louisiana and Mississippi (registered voters only). *See* Paula Hannaford-Agor & Morgan Moffett, *State-of-the-States: Survey of Jury Improvement Efforts: Jury Operations in State Courts,* Nat'l Center for State Cts. (2023), https://nationalcenterforstatecourts.app.box.com/s/j0fvqkpiuf1xv1ar7ofwevahg0iz3kox.

64. State courts use either a two-step or one-step method for summoning jurors. *See id.* at 6–7. In the two-step method, a subset of individuals on the master jury list is randomly selected to receive jury questionnaires to determine their qualifications. If they are qualified, they are placed on a list from which individuals are randomly summoned for jury service. In the one-step method, summonses and questionnaires are sent simultaneously. The trend is toward the one-step system because it implements modern, objective qualifications more efficiently.

65. Some fraction of individuals will not receive their summons or choose to ignore it.

at designated times and locations. The number of names selected depends on the anticipated need for jurors.

Some qualified individuals summoned for jury duty may be exempted or excused from jury service. Exemptions allow statutorily defined groups to opt out of jury service upon their request. Exemptions are commonly available to full-time students, individuals who recently served on juries,[66] the elderly,[67] those in certain occupations,[68] and sole caregivers for young children or incapacitated adults.[69] State laws generally exempt active-duty military personnel from jury service, although the military encourages its members to serve as jurors when feasible.[70] These exemptions aim to maintain a jury pool that is both impartial and able to serve effectively. Qualified individuals summoned for jury duty may be excused for various reasons, including "undue hardship" or "extreme inconvenience," often requiring supporting documentation.[71]

While courts may process qualifications, exemptions, and excuses simultaneously, there are significant distinctions between them. Most notably, the government uses qualifications to exclude entire groups from the pool of qualified jurors. In contrast, summoned individuals use exemptions and excuses to exclude themselves from service on an individualized basis. Disqualification is an official decision, fully within the government's control, whereas claiming an exemption or excuse is an individual decision, allowed by the government.[72]

---

66. 28 U.S.C. § 1866(e).

67. A person over age 70 summoned to jury duty is not prohibited from serving on a jury but may opt-out of jury service without further explanation or justification.

68. As discussed further in Section III-C, most statutory provisions for occupations are exemptions and not exclusions.

69. Federal law exempts some occupations from serving on federal juries: members of armed services on active duty, firefighters and police officers, and "public officers" of federal, state or local governments, who are actively engaged full-time in the performance of public duties. Many states exempt jurors who are over the age of 70, have served on jury in the last two years, or are volunteer firefighters, members of a rescue squad or ambulance crew.

70. Members of the military in active service are barred from federal juries. *See* 28 U.S.C. § 1863(6)(A). Although they are generally exempt from jury duty in state courts, the military encourages active-duty service members to serve on juries provided it does not interfere with their service responsibilities. *See* Ryan Guina, *Active Duty Military and Jury Duty Service,* THE MILITARY WALLET (Feb. 17, 2023), https://themilitarywallet.com/active-duty-military-jury-duty-service; Heidi E. Loredo, *Jury Duty is Civil Duty,* U.S. MARINE CORPS (July 28, 2005), https://www.hqmc.marines.mil/News/Article/Article/551818/jury-duty-is-civil-duty.

71. *See*, *e.g.*, 28 U.S.C. § 1863(b)(5)(A). Circumstances that excuse service and the proof required vary by jurisdiction. For example, an economic hardship claim may require the submission of tax returns. *See*, *e.g.*, MO. REV. STAT. § 494.430(6) (2004); TENN. CODE § 22-1-103(b)(5) (2024).

72. Therefore, courts evaluate exemptions and excuses with different standards than are applied to qualifications and categorical exclusions. *See supra* Section V.

Finally, prospective jurors may be questioned to ensure they remain impartial in a specific case.[73] The court may dismiss potential jurors for cause, but it must provide clear and specific reasons for doing so.[74] Litigants may also remove potential jurors through peremptory challenges. While litigants are not required to provide clear reasons for peremptory strikes, they are prohibited from intentionally discriminating against members of a protected class.[75]

C. Some Exclusions are Narrowly Tailored to Serve Compelling State Interests

There are two different strains of cases about the defendant's right to a jury trial. One set of cases, discussed in this part, addresses the categorical exclusion of identifiable groups from jury service, whether due to statutory provisions or overzealous practices of jury administrators.[76] Another set of cases focuses on jury selection practices and procedures that underrepresent distinct segments of the community.[77] While these two strains of cases present similar concerns, there are important distinctions between them.

The categorical exclusion of any identifiable group compromises the jury's authority to represent the community. Government efforts to control jury selection may be perceived as attempts to stack the jury pool against the defendant.[78] The intentional exclusion of individuals or groups—whether by legislatures, court administrators, or judges—should be scrutinized, as it raises the appearance of impropriety. The government's intentional exclusion of prospective jurors without sufficient justification constitutes structural trial error. Such errors compromise the basic integrity of trials. This type of structural error is

73. If a juror has a close personal relationship with one of the parties, has a financial interest in the outcome, or has already formed an opinion about the guilt or innocence of the defendant, they may be excluded from serving on the jury. The dismissed juror may then return to the jury pool to be considered for a different trial.

74. *See supra* note 52 and accompanying text.

75. Batson v. Ky., 476 U.S. 79, 85–88 (1986) (citations omitted).

76. *See, e.g., Thiel*, 328 U.S. at 222 (jury administrator excluded daily wage workers); Johnson v. McCaughtry, 92 F.3d 585, 589–90 (7th Cir. 1996) (jury administrator excluded young adults unless he knew them personally); Silagy v. Peters, 905 F.2d 986, 1009 (7th Cir. 1990) (jury administrator excluded prospective jurors over age 70).

77. *See infra* Section V.

78. An analogy to games cards is useful. The defendant's jury is analogous to the cards a player is dealt in a game of chance. A game of chance is not unfair simply because a player draws bad cards. However, the game is unfair if dealer removes cards from the deck. Even if only minor cards are removed and the player still has a decent chance of winning, the dealer is cheating the game. *See* N.J. Stat. Ann. § 5:12-115(2) (West 2024) (making it unlawful "[k]nowingly to deal . . . for play any game or games played with cards . . . which have in any manner been marked or tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal chance of the game which could determine or alter the result of the game."

considered so fundamental that it is not subject to harmless error analysis. A defendant need not show that improper exclusion of prospective jurors caused a reasonable probability of a different trial outcome.[79]

Consistent with a defendant's right to an impartial jury and the fundamental role of juries, the government may exclude certain groups to advance compelling public interests. Federal and state laws disqualify specific categories of people because of their inability to perform juror functions and likely bias. Other categorical exclusions safeguard public services or define the obligations of citizenship. Identifying categorical exclusions that appear narrowly tailored to serve compelling state interests shows that some exclusions can be properly justified.

To serve as a juror, one must attend full days of trial, understand the evidence presented at trial, and deliberate with other jurors. The government may, therefore, exclude individuals who are mentally or physically unable to perform juror tasks,[80] or lack proficiency with the English language.[81] Minimum age requirements surely exclude some exceptionally mature and intelligent minors, but they are reasonably well-tailored to advance the public's interest in selecting capable jurors.[82]

---

79. *See* Vasquez v. Hillery, 474 U.S. 254, 263–64 (1986) [W]hen a petit jury has been selected upon improper criteria . . . we have required reversal of the conviction because the effect of the violation cannot be ascertained."). *See also* United States v. Rodriguez-Lara, 421 F.3d 932, 940–41 (9th Cir. 2005).

80. Trial courts are required to make reasonable modifications to ensure that potential jurors are not excluded because of their disability. *See* Anna Offit, *Reimagining the Inclusive Jury*, 57 U.C. DAVIS L. REV. 2691, 2702 (2023) (providing examples of reasonable accommodations for deaf and visually impaired jurors); *see generally* Randy Lee, *Equal Protection and a Deaf Person's Right to Serve as a Juror*, 17 NYU REV. L. & SOC. CHANGE 81, 84 (1989).

81. Criminal defendants who are not proficient in the English language are entitled to the assistance of translators so they may obtain effective assistance of counsel and understand trial proceedings. *See generally* Lisa Santaniello, *If an Interpreter Mistranslates in a Courtroom and There is No Recording, Does Anyone Care?: The Case for Protecting LEP Defendants' Constitutional Rights*, 14 NW. J. L. & SOC. POL'Y 91, 97 (2018). A defendant with limited English proficiency is not, however, entitled to be judged by jurors with limited English proficiency, except in New Mexico. *See* Kyle P. Duffy, *Lost in Translation: New Mexico's Non-English Speaking Jurors and the Right to Translated Jury Instructions*, 47 N.M. L. REV. 376, 378 (2017). Jurors must be able to read, write, understand, and speak English to serve on federal juries. *See* 28 U.S.C. § 1865(b)(2)-(3). The logistical problem of jurors without English language proficiency would be glaring in cases where the defendant does not speak English or other jurors speak foreign languages. If, for example, the defendant speak Spanish and a juror speaks Vietnamese, the juror needs either translation from Spanish to Vietnamese, or translation from Spanish to English to Vietnamese.

82. VAN DYKE, *supra* note 38, at 70 ("Although eighteen is an arbitrary line, it is the almost universally accepted line demarking adulthood"). Setting the minimum age for jurors at 18 years helps assure that criminal defendants are judged by their peers. If the required age were lowered, it may be difficult for jury administrators to obtain source data for master jury lists because minors would not appear on voter registration records or property tax records. Some states have higher minimum ages. In Alabama and Nebraska, jurors must be at least 19 years old. *See* ALA. CODE ANN. § 12-16-60(a)(1) (2024); NEB. REV. STAT. § 25-1650(1) (2024). In Mississippi and Missouri, jurors must be 21 years old. *See* MISS. CODE ANN. § 13-5-1 (2024); MO. REV. STAT. § 494.425(1) (2004).

These requirements help assure that jurors fairly consider the evidence presented at trial.[83]

The state may exclude individuals incapable of performing essential juror functions, but such exclusions must be narrowly tailored.[84] English language proficiency standards should not exceed basic comprehension, and jury administrators must apply clear and uniform criteria when evaluating language proficiency.[85] Trial courts may not summarily exclude prospective jurors based on physical disability; instead, they must conduct individualized, case-by-case analyses and excuse a juror only when reasonable accommodations are not possible.[86] At the same time, litigants may use peremptory challenges to strike blind or deaf jurors, as these strikes do not require justification unless discriminatory intent is alleged.[87]

Most states have statutory exemptions allowing elderly individuals to opt-out of jury duty, but states do not categorically exclude prospective jurors based on advanced age. *See Kenneth Terrell, Can Your Age Get You Excused From Jury Duty?*, AARP (July 16, 2024), https://www.aarp.org/politics-society/government-elections/info-2024/jury-duty-age-exemption.html.

Minors do have opportunities to serve as volunteer jurors in Teen Court programs. *See* Deborah Kirby Forgays et al., *Teen Court: What Jurors Can Tell Us About the Process*, 55 JUVENILE & FAMILY CT. J. 25, 27 (2004); Edith Greene & Kasey Weber, *Teen Court Jurors' Sentencing Decisions*, 33 CRIM. J. REV. 361 (2008).

83. Hearing impairments may compromise a juror's ability to fairly consider trial evidence. "[T]here is no assurance that the trial proceedings or jury discussion would be fully communicated to the deaf juror. Matters of inflection and intonation would be entirely lost. It might be argued that a trial in which one or more jurors cannot hear the proceedings is less than fair." State v. Spivey, 700 S.W.2d 812, 814 (Mo. 1985). Disability exclusions have multiple implications for defendant's right to impartial jury trial; the state should not categorically exclude specific groups from the community, but jurors also must be able to attend full days of trial, observe witnesses, and listen to testimony. *See* Nancy Lawler Dickhute, *Jury Duty for the Blind in the Time of Reasonable Accommodations: The ADA's Interface with a Litigant's Right to a Fair Trial*, 32 CREIGHTON L. REV. 849, 855 (1998).

84. Disabled individuals may not be categorically excluded from serving on jurors. Under ADA, since 1990, an otherwise qualified juror may not be excluded from participation in the programs or activities of public entities on the basis of disability, including serving on a jury. *See* Crawford v. Hinds Cnty., 1 F.4th 371, 374 (5th Cir. 2021) (citations omitted).

85. *See generally* Carter v. Jury Comm'n of Greene Cty, 396 U.S. 320 (1970) (invalidating a literacy test requirement for jury service because it was applied in a discriminatory manner that disproportionately excluded African Americans).; *State v. Gibbs*, 758 A.2d 327, 340–41 (Conn. 2000) (upholding state statute excluding jurors who do not speak English).

86. Appellate courts generally uphold convictions where trial judges dismissed prospective jurors with disabilities based on individualized circumstances. *See, e.g.*, United States v. Harris, 197 F.3d 870, 875 (7th Cir. 1999) (upholding dismissal of a juror who experienced drowsiness from medication); Trotman v. State, 218 A.3d 265, 279–83 (Md. App. 2019) (holding that the trial judge made individualized finding that disabled jurors would be unable to access courtroom via stairs).

87. *See* United States v. Watson, 483 F.3d 828, 834 (D.C. Cir. 2007) (permitting peremptory strikes of blind jurors); *see generally* Natasha Azava, *Disability-Based Peremptory Challenge: Needs for Elimination*, 4 CARDOZO PUB. L. POL'Y & ETHICS J. 121 (2006); Andrew Weis, *Peremptory Challenges: The Last Barrier to Jury Service for People with Disabilities*, 33 WILLAMETTE L. REV. 1 (1997); Matthew J. Crehan, *The Disability-Based Peremptory Challenge: Does It Validate Discrimination against Blind Prospective*

Felons are categorically excluded from federal and state juries, even after completing their sentences, due to concerns that they may resent the state and be biased jurors.[88] The exclusion also reflects a normative belief that jurors must be law-abiding citizens to pass judgment on those accused of crimes.[89] Although some felons, particularly those who have rehabilitated and reintegrated into society, may make excellent jurors, the exclusion of felons is generally considered narrowly tailored to meet a compelling state interest.[90] Other groups of individuals—such as occupations closely associated with the state and law enforcement—may also be excluded because they cannot be expected to be impartial jurors.[91]

Certain occupations—such as doctors, firefighters, and active-duty military—may be excluded from juries because they provide vital services that should not be interrupted. Some states have categorically excluded practicing attorneys from serving on juries, citing the public need for legal services as well as the possibility of undue influence on other jurors.[92] Because juries are intended to represent all segments

---

Jurors, 25 N. Ky. L. Rev. 531 (1997); Mary A. Lynch, *The Application of Equal Protection to Prospective Jurors with Disabilities: Will Batson Cover Disability-Based Strikes*, 57 Alb. L. Rev. 289 (1993).

88. *See* United States v. Greene, 995 F.2d 793, 795–96 (8th Cir. 1993) (felon exclusion justified to maintain public confidence in verdicts). While most states do not allow felons to serve on juries, California now allows felons to serve on juries after they finish their sentences. *See* Debra Cassens Weiss, *New California Law Allows Felons Who Served Their Time to Serve on Juries*, ABA J. (Oct. 11, 2019), https://www.abajournal.com/news/article/new-california-law-allows-felons-who-served-their-time-to-serve-on-juries. Other states have considered allowing felons to serve on juries. *See* Jacob Rosenberg, *Jury Duty is the Next Big Step for Felons' Rights*, Mother Jones (May 21, 2019), https://www.motherjones.com/politics/2019/05/jury-duty-is-the-next-big-step-for-felons-rights.

89. A growing number of scholars criticize the felon exclusion on both moral and empirical grounds. *See, e.g.,* Sharion Scott, *Justice in the Jury: The Benefits of Allowing Felons to Serve on Juries in Criminal Proceedings*, 57 Wash. U. J.L. & Pol'y 225 (2018); Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 Am. U. L. Rev. 65, 142-45 (2003); Ashley Alexander, *Banned from the Jury Box: Examining the Justifications and Repercussions of Felon Jury Exclusion in the District of Columbia*, 57 Am. Crim. L. Rev. 11 (2020); James M. Binnall, *A Field Study of the Presumptively Biased: Is There Empirical Support for Excluding Convicted Felons from Jury Service?*, 36 Law & Pol'y 1 (2014); James M. Binnall, *Sixteen Million Angry Men: Reviving a Dead Doctrine to Challenge the Constitutionality of Excluding Felons from Jury Service*, 17 Va. J. Soc. Pol'y & L. 1 (2009). A thorough analysis of the felon exclusion is beyond the scope of this article, but clear and specific concerns about impartiality justify excluding felons from juries.

90. Felon jurors may have special insights into criminal behavior. They may also have useful perspective on who should be incarcerated for public safety and who would be made more dangerous by time in prison.

91. These exclusions may also be justified by the group providing essential public services. However, state legislators are generally not permitted to serve on juries even when the legislature is out of session.

92. *See, e.g.,* State v. Williams, 659 S.W.2d 778, 780 (Mo. 1983) (stating that "strong policy considerations" support excluding certain groups from jury service); People v. Cohen, 90 Cal. Rptr. 612, 617–18 (1970) (upholding the exclusion of physicians and lawyers from grand juries); State v. Brown, 364 A.2d 186, 191 (Conn. 1975) (citations

of the community, very few occupations are categorically excluded to protect public service.[93] More often, members of specific occupations may be excused upon request but are not categorically excluded.[94] Categorical exclusions for lawyers have not held up well over time.[95] Lawyers can serve on juries in most states and are encouraged to do so.[96]

Non-citizens are categorically excluded from federal and state juries.[97] Jury service is widely regarded as a valuable opportunity for individuals to participate in self-government.[98] The state has a compelling interest in fostering civic engagement and providing responsible citizenship.[99] Because of these effects, citizenship requirements are believed to advance compelling state interests, such as fostering civic responsibility, defining political communities, and emphasizing the importance of citizenship.[100] Allowing non-citizens to serve on juries could diminish jury service as a symbol of civic duty and the

omitted) (upholding exclusion of physicians and attorneys from jury service); *see also* Brett M. Woodburn, *Development of the Fair Cross Section Requirement: From Key Man Selection to Key Man Exemption,* 24 OHIO N.U. L. REV. 145, 160–61 (1998) (criticizing generous exemptions for professional class).

93. *See, e.g.,* FLA. STAT. § 40.013(2)(a) (2024) (excluding the Governor, Lieutenant Governor, cabinet officers, clerks of court, and judges from jury service).

94. A federal district court's plan for random jury selection may specify occupations whose members shall be excused from jury service upon individual request. *See* 28 U.S.C. § 1863(b)(5)(A).

95. *See Williams*, 659 S.W.2d at 781 (stating that "[m]any legitimate objectives justify the exclusion" of lawyers). Missouri later eliminated this exclusion without any apparent negative consequences. *See* MO. REV. STAT. §§ 494.425 (2004) & 494.430(6)-(7) (2019) (categorically excluding active-duty military and state national guard while eliminating exclusions for attorneys and allowing exemptions for health care providers and certain religious employees).

96. *See* John McGill, *Every Lawyer Should Sit on a Jury at Least Once*, ABA J. (July 16, 2020), https://www.abajournal.com/voice/article/lawyer-learns-the-value-of-sitting-on-a-jury.

97. Non-citizen exclusion is a "long accepted" practice, much older than residency requirements. *See Carter*, 396 U.S. at 332. In 2013, California's general assembly passed a bill allowing non-citizens to serve on juries, but Governor Jerry Brown vetoed it. *See* Eyder Peralta, *Calif. Gov. Brown Vetoes Bill Giving Non-Citizens Jury Duty*, NPR (Oct. 7, 2013), https://www.npr.org/sections/thetwo-way/2013/10/07/230242924/calif-gov-brown-vetoes-bill-giving-non-citizens-jury-duty.

98. *See* Martin Cronin, *Hidden in Plain Sight: The Due Process Alternative to Batson's Failed Equal Protection Paradigm*, 76 RUTGERS L. REV. 41, 51–54 (2023) (discussing citizen's right to participate in democracy through jury service); Richard M. Re, *Re-Justifying the Fair Cross Section Requirement: Equal Representation and Enfranchisement in the American Criminal Jury*, 116 YALE L.J. 1568 (2006); John Gastil et al., *Civic Awakening in the Jury Room: A Test of the Connection between Jury Deliberation and Political Participation*, 64 J. POL. 585 (2002).

99. *See* Perkins v. Smith, 370 F. Supp. 134, 137–38 (D. Md. 1974) (holding that state has compelling interest in restricting juries to citizens).

100. *See* Sugarman v. Dougall, 413 U.S. 634, 647–48 (1973) (state laws excluding noncitizens from political participation promote significant state interests in self-government); Foley v. Connelie, 435 U.S. 291, 295–96 (1978) (state may exclude noncitizens from participating in democratic political institutions).

unique responsibilities of citizenship.[101] While these claims are subject to debate, the categorical exclusion of non-citizens from juries appears narrowly tailored to advance compelling state interests.[102]

D. Distinguishing Equal Protection Claims by Excluded Jurors

It is important to distinguish between a fair cross-section claim under due process and an equal protection claim challenging the exclusion of specific citizens from jury service. The constitutionality of categorical exclusions should not hinge on whether the excluded group qualifies as a protected class under Equal Protection analysis.[103] When it comes to the new resident exclusion, the criminal defendant is concerned with receiving a fair trial. The defendant's primary concern is not protecting new residents from discrimination or safeguarding the right to travel. Unfortunately, some courts conflate the defendant's due process claim with a prospective juror's equal protection claim and focus on whether the state's jury qualifications target a "protected class" of citizens.[104]

The criminal defendant and the slighted citizen may challenge the same practice, but they address different concerns. To advance an equal protection claim, the victim of state discrimination must be a member of a protected class and must also demonstrate discriminatory intent.[105] In contrast, for his due process claim, the defendant does not need to be a member of the group excluded from jury service.[106] Additionally, the defendant does not need to prove that the

---

101. Limiting the number of times someone may be summoned to jury duty within a specific time interval may also promote shared civic responsibility. *See* 28 U.S.C. § 1866(e) (limiting the number of times a person may be summoned to serve on a jury within a two-year period).

102. Some scholars question the merits of excluding non-citizen from juries. *See, e.g.,* Amy R. Motomura, *The American Jury: Can Noncitizens Still Be Excluded?*, 64 Stan. L. Rev. 1503 (2012); Mary Lombardi, *Reassessing Jury Service Citizenship Requirements*, 59 Case W. Res. L. Rev. 725 (2008). Critical analysis of these claims is beyond the scope of this article.

103. *See generally* Chernoff, *supra* note 14, at 158.

104. *See, e.g., Adams*, 524 P.2d at 378 (analyzing whether state's one-year residency requirement targets cognizable class of citizens).

105. While a new resident may argue that a state law violates the Equal Protection Clause, the Clause does not apply against the federal government's jury qualification rule for federal courts, forcing the new resident to rely on the more permissive Due Process Clause. *See Ross*, 468 F.2d at 1216 (one-year residency requirement does not violate due process rights of new residents).

106. The defendant is injured because the jury venire is not a representative cross-section of the community. His primary concern is not an equal opportunity to serve on juries but rather being convicted by an unfair jury and sentenced to prison or death. For example, the due process claims in *Taylor* and *Duren*, regarding women serving on juries in Louisiana and Missouri, were made by male defendants. *See Kiff*, 407 U.S. at 500.

state intended to discriminate against the excluded group.[107] A proper Due Process analysis should not center on whether the excluded group requires protection from discrimination. Instead, the inquiry should be whether the group's exclusion unfairly stacks the jury pool against the defendant.[108]

While this article examines jury qualifications from the defendant's perspective, we should not discount the citizen's right to serve on federal and state juries. As previously discussed, jury service serves as an important reminder of a citizen's democratic responsibilities. Citizens denied the opportunity to serve on juries have challenged state laws that treat them as lesser citizens.[109] For some individuals, the opportunity to serve on a jury represents a civil rights issue.[110] One could argue that one-year residency requirements infringe on the fundamental right of citizens to travel and relocate within the United States.[111] Although new residents are not recognized as a protected class under Equal Protection analysis, they have often been the targets of discriminatory state laws aimed at citizens of other states.

IV. THE EXCLUSION IS NOT NARROWLY TAILORED TO SERVE COMPELLING STATE INTERESTS

The categorical exclusion of a specific group from jury service must be narrowly tailored to serve a compelling state interest. The exclusion of new residents from juries should be evaluated similarly to the exclusion of felons, individuals lacking English proficiency, those physically or mentally unable to serve, active-duty military, and other disqualified groups. If the exclusion of new residents is not narrowly tailored or fails to serve a compelling government interest, it infringes on the defendant's constitutional right to an impartial jury.

---

107. *See* Duren v. Mo., 439 U.S. 357, 368 n.26 (1979) ("In Sixth Amendment fair-cross-section cases, systematic disproportion itself demonstrates an infringement of the defendant's interest in a jury chosen from a fair community cross-section. The only remaining question is whether there is adequate justification for this infringement."); *see also* Chernoff, *supra* note 14, at 166–74.

108. *See* Witherspoon v. Ill., 391 U.S. 510, 523 (1968) (rejecting the dismissal of prospective jurors that "stacked the deck" against the defendant by excluding those opposed to the death penalty).

109. *See, e.g.,* Eckstein v. Kirby, 452 F. Supp. 1235 (E.D. Ark. 1978) (deaf citizen challenging exclusion from jury service); *Perkins*, 370 F. Supp. at 134 (resident alien challenging state excluding noncitizens from juries).

110. *See* Lee, *supra* note 80, at 96–99; *see also* Cronin, *supra* note 98, at 65–67.

111. This type of equal protection argument finds some support in caselaw. *See supra* Section III-E (discussing state laws discriminating against new residents).

A. The "Unfamiliar with Community" Rationale is not Supported by Any Evidence

The purported rationale for the exclusion is that new residents have not assimilated to the community's values, or established themselves as fit to serve on a jury.[112] Given their unfamiliarity with the community, new residents are thought to perceive trial evidence differently.[113]

These claims appear to be based on a single sentence from a 1968 House Committee Report ("Report"). Courts in Massachusetts,[114] California,[115] Alaska,[116] and Oregon[117] have all relied on the same sentence in an obscure government document published a decade after the rule went into effect. After discussing familiar qualifications, the Report states, "[T]he 1-year residency requirement assures some substantial nexus between a juror and the community whose sense of justice the jury as a whole is expected to reflect."[118] The Report continues, "[t]he foregoing screens will eliminate virtually all of those who ought not to be allowed to serve on a jury—the illiterate, the feebleminded, the insane, the decrepit, the infirm, the accused, and the criminal."[119] The Report does not list new residents among those who should not be allowed to serve, nor do new residents fit any of the groups described. The Report does not clarify why new residents should not be allowed to serve as its single sentence is the Report's only mention of the one-year residency requirement.

No data, evidence, or statistics support the assertion that new residents are unfamiliar with community conditions or values. The Report's claim about a nexus between the one-year residency requirement and the community represented by a jury is a bald assertion. The Report cites no research to support its claim. There is no evidence, for example, that new residents are less knowledgeable about politics and

---

112. *See* United States v. Duncan, 456 F.2d 1401, 1406 ("Historically one of the virtues of the jury, whether grand or petit, is supposed to be that it is a local body acquainted with local conditions, customs and mores. The residency requirement seems to us to be rationally related to that notion.").

113. *See* Reed v. State, 292 So.2d 7, 10 (Fla. 1974) ("[T]he residents of a particular locality or a particular state for a certain period of time are more apt to consider evidence in the light of surrounding circumstances[.]").

114. *See* United States v. Arnett, 342 F. Supp. 1255, 1261 (D. Mass. 1970).

115. *See* Adams v. Super. Ct., 524 P.2d 375, 383 (Cal. 1974) (citing Report language via *Arnett*).

116. *See* Hampton v. State, 569 P.2d 138, 149 (Alaska 1977).

117. *See* United States v. Armsbury, 408 F. Supp. 1130, 1134 (D. Or. 1976).

118. *See* H.R. Rep. No. 1076, at 6 (1968).

119. *Id.*, at 6. The same language appears in a Senate Committee Report published the prior year which also provides no further explanation or substantiation for the claims. *See* S. Rep. No. 891, at 22 (1967).

social issues, less likely to attend civic events, or less likely to participate in community affairs.[120]

The available data suggests that new residents are no less informed or engaged than others in the community. The American National Election Study ("ANES") enables us to compare those who have lived in their current community less than a year with those who have lived there a year or more.[121] The 2020 ANES data show no statistically significant difference in new residents' understanding of politics,[122] attending meetings about issues facing the community, contacting a state or local government official, turning out to vote, or going to political meetings. Established residents pay more attention to politics, but do not appear to be more knowledgeable and in some ways are less actively engaged. New residents are more likely to join a march or demonstration and are more likely to do volunteer work.[123]

We should not be surprised by the absence of significant differences in understanding of community conditions. Most new residents have simply relocated within the same county or to another county in the same state. Most moves are local, with a median distance of just 15 miles.[124] Counties with relatively high percentages of residents who moved from other states typically border other states.[125] These "new

120. *See Adams*, 524 P.2d at 383 (Mosk, J., dissenting) ("[T]he duration of residence does not appear rationally related to the only legitimate interest of the state in establishing juror qualifications, i.e., the assurance of obtaining capable jurors.")

121. *See 2020 Time Series Study*, AM. NAT'L ELECTION STUDIES (Feb. 10, 2022), https://electionstudies.org/data-center/2020-time-series-study/. Researchers asked respondents how long they have lived in their present community and recorded their response in years (study variable V201576), allowing us to compare individuals who have lived in their community for more/less than one year.

122. There is not a significant difference in self-reported political knowledge or based scores on nine-question political knowledge quiz embedded in the survey. Replication materials for all empirical analysis of ANES datasets is made available online. *See* Barry C. Edwards, *Replication Data for: Outdated and Unconstitutional: Rethinking Duration of Residency Requirements for Jury Service*, HARVARD DATAVERSE (2025), https://doi.org/10.7910/DVN/GGQGHB.

123. Earlier iterations of the ANES do show that newcomers are less likely to correctly identify the names of candidates who ran for Congress in their district. In the 1958 ANES, 33% of newcomers correctly identified at least one candidate compared to 49% of those with a year or more of residency. Comparable figures in the 1994 ANES, 29% for newcomers and 44% for established residents. *See Id.*

124. *See* Jessica Lautz, *Long-Distance Movers: Why Did They Move and How?* NAT'L ASS'N REALTORS (May 25, 2023), https://www.nar.realtor/blogs/economists-outlook/long-distance-movers-why-did-they-move-and-how; *see also* Nathanial Hendren et al., *New Data Tool and Research Show Where People Move as Young Adults*, U.S. CENSUS BUREAU (July 25, 2022), https://www.census.gov/library/stories/2022/07/theres-no-place-like-home.html (most young adults stay within 10 miles of where they grew up).

125. For example, the Virginia counties with the highest percentages of new residents are located on the state's southern border: Suffolk City (24.8%), Danville City (21.1%), Carroll County (19.9%), and Mecklenburg County (19.2%). The only exception is James City County (21.1% new residents). Georgia's Chattahoochee County (36.1% new residents) and Stewart County (23.5% new residents) are located south of Columbus,

residents" are essentially locals, not transplants unfamiliar with their communities; relatively few new residents have relocated from distant places.[126] Even those who move across the country often share common values and life experiences with long-term community members.[127]

If a state does not exclude new residents (and most do not), would it be proper for a trial judge to dismiss prospective jurors who have not resided in the jurisdiction for a year based on a general belief that they may be unfamiliar with the local community? No, a trial judge must make an individualized inquiry and substantiate the reason for excusing a prospective juror.[128] A trial judge may not strike a group of prospective jurors based on an unsubstantiated claim in an obscure government document published nearly sixty years ago.[129]

If the purported rationale is insufficient to justify a single for-cause dismissal, excluding all new residents from all trials is unacceptable. The only difference between striking new residents for cause after forming the jury pool and categorically excluding them beforehand is the timing. Excluding prospective jurors with statutes is worse, because it happens on a much larger scale. Categorical exclusions without narrow tailoring to serve compelling state interests are "abhorrent to the democratic ideal of trial by jury."[130] A trial judge cannot dismiss a prospective juror without specific and substantiated justification.[131] It should not be permissible for federal and state governments to exclude prospective jurors based on general, unsubstantiated beliefs about citizens who have simply relocated within the United States.

Georgia and neighboring Phenix City, Alabama. Columbus and Phenix City are effectively one metropolitan area separated by the Chattahoochee River. Similar patterns are observed in other states. The Alabama county with the highest percentage of new residents is Sumter County, located on its western border. *See* U.S. CENSUS BUREAU, American Community Survey DP02 (2022), https://data.census.gov/table/ACSDP5Y2022.DP02?t=Residential Mobility&g=010XX00US$0500000&d=ACS 5-Year Estimates Data Profiles.

126. Even those who relocated from distance may be returning to an area they lived previously, such as those who return after going to college in another state or being stationed abroad for military service. *See* Quoctrung Bui and Claire Miller, *The Typical American Lives Only 18 Miles from Mom*, N.Y. TIMES (Dec. 23, 2015), https://www.nytimes.com/interactive/2015/12/24/upshot/24up-family.html. People tend to relocate to places where they have family ties and connections. *See* Amy Spring et al., *Influence of Proximity to Kin on Residential Mobility and Destination Choice: Examining Local Movers in Metropolitan Areas*, 54 DEMOGRAPHY 1277 (2017).

127. Mobility, mass media, and the internet have reduced regional differences in customs and values. *See* ABA COMM. ON JURY STANDARDS, STANDARDS RELATING TO JUROR USE AND MANAGEMENT 37–38 (1993).

128. *See* United States v. Salamone, 800 F.2d 1216, 1226; *see also* Gray v. Miss., 481 U.S. 648, 659 (1987) (vacating death sentence imposed by jury from which a juror was erroneously excluded for cause); Davis v. Ga., 429 U.S. 122, 123 (1976) ("if a venireman is improperly excluded . . . any subsequently imposed death penalty cannot stand").

129. *See supra*, Section IV-A.

130. *Salamone*, 800 F.2d at 1226.

131. *See infra*, Section V-A (discussing requirements to dismiss a juror for cause).

B. Jurors Do Not Need to Be Familiar with Local Norms, Customs, and Mores

Familiarity with local values and loyalty to the community are not relevant or appropriate criteria for serving on juries. Jurors are instructed to apply federal or state laws to the evidence presented in court.[132] Lay jurors do not need specialized knowledge, training, or life experience to serve on a jury.[133] The purported rationale for excluding new residents is "completely unrelated to the ability of members of the group to serve as jurors in a particular case."[134]

In some cases, familiarity with local conditions and circumstances is not a helpful trait; instead, it threatens the fairness of trials.[135] Criminal defendants are often perceived as outsiders—transient individuals with unstable employment histories who have experienced homelessness, frequent relocations, and minimal ties to the community.[136] Adherence to local values and mores can cause prejudice against perceived outsiders. Judge Ervin of the Florida Supreme Court observed this disturbing tendency in capital trials:

> Truly characterized, the sentencing to death here is an example of the exercise of local arbitrary discretion. The two actors in the homicide were underprivileged drifters. Their

---

132. Rejecting one-year residency requirements for lawyers, courts have observed that familiarity with local customs has no bearing on fitness for the practice of law:

> Neither legal competence nor ethical fitness depends upon cultural provincialism. Assuming that knowledge of local government, a permanent stake in the community, and good character are desirable and important qualifications for the competent legal practitioner, we do not agree that one years' residence is in any way relevant to a determination that these qualities are present in a particular individual. Too often, even lifelong residents of a community have no knowledge of even the basic rudiments of the governmental units closest at hand. In our highly mobile society, one who has lived in a particular locale for one year may be firmly rooted in the community or he may be ready to move on tomorrow.

Keenan v. Bd. of L. Exam'rs, 317 F. Supp. 1350, 1359 (E.D.N.C. 1970); *see also* Smith v. Davis, 350 F. Supp. 1225, 1228–29 (S.D. W.Va. 1972) (citing cases invalidating one-year residency requirements for lawyers and declaring state's requirement unconstitutional).

133. The purported rationale for excluding new residents is weak in federal criminal trials applying laws that apply to all states. Indeed, federal laws create clear and uniform rules that pre-empt conflicting local policies. The idea that jurors should advance local norms, as opposed to generally applicable laws, is more in line with jury nullification and subverting judicial authority than a legitimate state interest. As discussed in Section I, the residency rule was introduced in an amendment designed to shield local officials from federal civil rights laws.

134. Lockhart v. McCree, 476 U.S. 162, 175 (1986).

135. Prejudicial pretrial publicity that denies defendant a fair trial is a structural error that entitles defendant to new trial. *See* Sheppard v. Maxwell, 384 U.S. 333, 351–52 (1966) (citation omitted) (presumption of bias where judge failed to protect trial from media circus).

136. *See*, *e.g.*, Heiney v. State, 447 So.2d 210 (Fla. 1984) (transient defendant sentenced to death); People v. Fenenbock, 54 Cal. Rptr. 2d 608, 610 (Cal. Ct. App. 1996) (death sentence for murder at transient campground).

> surnames, Spinkellnik [sic] and Szymankiewicz, were foreign and strange to the Tallahassee area. They had no family roots or business connections here. All of the ingredients were present for the exercise of invidious parochial discrimination in the sentencing process[.] . . . The result here is an old story, often repeated in this jurisdiction where the subconscious prejudices and local mores outweigh humane, civilized understanding when certain segments of the population are up for sentencing for murder.[137]

While the defendant may indeed be dangerous or guilty of an offense, he should be judged on his actions, not his foreign sounding name or place of residence.[138]

In high-profile prosecutions, "community allegiance" can color how prospective jurors view trial evidence.[139] The prosecutions of Dzhokhar Tsarnaev, Lee Malvo, and John Allen Muhammad show that familiarity with community conditions and values may be cause for disqualifying jurors. Moving the trial to a different venue with less exposure to prejudicial local news stories is sometimes necessary to ensure a fair trial.[140] In such cases, a new resident's lack of familiarity with the community provides an additional measure of impartiality and objectivity.[141]

In civil matters, jurors' community allegiance can also threaten the fundamental fairness of trials. One of the purposes of federal courts, especially in diversity of citizenship cases, is to protect out-of-state parties from the local prejudice in state courts.[142] Federal and state statutes that insulate local jury pools from the fresh perspectives of new residents encourage parties to shop different forums for favorable juries.

---

137. Spinkellink v. State, 313 So.2d 666, 674 (Fla. 1975) (Ervin, J., dissenting). John Spenkelink's last name is spelled incorrectly in both the case caption and Judge Ervin's opinion.

138. This problem is evident in the landscape of capital punishment. Death sentences are concentrated in specific localities and there is a lack of nationwide uniformity. *See* G. Ben Cohen & Robert J. Smith, *The Racial Geography of the Federal Death Penalty*, 85 WASH. L. REV. 425, 429–31 (2010) (observing that small number of jurisdictions responsible for most death sentences). To reduce geographic disparities, it may be helpful for new residents to voice outside perspectives.

139. *See*, *e.g.*, United States v. Tsarnaev, 968 F.3d 24, 51 (1st Cir. 2020) (considering Tsarnaev's argument that a prospective juror's pro-Boston social media posts showed excessive "community allegiance" and inability to be impartial).

140. *See* Rideau v. La., 373 U.S. 723, 726–27 (1963) (holding that locally televised confession before trial deprived defendant of due process); *Maxwell*, 384 U.S. at 351-52 (extensive publicity in local newspapers denied defendant a fair trial). While change of venue motions are rarely granted due to the cost and inconvenience of moving trials, it is not argued that trying the defendant before "new residents" would be unfair.

141. *See*, *e.g.*, *Tsarnaev*, 968 F.3d 57–58 (discussing concerns about potential bias of jurors who were exposed to a lot of information about the case and expressed strong allegiance to community).

142. *See* Hertz Corp. v. Friend, 559 U.S. 77, 85 (2010).

The perpetuation of insular jury pools with unusual local values is problematic in fields where national uniformity is desirable.[143]

Obscenity prosecutions are the only type of case identified to support the argument that jurors need to be familiar with local conditions. Citing *Miller v. California*,[144] the California Supreme Court observed: "in some cases jurors will be instructed to apply a local standard . . ., making it important to obtain persons who have had time to become familiar with the community."[145] Even in extremely rare obscenity prosecutions, it is not necessary for jurors to be personally familiar with contemporary community standards of decency.[146] At trial, parties may present evidence about community standards, as this is a required element of an obscenity prosecution.[147] Indeed, in the obscenity trial at issue in *Miller*, the state presented testimony from an "expert on community standards."[148] An obscenity trial juror does not need to be familiar with community decency standards any more than jurors need to be familiar with general accounting practices, causes of death, or standards of medical care. If familiarity with community standards is needed, other jurors can share their insights with new residents during deliberations.[149] Even in obscenity cases, the purported reason to exclude new residents has no bearing on jurors' ability to serve and render impartial decisions.

C. The Exclusion is Not Narrowly Tailored

Let us assume, for the sake of argument, that new residents cannot serve on obscenity trial juries because jurors must be personally familiar with local community standards regarding sexually-oriented

143. Commentators have criticized venue shopping in intellectual property litigation, particularly concentration of lawsuits filed in the Eastern District of Texas due to the jurisdiction's reputation for significant jury verdicts. *See, e.g.*, Jesus Efren Cano, *The Road to Marshall: Of Venue, Trolls, and the Eastern District of Texas*, 17 Chi.-Kent J. Intell. Prop. 137 (2017); William J. Watkins & William F. Shughart II, Patent Trolls: Predatory Litigation and the Smothering of Innovation 17-8 (2014).

144. 413 U.S. 15 (1973).

145. *See Adams*, 524 P.2d at 380.

146. With the broad reach of modern media, many argue Miller's local standard is increasingly unworkable. *See* Ashcroft v. ACLU, 535 U.S. 564, 586-89 (2002) (O'Connor, J., concurring); Sarah Kagan, *Obscenity on the Internet: Nationalizing the Standard to Protect individual Rights*, 38 Hastings Const. L.Q. 233, 240 (2010).

147. *See* Smith v. United States, 431 U.S., 291, 305 (1977) (emphasizing that obscenity juries must be instructed to consider standards of the entire community and not simply their own subjective standards); United States v. Various Articles of Obscene Merchandise, 709 F.2d 132, 135-136 (2d Cir. 1983) (holding that government must prove that materials offend community standards; government is not required to present evidence of community standards but parties may admit evidence of community standards).

148. Miller, 413 U.S. at 31 n.12 (1973).

149. It is estimated that 5 percent of adults are new residents for federal purposes. Without the residency requirement, there may be one or two new residents on the jury in an obscenity trial. *See supra,* Section I.

material before trial; the categorical exclusion of new residents is still not justified. If compelling reasons exist to exclude new residents from certain trials, they may be excused on a case-by-case basis. A judge presiding over an obscenity trial, or any other case requiring familiarity with local community standards,[150] could simply dismiss new residents from that case. Those jurors could then be reassigned to other trials.[151] The state does not need to exclude all new residents from all juries to conduct the rare obscenity trial.[152]

A general exclusion is overly broad if it is only justified in rare cases. Even if one indulges the statutes with legislative purpose, new residents' unfamiliarity with local conditions is not a sufficient reason to limit the cross-section represented on juries. In *Dunn v. Blumstein,*[153] the Court recognized that, "[i]t may well be true that new residents as a group know less about state and local issues than older residents."[154] The Court also acknowledged the state's interest in an informed electorate.[155] But, it concluded that "the conclusive presumptions of durational residence requirements are much too crude."[156] They exclude new residents who are informed and ignore whether other residents are informed. Statutes that affect constitutional rights, such as the right to trial by impartial jury, must be narrowly tailored.[157]

Although courts have not advanced this rationale, some may argue that recent movers deserve a reprieve from jury duty as they adjust to their new community. Moving can be a stressful and difficult experience, but this does not justify categorical exclusion. In *Taylor v. Louisiana*,[158] the Court rejected Louisiana's overbroad claim that women might be pregnant or need to stay home to care for children or other family members: "[i]t is untenable to suggest these days that

150. Although most states use a national standard of care in medical malpractice cases, some states still employ a local standard of care. *See generally* Hall v. Hilbun, 466 So. 2d 856, 871 (Miss. 1985) (rejecting local standards of care for state and discussing general trend for national standards). But even a medical malpractice case following a local standard of care would not rely on jurors' familiarity with the local standard of medical care; parties would call witnesses to testify about local medical standards.

151. This point is discussed further below. If juror familiarity with local conditions is a legitimate state interest, the categorical exclusion of new residents is not narrowly tailed to serve that interest.

152. *See The Quiet Crisis: Uncovering the DOJ's Failure to Tackle Obscenity*, Enough is Enough (Nov. 9, 2023), https://internetsafety101.org/objects/EIE-Obscenity-paper-11-09-2023.pdf (obscenity laws virtually unenforced since early 2000s); Tim Wu, *How Laws Die*, Slate (Oct. 15, 2007), https://slate.com/news-and-politics/2007/10/how-laws-die.html (observing that there are now almost no obscenity prosecutions for pornography).

153. 405 U.S. 330 (1972)

154. Dunn v. Blumstein, 405 U.S. 330, 359 (1972).

155. *Dunn*, at 354.

156. *Id.* at 360.

157. *Id.* at 343.

158. 419 U.S. 522 (1975).

it would be a special hardship for each and every woman to perform jury service or that society cannot spare *any* women from their present duties."[159] If a new resident faces significant hardship or extreme inconvenience, they can be excused like any other juror.[160] While determining who is ready to serve can be burdensome, courts routinely process excuses and exemption claims.[161]

D. Exclusion Does Not Help Courts Conduct Trials Efficiently

Some courts have suggested that one-year residency requirements help states administer jury trials efficiently. In 1974, the Florida Supreme Court claimed that requiring jurors to have lived in Florida for a year and the summoning county for six months could "expedite the administration of the selection procedure."[162] In 1976, Georgia's Supreme Court similarly suggested that the requirements allow states time to evaluate potential candidates for the jury and identify upright and intelligent citizens.[163]

These comments about efficiency are unsubstantiated and misguided. The new resident exclusion does not expedite the selection process, help administrators prepare master jury lists, nor does it serve jury summons more effectively. Modern jury administrators use electronic records, random selection methods, and do not personally evaluate prospective jurors. Eliminating one-year residency requirements would not impose an unreasonable record-keeping burden on court administrators. Administrators would not need to manually update master jury lists to track new arrivals.[164] Most states currently allow

159. Taylor v. La., 419 U.S. 522, 534–35 (1975) (original emphasis).

160. 28 U.S.C. § 1866(c). Although jury duty is often portrayed negatively in pop culture, research shows that many jurors enjoy the experience and value the opportunity to fulfill a civic duty. *See* Liana Pennington & Matthew J. Dolliver, *Understanding the Effects of Jury Service on Jurors' Trust in Courts*, 56 Law & Soc'y Rev. 580, 580 (2022); Jimin Pyo, *The Impact of Jury Experience on Perception of the Criminal Prosecution System*, 52 Int'l J. L. Crime & Just. 176 (2018). Rather than add to the hardship of moving to a new place, it is possible that serving on a jury may help new residents reduce the stress of moving by fostering social connections and easing feelings of isolation.

161. *See Taylor*, 419 U.S. at 535 ("[I]t may be burdensome to sort out those who should be exempted from those who should serve. But that task is performed in the case of men, and the administrative convenience in dealing with women as a class is insufficient justification for diluting the quality of community judgment represented by the jury in criminal trials.").

162. *Reed*, 292 So.2d at 10. Florida has since abandoned its one-year residency rule, endorsed by its Supreme Court in *Reed,* in favor of more inclusive, representative juries. *See* Fla. Stat. § 40.01 (2025).

163. *See* Gibson v. State, 226 S.E.2d 63, 68 (Ga. 1976).

164. Jury administrators update their master jury lists using public records, such as voter registration and motors vehicle records. *See supra* Section III-B.

new residents to serve without practical problems, administrative burdens, or loss of efficiency.[165]

The duration of residency requirement is inefficient and impedes the jury selection process. Enforcing the exclusion necessitates courts collecting and processing additional information on juror questionnaires, adding complexity to the process. Judge Mosk of the California Supreme Court noted that following the requirement is "obviously administratively inconvenient."[166] Similarly, the American Bar Association's Committee of Jury Standards reported that "the imposition of myriad eligibility requirements not only adversely affects the inclusiveness of the jury selection process, but may also increase the cost of administering the jury system."[167] Rather than expediting the selection process, the categorical exclusion slows it down.

E. The Exclusion is Rooted in Prejudice and Discrimination

The purported justification for exclusion—unfamiliarity with the local community—is neither a compelling state interest nor a valid rationale; instead, it is a product of prejudice, fear, and discrimination. It is an example of the "economically and socially privileged" members of the community fearing those who might question and challenge establishment.[168] Fear and hostility directed toward new residents reflect an in-group's base response to perceived threats posed by an out-group.[169]

The notion that jurors must reflect established values is tainted by racism and prejudice.[170] Throughout U.S. history, certain groups have

---

165. At the state level, there is a general trend away from duration of residency requirements in favor of expanding the pool of potential jurors in support of efficient administration of jury trials. *See* ABA Comm. on Jury Standards, *supra* note 127, at 50-1.

166. Adams, 524 P.2d at 381 (Mosk, J., dissenting).

167. ABA Comm. on Jury Standards, *supra* note 127, at 35.

168. Socially and economically privileged members of the community may treat its new residents as threatening outsiders. *See* Norbert Elias & John L. Scotson, The Established and the Outsiders xv (2d ed. 1994); *see also* Thiel v. So. Pac. Co., 328 U.S. 217, 223–24 (1946) (warning that categorical exclusion of daily wage workers "would breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged").

169. Out-group threat theory provides a general explanation for discrimination against newcomers because it suggests that when a group perceives an out-group as a threat, they respond to perceived threats from that group. Out-group threat theory suggests that people tend to view members of their own group (the in-group) more favorably than members of a new group (the out-group). *See* Walter G. Stephan et al., *Intergroup Threat Theory*, *in* Handbook of Prejudice, Stereotyping, & Discrimination, 255, 255–56 (Todd D. Nelson ed., 2015); Blake M. Riek et al., *Intergroup Threat and Outgroup Attitudes: A Meta-Analytic Review*, 10 Personality & Soc. Psych. Rev. 336 (2006); Aldo Cimino & Andrew W. Delton, *On the Perception of Newcomers: Toward an Evolved Psychology of Intergenerational Coalitions*, 21 Hum. Nature 186, 197 (2010) (suggesting humans have innate, evolved concept of newcomer).

170. *See generally* Jennifer Eisenberg, *Ramos, Race, and Juror Unanimity in Capital Sentencing*, 55 Loy. L.A. L. Rev. 1085, 1086–87 (2022) (discussing states adopting

been excluded from jury service due to their race, gender, ethnicity, religion, and social status.[171] In many states, the key man system historically excluded African Americans and other minority groups from jury service.[172] These "key men" often selected only white jurors who had social and business ties to those in positions of power.[173]

These troubling patterns are reflected in the legislative history of the one-year residency requirement for federal juries. This rule was part of an amendment aimed at undermining the enforcement of civil rights legislation by federal judges who held local officials in contempt of court. Local juries were intended to shield segregationists from accountability before federal judges. Southern lawmakers sought to prevent reformers and agitators unfamiliar with local norms from serving on juries.[174] In this context, the one-year residency requirement seems intended to ensure that prospective jurors would be familiar with the established racial hierarchy before serving on a jury.

Prejudice and discrimination against new residents existed before jury qualifications. States have a long history of treating new residents as second-class citizens. States have imposed durational residency requirements in various contexts to restrict the rights and opportunities of new residents. For instance, new residents have been denied the right to vote,[175] employment opportunities,[176] the right to run for public office,[177] and the opportunity to practice law.[178] States have tried to

non-unanimous jury verdict rules to preserve and promote white supremacy). The new resident exclusion similarly neutralizes the outsider's perspective.

171. *See* VAN DYKE, *supra* note 38, at 13–16 (discussing history of elitist juries).

172. *See* Hiroshi Fukurai, *Critical Evaluations of Hispanic Participation on the Grand Jury: Key-Man Selection, Jurymandering Language, and Representative Quotas*, 5 TEX. HISP. J.L. & POL'Y 7, 37-38 (2001). In 1980, the Massachusetts Supreme Judicial Court observed that the centuries-old "key man" system, which involved choices by community representatives in compiling jury lists, held "the possibility of abuse." Commonwealth v. Bastarache, 414 N.E.2d 984, 995 (Mass. 1980).

173. The Jury Selection Act of 1968 largely replaced the "key man" system of jury selection with a random selection process. *See* Alker Jr. & Barnard, *supra* note 62, at 220; Woodburn, *supra* note 92, at 154–57.

174. Hostility to outside perspectives was a feature of Southern resistance to civil rights and integration. *See* David Zirin, *The Fiction of the "Outside Agitator"*, THE NATION (May 3, 2024), https://www.thenation.com/article/activism/outside-agitator-false-narrative (discussing origin of "outside agitator" as term to denigrate and slander civil rights activists in Jim Crow south).

175. *See Dunn*, 405 U.S. at 331–33 (successful equal protection challenge by a new state resident who was not allowed to register to vote).

176. *See* Att'y Gen. of N.Y. v. Soto-Lopez, 476 U.S. 898, 901 (1986) (invalidating civil service hiring preference for veterans based on date of residency).

177. *See* Thompson v. Mellon, 507 P.2d 628, 636 (Cal. 1973) (invalidating city charter requiring two years of residency to run for public office); Marra v. Zink, 256 S.E.2d 581, 583 (1979) (invalidating a one-year residency requirement); Matthews v. Atl. City, 417 A.2d. 1011, 1012–13 (N.J. 1980) (invalidating a two-year residency requirement).

178. *See Keenan*, 317 F. Supp. at 1359; Smith v. David, 350 F. Supp. 1225, 1228–29 (S.D.W. Va. 1972).

deny new residents welfare benefits,[179] income assistance,[180] and tax exemptions.[181] States have imposed duration of residency requirements for public health care,[182] subsidized housing,[183] divorce filings,[184] and in-state tuition at public universities.[185] In many contexts, courts have recognized these requirements as unlawful discrimination and invalidated these laws.[186]

While most durational residency requirements have been struck down, some have been upheld as necessary to protect public resources.[187] States may restrict access to resources to bona fide residents who intend to remain in the state, preventing transients from claiming residency to secure benefits before returning to their home state.[188] For example, a state might require individuals to reside within its borders for a year before filing for divorce, ensuring it does not become a destination for quick divorces.[189] However, requiring one year of residency to serve on a jury does not protect state resources. New residents cannot apply for jury duty for the daily pay or per diem allowances because jurors are selected randomly by the court. Individuals do not move to a new state for the remote chance of being selected for a high-profile jury. The state

179. *See* Shapiro v. Thompson, 394 U.S. 618 (1969) (one year waiting period for state welfare benefits is unconstitutional burden on the fundamental right to travel); Saenz v. Roe, 526 U.S. 489 (1999) (state may not limit amount of welfare benefits based on duration of residency).

180. *See* Zobel v. Williams, 457 U.S. 55, 56 (1982) (state may not condition receipt of income dividends on duration of residency).

181. *See* Hooper v. Bernalilio Cnty. Assessor, 472 U.S. 612, 614–15 (1985) (striking down state law denying tax exemption to veterans who moved to state later).

182. *See* Mem'l Hospital v. Maricopa Cnty., 415 U.S. 250, 253 (1974) (one-year waiting residency requirement for public health care is unconstitutional).

183. *See* King v. New Rochelle Mun. Hous. Auth., 442 F.2d 646, 647–48 (2d Cir. 1971).

184. *See* McCay v. S.D., 366 F. Supp. 1244, 1245 (D.S.D. 1973) (striking down state's one-year residency requirement for divorce proceedings).

185. *See* Starns v. Malkerson, 326 F. Supp. 234, 235 (D. Minn. 1970) (upholding one-year residency requirement to establish residency for in-state tuition purposes).

186. "Residency requirements are one of the more peculiar anomalies of jury selection statutes because the Supreme Court has firmly denounced all residency requirements that infringe upon the related right of voting or that restrict access to other government activities such as welfare and publicly supported health care." VAN DYKE, *supra* note 38, at 71.

187. *See* Eugene D. Mazo, *Residency and Democracy: Durational Residency Requirements from the Framers to the Present*, 43 FLA. ST. L. REV. 611, 648–49.

188. *See* Martinez v. Bynum, 461 U.S. 321, 325–30 (1983) (distinguishing duration of residency requirements from bona fide residency requirements); Vlandis v. Kline, 412 U.S. 441, 445–46 (1973) (state may limit in-state tuition benefit to bona fide state residents).

189. *See* Sosna v. Iowa, 419 U.S. 393, 409 (1975) (state may impose duration of residency requirement on filing for divorce).

interests that may justify certain durational residency requirements fail to support one-year residency rules for jury service.[190]

The assertion that new residents are not "'of the State and district'" for purposes of the Sixth Amendment contradicts the full citizenship rights guaranteed to U.S. citizens.[191] When Americans establish residency in a new state, they become citizens of that state.[192] They are not provisionally admitted to the state on a probationary status, nor must they wait a year as if pledging membership in a fraternity. New residents are full members of their community, entitled to all the rights and responsibilities of citizenship.[193] States should treat Americans who move from other states as equals, ensuring they are not excluded from the privileges and responsibilities of citizenship.[194]

F. Excluding New Residents Undermines the State's Legitimate Interests

Unlike the categorical exclusion of felons, noncitizens, and individuals who are mentally or physically unable to serve, there is no clear justification for excluding those who have recently relocated to the jurisdiction. New residents have done nothing wrong. It is unjust to assume that an entire segment of society is incapable of fulfilling a basic civic duty simply because they recently lived in another county or state.

The exclusion of new residents fails to advance any compelling state interest. Instead, this exclusion, rooted in fear and prejudice, undermines legitimate state interests. As a group, new residents may have greater ability to serve as jurors than those who have lived in the community longer than them. According to U.S. Census Bureau data, summarized in Table 1, new residents are, on average, younger and more educated than others.[195]

---

190. Van Dyke has observed: "[N]o persuasive reasoning has been offered to justify a continuing residence for jury service when it is unconstitutional for virtually all other government functions." Van Dyke, *supra* note 38, at 72.

191. *Duncan*, 456 F.2d at 1406 (holding that the challenged residency requirement did not violate the Sixth Amendment).

192. *See Shapiro*, 394 U.S. at 629–31 (discussing citizens' right to travel within the United States).

193. *See Saenz,* 526 U.S. at 502.

194. One may argue that denying new residents public benefits jeopardizes the fundamental right to travel, while denying them civic responsibilities does not. However, both forms of discrimination create second-class citizens. "[S]ince the right to travel embraces the citizen's right to be treated equally in her new State of residence, the discriminatory classification is itself a penalty." *Id.* at 504–5.

195. *See* U.S. Census Bureau, American Community Survey B07009 (2023) https://data.census.gov/table/ACSDT5Y2023.B07009?q=b07009&g=010XX00US$0400000.. Many people move to new communities to advance their careers, further their education, and grow their families. *See* Long, *supra* note 24, at 233–39; Yolanda K. Kodrzycki, *Migration of Recent College Graduates: Evidence from the National Longitudinal Survey of Youth*, New Eng. Econ. Rev. 13, 22 (Jan./Feb. 2001).

Table 1: Age and Education by Residential Mobility

Variable	Place of Residence One Year Ago . . .				
	Same House	*Same County*	*Same State*	*Other State*	*Lived Abroad*
College Educated	34.5%	35.3%	36.3%.	49.3%	47.3%
Median age	41.2%	29.3%	28.3%	29.1%	30.0%

Source: U.S. Census Bureau, 2023 American Community Survey, 5-Year Estimates

Because the median new resident is more than ten years younger than the median long term resident, new residents will tend to have fewer health issues that would interfere with their jury service.[196] While some new residents may not qualify for jury duty, as a group, they may be more fit to serve than long-term residents.[197] Thus, the categorical exclusion of new residents undermines rather than supports the state's legitimate interest in selecting capable jurors.

As discussed in Section II.C, the state may categorically exclude groups who are likely to be biased for one side or the other. Nothing suggests that, as a group, new residents' past interactions with the criminal justice system will lead them to favor either the prosecution or the defense. New residents, as a group, have had fewer opportunities to interact with or form opinions about defendants and witnesses.

Excluding new residents is likely to lower the quality of jury deliberations and increase the risk of errors. Research demonstrates that juries consider more evidence and viewpoints when jurors bring diverse perspectives and life experiences to deliberations. Diverse juries tend to deliberate more thoroughly and produce higher-quality decisions.[198] New residents, offering fresh perspectives due to their limited assimilation into the community, can enhance jury deliberations and help prevent errors. Homogeneous and cohesive juries that share similar

---

196. Younger people tend to have fewer health problems requiring medical care. *See* Nat'l Fedn of Indep. Bus. v. Sebelius, 567 U.S. 519, 556 (2012) (young adults are less likely to need significant health care).

197. If a new resident is mentally or physically unable to serve on a jury, lacks English proficiency, has been convicted of a felony, or is otherwise disqualified, that new resident would be excluded from serving on a jury, the same as anyone else. Thus, the only practical effect of this rule in federal courts and a few states is to categorically exclude otherwise qualified adults who have recently moved from another state or region.

198. Researchers have found that diversity tends to enhance jury deliberations. *See* Samuel R. Sommers et al., *Cognitive Effects of Racial Diversity: White Individuals' Information Processing in Heterogeneous Groups*, 44 J. Experimental Soc. Psych. 1129, 1130 (2008); Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. Personality & Soc. Psych. 597, 600 (2006). Newcomers make groups more receptive to the views of minority members. *See generally* John M. Levine & H.S. Choi, *Minority Influence in Interacting Groups: The Impact of Newcomers*, *in* Rebels in Groups: Dissent, Deviance, Difference and Defiance 73, 86 (J. Jetten & M. J. Hornsey eds., 2011).

experiences and values are particularly susceptible to the dangers of "groupthink."[199] Instead of advancing a compelling state interest, excluding new residents likely weakens the jury's ability to act as a bulwark against government power, reducing it to an instrument of established values and interests.

While states have a compelling interest in promoting good citizenship,[200] excluding new residents undermines rather than advances this state interest. New residents, like long-term residents, have civic duties and responsibilities.[201] The new resident maintains a continuous responsibility to support the federal judiciary through jury service; moving to a new state does not diminish one's responsibility as an American citizen. Jury service is a tangible and meaningful way for individuals to participate in democratic self-governance.[202] Categorically excluding new residents "makes participation less universal and detracts from the jury as a democratizing institution."[203] Having new residents serve on juries would advance the state's compelling interest in promoting good citizenship. The jury's civilizing function is most effective when it engages individuals who might not otherwise participate in civic life.[204] Since jury service helps integrate citizens into political communities, the state's interest is better served by including new residents who are not yet established members of the community.[205]

Categorically excluding identifiable groups from serving on juries reduces public confidence in the criminal justice system. Public confidence is an urgent concern as it appears to be at all time low levels. Many people believe the system is rigged and politically motivated. As discussed, juries composed of ordinary citizens, selected randomly from the community, help legitimatize the results of criminal trials. Excluding any group from jury service perpetuates the belief that the criminal justice system generally, and the jury selection process specifically, is rigged against the poor and persons of color. As the Court recognized in

199. *See generally* Brian Mullen et al., *Group Cohesiveness and Quality of Decision Making: An Integration of Tests of the Groupthink Hypothesis*, 25 SMALL GRP. RSCH. 189, 191 (1994); Irving L. Janis, *Groupthink*, PSYCH. TODAY Nov. 1971, at 84.

200. *See supra,* Section III-C-4.

201. "Persons new to a community are just as much a part of it as long-time residents and have a valid point of view on its activities." VAN DYKE, *supra* note 38, at 72.

202. *See generally* Re, *supra* note 98, at 1582–85.

203. *Adams*, 524 P.2d at 383 (Mosk, J., dissenting) (citation omitted).

204. *See* John M. Levine et al., *Group Socialization & Newcomer Innovation*, *in* BLACKWELL HANDBOOK OF SOCIAL PSYCHOLOGY: GROUP PROCESSES 90 (Michael Hogg & R. Scott Tinsdale eds., 2001) (discussing importance of socializing newcomers to promote their commitment to group and avoid alienation).

205. Many organizations and institutions have orientation procedures to educate and incorporate new members. To the extent that jury duty serves a similar function for democratic government, that interest is better served by including new residents than by excluding them. If new residents are less familiar with community norms and values, less involved in civil life, they should be selected for jury service and not excluded.

Taylor, "[c]ommunity participation in the administration of the criminal law . . . is also critical to public confidence in the fairness of the criminal justice system."[206] The perception that jury selection is rigged to manipulate trial outcomes is not unfounded as federal and state jury qualification laws have historically been used to tip the scales of justice in favor of privilege and power.

V. CATEGORICAL EXCLUSIONS SHOULD NOT BE JUDGED BASED ON *DUREN* STANDARDS

In *Duren v. Missouri*,[207] the U.S. Supreme Court established standards for evaluating the practices and procedures used to select jurors from the pool of individuals qualified to serve.[208] Petitioner Billy Duren argued that his first-degree murder and robbery convictions should be overturned because Missouri's jury selection system violated his constitutional right to an impartial jury trial.[209] Missouri did not explicitly or categorically exclude women from juries. Missouri permitted women to serve on juries but also allowed them to opt out of service without providing evidence of hardship or a specific excuse.[210] Instead of directly excluding women, Missouri created an opportunity for women to exclude themselves. The law's impact depended on how women utilized the statutory exemption.

The Court outlined three essential elements that a defendant must prove to establish a prima facie case challenging a jury selection practice or procedure.[211] First, the allegedly excluded group must constitute a "distinctive" group in the community.[212] Second, the allegedly excluded group must be shown to be unfairly and unreasonably underrepresented in jury venires compared to its prevalence in the community.[213] Third, the underrepresentation must be due to systematic exclusion of the group in the jury-selection process.[214] If the defendant establishes a prima facie case by demonstrating these three factors, the burden shifts to the state to prove that the challenged selection procedures serve a compelling state interest.

Applying these three factors to the jury selection process used for Duren's trial, the Court first determined that women constitute a

---

206. *Taylor*, 419 U.S. at 530 (internal citations omitted).
207. 439 U.S. 357 (1979).
208. Duren v. Missouri, 439 U.S. 357, 364 (1979).
209. The trial court denied the defendant's motion to quash the jury panel. He was subsequently convicted and sentenced to life imprisonment. *See* State v. Duren, 556 S.W.2d 11, 13 (Mo. 1977).
210. *Duren*, 439 U.S. at 360.
211. *Id.* at 364.
212. *Id.*
213. *Id.*
214. *Id.*

distinctive group.[215] Next, the Court observed that women comprised only fifteen percent of jury venires, a figure significantly lower than their fifty-four percent prevalence in the community.[216] Regarding the third factor, the Court concluded that the consistent underrepresentation of women was caused by the state's special exemption provisions.[217] Finally, the Court held that the exemption was not supported by a compelling state interest.[218]

A. Intentional Exclusion by State is Different than Underrepresentation

The *Duren* criteria are appropriately applied to evaluate "those aspects of the jury-selection process, such as exemption criteria, that result in the disproportionate exclusion of a distinctive group."[219] When jurors are randomly selected, some degree of random deviation between jury pools and the communities they are meant to represent is expected. A jury pool cannot represent every group in a community in exact proportion to that group's prevalence. At the same time, courts must be cautious of practices and procedures that create, or fail to address, selection bias leading to the consistent underrepresentation of key population segments in jury pools. The *Duren* factors help courts distinguish natural variations caused by random selection processes from systematic violations of the fair cross-section requirements.

Some courts recognize the distinction between categorical exclusion and statistical underrepresentation.[220] In *Barber v. Ponte,*[221] the U.S. Court of Appeals for the First Circuit reviewed a conviction by a

---

215. *Id.*
216. *Id.* at 364–66.
217. *Id.* at 367.
218. *Id.* at 367–70.
219. *Id.* at 367–68.
220. This distinction has a useful parallel in survey research. To conduct a survey, the researcher defines a sampling frame, the target population to be studied, and then obtains a sample of observations from the sampling frame which are analyzed to learn about the target population. If the researcher excludes elements of the target population from the sampling frame, the design may be fundamentally flawed. Researchers should not exclude specific groups from the sampling frame unless there is a compelling reason to do so. Even with a proper sampling frame, the researcher may obtain non-representative samples due to non-responses and other logistical problems.

The *Duren* inquiry parallels survey research, where comparing sample demographics with the target population serves as a diagnostic tool. If a sampling frame omits key groups, corrective measures are needed to ensure validity. Significant underrepresentation may signal systemic issues, even if some demographic gaps occur by chance. Some statistical oddities can be expected, but statistical oddities, by and large, do not undermine the reliability or validity of research. For example, by chance, there may be no plumbers in the sample. So long as the researcher did not purposely exclude plumbers from the sampling frame, the researcher does not need to make any special effort to assure their representation.

221. 772 F.2d 982 (1st Cir. 1985).

jury drawn from a pool that underrepresented young people relative to the population.[222] Selection procedures that affect jury pool composition, such as administrative updates to master jury lists, should be judged by different standards than those applied to the deliberate exclusion of a specific group.

> That is not to say, however, that if a classification were *specifically* and *systematically excluded* from jury duty the same standard would be used as here, where defendant simply relies on a statistically disparity in the venires to challenge its constitutionality. If certain people are specifically and systematically excluded from jury duty, then the jury-administrating authority would have created its own group. Clearly, the state has no right to deliberately exclude specific classes or groups from juries without some very special reason. Thus, it may not *forbid* blue-collar workers, chess players, Masons, etc., from serving on juries. But if there are, as in the present case, mere statistical imbalances, unexplained, the problem is different.[223]

Similarly, in *Anaya v. Hansen,*[224] the petitioner argued that court procedures for maintaining master jury lists led to the underrepresentation of certain groups in the jury pool, including blue collar workers.[225] The First Circuit again emphasized the distinction between the categorical exclusion of wage laborers and their statistical underrepresentation caused by jury selection practices and procedures.

> *Thiel* nevertheless cannot be read as mandating that blue collar workers are a "cognizable group" as that term was used in *Duren,* such that a mere showing of statistical underrepresentation, with little more, indicates a prima facie violation of the sixth amendment. In *Thiel,* there was uncontroverted evidence that wage earners were deliberately discriminated against; "both the clerk of the court and the jury commissioner testified that they *deliberately* and *intentionally* excluded from the jury lists all persons who work for a daily wage." . . . The case did not involve a mere showing that certain types of occupations were *statistically* underrepresented on the venire, the issue before us in the present case.[226]

---

222. Barber v. Ponte, 772 F.2d 982, 1000 (1st Cir. 1985) (the under-representation of young people in jury pool was not systematic plan).

223. *Barber*, 772 F.2d at 999–1000.

224. 781 F.2d 1 (1st Cir 1986).

225. Anaya v. Hansen, 781 F.2d 1 (1st Cir. 1986).

226. *Anaya*, 781 F.2d at 4 (original emphasis); United States v. Salamone, 800 F.2d 1216, 1226 n.14 (3d Cir. 1986) (positively citing the First Circuit's distinction between challenges based on statistical disparity versus specific and systematic exclusion); *but see* Johnson v. McCaughtry, 92 F.3d 585, 591 (7th Cir. 1996) (characterizing the First Circuit's analysis as dicta).

The First Circuit's distinction between categorical exclusions and selection practices with disparate impacts effectively reconciles the U.S. Supreme Court's rulings in *Thiel* and *Duren*. In line with *Thiel*, the state is prohibited from categorically excluding any group of people—such as plumbers, chess players, or NRA members—from serving on juries "without some very special reason."[227] However, the state is not required to ensure proportional representation of plumbers, chess players, or NRA members in the jury pool.[228] According to *Duren*, the state simply needs to make sure that certain distinctive groups are adequately represented in jury pools.[229] The categorical exclusion of new residents, or any specific group, raises fundamentally different issues than statistical disparities caused by random chance or the actions of non-government actors. While the distinction between categorical exclusions and selection procedures may blur when covert schemes aim to exclude a group without express acknowledgment, appellate courts have generally seen through appearances and judged jury rules for what they really are.[230]

227. *Barber*, 772 F.2d at 1000.

228. To ensure adequate representation of key population groups, survey researchers may use stratified random sampling rather than simple random sampling. In simple random sampling, every individual has an equal chance of selection. In stratified sampling, the population is divided into subgroups (e.g., race, age, or gender), and a random sample is drawn from each subgroup proportional to its size. Sampling weights can also adjust for over- or under-representation of key groups in the final analysis.

Both methods aim for representativeness on important dimensions like race, ethnicity, and gender. However, as the number of subgroups (strata) increases, so do the cost and complexity of the design. In fair cross-section cases, identifying essential strata is critical to avoid arbitrary divisions. Characteristics often overlap (e.g., age 18–25 subdivided by gender, race, and religion), but *Duren* appropriately limits the analysis to distinct groups that reflect community values. Researchers, similarly, should ensure essential strata are represented without needing to account for every possible subgroup.

229. Federal law requires "random" selection of jurors, but does not specify a specific random sampling method, such as simple, stratified, systematic, or cluster sampling. To better assure the representation of distinct groups, some argue that jury administrators should use stratified random samples. *See* Nancy J. King & G. Thomas Munsterman, *Stratified Juror Selection: Cross-Section by Design*, 79 JUDICATURE 273, 278 (1995) (suggesting stratified random sampling to select jury pool); Leslie Ellis & Shari Seidman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*, 78 CHI.-KENT L. REV. 1033, 1056–58 (2003) (discussing geographic stratum for selecting jurors). A modern jury administrator could, for example, sort the master jury list by zip code and then randomly select individuals within each zip code in proportion to its prevalence in the population. Zip codes define useful strata because similar people tend to cluster geographically. *See generally* BILL BISHOP & ROBERT G. CUSHING, THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART (2009) (discussing implications of geographic sorting); Jacob R. Brown & Ryan D. Enos, *The Measurement of Partisan Sorting for 180 Million Voters*, 5 NATURE HUM. BEHAV. 998 (2021) (documenting extensive partisan sorting).

230. The Louisiana law at issue in *Taylor* did not categorically exclude women, but the opt-in procedure imposed on women, as a practical matter, achieved the same result. *See* Taylor v. La., 419 U.S. 522, 525 (1975). Similarly, the literacy test at issue in *Carter v.*

The "systematic exclusion" requirement can be a source of confusion, as it might be misinterpreted to include categorical exclusions, which are a subset of systematic exclusions. However, *Duren* is properly applied to situations where jurors are not categorically excluded, but are underrepresented in the jury pool due to court practices and procedures. A systematic exclusion is one that is "inherent in the particular jury-selection process utilized."[231] A jury venire should not be quashed due to random deviations, but rather only when underrepresentation of distinct groups is "due to the *system* by which juries were selected."[232]

One element of the *Duren* test is whether the exclusion is systematic and intentional in the jury selection process; however, it does not logically follow that *Duren* should be applied to all systematic and intentional exclusions. Categorical exclusions can be evaluated under *Thiel* without rendering the systematic exclusion requirement superfluous. The systematic exclusion factor remains relevant in cases that do not involve categorical exclusions. As illustrated by cases discussed in Section IV.C, jury selection processes may systematically and intentionally exclude distinct groups of potential jurors. An inquiry into whether an exclusion is systematic remains relevant in some cases, even if statutory exclusions of occupations or classes are evaluated under a different legal standard.

The distinction between government actions deliberately excluding someone from the jury pool and practices that inadvertently cause underrepresentation is reflected in the differing levels of scrutiny applied to for-cause dismissals by trial court judges and peremptory challenges by parties. A trial judge must provide clear and specific reasons to dismiss prospective jurors.[233] As a government actor, the judge should narrowly tailor for-cause dismissals to serve compelling state interests.[234] In contrast, parties are not required to provide

Jury Commissioner did not explicitly classify prospective jurors by race, but it had that effect in practice. *See* Carter v. Jury Comm'r, 396 U.S. 320, 327 (1970).

231. *Duren*, 439 U.S. at 366.

232. *Id.* at 367 (original emphasis). The term "systematic exclusion" is susceptible to different interpretations. In *Duren*, the Supreme Court contrasted systematic with occasional, emphasizing the consistency and duration of underrepresentation. Some lower courts interpreted the term to require defendants to prove that underrepresentation is caused intentionally by a discriminatory jury selection system. *See generally* David M. Coriell, *An (Un) fair Cross Section: How the Application of Duren Undermines the Jury*, 100 Cornell L. Rev. 463, 477 (2015).

233. *See* Witherspoon v. Ill., 391 U.S. 510, 522 (1968) ("a sentence of death cannot be carried out if the jury that imposed or recommended it was chosen by excluding veniremen for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction"); Wainwright v. Witt, 469 U.S. 412, 429 (1984); *Salamone*, 800 F.2d at 1225–26.

234. Apart from timing and scale, there is little difference between a legislature or jury administrator excluding jurors and a judge dismissing them for cause.

specific reasons for exercising peremptory challenges. Parties can strike jurors for nearly any reason but are prohibited from using strikes to discriminate against a protected class.[235] While it may be permissible for a party to strike prospective jurors because they are new residents, a judge (in a state that allows new residents to serve) should not strike new residents for cause based solely on generalized suspicions.

The categorical exclusion of a specific group is comparable to for-cause dismissals. In both situations, the government excludes prospective jurors and must substantiate the exclusion to overcome the presumption that all adults are eligible to serve as jurors.[236] The underrepresentation of distinct groups from selection practices and procedures is comparable to parties using peremptory strikes. In such cases, individuals fail to become jurors either by intentionally excluding themselves through exemptions or excuses, unintentionally due to outdated records, or by being struck by a lawyer. Simply put, a higher level of scrutiny applies when the government directly excludes prospective jurors (e.g., through legislation, court administration, or judicial orders) rather than when underrepresentation arises from private actions that influence the selection process.[237]

The difference between categorical exclusion and underrepresentation is illustrated in *United States v. Salamone*.[238] At Salvatore Salamone's trial for violating federal gun laws, the judge dismissed, for cause, several prospective jurors who were members of the National Rifle Association ("NRA") suspecting that they would not impartially apply federal gun laws.[239] The U.S. Court of Appeals for the Third Circuit pointed out that excusing NRA members is not problematic under the *Duren* framework because NRA members do not constitute a

---

235. *See* Batson v. Ky., 476 U.S. 79, 97–98; Eric L. Muller, *Solving the Batson Paradox: Harmless Error, Jury Representation, and the Sixth Amendment*, 106 YALE L.J. 93, 93 (1996). There are additional reasons to evaluate these two methods of eliminating jurors differently. Parties have a limited number of strikes, while there is no limit to the number of for-cause strikes that can be made. Additionally, because both parties may exercise strikes, their effect on the outcome is largely offsetting. It should also be noted that peremptory strikes are widely criticized and scrutinized. In many cases, parties do have to defend their strikes and show race-neutral reasons for striking potential jurors.

236. The standard governing for-cause dismissals should be the same the standards governing categorical exclusions. If a trial judge would not be permitted to exclude a certain group of people for cause during jury selection, the government should not be permitted to exclude that same group of people in its jury qualification statutes.

237. This distinction is familiar in discrimination cases where direct and explicit classifications are judged differently than laws or policies that are neutral on their face but may have disparate or discriminatory effects. *See, e.g.*, Hecox v. Little, 79 F.4th 1009, 1021–22 (9th Cir. 2023) (applying heightened scrutiny to a facially discriminatory law while distinguishing neutral laws with disparate effect).

238. 800 F.2d 1216 (3d Cir. 1986).

239. United States v. Salamone, 800 F.2d 1216, 1218 (3d Cir. 1986).

"distinctive group."[240] There is no constitutional requirement that NRA members be fairly represented in the jury pool. Similarly, the defendant may exercise peremptory strikes on NRA members. However, a judge's dismissal of NRA members for cause is fundamentally different from individuals claiming exemptions or attorneys exercising peremptory strikes. Citing *Thiel* and *Taylor*, the Third Circuit held that a trial judge must provide specific, substantiated reasons for excluding prospective jurors. While some NRA members may legitimately be disqualified, the judge abused his discretion by categorically excluding jurors based solely on their membership in a specific organization.[241]

B. Appropriate Applications of the *Duren* Standards

The criteria articulated in *Duren* should not be applied to evaluate the categorical exclusion of new residents from juries. Of course, this does not mean that the *Duren* criteria are never applicable. The *Duren* criteria are appropriately applied to evaluate jury selection practices and procedures that draw jury pools from qualified jury lists (see Fig. 1). Identifying these applications helps clarify the proper use of *Duren* criteria.

Statutory exemptions and excuses should be evaluated using the factors outlined in *Duren*. Exemptions and excuses may be problematic depending on who is exempted or excused, how often they are used, and the characteristics of the community being represented.[242] Statutory excuses for financial hardship and extreme inconvenience are problematic if they lead to the underrepresentation of distinct groups in the jury pool.[243] Excusing potential jurors based on unverified claims of lacking child care or reliable transportation may contribute to the underrepresentation of distinct groups, including racial minorities.[244] Local practices intended to minimize the inconvenience of jury service should also be assessed under the *Duren* criteria.[245] Even if statutory

240. Membership in the NRA is voluntary; NRA members may share some beliefs and interests, but that does not make them a distinctive group. *See Salamone*, 800 F.2d at 1219–20.

241. *Id.* at 1226–27.

242. According to Hannaford-Agor, classic occupational exemptions "collectively have little relationship to either socioeconomic or minority status" and are therefore unlikely to cause systematic underrepresentation of distinct groups in most jurisdictions. Paula L. 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, 787 (2010).

243. *See* Fukurai, *supra* note 172, at 35 (observing that Hispanics disproportionately ask to be excused with economic hardship claims).

244. *See* Anna Offit, *Benevolent Exclusion*, 96 Wash. L. Rev. 613 (2021) (arguing that dismissing jurors based on hardship of service biases jury pools).

245. In *Berghuis v. Smith*, the Court examined a local administrative practice that assigned jurors from Grand Rapids (with a relatively large African American population)

exemptions and excuses cause underrepresentation of distinct groups, compelling state interests would justify narrowly tailored exemptions and excuses.[246]

The *Duren* criteria are also useful for assessing how courts create and maintain their master lists of jury-eligible adults in the population (see Fig. 1).[247] If the jurisdiction creates its master jury list from property records or voter registration files, it may exclude certain groups.[248] If the master jury list is not updated for several years, it will not include young adults who became eligible since the last update.[249] While a jurisdiction may not categorically exclude young adults, infrequent updating may result in the chronic underrepresentation of young adults in jury pools.[250] In these cases, courts do not require jury administrators to update master jury lists more frequently than the law requires to ensure the representation of young adults.[251] Federal courts must update master jury lists at least once every four years to reflect changes within the district.[252] State courts typically update their master jury lists more frequently.[253]

---

to the city's misdemeanor trials, and if some Grand Rapids residents were still available, they were assigned to the county's felony trials. The practice caused underrepresentation of African Americans in jury pools for felony trials. *See* Berghuis v. Smith, 559 U.S. 314, 322 (2010).

246. *See* United States v. Terry, 60 F.3d 1541, 1544 (11th Cir. 1995) (may constitutionally exempt "certain occupational groups from jury service because it is good for the community that they not be interrupted in their work"). *See also* Joanna Sobol, *Hardship Excuses and Occupational Exemptions: The Impairment of the Fair Cross-Section of the Community*, 69 S. CAL. L. REV. 155, 197–98 (1995) (discussing how hardship excuses and occupational exemptions can reduce jury diversity).

247. *See* United States v. Cecil, 836 F.2d 1431, 1444–46 (4th Cir. 1988) (rejecting challenge to compiling master jury lists from voter registration records).

248. *See* Alker Jr. & Barnard, *supra* note 62, at 232–35. While compiling master jury lists from property tax records is impermissible, courts have held that they may be created from voter registration records. *See, e.g.,* United States v. Afflerbach, 754 F.2d 866, 869–70 (10th Cir. 1985). Most states now create master jury lists from multiple sources. *See* Hannaford-Agor & Moffett, *supra* note 63, at 4.

249. If, for example, a jury administrator uses a list of adults (ages 18 and up) eligible for jury service that is three years old, the youngest people on the list are now 21 years old. Young adults between the ages of 18 and 21 will not be selected for jury pool, although they now qualify.

250. Multiple defendants have unsuccessfully challenged jury selection procedures for underrepresenting young adults. *See*, *e.g.*, United States v. Kuhn, 441 F.2d 179, 181 (5th Cir. 1971); United States v. Gooding, 473 F.2d 425, 429-30 (5th Cir. 1973) (citations omitted); Hamling v. United States, 418 U.S. 87, 136–38 (1974).

251. *See* United States v. Ross, 468 F.2d 1213, 1216–18 (9th Cir. 1972) (young people are not a distinctive group for fair cross-section analysis).

252. 28 U.S.C. § 1863(b)(4). Updating master jury lists every four years does not reflect the best practices of modern trial courts. *See* Hannaford-Agor, *supra* note 242, at 782-83.

253. *See* Hannaford-Agor & Moffett, *supra* note 63 (noting that 39 states specify update time in statutes and 29 states require courts to renew master list at least annually).

The *Duren* criteria are useful when computer glitches affect the juror selection process. In one such case, a computer glitch misread the "d" in Hartford, mistakenly interpreting Hartford residents as deceased.[254] In other cases, a computer glitch restricted random selection of individuals from master jury lists to the first part of the list.[255] Whether programming bugs exclude jurors at random or disproportionately affect distinct groups is a question of fact that requires some case-specific analysis.[256] To resolve the example cases, one needs to know what caused the computer glitches and how they affected the jury pool's composition. The *Duren* criteria help us distinguish harmless snafus from serious errors that demonstrably harm defendants.

The practices and procedures discussed in this section—processing exemptions and excuses, generating master jury lists from public records, updating lists, issuing summonses, and assigning jurors to courthouses—are essential elements of the jury selection process, but also pose potential challenges to the right to a fair trial.[257] The *Duren* factors help assess whether jury selection practices and procedures produce jury pools that fairly represent those qualified to serve.

C. The Seventh Circuit's Approach is a Dangerous Precedent

While the U.S. Court of Appeals for the First Circuit appears to recognize the appropriate context for applying the *Duren* analysis, other courts have demonstrated a willingness to subject all fair cross-section claims to the *Duren* framework, regardless of whether the case involves categorical exclusions imposed by the government or discrepancies arising during the jury selection process. In *Johnson v.*

---

254. *See* United States v. Osorio, 801 F. Supp. 966 (D. Conn. 1992); United States v. Jackman, 46 F.3d 1240, 1242-44 (2d Cir. 1995) (even after discovering glitch, jury administrator used flawed list on computer and only used corrected list if more jurors needed to be summoned); *see also* Nina W. Chernoff, *No Records, No Right: Discovery & the Fair Cross-Section Guarantee*, 101 Iowa L. Rev. 1719, 1722–24 (2015) (discussing discovery of Hartford computer glitch and subsequent litigation).

255. *See* Ambrose v. Booker, 684 F.3d 638, 643 (6th Cir. 2012) (computer error limited selection by zip code, causing underrepresentation of African Americans in jury pools); Garcia-Dorantes v. Warren, 801 F.3d 584, 604 (6th Cir. 2015) (computer error caused violation of Sixth Amendment); Azania v. State, 778 N.E.2d 1253, 1259–60 (Ind. 2002) (computer error truncated selection process, reducing jurors from Wayne County and violating Sixth Amendment).

256. If the list were sorted randomly, by birthday, or alphabetically, a computer glitch truncating selection would be a random error. In contrast, the glitch in *Jackman*—interpreting "d" as deceased—would have a different impact if it applied to names rather than city names, given residential patterns.

257. Another application of the Duren analysis involves court practices for sending jury summons and ensuring compliance. *See generally* Walters et al., *supra* note 48, at 323–24, 27–28 (reporting studies that 80% of people contacted for jury duty do not show up to court).

McCaughtry,[258] a federal habeas corpus case, the U.S. Court of Appeals for the Seventh Circuit considered a jury administrator's categorical exclusion of individuals under the age of twenty-five.[259] Upholding the conviction, the Seventh Circuit held that *Duren* should apply to the jury administrator's categorical exclusion of young adults.[260] In *Silagy v. Peters*,[261] the Seventh Circuit upheld a conviction despite the jury administrator excluding individuals over the age of seventy from the jury pool.[262] In these cases, the Seventh Circuit rejected the notion that there is a "special category" of juror qualification issues that falls outside the scope of *Duren*.[263]

However, it is inappropriate to apply *Duren* analysis universally to statutory qualifications, categorical exclusions, opt-in procedures, exclusions imposed by jury administrators, or for-cause strikes by judges. The *Duren* framework is not a one-size-fits-all test for evaluating every Sixth Amendment claim. Applying *Duren* factors to categorical exclusions effectively removes meaningful limits on the state's ability to control who serves on juries. The consequences of this approach are particularly concerning in capital trials, where ensuring a fair and impartial jury is paramount.

It is difficult to distinguish the actions of the jury administrators in *Johnson* and *Silagy* from the conduct at issue in *Thiel*. Notably, the Seventh Circuit does not cite or discuss *Thiel* in either opinion. Applying the *Duren* test to categorical exclusions of specific groups would effectively overturn *Thiel*. The Seventh Circuit cases demonstrate that, under *Duren*, a jury administrator could categorically exclude individuals deemed too young or too old to serve as jurors.[264] Using

---

258. 92 F.3d 585 (7th Cir. 1996).

259. One of three jury commissioners serving Waukesha County, Wisconsin at the time of Johnson's trial systematically excluded those under age 25, believing them too immature to serve as jurors, unless he knew them personally. *See* Johnson v. McCaughtry, 92 F.3d at 589, 590 (7th Cir. 1996). The procedural context of this case should make some difference. Federal law gives state courts wide latitude and limits federal court review of state convictions.

260. *McCaughtry*, 92 F.3d at 587.

261. 905 F.2d 986 (7th Cir. 1990).

262. *Silagy v. Peters*, 905 F.2d 986, 1009–11 (7th Cir. 1990). *Also see* United States v. Barry, 71 F.3d 1269, 1273–74 (7th Cir. 1995) (evaluating categorical exclusion of felons based on *Duren* standards).

263. One might argue that cases like *Johnson* and *Silagy* are different than those addressing statutory requirements insofar as they concern discretionary decisions of local jury administrators, rather than statewide or nationwide laws. A jury administrator's mistakenly exempting a specific group from jury service has a less systematic and pervasive effect than a general statute disqualifying a specific group. In *Johnson*, the Waukesha County jury administrator was one of three administrators selecting jurors for the court and he allowed some individuals under age 25 to serve on juries if he knew them personally.

264. *See* Rabinowitz v. United States, 366 F.2d 34, 53 (5th Cir. 1966) (criticizing the idea of requiring judge to make detailed findings to dismiss jurors for cause while

similar reasoning, a jury administrator could exclude daily wage workers because they do not constitute a distinctive group under the *Duren* framework. If the Seventh Circuit's interpretation is correct, it implies that *Duren* either silently overruled *Thiel* and *Taylor* or severely restricted their scope. However, the *Duren* decision neither cited nor discussed *Thiel*, much less overturned it.

If a jury administrator can exclude any group from jury service, so long as it is not a "distinctive group" under *Duren*,[265] why confine exclusions to young people, old people, or daily wage workers? If the distinctness of the excluded group is the primary criterion, then any occupation, demographic, or classification not considered "suspect" could be excluded.[266] Under the Seventh Circuit's interpretation, jury administrators could categorically exclude prospective jurors based on their education,[267] income,[268] or disability.[269] The trial judge in *Salamone* simply directs the jury administrator to exclude NRA members from consideration.[270] The exclusion of doctors, dentists, and lawyers,[271] blue collar workers,[272] and individuals in other occupations would be permissible.[273] The state could exclude individuals who refused to take a vaccine (or individuals who get vaccinated),[274] reservation Indians,[275]

"silently vest[ing] even broader discretion in the unregulated hands of the clerk and jury commissioner").

265. Distinctive groups, as discussed further in Section VI-A, are generally interpreted as groups defined by race, religion, ethnicity, or gender.

266. *See* United States v. Allen, No. 16-10141-01, 2018 WL 453725, at *4 (D. Kan. Jan. 17, 2018) (citation omitted) ("Groups characterized by age, occupation, disability, education, and other characteristics are not distinctive under Taylor, and their exclusion does not run afoul of the Constitution.").

267. *See* United States v. Potter, 552 F.2d 901, 905 (9th Cir. 1977) (less educated individuals are not distinctive group).

268. *See* State v. Ramseur, 485 A.2d 708, 713–14 (N.J. Super. 1984) holding that low-income individuals are not distinctive group).

269. *See* State v. Spivey, 700 S.W.2d at 814 (Mo. 1985) ("We doubt that deaf persons have a community of attitudes or ideas. The misfortune of deafness, rather, exists in all segments of the community.").

270. *See Salamone*, 800 F.2d at 1226–27 (holding that the trial judge may not dismiss prospective jurors for cause based on their NRA membership).

271. *See* State v. Puente, 431 N.E.2d 987, 989 (Ohio 1982) (holding that doctors, dentists, and lawyers are not distinctive groups); State v. Williams, 659 S.W.2d at 780-81 (Mo. 1983) (attorneys are not distinctive groups).

272. *See Anaya*, 781 F.2d at 5 (blue collar workers are not a distinctive group).

273. *See generally* Sobol, *supra* note 246, at 183–85 (occupational classes not considered distinctive groups).

274. *See* United States v. Cole, 583 F. Supp. 3d 1037, 1041–43 (N.D. Ohio 2022) (unvaccinated jurors are not a distinctive group); United States v. O'Lear, 90 F.4th 519, 528-530 (6th Cir. 2024) (upholding exclusion of unvaccinated jurors during COVID-19 pandemic).

275. *See* United States v. Raszkiewicz, 169 F.3d 459, 465–67 (7th Cir. 1999) (Native Americans living on reservations are not distinctive group).

or non-voters.[276] An administrator could exclude individuals from specific neighborhoods or zip codes.[277] Since no age group is considered distinctive, individuals of any age could be excluded. If categorical exclusions and for-cause dismissals are evaluated under the *Duren* standard, a state, judge, or court administrator could theoretically exclude all Republicans, Trump voters, or rural residents from juries.[278] By the same logic, one could justify excluding Democrats, Biden voters, urban residents, apartment dwellers, or vaccinated individuals.

Allowing the state to categorically exclude members of any non-distinct group would undermine the U.S. Supreme Court's precedents on death-qualifying jurors in capital cases. In multiple cases, the Court has held that trial courts may death-qualify prospective jurors in capital punishment cases and dismiss jurors who make it clear that they cannot set aside their personal beliefs about the death penalty.[279] If categorical exclusions are governed by *Duren* factors, individuals who oppose (or favor) capital punishment may be categorically excluded from juries, because they are not a distinctive group. A jury questionnaire could simply ask potential jurors about their views on the death penalty, allowing the jury administrator to simply drop those who gave the "wrong" answer from the qualified jury list. Under existing precedents, it is reversible error for a judge to exclude prospective jurors with reservations about the death penalty without specific findings.[280] However, the Seventh Circuit's interpretation of *Duren* would permit jury administrators to exclude such individuals before they ever reach a courtroom.

The Seventh Circuit's application of *Duren* factors places the government in the same position as a prosecutor making peremptory strikes; under the Seventh Circuit's interpretation, the government can exclude anyone from jury service as long as it can provide a non-discriminatory reason for doing so.[281] This is particularly problematic

---

276. *See Afflerbach*, 754 F.2d 866, 870 (10th Cir. 1985) (people who do not register to vote are not distinctive group).

277. *See* United States v. Allen, No. 16-10141-01, 2018 WL 453725, at *4 (D. Kan. Jan. 17, 2018) (geographic locations are not distinct groups unless they are "profoundly culturally distinct.").

278. *See Id.* at *13–18 (citation omitted) (registered Republicans, Trump voters, and rural citizens are not distinctive groups).

279. Jurors who would refuse to impose a death sentence under any circumstance or who would automatically recommend the death sentence in all murder cases cannot follow the law in an impartial manner and should be excluded. The death qualifying standard is "equally true of any situation where a party seeks to exclude a biased juror." *Wainwright,* 469 U.S. at 423–24.

280. *See, e.g., Witherspoon*, 391 U.S. at 522–23 (reversing a death sentence because all jurors who expressed doubt about application of the death penalty were excluded).

281. *See Batson*, 476 U.S. at 97–98 (holding that once defendant makes prima facie case of discrimination the prosecutor must articulate a race-neutral explanation for striking black jurors).

because while parties have a limited number of peremptory strikes for individual cases, the government can categorically exclude entire groups on a nationwide, statewide, or local basis across all types of cases.

Additionally, the mechanics of *Duren* analysis render it unsuitable for evaluating general juror qualifications. The second *Duren* factor requires consideration of whether a group is underrepresented relative to its prevalence in the jury-qualified population.[282] For example, under *Duren* analysis, the prevalence of Hispanics in the jury pool is compared not to their prevalence in the adult population as a whole, but to their prevalence within the jury-qualified population, which excludes non-citizens, felons, and individuals with limited English proficiency.[283] Statutory qualifications and exclusions must be accounted for before conducting *Duren* analysis. If *Duren* is applied to categorical exclusions, any exclusion is permissible because an excluded group will not be represented in the qualified jury pool.

When state jury qualification laws make clear distinctions among people, these laws create distinctive groups for jury service purposes. Courts have relied too heavily on determining that groups are "not distinctive," rather than articulating legitimate reasons for excluding certain groups in a manner consistent with constitutional guarantees. For example, rather than argue that felons are not a distinctive group under a *Duren* analysis,[284] the Seventh Circuit should acknowledge that jury qualification laws make distinction between felons and non-felons and identify the state interests served by excluding felons.[285] Similarly, rather than permit states to exclude unvaccinated jurors as an indistinct group,[286] courts should instead hold that these exclusions were narrowly tailored to protect public health during a pandemic. The problem with bending the *Duren* rules to justify a categorical exclusion should now be clear: Now that the pandemic is over, the exclusion is

---

282. This is not immediately clear from *Duren* itself, which calls for comparing the representation of a group in jury pools "in relation to the number of such persons in the community." *Duren*, 439 U.S. at 364.

283. *See* Sanders v. Woodford, 373 F.3d 1054, 1069–70 (9th Cir. 2004) (expert failed to account for prevalence of non-citizens and others ineligible for jury service); United States v. Artero, 121 F.3d 1256, 1261 (9th Cir. 1997) (prevalence of Hispanics in jury pool should be compared to jury-qualified population, not total population); United States v. Cannady, 54 F.3d 544, 548 (9th Cir. 1995) (requiring comparison of jury pool to jury-eligible Hispanic population). *But see* United States v. Rodriguez-Lara, 421 F.3d 932, 943 n.9 (9th Cir. 2005) (noting conflicting authority, suggesting prima facie case for underrepresentation may be made based on more readily available data for community population).

284. *See* United States v. Barry, 71 F.3d at 1273–74 (applying *Duren* analysis to exclusion of felons).

285. Felons are categorically excluded from juries due to likely bias against the prosecution. *See supra* Section III-C.

286. *See supra* note 271.

no longer justified, but the Seventh Circuit approach justifies excluding those who refuse vaccinations at any time, regardless of necessity, because they are not a distinct group.

VI. THE YEAR RESIDENCY REQUIREMENT IS ALSO INVALID UNDER *DUREN* CRITERIA

In this section, the *Duren v. Missouri*[287] standard for fair cross-section claims is applied to analyze the exclusion of new residents.[288] The *Duren* criteria should not be used to evaluate a categorical exclusion, yet at least one federal circuit has adopted this approach. Under *Duren*, a prima facie case against one-year residency requirements requires that the defendant show: (1) the exclusion of new residents from juries is systematic, (2) new residents are not fairly and reasonably represented in jury venires, and (3) new residents constitute a distinctive group.[289] Applying the standards set forth in *Duren*, there is a strong argument that prohibiting new residents from serving on juries violates a defendant's constitutional right to an impartial jury.

The first element of a *Duren* claim is readily satisfied. The exclusion of new residents from juries is systematic and intentional, because it is the direct result of federal and state statutes. The categorical exclusion of new residents is a fixed component of the juror selection process in both criminal and civil trials, rather than an intermittent or occasional issue.

Regarding the second element, new residents are neither fairly, nor reasonably, represented in jury venires. Due to statutes, new residents have zero representation in federal and state jury venires. The precise meanings of terms like "fair" and "reasonable" are open to debate; but if these terms hold any substantive meaning, they must require more than complete exclusion. Even with a small percentage of new residents in the community, one would still expect some representation in jury pools. The categorical exclusion of new residents results in underrepresentation that far exceeds the bounds of random deviation.[290] If the excluded group is relatively large, a five-percentage-point difference between its prevalence in jury pools and in the general population may be acceptable.[291] However, when the excluded

287. 439 U.S. 357 (1979).

288. Duren v. Mo., 439 U.S. 357 (1979).

289. *Duren*, 439 U.S. at 364.

290. The probability of selecting no new residents in a 500-person jury pool, given a jurisdiction with 2% new residents, is approximately $(1 - 0.02)^{500}$, or 1 in 25,000.

291. Courts use multiple methods to assess whether an allegedly excluded group is underrepresented in the jury pool relative to the population with both absolute and comparative disparity measures. *See, e.g.,* Berghuis v. Smith, 559 U.S. 314, 329–30 (2010) (*Duren* does not specify disparity measurement method; multiple measures are useful);

group is relatively small, such a difference effectively eliminates its presence in jury pools.[292]

A. Distinctiveness Should be Assessed in Context of Jury Service

To satisfy *Duren* requirements, the defendant must demonstrate that the systematically excluded group, which is not fairly represented in the jury pool, constitutes a distinctive group.[293] While the Supreme Court has not precisely defined "distinctive group," it has indicated that "distinctive group" should be interpreted given the purposes of the fair cross-section requirement and special functions served by juries. [294] The purposes of the fair cross-section requirement are "(1) '[guarding] against the exercise of arbitrary power' and ensuring that the 'commonsense judgment of the community' will act as 'a hedge against the overzealous or mistaken prosecutor,' (2) preserving 'public confidence in the fairness of the criminal justice system,' and (3) implementing our belief that 'sharing in the administration of justice is a phase of civic responsibility.'"[295]

In *Duren*, the Court used the term "distinctive group" rather than "protected class," the term commonly used for equal protection analysis.[296] A defendant must establish that the excluded group is "distinctive" for jury purposes, which is different than demonstrating that the group is "protected" or "cognizable," or that the law creates a suspect classification. Protected classes, such as racial and ethnic minorities, are certainly distinctive groups, but distinctive groups are a broader category than protected classes. Distinctive groups are not defined solely by race, gender, religion, or other suspect classifications.[297] The Sixth Amendment's impartial jury guarantee reflects a

---

United States v. Rioux, 97 F.3d 648, 655–56 (2d Cir. 1996) (citation omitted) (discussing various methods for assessing disparity).

292. When a group's prevalence in the population is relatively small, courts should consider comparative disparity measures. *See* People v. Smith, 615 N.W.2d 1, 2–3 (Mich. 2000) (absolute disparity measure misleading for small groups); United States v. Jackman, 46 F.3d 1240, 1246–48 (2d Cir. 1995) (comparative disparity useful for smaller groups). For new residents, absolute disparity averages about five percentage points (new residents are 4.9% of the population and 0% of jury pools). Comparative disparity is 100% because all new residents are categorically excluded. Comparative disparity measures are useful for assessing the exclusion of new residents while avoiding the problems that may arise applying comparative measures to microscopic groups. *See, e.g.,* United States v. Hafen, 726 F.2d 21, 24 (1st Cir. 1984) (noting difficulty applying comparative disparity "in an area that had 500,000 whites and only one black eligible to serve as jurors").

293. *Duren*, 439 U.S. at 364.

294. Lockhart v. McCree, 476 U.S. 162 (1986).

295. *Lockhart*, 476 U.S. at 174–75 (citing *Taylor*).

296. *Duren*, 439 U.S. at 364.

297. Even under equal protection analysis, legal protection should not be confined to static categories because different groups can be singled out for discrimination.

broader principle.[298] A group may be distinctive for fair cross-section purposes even though it would not be considered a protected class for an equal protection claim.[299] As discussed above, due process analysis should center on the defendant's right to an impartial jury and a fair trial, rather than on a prospective juror's right to serve.

For Sixth Amendment purposes, the distinctiveness of a group should turn on whether that group tends to hold significantly different views, preferences, or beliefs regarding decisions made by jurors, particularly on issues of guilt and punishment, as well as the factors that influence those decisions, such as trust in law enforcement and perceptions of danger.[300] One can make a compelling argument that new residents constitute a distinctive group for purposes of jury trials.[301] As discussed in Section III.G, new resident jurors offer a fresh perspective, less encumbered by the community's prejudices and insular values, a healthy dose of outside opinion that promotes good judgment and guards against groupthink. Representation of all facets of the community promotes public confidence in juries. The community should expect its new residents to assume civic responsibilities.

Unfortunately, the U.S Supreme Court's loose guidance on the meaning of "distinctive group" has led to varying interpretations in

---

"[C]ommunity prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact." Hernandez v. Tex., 347 U.S. 475, 478 (1954).

298. Commonwealth v. Bastarache, 414 N.E.2d 984, 992 (Mass. 1980) (citation omitted).

299. *See Bastarache* 414 N.E.2d at 992; *see also* Mitchell S. Zuklie, *Rethinking the Fair Cross-Section Requirement*, 84 CAL L. REV. 101, 150 (1996) (criticizing narrow interpretation of "distinctive group").

300. In the context of jury service, it is not clear that groups recognized as distinctive are more distinctive than new residents. Individual juror characteristics, like race, gender, and ethnicity, are not strongly correlated to verdict preferences. *See* Dennis J. Devine et al., *Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups*, 7 PSYCH., PUB. POL'Y & L. 622, 700 (2001) (individual juror characteristics explain only 5–15% of variation in verdict preferences); Solomon M. Fulero & Steven D. Penrod, *Attorney Jury Selection Folklore: What Do They Think and How Can Psychologists Help?*, 3 FORENSIC REP. 233 (1990) (reporting that individual differences among jurors do not reliably predict how jurors will vote); Joel D. Lieberman, *The Utility of Scientific Jury Selection: Still Murky After 30 Years*, 20 CURRENT DIRECTIONS PSYCH. SCI. 48, 50 (2011); Richard Seltzer, *Scientific Jury Selection: Does It Work?*, 36 J. APPLIED SOC. PSYCH. 2417, 2419 (2006). When it comes to jury functions, new residents may be just as distinctive as groups traditionally considered distinctive.

301. Applying *Duren* factors and finding that new residents constitute a distinctive group would be a more radical decision than simply determining that categorical exclusion is not narrowly tailored to serve a compelling state interest. If new residents are recognized as a distinctive group, court selection practices and procedures must ensure that they are adequately represented in the jury pool. This may require, for example, courts to update master jury lists more frequently to ensure that new residents are properly included.

lower courts.[302] Lower courts have overlooked the special role juries play in the criminal justice system and have instead analyzed "distinctive group" through the lens of equal protection analysis.[303] Courts have interpreted "distinctive group" in a manner that disregards what jurors do and how they perceive evidence and deliberate, instead focusing on individual characteristics. Essentially, no proof of distinctiveness is accepted.

B. Distinctiveness as Jurors is the Justification for Exclusion

Federal, and some state laws, treat new residents as a category of individuals who are unfit to serve on juries.[304] Jury qualification laws explicitly single out new residents for different treatment.[305] The purported justification for excluding new residents from juries is their distinctiveness. For example, in *United States v. Duncan*,[306] the U.S. Court of Appeals for the Ninth Circuit opined that new residents are unfamiliar with local conditions, customs, and mores.[307] Because of this unfamiliarity, they are perceived as interpreting trial evidence differently.[308]

In the relevant context of jury decision-making, new residents are considered a distinctive group. While these concerns may be misguided, the reality remains that federal, and some state, laws treat new residents as a distinctive group and impose different qualifications on them than on other members of the community.

Some courts have upheld duration-of-residency rules by determining that new residents are not a distinctive group.[309] This view creates a glaring contradiction in cases that have endorsed the exclusion. Courts have also ruled that legislatures may impose this distinction among prospective jurors because newcomers are a distinct group—a

---

302. *See* Sanjay K. Chhablani, *Re-Framing the 'Fair Cross-Section' Requirement*, 13 J. Const. L. 931, 947–48 (2011) (discussing conflation of distinctive group for fair cross-section purposes with Equal Protection analysis).

303. Because new residents are not a cognizable class for equal protection purposes, the *Adams* Court mistakenly applies a rational basis test, asking only "if there is any rational relationship between the requirement and some legitimate state objective." Adams v. Super. Ct., 524 P.2d 375, 379–80 (Cal. 1974).

304. *See supra* Section II (discussing federal and state statutes that categorically exclude new residents from juries).

305. *See* Castaneda v. Partida, 430 U.S. 482, 494 (1977) (starting point for determining whether a group is constitutionally "cognizable" is whether the group is "a recognizable, distinct class, singled out for different treatment under the laws, as written or applied.").

306. 456 F.2d 1401 (9th Cir. 1972).

307. United States v. Duncan, 456 F.2d 1401, 1406 (9th Cir. 1972).

308. *See* Reed v. State, 292 So.2d 7, 10 (Fla. 1974).

309. *See, e.g., Adams*, 524 P.2d at 378; Hampton v. State, 569 P.2d 138, 148–49 (citing *Adams* analysis); *Wainwright*, 587 F.2d at 263–64 (one-year residency requirement does not exclude a distinctive class).

defined subset of community outsiders who are unfamiliar with local customs, values, and mores.[310] New residents cannot simultaneously be both a distinctive group and not a distinctive group. If newcomers are not distinctive, there is no rational basis for the distinction made in jury qualification laws. Conversely, if they are a distinctive group, they must be fairly and adequately represented in jury venires unless their exclusion is justified by a compelling state interest.

C. New Residents Are Distinctive Group Based on Other Criteria

Some circuit courts have disregarded the U.S. Supreme Court's advice to interpret "distinctive group" in light of the special functions of juries.[311] Instead, lower courts have focused on whether excluded groups should be protected from discrimination and granted equal opportunities to serve on juries.[312] According to the U.S. Court of Appeals for the Sixth Circuit, distinctive groups possess three characteristics: (1) they are "defined and limited by some factor (i.e., that the group has a definite composition such as by race or sex)[,]"[313] (2) "a common thread or basic similarity in attitude, ideas, or experience runs through the group[,]"[314] and (3) "there is a community of interest among members of the group such that the group's interests cannot be adequately represented if the group is excluded from the jury selection process."[315] This interpretation of "distinctive group" is misguided, but some courts may feel compelled to adhere to it.[316]

1. New Residents Are a Defined and Limited Group

New residents are defined and limited by a specific factor: duration of residency. One year of residency serves as a bright-line rule. This factor is so specific and definite that it eliminates an entire category of prospective jurors based on a single question on a juror questionnaire.

Some may argue that new residents do not constitute a definite group because their membership changes over time. As new residents become established residents, others move into the community, replacing them. While this is true, the same can be said of groups already considered distinctive. Church membership is not permanent; over time, some members leave, pass away, or convert to another faith, while

310. *See*, *e.g.*, *Reed*, 292 So. 2d at 10 (asserting that new residents are less likely to consider evidence in the light of surrounding circumstances).

311. *See supra* Section VI-A.

312. *See supra* Section III-D.

313. Ford v. Seabold, 841 F.2d 677, 681 (6th Cir. 1988) (citation omitted).

314. *Seabold*, 841 F.2d at 681–82 (citations omitted).

315. *Id.* at 682.

316. *See* Chernoff, *supra* note 14, at 182–84 (criticizing mistaken focus on excluded jurors' opportunities to serve on juries in due process context).

others join or are born into it.[317] Similarly, women age into and out of childbearing years, and pregnancy itself lasts less than a year, yet pregnant women, as a distinct group, are protected from discrimination.[318]

Others may argue that new resident status is an attribute within an individual's control. While some people move to a new community by choice, others are forced to relocate due to external factors such as factory closures, corporate transfers, natural disasters, family obligations, or military deployment. Moreover, once someone has moved, their new resident status is a fixed attribute and no longer a matter of choice. Unlike joining a church, affiliating with a civic group, registering with a political party, or opposing capital punishment on moral grounds, residency status is an objective characteristic that is not always subject to personal preference.[319]

2. Common Thread and Basic Similarities

New residents share a common thread and a basic similarity in attitudes, ideas, and experiences—they have all recently moved to a new place. Moving can be one of life's most stressful experiences. Leaving behind familiar surroundings, routines, and social networks can lead to feelings of loss, loneliness, and anxiety. Moving is costly in both time and resources.[320] New residents encounter common challenges associated with integrating into a new community, such as enrolling children in a new school, finding a new doctor, navigating unfamiliar roads, being an outsider, making new friends, and trying to establish themselves in a new environment.

Researchers have documented the distinctive qualities of newcomers in multiple domains. Judges exhibit a "freshman effect" their first year on the bench.[321] Students experience a freshman effect

---

317. "Americans change religious affiliation early and often. In total, about half of American adults have changed religious affiliation at least once during their lives. Most people who change their religion leave their childhood faith before age 24, and many of those who change religion do so more than once." *Pew Forum on Religion & Pub. Life, Faith in Flux: Changes in Religious Affiliation in the U.S.*, PEW RSCH. CTR. (April 2009), https://www.pewresearch.org/wp-content/uploads/sites/7/2009/04/fullreport.pdf.

318. *See generally* Jill E. Habig, *Defining the Protected Class: Who Qualifies for Protection Under the Pregnancy Discrimination Act*, 117 YALE L.J. 1215, 1215 (2007).

319. Individuals who fundamentally oppose the death penalty are not a distinctive group for fair cross-section analysis. *See Lockhart*, 476 U.S. at 174–77.

320. *See* Abby Doyle, *How Much Does It Cost to Move?*, NERD WALLET (Dec. 3, 2024), https://www.nerdwallet.com/article/mortgages/how-much-does-it-cost-to-move (discussing costs of local and long-distance moves).

321. Researchers report statistically significant differences in judges' first years on the bench. *See, e.g.,* Rachael Houston et al., *Learning to Speak Up: Acclimation Effects and Supreme Court Oral Argument*, 42 JUST. SYS. J. 115 (2021); Timothy M. Hagle, *"Freshman Effects" for Supreme Court Justices*, 37 AM. J. POL. SCI. 1142 (1993); Virginia A. Hettinger et al., *Acclimation Effects and Separate Opinion Writing in the U.S. Courts of Appeals*, 84 SOC. SCI. Q. 792, 793 (2003); Mark S. Hurwitz & Oseph V. Stefko, *Acclimation*

their first year at college.[322] The first year is distinct from subsequent years.

Businesses target new residents as a distinct segment of the marketplace.[323] Recent movers are uniquely open to trying new goods and services.[324] Contrary to the suggestion that newcomers are unfamiliar with local conditions, they may be more hyperaware of the community's unique features than long-term residents who have grown accustomed to local conditions.[325] Some of these experiences may seem mundane, but they are neither trivial nor insignificant. These are the experiences that define the day-to-day lives of jurors.

Businesses frequently hire outside consultants to provide objective views and unbiased opinions, free from internal politics or preconceptions.[326] Similarly, parties in conflict may engage third-party mediators to resolve disputes. A neutral third party can help adversaries see

---

and Attitudes: "Newcomer" Justices and Precedent Conformance on the Supreme Court, 57 POL. RSCH. Q. 121 (2004).

322. Researchers have identified distinct features of the freshman experience at college, including health consequences. *See* Claudia Vadeboncoeur et al., *Freshman 15 in England: A Longitudinal Evaluation of First Year University Student's Weight Change*, 3 BMC OBESITY 1 (2016); Claudia Vadeboncoeur et al., *A Meta-Analysis of Weight Gain in First Year University Students: Is Freshman 15 a Myth?*, 2 BMC OBESITY 1 (2015); *see generally* Lijuan Quan et al., *The Effects of Loneliness and Coping Style on Academic Adjustment Among College Freshmen*, 42 SOC. BEHAV. & PERSONALITY 969 (2014).

323. According to one marketing professional, the new mover market "is truly unique and in the process of completing a major life event." Krystal Finnigan, *The Power of New Movers in Marketing*, FOCUS USA, https://www.focus-usa.com/the-power-of-new-movers-in-marketing (n.d.). Another marketing expert notes, "New [h]omeowners are an amazing market segment . . . Even though they may be small in numbers, when it comes to lifetime value, there is no more profitable customer." *New Homeowners Lists – Be First in the Door*, DATAMAN GRP. DIRECT, https://www.datamangroup.com/new-homeowners-lists (n.d.); *see also The Marketing Potential of a New Homeowner Mailing Lists*, MAILING LISTS DIRECT, https://www.mailing-lists-direct.com/the-marketing-potential-of-new-homeowner-mailing-lists (n.d.); *How to Grow Your Customer Base by Marketing to New Movers*, PORCH GROUP MEDIA, https://porchgroupmedia.com/blog/how-grow-your-customer-base-marketing-new-movers (n.d.).

324. *See* Finnigan, *supra* note 323 ("New Movers are open to change. . . . [S]ome of them are making some of the biggest changes of their lives. . . . Moving to a new location is a significant change in a person's life, and new movers are often more open to trying new things and exploring new opportunities.").

325. *See, e.g.,* Andrés Di Masso et al., *Between Fixities and Flows: Navigating Place Attachments in an Increasingly Mobile World*, 61 J. ENV'T. PSYCH. 125, 126–27 (2019) (modern research challenges assumption that duration of residency increases place attachment); Maria Lewicka, *On the Varieties of People's Relationships with Places: Hummon's Typology Revisited*, 43 ENV'T. & BEHAV. 676, 677 (2011) (with longer contact, the place of residence is taken for granted); Richard C. Stedman, *Understanding Place Attachment Among Second Home Owners*, 50 AM. BEHAV. SCIENTIST 187, 187 (2006) (noting that although seasonal residents are perceived as "outsiders," they exhibit higher levels of attachment to place).

326. *See* CHRISTOPHER D. MCKENNA, THE WORLD'S NEWEST PROFESSION: MANAGEMENT CONSULTING IN THE TWENTIETH CENTURY 10–16 (2006); Vikas Anand et al., *Thriving on the Knowledge of Outsiders: Tapping Organizational Social Capital*, 16 ACAD. MGMT. PERSPS. 87, 91 (2002).

longstanding disputes from a different perspective and find common ground.[327] Outsiders may be welcomed for their fresh perspectives, or feared as a threat to established values, in either case, they are different than established members of the community.

3. *Not Adequately Represented by Long Term Residents*

Assessing whether an excluded group's interests can be adequately represented by other jurors is misguided. Jury deliberation is not a forum to advance the interests of specific groups. Jury service is not a source of public benefits. No jurors should have an interest in the trial outcome on a personal level or as members of a group. The focus on protecting the interests of excluded jurors conflates equal protection analysis with the defendant's due process rights. Nevertheless, we can consider whether new residents' perspectives can be adequately represented in jury deliberations in their absence. The newcomers' viewpoints and experiences are not represented by those who have assimilated into the community. Established members of a community not only forget what it is like to be new members—if they ever were newcomers—but they may endeavor to exclude and exploit newcomers now that they are established members of the community.[328] History provides many examples of established state residents serving their own interests at the expense of new residents.[329] Outsiders are not adequately represented by insiders.

When new residents are categorically excluded, they cannot expect to have their views represented by other members of their group who do serve on juries. It is not a situation like that of young people, where some members of the group remain in the jury pool despite being underrepresented relative to the population.[330] There are no new residents

327. *See generally* Michael J. Boland & William H. Ross, *Emotional Intelligence and Dispute Mediation in Escalating and De-Escalating Situations*, 40 J. Applied Soc. Psych. 3059 (2010); Ralph A. Peeples et al., *Its the Conflict, Stupid: An Empirical Study of Facts That Inhibit Successful Mediation in High-Conflict Custody Cases*, 43 Wake Forest L. Rev. 505, 510 (2008); Roger Fisher & William L. Ury, Getting to Yes: Negotiating Agreement Without Giving In 57 (2d ed. 2011).

328. This dynamic explains the persistence of hazing rituals in multiple domains. Those who recently suffered through initiation rituals tend to the ones who carry them out against newcomers. People who endure severe initiations later rate the group as more attractive; they justify the pain of initiation by boosting commitment to the group. *See* Elliot Aronson and Judson Mills, *The Effect of Severity of Initiation on Liking for a Group*, 59 J. Abnormal & Soc. Psych. 177 (1959).

329. *See supra*, Section IV-F.

330. In cases addressing the underrepresentation of 18- to 20-year-olds in jury pools, courts held that the viewpoints and attitudes of individuals in this age group are indistinct and could be effectively represented by jurors aged 21 to 25. *See, e.g.*, United States v. Olson, 473 F.2d 686, 688–89 (8th Cir. 1973); United States v. Kuhn, 441 F.2d 179, 181 (5th Cir. 1971).

in the jury pool. Even if one assumes that another group, perhaps those who have recently moved within the jurisdiction, can represent those who are new to the jurisdiction, the excluded group's viewpoint is not adequately advanced by its mere presence. Numbers matter. Jurors cannot adequately advance their viewpoint in deliberation if their verdict faction is undersized.[331]

4. New Residents Have Distinct Viewpoints, Opinions, and Attitudes

The American National Election Studies ("ANES"), conducted every two years, provides excellent data on the viewpoints, opinions, and demographic characteristics of American citizens. The studies also ask respondents how long they have lived at their current address, creating an opportunity to compare the viewpoints, opinions, and attitudes of new residents and established residents on a wide variety of topics.

ANES survey data shows that new residents have distinct viewpoints, opinions, and attitudes on a wide variety of topics. The 2020 iteration of the ANES asked respondents 423 questions about political, economic, and social issues.[332] New residents gave significantly different answers on 311 of the questions (73.5% of items).[333] Table 3 highlights some of the distinctive opinions and characteristics of the individuals who have lived in their current community less than one year compared to those who have lived in their current community one year or more. As one might expect, new residents show greater acceptance of alternative lifestyles and progressive values, while showing less support for traditional social controls.

---

331. *See* Norbert L. Kerr & Robert J. MacCoun, *The Effects of Jury Size and Polling Method on the Process and Product of Jury Deliberation*, 48 J. PERSONALITY & SOC. PSYCH. 349, 360 (1985); Norbert L. Kerr & Robert J. MacCoun, *Is the Leniency Asymmetry Really Dead? Misinterpreting Asymmetry Effects in Criminal Jury Deliberation*, 15 GRP. PROCESSES & INTERGROUP REL. 585 (2012); Marla Sandys & Robert C. Dillehay, *First-Ballot Votes, Predeliberation Dispositions, and Final Verdicts in Jury Trials*, 19 LAW & HUM. BEHAV. 175, 176 (1995).

332. *See supra* note 121 and accompanying text.

333. *See* Edwards, *supra* note 122 (replication material for ANES analysis). The type of test used to compare group differences depends on the type of question asked. When respondents' answers fall into categories, such as multiple-choice responses, chi-square tests assess the difference between groups. *See* PHILIP H. POLLOCK III & BARRY C. EDWARDS, THE ESSENTIALS OF POLITICAL ANALYSIS 249–51 (7th ed. 2026). When respondents give numerical answers, such as values between 0 and 100, differences of means tests or analysis of variance (ANOVA) are used. *See Id.* at 268.

Table 2: Opinions and Characteristics of New Residents[334]

Opinion or Characteristic	New	Old
Consider themselves feminists	45.1%	20.9%
Feeling thermometer: Transgenders	70.8%	58.7%
Favor transgenders in military	56.8%	39.5%
Favor more federal spending on crime control	33.3%	55.8%
Feeling thermometer: Police	57.1%	70.1%
Favor more federal spending on border security	22.6%	44.3%
Feeling thermometer: Gays/lesbians	77.8%	64.5%
Feeling thermometer: Muslims	66.8%	58.3%
Never married	45.5%	27.4%
Have children	53.0%	70.6%
Have landline phone	12.5%	39.6%
Average Age	35.8%	48.8%

New residents have some distinguishing attitudes and characteristics. The problem is that courts do not accept evidence of distinct viewpoints, opinions, and attitudes as proof that groups are distinctive.[335] One might think that distinct political viewpoints, opinions, and attitudes make a group distinctive, but courts have held that registered Republicans and Trump voters are not distinctive groups,[336] nor are those opposed to the death penalty.[337]

D. Exclusion is Not Justified by Any Compelling State Interest

The exclusion of a distinctive group from jury service compromises the jury's role as a representative body of diverse community experiences and creates a presumption of prejudice. However, as the U.S. Supreme Court advised in *Duren,* a defendant's prima facie case is not the end of the inquiry.[338] States may adopt qualifications and

334. *See* 2020 Time Series Study, Am. Nat'l Election Studies (Feb. 10, 2022), https://electionstudies.org/data-center/2020-time-series-study/.

335. "Without much effort we can point to various significant social indicators that would seem to punctuate clear differences in the attitudes, values, ideas and experiences of 18 year olds vis-a-vis 34 year olds" Barber v. Pointe, 772 F.2d 982, 998 (1st Cir. 1985) (rejecting young adults as distinctive class).

336. *See* United States v. Allen, No. 16-10141-01, 2018 WL 453725, at *7–8 (D. Kan. Jan. 17, 2018).

337. *See Lockhart*, 476 U.S. at 174–77.

338. *Duren*, 439 U.S. at 367–68. Because new residents are categorically excluded from jury pools—rather than merely underrepresented due to jury selection practices—the constitutional analysis should begin by determining whether the exclusion is narrowly tailored to serve a compelling state interest.

exclude certain jurors, provided they demonstrate that "a significant state interest be manifestly and primarily advanced by those aspects of the jury-selection process, such as exemption criteria, that result in the disproportionate exclusion of a distinctive group."[339]

As argued in Section II, one-year residency requirements are not narrowly tailored to serve any compelling state interest. As discussed, there is no evidence that new residents are unfamiliar with local conditions. Furthermore, jurors do not need to be familiar with local conditions to listen to trial evidence and apply federal and state laws. If jurors ever need to be familiar with local conditions, new residents could simply be dismissed from that rare case, rather than categorically excluded from all jury trials. The exclusion is not needed to alleviate undue hardships. It is an administrative burden. The purported interest is a manifestation of local prejudice against outsiders and discrimination against newcomers. On the whole, new residents would: (1) have a greater ability to serve on juries, (2) improve jury deliberations, (3) raise public confidence in jury verdicts, and (4) underscore our shared commitment to democracy and self-government.

VII. CONCLUSION

This article urges critical reconsideration of federal and state laws that require prospective jurors to have at least one year of residency in the summoning jurisdiction. Residency duration requirements were adopted in a bygone era—before computers and electronic records—where jurors were handpicked based on their reputation in the community.

The federal and state laws discussed in this article have been in place for a long time. Even if these laws now serve no legitimate state interest and may, instead, undermine multiple state interests, there is the temptation for courts to maintain the status quo and leave solutions to legislators. It is true that many states have abandoned one-year residency requirements without being compelled to do so by a court. While one hopes that Congress and the remaining state legislatures will continue this trend, the possibility of legislative action should not relieve courts of their obligation to protect constitutional rights and the integrity of jury trials. This is particularly true for the rights of criminal defendants, who frequently suffer at the hands of political majorities.

Another concern may be how a decision to hold laws excluding new residents from juries unconstitutional would affect past convictions and current cases. Procedural rules—such as changes to juror

339. *Id.* at 368.

qualifications or selection processes—are not applied retroactively in post-conviction proceedings by prisoners.[340] Invalidating duration of residency required for jurors would not affect past convictions, but it would apply to cases awaiting trial where a jury pool has not yet been summoned. A decision that excluding new residents from juries violates due process rights would also apply to pending appeals.[341] Defendants may be entitled to relief if they challenged their jury venire for excluding new residents to preserve the claim for future appeals; if they failed to object, the error is not reviewable unless it constitutes plain error, a difficult standard to meet.[342] Recognizing that duration of residency requirements are outdated and unconstitutional may affect an unknown number of cases on appeal, imposing costs, "[b]ut new rules of criminal procedure usually do, often affecting significant numbers of pending cases across the whole country."[343]

Implementing a new standard for future trials should not be problematic. By all accounts, it is easier for jury administrators to treat new residents like other citizens than it is to identify and exclude them.[344] The responsibility of jury service would be more widely shared. New residents offer fresh perspectives that tend to improve deliberation and trials fairer,[345] especially in high-profile cases like *United States v. Tsarnaev* where pretrial publicity creates local prejudice.[346] If the exclusion of new residents were struck down, the adequacy of new residents' representation in jury pools would be evaluated under the standards articulated in *Duren v. Missouri*.[347] If new residents are considered a distinctive group that must be represented in jury pools, the relevant inquiry would then be whether jury selection practices and procedures systematically underrepresent new residents to an intolerable degree.[348]

---

340. *See* Edwards v. Vannoy, 593 U.S. 255, 271–72 (2021); *see also* Ramos v. La., 590 U.S. 83, 129–31 (2020) (Kavanaugh, J., concurring) (explaining why requiring unanimous juries for conviction will not apply retroactively to past convictions).

341. *See* Griffith v. Ky., 479 U.S. 314, 328 (1987) (holding that new procedural rules are to be applied retroactively to cases pending on appeal).

342. *See* Johnson v. United States, 520 U.S. 461 (1997) (holding that new rule did not apply to pending appeal where defendant did not preserve objection unless the error at issue constitutes "plain error"); *see also* Henderson v. United States, 568 U.S. 266 (2013) (holding that an error may become plain during appeals even if issue was unsettled at time of trial).

343. *Ramos*, 590 U.S. at 108.

344. *See supra*, Section IV-D.

345. *See supra*, Section IV-F.

346. *See supra* notes 1-5 and accompanying text.

347. 439 U.S. 357 (1979).

348. Courts have held that updating master jury lists every four years is sufficient. *See supra*, Section V-B. However, a federal jury administrator's ability to update records today is vastly different from what it was in 1968, when the four-year rule was codified. If up-to-date community information were readily available and easily accessible, yet the administrator chose to use outdated data, this could present a problem under the fair cross-section requirement.

There has never been a good reason to require one year of residency for jury service. These laws should have been eliminated a long time ago. Finding these laws invalid now would help deliver on the constitutional guarantee that defendants be judged by all their peers in the community. One hopes the judiciary will critically examine why this class of citizens is not allowed to serve on juries and finally decide that it is unconstitutional.