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# Reimagining the Inclusive Jury

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*At the height of the COVID-19 pandemic, everyday life for many Americans was upended. And yet, the jury trial remained viable — even vital. Faced with an era-defining public health disaster, courts innovated, embracing novel technologies and techniques to reimagine where and how justice might be made. But why did it take a pandemic to spur this kind of institutional creativity? Prior to the outbreak of COVID-19, people who were otherwise eligible to participate as jurors were routinely — and uncontroversially — struck or exempted from service due to limited mobility, vision and hearing loss, and caregiving responsibilities. Recent experience with hybrid and fully-remote trial formats shows that it is possible to include more of these prospective jurors in our jury system. Further, the drawbacks to using such innovations to accommodate individual jurors on a case-by-case basis are essentially nonexistent: successful hybrid and fully-remote proceedings deployed widely available digital technologies to offer effective, low-cost tools for jury trials in circumstances where some (or all) jurors could not be present physically.*

*This Article argues that some of the extraordinary trial modifications that emerged as a result of the pandemic should not disappear with decreasing infection numbers. Rather, we should embrace the momentum of the past few*

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*years and ask how new technologies and techniques might be used to eliminate entrenched forms of juror exclusion and discrimination. Toward that end, this Article does four things. First, it examines the state of disability and caregiving-based exclusion in the United States, highlighting the shortcomings of both current protections and accommodations. Second, it reviews modifications to jury trials made during the pandemic, discussing five key innovations that made these trials successful: distributed participation, virtual private spaces, equipment provision, phasing, and livestreaming. Third, it shows how the incorporation of one or more of these innovations into post-pandemic trials would significantly lower extant barriers to jury service. Finally, it addresses potential concerns about modifying the jury trial — both constitutional and logistical — and reflects on the forms of exclusion that would remain even in the wake of creating a more inclusive trial.*

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## INTRODUCTION

In August 2020, the Travis County Misdemeanor Court in Austin, Texas was the setting for a momentous event in the history of the United States’ criminal legal system: the first fully-remote criminal jury trial with a binding verdict.<sup>1</sup> Though heralded at the time as a milestone, the trial was also the subject of skepticism.<sup>2</sup> Critics weighed undeniable merits, such as significantly reduced risk of COVID-19 transmission, against perceived drawbacks, including the lack of in-person interaction and observation. Some argued that even if the participation of a jury had

<sup>1</sup> See *Travis County Justice of the Peace Nicholas Chu to Hear the Nation’s First Criminal Jury Trial Via Videoconference*, AUSTIN BAR ASS’N: AUSTIN BAR BLOG (Aug. 6, 2020), <https://www.austinbar.org/?pg=AustinBarBlog&blAction=showEntry&blogEntry=64526> [<https://perma.cc/GA8H-L7X7>] (“On August 11, 2020 at 8:30 AM, Travis County Justice of the Peace Nicholas Chu will hear the nation’s first binding criminal jury trial via videoconference.”); Madison Alder, *Virtual Criminal Jury Trial Getting Texas Test-iPads Included*, BLOOMBERG L. (Aug. 11, 2020, 1:50 AM PDT), <https://news.bloomberglaw.com/us-law-week/virtual-criminal-jury-trial-getting-texas-test-ipads-included-1> [<https://perma.cc/DPU9-AHJT>] (“An Austin, Texas, court will begin what it says is the first U.S. virtual criminal jury trial on Tuesday, a closely watched experiment brought on by the coronavirus pandemic that’s requiring creative solutions.”).

<sup>2</sup> See e.g., Jake Bleiberg, *Texas Court Holds Jury Trial in Traffic Crime Case over Zoom*, AP NEWS (Aug. 11, 2020, 6:38 PM PDT), <https://apnews.com/article/virus-outbreak-us-news-courts-crime-tx-state-wire-4e9d8013a7aa92f19551328a975e5579> [<https://perma.cc/L5KA-NLUA>] (“Legal experts say the pandemic requires courts to strike a tricky balance; they must advance cases to give people speedy trials and prevent an overwhelming backlog while preserving defendants’ rights...”); *Id.* (noting Professor Daniel Medwed’s concern that jurors could have difficulty assessing demeanor evidence by video in violation of the Confrontation Clause).

been made possible in the midst of an era-defining public health crisis, something essential about the institution was being lost.<sup>3</sup>

This view largely missed the point, however. In framing the pandemic-era trial as an alternative to its pre-pandemic counterpart, critics overlooked its innovations as potential accommodations that might be used not to replace the traditional jury trial format but to enhance it. After all, whatever difficulties these changes created, it is clear that — in conjunction with extant provisions for people at higher risk of exclusion — they can radically enhance the inclusivity of the jury trial, particularly for those with disabilities or the duty to care for ailing or otherwise dependent family members.<sup>4</sup> Though eligible for jury service, this is a population whose participation on juries has not been fully or effectively safeguarded by decades of anti-discrimination law.<sup>5</sup> Nevertheless, it is part of the public for which the American legal system makes justice, and its systematic inclusion should be an ideal toward which we aspire.

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<sup>3</sup> See e.g., Katie Hall, *Travis County Plans for Future Virtual Juries After Successful Trial Run*, AUSTIN AM. STATESMAN (Aug. 28, 2020, 5:51 PM CST), <https://www.statesman.com/story/news/2020/08/28/travis-county-plans-for-future-virtual-juries-after-successful-trial-run/113598114/> [<https://perma.cc/3SN2-RGVX>] (noting public defender and Professor Kathryn Dyer’s concern about issues related to internet connectivity and jurors’ attention); Richard Susskind, *The Future of Courts*, PRACTICE, July/Aug. 2020, <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/remote-courts/the-future-of-courts/> [<https://perma.cc/6JS9-UHYE>] (noting that “‘crowd justice’ and ‘mass collaboration’ jury systems bear almost no relation to mainstream criminal jury systems” and it is far from clear that Zoom trials would be “scalable, reliable, and manageable, even if early experiments are promising”).

<sup>4</sup> See Letter from GBAO to Nat’l Ctr. for State Cts., *Jury Trials in a (Post) Pandemic World — National Survey Analysis* (June 22, 2020), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0006/41001/NCSC-Juries-Post-Pandemic-World-Survey-Analysis.pdf](https://www.ncsc.org/__data/assets/pdf_file/0006/41001/NCSC-Juries-Post-Pandemic-World-Survey-Analysis.pdf) [<https://perma.cc/D54D-2LNS>] (according to a national survey commissioned by the National Center for State Courts, 47 percent of respondent prospective jurors said “that either they or someone in their household has an underlying medical condition that would make them more vulnerable” to COVID-19).

<sup>5</sup> See DEBORAH SMITH & GREG HURLEY, NAT’L CTR. FOR STATE CTS., *JURORS WITH DISABILITIES* 18 (2018), [https://www.ncsc-jurystudies.org/\\_\\_data/assets/pdf\\_file/0014/7340/juror-with-disabilities-final-report.pdf](https://www.ncsc-jurystudies.org/__data/assets/pdf_file/0014/7340/juror-with-disabilities-final-report.pdf) [<https://perma.cc/AJ4Z-E4AT>] (noting that the creation of master jury lists that rely on driver’s license and voting registration databases may inadvertently prevent citizens with disabilities from receiving a jury summons); *infra* Appendix.

This Article makes the case that we can make meaningful progress toward that ideal by selectively incorporating pandemic-era trial techniques into a more flexible jury trial format. Part One reviews the current situation for prospective jurors with disabilities or responsibilities that require support. It shows not only that the Americans with Disabilities Act (“ADA”) protections fail to achieve an inclusive jury selection process but that what accommodations are in place are for the most part implemented at the discretion of individual judges, sometimes leading to arbitrary exclusions. What we discover is that despite good intentions and commitments to inclusion, the empanelment of these groups is uneven, unpredictable, and — if our aspiration is building juries that reflect the diversity of their communities — unacceptable.<sup>6</sup> There is much work to be done.

Part Two examines the creativity and innovativeness of the pandemic-era trial. Fully-remote and hybrid trial formats, once unthinkable, were pioneered by courts only months after the first cases of COVID-19 were confirmed in the United States.<sup>7</sup> They represent a paradigm shift with respect to the contemporary jury. This shift is even more striking because it did not require sacrificing key elements of the jury trial or inventing new technologies. Rather, extant technologies and techniques were deployed in new ways, showing that it is possible to lower barriers

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<sup>6</sup> For an example of proposed legislation aimed at safeguarding the participation of eligible prospective jurors with disabilities, see Disabled Juror Nondiscrimination Act, S. 3942, 117th Cong. (2022).

<sup>7</sup> THE PEW CHARITABLE TR., HOW COURTS EMBRACED TECHNOLOGY, MET THE PANDEMIC CHALLENGE, AND REVOLUTIONIZED THEIR OPERATIONS 1 (2021), <https://www.pewtrusts.org/-/media/assets/2021/12/how-courts-embraced-technology.pdf> [<https://perma.cc/5E6Z-XC25>] (noting that the COVID-19 outbreak prompted “public services to shift to online operations in a matter of weeks” and “reimagin[e] how to administer justice” citing the Texas court system as an example which “conducted 1.1 million remote proceedings across its civil and criminal divisions between March 2020 and February 2021.”); Eric Scigliano, *Zoom Court Is Changing How Justice Is Served*, ATLANTIC (Apr. 13, 2021), <https://www.theatlantic.com/magazine/archive/2021/05/can-justice-be-served-on-zoom/618392/> [<https://perma.cc/HN44-S36Q>] (noting the rapid pace at which court operations shifted online such that “millions of hearings, depositions, arraignments, settlement conferences, and even trials — nearly entirely in civil cases or for minor criminal offenses” were conducted “over Zoom and other meeting platforms”).

to jury service with few discernible drawbacks.<sup>8</sup> This Part examines the lessons of pandemic-era trial formats with a view to determining which accommodations might be usable and useful on a more permanent basis.

In Part Three, the Article makes the case that select pandemic-era accommodations should in fact remain part of the jury trial, as needed, even as the pandemic recedes. It first reviews these accommodations and discusses their potential with respect to broadening the participation of prospective jurors with limited mobility, vision and hearing loss, and the duty to care for ailing or dependent family members including breastfed children. It then discusses practical and constitutional considerations, showing that neither presents an insurmountable obstacle to the long-term implementation of accommodations derived from the fully-remote and hybrid trial formats. In fact, it is through the incorporation of these accommodations into the jury trial in the criminal as well as the civil context that we move closer to bringing the reality of our legal system into alignment with the Sixth Amendment.<sup>9</sup> In doing so, we would also accede to the wishes of the American public — as this Part shows, large swaths of the population would welcome the more systemic use of technology in the jury trial.

The Article concludes by reaffirming that inclusivity should be the value that animates our efforts to revitalize and reform the American jury.<sup>10</sup> Though significant challenges remain, the COVID-19 pandemic

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<sup>8</sup> See Valerie P. Hans, *Virtual Juries*, 71 DEPAUL L. REV. 301, 313-19 (2022).

<sup>9</sup> U.S. CONST. amend. VI (guaranteeing criminal defendants a right to a speedy and public trial by an impartial jury); see Jeffrey Abramson, *Jury Selection in the Weeds: Whither the Democratic Shore?*, 52 U. MICH. J.L. REFORM 1, 5 (2018) [hereinafter *Jury Selection in the Weeds*] (“It is a further (and good) thing to fulfill the positive or affirmative right housed in the Sixth Amendment’s requirement that only a representative jury system can deliver impartial justice.” (citing *People v. Morales*, 770 P.2d 244, 276 (Cal. 1989) (Broussard, J., dissenting) (“The Fourteenth Amendment protects against intentional discrimination in the selection of venires, but the Sixth Amendment protects against unintentional deviations from the constitutional standard.”))).

<sup>10</sup> See Jeffrey Abramson, *The American Jury and Democratic Justice*, 18 TOCQUEVILLE REV. 5, 8 (1997) (noting that the “cross-sectional principle” for juries departed from the premise that juries deliberate best when they can draw on diverse, local knowledge); *Smith v. Phillips*, 455 U.S. 209, 223-24 (1982) (O’Connor, J., concurring) (arguing that an impartial jury is necessary in order to ensure an unbiased verdict); EQUAL. & HUM. RTS.

has shown what is possible with respect to accommodating jurors. Normalizing these exceptional modifications would also normalize the participation of a greater share of the American public in jury proceedings. The jury serves as a conduit for local expertise, lay knowledge, and community perspectives in the legal system.<sup>11</sup> For this reason, the arbitrary exclusion of people with disabilities and significant caregiving responsibilities constitutes a loss for us all — and its resolution represents a source of potential enrichment for our legal institutions.<sup>12</sup> Some will undoubtedly blanch at this proposal. In response to those critics who are concerned about abandoning the pre-pandemic status quo, this Article encourages critical reflection on that status quo and associated patterns of exclusion.<sup>13</sup> The current tide of

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COMM’N, INCLUSIVE JUSTICE: A SYSTEM DESIGNED FOR ALL 7 (2020), [https://www.equalityhumanrights.com/sites/default/files/evidence\\_base\\_inclusive\\_justice\\_a\\_system\\_designed\\_for\\_all.pdf](https://www.equalityhumanrights.com/sites/default/files/evidence_base_inclusive_justice_a_system_designed_for_all.pdf) [<https://perma.cc/4XY8-2R4J>] (arguing that a person’s right to a fair trial can be ensured by endeavoring to promote broad “participation”); Ashish S. Joshi & Christina T. Kline, *Lack of Jury Diversity: A National Problem with Individual Consequences*, AM. BAR ASS’N (Sept. 1, 2015), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2015/lack-of-jury-diversity-national-problem-individual-consequences/> [<https://perma.cc/2VCN-Q4R4>] (“[M]inority presence on a jury allows the group to understand and appreciate the different life experiences that different racial identities have with the criminal justice system.”).

<sup>11</sup> See JEFFREY ABRAMSON, WE, THE JURY: THE JURY SYSTEM AND THE IDEAL OF DEMOCRACY 246 (1994) (noting that “the search for common justice starts with the different experiences attached to identity in America. Here, Abramson’s point is not that differences in community perspective are an impediment to deliberation but, rather, that conversation is “enrich[ed]”); Donovan W. Frank & Brian N. Aleinikoff, *Juries and the Disabled*, 59 FED. LAW., Dec. 2012, at 34, 34 (discussing a civil trial in which a blind juror told the judge that “she saw things we did not see” thus helping constitute a “better jury”).

<sup>12</sup> See Jocelyn Simonson, *The Place of “The People” in Criminal Procedure*, 119 COLUM. L. REV. 249, 299 (2019) (arguing for the importance of “facilitating popular engagement by marginalized populations into a criminal legal system characterized by mass incarceration and supervision of those very populations”); Speech by David Nuffer, *Lay Participation in Criminal Justice* (2007), [https://www.utd.uscourts.gov/sites/utd/files/Ukraine\\_Lecture.pdf](https://www.utd.uscourts.gov/sites/utd/files/Ukraine_Lecture.pdf) [<https://perma.cc/LP29-4JHE>] (“Citizen participation reportedly promotes the democratic quality of justice, incorporating public ideas about justice and fairness into trial court decisions.”).

<sup>13</sup> See EQUAL JUST. INITIATIVE, RACE AND THE JURY: ILLEGAL RACIAL DISCRIMINATION IN JURY SELECTION (2021), <https://eji.org/report/race-and-the-jury/> [<https://perma.cc/RB2T->

change, if anything, has seen a fall in the absolute and relative number of jury trials, even if legal practice continues to revolve around juries.<sup>14</sup>

### I. THE STATE OF JUROR DISABILITY EXCLUSION

In the contemporary United States, the legal protections afforded to people with disabilities — or the responsibility to care for others who cannot care for themselves — do not extend in a systematic way to jury selection.<sup>15</sup> This is among the reasons that the summoning of a fair cross-section of the community to constitute an impartial jury, required

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94TJ] (discussing the history of discriminatory practices in American jury selection); Caryn Devins & Stuart Kauffman, *Toward a New View of Law and Society: Complexity and Power in the Legal System*, NPR (Jan. 22, 2013, 4:30 PM EST), <https://www.npr.org/sections/13.7/2013/01/22/169527577/toward-a-new-view-of-law-and-society-complexity-and-power-in-the-legal-system> [https://perma.cc/PPY6-5SMT] (arguing that “powerful, regulated interests” and hierarchy are an inbuilt part of the American legal system); Elliot Oberholtzer, *Police, Courts, Jails, and Prisons All Fail Disabled People*, PRISON POLY INITIATIVE (Aug. 23, 2017), <https://www.prisonpolicy.org/blog/2017/08/23/disability/> [https://perma.cc/2HQX-CLKL] (discussing the American legal system’s disparate treatment of individuals with a disability); Shasta N. Inman, *Racial Disparities in Criminal Justice*, AM. BAR ASS’N (Sept. 18, 2020), [https://www.americanbar.org/groups/young\\_lawyers/publications/after-the-bar/public-service/racial-disparities-criminal-justice-how-lawyers-can-help/](https://www.americanbar.org/groups/young_lawyers/publications/after-the-bar/public-service/racial-disparities-criminal-justice-how-lawyers-can-help/) [https://perma.cc/33WZ-JX3K] (“The evidence of differential treatment and injustice in the ‘justice’ system is overwhelming.”); *Gender in the Criminal Justice System*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-gender.html> (last visited Nov. 21, 2023) [https://perma.cc/VU4T-XLMZ] (discussing, for example, the impact of gender-based discrimination on “access to justice for all”).

<sup>14</sup> See Anna Offit, *Prosecuting in the Shadow of the Jury*, 113 NW. U. L. REV. 1071, 1074 (2019) (documenting the pre-pandemic decline of state and federal jury trials in the United States while discussing the continued salience of jurors for federal prosecutors’ trial strategy and ethical conceptions of their work). See generally ANNA OFFIT, *THE IMAGINED JUROR: HOW HYPOTHETICAL JURORS INFLUENCE FEDERAL PROSECUTORS* (2022) (discussing the role of jurors’ in prosecutors’ everyday work, including on cases for which there is little chance of a jury trial resolution).

<sup>15</sup> For a discussion of how the *Batson* doctrine has failed to facilitate the inclusion of prospective jurors with disabilities, see generally Jordan Benson, Note, *Stricken: The Need for Positive Statutory Law to Prevent Discriminatory Peremptory Strikes of Disabled Jurors*, 103 CORNELL L. REV. 437, 452-53 (2018), citing appellate cases *United States v. Harris*, 197 F.3d 870, 871-72 (7th Cir. 1999) and *United States v. Watson*, 483 F.3d 828, 829 (D.C. Cir. 2007) in which medications and visual impairment were uncontested grounds of juror removal using peremptory strikes.



by the Sixth Amendment, does not inevitably translate into juries that approximate the diversity of American communities.<sup>16</sup> In this first Part, the Article examines the inclusivity of the contemporary jury system for people with disabilities and significant caregiving responsibilities, paying particular attention to the admirable, if uneven, state-level efforts to accommodate these subsets of the population.<sup>17</sup>

### A. Equal Protection

The Equal Protection Clause of the U.S. Constitution holds that states and the federal government cannot deny to any person within their jurisdictions the equal protection of the laws.<sup>18</sup> In *Batson v. Kentucky*, the U.S. Supreme Court affirmed the extension of this protection to the jury selection process, where purposeful racial discrimination cannot motivate prosecutors' removal of prospective jurors using peremptory strikes.<sup>19</sup> Under *Batson*, a party alleging a violation bears the burden of proving the existence of purposeful discrimination.<sup>20</sup> During voir dire, this entails making a prima facie case that the person struck is a member of a recognized racial group and that the facts and relevant circumstances raise an inference that the prosecutor did so to exclude jurors on account of their race.<sup>21</sup> The *Batson* doctrine also forbids the use of peremptory strikes to remove jurors based solely on gender<sup>22</sup> or ethnicity.<sup>23</sup>

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<sup>16</sup> U.S. CONST. amend. VI; see Kristi Bleyer, Kathryn Shane McCarty & Erica Wood, *Access to Jury Service for Persons with Disabilities*, 19 MENTAL & PHYSICAL DISABILITY L. REP. 249, 249-50 (1995) (noting the extent to which jury source lists can facilitate the exclusion of those with disabilities. For example, “[d]river’s license lists discriminate against persons who are blind, have severe vision impairments or epilepsy, and who are older and no longer drive. Voter registration lists often do not include persons who have difficulty registering”).

<sup>17</sup> See *infra* Appendix.

<sup>18</sup> U.S. CONST. amend. XIV, § 1.

<sup>19</sup> *Batson v. Kentucky*, 476 U.S. 79, 88 (1986).

<sup>20</sup> *Id.* at 93.

<sup>21</sup> *Id.* at 96.

<sup>22</sup> *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 129 (1994) (holding that challenging a prospective juror on the basis of that juror’s gender is unconstitutional).

<sup>23</sup> See *Hernandez v. New York*, 500 U.S. 352, 371-72 (1991) (Kennedy, J., plurality opinion) (expanding *Batson* protections to discrimination against Hispanic and Latino

Other bases of juror excusal remain fair game, however. The Supreme Court has held that “[p]arties may . . . exercise their peremptory challenges to remove from the venire any group or class of individuals normally subject to ‘rational basis’ review.”<sup>24</sup> This is among the reasons that the exclusion of jurors based on physical disability has not been successfully challenged under the Equal Protection Clause. Rational basis review, it turns out, gives wide latitude to the government<sup>25</sup> to act in a manner that impacts those with characteristics relevant to a state interest. Under these circumstances, the state needs only show that there was a rational relationship between the disparate treatment and some legitimate governmental purpose.<sup>26</sup> The Equal Protection Clause thus neither requires states to accommodate people with physical disabilities nor forbids qualification requirements that fail to make such accommodations.<sup>27</sup>

While courts have ruled that jurors cannot be discriminated against based on race and gender, physical disabilities may foreclose a prospective jurors’ participation.<sup>28</sup> Thus, in response to equal protection challenges to the removal of prospective jurors with physical disabilities, courts have affirmed that the government has a legitimate and rational concern related to the provision of a fair trial.<sup>29</sup> Though the

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prospective jurors — referred to interchangeably). The exclusion of prospective jurors on the basis of sexual orientation or religious affiliation may also be prohibited under *Batson* depending upon one’s jurisdiction. *See, e.g., SmithKline Beecham Corp. v. Abbott Lab.*, 740 F.3d 471, 486 (9th Cir. 2014) (holding that *Batson* prohibits discrimination based on the sexual orientation of a prospective juror). For a discussion of the impact of anti-discrimination law on exclusion based on religious affiliation or religiosity, see generally Anna Offit, *Religious Convictions*, 101 N.C. L. REV. 271 (2023).

<sup>24</sup> *J.E.B.*, 511 U.S. at 143.

<sup>25</sup> *See City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 446 (1985).

<sup>26</sup> *Bd. of Tr. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 367 (2001).

<sup>27</sup> *See id.* at 368.

<sup>28</sup> *See United States v. Harris*, 197 F.3d 870, 875 (7th Cir. 1999) (“Unlike race or gender, disability may legitimately affect a person’s ability to serve as a juror.”); *see also Jones v. State*, 548 S.E.2d 75, 77 (Ga. Ct. App. 2001).

<sup>29</sup> *See Harris*, 197 F.3d at 875-76 (holding that excluding a prospective juror who took medication that made her drowsy did not violate the equal protection clause); *see also Jones*, 548 S.E.2d at 77 (holding that a prosecutor’s concern that he could not keep his voice up when a prospective juror had slight hearing loss was rationally related to the selection of a fair or impartial jury).

*Batson* doctrine arose from the Equal Protection Clause, which in other cases has protected individuals with disabilities from discrimination, no court has held that *Batson* should protect jurors with disabilities.<sup>30</sup> In fact, current practice has normalized the excusal of individuals whose capacities are deemed irreconcilable with the requirements of jury service, understood implicitly as a physical endeavor.<sup>31</sup>

### B. Juror Exclusion and the ADA

Under the ADA, which has been in effect since 1990, an otherwise qualified person with a disability may not be “excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity” on the basis of a disability.<sup>32</sup> The ADA defines such a “qualified” individual as someone who otherwise “meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”<sup>33</sup> Jury service, which entails participating in a civic obligation in a trial court, which is a public entity, confers such protections on jurors who have disabilities.<sup>34</sup> Under the

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<sup>30</sup> See, e.g., *Harris*, 197 F.3d at 875 (finding that *Batson* is a “narrow limitation” on peremptory challenges that does not apply in the context of disability); *Donelson v. Fritz*, 70 P.3d 539, 544 (Colo. App. 2002) (“We . . . conclude that *Batson* does not apply to peremptory challenges to persons with disabilities.”); *People v. Falkenstein*, 288 A.D.2d 922, 922 (N.Y. App. Div. 2001) (“While it is impermissible to exercise a peremptory challenge on the basis of race or gender, no such prohibition applies to physical disabilities.”). But see Mary A. Lynch, *The Application of Equal Protection to Prospective Jurors with Disabilities: Will Batson Cover Disability-Based Strikes?*, 57 ALB. L. REV. 289, 340-62 (1993).

<sup>31</sup> See, for example, *United States v. Watson*, 483 F.3d 828, 834 (D.C. Cir. 2007), in which the D.C. Circuit found that the prosecutor’s use of peremptory strikes to excuse two prospective jurors who were blind did not violate the Equal Protection Clause. The government, in this case, justified its removal of the jurors by arguing that video and photographic evidence required the juror to see it in order to appreciate its “full impact.” *Id.*

<sup>32</sup> 42 U.S.C. § 12132.

<sup>33</sup> *Id.* § 12131.

<sup>34</sup> See *Crawford v. Hinds Cnty. Bd. of Supervisors*, 1 F.4th 371, 374 (5th Cir. 2021) (“Jury service is one such program contemplated by Title II.”); *Galloway v. Superior Ct.*, 816 F. Supp. 12, 18-19 (D.D.C. 1993) (“The Superior Court and the District of Columbia are public entities within the meaning of the [ADA] . . . .”); *Trotman v. State*, 218 A.3d

ADA, public entities like trial courts are required to make reasonable, but not fundamental, modifications to ensure that people with disabilities are not excluded by the absence of auxiliary aids or by the failure to remove architectural or communication barriers when feasible.<sup>35</sup> Examples of reasonable accommodations include: a court-appointed sign language interpreter;<sup>36</sup> reading into the record all documents admitted into evidence for a juror who has difficulty seeing;<sup>37</sup> moving a juror's seat closer to the witness box;<sup>38</sup> and providing enlarged prints of transcripts of evidence.<sup>39</sup>

Yet because the ADA defines a public entity as any state or local government entity — or department or instrumentality thereof — <sup>40</sup> it does not encompass federal courts.<sup>41</sup> For this reason, the Rehabilitation Act, a federal law that has been in effect since September 26, 1973, provides that no otherwise qualified individual with a disability shall, “solely by reason of his handicap, be excluded from the participation in . . . or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>42</sup> The Rehabilitation Act was also amended such that the standards used in determining whether a

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265, 279 (Md. 2019) (“Jury service constitutes an activity of a public entity — namely, a trial court.”).

<sup>35</sup> 42 U.S.C. § 12182(b).

<sup>36</sup> See *People v. Guzman*, 555 N.E.2d 259, 260 (N.Y. 1990); *DeLong v. Brumbaugh*, 703 F. Supp. 399, 405 (W.D. Pa. 1989) (applying the Rehabilitation Act).

<sup>37</sup> *People v. Caldwell*, 603 N.Y.S.2d 713, 713-14 (N.Y. Crim. Ct. 1993).

<sup>38</sup> *Id.* at 714.

<sup>39</sup> *Id.* For an example of reasonable accommodations offered to jurors suffering a disability, see also *Request for Disability Accommodation*, N.C. JUD. BRANCH, <https://www.nccourts.gov/form/request-for-disability-accommodation> (last visited Nov. 21, 2023) [<https://perma.cc/9NGZ-QBMZ>] (accommodations include, but are not limited to: access to an American Sign Language (“ASL”) interpreter; an ASL and Certified Deaf Interpreter team; a TASL (tactile) interpreter; and Communication Access Realtime Translation (“CART”) captioning. They might also include the provision of sound amplifiers, permission to use electronic devices for communication purposes, a virtual hearing, and use of a service animal).

<sup>40</sup> 42 U.S.C. § 12131.

<sup>41</sup> See *United States v. Snarr*, 704 F.3d 368, 384 (5th Cir. 2013) (holding that the ADA does not apply to the federal government).

<sup>42</sup> Rehabilitation Act of 1973, Pub. L. 93-112, § 504, 87 Stat. 355, 394 (codified at 29 U.S.C §§ 701-18).

violation occurred were identical to those applied under the ADA,<sup>43</sup> with the same remedies.<sup>44</sup>

Courts that have applied the ADA to cases of juror exclusion have held that: (1) a trial court may not summarily excuse a prospective juror on the grounds of a physical disability and instead must engage in an individualized, case-specific inquiry; and (2) *may* excuse a prospective juror on the grounds of a physical disability if no reasonable accommodation is possible.<sup>45</sup> These courts have found that while the ADA prohibits “blanket conclusion[s] that a certain disability would necessarily preclude jury service at any given trial,” prospective jurors may be excused on disability-related grounds after an “individualized case- and disability- specific inquiry.”<sup>46</sup> The New York Superior Court, for example, held that excluding jurors with difficulty seeing in any case in which there is relevant physical evidence would “violate the spirit and intent” of the ADA; in such a case, the court must determine whether it

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<sup>43</sup> Rehabilitation Act Amendments of 1992, Pub. L. 102-569, § 505(d), 106 Stat. 4344, 4428 (codified at 29 U.S.C §§ 791-94g).

<sup>44</sup> 42 U.S.C. § 12133.

<sup>45</sup> See, e.g., *Falk v. Am. Legion*, No. 101740, 2010 WL 1687859, at \*7 (Kan. Ct. App. Apr. 22, 2010) (finding the district court erred in applying the *Batson* doctrine to a prospective juror with a disability); *Trotman v. State*, 218 A.3d 265, 279-83 (Md. 2019) (finding the Maryland Court of Appeals did not abuse its discretion in dismissing four prospective jurors who had difficulty using stairs because there were no reasonable accommodations available. In addition, the court found that for the *Batson* doctrine to be executed properly under the Equal Protection clause it should be based on a prospective juror’s race or gender, not on a prospective juror’s disability); see also *Galloway v. Superior Ct.*, 816 F. Supp. 12, 18-19 (D.D.C. 1993); *People v. Caldwell*, 603 N.Y.S.2d 713, 715 (N.Y. Crim. Ct. 1993).

<sup>46</sup> *Trotman*, 218 A.3d at 264, 280 (“[A] trial court may excuse a prospective juror . . . on a disability-related ground if no reasonable accommodation is possible, and, at that particular trial, the particular disability would prevent the prospective juror from providing satisfactory jury service.”); see *Galloway*, 816 F. Supp. at 15, 19 n.12 (holding that “mere possession of a handicap is not a permissible ground for assuming an inability to function in a particular context” and instructing courts to determine whether a prospective juror with a physical disability can serve competently on a case-by-case basis); *DeLong v. Brumbaugh*, 703 F. Supp. 399, 402 (W.D. Pa. 1989) (finding a violation of the Rehabilitation Act where a prospective juror was excluded due to deafness “without a meaningful opportunity to explain to the court that she met all the statutory requirements of state law for service as a juror”); *Caldwell*, 603 N.Y.S.2d at 714 (“[The prospective juror] could not be considered unqualified unless she could not, with reasonable modifications, fulfill the functions of a juror in this case.”).

can accommodate the juror and whether a “juror’s inability to see” such evidence would deny the defendant a fair trial.<sup>47</sup> Courts applying the ADA to juror exclusion have also found that a prospective juror should only be excused from jury service in the absence of feasible, reasonable accommodations.<sup>48</sup> Accommodations perceived as “fundamentally” altering the trial, however, are not required,<sup>49</sup> leaving broad discretion to judges tasked with making these determinations.

There is also no uniform standard for determining whether a prospective juror with a disability should be excused. With wide discretion, courts can make decisions that are susceptible to bias, stereotypes, and misunderstandings. And in fact, one finds that the current regime of protection for jurors with disabilities, and for those with caregiving responsibilities, is characterized by remarkable unevenness. A prospective juror with some difficulty hearing in Colorado might precipitate the assignment of an interpreter while, in Idaho, such a juror might face excusal.<sup>50</sup> Statutory protections are enacted at the state level, providing a legal basis for accommodation without fostering a consistent, principled approach.<sup>51</sup> The Section that follows examines these state-level protections and makes the case that efforts to accommodate prospective jurors, while welcome, are unequal and inadequate if the jury is to live up to its democratic ideal.

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<sup>47</sup> *Caldwell*, 603 N.Y.S.2d at 716.

<sup>48</sup> See *Galloway*, 816 F. Supp. at 17-19 (“[E]ven if the individual does not initially appear to be ‘otherwise qualified,’ it must still be determined whether reasonable accommodation would make the individual otherwise qualified.”); *Carter v. State*, 491 S.E.2d 525, 528 n.1 (Ga. Ct. App. 1997) (“It must be noted that striking for cause a juror based upon a physical disability . . . without making an attempt at a reasonable accommodation for the disability, may constitute a violation of [the ADA.]”); *Trotman*, 218 A.3d at 279-80 (“[A] person should be excused from jury service only for mental or physical disability [that], despite reasonable accommodation for the disability, substantially impairs the capacity to serve[.]” (alterations in original)).

<sup>49</sup> See 42 U.S.C. § 12182(b)(2)(A)(ii).

<sup>50</sup> Compare *United States v. Dempsey*, 830 F.2d 1084, 1087-89 (10th Cir. 1987) (holding that deafness did not disqualify a juror when the juror was provided with an interpreter in a District of Colorado trial), with *Bell v. O’Connor Transp. Ltd.*, 489 P.2d 439, 442 (Idaho 1971) (holding that the exclusion of a juror because of his hearing difficulty was within the Idaho trial court’s discretion), *overruled on other grounds by* *Owen v. Burcham*, 599 P.2d 1012, 1016 (Idaho 1979).

<sup>51</sup> See *infra* Appendix.

### C. Statutory Protections for Jurors with Disabilities

Exemptions and grounds for excusing prospective jurors are prescribed by statute, with each state affording judges discretion, either by disqualification or exemption, to dismiss jurors on the basis of physical disabilities.<sup>52</sup> An excuse differs from an exemption or a disqualification in that it may be granted on an individual basis by the court.<sup>53</sup> The vast majority of cases challenging such decisions are brought not by jurors with disabilities but by defendants alleging the abridgment of their right to a fair trial.<sup>54</sup> In what follows, this Article considers three things pertinent to prospective jurors with disabilities: (1) anti-discrimination statutes; (2) physical disabilities that are common bases of juror excusal; and (3) the evidence courts require or accept in support of a juror's excusal.

#### 1. Anti-discrimination Statutes

Six states, including North Dakota, Oregon, Washington, Rhode Island, Utah, and West Virginia, have anti-discrimination statutes prohibiting the exclusion of citizens from jury service on account of a physical disability alone.<sup>55</sup> In spite of these laws, an otherwise eligible

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<sup>52</sup> See *infra* Appendix.

<sup>53</sup> KRISTI BLEYER, KATHRYN SHANE MCCARTY & ERICA WOOD, INTO THE JURY BOX: A DISABILITY ACCOMMODATION GUIDE FOR STATE COURTS 10 (1994).

<sup>54</sup> See *id.* at 11.

<sup>55</sup> N.D. CENT. CODE ANN. § 27-09.1-02 (2023) (“A citizen may not be excluded from jury service in this state on account of . . . physical disability . . .”); OR. REV. STAT. ANN. § 10.030(4) (2023) (“A person who is blind, hard of hearing or speech impaired or who has a physical disability is not ineligible to act as a juror and may not be excluded from a jury list or jury service on the basis of blindness, hearing or speech impairment or physical disability alone.”); 9 R.I. GEN. LAWS ANN. § 9-9-2 (2023) (“No citizen, possessing all other qualifications . . . shall be disqualified for service as a grand or petit juror in any court of this state on account of . . . disability . . .”); UTAH CODE ANN. § 78B-1-103(2) (2023) (“A qualified citizen may not be excluded from jury service on account of . . . disability . . .”); WASH. REV. CODE ANN. § 2.36.080 (2023) (“A citizen shall not be excluded from jury service in this state on account of membership in a protected class recognized in RCW 49.60.030, or on account of economic status.”); *id.* § 49.60.030 (2023) (protected classes include “the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability”); W. VA. CODE ANN. § 52-1-2 (2023) (“A citizen may not be excluded from jury service on account of . . . being a qualified individual with a disability.”).

juror in North Dakota, Rhode Island, and West Virginia may still face excusal for having a physical or intellectual disability if such a person is deemed incapable of rendering satisfactory jury service.<sup>56</sup> In West Virginia, a person with a physical disability who can “competent[ly]” serve as a juror, if accommodated, can nonetheless face excusal if a judge believes that person’s disability could “unduly inhibit” the evaluation of evidence.<sup>57</sup> In Oregon, Utah, and Washington, prospective jurors may be subject to challenges for cause on the basis of a mental or physical disability if the court finds that such individuals are incapable of performing the duties of a juror.<sup>58</sup>

## 2. Physical Disabilities that Are Common Bases of Juror Excusal

In addition to general pronouncements on the possibility of dismissing prospective jurors with disabilities, there are also laws that target specific forms of impairment. In eight states, for instance, judges may not disqualify people from serving solely because they are hard of hearing.<sup>59</sup> Further, in Alaska, Kansas, Kentucky, Missouri, Rhode Island,

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<sup>56</sup> N.D. CENT. CODE ANN. § 27-09.1-08(2)(d) (2023) (disqualification if “incapable, by reason of a physical or mental disability and with reasonable accommodation, of rendering satisfactory jury service”); 9 R.I. GEN. LAWS ANN. § 9-9-1.1(a)(5) (2023) (disqualification if “physically and mentally capable of performing in a reasonable manner the duties of a juror”); W. VA. CODE ANN. § 52-1-8(b)(3) (2023) (disqualification if “incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service”).

<sup>57</sup> W. VA. CODE ANN. § 52-1-8(e) (noting that a judge can excuse such a juror upon finding that “the nature of potential evidence in the case including, but not limited to, the type or volume of exhibits or the disabled juror’s ability to evaluate a witness or witnesses, unduly inhibits the disabled juror’s ability to evaluate the potential evidence”).

<sup>58</sup> WASH. REV. CODE ANN. § 4.44.160(2) (2023) (challenge for cause for “[u]nsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him or her incapable of performing the duties of a juror in any action”); OR. R. CIV. P. 57(D)(1)(b) (challenge for cause for “existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party”); UTAH R. CRIM. P. 18(e)(2) (criminal challenge for cause for “[a]ny mental or physical infirmity which renders one incapable of performing the duties of a juror”).

<sup>59</sup> ALASKA STAT. ANN. § 09.20.010(b) (2023) (“A person is not disqualified from serving as a juror solely because of the loss of hearing . . . in any degree . . .”); ARK. CODE



and Texas, the court is statutorily obligated to provide an interpreter when necessary to enable a person with hearing loss to serve as a juror.<sup>60</sup> Several courts have also held that a juror who has difficulty hearing may participate with accommodations, including the provision of an interpreter or use of microphones at trial.<sup>61</sup>

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ANN. § 16-31-102(a) (2023) (“[N]o person shall be disqualified solely on the basis of loss of hearing . . . in any degree.”); CONN. GEN. STAT. ANN. § 51-217(1) (2023) (“[N]o person shall be disqualified because the person is deaf or hard of hearing . . . .”); MO. ANN. STAT. § 494.425(5) (2023) (a juror is disqualified if unable to read, speak, and understand English, “unless such person’s inability is due to a vision or hearing impairment which can be adequately compensated for through the use of auxiliary aids or services”); OR. REV. STAT. ANN. § 10.030(4) (“A person who is . . . hard of hearing . . . is not ineligible to act as a juror and may not be excluded from a jury list or jury service on the basis of . . . hearing . . . impairment . . . alone.”); S.D. CODIFIED LAWS § 16-13-10 (2023) (“No potential juror may be excluded from jury duty because of a . . . hearing impairment.”); CAL. CIV. PROC. CODE § 203 (“[N]o person shall be deemed incompetent solely because of the loss of sight or hearing in any degree . . . .”); LA. CODE CRIM. PROC. ANN. art. 401(A)(4) (“[N]o person shall be deemed incompetent solely because of the loss of hearing in any degree.”).

<sup>60</sup> ALASKA STAT. ANN. § 09.20.010(c) (“The court shall provide, and pay the cost of services of, an interpreter . . . when necessary to enable a person with impaired hearing . . . to act as a juror.”); KAN. STAT. ANN. § 75-4355a (2023) (“A qualified interpreter shall be secured for any person who is deaf, hard of hearing or speech impaired in any grand jury, court or jury proceeding . . . and the interpreter shall interpret throughout the actual trial and during the time that the jury is sequestered or engaged in its deliberations.”); KY. REV. STAT. ANN. § 30A.410(1) (2023) (“The court in any matter, criminal or civil, shall appoint a qualified interpreter or interpreters, to be paid out of the State Treasury, for . . . [p]ersons who because of deafness or hard of hearing: . . . [u]se sign language . . . or . . . use interpreters and assistive technology . . . .”); MO. ANN. STAT. § 476.753(1) (2023) (“A designated responsible authority shall provide, based on a deaf person’s expressed needs, auxiliary aids and services to interpret the proceedings . . . .”); 9 R.I. GEN. LAWS ANN. § 9-9-1.2 (“In any proceeding, civil or criminal, the courts shall provide and pay the reasonable costs of services of a qualified interpreter for persons who are deaf or heard of hearing . . . .”); TEX. GOV’T CODE ANN. § 62.1041(c) (2023) (providing for reasonable accommodations for a “deaf or hard of hearing person serving as a juror[.]” including an interpreter paid for by the county or other “auxiliary aid”); LA. CODE CRIM. PROC. ANN. art. 401.1 (2023) (“When a person with a hearing loss is among the petit jury venire, the court shall: (1) Provide an interpreter for the deaf prospective juror.”).

<sup>61</sup> *United States v. Dempsey*, 830 F.2d 1084, 1087-89 (10th Cir. 1987) (finding that use of an interpreter at trial was an acceptable means of accommodating a juror’s hearing loss); *People v. Navarette*, 66 P.3d 1182, 1201 (Cal. 2003) (allowing juror to sit closer to the witness box was proper accommodation for hearing loss); *People v. Pigford*,

At the same time, there are states in which hearing loss or deafness is legal grounds for a prospective juror's dismissal. In Idaho and Oklahoma, for example, the excusal of prospective jurors for hearing loss falls within a judge's discretion.<sup>62</sup> Likewise, under Alabama common law, it is "a basic premise" that service on a jury means being "able to hear."<sup>63</sup> In Mississippi, deafness is disqualifying, but hearing loss is not if the prospective juror can respond to verbal questions.<sup>64</sup> Similarly, in Pennsylvania, a prospective juror is considered "incompetent to serve" only if a hearing impairment "interfere[s] with the juror's ability to hear and understand" evidence at trial.<sup>65</sup>

In other settings, a prospective juror with hearing loss must be deemed to have met a particular standard to participate.<sup>66</sup> In New York, for example, a court must decide whether a prospective juror who has difficulty hearing is not only able to understand the evidence presented but also "evaluate that evidence in a rational manner, communicate

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17 P.3d 172, 177 (Colo. App. 2000) (finding that a prospective juror with hearing loss could render satisfactory juror service when a microphone was used at trial and the juror stated that he would probably not have difficulty hearing the proceedings); *Ford v. State*, 658 S.E.2d 428, 429 (Ga. Ct. App. 2008) (use of amplified headphones was proper accommodation for juror with hearing loss); *Lewis v. State*, 726 N.E.2d 836, 845 (Ind. Ct. App. 2000) (juror with hearing loss was properly accommodated by requesting that witnesses speak slowly); *State v. King*, 320 S.E.2d 1, 910 (N.C. 1984) ("Although we think it the better practice for our trial judges freely to excuse any juror who has a genuine hearing impairment which in the juror's opinion would hamper his or her ability to perform a juror's duties, in this case we cannot say that the trial judge's failure to do so amounted to an abuse of his discretion . . ."); *Skinner v. State*, 33 P.3d 758, 764 (Wyo. 2001) (slight hearing loss was accommodated with use of a hearing aid).

<sup>62</sup> *Bell v. O'Connor Transp. Ltd.*, 489 P.2d 439, 442 (Idaho 1971) (holding that the excusal of a prospective juror who had difficulty hearing "was entirely proper and within [the trial court's] discretion."), *overruled on other grounds by Owen v. Burcham*, 599 P.2d 1012 (Idaho 1979); *Hammon v. State*, 999 P.2d 1082, 1095 (Okla. Crim. App. 2000) (holding that the excusal of two jurors with hearing loss was "within the discretion of the trial court").

<sup>63</sup> *Magwood v. State*, 689 So. 2d 959, 984 (Ala. Crim. App. 1996).

<sup>64</sup> *See Weaver v. State*, 497 So. 2d 1089, 1094-95 (Miss. 1986).

<sup>65</sup> *Commonwealth v. Brown*, 332 A.2d 828, 831 (Pa. Super. Ct. 1974).

<sup>66</sup> *See* FLA. STAT. ANN. § 40.013 (2023); TEX. GOV'T CODE ANN. § 62.1041(b) (2023) ("A deaf or hard of hearing person is disqualified to serve as a juror if, in the opinion of the court, his hearing loss renders him unfit to serve as a juror in that particular case."); *People v. Guay*, 959 N.E.2d 504, 508 (N.Y. 2011).

effectively with the other jurors during deliberations, and comprehend the applicable legal principles, as instructed by the court[.]”<sup>67</sup> If a judge decides that such jurors can fulfill these duties with “reasonable” accommodations and “without interfering with the defendant’s trial rights,” their empanelment should be facilitated.<sup>68</sup> Likewise, in Ohio, the trial court is tasked with determining whether reasonable accommodations will enable prospective jurors to assess evidence in a case.<sup>69</sup> When judges determine that no such accommodations exist, jurors are excused for cause.<sup>70</sup>

A number of states have also taken positions on prospective jurors who are blind or partially sighted. In seven states, judges may not exclude a person from service solely because of a visual impairment.<sup>71</sup> In

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<sup>67</sup> *Guay*, 959 N.E.2d at 508 (citing *People v. Guzman*, 555 N.E.2d 259, 261 (N.Y. 1990)).

<sup>68</sup> *Id.* at 508-09.

<sup>69</sup> *Columbus v. Nearhood*, 951 N.E.2d 452, 456 (Ohio Ct. App. 2011).

<sup>70</sup> *Id.* Examples of the inconsistent treatment of prospective jurors with hearing loss in Ohio include: *State v. Speer*, 925 N.E.2d 584, 589 (Ohio 2010) (finding that defendant was not given a fair trial after a juror with a hearing disability was chosen for trial. Even with accommodations the court found that the juror could not “effectively perceive or evaluate Speer’s demeanor, detect any slurred speech or the lack of it, or consider the loudness or softness of his voice, the patterns of his speech, his tone — whether excited, calm, or passive — or the inflections of the voices on the 9-1-1 tape”); *Columbus*, 951 N.E.2d at 456-57 (finding on appeal that the trial judge did not abuse her discretion in dismissing a prospective juror with hearing loss. The case required jurors to listen to phone conversations in which the judge determined the prospective juror might not be able to understand important inflections, etc.); *State v. Jackson*, No. 18CA7, 2020 WL 8093203, ¶ 21, at 25-27 (Ohio Ct. App. Nov. 4, 2020) (finding that a defendant was given a fair trial, although the juror had hearing loss. This case is distinguished from *Speer* because the juror in that case had to lip read to understand the testimony from witnesses and arguments from counsel. In this case the juror only had minor hearing loss that could be mitigated with the use of a hearing aid).

<sup>71</sup> ALASKA STAT. ANN. § 09.20.010(b) (2023) (“A person is not disqualified from serving as a juror solely because of the loss of . . . sight in any degree . . . .”); ARK. CODE ANN. § 16-31-102(a)(6) (2023) (“[N]o person shall be disqualified solely on the basis of loss of . . . sight in any degree.”); CAL. CIV. PROC. CODE § 203(a)(6) (2023) (“[N]o person shall be deemed incompetent solely because of the loss of sight . . . in any degree . . . .”); OR. REV. STAT. ANN. § 10.030(4) (2023) (“A person who is blind . . . is not ineligible to act as a juror and may not be excluded from a jury list or jury service on the basis of blindness . . . alone.”); S.C. CODE ANN. § 14-7-810(3) (2023) (“Legal blindness does not disqualify an otherwise qualified juror.”); S.D. CODIFIED LAWS § 16-13-10 (2023) (“No

Alaska and Rhode Island, for example, courts are required to provide such jurors with a reader.<sup>72</sup> In other states, a juror may be excused on the basis of a visual impairment only under specified circumstances. Courts in Massachusetts, for instance, have held that a blind juror can participate if visual identification is not considered to be the predominant issue at trial — as in a case in which one’s view of a victim’s face while identifying a defendant is deemed critical to the case’s outcome.<sup>73</sup>

These are not the only considerations that may come into play as jurors negotiate the boundaries of legally recognized physical disabilities. Stipulations and exceptions are plentiful: in Alaska and California, an otherwise eligible prospective juror may *not* face excusal on the basis of a mobility limitation.<sup>74</sup> Other courts have found the same juror characteristic to be disqualifying.<sup>75</sup> Some courts have found that

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potential juror may be excluded from jury duty because of a visual . . . impairment.”); VA. CODE ANN. § 8.01-337 (2023) (“No person shall be deemed incompetent to serve on any jury because of blindness or partial blindness.”).

<sup>72</sup> ALASKA STAT. ANN. § 09.20.010(c) (“The court shall provide, and pay the cost of services of, an interpreter or reader when necessary to enable a person with impaired . . . sight to act as a juror.”); 9 R.I. GEN. LAWS ANN. § 9-9-1.2 (2023) (“In any proceeding, civil or criminal, the courts shall provide and pay the reasonable costs of services of a qualified . . . reader for persons who are visually impaired when necessary to enable persons with these disabilities to serve as jurors . . .”).

<sup>73</sup> See *Commonwealth v. Heywood*, 138 N.E.3d 1020, 1024 (Mass. 2020) (holding that the trial judge did not abuse her discretion in finding a blind juror competent to serve because “the identification of the perpetrator was not in question” and “the ability to see the victim’s face during his testimony was not essential to reaching a verdict”); *Commonwealth v. Susi*, 477 N.E.2d 995, 998 (Mass. 1985) (holding that the trial judge abused her discretion in allowing a blind juror to serve when the “issue of identification was the predominant issue at trial”).

<sup>74</sup> ALASKA STAT. ANN. § 09.20.010(b) (“A person is not disqualified from serving as a juror solely because of . . . a disability that substantially impairs or interferes with the person’s mobility.”); CAL. CIV. PROC. CODE § 203(a)(6) (“[N]o person shall be deemed incompetent solely because of . . . [a] disability which impedes . . . or interferes with the person’s mobility.”); see also *People v. Santiago*, 715 N.Y.S.2d 73, 73-74 (App. Div. 2000) (finding no error in retaining a juror who had arthritis when court stated it would accommodate him by taking frequent breaks).

<sup>75</sup> See *Neal v. State*, 460 So. 2d 257, 261-62 (Ala. Crim. App. 1984) (finding that excusing a juror who could not stand for long periods of time was within the trial court’s discretion); *Trotman v. State*, 218 A.3d 265, 267 (Md. 2019) (finding no abuse of

taking certain medications (like narcotic pain killers) can be considered an undue hardship for the purposes of excusal.<sup>76</sup> In Oregon, a prospective juror may not be excused from service on the basis of a speech impediment.<sup>77</sup> In Pennsylvania, South Carolina, and Utah, courts have found no abuse of discretion when jurors were excused for exhibiting signs of anxiety.<sup>78</sup> No principled distinction can account for the varied state approaches to assessing the capacities of otherwise eligible prospective jurors.

### 3. Evidence Courts Require or Accept in Support of a Juror's Excusal

The majority of states offer no guidance on the circumstances under which a prospective juror with a disability may be excused on that basis. In Alabama, Indiana, and Maryland, responses elicited from prospective jurors, which sometimes appear on written questionnaires, can provide the basis of a disability excusal.<sup>79</sup> In eight states, the trial judge can

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discretion for excusing four prospective jurors for being unable to use stairs when stairs were the only means of reaching the jury room).

<sup>76</sup> See *Thompson v. State*, 153 So. 3d 84, 119-20 (Ala. Crim. App. 2012) (finding no abuse of discretion when a juror was excused for being on medication that caused him to fall asleep); *State v. Wilson*, 298 P.3d 148, 159 (Wash. Ct. App. 2013) (finding no abuse of discretion when a juror was excused for taking narcotic pain killers).

<sup>77</sup> OR. REV. STAT. ANN. § 10.030(4) (2023) (“A person who is . . . speech impaired . . . may not be excluded from a jury list or jury service on the basis of . . . speech impairment . . . alone.”).

<sup>78</sup> *Commonwealth v. Gibbons*, 549 A.2d 1296, 1302 (Pa. Super. Ct. 1988) (finding no abuse of discretion when a court excused a juror who complained that she was too nervous to serve); *State v. Skipper*, 328 S.E.2d 58, 60 (S.C. 1985) (finding that excusing a juror who was visibly nervous and slurred her speech was “correct and proper”), *rev'd on other grounds*, 476 U.S. 1 (1986); *State v. Young*, 853 P.2d 327, 344-45 (Utah 1993) (finding no abuse of discretion when a trial judge removed a juror who suffered from “emotional problems and a hormonal imbalance”).

<sup>79</sup> IND. CODE ANN. § 33-28-5-16(a) (2023) (juror qualification form used to determine juror qualifications and deferrals from jury service); MD. CODE ANN., CTS. & JUD. PROC. § 8-402(b) (2023) (“An individual may be disqualified only on the basis of information provided on a juror questionnaire or during an interview or other competent evidence.”); *Neal*, 460 So. 2d at 262 (“The testimony of the two potential jurors was properly accepted as proof of their disqualification.”).

require that a person provide medical documentation supporting their excusal.<sup>80</sup>

Numerous states, meanwhile, offer guidance on proper assessments of jurors with caregiving responsibilities. In thirteen states, the care or supervision of another is grounds for a juror's excusal.<sup>81</sup> Texas and

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<sup>80</sup> ARIZ. REV. STAT. ANN. § 21-202(b)(1) (2023) (excusal requires a medical statement from a physician, physician assistant, or registered nurse practitioner or a sworn statement from a professional caregiver); COLO. REV. STAT. ANN. § 13-71-105(1)(c) (2023) (jury commissioner may request a letter from a licensed medical professional for disqualification); *id.* § 13-71-119.5(1)(e) (2023) (person requesting excusal “may provide the judge or jury commissioner documentation”); CONN. GEN. STAT. ANN. § 51-217(a) (2023) (disqualification by reason of physical or mental disability requires prospective juror to submit to the Jury Administrator “a letter from a licensed health care provider”); IDAHO CODE ANN. § 2-212(3)(b) (2023) (“The court or the jury commissioner may require a person requesting a postponement for any medical reason to provide a statement from a medical provider supporting the request.”); MO. ANN. STAT. § 494.430(6) (2023) (“A person asking a judge to grant an excuse based on undue or extreme physical or financial hardship shall provide the judge with documentation”); N.J. STAT. ANN. § 2B:20-10(c)(1) (2023) (excusal for severe medical hardship requires verification “by a licensed physician”); OHIO REV. CODE ANN. § 2313.14(D) (2023) (“A prospective juror who asks a judge to grant an excuse based on undue or extreme physical or financial hardship shall provide the judge with documentation . . .”); OKLA. STAT. ANN. tit. 38, § 28(B)(1) (2023) (excusal for a mental or physical condition requires documentation from a physician verifying that the condition “renders the person unfit for jury service for a period of up to twenty-four (24) months”); *id.* § 28(B)(2) (excusal for undue or extreme physical or financial hardship requires “satisfactory documentation”).

<sup>81</sup> ALA. CODE § 12-16-63(b)(2)(a) (2023) (allowing excusal upon “a showing of undue or extreme physical or financial hardship” which includes being “required to abandon a person under his or her personal care or supervision . . .”); ARIZ. REV. STAT. ANN. § 21-202(B)(4) (allowing excusal when jury service “would cause undue or extreme physical or financial hardship” which includes being “required to abandon a person under the prospective juror’s care or supervision . . .”); CAL. R. CT. 2.1008(d)(7) (allowing excusal for “undue hardship” which may be granted when the “prospective juror has a personal obligation to provide actual and necessary care to another, including sick, aged, or infirm dependents . . .” although the prospective juror “may be required to furnish verification”); GA. CODE ANN. § 15-12-1.1(a)(3) (2023) (allowing excusal for “any person who is the primary caregiver having active care and custody of a child six years of age or younger . . .”); 705 ILL. COMP. STAT. ANN. 305/10.2(b) (2023) (allowing excusal when “undue hardship caused by a family situation is due to the prospective juror being the primary care giver of a person with a mental or physical disability . . .” if “no reasonable alternative care is feasible . . .”); MONT. CODE ANN. § 3-15-313(1) (2023) (allowing juror excusal when the prospective juror “has a personal obligation to provide actual and

Virginia, for example, are among the states in which a prospective juror may be excused from service on the grounds of needing to provide supervision or care for another.<sup>82</sup> In Colorado, an individual who provides daily care for a person with a “permanent disability,” such that jury service might pose significant risks, can be dismissed from jury service on that basis.<sup>83</sup> In other states, prospective jurors who supervise or care for others have been excused from service on the basis of “undue hardship.”<sup>84</sup> In seventeen states, breastfeeding a child is grounds for

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necessary care to another, including a sick, aged, or special needs dependent . . .”); NEV. REV. STAT. ANN. § 6.030(2) (2023) (allowing temporary excusal for a “primary caregiver of another person who has a documented medical condition which requires the assistance of another person at all times”); N.J. STAT. ANN. § 2B:20-10(c)(3) (allowing juror excusal for “severe hardship” which includes “a personal obligation to care for another, including a dependent who is sick, elderly, or has an infirmity or a minor child . . .”); N.M. STAT. ANN. § 38-5-2(G) (2023) (allowing excusal for “undue or extreme physical or financial hardship” including “be[ing] required to abandon another person under the person’s care . . .”); OHIO REV. CODE ANN. § 2313.14(A)(5) (allowing excusal when “[j]ury service would otherwise cause undue or extreme physical or financial hardship to the prospective juror or a person under the care or supervision of the prospective juror”); OR. REV. STAT. ANN. § 10.050(5) (2023) (allowing excusal upon request if “the person is the sole caregiver for a child or other dependent during the court’s normal hours of operation, the person is unable to afford day care or make other arrangements for the care of the dependent . . .”); S.C. CODE ANN. § 14-7-860(B) (2023) (allowing excusal for a person who “has legal custody and the duty of care for a child less than seven years of age[,]” “is the primary caretaker of a person aged sixty-five or older[,]” or “is the primary caretaker of a severely disabled person who is unable to care for himself or cannot be left unattended”); WYO. STAT. ANN. § 1-11-104(a) (2023) (allowing excusal when “the sickness or death of a member of his family requires his absence” and when “care of that person’s young children requires his absence”).

<sup>82</sup> TEX. GOV’T CODE ANN. § 62.106(a) (2023) (exempting a person from jury service if they are “the primary caretaker of a person who is unable to care for himself or herself”); VA. CODE ANN. § 8.01-341.1(8)-(9) (2023) (exempting from jury service a “person who is necessarily and personally responsible for a person having a physical or mental impairment requiring continuous care by him during normal court hours”).

<sup>83</sup> COLO. REV. STAT. ANN. § 13-71-105(1)(d) (excusing juror who assumes “sole responsibility for the daily care of an individual with a permanent disability living in the same household to the extent that the performance of juror service would cause a substantial risk of injury to the health of the individual with a disability”).

<sup>84</sup> See IDAHO CODE ANN. § 2-212(3) (allowing excusal for undue hardship); KY. REV. STAT. ANN. § 29A.100(1) (2023) (allowing excusal for undue hardship); *State v. Rhoades*, 822 P.2d 960, 976 (Idaho 1991) (finding no abuse of discretion when jurors were excused for having small children and an absent husband who had just undergone surgery);

excusal from jury service,<sup>85</sup> while six states can request supportive documentation before dismissing a nursing juror.<sup>86</sup> Other states,

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Bratcher v. Commonwealth, 151 S.W.3d 332, 345 (Ky. 2004) (finding no abuse of discretion for excusing prospective jurors who worked in the home and served as sole caregivers for their children).

<sup>85</sup> CAL. R. CT. 2.1006 (allowing deferral for up to one year upon the request of a mother who is breastfeeding); COLO. REV. STAT. ANN. § 13-71-119.5(2.5) (2023) (allowing excusal for a “person who is breast-feeding a child and is temporarily unable to or chooses not to leave the child in order to serve on a jury”); DEL. CODE ANN. tit. 10, § 4511(b) (2023) (“Women who are currently breastfeeding a child shall be excused from jury service for at least 1 year.”); IDAHO CODE ANN. § 2-212(3) (2023) (allowing excusal “upon a showing that the juror is a mother breastfeeding her child”); KAN. STAT. ANN. § 43-158(e) (2023) (allowing jury service to be postponed “until such mother is no longer breastfeeding the child”); KY. REV. STAT. ANN. § 29A.100(4) (“The judge shall excuse a mother who is breastfeeding a child or expressing breastmilk from jury service until such time as the child is old enough that the mother is no longer breastfeeding the child.”); MICH. COMP. LAWS ANN. § 600.1307a(3) (2023) (allowing a nursing mother to claim exemption from jury service “for the period during which she is nursing”); MISS. CODE. ANN. § 13-5-23(1)(c) (2023) (allowing excusal “[w]hen the potential juror is a breast-feeding mother”); MO. ANN. STAT. § 494.430(1)(2) (allowing excusal of a nursing mother “upon her request, and with a completed written statement from her physician to the court certifying she is a nursing mother”); MONT. CODE ANN. § 3-15-313(1) (allowing excusal for “a breastfeeding mother”); NEB. REV. STAT. ANN. § 25-1650(1) (2023) (“A nursing mother who requests to be excused shall be excused from jury service until she is no longer nursing her child, but the mother shall be required to submit a physician’s certificate in support of her request.”); N.Y. JUD. LAW § 517(a)(1) (2023) (allowing excusal “if the prospective juror is a breastfeeding mother and submits with her application a note from a physician”); OKLA. STAT. ANN. tit. 38, § 28(E)(2) (exempting a “mother who is breast-feeding a baby” upon her request); OR. REV. STAT. ANN. § 10.050(4) (allowing excusal “upon the request of the woman if the woman is breast-feeding a child”); 42 PA. STAT. AND CONS. STAT. ANN. § 4503(a)(8) (2023) (allowing excusal for “[b]reastfeeding women who request to be excused”); S.D. CODIFIED LAWS § 16-13-10.4 (2023) (“A mother shall be exempt from jury duty if she is breastfeeding a baby younger than one year.”); UTAH CODE ANN. § 78B-1-109(1)(a) (2023) (allowing excusal when “the individual is a mother who is breastfeeding a child”).

<sup>86</sup> See e.g., COLO. REV. STAT. ANN. § 13-71-119.5(2.5) (“The judge or jury commissioner may request a medical statement in support of the postponement.”); IDAHO CODE ANN. § 2-212(3)(b) (2023) (requiring a written statement from the juror and allowing the court or jury commissioner to require a “statement from a medical provider”); see also MICH. COMP. LAWS ANN. § 600.1307a(3) (a nursing mother “must be exempt upon . . . request if she provides a letter from a physician, a lactation consultant, or a certified nurse midwife verifying that she is a nursing mother”).



including Missouri, Nebraska, and New York, *require* such documentation.<sup>87</sup>

Above all, this overview of the legal provisions made for prospective jurors with disabilities or caregiving responsibilities highlights both a lack of federal engagement and radical inconsistency across the states. Whether a disability or caregiving obligation precludes one from serving on a jury depends on where one is summoned, as well as the judge who determines whether a potential accommodation is reasonable. The arbitrariness of this is striking, and not in keeping with the representative ideal of the American jury system. Even legal actors and commentators who are contemptuous of the exclusionary status quo, however, would point out that some accommodations necessary to empanel more jurors with disabilities or caregiving responsibilities are cumbersome, disruptive, or expensive. In short, even if we would like to include these jurors, it may not be feasible.

Or so one hears.<sup>88</sup> This view was always dubious — it could only prevail in a legal environment in which the actual costs of deploying new accommodations were all or mostly unknown. With the COVID-19 pandemic, that environment changed dramatically, and practices that might previously have been viewed as welcome but optional for some

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<sup>87</sup> MO. ANN. STAT. § 494.430(1)(2) (allowing excusal of a nursing mother “upon her request, and with a completed written statement from her physician to the court certifying she is a nursing mother”); NEB. REV. STAT. ANN. § 25-1650(1) (“A nursing mother who requests to be excused shall be excused from jury service until she is no longer nursing her child . . .”); N.Y. JUD. LAW § 517(a)(1) (allowing excusal “if the prospective juror is a breastfeeding mother and submits with her application a note from a physician”); *see also* Judith P. Miller, Opinion, *My Attempt at Jury Duty Failed — Because I’m a Nursing Mother*, CHI. TRIB. (Oct. 13, 2017, 10:17 AM), <https://www.chicagotribune.com/opinion/commentary/ct-perspec-jury-duty-breastfeeding-1015-story.html> [<https://perma.cc/Q7ZV-JPUJ>] (for a personal account of the lack of accommodations for prospective jurors who are lactating mothers: “[M]y need to pump gave me only one choice: I had to leave — ironically, just as the loudspeaker called my panel into a courtroom”).

<sup>88</sup> For example, in Virginia, a prospective juror will be disqualified for failing to provide financial support to a dependent; in Oregon, a prospective juror might be disqualified for being unable to afford a substitute caregiver or the cost of daycare; and in Oklahoma, a prospective juror who would face financial hardship by serving — or cause a dependent a financial loss — will be granted excusal for a period. *See infra* Appendix.

became necessary *for all*. In this respect, the pandemic could be viewed as a stress test for the jury system — pushing us to consider the types of adaptations that might permit the jury trial to continue functioning if serious illness — a disabling or potentially disabling one — were a fact not just for a minority but for the majority of the population. Already, this natural experiment has largely come to an end. But even as the pandemic trial becomes a historical artifact in real-time, it offers important lessons on accommodation and inclusivity.

## II. REMOTE POSSIBILITIES: A SURVEY OF COVID-ERA JURY TRIAL MODIFICATIONS

As COVID-19 spread around the globe, policymakers came to understand that effective containment would require what became known as “social distancing,” or conducting daily activities without close physical proximity. In the United States, everything from education and shopping to religious services and jury trials were viewed as risky and thus in need of modification. The question was how to ensure that these social activities, some of them essential to the functioning of American society, be undertaken without increasing the ever-growing number of infections, hospitalizations, and deaths. In short, COVID-19 represented an unprecedented test for a way of life — and, importantly, a way of making justice.

For the American jury trial, the solution came in the form of various technologies and techniques. These helped to create trial processes that functioned more or less like those that existed before the pandemic, albeit without the heightened risk. The most significant move was the embrace of partially (if not fully) remote participation via the use of digital teleconferencing and streaming tools. With applications like Zoom, Cisco Webex, and Microsoft Teams, anyone with a computer or smartphone could join virtual, face-to-face meetings without the risk of infection.<sup>89</sup> Less than a year after the first cases of COVID-19 were

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<sup>89</sup> See e.g., Wendell Jisa, *The Zoom Boom in Law: The Good, the Bad, & the Data*, BUS. L. TODAY (Jan. 14, 2022), <https://businesslawtoday.org/2022/01/the-zoom-boom-in-law-the-good-the-bad-the-data/> [<https://perma.cc/YLS8-UC2D>] (“During the heart of nationwide lockdowns, and still to this day, lawyers and their clients have been able to continuously communicate in a safe and effective way.”); Brian Sutherland, *How Lawyers Are Using Teams Is an Existential Change, Not an Elective One*, IN THE CLOUD TECHS. (Jan. 26, 2022),

detected in the United States, American courts took the unprecedented step of conducting Zoom-based criminal and civil jury trials. With this, the jury box was no longer a single physical gathering space — it was a distributed, virtual one.

This Part explores the approaches that state and federal courts took to modify, alter, or otherwise accommodate in-person trial proceedings during a period in which a vulnerable public would not have been able to engage in routine interpersonal interactions without significant risk. These approaches are associated with two broad, pandemic-era trial frameworks: *fully-remote jury trials* and *hybrid jury trials*.

### A. Fully-Remote Jury Trials

The jury trial requires a continuity of participation among its actors. When COVID-19 threatened this continuity, courts had strong incentives to find alternatives to the traditional in-person trial format.<sup>90</sup> The least risky of these alternatives was the fully-remote trial,<sup>91</sup> and despite technical and logistical concerns, some courts were quick to embrace the approach. About two months after the country's first fully-remote bench trial in Collin County, Texas, the same judge presided over the first fully-remote, non-binding jury trial — conducting all phases of the proceedings — voir dire, the trial itself, and jury

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<https://www.inthecloudtech.net/law-firms-use-teams-for-valuable-benefits/> [https://perma.cc/YXB7-2YGF] (“According to the 2021 LTN Law Firm Tech Survey, 59% of law firm tech executive respondents said their firm already uses Microsoft Teams for internal firm messaging. Such adoption was accelerated by COVID-19 and the sudden pivot to remote working.”).

<sup>90</sup> See Elizabeth G. Thornburg, *Observing Online Courts: Lessons from the Pandemic*, 54 FAM. L.Q. 181, 182 (2021) (noting that “[t]o keep vital legal processes moving while keeping participants and the public safe, courts quickly reached for what technology could provide”).

<sup>91</sup> See e.g., REMOTE JURY TRIALS WORK GRP., WASH. CTS., BEST PRACTICES IN RESPONSE TO FREQUENTLY ASKED QUESTIONS 7 (2021), <https://www.courts.wa.gov/newsinfo/content/Best%20Practices%20in%20Response%20to%20FAQ.PDF> [https://perma.cc/GE6Y-V2KB] (noting that the “advantages of remote jury trials” include “maximizing safety”); see also Guy Campos, *First Binding Virtual Jury Trial Takes Place in US*, AV MAG. (Aug. 11, 2020), <https://www.avinteractive.com/territories/us-canada/first-virtual-jury-trial-takes-place-us-11-08-2020/> [https://perma.cc/NY62-RU2W].

deliberations — using Zoom.<sup>92</sup> In August, another Texas court, the Travis County Commissioners Court, hosted the country's first fully-remote criminal jury trial with a binding verdict.<sup>93</sup> This misdemeanor traffic case was also conducted via Zoom and broadcast live on YouTube, a streaming and video-sharing platform.<sup>94</sup>

Civil jury trials also found success on remote platforms. In the Superior Court of Alameda County, California, a weeklong trial was conducted over Zoom in an asbestos case.<sup>95</sup> The first binding virtual civil jury trial in Florida also utilized Zoom. In this case, which involved alleged violence in a night club, the jury spent one day hearing evidence and deliberated remotely.<sup>96</sup> Federal courts have also conducted fully-

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<sup>92</sup> See Christian Mcphate, *Collin County District Judge Receives Prestigious Award for Trailblazing Virtual Trials*, LOCAL PROFILE (Sep 10, 2020, 4:00 AM), <https://www.localprofile.com/news/collin-county-district-judge-receives-prestigious-award-for-trailblazing-virtual-trials-7504250> [https://perma.cc/UW5W-6RC3]; see also Carl Smith, *Virtual Justice: A Texas County Forges Path During Crisis*, GOV'T TECH. (Sept. 18, 2020), <https://www.govtech.com/public-safety/virtual-justice-a-texas-county-forges-path-during-crisis.html> [https://perma.cc/V77H-5US2].

<sup>93</sup> *Travis County Justice of the Peace Nicholas Chu*, *supra* note 1.

<sup>94</sup> The trial was originally livestreamed on the Travis County YouTube channel. JP5TravisCounty, YOUTUBE, <https://www.youtube.com/channel/UCBSagYxuJuWWl9hCvSDm1g> (last visited Dec. 17, 2023) [https://perma.cc/55ZP-5U7C]. The trial was announced by Judge Chu on Facebook. Judge Nick Chu, FACEBOOK (Aug. 6, 2020), [https://www.facebook.com/story.php?story\\_fbid=1346606878881801&id=556224667920030&paipv=0&eav=AfY8Jbe6V4DDWOBALoQwTby7GnogHTaj7cpzb97Be5iGicA326COdylEOMwnSEJXT1A&\\_rdr](https://www.facebook.com/story.php?story_fbid=1346606878881801&id=556224667920030&paipv=0&eav=AfY8Jbe6V4DDWOBALoQwTby7GnogHTaj7cpzb97Be5iGicA326COdylEOMwnSEJXT1A&_rdr) [https://perma.cc/TV84-M7F2].

<sup>95</sup> See *Ocampo v. Aamco Transmissions, Inc.*, No. RG19041182, 2020 Cal. Super. LEXIS 70634, at \*1-2 (Cal. Super. Ct. Sept. 3, 2020) (in which a former custodian and his wife brought a case against Honeywell for alleged asbestos in brake pads. The week-long trial was held over Zoom with jurors deliberating from their homes.).

<sup>96</sup> *Griffin v. Albanese Enter., Inc.*, No. 16-2019-CA-1555, 2020 WL 4729089, at \*1 (Fla. Cir. Ct. Aug. 10, 2020); see Jim Ash, *The Key to Pulling Off the Fourth Circuit's Virtual Jury Trial Was the Court Tech Officers Who Served as "Remote Bailiffs,"* FLA. BAR (Aug. 13, 2020), <https://www.floridabar.org/the-florida-bar-news/the-key-to-pulling-off-the-fourth-circuits-virtual-jury-trial-was-the-court-tech-officers-who-served-as-remote-bailiffs> [https://perma.cc/C488-3H99] (the plaintiff in this case worked as a dancer at a Jacksonville night club. After being ejected from the club and attempting to reenter it to retrieve possessions she was battered by two bouncers, resulting in injuries. The Fourth Circuit utilized Zoom and the jury was to determine damages.); see also *Florida Remote Civil Jury Trial Pilot Program: Cayla Griffin vs. Albanese Enterprise, Inc.*, COURTROOM VIEW NETWORK, <https://pages.cvn.com/duval-county-florida-remote-trial->

remote jury trials.<sup>97</sup> In the Western District of Washington, for example, the first fully-remote federal civil jury trial arose from a plaintiff's alleged injury while on a cruise.<sup>98</sup> Jurors were required to use Zoom, and the entire trial was conducted virtually, with jurors and witnesses participating from their homes.<sup>99</sup>

Among the many elements that made the fully-remote trial a success, three are worth considering further for their potential relevance to post-pandemic trials: distributed participation, virtual private spaces, and equipment provision.

1. Distributed Participation

The traditional jury trial format features all relevant actors in one physical setting during proceedings. Before the pandemic, participation of this sort was understood to be necessary for making and hearing arguments, presenting, and interpreting evidence and testimony, deliberating toward verdicts, etc. COVID-19, however, made what might be called 'consolidated' participation a liability. After all, in-person contact was precisely what could undo the jury trial and lead to interminable postponements, a growing backlog, and defendants forced to remain in limbo while waiting for something like normalcy to return. The fully-remote trial, which brought together actors via a digital network, supplied a solution to this problem: *distributed participation*.

Distributed participation does not take for granted that a setting for the trial exists, or that participation in the trial necessitates finding a

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program (last visited Dec. 17, 2023) [<https://perma.cc/JA4S-VGS8>]; *Mathis vs. Argyros Remote Trial Stream*, COURTROOM VIEW NETWORK, <https://pages.cvn.com/mathis-vs-argyros-remote-trial-stream> (last visited Dec. 17, 2023) [<https://perma.cc/8QWH-3N7U>] (this matter was the subject of a Florida Circuit Court pilot project involving a fee dispute between an attorney and his former client, culminating in a two-day Zoom-based trial).

<sup>97</sup> For an example of one of the first fully-remote federal trials, see Julie Steinberg & Madison Alder, *Injured Cruise Passenger Wins \$1.35 Million in Virtual Trial* (2), BLOOMBERG L. (Oct. 9, 2020, 7:24 AM PDT), <https://news.bloomberglaw.com/litigation/injured-cruise-passenger-awarded-1-35-million-in-virtual-trial> [<https://perma.cc/M47K-4ETG>].

<sup>98</sup> See *Dallo v. Holland Am. Line*, No. C19-865, 2020 WL 7093818, at \*1-2 (W.D. Wash. Oct. 7, 2020).

<sup>99</sup> Steinberg & Alder, *supra* note 97.

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way to get to and remain in that setting. Rather, distributed participation treats the setting of the trial as an ongoing production and recasts the trial process as a matter of finding a way to bring that setting to relevant actors using technological devices. The critical tool here is the digital videoconferencing platform. Zoom, Cisco Webex, and Microsoft all found new uses as in-person meetings transitioned online in the name of user safety. By utilizing a Zoom session, for instance, it became possible for jurors to follow and participate in proceedings in real-time from different physical locations.

Distributed participation allowed courts to transcend physical spaces and the challenges that these posed for people with limited mobility, vision, and hearing. By recreating the trial as something to be summoned for jurors, as opposed to something for which jurors are summoned, it became possible to take for granted the potential involvement of people who in a pre-pandemic context would need significant and individualized accommodations. On a videoconferencing platform, the proceedings are at one's fingertips, the dialogue has adjustable volume, and there is perhaps even a live transcript. During the pandemic, this made the jury trial low risk and thus possible. In the wake of the pandemic, the significance of distributed participation lies in its radical enhancement of trial accessibility for a differentially abled public.

## 2. Virtual Private Spaces

In traditional, in-person proceedings, there are various contexts in which small groups of actors desire or are obliged to speak to one another. Whispered conversations among defendants and their attorneys, breaks in the trial during which jurors can communicate informally, sidebar interactions, jury deliberation — each of these is a critical point during which private space is created within the public spectacle of the trial to facilitate essential exchanges of information. These are not external or extraneous communicative events. They are constitutive of the jury trial as we know it.

Some courts have succeeded in recreating these kinds of encounters using the videoconferencing platforms associated with the fully-remote trial. The key here is virtual private space, such as Zoom's "waiting room" and "breakout rooms." The former creates a digital antechamber

in which participants can be sequestered until their presence is permitted. This allows for the creation of boundaries that insulate digital spaces from one another when appropriate. For example, when courts in Michigan used Zoom to conduct hearings during the pandemic,<sup>100</sup> the waiting room was used as “a staging area for motion day.”<sup>101</sup>

By contrast, “breakout rooms” allow trial organizers to distribute the actors from an integrated virtual setting into virtual private spaces. In Michigan, once again, courts put litigants and their lawyers into breakout rooms so that the judge’s staff could ascertain whether there were “any agreements reached or issues to resolve, and confirm connectivity.”<sup>102</sup> Courts can also provide breakout rooms to maintain client-attorney confidences during criminal cases.<sup>103</sup> Finally, and most importantly, breakout rooms can facilitate confidential deliberation among jurors who are not gathered in a single physical space.

The jury trial is unthinkable without the right blend of public, off-record, and confidential communication. By using virtual private spaces, the fully-remote trial demonstrated that new techniques and

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<sup>100</sup> MICH. STATE CT. ADMIN. OFF., MICHIGAN TRIAL COURTS: LESSONS LEARNED FROM THE PANDEMIC OF 2020–2021, at 3 (2021), <https://www.courts.michigan.gov/4a4803/siteassets/covid/covid-19/lessonslearned.pdf> [<https://perma.cc/V2FP-3A7H>].

<sup>101</sup> *Id.* at 23.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*; see also Willie J. Epps Jr. & Cailynn D. Hayter, *Zoomed in to Justice: Remote Proceedings During a Pandemic*, 60 JUDGES’ J., Summer 2021, at 10, [https://www.americanbar.org/groups/gpsolo/publications/gpsolo\\_ereport/2021/november-2021/zoomed-to-justice-remote-proceedings-during-pandemic/#ref12](https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2021/november-2021/zoomed-to-justice-remote-proceedings-during-pandemic/#ref12) [<https://perma.cc/2ETV-UB5C>] (“The courtroom deputy offers the criminal defendant and his counsel the ability to enter a breakout room to speak privately. Once defense counsel and the defendant reenter the main hearing room and are ready to proceed, the courtroom deputy alerts the judge, who may begin the hearing.”); Justin Jouvenal, *Justice by Zoom: Frozen Video, a Cat — and Finally a Verdict*, WASH. POST (Aug. 12, 2020, 11:03 AM EDT), [https://www.washingtonpost.com/local/legal-issues/justice-by-zoom-frozen-video-a-cat--and-finally-a-verdict/2020/08/12/3e073c56-dbd3-11ea-8051-d5f887d73381\\_story.html](https://www.washingtonpost.com/local/legal-issues/justice-by-zoom-frozen-video-a-cat--and-finally-a-verdict/2020/08/12/3e073c56-dbd3-11ea-8051-d5f887d73381_story.html) [<https://perma.cc/9E6G-6PYN>] (“The proceeding followed a typical trial format with jury selection, opening statements, testimony, closing statements and jury deliberations, but the courts had to re-engineer basic aspects using technology. Private virtual breakout rooms in Zoom allowed the defendant to confer with her attorneys and the jury to deliberate. Prosecutors and defense attorneys posted evidence using the file-sharing service Box before it was displayed on the jurors’ screens.”).

technologies could be incorporated into the trial in a way that preserved — and even enhanced — fundamental features of in-person proceedings. After all, in a virtual private space, it is less likely that an uninvited actor will overhear a confidential exchange.<sup>104</sup> At the same time, these spaces help to make for a more inclusive trial, bringing jurors and legal actors together in more accessible digital settings.

### 3. Equipment Provision

As has been established, fully-remote proceedings do not bring people to court — they bring the court to people. But this cannot happen without adequate technological infrastructure. At a minimum, digital trials require that users have devices like computers, tablets, or smartphones, as well as a reliable, high-speed internet connection.<sup>105</sup> Ideally, participants will also have access to quiet, private physical spaces — offices or unshared rooms, for example — where they can follow proceedings without distraction. In the United States, persistent socioeconomic inequalities mean that no court can take for granted that jurors possess these things or the technical know-how and experience to use them to participate in a trial.<sup>106</sup> The “digital divide,” whether

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<sup>104</sup> Cf. *Morrow v. Superior Ct.*, 36 Cal. Rptr. 2d 210, 212-13 (Ct. App. 1994) (finding that a prosecutor’s orchestration of eavesdropping to access privileged communications between a criminal defendant and attorney necessitated the dismissal of an indictment).

<sup>105</sup> See DAVID SLAYTON, TEX. OFF. OF COURT ADMIN., JURY TRIALS DURING THE COVID-19 PANDEMIC: OBSERVATIONS AND RECOMMENDATIONS 17 (2020), <https://www.txcourts.gov/media/1449880/jury-trials-during-covid-19.pdf> [<https://perma.cc/J8F8-UZXX>] (noting that while most prospective jurors summoned to participate in a virtual trial in Texas were willing to do so, “a few did not have the technology” which led the court to supply “iPads with cell service to those jurors to permit them to effectively participate”).

<sup>106</sup> For example, when using videoconferencing technology, jurors need a computer, smartphone, or tablet with reliable internet access in a quiet and private location. See Phillip C. Hamilton, *The Practical and Constitutional Issues with Virtual Jury Trials in Criminal Cases*, AM. BAR ASS’N (Feb. 26, 2021), <https://www.americanbar.org/groups/litigation/committees/criminal/articles/2021/spring2021-practical-and-constitutional-issues-with-virtual-jury-trials-in-criminal-cases/> [<https://perma.cc/BAA6-PXNV>] (arguing that virtual jury trials can hinder the empanelment of an impartial and representative jury “due to the digital divide that currently exists in the United States.”); see also David Shepardson, *US Agency Says 8.3 Million Homes, Businesses Lack Access to High-Speed Broadband*, REUTERS (May 30, 2023, 10:10 AM PDT), <https://www.reuters.com/world/us/us-agency-says-83-million-homes-businesses-lack-access-high-speed-broadband->



construed materially or in terms of computer literacy, is a potentially significant obstacle to a trial format that embraces new technologies.

It falls to courts to mitigate this inequality where they can. While the provision of private space and reliable internet falls beyond the capacity of even the most committed courts, the pandemic era witnessed initiatives that aimed to equip jurors with the technological means to participate.<sup>107</sup> In Texas, for instance, the court that hosted the first jury trial with a binding verdict had a reserve of twenty iPads for prospective jurors' use<sup>108</sup> and loaned four of them.<sup>109</sup> In New Jersey, authorization of remote state grand jury proceedings<sup>110</sup> was coupled with a mandate to

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2023-05-30/ (noting that over “8.3 million U.S. homes and businesses lack access to high-speed broadband internet”); Natalie Campisi, *Millions of Americans Are Still Missing Out on Broadband Access and Leaving Money on the Table — Here’s Why*, FORBES, <https://www.forbes.com/advisor/personal-finance/millions-lack-broadband-access/> (last updated May 26, 2023, 1:58 PM) [<https://perma.cc/9UTZ-MTQN>] (noting that approximately “42 million Americans have no access to broadband”).

<sup>107</sup> See, e.g., SLAYTON, *supra* note 105, at 17 (“OCA provided iPads with cell service to those jurors to permit them to effectively participate.”); Victoria Hudgins, *Tech Can Flag Distracted Jurors. But Will Courtrooms Allow Facial Recognition?*, LAW TECH. NEWS (Feb. 28, 2021, 12:00 PM), <https://www.bloomberglaw.com/document/X6I4MLC4000000?jcsearch=gmk45hgfgm#jcite> [<https://perma.cc/A7S8-DX3K>] (noting that the Texas state government provided courts with Zoom and Box-equipped iPads for use by remote jurors); Angela Morris, *While Others Struggle, Austin’s District Courts Have Mastered Remote Trials*, TEX. LAW. (June 21, 2021, 5:11 PM), <https://www.bloomberglaw.com/document/XARGLAF8000000?jcsearch=hde45igim#jcite> [<https://perma.cc/PZM4-KLZF>] (noting that the Travis County Commissioner’s Court “allocated funding for 150 iPads, iPad stands and mobile hot spots” for remote jurors’ use). In a similar vein the introduction of technology in court has been credited with enhancing the experience and expertise of attorneys. See, e.g., Alexandria Ator, *Trial by iPad: How Technology Is Giving Young Associates Courtroom Experience*, LEGAL INTELLIGENCER (Aug. 18, 2021, 12:36 PM), <https://www.bloomberglaw.com/document/X31S9LT8000000?jcsearch=hdf45lljji#jcite> [<https://perma.cc/47SP-L3DJ>] (noting that use of iPads also facilitated active jury trial observation, participation, and learning by law firm associates).

<sup>108</sup> Anjelica Cappellino, *Texas Court Hears Nation’s First Criminal Jury Trial via Zoom*, EXPERT INST. (Jan. 7, 2022), <https://www.expertinstitute.com/resources/insights/texas-court-hears-nations-first-criminal-jury-trial-via-zoom/> [<https://perma.cc/VS82-NGJ8>] (noting that four iPads were loaned to prospective jurors in the case).

<sup>109</sup> *Id.*

<sup>110</sup> Notice by Glenn A. Grant, Acting Admin. Dir. of the Cts., Sup. Ct. of N.J., to the State Bar, COVID-19 — Tenth COVID-19 Omnibus Order 1 (Feb. 17, 2021), <https://www.njcourts.gov/sites/default/files/notices/2021/02/n210218a.pdf> [<https://perma.cc/GK8DDUZK>] (“The Court in its November 16, 2020 Order suspended in-person jury

provide technological support, including over 150 tablets.<sup>111</sup> In Texas, once more, legislators have discussed a bill that would require courts, even after the pandemic, to provide prospective jurors with the technology needed to engage in a remote proceeding.<sup>112</sup> Some federal districts loaned jurors devices with cellular internet service to ensure access to the necessary equipment and connectivity.<sup>113</sup>

While these efforts cannot overcome entrenched structural inequalities that stifle technological access and literacy, they are likely to reduce the impact of these inequalities on juror participation. And if equipment provision were paired with a basic orientation session, it is possible that making such devices and software accessible for jury duty would, in the aggregate, enhance general comfort and competence with respect to their use. In other words, jury duty might function not just as a site of civic participation but also, in a small way, a site of skill building.

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trials and in-person grand jury proceedings, while allowing virtual options to continue.”); Nick Muscavage, *NJ Justices Say Virtual Grand Juries Are Constitutional*, LAW360 PULSE (Apr. 28, 2021, 4:12 PM EDT), <https://www.law360.com/pulse/courts/articles/1379575> [<https://perma.cc/A3KU-C2SM>].

<sup>111</sup> Muscavage, *supra* note 110.

<sup>112</sup> Sozi Tulante, Kimberly Branscome & Emily Van Tuyl, *Demystifying the Virtual Civil Jury Trial Experience*, LAW360 (Apr. 29, 2021, 4:51 PM EDT), <https://www.law360.com/articles/1379757/demystifying-the-virtual-civil-jury-trial-experience> [<https://perma.cc/X53J-F9R4>].

<sup>113</sup> See, e.g., *Bao Xuyen Le v. Rev. Dr. Martin Luther King, Jr. County*, 524 F.Supp.3d 1113, 1117-18 (W.D. Wash. 2021) (“For example, to ensure that potential jurors are not precluded from participating in virtual trials by lack of access to the necessary equipment and/or connectivity, the district is prepared to loan out devices with cellular internet service.”); *Julian Liu v. State Farm Mut. Auto. Ins. Co.*, 507 F. Supp. 3d 1262, 1266 (W.D. Wash. 2020) (“Defendant’s first objection — the possibility that a juror might not have access to reliable technology — is easily assuaged by the fact that the Court is prepared to loan equipment to jurors if necessary. This equipment includes laptops, wireless routers for Wi-Fi hotspots, speakers, and monitors.”); *Kieffaber v. Ethicon, Inc.*, No. CV 20-1177, 2021 WL 425822, at \*4 (D. Kan. Feb. 8, 2021) (noting the court’s willingness to provide “technical assistance and training” and “arrange[] to loan equipment to jurors if necessary . . . includ[ing] laptops, iPads, wireless routers for Wi-Fi hotspots, speakers and monitors.”).

#### 4. Discussion

The pandemic-era jury trial is a laboratory. Since 2020, American courts have endeavored to protect the legal process by modifying routines and adopting novel technologies.<sup>114</sup> One result is an institution that is almost impervious to disruption by a highly-transmissible virus. Another is a set of lessons about inclusivity and the level of representativeness that can be achieved by a legal system that breaks with some of the received wisdom about what these trials are supposed to look like — and where they happen. Distributed participation, virtual private spaces, and equipment provision have allowed us not only to preserve the contemporary court but to reimagine it.

This process has not been without challenges. For example, in Texas, where courts enthusiastically experimented with the pandemic-era trial, many participants, including jurors, parties, attorneys, and even judges, lacked sufficient broadband internet.<sup>115</sup> Further, judges discovered that some litigants had difficulty navigating videoconferencing technology, which could involve learning new ways to present visual aids or submit documents to the court.<sup>116</sup> Remote proceedings also presented challenges for prospective jurors for whom English was not the primary language spoken at home, as Zoom’s interpreter function could be difficult to coordinate.<sup>117</sup>

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<sup>114</sup> Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the Covid-19 Pandemic and Beyond*, 115 NW. U. L. REV. 1875, 1877 (2021) (“Across the country, courts at every level have relied on remote technology to adapt”).

<sup>115</sup> Memorandum from Tex. Access to Just. Comm’n, Best Practices for Courts in Zoom Hearings Involving Self Represented Litigants 1 (n.d.), <https://www.txcourts.gov/media/1448439/best-practices-for-courts-in-zoom-hearings-plus-disability-accommodations-final.pdf> (last visited Dec. 20, 2023) [<https://perma.cc/V3A6-4X3K>] (“Many people do not have access to the internet, or reliable internet, in the home. Public access to the internet via libraries, coffee shops, and other local options is problematic due to privacy issues and may not currently be an option due to stay in place orders.”).

<sup>116</sup> See NAT’L CTR. FOR STATE CTS., THE USE OF REMOTE HEARING IN TEXAS STATE COURTS: THE IMPACT ON JUDICIAL WORKLOAD 12 (2021), [https://www.ncsc.org/\\_media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf](https://www.ncsc.org/_media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf) [<https://perma.cc/HR9D-9UE3>].

<sup>117</sup> See *id.* at 12 (noting that for Zoom’s interpreter function to work, each participant must access the hearing through the Zoom application).

Notwithstanding these concerns, others observed greater participation in Zoom-based proceedings than had taken place in person.<sup>118</sup> Lawyers and judges gathered, juries were summoned and empaneled, witnesses were called and gave testimony. All of this was made possible and low-risk through a combination of techniques. At the same time, it is critical to recall that not all trial experimentation sought to move proceedings entirely or mostly into virtual space. In fact, much experimentation was aimed at joining workable elements from the in-person trial with convenient and cost-effective innovations. The result was the *hybrid trial format*.

### B. Hybrid Jury Trials

If fully-remote trials ask the most of the court, and in-person ones the least, *hybrid jury trials* represent an attempt to find a productive compromise. Seeking such compromise is motivated by the desire to come up with a viable trial format while limiting costs and burdens on the trial's various actors. The hybrid format therefore embraces pandemic-era innovations as part of an overall strategy of enhancing the familiar trial process. The subsections below review two key features associated with this potential enhancement: "phasing" and livestreaming.

#### 1. Phasing

Some courts found that pandemic-era innovations could be used effectively to manage discrete phases of what had otherwise been an in-

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<sup>118</sup> In an interview with the Administrative Director for Texas's Office of Court Administration, David Slayton responded to a question about broadband internet access concerns by noting that in the course of twenty-five virtual jury proceedings, judges observed *increased* participation: "Usually, let's say that a county has 40 percent of people show up for jury duty — that's actually a pretty good number. During the pandemic, that's declined to 30, 35, maybe 25 percent of people showing up [in-person]. With the virtual jury selection, we've seen that number actually increase, so, 60, 70, 80 percent participation" while acknowledging cases in which some judges, clients and defendants have utilized the internet at the courthouse due to broadband constraints at home. Arya Sundaram, *How Texas Courts Went Virtual*, TEX. OBSERVER (Feb.10, 2021, 3:42 PM CST), <https://www.texasobserver.org/how-texas-courts-went-virtual/> [<https://perma.cc/23DJ-25MY>].

person, socially-distanced trial. In New Jersey, for instance, courts conducted jury screening remotely,<sup>119</sup> allowing people to participate using their smartphones.<sup>120</sup> If a prospective juror lacked access to a smartphone, computer, or other internet-connected device, New Jersey courts provided technology assistance in the form of Samsung Galaxy tablets and broadband internet.<sup>121</sup> If a person was selected as a juror, they would report to the courthouse for an in-person jury trial.<sup>122</sup> New Jersey's process was part of a broader "remote first" approach to

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<sup>119</sup> Notice by Glenn A. Grant, Acting Admin. Dir. of the Cts., Sup. Ct. of N.J., to the State Bar, COVID-19 — Criminal and Civil Jury Trials to Resume Incrementally Using a Hybrid Process with Virtual (Video) Jury Selection and Socially Distanced In-Person Trials 1 (July 22, 2020), <https://www.njcourts.gov/sites/default/files/notices/2020/07/n200722a.pdf> [<https://perma.cc/N4DU-72EN>] ("All case-specific questioning of jurors will be conducted by a judge in the presence of the attorneys and parties, with the difference being that most voir dire will be conducted virtually rather than in physical courtrooms."); *see also* Hans, *supra* note 8, at 318 (discussing the efficiency of virtual voir dire).

<sup>120</sup> *See Videoconference Instructions*, N.J. CTS., <https://www.njcourts.gov/videoconference-instructions> (last visited April 1, 2024) [<https://perma.cc/7ZEM-C3JS>]; *see also* Hans, *supra* note 8, at 318.

<sup>121</sup> *See, e.g.,* Sozi Tulante, Kimberly Branscome & Emily Van Tuyl, *Demystifying the Virtual Civil Jury Trial Experience*, LAW360, at n.20 (April 29, 2021, 4:51 PM EDT), <https://www.law360.com/articles/1379757/demystifying-the-virtual-civil-jury-trial-experience> [<https://perma.cc/DM37-TT79>] ("[S]ome courts likely will require that technology and training to be provided to jurors."); Blake Nelson, *Criminal Trials in N.J. Can Resume This Week While Jury Selection Will Stay Partially Remote*, NJ.COM (June 14, 2021, 6:04 PM), <https://www.nj.com/news/2021/06/criminal-trials-in-nj-can-resume-this-week-while-jury-selection-will-stay-partially-remote.html> [<https://perma.cc/YL4A-DLD6>] (noting that summoned jurors who lack access to a smartphone can request assistance from the court).

<sup>122</sup> *See* Tom Nobile, *State Supreme Court Upholds Virtual Jury Selection in Bergen County Arson Case*, NORTHJERSEY.COM (Aug. 17, 2021, 4:00 AM EDT), <https://www.northjersey.com/story/news/bergen/2021/08/17/bergen-county-arson-case-upheld-nj-supreme-court/8158115002/> [<https://perma.cc/6ZDB-4MT8>].

proceedings during the pandemic<sup>123</sup> — representing a hybrid format that is expected to remain in place.<sup>124</sup>

Other courts also used digital technology selectively in otherwise analog trial processes. In Arizona, for instance, courts used “electronic check-in and pre-screens, [and] electronic jury questionnaires.”<sup>125</sup> In Orange County, California, concerns about physical distancing were addressed by a check-in process that allowed prospective jurors to be seated in the assembly room without waiting in line.<sup>126</sup> In California’s Alameda County, a court kept jurors in a separate room during voir dire,

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<sup>123</sup> Notice by Glenn A. Grant, Acting Admin. Dir. of the Cts., Sup. Ct. of N.J., to the State Bar, COVID-19 — Continuation of “Remote First” Court Operations with Limited In-Person Events and Services (Nov. 17, 2020), <https://www.njcourts.gov/sites/default/files/notices/2020/11/n201118b.pdf> [<https://perma.cc/A7LG-LRR2>] (“[M]atters that can be conducted remotely will continue to be done remotely, and certain matters that cannot be handled in a remote format will be conducted in person.”).

<sup>124</sup> Notice by Glenn A. Grant, Acting Admin. Dir. of the Cts., Sup. Ct. of N.J., to the State Bar, Jury — Guidance as to Virtual and In-Person Jury Selection; Public Access to Jury Trials (Mar. 18, 2022), <https://www.njcourts.gov/sites/default/files/notices/2022/03/n220321a.pdf> [<https://perma.cc/H3PU-F3MY>] (“Jury selection for all trials shall continue to be in virtual format in the presence of attorneys and parties. In criminal cases, the exercise of preemptory challenges shall continue to be conducted in person. Grand jury selection shall also continue to begin in a virtual format.”); Notice by Glenn A. Grant, Acting Admin. Dir. of the Cts., Sup. Ct. of N.J., to the State Bar, COVID-19 — Summoning of Jurors for Possible In-Person Jury Trials on or After May 17, 2021 (Mar. 4, 2021), <https://www.njcourts.gov/sites/default/files/notices/2021/03/n210305a.pdf> [<https://perma.cc/7P7J-QNM7>] (“The modified summons documents will inform prospective jurors (1) that the jury selection process will begin in a virtual format; and (2) that their service may continue virtually or may involve reporting in person to a courthouse with safety precautions . . . .”); Notice by Glenn A. Grant, Acting Admin. Dir. of the Cts., Sup. Ct. of N.J., to the State Bar and Public, Future of Court Operations, Remote and In-Person Proceedings — Publication for Comment (July 16, 2021), <https://www.njcourts.gov/sites/default/files/notices/2021/07/n210716a.pdf> [<https://perma.cc/8GUL-TR56>] (considering the potential use of post-pandemic “virtual grand juries” and “hybrid jury selections”).

<sup>125</sup> COVID-19 CONTINUITY OF CT. OPERATIONS DURING A PUB. HEALTH EMERGENCY WORKGROUP, ARIZ. SUP. CT., POST-PANDEMIC RECOMMENDATIONS 24 (2021), <https://www.azcourts.gov/Portals/216/Pandemic/2021/Post-PandemicRecommendations.pdf?ver=2021-06-08-192520-583> [<https://perma.cc/59LC-X67Z>].

<sup>126</sup> News Release, Superior Ct. of Cal., Cnty. of Orange, Citizens of Orange County Step Up and Answer the Call to Serve as Jurors (June 3, 2020), [https://www.occourts.org/system/files/jury\\_press-release\\_060320.pdf](https://www.occourts.org/system/files/jury_press-release_060320.pdf) [<https://perma.cc/W2S7-RF3Q>].

using screens to allow for communication with lawyers and the judge.<sup>127</sup> In King County, Washington, courts experimented with virtual jury selection<sup>128</sup>— with proposed rule GR 41 moving to make virtual voir dire a fixture of the trial process and CR 39 seeking to create a standardized set of procedures for remote trials.<sup>129</sup> Even beyond the pandemic, remote jury selection proceedings have been retained in some jurisdictions, citing their creation of a more representative, “widened” venire.<sup>130</sup>

In general, the introduction of digital or remote “phases” has allowed for more flexible trials that find a workable compromise between inclusivity and feasibility. The result is a trial format that oscillates between the physical and digital integration of the trial’s actors.

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<sup>127</sup> Benjamin Perkel, *Summit Panel Recap: Practical Tips for Post-Pandemic Trials — Hybrid Jury Trials*, 6 JURY MATTERS, Jan. 2021, <https://myemail.constantcontact.com/January-Newsletter-of-the-Civil-Jury-Project.html?soid=1127815376566&aid=r7Lx-uOoOG8> [<https://perma.cc/3WTT-2BBM>].

<sup>128</sup> Paul Kiefer, *King County Superior Court Wants to Make Virtual Jury Selection — and Trials — Permanent*, PUBLICOLA (Oct. 1, 2021), <https://publicola.com/2021/10/01/king-county-superior-court-wants-to-make-virtual-jury-selection-and-trials-permanent/> [<https://perma.cc/XCH8-D5YV>].

<sup>129</sup> CR 39 § (d) (proposed 2021), however, did not provide definitive guidance on which jury trials would remain remote beyond the pandemic. It specified relevant considerations in making this determination, however, including the number of parties, witnesses, and nature of the evidence. *See* 2021-17 Wash. Reg. 35 (Sept. 1, 2021). The Washington Supreme Court has not yet ruled on these proposed amendments. Proposed Rule GR 41 was deferred, as was CR 39. *See Washington State Court Rules Archive*, WASH. CTS., [https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.archivelist](https://www.courts.wa.gov/court_rules/?fa=court_rules.archivelist) (last visited Dec. 24, 2023) [<https://perma.cc/L5QE-58AR>].

<sup>130</sup> Ashley Archibald, *King County Superior Court Plans to Keep Some Virtual Options Post-Pandemic*, REAL CHANGE NEWS (Dec. 28, 2022), <https://www.realchangenews.org/news/2022/12/28/king-county-superior-court-plans-keep-some-virtual-options-post-pandemic> [<https://perma.cc/LS6Z-LSXG>] (noting that pandemic-era trials summoned a larger number of prospective jurors due to requests for hardship excusals related to COVID-19 and caretaking responsibilities, among other concerns); *see also* Sup. Ct. of Alaska Order No. 2013, Order Regarding Post-Pandemic Jury Practices (May 17, 2023), <https://courts.alaska.gov/sco/docs/sco2013.pdf> (“Judges are encouraged to consider conducting voir dire — or portions thereof such as for cause challenges — remotely where feasible.”).

## 2. Livestreaming

The Sixth Amendment entitles defendants to a *public* trial.<sup>131</sup> This right may only be dispensed with — that is, with a closed hearing — if: (1) an overriding interest is likely to be prejudiced if the hearing is not closed; (2) the closure is no broader than necessary to protect that interest; (3) the court has considered reasonable alternatives; and (4) the court makes findings adequate to support the closure.<sup>132</sup> During the pandemic, one court held that the partial closure of a courtroom in which members of the public were required to pass temperature checks and wear masks (among other measures, including capacity limitations) did not violate this right.<sup>133</sup> Applying the test described above, the court in question found that the entrance policies advanced an overriding interest in health and safety for those attending and participating in the trial, the partial closure was no broader than necessary to protect this interest, and that the court did consider alternatives (including postponing the trial) and found them to be unreasonable.<sup>134</sup>

Concerns associated with the partial closure of a courtroom might be mitigated by technological modifications of the jury trial that facilitate broader public access. Closed-captioned and livestreamed video of proceedings, for example, can invite onlookers far beyond those who might be accommodated on courtroom benches while protecting juror privacy in high-profile cases.<sup>135</sup> Over the past decade, courts have

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<sup>131</sup> The Sixth Amendment states that “[i]n all criminal prosecutions, the accused shall enjoy the right to a . . . public trial.” U.S. CONST. amend. VI.

<sup>132</sup> *Waller v. Georgia*, 467 U.S. 39, 48 (1984).

<sup>133</sup> *United States v. Trimarco*, No. 17-CR-583, 2020 WL 5211051, at \*3 (E.D.N.Y. Sept. 1, 2020); *see also* *State v. Daniels*, 656 S.W.3d 378 (Tenn. Crim. App. 2022) (holding that a defendant’s right to confrontation was not compromised when he and other witnesses were compelled to wear masks); *cf.* Janet Miranda, *Texas Man Wins New Trial over Witness Use of Face Mask on Stand*, BLOOMBERG L. (Sept. 23, 2022, 2:10 PM PDT), [https://www.bloomberglaw.com/bloomberglawnews/white-collar-and-criminal-law/X5J7K09C000000?bna\\_news\\_filter=white-collar-and-criminal-law#jcite](https://www.bloomberglaw.com/bloomberglawnews/white-collar-and-criminal-law/X5J7K09C000000?bna_news_filter=white-collar-and-criminal-law#jcite) [<https://perma.cc/54FJ-52CE>] (discussing a case tried in July of 2021 in which the Texas Court of Appeals granted a defendant a new trial when the State’s key witness wore a mask, as the record did not include findings related to this fact).

<sup>134</sup> *Trimarco*, 2020 WL 5211051, at \*3-4.

<sup>135</sup> *See, e.g.*, Marco della Cava, *Anonymous Jury in Derek Chauvin Trial Part of a Growing Trend That Has Some Legal Experts Worried*, USA TODAY (Apr. 26, 2021, 7:47 AM EST),



experimented with the use of popular online streaming platforms to broadcast proceedings to audiences on the internet. The COVID-19 pandemic stimulated further experimentation, as having observers follow along online was no longer a supplement to, but rather a necessity for, the jury trial. These experiments demonstrated that it is possible to bring in-person proceedings to a broad audience using technologies that are already available.

Beyond its potential to expand the courts' means of accommodating jurors, a commitment to livestreaming proceedings for the general public is an essential part of maintaining the constitutionally-mandated public character of the trial.<sup>136</sup> In high-profile trials, including those that are sensitive in nature or might expose empaneled jurors to harassment, the practice of livestreaming proceedings may have the added benefit of shielding lay decision-makers' identities. Just as American jurors render anonymous verdicts, there is no requirement or expectation that individual jurors bear the personal brunt of the public's dissatisfaction or disagreement with the outcomes of their deliberation. Indeed, recent in-person civil and criminal jury trials, including the prosecution of Derek Chauvin for the murder of George Floyd and the defamation trial of actor Amber Heard by Johnny Depp have brought into relief the capacity, if not need, for court administrators to shield juror identities from public identification and scrutiny.<sup>137</sup>

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<https://www.usatoday.com/story/news/nation/2021/04/25/chauvin-trial-jury-anonymous-concerning-trend-us-justice/7342909002/> [<https://perma.cc/SN6F-2JVG>] (discussing the potential benefits and limitations of preserving the anonymity of empaneled jurors in high-profile or otherwise controversial cases that could result in harm to lay decision-makers).

<sup>136</sup> See Ed Spillane, *The End of Jury Trials: COVID-19 and the Courts: The Implications and Challenges of Holding Hearings Virtually and in Person During a Pandemic from a Judge's Perspective*, 18 OHIO ST. J. CRIM. L. 537, 541 (2021) (noting that YouTube livestreaming enabled proceedings to be public while also allowing the judge to "manage" participation in the Zoom hearing).

<sup>137</sup> See Yelena Dzhanova, *A Judge Ordered the Names of Jurors from Derek Chauvin's Trial to Be Sealed so They're Protected Against "Unwanted Publicity or Harassment,"* BUS. INSIDER (Apr. 24, 2021, 6:26 AM PDT), <https://www.insider.com/judge-sealed-juror-names-derek-chauvin-trial-2021-4> (Chauvin trial); Steve Karnowski, *Explainer: Chauvin Jury Could Stay Anonymous for a Long Time*, AP NEWS (Apr. 21, 2021, 1:32 PM PDT), <https://apnews.com/article/derek-chauvin-jury-anonymous-638ebffa133473fa89516d824adca1d7> [<https://perma.cc/MD9W-GXJ5>]; Joshua Zitser, *The Jurors Who Gave Johnny Depp Victory in Amber Heard Lawsuit Will*

At first glance, livestreaming court proceedings may appear to add little benefit to the pandemic-era trial. After all, does distributed participation associated with videoconferencing not already allow jurors to follow proceedings from a distance? The difference between these two accommodations lies in their relation to the overall format of the trial. Distributed participation is sensible in situations in which *all* jurors need to participate remotely in some portion of a proceeding and is valuable to the extent that jurors are asked also to *deliberate* remotely. If trial actors need to interact with one another virtually, then use of a videoconferencing platform is critical. On the other hand, if proceedings are in-person but one or more jurors must follow them from outside the courtroom for some period of time, livestreaming may be a useful tool that effectively hybridizes the trial process.

### 3. Discussion

For American courts, the COVID-19 pandemic created unique obstacles to proceeding safely through their dockets.<sup>138</sup> Some courts encouraged litigants to proceed with alternative dispute resolution.<sup>139</sup> Others managed to conduct proceedings with a mix of modifications. Many mandated masks and social distancing, even holding jury selection proceedings in non-traditional locations that allowed for more space between people, like theaters or gymnasiums.<sup>140</sup> Some used video

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*Have Their Identities Kept Secret for a Year*, BUS. INSIDER (June 2, 2022, 4:22 AM PDT), <https://www.insider.com/johnny-depp-amber-heard-judge-grants-order-seal-jurors-identities-2022-6> [<https://perma.cc/9HKY-BKYV>] (Depp-Heard trial).

<sup>138</sup> See Zack Needles, *Law.com Trendspotter: Virtual Civil Jury Trials Are Definitely Divisive — and Likely Inevitable*, LAW.COM (Sept. 13, 2020, 10:00 PM) <https://www.law.com/2020/09/13/law-com-trendspotter-virtual-jury-trials-remain-divisive-but-are-they-inevitable/?slreturn=20231119011827> [hereinafter *Virtual Civil Jury Trials Definitely Divisive*] (“[T]he initial impetus for testing out virtual civil jury trials was the logistical headache of convening jurors in a safe manner.”).

<sup>139</sup> See *id.* (“[A]long with nudging more litigants toward bench trials and traditional alternative dispute resolution methods, a number of courts were conducting early-stage experiments with remote jury trials.”).

<sup>140</sup> SLAYTON, *supra* note 105, at 14 (“Due to space limitations, most courts were unable to conduct the qualification and voir dire process in courthouse facilities and instead needed to obtain auxiliary space in other buildings in the county.” Such spaces included “gymnasiums, theaters, and ballrooms.”).

conferencing technology (like Zoom or WebEx).<sup>141</sup> These tools were successfully deployed as part of both hybrid proceedings and fully-remote trials.<sup>142</sup>

But these trial formats also introduced practical challenges, such as ensuring that the jury was representative when reliable, high-speed internet was required to participate.<sup>143</sup> Another challenge was ensuring that jurors were able to privately sequester during virtual proceedings.<sup>144</sup> Moreover, jurors needed be alert and focused,<sup>145</sup> able to

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<sup>141</sup> See Vincent Denault & Miles L. Patterson, *Justice and Nonverbal Communication in a Post-Pandemic World: An Evidence-Based Commentary and Cautionary Statement for Lawyers and Judges*, 45 J. NONVERBAL BEHAV. 1 (2021) (“Courts across the world limited their operations. Nonetheless, given that justice delayed is justice denied, many jurisdictions have turned to technologies for urgent matters.”).

<sup>142</sup> Needles, *Virtual Civil Jury Trials Definitely Divisive*, *supra* note 138 (“[W]ith little to no light at the end of the tunnel and growing case backlogs across the country, regular virtual civil jury trials seem increasingly likely to become a reality in many jurisdictions . . . .”); Zack Needles, *Law.com Trendspotter: As COVID-19 Lingers, Alternatives to In-Person Civil Jury Trials Gain Traction*, LAW.COM (July 27, 2020, 1:31 AM) <https://www.law.com/2020/07/27/law-com-trendspotter-as-covid-19-lingers-alternatives-to-in-person-civil-jury-trials-gain-traction/%20> [<https://perma.cc/A9UF-65JR>] (“In Texas, . . . a recent attempt to hold jury trials in a high school auditorium yielded some promising results. . . . A recent[] experiment by Broward Circuit Court in Florida to conduct jury selection virtually was a similarly pleasant surprise for the presiding judge. . . . New Jersey is planning to resume face-to-face jury trials . . . under a hybrid model in which the preliminary screening of prospective jurors will take place virtually, but voir dire will be conducted in the courthouse. In addition, to aid social distancing, some trials will take up two courtrooms, with the judge, attorneys and litigants in one room and the jurors following by video link from a separate courtroom.”); *see also* SLAYTON, *supra* note 105, at 18 (“All courts should be permitted to conduct virtual jury proceedings, which are allowable under the current emergency order.”); Robert Swafford, *Virtual Trials Are the Only Rational Path Forward*, 84 TEX. BAR J. 455, 455 (2021) (“Virtual jury trials have already been employed in Florida, New Jersey, Texas, and other states.”).

<sup>143</sup> See Needles, *Virtual Civil Jury Trials Definitely Divisive*, *supra* note 138 (“[A]rbitrators and mediators in Atlanta . . . penned a commentary arguing that assembling virtual juries that reflect the diversity of Georgia communities would be difficult, if not impossible, given that many people across the state do not have access to reliable, high-speed internet”).

<sup>144</sup> *See id.* (noting that participation might be limited to people “who either live alone or have the ability to sequester in their homes”).

<sup>145</sup> *See id.* (“The risk of multi-tasking during a trial can be easily controlled in the courtroom, very difficult to control with a Zoom setting or other remote software setting . . .”).

both assess the credibility of witnesses and evaluate evidence.<sup>146</sup> During one virtual voir dire in California, one prospective juror appeared to fall asleep, another exercised, one left the room, and a few seemed to be using electronic devices unrelated to the proceedings.<sup>147</sup> While one cannot expect perfect jury engagement, virtual trials offer novel distractions and may put too much distance between people, leading jurors to dehumanize defendants or fail to grasp the solemnity associated with legal proceedings.<sup>148</sup>

But such potential drawbacks must be weighed against the merits of modified trial formats. It is equally likely, for instance, that virtual proceedings could allow jurors to better see and evaluate evidence, as well as participants' physical and verbal conduct. Jurors may also be more attentive if they are able to better see and hear the witnesses speaking.<sup>149</sup> As one judge responding to a survey on virtual court proceedings said: "While we lose formality, we gain participation."<sup>150</sup>

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<sup>146</sup> Tina Ma, *Impact of COVID-19 on Juror Perceptions*, TYSON & MENDES (Jan. 21, 2021, 9:00 AM), <https://www.tysonmendes.com/impact-of-covid-19-on-juror-perceptions> [<https://perma.cc/M5R6-X5PX>] ("Being able to assess an individual's credibility often depends on their facial expression and non-verbal cues, which face masks may hinder or obscure. . . . [T]he use of remote-access technology has also proven to have a negative impact for litigants during trial, particularly raising concerns such as dehumanizing defendants and the role of nonverbal communication.").

<sup>147</sup> Debra Cassens Weiss, *Potential Jurors Exercised, Curled Up on Bed During Virtual Voir Dire, Motion Says in Asbestos Case*, AM. BAR ASS'N J. (July 22, 2020, 2:41 PM CDT), <https://www.abajournal.com/news/article/potential-jurors-exercised-curled-up-on-bed-during-virtual-voir-dire-motion-says> [<https://perma.cc/V224-YXLH>] (citing a mistrial motion that claimed "[p]otential jurors were distracted or absent during a virtual voir dire, noting that one juror appeared to be in bed "and possibly asleep").

<sup>148</sup> See Ma, *supra* note 146 (noting that remote proceedings may have the effect of "distan[c]ing" jurors from defendants "in a way that may decrease their empathy" and "diminish the cultural meaning and solemnity associated with adjudicatory processes.").

<sup>149</sup> See Needles, *Virtual Civil Jury Trials Definitely Divisive*, *supra* note 138 (arguing that remote jurors are no more likely to "tune out mentally" than jurors who participate in person).

<sup>150</sup> OURFAMILYWIZARD, NATIONAL FAMILY JUDICIARY REMOTE HEARING SURVEY 11 (2020), [https://6a1ab614-8a16-459a-b02b-6cb58b4e4148.filesusr.com/ugd/850355\\_da459086f4e418845674916359c9c.pdf](https://6a1ab614-8a16-459a-b02b-6cb58b4e4148.filesusr.com/ugd/850355_da459086f4e418845674916359c9c.pdf) [<https://perma.cc/8WWE-ZZJV>].

Some have argued, to this end, that technological solutions can facilitate more inclusive jury trials in the long run.<sup>151</sup> Greater use of remote options, for example, could reduce court costs while facilitating the empanelment of jurors with the means to participate remotely.<sup>152</sup> Indeed, as juries returned to entirely in-person proceedings, some feared that reporting and participation rates might actually drop to lower numbers than existed pre-pandemic, due to ongoing concerns about new viral variants and impediments to vaccine access.<sup>153</sup>

This brief overview highlights examples of the creativity and adaptability of the American court. In short, when confronted with a significant threat to the participation of legal actors and jurors in trials, courts availed themselves of technologies and techniques to carry on. In the process, they demonstrated that a more inclusive jury trial is possible — and desirable.

Courts have long recognized the awkward place of prospective jurors with disabilities in the legal system — individuals whose participation may hinge on accommodations. Some states, as this Article documents, have made efforts to accommodate these individuals. The COVID-19 jury trial showed that new technologies create new modes of participation. The continued exclusion of people with disabilities from jury service is thus a choice. And we could choose differently.

### III. CONTINUED MODIFICATIONS TO ENHANCE JURY INCLUSIVITY

The pandemic-era trial is not a permanent substitute for its pre-pandemic forerunner. Rather, its innovations are a set of tools that American courts should experiment with to construct a more inclusive post-pandemic jury trial. Indeed, their incorporation on a case-by-case basis into post-pandemic trials makes thinkable, for the first time, a trial with robust capacity to accommodate a public that is differentially

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<sup>151</sup> See Lucy Lang, *Virtual Criminal Justice May Make the System More Equitable*, WIRED (July 1, 2020, 9:00 AM), <https://www.wired.com/story/opinion-virtual-criminal-justice-may-make-the-system-more-equitable/>.

<sup>152</sup> See *id.*

<sup>153</sup> See *id.*; James Paton, *Public Health Officials Warn About Slow Vaccine Rollout as Coronavirus Variants Multiply*, FORTUNE (Jan. 18, 2021, 12:19 AM PST), <https://fortune.com/2021/01/18/health-warning-slow-vaccine-rollout-coronavirus-variants-multiply> [<https://perma.cc/3MBV-SRRC>].

abled, encumbered, and obliged to others. In this part of the Article, I first show that these accommodations could allow the American legal system to make strides with respect to inclusivity. I then examine logistical and constitutional concerns that must be considered during implementation. I make the case that while these hurdles should be taken seriously, they do not foreclose meaningful reform toward a more inclusive trial.

### A. *Obstacles to Participation*

As shown in Part I, the protections afforded to prospective jurors with disabilities and significant caregiving responsibilities are limited and inconsistently applied. For this reason, and despite the ADA, some prospective jurors are at risk of dismissal for limited mobility, vision, hearing, or care obligations to sick or elderly dependents. In what follows, I consider these obstacles to participation once more, and describe how pandemic-era innovations would help make progress toward better including people who at present are often excused because of judges' perceptions of what jury service requires.

#### 1. Mobility

About one in seven adults in the United States has some kind of mobility-related disability<sup>154</sup> — including those that impact walking and climbing stairs.<sup>155</sup> The accommodations offered to these prospective jurors reflect shared assumptions about where a person must be in order to participate on a jury — that is, in court. But even with a comprehensive approach to facilitating physical access, it may be possible that getting to a courthouse, navigating its rooms and hallways

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<sup>154</sup> *CDC: 1 in 4 US Adults Live with a Disability*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 16, 2018, 1:00 PM EST), [https://archive.cdc.gov/www\\_cdc\\_gov/media/releases/2018/p0816-disability.html](https://archive.cdc.gov/www_cdc_gov/media/releases/2018/p0816-disability.html) [<https://perma.cc/Q8H6-4CFN>] [hereinafter *CDC Adult Disability Survey*] (“The most common disability type, mobility, affects 1 in 7 adults. With age, disability becomes more common, affecting about 2 in 5 adults age 65 and older.”).

<sup>155</sup> *Disability Impacts All of Us*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 15, 2023), <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html> [<https://perma.cc/59Q7-2BLN>] (demonstrates that %12.1 of people with a disability have difficulty walking or climbing stairs).

during different phases of the trial, and remaining there for an extended period, day after day, is more than either courts or prospective jurors with limited mobility can — or should have to — handle. Those who need to return home at irregular intervals and those without proper or reliable forms of transportation may continue to be excluded despite the best efforts of the court and their otherwise perfect capacity to serve.

Distributed participation, virtual private spaces, livestreaming, and equipment provision offer potential solutions. Videoconferencing platforms like Zoom have helped create a “work from home” revolution,<sup>156</sup> which in turn has shown that people do not actually need to move very much, either from their homes, to an office, or within their homes, to be effective and engaged employees. In the post-pandemic court, it is conceivable that creating a videoconferencing option could increase rates of participation among people with mobility restrictions. These jurors could join their peers as part of a hybrid jury trial, while those who do not require accommodation appear at the courthouse.<sup>157</sup>

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<sup>156</sup> See Kim Parker, Juliana Menasce Horowitz & Rachel Minkin, *How the Coronavirus Outbreak Has — and Hasn't — Changed the Way Americans Work*, PEW RSCH. CTR. (Dec. 9, 2020), <https://www.pewresearch.org/social-trends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/> [<https://perma.cc/3CKC-NUHL>] (noting that “81% of employed adults who are working from home all or most of the time say they use video calling or online conferencing services like Zoom or Webex at least some of the time (59% use these often). And 57% use instant messaging platforms such as Slack or Google Chat (43% use these often). Among those who use video conferencing services often, 63% say they are fine with the amount of time they spend on video calls; 37% say they are worn out by it. In general, teleworkers view video conferencing and instant messaging platforms as a good substitute for in-person contact — 65% feel this way, while 35% say they are not a good substitute.”).

<sup>157</sup> See Kerry Breen, “Normal Didn't Work for Us”: People with Disabilities Worry About Loss of Virtual Options, TODAY (Apr. 22, 2021, 9:14 AM PDT), <https://www.today.com/health/people-disabilities-worry-about-losing-virtual-options-t214877> [<https://perma.cc/8LXD-S2TX>] (noting the position of a law clerk in California who used a wheelchair and could not drive, that the “pandemic changed things for the better ‘overnight.’” She commented that the adoption of Zoom for court hearings allowed her to save hours of time she would otherwise have needed to allocate for a commute using public transportation); *The Accessibility of Online Events: A Retrospective*, FABLE, <https://makeitfable.com/article/the-accessibility-of-online-events-a-retrospective/> (last visited Dec. 18, 2023) [<https://perma.cc/5WNE-3L3S>] (noting the outcome of a community survey that indicated “40% said online events turned out to be much more accessible than in-person events, and 49% said they were a little bit more accessible.

## 2. Hearing and Vision

Disabilities related to hearing and vision are also common.<sup>158</sup> About thirteen percent of the adult population of the United States lives with some kind of visual impairment.<sup>159</sup> As many as twenty-three percent have hearing loss.<sup>160</sup> In many cases, the accommodations discussed in Part One are likely to prove adequate for such prospective jurors — though not for all. In the courtroom, those with vision or hearing loss may still find it difficult to comfortably follow proceedings depending on a variety of factors: the spatial layout of the courtroom and its actors,

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Only 11% said the accessibility of online events was about the same as in-person events, and nobody found online events to be less accessible.”).

<sup>158</sup> *CDC Adult Disability Survey*, *supra* note 154 (finding mobility-related disabilities to be the most common, and that “one in 4 U.S. adults — 61 million Americans — have a disability that impacts major life activities”).

<sup>159</sup> *Statistical Snapshots From the American Foundation for the Blind*, AM. FOUND. FOR THE BLIND, <https://www.afb.org/research-and-initiatives/statistics> (last visited Dec. 18, 2023) [<https://perma.cc/2AFW-PNGG>] (“[F]indings from the 2018 National Health Interview Survey (NHIS) data release established that an estimated 32.2 million adult Americans (or about 13% of all adult Americans) reported they either ‘have trouble’ seeing, even when wearing glasses or contact lenses, or that they are blind or unable to see at all.”); *see also* *The Burden of Vision Loss*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/visionhealth/risk/burden.htm> (last updated June 12, 2020) [<https://perma.cc/3BRA-YZ9K>] (noting that in the year 2015 1.02 million people in the United States were reportedly blind. An additional 3.22 million people reportedly had “vision impairment,” defined by “the best-corrected visual acuity in the better-seeing eye.” 8.2 million additional Americans had visual impairment due to uncorrected refractive error.”).

<sup>160</sup> Adele M. Goman & Frank R. Lin, *Prevalence of Hearing Loss by Severity in the United States*, 106 AM. J. PUB. HEALTH RSCH. 1820, no. 10, Oct. 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5024365/pdf/AJPH.2016.303299.pdf> [<https://perma.cc/48XV-BR5S>] (estimating that “[h]earing loss directly affects 23% of Americans aged 12 years or older”); *see* Jennifer H. Madans, Julie D. Weeks & Nazik Elgaddal, *Hearing Difficulties Among Adults: United States, 2019*, (Nat’l Ctr. for Health Stat., Data Brief No. 414, 2021), <https://www.cdc.gov/nchs/products/databriefs/db414.htm> [<https://perma.cc/KT98-WMKL>] (noting that “[i]n 2019, 13.0% of adults aged 18 and over had some difficulty hearing even when using a hearing aid and 1.6% either had a lot of difficulty hearing or could not hear at all, even when using a hearing aid.”); *Quick Statistics About Hearing*, NAT’L INST. ON DEAFNESS & OTHER COMMUN DISORDERS, <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing> (last updated Mar. 25, 2021) [<https://perma.cc/3G6B-9KSH>] (“Approximately 15% of American adults (37.5 million) aged 18 and over report some trouble hearing.”).



obstructions that hinder the visibility of faces (thus making lip reading difficult), ambient noise, poor acoustics, etc. Each of these factors alone, or together, can reduce the effectiveness of the limited accommodations offered to jurors. Once more, the precondition of the analog trial — gathering all relevant actors in a single space — may constitute, for some prospective jurors, the basis of their exclusion or imperfect inclusion.

For those with vision or hearing loss, the innovations of the pandemic-era trial could have a decisive effect on jury inclusivity. As has been mentioned, distributed participation using a videoconferencing platform can put the action right in front of jurors, both visually and aurally. This could address issues associated with the layout of the courtroom and augment jurors' access to and engagement with proceedings. Jurors with moderate to mild vision or hearing loss would also benefit. Is a witness difficult to see? Zoom in to better see their face. Is an attorney difficult to hear? Use headphones and turn up the volume. If a vital function of the jury trial is to provide jurors unmediated access to evidence and testimony, then the utility of pandemic-era tools is undeniable.

Other relevant features of videoconferencing platforms include live transcription and closed captioning, both of which can help to overcome aural issues without the need for an additional actor proficient in sign language.<sup>161</sup> Virtual private spaces are also likely to prove useful, as jurors would be afforded the chance to participate in conversations with consistent visibility and volume, as well as the opportunity to use a

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<sup>161</sup> See, e.g., Ryan Taylor, *How Captions Improve Accessibility in Video Conference Meetings*, REV (July 7, 2020), <https://www.rev.com/blog/how-captions-improve-accessibility-in-video-conference-meetings> [<https://perma.cc/5PCA-3NGE>] (noting potential detriments of relying on interpreters as compared to the Zoom captioning function: “[P]eople with disabilities may feel more involved with their interpreter or note-taker than with the business meeting or school lecture itself. Live [Z]oom captioning allows the deaf and hard of hearing to engage more directly with conversations and teaching materials. When using live captioning, people with disabilities can read everything that’s said. They’re also able to respond in real time.”); Emily Tian, *Closed Captioning, a Long-Awaited Accessibility Feature Now Available on Zoom*, YALE DAILY NEWS (Nov. 6, 2020, 12:23 AM), <https://yaledailynews.com/blog/2020/11/06/closed-captioning-a-long-awaited-accessibility-feature-now-available-on-zoom/> [<https://perma.cc/6FMZ-FHSD>] (noting that “captions can be a critical service not only for deaf or partially deaf students but also for students with cochlear implants, attention deficit disorders or auditory processing disorders”).

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“chat” or dialogue function, which could make it easier to ask and keep track of questions. In sum, though current accommodations have helped to overcome some barriers to participation associated with vision and hearing loss, pandemic-era innovations could help courts make gains in this area.

### 3. Caregiving

These gains would also improve the situation of otherwise eligible prospective jurors who are unable to serve due to caregiving responsibilities. Whether these responsibilities are to family members with chronic or transient illnesses, or other dependents, they may involve a schedule that is incongruent with in-person jury service that requires continuity of presence at a courthouse. For some caregiving responsibilities, particularly those where schedules are unpredictable or where nonstop attention to another person is required, no accommodation will be adequate. For caregivers who can find blocks of time and use breaks to fulfill their obligations, however, it is not caregiving but being physically present in a courtroom that constitutes the obstacle to participation.

The barriers to jury service for caregivers can be lowered using the approaches discussed above. By making virtual jury participation a potential accommodation, caregivers will not have to worry about being unable to check on an ailing family member. With normal breaks in a trial featuring distributed participation, it is more likely that caregivers will be able to reconcile their responsibilities with the requirements of jury service. Alternatively, phasing (e.g., with virtual jury selection) could make it easier for prospective jurors with caregiving obligations to participate in voir dire. Even if this did not result in these jurors’ empanelment, lowering initial barriers to participation could make it easier for jurors to make necessary arrangements, increasing the likelihood that they will be able to serve if selected.

Caregiving obligations are dynamic and thus pose a unique challenge when it comes to identifying suitable accommodations. The goals for reformers interested in inclusivity should be ambitious but realistic: it will not be possible in all cases to come up with an arrangement that permits people to serve and fulfill their responsibilities to others. As currently constituted, however, the in-person jury trial creates hurdles

that could be, on a case-by-case basis, removed or modified to allow for the substantive involvement of people with routinized caregiving obligations. Once more, the pandemic-era trial offers tools that can help some people to be *on the jury* and *at home* while successfully performing the roles associated with both of those things.

As shown above, the exclusion of prospective jurors with disabilities and caregiving responsibilities stems in large part from the incongruity between the circumstances of these individuals and the rigidity of the contemporary jury trial format. Pandemic-era modifications can remake the trial in subtle but impactful ways that invite a broader public into the legal system. These modifications should not necessarily apply in all cases. At times, a virtual, distributed jury might be more workable and practicable. In others, it may make more sense to have some jurors follow the proceedings in-person while others use a livestream. These decisions could be made on a case-by-case basis. What should be common to all cases, however, is a paradigm-shift with respect to the jury trial. Our aim should not be to whittle away at our diverse communities until we find a group that fits the jury trial as we know it. Rather, we should dare to imagine a jury trial that fits the diversity of our communities.

#### IV. CHALLENGES AND DIRECTIONS FORWARD

In general, Americans have been glad to do away with the changes that COVID-19 imposed on their lives. The jury trial is a different matter, however, and there is some evidence that many would welcome the modifications proposed in this Article. A National Center for State Courts poll, for instance, found that sixty-six percent of respondents were comfortable using video technology<sup>162</sup> — a figure that could increase with enhanced juror orientation efforts. In addition, the majority of respondents preferred a virtual voir dire option, with sixty percent indicating they would use this option if offered.<sup>163</sup> With respect

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<sup>162</sup> NAT'L CTR. FOR STATE CTS., STATE OF THE STATE COURTS: 2021 POLL 11 fig. 7 (2021), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0020/70580/SSC\\_2021\\_Presentation.pdf](https://www.ncsc.org/_data/assets/pdf_file/0020/70580/SSC_2021_Presentation.pdf) [<https://perma.cc/3946-S6VY>].

<sup>163</sup> *Id.* at 12 fig. 8 (this is a figure that exceeds the 55% of respondents who indicated they would be amendable to virtual arbitration if offered.).

to jury empanelment, forty-nine percent of respondents said they would use a video option, if available,<sup>164</sup> and fifty-two percent wished to see remote hearings continue into the future even after the pandemic is over — thirty-eight percent responded that they would not.<sup>165</sup> The polling further indicates that respondents under fifty years old preferred a virtual option with sixty-two percent saying they wish to see this option remain after the pandemic<sup>166</sup> — as opposed to thirty-four percent of respondents over the age of sixty-five.<sup>167</sup>

Some courts agree that some combination of hybrid, in-person, and virtual formats should be used moving forward.<sup>168</sup> Nevertheless, and despite public acceptance, availability, and the considerable experience that courts now have with these techniques, courts might still face challenges in trying to integrate them on a permanent basis. Further, their widespread introduction would not solve all problems associated with the exclusion of jurors with disabilities or caregiving responsibilities. This Part examines the obstacles likely to arise in a scenario in which accommodations inspired by the pandemic court are made broadly available, as well as the issues that would remain during their integration. It begins with constitutional concerns.

#### A. Constitutional Concerns

Depending on how changes are made (and to what), modified jury trials are liable to face constitutional challenges, and particularly in the criminal context.<sup>169</sup> This Section examines the constitutional

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<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 14 fig. 10.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> GINA JURVA, THOMAS REUTERS INST., THE IMPACTS OF THE COVID-19 PANDEMIC ON STATE & LOCAL COURTS STUDY 2021: A LOOK AT REMOTE HEARINGS, LEGAL TECHNOLOGY, CASE BACKLOGS, AND ACCESS TO JUSTICE 10 (2021), <https://www.thomsonreuters.com/en-us/posts/legal/pandemic-impact-courts-report-2021/> [https://perma.cc/2CTD-3NRZ] (“An overwhelming majority of courts (86%) indicated that in the future they plan to use a mixture of in-person and virtual formats for courts hearings, with civil cases topping that list. Only 13% of courts said they would return to pre-pandemic, in-person operations for court hearings.”).

<sup>169</sup> Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the Covid-19 Pandemic and Beyond*, 115 NW. U. L. REV. 1875, 1902 (2021) (arguing

requirements for criminal trials and explains how they might be reconciled with trial modifications that facilitate the more inclusive empanelment of prospective jurors. Technologies and techniques associated with the hybrid criminal jury trial format could, for example, violate a defendant's Sixth Amendment right to be present, to counsel, to confront witnesses, to a public trial, to a fair and impartial jury, and to general due process.<sup>170</sup> Each of these is considered in turn.

The U.S. Supreme Court has held that a criminal defendant has a constitutional right to be present in the courtroom during critical stages of felony cases as an element of due process and the Confrontation Clause.<sup>171</sup> Whether a *defendant's* virtual presence would satisfy this constitutional requirement is an open question.<sup>172</sup> Some courts have also

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that “[t]he most acute constitutional questions arise in the criminal context — and, for this very reason, courts have shown a greater reluctance to advance criminal trials remotely as compared to their civil counterparts.”); *see also* Hamilton, *supra* note 106 (arguing that virtual jury trials in the criminal context “should never be contemplated outside of extreme circumstances, and only then on a case-by-case basis where the inherent constitutional risks are outweighed by a criminal defendant’s well-informed desire for a more expeditious resolution”).

<sup>170</sup> *See* U.S. CONST. amend. V; U.S. CONST. amend. VI; U.S. CONST. amend. XIV, §1; *see also* NAT’L CTR. FOR STATE CTS., CONSTITUTIONAL CONCERNS RELATED TO JURY TRIALS DURING THE COVID-19 PANDEMIC 1 (2021), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0034/57886/Constitutional-Concerns-Related-to-Jury-Trials-During-the-COVID-19-Pandemic.pdf](https://www.ncsc.org/_data/assets/pdf_file/0034/57886/Constitutional-Concerns-Related-to-Jury-Trials-During-the-COVID-19-Pandemic.pdf) [<https://perma.cc/5XN7-LMJA>] [hereinafter CONSTITUTIONAL CONCERNS].

<sup>171</sup> *See* U.S. CONST. amend. V; U.S. CONST. amend. XIV §1; *United States v. Gagnon*, 470 U.S. 522, 526 (1985).

<sup>172</sup> Jenia I. Turner, *Remote Criminal Justice*, 53 TEX. TECH L. REV. 197, 204 (2021); *see* Taylor Maurer, *Videoconferencing, Covid-19, and the Constitution: Will Virtual Trials “Minimize” the Right to Confrontation?*, TEMPLE UNIV. BEASLEY SCH. OF L. & PUB. POL’Y BLOG (Jan. 15, 2021), <https://www2.law.temple.edu/lppp/videoconferencing-covid-19-and-the-constitution-will-virtual-trials-minimize-the-right-to-confrontation/> [<https://perma.cc/JF2N-85NQ>] (“The right to face-to-face confrontation is preferred, but not absolute . . . the right to confrontation must occasionally give way to public policy and the necessities of the case.”); *see, e.g., Vazquez Diaz v. Commonwealth*, 167 N.E.3d 822, 837 (Mass. 2021) (holding that a virtual hearing during the pandemic is not a *per se* violation of a defendant’s right to be present, to confrontation, to a public hearing, or to effective assistance of counsel and instead determined that videoconferencing technology can create a close approximation of the courtroom setting); *State v. Seale*, No. M2019-01913, 2020 WL 4045227, at \*1 (Tenn. Crim. App. July 20, 2020) (use of two-way video testimony for out of state witness in criminal trial would only be allowed if lower court found that the denial of the defendant’s right to confront the witness in person is

found that the use of a videoconferencing platform can impact a juror's assessment of the defendant's credibility and the fairness of the proceedings — thus reinforcing the need for a defendant's physical presence in court.<sup>173</sup>

The Federal Rules of Criminal Procedure require a criminal defendant to be present at: (1) the initial appearance, the initial arraignment, and the plea; (2) every trial stage, including jury empanelment and the return of the verdict; and (3) sentencing.<sup>174</sup> Exceptions to this rule include cases in which a defendant is charged with a misdemeanor, accompanied by the defendant's written consent.<sup>175</sup> Defendants may

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necessary to further an important public interest); *see also* Matthew J. Tokson, *Virtual Confrontation: Is Videoconference Testimony by an Unavailable Witness Constitutional?*, 74 U. CHI. L. REV. 1581, 1583 (2007) (“A defendant's rights under the Confrontation Clause are not violated despite the absence of an in-person confrontation at trial where ‘denial of such confrontation is not necessary to further an important public policy and □ where the reliability of the testimony is otherwise assured.’”).

<sup>173</sup> *See* *People v. Stroud*, 804 N.E.2d 510, 517 (Ill. 2004) (“We believe that defendant's physical presence would have contributed to the fairness of the proceeding.”); *People v. Heller*, 891 N.W.2d 541, 544 (Mich. App. 2016) (claiming that “[a]bundant social science research demonstrates that video conferencing . . . may color a viewer's assessment of a person's credibility, sincerity, and emotional depth.”).

<sup>174</sup> FED. R. CRIM. P. 43(a). Other circumstances excepted by this rule include conferences or hearings on questions of law and proceedings to correct or reduce a sentence. *Id.* 43(b)(3-4).

<sup>175</sup> *Id.* 43(b). This can be done under the Federal Rules of Criminal Procedure if the defendant was either initially present or pleaded guilty or *nolo contendere*: (1) by their voluntary absence after the trial has begun; (2) in a noncapital case, by their voluntary absence at sentencing; and (3) when the defendant has persisted in conduct justifying removal from the courtroom despite a warning from the court. *See* FED. R. CRIM. P. 43(c).

also waive their presence,<sup>176</sup> and there are states that allow videoconferencing even without the defendant's consent.<sup>177</sup>

A defendant's remote participation in sentencing proceedings has raised clearer objections.<sup>178</sup> Further, the one appeals court to address the question of whether a defendant can affirmatively consent to a plea by videoconferencing found that "the plain language of Rule 43 requires all parties to be present" irrespective of a defendant's consent.<sup>179</sup> The question of whether this would apply to proceedings in which a defendant was present in a courtroom while a *juror* participated

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<sup>176</sup> See, e.g., CAL. PENAL CODE § 977 (2023) (Misdemeanor — "If the accused agrees, the initial court appearance, arraignment, and plea may be by video . . . ."; Felony — "If the accused agrees, the initial court appearance, arraignment, and plea may be by video . . . . The court may permit the initial court appearance and arraignment of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audio video communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom."); MINN. R. CRIM. P. 1.05 ("ITV [interactive video teleconference] may be used to conduct the proceedings specified in subdivisions 4 and 5: (1) When no judge is available in the venue county; (2) When the defendant is in custody and is being held in a location other than the venue county; or [when doing so is] (3) In the interests of justice. . . . In all proceedings other than a Rule 5 or Rule 6 hearing, prior to the commencement of the hearing, the defendant, defense attorney, prosecutor, and judge must consent to holding the hearing by ITV.").

<sup>177</sup> See, e.g., ALASKA R. CRIM. P. 38.2 ("The Administrative Director of the Alaska Court System, after consultation with the presiding judge, Public Defender Agency, Attorney General's Office, Department of Public Safety, and Department of Corrections, may approve systems allowing judges to provide for the appearance by a defendant at certain criminal proceedings by way of contemporaneous two-way videoconference equipment in lieu of the physical presence of the defendant in the courtroom. Any approved system must provide for a procedure by which the defendant may confer with the defendant's attorney in private.").

<sup>178</sup> See *United States v. Williams*, 641 F.3d 758, 764-65 (6th Cir. 2011) ("As written, the Rule reflects a firm judgment in favor of physical presence and does not permit the use of video conferencing as a substitute."); *United States v. Torres-Palma*, 290 F.3d 1244, 1248 (10th Cir. 2002) ("[V]ideo conferencing for sentencing is not within the scope of a district court's discretion."); *United States v. Navarro*, 169 F.3d 228, 237 (5th Cir. 1999) ("[T]he term 'present' suggests a physical existence in the same location as the judge.").

<sup>179</sup> See e.g., *United States v. Bethea*, 888 F.3d 864, 867 (7th Cir. 2018).

remotely is less clear.<sup>180</sup> In such a scenario, it would appear that while the physical presence of a defendant may be nonnegotiable, the same is not true of an accommodated juror.

The incorporation of new accommodations might also affect a defendant's access to counsel. The Supreme Court has held that a criminal defendant has a right to consult with her lawyer before and during criminal proceedings, except while the defendant is testifying as a witness.<sup>181</sup> To protect the right to counsel, courts would have to ensure during any hybrid proceeding that defendants and their lawyers had the opportunity to confer privately. This could necessitate the creation of an additional and exclusive digital space for discussion. Videoconferencing platforms, as noted above, have the capacity to make confidential communication possible.<sup>182</sup> A defendant's right to counsel would therefore not be abridged by trial formats that availed themselves of virtual private spaces.

The Confrontation Clause provides defendants with the right to "be confronted with the witnesses against him."<sup>183</sup> Such confrontation is commonly satisfied by a defendant's ability to conduct cross-examination in-person during trial.<sup>184</sup> This right would certainly be implicated in *fully*-remote trials where live testimony is rendered virtually.<sup>185</sup> The Supreme Court has recognized, to this end, that one aspect of confronting witnesses is permitting "the jury that is to decide

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<sup>180</sup> See Turner, *supra* note 172, at 204 (noting that the U.S. Supreme Court has not yet resolved the question of whether virtual presence satisfies the Due Process Clause).

<sup>181</sup> Perry v. Leeke, 488 U.S. 272, 281 (1989) (noting that a defendant "has no constitutional right to consult with his lawyer while he is testifying").

<sup>182</sup> See, e.g., State v. Kolaco, No. 1910010939, 2020 WL 7334176, at \*4 (Del. Super. Ct. Dec. 14, 2020) ("During the hearing, the Court . . . made available a secured room, adjacent to the courtroom, that provided live-feed access to SCI through the same audiovisual medium used in the hearing. The video application permitted defense counsel, through use of its breakout room feature, to leave the courtroom, walk several feet, enter the adjacent room, and then confidentially communicate with Mr. Kolaco.") (as applied during a criminal hearing but not during the trial stage).

<sup>183</sup> U.S. CONST. amend. VI.

<sup>184</sup> See Coy v. Iowa, 487 U.S. 1012, 1017 (1988) ("[T]he Confrontation Clause provides two types of protections for a criminal defendant: the right physically to face those who testify against him, and the right to conduct cross-examination." (internal quotations omitted)).

<sup>185</sup> See NAT'L CTR. FOR STATE CTS., CONSTITUTIONAL CONCERNS, *supra* note 170, at 8.



the defendant's fate to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility."<sup>186</sup> A concern, in this context, is that virtual proceedings can diminish jurors' empathy for defendants and inhibit their ability to observe parties' behavior.<sup>187</sup> It is of course possible that the opposite would be true, as technological accommodations may improve a juror's view — or ability to hear.<sup>188</sup>

Although the U.S. Supreme Court has found that “face-to-face confrontation enhances the accuracy of factfinding,” this constitutional right is “generally satisfied” when defendants are given the chance to examine witnesses.<sup>189</sup> While the Confrontation Clause “reflects a *preference* for face-to-face confrontation at trial,” it can be satisfied in the absence of a face-to-face confrontation “where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured.”<sup>190</sup> Case law in Washington has held that remote testimony by witnesses during the pandemic satisfied this exception, as it was “necessary to further the important public policy reasons of the health and safety of witnesses and the court's continued operations” while ensuring the reliability of witness testimony.<sup>191</sup> Some courts have found that the use of video conference technology to accommodate witness testimony in criminal

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<sup>186</sup> *Maryland v. Craig*, 497 U.S. 836, 846 (1990) (internal quotations omitted).

<sup>187</sup> *Ma*, *supra* note 146 (arguing that the use of “remote-access technology” can adversely impact litigants by “dehumanizing defendants and the role of nonverbal communication.”).

<sup>188</sup> *See id.* (highlighting potential benefits of “the use of phone and computer applications” — including the possibility such technology can enhance the view of witness and juror faces); *see also* *State v. Wade*, 534 P.3d 1221, 1229 (Wash. Ct. App. 2023) (noting the “up-close view of the witness” that a juror can have via remote testimony).

<sup>189</sup> *Craig*, 497 U.S. at 846-47 (internal quotations omitted) (noting that defendants must be “given a full and fair opportunity to probe and expose testimonial infirmities such as forgetfulness, confusion, or evasion through cross-examination . . .”)

<sup>190</sup> *Id.* at 837, 850 (internal quotations omitted).

<sup>191</sup> *Wade*, 534 P.3d at 1228 (noting that necessity “means something more than ‘convenient,’ although something less than ‘absolute physical necessity’” (citing *State v. Sweidan*, 461 P.3d 378, 390 (Wash. Ct. App. 2020), and referencing witnesses' advanced ages, status as unvaccinated against COVID-19, and a physician's note as evidence of necessity)); *see also* *State v. Milko*, 505 P.3d 1251, 1258 (Wash. Ct. App. 2022) (holding that the risk of contracting COVID-19 “was sufficient to establish necessity”).

jury trials does not necessarily violate a defendant's right to confrontation,<sup>192</sup> including cases in which videoconference technology has been used by victims during trial.<sup>193</sup> As Justice Beasley of the Court of Special Appeals of Maryland framed the issue, in ruling that a victim's use of two-way videoconferencing technology did not violate the defendant's right to confrontation: "The defendant sees the witness. Everybody sees everybody in real time, and I am . . . highly confident we can arrange the TV screen, just like I did yesterday in a trial, so the jury and everybody sees everybody. That is not a technical problem in this day and age."<sup>194</sup> The Ninth Circuit went so far as to uphold a conviction by a jury that included a remote participant in deliberations due to possible COVID-19 infection, rejecting the defendant's argument that remote participation would "render a trial unfair and the judgment unreliable."<sup>195</sup> The court said that "no case law or record evidence" would support such a presumption.<sup>196</sup> Defendants might also waive their right to confront witnesses<sup>197</sup> — doing so, for example, to protect another constitutional right, such as the empanelment of an impartial jury.

In sum, trials that allow an individual juror who requires accommodation to participate remotely are unlikely to raise the same

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<sup>192</sup> See, e.g., *Milko*, 505 P.3d at 1258 (here, video testimony of two witnesses in a criminal jury trial due to COVID-19 did not violate Confrontation Clause); see also *State v. Tate*, 969 N.W.2d 378 (Minn. Ct. App. 2022) (holding that a police officer's testimony by way of live, remote, two-way video testimony after his exposure to COVID-19 did not violate the Confrontation Clause); cf. *State v. Mercier*, 479 P.3d 967 (Mont. 2021) (holding that the use of video testimony for an officer testifying in a criminal jury trial violated of the Confrontation Clause); *People v. Lee*, 76 V.I. 240 (Super. Ct. 2022) (denying a motion to allow testimony via video conference in criminal jury trial on the grounds that a victim would be spared the psychological trauma of encountering a defendant in person).

<sup>193</sup> See, e.g., *State v. D.K.*, 507 P.3d 859, 862-63 (Wash. Ct. App. 2022) (here, a victim's remote testimony via two-way video during a criminal jury trial did not violate Confrontation Clause).

<sup>194</sup> *Spinks v. State*, 260 A.3d 726, 730 (Md. Ct. Spec. App. 2021).

<sup>195</sup> *United States v. Knight*, 56 F.4th 1231, 1236 (9th Cir. 2023).

<sup>196</sup> *Id.*

<sup>197</sup> *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 313 n.3 (2009).

constitutional concerns<sup>198</sup> as fully remote trials. And the exclusion of such jurors may violate a defendant's Sixth Amendment Right to an impartial jury. The principle animating this right is that of inclusivity; a venire that is composed of a cross-section the community is more likely to result in a jury that can assess evidence impartially.<sup>199</sup> A partially — if not fully — remote jury may do just this.<sup>200</sup> Indeed, technology has

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<sup>198</sup> Fredric I. Lederer, *The Evolving Technology-Augmented Courtroom Before, During, and After the Pandemic*, 23 VAND. J. ENT. & TECH. L. 301, 320 (2021) (“Because criminal defendants have a Sixth Amendment right to confrontation, a virtual criminal trial defendant would likely allege that the inability to be physically in the same room with the witness and to subject the witness to in-person cross-examination violates the confrontation clause.”); *see generally* See Brandon Marc Draper, *And Justice for None: How COVID-19 Is Crippling the Criminal Jury Right*, 62 B.C. L. REV. E-SUPPLEMENT 1, 6-9 (2021) (discussing constitutional concerns associated with fully-remote criminal proceedings); *see also* Brandon Marc Draper, *Revenge of the Sixth: The Constitutional Reckoning of Pandemic Justice*, 105 MARQ. L. REV. 205, 251-59 (2021) (discussing potential Sixth Amendment impediments to conducting fully or partially remote criminal jury trials in a post-pandemic context).

<sup>199</sup> *See Taylor v. Louisiana*, 419 U.S. 522, 528 (1975) (“[T]he selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial.”).

<sup>200</sup> *See* KING CNTY. SUPERIOR CT., STATE OF WASH., THE RESPONSE OF THE KING COUNTY SUPERIOR COURT TO THE COVID-19 PANDEMIC: LESSONS LEARNED AND RECOMMENDATIONS 60 (2022), [https://kingcounty.gov/en/legacy/courts/superior-court/get-help/-/media/courts/superior-court/docs/KCSC-Covid19-Response-Report\\_SJI-21-P-002.ashx](https://kingcounty.gov/en/legacy/courts/superior-court/get-help/-/media/courts/superior-court/docs/KCSC-Covid19-Response-Report_SJI-21-P-002.ashx) [<https://perma.cc/X5WP-KTA7>] (“Judicial officers report that the Washington State Batson Rule GR 37 is much easier to administer because the jurors are all questioned and can be seen much closer and more easily on the video screen, resulting in a better record.”); *see, e.g.*, WORKGROUP ON POST-PANDEMIC INITIATIVES, SUP. CT. OF CAL., INTERIM REPORT: REMOTE ACCESS TO COURTS 3 (2021), <https://newsroom.courts.ca.gov/sites/default/files/newsroom/2021-08/P3%20Workgroup%20Remote%20Access%20Interim%20Report%2008162021.pdf> [<https://perma.cc/A48E-VDXM>] (acknowledging the potential for the continuation of remote proceedings and accommodations to expand public access to the courts including in criminal matters with the consent of the defendant); NAT'L CTR. FOR STATE CTS., REMOTE PROCEEDING TOOLKIT 25, 39 (2024), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0027/82377/Remote-Proceeding-Toolkit-Final.pdf](https://www.ncsc.org/_data/assets/pdf_file/0027/82377/Remote-Proceeding-Toolkit-Final.pdf) [<https://perma.cc/3HCN-ZDAU>] (citing efforts in Minnesota, Texas, Washington D.C., New Mexico, Maryland, and Hawaii to facilitate access to technology for remote proceedings as well as initiatives in Alaska and Washington to facilitate remote jury selection proceedings); *see also* *State v. Wade*, 534 P.3d 1221, 1231 (Wash. Ct. App. 2023) (in response to a defendant's fair cross section challenge to a remotely selected and empaneled jury, the appellate court cited the trial court's statement that “[t]he use of Zoom technology has

*already* been introduced into the jury selection process to excuse individuals who attorneys conclude — rightly or wrongly — *cannot* be impartial.<sup>201</sup> Prospective jurors with a range of disabilities previously believed to be irreconcilable with effective jury service may find themselves able to have a voice in the legal system.

The right to an impartial jury also requires that parties conduct a “thorough inquiry” of prospective jurors during voir dire.<sup>202</sup> This is relevant for the purposes of hybrid jury selection proceedings, as such accommodations for people with disabilities could impact parties’ examinations of potential jurors.<sup>203</sup> When a defendant argued that his attorneys would be unable to judge masked jurors’ credibility during voir dire, however, a judge countered that while seeing jurors’ faces may be tactically advantageous, it is not a constitutional requirement.<sup>204</sup>

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already increased juror response rather than dampening it. No credible evidence exists that its use has increased disproportionality in this jury”).

<sup>201</sup> See, e.g., Kenneth Artz, *Voir Dire by Google*, TEX. LAW. (Aug. 20, 2021, 2:58 PM), <https://www.law.com/texaslawyer/2021/08/20/voir-dire-by-google/>, [<https://perma.cc/4JDR-KMYS>] (“I affectionately tell people that voir dire is becoming voir Google because of the level of online research we do now”); Michael H. Payne, *Tomorrow’s Artificially Intelligent Lawyer Getting Closer Each Day*, LEGAL INTELLIGENCER (May 15, 2019, 1:02 PM), <https://www.law.com/thelegalintelligencer/2019/05/15/tomorrows-artificially-intelligent-lawyer-getting-closer-each-day/> [<https://perma.cc/Q5T4-9B2T>] (“Analytics . . . are now found in programs developed for the purpose of gaining more data about prospective jurors, such as detailed social media profiles, that give attorneys more of a sense of how particular jurors may act if selected.”); Zach Schlein, *Florida Litigator Launches Digital Jury-Selection Software and Subscription Service*, LEGALTECH NEWS (Nov. 4, 2019, 1:00 AM), <https://www.law.com/legaltechnews/2019/11/04/coral-gables-litigator-launches-digital-jury-selection-software-and-subscription-service-397-27134/> [<https://perma.cc/J69N-9M2S>] (describing “jury selection software” that draws on “biographical information, public social media posts, filled-out questionnaires and other input” to “rank and rate prospective jurors”).

<sup>202</sup> *Ristaino v. Ross*, 424 U.S. 589, 598 (1976).

<sup>203</sup> NAT’L CTR. FOR STATE CTS., CONSTITUTIONAL CONCERNS, *supra* note 170, at 7 (“In totally remote and hybrid jury selections, the ability of the parties and the court to observe the demeanor of prospective jurors may be compromised. During remote voir dire, the nuances of a juror’s body language are cramped by the confines of a video screen. In hybrid jury selections conducted in socially distanced courthouse settings, evaluation of a juror’s demeanor is compromised by face coverings and spatial distance.”).

<sup>204</sup> *United States v. Trimarco*, No. 17-CR-583, 2020 WL 5211051, at \*5 (E.D.N.Y. Sept. 1, 2020).

Following this logic, a reviewing court might find that, in fully-remote or hybrid voir dire proceedings, the constitution does not require that attorneys be able to view the entire bodies of prospective jurors to assess their credibility.

From the foregoing discussion, it is possible to draw some tentative conclusions about the constitutionality of this Article's proposed accommodations. Permitting individual jurors to make use of technology deployed in hybrid, pandemic-era trials must reckon with Sixth Amendment concerns.<sup>205</sup> Reliable videoconferencing technology that facilitates observation of witnesses' faces and upper bodies, upon a finding of necessity to further an important public policy, may satisfy the Sixth Amendment requirement that jurors assess a witness's demeanor.<sup>206</sup> In fact, remote participants in a hybrid trial may actually be able to view facial characteristics of witnesses and jurors *better* on computer screens.<sup>207</sup> Likewise, the right to a public trial can likely be satisfied by livestreaming trial proceedings. This would likely increase the public's access to trials.<sup>208</sup> Moreover, to the extent that the right to an impartial jury requires a representative venire, a trial that permits remote or hybrid voir dire may do a better job avoiding the systematic exclusion of underrepresented groups.<sup>209</sup>

### B. Practical Concerns

The incorporation of new accommodations into court processes would incur costs.<sup>210</sup> A calculation of such costs, however, would have to

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<sup>205</sup> See U.S. CONST. amend. V; U.S. CONST. amend. VI; U.S. CONST. amend. XIV; see also Turner, *supra* note 172, at 203-213; NAT'L CTR. FOR STATE CTS., CONSTITUTIONAL CONCERNS, *supra* note 170, at 1.

<sup>206</sup> See Maryland v. Craig, 497 U.S. 836, 846, 857 (1990) (holding that so long as a trial court makes a case-specific finding of necessity, the Confrontation Clause does not prohibit a State from using a one-way closed circuit television procedure for the testimony of a child witness in a child abuse case).

<sup>207</sup> Ma, *supra* note 146.

<sup>208</sup> See Turner, *supra* note 172, at 210; NAT'L CTR. FOR STATE CTS., CONSTITUTIONAL CONCERNS, *supra* note 170, at 5.

<sup>209</sup> Duren v. Missouri, 439 U.S. 357, 357 (1979).

<sup>210</sup> See, for example, Complaint, Koplitz v. Superior Ct., No. 14-cv-01435 (D.D.C. Aug. 22, 2014), [https://www.ncsc-jurystudies.org/\\_data/assets/pdf\\_file/0013/6151/koplitz-complaint-3.pdf](https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0013/6151/koplitz-complaint-3.pdf) [<https://perma.cc/LY6N-ZJ36>], concerning a deaf prospective juror's

include two critical considerations: first, the majority of the adult American population already possesses access to the tools and infrastructure necessary to participate in a more inclusive jury trial.<sup>211</sup> For this reason, the expansion of equipment provision would not require universal coverage. Further, accommodations could be phased in, making the growth of inclusivity a project, rather than a short-term reform.

Second, any material calculus pertaining to future accommodations must weigh seriously the social effects of our continued failure to provide access to jury service for many Americans with disabilities and caregiving responsibilities. Though it is cheaper to maintain an exclusionary status quo, the symbolic costs of doing so are immense and no less significant. The democratic character and legitimacy of the legal process hinge on the public's involvement in the jury system.<sup>212</sup>

Beyond costs, some might worry about the unintended or unwelcome effects of technologized jury trials. For example, it is not unthinkable that videoconferencing could diminish the solemnity associated with courtrooms or make it easier to dehumanize defendants who are not physically present in the same room.<sup>213</sup> There is also the enhanced risk of technical issues, which could interfere with a juror's ability to

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transfer from grand jury service to petit jury service due to the perceived additional expense of providing an ASL interpreter over a longer time frame. The plaintiff sued the court under Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-65, among other laws.

<sup>211</sup> See MICHAEL MARTIN, U.S. CENSUS BUREAU, COMPUTER AND INTERNET USE IN THE UNITED STATES: 2018, at 2 (2021) <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acs-49.pdf> [<https://perma.cc/6J5W-XL8S>] (“Among all households in 2018, 92[%] had at least one type of computer and 85[%] had a broadband internet subscription.”).

<sup>212</sup> See *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975) (“Community participation in the administration of the criminal law, moreover, is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system.”); Offit, *supra* note 14, at 123-126 (discussing the impact of representative juries on federal prosecutors' enforcement of the law: “The potential that imagined jurors have to serve as an ethical resource, a means of speaking about extralegal justice, and an impetus for more reflexive law enforcement work is ultimately contingent on the interventions of actual laypeople in the legal system”).

<sup>213</sup> Ma, *supra* note 146.

participate and hear witness testimony.<sup>214</sup> Moreover, by depriving jurors of an in-person view of body language, fully-remote or hybrid trials might foster new approaches to assessing the credibility of defendants and witnesses — for better or worse.<sup>215</sup>

While court systems used technology in innovative ways in response to the pandemic,<sup>216</sup> remote proceedings in other contexts — including bail and immigration hearings — had already become established and faced scrutiny.<sup>217</sup> And although certain difficulties in these settings are

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<sup>214</sup> *Id.*

<sup>215</sup> See Vincent Denault et al., *The Analysis of Nonverbal Communication: The Dangers of Pseudoscience in Security and Justice Contexts*, 30 ANUARIO DE PSICOLOGÍA JURÍDICA, 1, 1-12 (2020) (Spain) (discussing and dispelling common myths related to nonverbal signals as indicators of credibility); see also GOV. ACCOUNTABILITY OFF., GAO-17-438, IMMIGRATION COURTS: ACTIONS NEEDED TO REDUCE CASE BACKLOG AND ADDRESS LONG-STANDING MANAGEMENT AND OPERATIONAL CHALLENGES 55 (2017) (describing immigration judges' perceptions, when assessing asylum applications, that "poor audio quality" during remote hearings and difficulty "identify[ing] a respondent's cognitive disability" by video adversely impacted credibility assessments as compared to in-person hearings); Susan A. Bandes & Neal Feigenson, *Empathy and Remote Legal Proceedings*, 51 SW. L. REV. 20, 20 (2021) (in an analysis of the "empathy deficit" involved in remote proceedings, authors caution that "there are ample grounds for concern that remote proceedings may further disadvantage litigants who are already unequally burdened by empathy deficits based on race, social class, gender, ethnicity, or other factors that may differentiate them from decision-makers"); Sara Landström, Pär Anders Granhag & Maria Hartwig, *Children's Live and Videotaped Testimonies: How Presentation Mode Affects Observers' Perception, Assessment and Memory*, 12 LEGAL & CRIM. PSYCH. 333, 335 (2007) ("Therefore, it can be argued that live testimonies, due to face-to-face immediacy, are perceived as more vivid than, for example, video-based testimonies, and in-turn are perceived more favourably, considered more credible and are more memorable."); cf. Julia Simon-Kerr, *Unmasking Demeanor*, 88 GEO. WASH. L. REV. ARGUENDO 158, 169 (2020) (discussing the limitations of conventional approaches to *in-court* assessments of demeanor).

<sup>216</sup> See, e.g., ALICIA BANNON & JANNA ADELSTEIN, THE IMPACT OF VIDEO PROCEEDINGS ON FAIRNESS AND ACCESS TO JUSTICE IN COURTS 2 (2020), <https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court> [<https://perma.cc/G55B-KRSQ>]; see also Nate Raymond, *Texas Tries a Pandemic First: A Jury Trial by Zoom*, REUTERS (May 18, 2020, 11:14 AM PDT), <https://www.reuters.com/article/us-health-coronavirus-courts-texas/texas-tries-a-pandemic-first-a-jury-trial-by-zoom-idUSKBN22U1FE> [<https://perma.cc/BV55-VYRT>].

<sup>217</sup> See, e.g., Shari Seidman Diamond, Locke E. Bowman, Manyee Wong & Matthew M. Patton, *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. CRIM. L. & CRIMINOLOGY 869, 870 (2010) (in a study of bail hearings in Cook

mitigated by technological improvements,<sup>218</sup> others, including disparities in access to the internet, reflect broader societal trends.<sup>219</sup> Some studies of remote proceedings have also highlighted their negative impacts on litigants. For example, in a study comparing remote and in-person immigration hearings, litigants in the latter group were more likely to apply for relief, seek representation, and to apply for voluntary departure.<sup>220</sup> Another study of bail hearings in Cook County, Illinois, showed that following the implementation of remote procedures, bond amounts increased substantially.<sup>221</sup>

Though these concerns must be taken seriously, they do not preclude adapting trials on a case by case basis to better accommodate prospective jurors who are routinely left out. At least one court has observed explicitly that its remote proceedings in no way lacked

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County, the authors found “a sharp increase in the average amount of bail set in cases subject to the CCTP [closed circuit television procedure], but no change in cases that continued to have live hearings”); Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 NW. U. L. REV. 933, 933 (2015) (finding that “televideo litigants were more likely than detained in-person litigants to be deported” and were “less likely than other detained litigants to take advantage of procedures that could help them”).

<sup>218</sup> For example, Zoom is more flexible in creating private spaces for participants. Compare Eric T. Bellone, *Private Attorney-Client Communications and the Effect of Videoconferencing in the Courtroom*, 8 J. INT'L COM. L. & TECH. 24, 44 (2013) (“Of the 111 courts used in this research, 41 courts, or 36.9%, indicated there is no provision for private communications between attorney and client when attorney is in the courtroom and the client is at a remote location.”), with Angela Morris, *Juror Walks Off to Take Phone Call as Texas Tests First Jury Trial via Zoom*, TEX. LAW. (May 18, 2020, 12:54 PM), <https://www.law.com/texaslawyer/2020/05/18/juror-walks-off-to-take-phone-call-as-texas-tests-first-jury-trial-via-zoom/> [<https://perma.cc/9P2S-RBQU>] (describing a judge’s use of a “separate breakout room,” using Zoom, to facilitate communication between the judge and lawyers).

<sup>219</sup> See, e.g., PEW RSCH. CTR., INTERNET/BROADBAND FACT SHEET (2021), <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?tabId=tab-3109350c-8dba-4b7f-ad52-a3e976ab8c8f> [<https://perma.cc/3THH-KHKV>] (“As is true of internet adoption more broadly, home broadband adoption varies across demographic groups. Racial minorities and those with lower levels of education and income are less likely to have broadband service at home.”).

<sup>220</sup> Eagly, *supra* note 217, at 938, 961 (“Televideo must therefore be understood as having an indirect relationship to overall substantive case outcomes — one linked to the disengagement of respondents who are separated from the traditional courtroom setting.”).

<sup>221</sup> Diamond et al., *supra* note 217, at 897-98.



solemnity: all participants, including jurors, conducted themselves with the same decorum and formality they would have had in a physical courtroom.<sup>222</sup> The same court found that remote jurors seemed more aware that they could easily be observed — and thus remained focused.<sup>223</sup> Another court likewise found that it could monitor remote jurors' attentiveness.<sup>224</sup>

And jurors did seem to be engaged.<sup>225</sup> In fact, one federal district saw a higher response rate to jury summonses in connection with remote trials than it had seen historically, and another found that “a remote proceeding will actually expand the number and categories of jurors who are willing and able to serve.”<sup>226</sup> Further, one federal district court found that jurors are actually “more likely to stay engaged during remote proceedings than they would during in-person trials” and that “[a]ll participants, including the jurors, in . . . remote trials . . . have comported themselves in the same manner as they would were they in a physical courtroom.”<sup>227</sup> A federal district court in the Eastern District of Michigan found that the visual and audio quality of videoconferencing software used in its remote trial was, “in many ways, superior to the quality of technology used in a courtroom.”<sup>228</sup>

The expense of developing a more inclusive approach to the jury trial can also be justified by, among other things, the effects of this approach on engagement. Still, the advocates of change must contend with at least

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<sup>222</sup> *Bao Xuyen Le v. Rev. Dr. Martin Luther King, Jr. County*, 524 F. Supp. 3d 1113, 1119 (W.D. Wash. 2021).

<sup>223</sup> *Id.* at 1117-19.

<sup>224</sup> *Kieffaber v. Ethicon, Inc.*, No. 20-1177, 2021 WL 425822, at \*3-4 (D. Kan. Feb. 8, 2021).

<sup>225</sup> See Huo Jingnan, *To Try or Not to Try — Remotely. As Jury Trials Move Online, Courts See Pros and Cons*, NPR (Mar. 18, 2022, 5:45 AM EST), <https://www.npr.org/2022/03/18/1086711379/as-jury-trials-move-online-courts-see-pros-and-cons> [<https://perma.cc/2NUT-CK2X>] (“[Remote juries] deliberate longer, [and] the deliberations are more thorough. The jurors tend to be more satisfied with their deliberations, that they really feel like they . . . have done a good job.”).

<sup>226</sup> *Bao Xuyen Le*, 524 F. Supp. 3d at 1118; *Kieffaber*, 2021 WL 425822, at \*4.

<sup>227</sup> *Bao Xuyen Le*, 524 F. Supp. 3d at 1118-19.

<sup>228</sup> *Gould Elecs. Inc. v. Livingston Cnty. Rd. Comm'n*, 470 F. Supp. 3d 735, 743-44 (2020) (“Further, the visual and audio quality of the Court’s videoconferencing software that would be used for a remote trial is, in many ways, superior to the quality of technology used in a courtroom.”).

one other critical issue: the uneven distribution of computer and high-speed internet access in the United States.<sup>229</sup> Research on the so-called “digital divide” reveals lingering inequalities with respect to computer literacy.<sup>230</sup> Black and Latinx citizens, as well as Americans who are poor, live in rural areas, are older, or less educated are less likely to have high levels of technical literacy.<sup>231</sup> While the digital divide would have no bearing on the use of non-computer accommodations, it would have the potential to greatly undermine the efficacy of the reforms proposed in this article. After all, the court does not become more inclusive if accommodating one group creates a new structural impediment to the participation of another.

A further issue is uneven access to adequate devices and connectivity. Among its lessons, the pandemic trial has shown that the availability of functional broadband internet is *the* precondition for remote jury trials.<sup>232</sup> Over twenty-one million Americans do not have internet access

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<sup>229</sup> See PEW RSCH. CTR., *supra* note 219 (In 2021, 57% of families earning less than \$30,000 annually reported subscribing to home broadband, as compared to 92% of families earning over \$75,000 annually).

<sup>230</sup> SAIDA MAMEDOVA & EMILY PAWLOWSKI, NAT’L CTR. FOR EDUC. STAT., U.S. DEP’T OF EDUC., NCES 2018-161, A DESCRIPTION OF U.S. ADULTS WHO ARE NOT DIGITALLY LITERATE 5 (2018), <https://nces.ed.gov/pubs2018/2018161.pdf> [<https://perma.cc/239F-BQGE>] (“Adults who are not digitally literate are, on average, less educated, older, and more likely to be Black, Hispanic, or foreign born, compared to digitally literate adults. Compared to digitally literate adults, adults who are not digitally literate have a lower rate of labor force participation and tend to work in lower skilled jobs.”).

<sup>231</sup> See, e.g., *id.* at 1, 8 (“A report from the Council of Economic Advisers (2015) notes that although the United States is a world leader of advanced Internet services and technology, the benefits of these technologies do not reach all Americans and a “digital divide” remains, particularly among older, less educated, and less affluent populations, as well as in rural parts of the country.” Additionally, “the percentage of Black adults who are not digitally literate is about twice the percentage of White adults (22 versus 11 percent) (figure 6), and the percentage of Hispanic adults who are not digitally literate is about three times the percentage of White adults (35 versus 11 percent). Nonetheless, White adults make up about half (46 percent) of adults who are not digitally literate (figure 7).”).

<sup>232</sup> See Paula Hinton & Tom Melsheimer, *The Remote Jury Trial Is a Bad Idea*, LAW360 (June 9, 2020, 5:33 PM EDT), <https://www.law360.com/articles/1279805/> [<https://perma.cc/NU2R-6MFS>].

including twenty-seven percent of those who live in rural areas.<sup>233</sup> Even in large metropolitan areas, such as Dallas County, as many as one in three families lack internet access at home.<sup>234</sup> Those without internet access are also more likely to be Black and Latinx.<sup>235</sup>

Beyond the equipment provision described above, there are nonetheless ways to combat persistent technological inequalities in American society. One potential solution for jurors was offered by Judge Emily Miskel as she presided over the first remote jury selection proceeding in a civil case.<sup>236</sup> Miskel was among the proponents of using public areas, such as public libraries or cubicles within the courthouse, where those without internet access could participate in jury selection.<sup>237</sup> Further, computer illiteracy is not an insurmountable problem, if only because courts have ample experience with respect to providing instructions to jurors. And thankfully, the range of operations needed to use a videoconferencing platform is limited. A brief tutorial, given either by a court-affiliated actor or offered as a video or document,

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<sup>233</sup> Joyce Winslow, *America's Digital Divide*, PEW TRUST MAG. (July 26, 2019), <https://www.pewtrusts.org/en/trust/archive/summer-2019/americas-digital-divide> [<https://perma.cc/MKB8-UZ6F>] (“The Federal Communications Commission estimates that more than 21 million people in the United States don’t have . . . [an internet] connection. That includes nearly 3 in 10 people — 27 percent — who live in such rural places . . .”).

<sup>234</sup> Corbett Smith, *A Third of Dallas Families Are Without Home Internet, Making Online Learning All the More Difficult*, DALL. MORNING NEWS (May 8, 2020, 12:45 PM CDT), <https://www.dallasnews.com/news/public-health/2020/05/08/a-third-of-dallas-families-are-without-home-internet-making-online-learning-all-the-more-difficult/> [<https://perma.cc/HT9H-QRV2>].

<sup>235</sup> Sara Atske & Andrew Perrin, *Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in the U.S.*, PEW RSCH. CTR. (July 16, 2021), <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/> [<https://perma.cc/WP8T-7V7G>] (“Eight-in-ten White adults report owning a desktop or laptop computer, compared with 69% of Black adults and 67% of Hispanic adults. Eight-in-ten White adults also report having a broadband connection at home, while smaller shares of Black and Hispanic adults say the same — 71% and 65%, respectively. These gaps have been present across several Center surveys.”).

<sup>236</sup> Raymond, *supra* note 216.

<sup>237</sup> Nat’l Ctr. for State Cts., *Webinar: How State Courts Are Using Innovative Technologies and Responsible Health and Safety Practices to Resume Jury Trials*, VIMEO (May 22, 2020), <https://vimeo.com/422780495> [<https://perma.cc/ATA9-EGJ2>].

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would likely in most cases be sufficient to orient jurors. One should note further that this should not be viewed as a burden by the court. Civic engagement — jury service, voting, etc. — are sites of learning. Teaching people to use videoconferencing technology as part of jury service may create other opportunities for productive participation in an increasingly digitized public life. Instead of lamenting the endurance of a digital divide in the United States, we might ask how we can use our institutions to help overcome it.

### C. Discussion

Those with physical disabilities, those who are pregnant or breastfeeding, and those who give necessary care to dependents are often excluded from jury service.<sup>238</sup> The option to serve remotely using videoconferencing technology and other recent innovations would make jury pools more representative and enhance the participation of those who already serve but find it burdensome due to personal challenges for which there are currently not adequate accommodations.<sup>239</sup>

Once implemented or retained from the COVID era, the juror- and case-specific accommodations proposed in this Article could enhance the inclusivity of the American jury trial — and yet, the disproportionate exclusion of people with disabilities would, even if diminished, likely persist. It is thus necessary to be realistic about the limitations of the proposed changes. These fall into two main categories. First, there is the problem of disabilities and caregiving obligations that require accommodations that go beyond the technological interventions described above. For instance, disabilities that require the direct aid of

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<sup>238</sup> See e.g., Abramson, *Jury Selection in the Weeds*, *supra* note 9, at 3-4 (noting that unrepresentative juries routinely result despite the absence of discriminatory intent on the part of any judge or lawyer). See generally Anna Offit, *Benevolent Exclusion*, 96 WASH. L. REV. 613 (2021) (discussing the extent to which cause challenges are granted for the perceived benefit of prospective jurors with caregiving responsibilities).

<sup>239</sup> See, e.g., ALA. CODE § 12-16-63(b)(2) (2023) (a prospective juror may be excused when that person is a primary caregiver and participation on a jury would be a hardship); ARIZ. REV. STAT. ANN. § 21-202 (2023) (a prospective juror may be excused if that juror has a mental or physical condition that would impede participation); see also Jingnan, *supra* note 225 (supporting the proposition that pandemic-era technology made jury pools more diverse according to judges who were interviewed in King County).

an additional person will not be overcome by using the techniques of the hybrid or fully-remote trial. Further, as the proposed changes alter the spatial but not temporal dimension of the trial, issues are likely to remain with respect to synchronizing trial timelines with the lives of jurors who, for whatever reason, conform to an unpredictable or inflexible schedule (of treatment, therapy, care, etc.). In short, though these reforms would reduce the number of obstacles faced by prospective jurors, they would not eliminate them entirely.

Second, there is the problem of technological change. Though equipment provision would help somewhat to overcome the digital divide, new devices and applications will be introduced over time, and with them new inequalities of both access and expertise. For this reason, courts would likely find it difficult to achieve lasting inclusivity without regularly revisiting the logistics of participation for a diverse community. This should not however discourage experimentation: if anything, it is critical for courts to understand inclusivity as a dynamic and ongoing project wherein evolving publics and technologies are met by an evolving jury trial. It is only through becoming flexible and reflexive that the contemporary court can hope to surmount current and future obstacles to the formation of truly representative juries.

Though a mix of constitutional and logistical questions perhaps stifled courtroom innovation before the pandemic, this landscape has shifted. The challenges posed by COVID-19 have unleashed creativity and adaptation, motivated by a commitment to make the jury trial work in the face of significant risk — and it has.

#### CONCLUSION

Half a decade after the first cases of COVID-19 were documented in the U.S., many of the exceptional societal adjustments made to slow its spread have been discontinued. Although in most cases we should welcome a return to normalcy, there are certain innovations that have clearly improved pre-pandemic procedures. Remote trial formats offered no shortage of such innovations. At a time of significant risk, they not only made jury trials possible, but showed that extant technology could be used to enhance the inclusivity of the American jury.

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This is a critical lesson. Despite a longstanding formal commitment to protecting and including people with disabilities and individuals with significant caregiving obligations, the jury trial has proven remarkably resistant to procedural changes — with few exceptions.<sup>240</sup> Those accommodations that have been made are, for the most part, limited and hinge on the discretion of judges. By integrating pandemic-tested accommodations into the jury trial on a more permanent basis, we can expand the pool of people who can serve and reduce the burden associated with serving. In this way, we can work toward closing the distance, as we have with *Batson* and other anti-discrimination efforts, between the jury system as it exists and the ideal of a legal system where justice is made for a diverse public by a diverse public.

Not all pandemic-era innovations will work. For constitutional or practical reasons, it is likely that the potential for making modifications beyond the jury — say, with defendants and witnesses — will be limited. This has little bearing on the proposals described above, which focus on one right — that to a jury drawn from the community.

Accommodations offered to individual jurors on a case-by-case basis will not eliminate all impediments to participation. Though long-term use of the techniques and technologies of hybrid and fully-remote trials will make juries more inclusive, it is likely that in the absence of increased juror compensation, entrenched socioeconomic inequality will continue to make serving impossible for many people. Further, insofar as personal experiences, political views, or religious convictions are permitted to justify the disqualification of prospective jurors who otherwise affirm their commitment and capacity to serve, American juries will not reflect the multifaceted populations from which they are drawn. The struggle for the jury is thus a complex one in which we must seize those rare opportunities for meaningful progress. The COVID-19 pandemic has created one such opportunity, and its innovations, though meant to mitigate the exceptional risks of a particular moment, have been shown to improve the jury trial in ways that are worth making permanent.

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<sup>240</sup> See, e.g., H.B. 2413, 55th Leg., Reg. Sess. (Ariz. 2022), <https://www.azleg.gov/legtext/55leg/2R/bills/HB2413P.pdf> [<https://perma.cc/V2F4-48FF>].

APPENDIX: JUROR DISABILITY STATE SURVEY

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Alabama	Qualification: must be capable "by reason of physical and mental ability to render satisfactory jury service"; "not afflicted with any permanent disease or physical weakness whereby the juror is unfit to discharge the duties of juror" <sup>1</sup>	Excuse: "only upon a showing of undue or extreme physical . . . hardship, [or] a mental or physical condition that incapacitates the person" <sup>2</sup>	Excuse: "for a period of up to 24 months, at the conclusion of which the person may be directed to reappear for jury service in accordance with the court's direction." <sup>3</sup>		Condition: abandoning a person under his personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation <sup>4</sup> Condition: physical hardship that would result in illness or disease <sup>5</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Alabama continued					Condition: inability to hear <sup>6</sup> Condition: medication that caused juror to fall asleep <sup>7</sup> Condition: unable to stand for long periods of time; “The testimony of the two potential jurors was properly accepted as proof of their disqualification.” <sup>8</sup>
Alaska	Excusal for failure to meet statutory qualifications: if “person is not of	Temporary excusals for Hardship: if it is “shown that the person’s health, the	Temporary excusal: Either a short-term excusal during the term of service or a	Condition: “loss of hearing or sight in any degree”; court shall provide “an	



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Alaska continued	<p>sound mind or in possession of the person's natural faculties, the person will be excused only if the person has a court-appointed guardian or if a licensed physician, nurse practitioner, or physician's assistant verifies in writing that the person is unable to serve as a juror for medical reasons.<sup>79</sup></p>	<p>health or proper care of the person's family, a physical or mental disability, or other substantial hardship<sup>78</sup>            Permanent excusal: over age 70 or "permanently unable to serve as juror for medical reasons, including physical or mental disability, if verified in writing by a licensed physician, psychologist, nurse practitioner, or physician's</p>	<p>long-term excusal for one year from the first day of the term of service for which the person was summoned, depending on the length of the hardship<sup>3</sup>            Excusal for failure to meet statutory qualifications: for one year from the first day of the term of service for which the person was summoned<sup>14</sup></p>	<p>interpreter or reader when necessary<sup>75</sup>            Condition: "disability that substantially impairs or interferes with the person's mobility"<sup>76</sup></p>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Alaska continued		<p>assistant.”<sup>11</sup>  Exemption or excusal if “the person’s health, the health or proper care of the person’s family, a permanent physical or mental disability, or other substantial hardship expected to last more than two years makes it necessary for the person to be excused”<sup>12</sup></p>			
Arizona		<p>Excusal if prospective juror “juror has a mental or physical</p>		<p>No error in striking a juror who has “a hard time hearing”<sup>19</sup></p>	<p>Undue or extreme physical hardship is limited to</p>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Arizona continued		condition that causes the juror to be incapable of performing jury service"; requires medical statement from a physician, physician assistant, or registered nurse practitioner or sworn statement from a professional caregiver <sup>17</sup> Excusal for undue or extreme physical hardship to the prospective juror or a person under the			circumstances in which a person would "be required to abandon a person under the potential juror's care or supervision due to the impossibility of obtaining an appropriate substitute caregiver" or would "suffer physical hardship that would result in illness or disease"; requires documentation supporting the request to be excused,

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Arizona continued		prospective juror's care or supervision <sup>18</sup>			like income tax returns, payroll records, or medical statements <sup>20</sup>
Arkansas	Disqualified if unable "by reason of a physical or mental disability to render satisfactory jury service" <sup>21</sup>	Excusal "when the state of his health or that of his family reasonably requires his absence, or when, for any reason, his own interests or those of the public will, in the opinion of the court, be materially injured by his attendance" <sup>22</sup>	"for such a period as the court deems necessary or may have his service deferred to another specified term of court" <sup>23</sup>	Condition: loss of hearing or sight in any degree <sup>24</sup>	
California	Competency: "no person shall be	Excusal "from jury service only for undue	Deferral of jury service is preferred to	Condition: loss of sight or hearing in	Condition: "care provided to sick,

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
California continued	deemed incompetent solely because of the loss of sight or hearing in any degree or other disability which impedes the person's ability to communicate or which impairs or interferes with the person's mobility <sup>25</sup>	hardship, upon themselves or upon the public, as defined by the Judicial Council <sup>26</sup> Deferral by request for up to one year for a mother who is breastfeeding <sup>27</sup> Permanent medical excusal from jury service available with supporting documentation from health care provider and approval from jury commissioner <sup>28</sup> Excusal for undue	excusing a prospective juror for temporary or marginal hardship. <sup>31</sup>	any degree <sup>32</sup> Condition: disability which "impedes the person's ability to communicate or which impairs or interferes with the person's mobility" <sup>33</sup> Condition: any disability that still allows a juror to perform juror service, "with or without disability-related accommodations, including auxiliary aids or services" <sup>34</sup> Condition: "hearing	disabled, or infirm person"; prospective juror may be required to furnish verification <sup>36</sup> Condition: "medical concerns not tied to an appointment" <sup>37</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
California continued		<p>hardship if “prospective juror has a physical or mental disability or impairment, not affecting that person’s competence to act as a juror, that would expose the potential juror to undue risk of mental or physical harm”<sup>29</sup></p> <p>Excusal for undue hardship if prospective juror has obligation “to provide actual and necessary care to another,</p>		<p>problem”, court allowed juror to sit closer to the witness box<sup>35</sup></p>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
California continued		including sick, aged, or infirm dependents, or a child who requires the prospective juror's personal care and attention, and no comparable substitute care is either available or practical without imposing an undue economic hardship on the prospective juror or person cared for" <sup>30</sup>			
Colorado	Disqualified if unable "by reason of physical or mental disability to	Excusal for "undue or extreme physical hardship to him or	Disqualification: Any person claiming disqualification for	Condition: body cramps with no supporting medical	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Colorado continued	<p>render satisfactory jury service"; guideline is inability to perform a sedentary job requiring close attention for 3 days, 6 hours per day, with short breaks)<sup>38</sup></p> <p>Disqualified if potential juror has "[s]ole responsibility for daily care of an individual with a permanent disability living in the same household to the extent that the</p>	<p>her or to another person under his or her direct care or supervision"<sup>41</sup></p> <p>Undue or extreme physical hardship is limited to the following circumstances: (a) would be required to abandon a person under his direct care or supervision because of inability to obtain an appropriate substitute; (b) would suffer physical hardship possibly</p>	<p>physical or mental disability or daily care of an individual with a permanent disability shall submit a letter, if the jury commissioner requests it, from a licensed medical professional<sup>43</sup></p> <p>Excusal: a person requesting to be excused may provide judge or jury commissioner supporting documentation, including but not</p>	<p>documentation<sup>48</sup></p> <p>Condition: difficulty hearing<sup>49</sup></p> <p>Condition: hearing loss; "the use of an interpreter at trial was an acceptable means to accommodate"; court also moved juror closer to witness stand<sup>50</sup></p>	



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Colorado continued	<p>performance of juror service would cause a substantial risk of injury to the health of the individual with a disability”<sup>39</sup></p> <p>Physically impaired persons shall serve except where court finds that such service is not feasible<sup>40</sup></p>	<p>resulting in illness or disease</p> <p>Excusal for a person who is breast-feeding a child<sup>42</sup></p>	<p>limited to medical statements, proof of dependency or guardianship, or other similar documents<sup>44</sup></p> <p>A person who is temporarily excused becomes eligible for qualification as a juror “when the temporary excuse expires, as determined by the court.”<sup>45</sup></p> <p>“A person may be permanently excused only if the judge or jury commissioner</p>		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Colorado continued			determines that the grounds for being excused from jury service are permanent in nature." <sup>46</sup> Excusal for a person who is breast-feeding a child: "must be excused temporarily from service as a juror for up to two consecutive twelve-month postponements" <sup>47</sup>		
Connecticut	Disqualification if potential juror is "found by a judge of the Superior Court to		Disqualification by reason of physical or mental disability requires the potential	Condition: "deaf or hard of hearing" <sup>54</sup>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Connecticut continued	<p>exhibit any quality which will impair the capacity of such person to serve as a juror, except that no person shall be disqualified because the person is deaf or hard of hearing<sup>251</sup></p> <p>Disqualification if potential juror "is incapable, by reason of a physical or mental disability, of rendering satisfactory juror service"<sup>252</sup></p>		<p>juror to submit to the Jury Administrator "a letter from a licensed health care provider stating the health care provider's opinion that such disability prevents the person from rendering satisfactory juror service"; the guideline is as follows: "A person shall be capable of rendering satisfactory juror service if such person is able to perform a</p>		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Connecticut continued			sedentary job requiring close attention for six hours per day, with short work breaks in the morning and afternoon sessions, for at least three consecutive business days.” <sup>53</sup>		
Delaware	Disqualified if “incapable, by reason of physical or mental disability, of rendering satisfactory jury service” <sup>55</sup>	Excusal “only upon a showing of undue hardship, extreme inconvenience, or public necessity” <sup>56</sup>	Excusal “for a period the Court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the Court’s		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Delaware continued			<p>direction<sup>57</sup></p> <p>“Women who are currently breastfeeding a child shall be excused from jury service for at least 1 year.”<sup>58</sup></p>		
Washington D.C.	<p>A person may not be excluded or disqualified from jury service on the basis of “physical handicap,” except as statutorily provided.<sup>59</sup></p> <p>Disqualification if “determined to be incapable by reason of physical or mental</p>		<p>“An individual excluded from a jury shall be eligible to sit on another jury if the basis for the initial exclusion would not be relevant to his or her ability to serve on such other jury.”<sup>62</sup></p>	<p>Condition: mental disability without adjudication of mental illness or incompetency<sup>63</sup></p>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Washington D.C. continued	<p>infirmity of rendering satisfactory jury service<sup>60</sup></p> <p>No disqualification solely on the basis of blindness, "but may be disqualified from serving as a juror in a particular case if the individual's blindness makes the individual incapable of rendering satisfactory jury service in that case"<sup>61</sup>.</p>				
Florida		<p>Challenge for cause: "unsound mind or bodily defect that</p>		<p>Condition: deafness or hearing impairment<sup>66</sup></p>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Florida continued		<p>renders him or her incapable of performing the duties of a juror, except that, in a civil action, deafness or hearing impairment shall not be the sole basis of a challenge for cause”<sup>64</sup></p> <p>Excusal: presiding judge may, “in his or her discretion,” excuse a person “who is physically infirm” from jury service, except that “no person shall be excused from jury</p>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Florida continued		<p>service on a civil trial solely on the basis that the person is deaf or hearing impaired, if that person wishes to serve, unless the presiding judge makes a finding that consideration of the evidence to be presented requires auditory discrimination or that the timely progression of the trial will be</p>			



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
<p>Florida continued</p> <p>Georgia</p>		<p>considerably affected thereby”<sup>65</sup></p> <p>Challenges for cause: “juror is incompetent to serve because of mental illness or intellectual disability”<sup>67</sup></p> <p>Excusal for “good cause”<sup>68</sup></p>	<p>“[E]xcept for permanently mentally or physically disabled persons, all excuses shall be deferred to a date and time certain within that term or the next succeeding term or shall be deferred as set forth in the court order.”<sup>69</sup></p>		<p>Condition: primary caregiver for child six years of age or younger; requires affidavit on form provided by court and request to be excused or deferred<sup>73</sup></p> <p>Condition: primary caregiver for person with physical or cognitive limitation that cannot be left unattended; requires affidavit on form provided by court,</p>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Georgia continued					request to be excused or deferred, and statement of a physician or other medical provider <sup>74</sup> Condition: untreated attention deficit disorder (“ADD”) <sup>75</sup> Condition: hearing impairment when unable to answer or understand questions <sup>76</sup>
Hawaii	A citizen shall not be excluded from jury service in this State on account of physical disability,	A prospective juror shall not be excused by a court for slight or trivial cause, but only when it appears			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Hawaii continued	<p>except as provided in section 612-4(b)(1).<sup>77</sup></p> <p>A prospective juror is disqualified if the juror is “incapable, by reason of the prospective juror’s disability, of rendering satisfactory jury service; but a prospective juror claiming this disqualification may be required to submit a physician’s, physician assistant’s, or advanced practice registered nurse’s</p>	<p>that jury duty would entail a serious personal hardship, or that for other good cause the prospective juror should be excused either temporarily or otherwise.<sup>79</sup></p>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Hawaii continued	certificate as to the disability, and the certifying physician, physician assistant, or advanced practice registered nurse is subject to inquiry by the court at its discretion.” <sup>778</sup>				
Idaho	A prospective juror is disqualified from service if he has a disability which renders him “incapable of performing satisfactory jury service.” “A person	“A person who is not disqualified for jury service under section 2-209, Idaho Code, may have jury service postponed by the court or the jury commissioner only upon a showing of	Disqualification: A prospective juror who is disqualified on the grounds of a disability shall be excused from jury service for a period of two years following the disqualification. The		Condition: hearing difficulty <sup>85</sup> Condition: breastfeeding a child; written statement and court may require a statement from a medical provider <sup>86</sup> Condition: three

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Idaho continued	claiming this disqualification shall be required to submit a physician's certificate as to the disability, and the certifying physician is subject to inquiry by the court at its direction. <sup>780</sup>	undue hardship, extreme inconvenience, or public necessity, or upon a showing that the juror is a mother breastfeeding her child. <sup>781</sup> The person requesting the deferral must provide a "written statement setting forth the reason for the request and the anticipated date that the reason will no longer exist. The court or the jury commissioner may	administrative district judge, or a district judge or magistrate judge designated by the administrative district judge, may excuse a person disqualified for a disability for a period of time greater than two years or may excuse such person permanently. Such an order shall be based on a finding "as to the nature and duration of the disability,		small children and husband away. <sup>87</sup> Condition: husband who had just undergone surgery <sup>88</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Idaho continued		require a person requesting a postponement for any medical reason to provide a statement from a medical provider supporting the request. <sup>782</sup>	based upon the information provided in the qualification questionnaire form, an interview with the prospective juror, or other competent evidence. <sup>83</sup> Deferral: “for a period of time as the court or the jury commissioner deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the direction of		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Idaho continued			the court or the jury commissioner. <sup>84</sup>		
Illinois		Challenges for cause: "Each party may challenge jurors for cause. If a prospective juror has a physical impairment, the court shall consider such prospective juror's ability to perceive and appreciate the evidence when considering a challenge for cause." <sup>89</sup> Excusal: A prospective juror	Proof: "The county boards of the respective counties, the jury commissioners for those counties which have been appointed under the Jury Commission Act, <sup>1</sup> or a jury administrator shall submit questionnaires to prospective jurors to inquire as to their qualifications for jury service and as to the		Condition: "juror being the primary care giver of a person with a mental or physical disability, a person with a medically diagnosed behavior problem, or a child under age 12." <sup>93</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Illinois continued		shall be excused from jury service if the prospective juror shows that such service would impose an undue hardship on account of the nature of the prospective juror's physical health or family situation. <sup>90</sup> "When an undue hardship caused by a family situation is due to the prospective juror being the primary care giver of a person with a mental or physical	hardship that jury service would pose to the prospective jurors." <sup>92</sup>		



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Illinois continued		disability, a person with a medically diagnosed behavior problem, or a child under age 12, then the county board, jury commissioners or jury administrator shall excuse such a prospective juror, if it finds that no reasonable alternative care is feasible which would not impose an undue hardship on the prospective juror or the person for whom the prospective			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Illinois continued Indiana	<p data-bbox="573 1274 1084 1507">“The supervising judge or the jury administrator shall determine whether a prospective juror is qualified to serve or, if disabled but otherwise qualified, whether the prospective juror could serve with reasonable accommodation.”<sup>94</sup> Qualification: “not suffering from any physical or mental</p>	<p data-bbox="573 1037 1084 1274">juror is providing care, or both.”<sup>91</sup></p>	<p data-bbox="573 800 1084 1037">Proof for qualification: “juror qualification form”; “under oath or affirmation”<sup>97</sup></p>	<p data-bbox="573 562 1084 800">Condition: impaired hearing or inability to hear testimony during trial; witnesses were sometimes asked to raise voices or to speak slowly</p>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Indiana continued	<p>disability that prevents the person from rendering satisfactory jury service<sup>95</sup></p> <p>Disqualification: “incapable of rendering satisfactory jury service due to physical or mental disability”; may require supporting physician’s certificate<sup>96</sup></p> <p>A person shall not be excluded from jury service or from consideration for jury</p>				
Iowa		<p>Criminal challenges for cause: “Unsoundness of mind, or such defects</p>		<p>Condition: court rejected a challenge for cause to a juror who claimed a</p>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Iowa continued	service on account of physical disability. <sup>98</sup>	in the faculties of the mind or the organs of the body as render the juror incapable of performing the duties of a juror" <sup>99</sup> Excusal: court may excuse a potential juror upon a finding that such service would threaten the person's Physical, or emotional well-being, or the well-being of another person who is dependent upon the person, or other similar findings of		hearing impairment but could give direct and accurate responses to questions <sup>102</sup> , a juror's self-assessment may carry great weight but is not decisive <sup>103</sup>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Iowa continued		<p>extreme hardship<sup>100</sup>            Deferral: Court may defer the term of a juror upon a finding of hardship, inconvenience, or public necessity<sup>101</sup></p>			
Kansas		<p>A mother breastfeeding her child shall be excused from jury service.<sup>104</sup>            The following prospective jurors may be excused: persons “so physically or mentally infirm as to be unequal to the task of ordinary jury</p>	<p>Excusal for breastfeeding mother:            “Jury service shall be postponed until such mother is no longer breastfeeding the child.”<sup>106</sup></p>	<p>Condition: deafness;            “A qualified interpreter shall be secured for any person who is deaf, hard of hearing or speech impaired in any grand jury, court or jury proceeding . . . and the interpreter shall interpret</p>	<p>Condition:            breastfeeding mother<sup>108</sup>            Condition: hearing impairment; “juror’s specific statement of such a factual matter”<sup>109</sup></p>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Kansas continued		duty”; “persons whose presence elsewhere is required for the public welfare, health, or safety”; or “persons for whom jury service would cause extraordinary or compelling personal hardship.” <sup>105</sup>		throughout the actual trial and during the time that the jury is sequestered or engaged in its deliberations.” <sup>107</sup>	
Kentucky	“[A]n individual with a disability shall not be disqualified solely by reason of the disability. For the purposes of this section, “individual with a disability”	Excusal upon request of prospective juror and “upon a showing of undue hardship, extreme inconvenience, or public necessity” <sup>111</sup> “The judge shall	“In his or her discretion the judge may excuse a juror from service entirely, reduce the number of days of service, or may postpone the juror’s service	Condition: deafness; court is required to appoint a qualified interpreter <sup>114</sup> Condition: vision impairment but could operate heavy equipment <sup>115</sup>	Condition: breastfeeding mother <sup>116</sup> Condition: three mothers who were sole care providers for their children <sup>117</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Kentucky continued	means a person with a physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual, a record of the impairment, or being regarded as having the impairment. <sup>7110</sup>	excuse a mother who is breastfeeding a child or expressing breastmilk from jury service until such time as the child is old enough that the mother is no longer breastfeeding the child. <sup>7112</sup>	temporarily for a period of time not to exceed, however, twenty-four (24) months. Whenever possible the judge shall favor temporary postponement of service or reduced service over permanent excuse. <sup>7113</sup>		
Louisiana	Qualification: must not "be under interdiction or incapable of serving as a juror because of a mental or physical infirmity, provided	Challenges for cause: "loss of hearing or the existence of any other incapacity which satisfies the court that the challenged person is incapable of	Excusal: "In the event a person is excused because jury service would result in undue hardship or extreme inconvenience, the	Condition: hearing loss; court shall provide an interpreter <sup>122</sup> Condition: some short-term memory loss (denial of	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Louisiana continued	that no person shall be deemed incompetent solely because of the loss of hearing in any degree." <sup>118</sup>	performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party" <sup>119</sup> Excusal if jury service "would result in undue hardship or extreme inconvenience" <sup>120</sup>	court may order that person's name be placed again in the general venire or in a central jury pool." <sup>121</sup>	challenge for cause) <sup>123</sup> Condition: some hearing impairment but could read lips when jury was not asked to recognize defendant's voice or listen to a tape that was difficult to hear <sup>124</sup>	
Maine	"A citizen may not be excluded from jury service in this State on account of . . . age or physical disability, except as provided in	Excusal for "inability to render satisfactory jury service because of physical or mental disability" <sup>126</sup> Person claiming	"Depending upon the circumstances, a juror may be finally excused from jury service, be required to serve at a later		



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Maine continued	this chapter. <sup>125</sup>	excusal for disability “may be required to submit a physician’s certificate or accredited Christian Science practitioner’s certificate <sup>127</sup>	specific time or be required to serve for a period of time less than the usual 15 court days. The clerk shall enter the determination regarding the requested excuse and the reason for the determination in the appropriate record kept for that purpose.” <sup>128</sup>		
Maryland	Disqualification for “disability that, as documented by a health care provider’s	“To be excused, an individual shall show, on a juror questionnaire,	“(2) An individual may be excused: (i) Only for the period that the jury		Condition: unable to use stairs when only way to reach courthouse jury room

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Maryland continued	certification, prevents the individual from providing satisfactory jury service <sup>m29</sup>	during an interview, or by other competent evidence, that extreme inconvenience, public necessity, or undue hardship requires excusal. <sup>m30</sup> “When determining whether it is permissible to excuse for cause a prospective juror on a disability-related ground, a trial court must engage in an individualized, case- and disability-specific	judge or jury commissioner considers necessary; and (ii) Not more than twice unless the jury judge finds that the individual has shown an extraordinary circumstance that requires an additional excuse. (3) When the period set under this subsection expires, a jury commissioner again shall summon the individual for jury		was stairs <sup>34</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Maryland continued		inquiry. <sup>2131</sup>	service. <sup>2132</sup> Evidence: “An individual may be disqualified only on the basis of information provided on a juror questionnaire or during an interview or other competent evidence.” <sup>2133</sup>		

<p>Massachusetts</p>	<p>Disqualification:          “Such person is incapable, by reason of a physical or mental disability, of rendering satisfactory juror service”; requires “letter from a registered physician stating the nature of the disability and the physician’s opinion that such disability prevents the person from rendering satisfactory juror service”; Guideline: “a person shall be capable of rendering satisfactory juror service if such person is able to perform a sedentary job requiring close</p>	<p>Excusal for “finding of hardship, inconvenience, or public necessity taking into consideration the expected length of the extended trial, but any juror so excused shall otherwise complete his term of juror service”<sup>38</sup></p>	<p>Disqualification for permanent disability: “person shall be considered permanently ineligible for jury service, and the person’s name and physician’s letter shall be placed on record with the office of jury commissioner”<sup>39</sup></p>	<p>Condition: blindness; had documentary evidence read to him; no special importance to being able to see under circumstances of this case (i.e. identification of perpetrator)<sup>40</sup>          Condition: hearing impairment but wore hearing aids and could read lips<sup>41</sup></p>	<p>Condition: blindness when issue of identification was predominant issue at trial<sup>42</sup></p>
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<p>Massachusetts continued</p>	<p>attention for six hours per day, with short work breaks in the morning and afternoon sessions, for three consecutive business days”<sup>35</sup></p> <p>Disqualification: sole responsibility “for the daily care of a permanently disabled person living in the same household and the performance of juror service would cause a substantial risk of injury to the health of the disabled person”; requires “letter from a registered physician stating the name, address, and age of</p>				
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<p>Massachusetts continued</p>	<p>the disabled person, the nature of the daily care provided by the prospective juror, and the physician's opinion that the performance of juror service would cause a substantial risk of injury to the health of the disabled person."<sup>136</sup> "Physically handicapped persons shall serve except where the court finds such service is not feasible. The court shall strictly enforce the provisions of this section."<sup>137</sup></p>				
<p>Michigan</p>	<p>Qualification: be "physically and mentally able to carry</p>		<p>Upon finding that prospective juror is not qualified or</p>		<p>Condition: nursing mother during period she is nursing; must</p>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Michigan continued	out the functions of a juror"; "[t]emporary inability must not be considered a disqualification" <sup>143</sup>		exempt and claims an exemption, "the court shall discharge him or her from further attendance and service as a juror." <sup>144</sup>		be exempt upon making request "if she provides a letter from a physician, a lactation consultant, or a certified nurse midwife verifying that she is a nursing mother" <sup>145</sup>
Minnesota	"A citizen shall not be excluded from jury service in this state on account of . . . a physical or sensory disability." <sup>146</sup> But that does not restrict "the right to strike an individual from being	Challenge for cause: "physical or mental disability that renders the juror incapable of performing the duties of a juror" <sup>149</sup>			Condition: obsessive compulsive disorder ("OCD") <sup>150</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Minnesota continued	<p>impaneled on a jury for cause based on a showing that a physical or sensory disability will impair the juror's ability to try a particular case.<sup>747</sup></p> <p>Qualification based on juror questionnaire: prospective juror must be "physically and mentally capable of rendering satisfactory jury service"; may require "a physician's</p>				



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Minnesota continued	certificate as to the disability, and the Judge may inquire of the certifying physician” <sup>4,8</sup>				
Mississippi		Excusal when “juror is ill and, on account of the illness, is incapable of performing jury service” or when “the juror’s attendance would cause undue or extreme physical or financial hardship to the prospective juror or to a person under his or her care or	Proof: juror claiming excuse of illness may provide clerk of court with a certificate of a licensed physician, stating that the juror is ill and unfit for jury service, and clerk of court may then excuse juror. If no physician’s certificate, judge shall decide whether to	Condition: hearing impairment but is still responsive to verbal questions <sup>53</sup>	Condition: deafness <sup>54</sup> Condition: child was critically ill <sup>55</sup> Condition: breastfeeding mother <sup>56</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Mississippi continued		supervision <sup>7</sup> or when “the potential juror is a breast-feeding mother” <sup>51</sup>	excuse individual. <sup>52</sup>		
Missouri	Disqualification: unable to read, speak, and understand the English language, “unless such person’s inability is due to hearing impairment which can be adequately compensated for through the use of auxiliary aids or services” <sup>57</sup> Disqualification: “in	Excusal: nursing mother “upon her request, and with a completed written statement from her physician to the court certifying she is a nursing mother” <sup>59</sup> Excusal for undue or extreme physical hardship <sup>60</sup> Unless “it is apparent to the court that the physical hardship	After two years, excused person shall become eligible once again for qualification as a juror “unless the person was excused from service permanently” (which occurs “only when the deciding judge determines that the underlying grounds for being excused are of a permanent	Condition: deafness; court is required to provide auxiliary aids and interpretation services <sup>64</sup> Condition: some hearing impairment and frequent urination due to diuretic use; court relied on juror’s characterization of his health problems; courtroom was	Condition: nursing mother “upon her request, and with a completed written statement from her physician to the court certifying she is a nursing mother” <sup>66</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Missouri continued	the judgment of the court, is incapable of performing the duties of a juror because of mental or physical illness or infirmity"; may provide court with physician documentation "verifying that a mental or physical condition renders the person unfit for jury service for a period of up to twenty-four months" <sup>158</sup>	would significantly impair the person's ability to serve as a juror," undue or extreme physical hardship is limited to circumstances in which the potential juror would: (1) have to abandon a person "under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of	nature") <sup>163</sup>	equipped with amplification system <sup>165</sup>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Missouri continued		participation in the jury pool or on the jury” or “suffer physical hardship that would result in illness or disease”. <sup>161</sup> Judge may require documentation. <sup>162</sup>			
Montana		Excusal for “breastfeeding mother” or someone who “has a personal obligation to provide actual and necessary care to another, including a sick, aged, or special needs dependent who	Permanent excusal for a “person who is chronically incapacitated by illness or injury”; requires affidavit including a certification by the person’s physician “that the person is		Condition: breastfeeding mother <sup>172</sup> Condition: medical appointments <sup>173</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Montana continued		requires the prospective juror's personal care and attention, and comparable substitute care is either unavailable or impractical without imposing an undue economic hardship on the prospective juror or dependent person <sup>m/67</sup> Excusal for "undue hardship for the person, a dependent of the person, or the public served by the	chronically incapacitated by illness or injury <sup>m/70</sup> "If the prospective juror succeeds in demonstrating undue hardship, the juror will be excused for that jury trial but will remain on the jury list for the remaining jury term and may be summoned to serve on a subsequent jury during that term." <sup>m/71</sup>		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Montana continued		<p>person”; may require an affidavit stating facts the person believes will excuse the person from jury service<sup>68</sup></p> <p>Permanent excusal for a “person who is chronically incapacitated by illness or injury”; requires affidavit including a certification by the person’s physician “that the person is chronically incapacitated by</p>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Montana continued		illness or injury". A person is chronically incapacitated if "the person has a condition due to an illness or injury that restricts the person's ability to leave the person's place of residence without the aid of supportive devices, such as crutches, a cane, a wheelchair, or a walker, that restricts the person's ability to leave home without the use of special			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Montana continued		<p>transportation or the assistance of another person, or that causes leaving home to be medically contraindicated.”</p> <p>Examples of factors to be taken into account in determining whether chronic incapacitation exists include but are not limited to: (a) paralysis by a stroke or other cause; (b) blindness; (c) senility; (d) loss of the use of a</p>			



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Montana continued		<p>person's extremities requiring the assistance of another in leaving the person's place of residence; (e) arteriosclerotic heart disease of such severity that a person is required to avoid all stress and physical activity; or a psychiatric problem if the illness is manifested in part by a refusal to leave home or is of such a nature that it would</p>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Montana continued		not be considered safe for the person to leave home unattended, even if there are no physical limitations. <sup>169</sup>			
Nebraska	Disqualification: persons “who are incapable, by reason of physical or mental disability, of rendering satisfactory jury service” but “a person claiming this disqualification shall be required to submit a physician’s certificate as to the	Excuse: nursing mother who requests to be excused shall be excused from jury service until she is no longer nursing; requires a physician’s certificate <sup>75</sup> Excuse: undue hardship, extreme inconvenience, or public necessity <sup>76</sup>	Excuse (nursing mother): until no longer nursing <sup>78</sup> Excuse (hardship/inconvenience): “for such period as court deems necessary”; at the conclusion of such period “the person shall reappear for jury service in accordance		Condition: nursing mother who requests to be excused shall be excused from jury service until she is no longer nursing; requires a physician’s certificate <sup>80</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Nebraska continued	disability and the certifying physician is subject to inquiry by the court at its discretion <sup>74</sup>	Challenge for cause: does “not possess the qualifications of a juror” <sup>77</sup>	with the court’s direction <sup>79</sup>		
Nevada	Qualification: “not rendered incapable by reason of physical or mental infirmity” <sup>81</sup>	Temporary excuse: “Sickness or physical disability” <sup>82</sup> Temporary excuse: “Serious illness or death of a member of the juror’s immediate family” <sup>83</sup> Temporary excuse: “primary caregiver of another person who has a documented	Temporary excuse: juror “shall appear for jury service as the court may direct” <sup>86</sup>		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Nevada continued		<p>medical condition which requires the assistance of another person at all times”<sup>84</sup></p> <p>Permanent excuse: “person is incapable, by reason of a permanent physical or mental disability, of rendering satisfactory service as a juror”; may require physician certificate<sup>85</sup></p>			
New Hampshire	Disqualification: “juror is deemed by the court to be mentally or physically	Excuse: “undue hardship, extreme inconvenience, public necessity or for any	Disqualification: juror “shall be discharged” <sup>89</sup> Excuse: “for the time		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
New Hampshire continued	unfit to act as a juror <sup>2187</sup>	other cause that the court deems appropriate <sup>2188</sup>	deemed necessary by the court <sup>2189</sup> ; "shall report again for jury service, as directed by the court" <sup>2190</sup>		
New Jersey	Qualification: "shall not have any mental or physical disability which will prevent the person from properly serving as a juror" <sup>2191</sup>	Excuse: "Jury service will impose a severe hardship due to circumstances which are not likely to change within the following year." <sup>2192</sup> Severe hardship includes: "medical inability to serve which is verified by a licensed physician" <sup>2193</sup>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
New Jersey continued		Severe hardship includes instances in which a “prospective juror has a personal obligation to care for another, including a dependent who is sick, elderly, or has an infirmity or a minor child, who requires the prospective juror’s personal care and attention, and no alternative care is available without severe financial hardship on the prospective juror or			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
New Jersey continued		the person requiring care <sup>194</sup>			
New Mexico	<p>Disqualification: “physical or mental illness or infirmity”<sup>195</sup></p> <p>Disqualification: “undue or extreme physical or financial hardship”<sup>196</sup></p>	<p>Excuse: “jury service would cause undue or extreme physical or financial hardship to the prospective juror or to a person under the prospective juror’s care or supervision”<sup>197</sup></p> <p>Undue or extreme physical or financial hardship means circumstances in which a person would: (a) “be required to abandon</p>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
New Mexico continued		<p>another person under the person's care or supervision due to the extreme difficulty of obtaining an appropriate substitute caregiver during the period of jury service" or (c) "suffer physical hardship that would result in illness or disease"<sup>198</sup>  Excuse: "person has an emergency that renders the person unable to perform jury service"<sup>199</sup></p>			



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
New York		Excuse: "In determining whether an application for excusal should be granted, the commissioner or the court shall consider whether the applicant has a mental or physical condition that causes him or her to be incapable of performing jury service or there is any other fact [that] indicates that attendance for jury service in accordance	Excuse generally: "commissioner of jurors may, in his or her discretion, on the application of a prospective juror who has been summoned to attend, excuse such prospective juror from a part or the whole of the time of jury service or may postpone the time of jury service to a later day during the same or any subsequent term of the court" <sup>201</sup> Excuse (breastfeeding	Condition: arthritis in back; Court stated that juror with back pain would be accommodated with "frequent breaks" <sup>203</sup> Condition: juror required treatment for methadone withdrawal during deliberations <sup>204</sup> Condition: some visual impairment (could see outline of witnesses' faces but not their facial expressions; wore glasses) <sup>205</sup>	Condition: breastfeeding mother; requires note from physician <sup>206</sup> Condition: hearing impairment though not automatically <sup>207</sup> "When confronted with such a situation involving a prospective juror's hearing impairment, a court must determine whether the individual has the ability to understand all of the evidence presented, evaluate

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
New York continued		with the summons would cause undue hardship or extreme inconvenience to the applicant, a person under his or her care or supervision, or the public. <sup>7200</sup>	mother); with note from physician indicating that prospective juror is breastfeeding, “commissioner shall excuse the prospective juror or postpone the time of jury service.” <sup>7202</sup>		that evidence in a rational manner, communicate effectively with the other jurors during deliberations, and comprehend the applicable legal principles, as instructed by the court <sup>7208</sup> “If a judge is made aware of a reasonable accommodation that would allow a hearing-impaired prospective juror to fulfill these duties

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New York continued					without interfering with the defendant's trial rights, such measures should be taken <sup>209</sup>
North Carolina	Qualification: "physically and mentally competent" <sup>210</sup>	Challenge for cause: "incapable by reason of mental or physical infirmity of rendering jury service" <sup>211</sup> Excuse: not qualified <sup>212</sup>		Condition: hearing impairment in which prospective juror sometimes had trouble hearing others <sup>213</sup>	Condition: past coronary bypass surgery and past addiction to Valium <sup>214</sup>  Condition: "had been very sick with the measles and encephalitis"; some difficulty understanding the proceedings <sup>215</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
North Carolina continued					Condition: "in her eighth month of pregnancy" <sup>216</sup>
North Dakota	<p>Discrimination: "A citizen may not be excluded from jury service in this state on account of . . . physical disability[.]"<sup>217</sup></p> <p>Disqualification: "incapable, by reason of a physical or mental disability and with reasonable accommodation, of rendering satisfactory jury service"; may</p>	<p>Challenge for cause: not qualified or "[u]nsoundness of mind or such defect in the faculties of the mind or organs of the body as renders the juror incapable of performing the duties of a juror"<sup>219</sup></p> <p>Excuse: "undue hardship, extreme inconvenience, or public necessity"; upon request or on</p>	<p>Excuse: "for a period the court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court's direction"<sup>221</sup></p>		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
North Dakota continued	require a physician's certificate <sup>218</sup>	court's own initiative <sup>220</sup>			
Ohio		Excuse: "juror's spouse or a near relative of the juror or the juror's spouse has recently died or is dangerously ill" <sup>222</sup> Excuse: "mental or physical condition that causes the prospective juror to be incapable of performing jury service"; may require documentation from a physician <sup>223</sup> Excuse: "jury service	Excuse: "whether permanent or not," an excuse "shall not extend beyond that jury year"; a person is excused from jury service permanently "only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature" <sup>227</sup>		Excuse: juror not fully recovered from past surgeries <sup>228</sup> Condition: hearing impairment (but not automatic) <sup>229</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Ohio continued		would otherwise cause undue or extreme physical or financial hardship to the prospective juror or a person under the care or supervision of the prospective juror” as determined by a “judge of the court for which the prospective juror was called to jury service” (though judge may delegate to an appropriate court employee) <sup>224</sup> ; requires documentation <sup>225</sup>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Ohio continued		Undue or extreme physical or financial hardship is limited to the following circumstances: (a) juror "would be required to abandon a person under the prospective juror's personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Ohio continued		jury” or (c) juror “would suffer physical hardship that would result in illness or disease.” <sup>12,26</sup>			
Oklahoma		Excuse: “prospective juror has a mental or physical condition that causes him or her to be incapable of performing jury service”; requires documentation from a physician verifying that the condition “renders the person unfit for jury service for a period of up to	Excuse: “After two (2) years, a person excused from jury service shall become eligible once again for qualification as a juror unless the person was excused from service permanently. A person is excused from jury service permanently only	Condition (challenge for cause): juror had poor vision but wore glasses and was accommodated through seating adjustments <sup>35</sup>	Condition: a mother who is breast-feeding a baby shall be exempt from jury service upon her request <sup>36</sup> Condition: difficulty staying awake <sup>37</sup> Condition: hearing impairment <sup>38</sup>



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Oklahoma continued		<p>twenty-four (24) months<sup>2230</sup></p> <p>Excuse; jury service would “cause undue or extreme physical or financial hardship to the prospective juror or a person under his or her care or supervision” as determined by a judge of the court for which the individual was called to jury service.<sup>231</sup></p> <p>Undue or extreme financial hardship is limited to</p>	<p>when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.<sup>2234</sup></p>		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Oklahoma continued		<p>circumstances 'in which an individual would be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury, incur costs that would have a substantial adverse impact on the</p>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Oklahoma continued		<p>payment of the individual's necessary daily living expenses or on those for whom he or she provides the principle means of support, or suffer physical hardship that would result in illness or disease"; requires documentation<sup>23,22</sup></p> <p>Challenges for cause: not qualified as prescribed by law or "[u]nsoundness of mind, or such defect in the faculties of the</p>			

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Oklahoma continued		mind or organs of the body as renders him incapable of performing the duties of a juror” <sup>233</sup>			
Oregon	Discrimination: “A person who is blind, hard of hearing or speech impaired or who has a physical disability is not ineligible to serve as a juror and may not be excluded from a jury list or jury service on the basis of blindness, hearing or speech	Challenge for cause: “existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights		Condition: blindness <sup>242</sup> Condition: hearing impairment <sup>243</sup> Condition: speech impairment <sup>244</sup>	Condition: woman breast-feeding a child upon written request <sup>245</sup> Condition: sole caregiver for a child or other dependent during court’s normal hours of operation, is unable to afford substitute childcare,

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Oregon continued	impairment or physical disability alone. <sup>239</sup>	of the challenging party <sup>240</sup> Excuse: “undue hardship or extreme inconvenience to the person, the person’s family, the person’s employer or the public served by the person” <sup>241</sup>			upon request, unless “the public need for juries in the court outweighs the individual circumstances of the person summoned” <sup>246</sup>
Pennsylvania	Disqualification: “unable, by reason of mental or physical infirmity, to render efficient jury service” <sup>247</sup>	Excuse: “undue hardship or extreme inconvenience” <sup>248</sup>	Excuse: “permanently or for such period as the court determines is necessary, and if excused for a limited period shall, at the end of the period, be assigned to the next		Condition: breastfeeding women, upon request <sup>50</sup> Condition: anxiety related to jury service <sup>51</sup> Condition: hearing

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Pennsylvania continued			jury array <sup>249</sup>		impairment and some disorientation <sup>252</sup>  Condition: hearing impairment that interferes with juror's ability to hear and understand testimony and evidence <sup>253</sup>
Rhode Island	Discrimination: "No citizen, possessing all other qualifications which are or shall be prescribed by law, shall be disqualified for service as a grand or petit juror in any court of this state on	Excuse: "A justice of the superior court or the family court, or the jury commissioner, may excuse a person from jury duty or may continue the date of the service upon a			Condition: hearing impairment such that juror is not responsive to questions; "juror's own statement that he was able to hear all the testimony in the case cannot be

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Rhode Island continued	<p>account of . . . . disability[.]”<sup>254</sup></p> <p>Qualification: “physically and mentally capable of performing in a reasonable manner the duties of a juror.”<sup>255</sup></p> <p>But “a person with a disability shall not be ineligible to serve as a juror solely on the basis of his or her disability, and if that person meets the above requirements,</p>	<p>showing of mental or physical disability, illness, or the serious illness of some member of his or her immediate family, economic or domestic hardship, or other good cause; provided, that he or she may be required to serve his or her term or the remainder thereof, as the case may be, on an emergency panel of jurors, if such a panel is deemed necessary by the jury</p>			<p>considered persuasive, since he would not necessarily be aware of what he could not hear.”<sup>258</sup></p>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Rhode Island continued	with reasonable accommodations if necessary, he or she shall be deemed a qualified juror. <sup>2556</sup>	commissioner or the presiding justice of the superior or family court. The discretion to so excuse may be exercised by the appropriate party at any time during the selection or assignment of jurors. <sup>2557</sup>			
South Carolina	Disqualification: “incapable by reason of mental or physical infirmities to render efficient jury service. Legal blindness does not disqualify an	Excuse: “any person . . . if the judge considers it advisable” <sup>2560</sup> Excuse: person who “has legal custody and duty of care for a		Condition: legal blindness <sup>2564</sup>	Condition: person who “has legal custody and duty of care for a child less than 7 years of age”; requires “affidavit to clerk of court” <sup>2565</sup>



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
South Carolina continued	<p>otherwise qualified juror.”</p> <p>A person claiming disqualification must “state the disqualifying facts or the reasons for his suspicions”; “trial judge must make the final determination of the qualifications of a juror” and “his decision must not be disturbed on appeal.”<sup>259</sup></p>	<p>child less than 7 years of age”<sup>261</sup></p> <p>Excuse: person who “is the primary caretaker of a person aged sixty-five or older”<sup>262</sup></p> <p>Excuse: person who “is the primary caretaker of a severely disabled person who is unable to care for himself or cannot be left unattended”<sup>263</sup></p>			<p>Condition: person who “is the primary caretaker of a person aged sixty-five or older”; requires “affidavit to clerk of court”<sup>266</sup></p> <p>Condition: person who “is the primary caretaker of a severely disabled person who is unable to care for himself or cannot be left unattended”; requires “affidavit to clerk of</p>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
South Carolina continued					court <sup>267</sup>  Condition: juror appears to be in stupor with slurred speech and was extremely nervous <sup>268</sup>
South Dakota	Qualifications: no disqualifications for physical disability <sup>269</sup>	Challenges for cause: none regarding physical disability <sup>270</sup>		Condition: visual impairment <sup>271</sup>  Condition: hearing impairment <sup>272</sup>	Condition: parent of child expected to be born during, or immediately prior to, the scheduled jury duty; requires written request <sup>273</sup> Condition: mother breastfeeding a baby younger than year; requires written

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South Dakota continued					request <sup>274</sup>
Tennessee		Excuse: "juror has a mental or physical condition that causes that person to be incapable of performing jury service"; requires "documentation from a physician" <sup>275</sup> Excuse: "person's service will constitute an undue or extreme physical or financial hardship to the prospective juror or a person under the	Excuse: "A person excused from jury service pursuant to this section becomes eligible for qualification as a juror following the period ordered by the court, which shall not exceed twenty-four (24) months. A person is excused from jury service permanently only when the deciding judge determines that		Condition: deafness or hearing impairment <sup>280</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Tennessee continued		prospective juror's care or supervision. <sup>276</sup> May require documentation. <sup>277</sup> Undue or extreme physical hardship is limited to instances in which a prospective juror would: (A) "Be required to abandon a person under the juror's personal care or supervision due to the impossibility of obtaining an appropriate	the underlying grounds for being excused are of a permanent nature. <sup>279</sup>		

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Tennessee continued		substitute caregiver during the period of participation in the jury pool or on the jury," or (C) "Suffer physical hardship that would result in illness or disease" <sup>278</sup>			
Texas		Challenge for cause: "the juror has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render the juror unfit for jury service, or that the juror is legally	Excuse: can be released from jury service entirely or until another day of the term, as appropriate <sup>285</sup> Exemption: "permanently or for a specified period" <sup>286</sup>	Condition: legal blindness alone <sup>287</sup> Condition: deaf or hard of hearing alone <sup>288</sup> ; "A deaf or hard of hearing person serving as a juror shall be reasonably	Condition: legal blindness in a civil case if, in the opinion of the court, "his blindness renders him unfit to serve as a juror in that particular case" <sup>291</sup> Condition: deaf or

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Texas continued		<p>blind and the court in its discretion is not satisfied that the juror is fit for jury service in that particular case”<sup>281</sup></p> <p>Excuse: “any reasonable sworn excuse”<sup>282</sup></p> <p>Exemption: “physical or mental impairment”<sup>283</sup>; requires an affidavit<sup>284</sup></p>		<p>accommodated”<sup>289</sup></p> <p>Condition: pain medication that did not interfere with ability to listen<sup>290</sup></p>	<p>hard of hearing if, in the opinion of the court, “his hearing loss renders him unfit to serve as a juror in that particular case.”<sup>292</sup></p> <p>Condition: father preoccupied by illness of child such that “he could not possibly give the case that attention contemplated by the law”<sup>293</sup></p> <p>Condition: “primary</p>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Texas continued					<p>caretaker of a person who is unable to care for himself or herself<sup>294</sup></p> <p>Condition: "has legal custody of a child younger than 12 years of age and the person's service on the jury requires leaving the child without adequate supervision"<sup>295</sup></p> <p>Condition: radiation sickness, arthritis, gout, and high blood</p>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Texas continued					pressure <sup>296</sup>
Utah	Discrimination: "A qualified citizen may not be excluded from jury service on account of . . . disability[.]" <sup>297</sup>	Challenge for cause (criminal): "Any mental or physical infirmity which renders one incapable of performing the duties of a juror." <sup>298</sup>  Excuse: undue hardship, public necessity, mother who is breastfeeding a child, or individual is incapable of jury service; requires affidavit <sup>299</sup>			Condition: breastfeeding mother <sup>300</sup>  Condition: emotional problems and hormonal imbalance <sup>301</sup>



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Vermont	Qualification/excuse: "is capable, by reason of mental or physical condition, to render satisfactory jury service" <sup>302</sup>		Judge "may excuse a person for all or part of the two-year period upon individual request showing undue hardship on the prospective juror or the employer" <sup>303</sup>		
Virginia	Disqualification: persons "adjudicated incapacitated" <sup>304</sup>  Disqualification: "Any other person under a disability as defined in § 8.01-2" <sup>305</sup> Person under a	Objections: "any legal disability" <sup>308</sup>		Condition: "blindness or partial blindness" <sup>309</sup>	Condition: "A person who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care by him during

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Virginia continued	disability includes: an incapacitated person (defined below) or any other person who "is determined to be (i) incapable of taking proper care of his person, or (ii) incapable of properly handling and managing his estate, or (iii) otherwise unable to defend his property or legal rights either because of age or temporary or permanent impairment, whether				normal court hours, or any mother who is breast-feeding a child"; on request <sup>310</sup>  Condition: "person who is necessarily and personally responsible for a person having a physical or mental impairment requiring continuous care by him during normal court hours"; on request <sup>311</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Virginia continued	<p>physical, mental, or both”<sup>356</sup>            Incapacitated person means “an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his</p>				

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Virginia continued	health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator.” <sup>307</sup>				
Washington	Discrimination: “A citizen shall not be excluded from jury	Challenge for cause: “Unsoundness of mind, or such defect	Excuse: “for a period of time the court deems necessary” <sup>316</sup>		Condition: on narcotic pain killers <sup>317</sup>

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Washington continued	service in this state on account of membership in a protected class recognized in RCW 49.60.030, or on account of economic status. <sup>312</sup> Protected classes include those in possession of “any sensory, mental, or physical disability” or those who require “a trained dog guide or service animal” <sup>313</sup>	in the faculties of the mind, or organs of the body, as renders him or her incapable of performing the duties of a juror in any action” <sup>314</sup>  Excuse: “showing of undue hardship, extreme inconvenience, public necessity, or any reason deemed sufficient by the court” <sup>315</sup>			
West Virginia	Discrimination: “A citizen may not be	Excuse: “undue hardship, extreme	Excuse: “for a period the court deems	“A person who is physically disabled	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
West Virginia continued	<p>excluded from jury service on account of . . . being a qualified individual with a disability.”<sup>338</sup></p> <p>Disqualification: “incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service”; may require physician’s certificate<sup>319</sup></p>	<p>inconvenience, or public necessity”<sup>320</sup></p> <p>Exemption: “Is incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service. A person claiming this disqualification may be required to submit a physician’s certificate as to the disability and the certifying physician is subject to inquiry by</p>	<p>necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court’s direction”<sup>321</sup></p>	<p>and can render competent service with reasonable accommodation is not ineligible to act as juror and may not be dismissed from a jury panel on the basis of disability alone. The circuit judge shall, upon motion by either party or upon his or her own motion, disqualify a disabled juror if the circuit judge finds that the nature of potential evidence in</p>	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
West Virginia continued		the court at its discretion"		the case including, but not limited to, the type or volume of exhibits or the disabled juror's ability to evaluate a witness or witnesses, unduly inhibits the disabled juror's ability to evaluate the potential evidence. For purposes of this section: (1) Reasonable accommodation includes, but is not limited to, certified interpreters for the	

State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
West Virginia continued				deaf and hard of hearing, spokespersons for the speech impaired, real-time court reporting and readers for the visually impaired. <sup>73,22</sup>	
Wisconsin		Excuse: "if the court determines that the person cannot fulfill the responsibilities of a juror" but the court "shall not consider any structural limitations of a facility" <sup>73,23</sup>  Deferral: "undue		Condition: minor difficulty hearing <sup>25</sup>	



State	Grounds for disqualification	Grounds for temporary excusal	Period of temporary excusal (if specified)	General categories and/or specific examples of non-disqualifying disabilities & related accommodations	Specified examples of disqualifying disabilities & related proof
Wisconsin continued		hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice. <sup>7324</sup>			
Wyoming	Qualification: in possession "of his natural faculties, of ordinary intelligence and without mental or physical infirmity preventing satisfactory jury service" <sup>7326</sup>	Excuse: "when his health or the sickness or death of a member of his family requires his absence." <sup>7327</sup>		Condition: slight hearing impairment, use of hearing aid <sup>328</sup>	Condition: person's young children require care <sup>329</sup>

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<sup>1</sup> ALA. CODE § 12-16-60(a)(3) (2023).

<sup>2</sup> *Id.* § 12-16-63(b).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 12-16-63(b)(2).

<sup>5</sup> *Id.* § 12-16-63(b)(2).

<sup>6</sup> Magwood v. State, 689 So. 2d 959, 984 (Ala. Crim. App. 1996).

<sup>7</sup> Thompson v. State, 153 So. 3d 84, 119-20 (Ala. Crim. App. 2012).

<sup>8</sup> Neal v. State, 460 So. 2d 257, 262 (Ala. Crim. App. 1984).

<sup>9</sup> ALASKA R. ADMIN. 15(f).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> ALASKA STAT. § 09.20.030(a) (2014).

<sup>13</sup> ALASKA R. ADMIN. 15(f).

<sup>14</sup> *Id.*

<sup>15</sup> ALASKA STAT. § 09.20.010(b)-(c) (2014).

<sup>16</sup> *Id.* § 09.20.010(b).

<sup>17</sup> ARIZ. REV. STAT. § 21-202(B)(1) (2021).

<sup>18</sup> *Id.*

<sup>19</sup> State v. Holguin, No. 1 CA-CR 11-0836, 2012 WL 2466874, at \*2 (Ariz. Ct. App. June 19, 2012).

<sup>20</sup> ARIZ. REV. STAT. § 21-202(B)(4) (2021).

<sup>21</sup> ARK. CODE § 16-31-102(a) (2023).

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<sup>22</sup> *Id.* § 16-31-103(b).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* 16-31-102(a).

<sup>25</sup> CAL. CIV. PROC. CODE § 203(a)(6) (2020).

<sup>26</sup> *Id.* § 204(b).

<sup>27</sup> CAL. R. CT. 2.1006.

<sup>28</sup> *Id.* 2.1009(c)-(d).

<sup>29</sup> *Id.* 2.1008(d)(5).

<sup>30</sup> *Id.* 2.1008(d)(7).

<sup>31</sup> *Id.* 2.1008(b)(3).

<sup>32</sup> CAL. CIV. PROC. CODE § 203(a)(6) (2020).

<sup>33</sup> *Id.*

<sup>34</sup> CAL. R. CT. 2.1009(a)(5).

<sup>35</sup> *People v. Navarette*, 30 Cal. 4th 458, 490 (2003).

<sup>36</sup> CAL. R. CT. 2.1008(d)(7).

<sup>37</sup> *People v. Eubanks*, 53 Cal. 4th 110, 130 n.10 (2011).

<sup>38</sup> COLO. REV. STAT. § 13-71-105(2)(c) (2019).

<sup>39</sup> *Id.* § 13-71-105(2)(d).

<sup>40</sup> *Id.* § 13-71-104(3)(b).

<sup>41</sup> *Id.* § 13-71-119.5(2)(a).

<sup>42</sup> *Id.* § 13-71-119.5-2.5.

<sup>43</sup> *Id.* § 13-71-105-2(c).

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- <sup>44</sup> *Id.* § 13-71-119.5-2(e).
- <sup>45</sup> *Id.* § 13-71-119.5-3.
- <sup>46</sup> *Id.* § 13-71-119.5-3.
- <sup>47</sup> *Id.* § 13-71-119.5-2.5.
- <sup>48</sup> *People v. Coughlin*, 304 P.3d 575, 580-81 (Colo. App. 2011).
- <sup>49</sup> *People v. Pigford*, 17 P.3d 172, 177 (Colo. App. 2000).
- <sup>50</sup> *United States v. Dempsey*, 830 F.2d 1084, 1087-89 (10th Cir. 1987).
- <sup>51</sup> *Id.* § 51-217(1).
- <sup>52</sup> *Id.* § 51-217(9).
- <sup>53</sup> *Id.* § 51-217.
- <sup>54</sup> *Id.* § 51-217.
- <sup>55</sup> DEL. CODE ANN. tit. 10, § 4509(a)(5) (2022)
- <sup>56</sup> *Id.* § 4511(b).
- <sup>57</sup> *Id.*
- <sup>58</sup> *Id.*
- <sup>59</sup> D.C. CODE ANN. § 11-1903 (2023).
- <sup>60</sup> *Id.* § 11-1906(b)(2)(A).
- <sup>61</sup> *Id.* § 11-1906(b)(4) (2011).
- <sup>62</sup> *Id.* § 11-1908(c).
- <sup>63</sup> *Khaalis v. United States*, 408 A.2d 313, 360 (D.C. 1979).
- <sup>64</sup> FLA. STAT. ANN. § 913.03(2) (2023).
- <sup>65</sup> FLA. STAT. ANN. § 40.013(5) (2020).

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- <sup>66</sup> FLA. STAT. ANN. § 913.03(2) (2023).
- <sup>67</sup> GA. CODE ANN. § 15-12-163(b)(3) (2023).
- <sup>68</sup> *Id.* §15-12-1.1(a)(1).
- <sup>69</sup> *Id.*
- <sup>70</sup> Jones v. State, 548 S.E.2d 75, 76 (Ga. Ct. App. 2001).
- <sup>71</sup> Wilhite v. State, 787 S.E.2d 293, 297 (Ga. Ct. App. 2016).
- <sup>72</sup> Ford v. State, 658 S.E.2d 428, 429 (Ga. Ct. App. 2008).
- <sup>73</sup> GA. CODE ANN. §15-12-1.1(a)(3) (2014).
- <sup>74</sup> *Id.* §15-12-1.1(a)(5) (2014).
- <sup>75</sup> United States v. Flores, 572 F.3d 1254, 1261 (11th Cir. 2009).
- <sup>76</sup> Jenkins v. State, 269 Ga. 282, 289-90 (Ga. 1998).
- <sup>77</sup> HAW. REV. STAT. ANN. § 612-2 (2022).
- <sup>78</sup> *Id.* § 612-4(b)(1) (2023).
- <sup>79</sup> *Id.* § 612-7.
- <sup>80</sup> *Id.* § 2-209(1)(b).
- <sup>81</sup> *Id.* § 2-212(3).
- <sup>82</sup> *Id.* § 2-212(3)(a)(b).
- <sup>83</sup> IDAHO CODE ANN. § 2-209(3) (2023).
- <sup>84</sup> *Id.* § 2-212(3)(c).
- <sup>85</sup> Bell v. O'Connor Transp. Ltd., P.2d 439, 442 (Idaho 1971) (overruled on other grounds).
- <sup>86</sup> IDAHO CODE ANN. § 2-212(3) (2023).
- <sup>87</sup> State v. Rhoades, P.2d 960, 976 (Idaho 1991).

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- <sup>88</sup> *Id.*
- <sup>89</sup> ILLCS S. CT. R. 434; 725 ILL. COMP. STAT. ANN. 5/115-4 (2023).
- <sup>90</sup> 705 ILL. COMP. STAT. ANN. 305/10.2(a) (2023).
- <sup>91</sup> *Id.* 305/10.2(b).
- <sup>92</sup> *Id.* 305/10.2(a).
- <sup>93</sup> *Id.* 305/10.2(b).
- <sup>94</sup> IND. CODE ANN. § 33-28-5-18(a) (2023).
- <sup>95</sup> *Id.* § 33-28-5-16(b) (5).
- <sup>96</sup> *Id.* § 33-28-5-18(b) (3).
- <sup>97</sup> *Id.* § 33-28-5-16(a), (b).
- <sup>98</sup> IOWA CODE ANN. § 607A.2 (2023).
- <sup>99</sup> IOWA R. CRIM. P. 2.18(5)(c) (2022) (amended 2023).
- <sup>100</sup> IOWA CODE ANN. § 607A.6 (2023).
- <sup>101</sup> *Id.*
- <sup>102</sup> State v. Mitchell, 573 N.W.2d 239, 241 (Iowa 1997).
- <sup>103</sup> *Id.* at 242.
- <sup>104</sup> KAN. STAT. ANN. § 43-158(e) (2023).
- <sup>105</sup> *Id.* § 43-159(a)-(c).
- <sup>106</sup> *Id.* § 43-158(e).
- <sup>107</sup> KAN. STAT. ANN. § 75-4355a (2022).
- <sup>108</sup> KAN. STAT. ANN. § 43-158(e). (2023).
- <sup>109</sup> State v. Miller, 722 P.2d 1131, 1133 (Kan. 1986).

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- <sup>110</sup> KY. REV. STAT. ANN. § 29A.080(4) (2023).
- <sup>111</sup> *Id.* § 29A.100(1).
- <sup>112</sup> *Id.* § 29A.100(4).
- <sup>113</sup> *Id.* § 29A.100(3).
- <sup>114</sup> *Id.* § 30A.410(1); Woodard v. Com., 147 S.W.3d 63, 68-69 (Ky. 2004).
- <sup>115</sup> Foley v. Com., 953 S.W.2d 924, 932 (Ky. 1997), *as modified on denial of reh'g* (Nov. 20, 1997).
- <sup>116</sup> KY. REV. STAT. ANN. § 29A.100(4) (2023).
- <sup>117</sup> Bratcher v. Commonwealth, 151 S.W.3d 332, 345 (Ky. 2004).
- <sup>118</sup> LA. CODE CRIM. PROC. ANN. art. 401(A)(4) (2023).
- <sup>119</sup> *Id.* art. 401(B)(1).
- <sup>120</sup> *Id.* art. 783(B).
- <sup>121</sup> *Id.* art. 783(D).
- <sup>122</sup> *Id.* art. 401.1.
- <sup>123</sup> State v. Diggs, 294 So. 3d 487, 491-93 (La. Ct. App. 2018).
- <sup>124</sup> State v. Simpson, 699 So. 2d 477, 481 (La. Ct. App. 2018).
- <sup>125</sup> ME. REV. STAT. TIT. 14, § 1202-A (2021).
- <sup>126</sup> *Id.* § 1213(2).
- <sup>127</sup> *Id.* § 1213(2)(A).
- <sup>128</sup> *Id.* § 1213(3).
- <sup>129</sup> MD. CODE ANN., CTS. & JUD. PROC. § 8-103(b)(3) (2022).
- <sup>130</sup> *Id.* § 8-402(c)(1).
- <sup>131</sup> Trotman v. State, 218 A.3d 265, 280 (Md. 2019).

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- <sup>132</sup> MD. CODE ANN., CTS. & JUD. PROC. § 8-402(2)-(3) (2021).
- <sup>133</sup> *Id.* § 8-402(b).
- <sup>134</sup> Trotman v. State, 218 A.3d 265, 267 (Md. 2019).
- <sup>135</sup> MASS. GEN. LAWS ANN. CH. 234A, § 4(4) (2019).
- <sup>136</sup> *Id.* § 4(5).
- <sup>137</sup> *Id.* § 3.
- <sup>138</sup> *Id.* § 40.
- <sup>139</sup> *Id.* § 4(4).
- <sup>140</sup> Commonwealth v. Heywood, 138 N.E.3d 1020, 1023 (Mass. App. Ct. 2020).
- <sup>141</sup> Commonwealth v. Santos, No. 07-P-449, 2009 WL 910775, at \*2 (Mass. App. Ct. Apr. 7, 2009).
- <sup>142</sup> Commonwealth v. Susi, 477 N.E.2d 995, 998 (Mass. App. Ct. 1985).
- <sup>143</sup> MICH. COMP. LAWS ANN. § 600.1307a(1)(c) (2021).
- <sup>144</sup> *Id.* § 600.1337 (2004).
- <sup>145</sup> *Id.* § 600.1307a(3) (2021).
- <sup>146</sup> *Id.* § 593.32(1) (2013).
- <sup>147</sup> *Id.* § 593.32(2) (2013).
- <sup>148</sup> MINN. STAT. GEN. PRAC. RULE 808(b)(5) (2023).
- <sup>149</sup> MINN. R. CRIM. P. 26.02(1) (2015).
- <sup>150</sup> State v. Closmore, No. A13-0806, 2014 WL 4175792, at \*2 (Minn. Ct. App. Aug. 25, 2014).
- <sup>151</sup> MISS. CODE ANN. § 13-5-23(a)-(c) (2023).
- <sup>152</sup> *Id.* § 13-5-23 (2023).
- <sup>153</sup> Weaver v. State, 497 So. 2d 1089, 1094-95 (Miss. 1986).



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- <sup>154</sup> *Weaver v. State*, 497 So. 2d 1089, 1094-95 (Miss. 1986).
- <sup>155</sup> *Upshaw v. State*, 94 So. 2d 337, 340 (Miss. 1957).
- <sup>156</sup> MISS. CODE ANN. § 13-5-23 (2023).
- <sup>157</sup> MO. REV. STAT. § 494.425(5) (2004).
- <sup>158</sup> *Id.* § 494.425(8) (2004).
- <sup>159</sup> *Id.* § 494.430(2).
- <sup>160</sup> *Id.* § 494.430(3).
- <sup>161</sup> *Id.* § 494.430(4).
- <sup>162</sup> *Id.* § 494.430(6).
- <sup>163</sup> *Id.* § 494.430(7).
- <sup>164</sup> MO. REV. STAT. § 476.753(1) (2023).
- <sup>165</sup> *Allen v. Grebe*, 950 S.W.2d 563, 566 (Mo. Ct. App. 1997).
- <sup>166</sup> MO. REV. STAT. § 494.430(2) (2004).
- <sup>167</sup> MONT. CODE ANN. § 3-15-313(1) (2023).
- <sup>168</sup> *Id.* § 3-15-313(2).
- <sup>169</sup> *Id.* § 3-15-313(4).
- <sup>170</sup> *Id.*
- <sup>171</sup> *State v. Henry*, 788 P.2d 316, 319 (Mont. 1990).
- <sup>172</sup> MONT. CODE ANN. § 3-15-313(1).
- <sup>173</sup> *State v. Fehringer*, 293 P.3d 853, 857 (Mont. 2013).
- <sup>174</sup> NEB. REV. STAT. § 25-1650(1) (2023).
- <sup>175</sup> *Id.*

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<sup>176</sup> *Id.* § 25-1650(2).

<sup>177</sup> *Id.* § 25-1652(1).

<sup>178</sup> *Id.* § 25-1650(1).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> NEV. REV. STAT. § 6.010 (2023).

<sup>182</sup> *Id.* § 6.030(1)(a).

<sup>183</sup> *Id.* § 6.030(1)(b).

<sup>184</sup> *Id.* § 6.030(2).

<sup>185</sup> *Id.* § 6.030(4).

<sup>186</sup> *Id.* § 6.030(3).

<sup>187</sup> N.H. REV. STAT. ANN. § 500-A:10 (2013).

<sup>188</sup> *Id.* § 500-A:11.

<sup>189</sup> *Id.* § 500-A:10.

<sup>190</sup> *Id.* § 500-A:11.

<sup>191</sup> N.J. STAT. ANN. § 2B:20-1 (2023).

<sup>192</sup> *Id.* § 2B:20-10.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> N.M. STAT. ANN. § 38-5-1(A)(1) (2023).

<sup>196</sup> *Id.* § 38-5-1(A)(2).

<sup>197</sup> *Id.* § 38-5-2(C)(1).

<sup>198</sup> *Id.* § 38-5-2(G)(1).

<sup>199</sup> *Id.* § 38-5-2(C)(2).

<sup>200</sup> N.Y. JUD. LAW § 517(c) (2019).

<sup>201</sup> *Id.* § 517(a)(1).

<sup>202</sup> *Id.* § 517(a)(1).

<sup>203</sup> *People v. Santiago*, 715 N.Y.S.2d 73, 73-74 (N.Y. App. Div. 2000).

<sup>204</sup> *People v. Henriquez*, 625 N.Y.S.2d 526, 527 (N.Y. App. Div. 1995).

<sup>205</sup> *People v. Caldwell*, 603 N.Y.S.2d 713, 713-14 (N.Y. Crim. Ct. 1993).

<sup>206</sup> N.Y. JUD. LAW § 517(A)(1).

<sup>207</sup> *People v. Guay*, 959 N.E.2d 504, 508 (N.Y. 2011).

<sup>208</sup> *Id.* (internal quotations omitted).

<sup>209</sup> *Id.*

<sup>210</sup> N.C. GEN. STAT. ANN. § 9-3 (2023).

<sup>211</sup> *Id.* § 15A-1212(2).

<sup>212</sup> *Id.* § 15A-1212(1).

<sup>213</sup> *State v. King*, 320 S.E.2d 1, 9 (N.C. 1984) (“Although we think it the better practice for our trial judges freely to excuse any juror who has a genuine hearing impairment which in the juror’s opinion would hamper his or her ability to perform a juror’s duties, in this case we cannot say that the trial judge’s failure to do so amounted to an abuse of his discretion.”); *State v. Lovette*, 737 S.E.2d 432, 439 (Ct. App. N.C. 2013).

<sup>214</sup> *State v. Neal*, 487 S.E.2d 734, 741 (N.C. 1997).

<sup>215</sup> *State v. Alston*, 461 S.E.2d 687, 699 (N.C. 1995).

<sup>216</sup> *State v. Carter*, 451 S.E.2d 157, 165 (N.C. 1994).

<sup>217</sup> N.D. CENT. CODE ANN. § 27-09.1-02 (2023).

<sup>218</sup> *Id.* § 27-09.1-08(2)(d).

<sup>219</sup> *Id.* § 29-17-34.

<sup>220</sup> *Id.* § 27-09.1-11.

<sup>221</sup> *Id.* § 27-09.1-11.

<sup>222</sup> *Id.* § 2313.14(A)(2).

<sup>223</sup> *Id.* § 2313.14(A)(4).

<sup>224</sup> *Id.* § 2313.14(A)(5).

<sup>225</sup> *Id.* § 2313.14(D).

<sup>226</sup> *Id.* § 2313.14(C).

<sup>227</sup> *Id.* § 2313.14(E).

<sup>228</sup> *Jenkins v. Grawe*, 136 N.E.3d 895, 905 (Ohio Ct. App. 2019).

<sup>229</sup> *State v. Speer*, 925 N.E.2d 584, 590 (Ohio 2010); *City of Columbus v. Nearhood*, 951 N.E.2d 452, 456-57 (Ohio Ct. App. 2011) (“Trial court must determine whether reasonable accommodations will enable an impaired juror to perceive and evaluate all relevant and material evidence, and when no such accommodation exists, the court must excuse the juror for cause.”).

<sup>230</sup> OKLA. STAT. ANN. tit. 38, § 28(B)(1) (2015).

<sup>231</sup> *Id.* § 28(B)(2).

<sup>232</sup> *Id.* § 28(B)(2).

<sup>233</sup> OKLA. STAT. ANN. tit. 22, § 658 (2015).

<sup>234</sup> OKLA. STAT. ANN. tit. 38, § 28(B) (2015).

<sup>235</sup> *Browning v. State*, P.3d 816, 830 (Okla. Crim. App. 2006).

<sup>236</sup> OKLA. STAT. ANN. tit. 38, § 28(E)(2) (2015).

<sup>237</sup> *Grant v. State*, 205 P.3d 1, 15 (Okla. Crim. App. 2009).

<sup>238</sup> *Hammon v. State*, 999 P.2d 1082, 1095 (Okla. Crim. App. 2000).

<sup>239</sup> OR. REV. STAT. § 10.030(4) (2021).

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<sup>240</sup> OR. R. CIV. P. 57(D)(1)(b).

<sup>241</sup> OR. REV. STAT. ANN. § 10.050(1) (2021).

<sup>242</sup> *Id.* § 10.030(4).

<sup>243</sup> *Id.* § 10.030(4).

<sup>244</sup> *Id.* § 10.030(4).

<sup>245</sup> *Id.* § 10.050(4).

<sup>246</sup> *Id.* § 10.050(5).

<sup>247</sup> PA. STAT. CONS. STAT. § 4502 (2023).

<sup>248</sup> *Id.* § 4503(a)(3).

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* § 4503(a)(8).

<sup>251</sup> *Commonwealth v. Gibbons*, 549 A.2d 1296, 1302 (Pa. Super. Ct., 1988).

<sup>252</sup> *Commonwealth v. Hamilton*, 546 A.2d 90, 95 (Pa. Super. Ct., 1988).

<sup>253</sup> *Commonwealth v. Brown*, 332 A.2d 828, 831 (Pa. Super. Ct., 1974).

<sup>254</sup> 9 R.I. GEN. LAWS ANN. § 9-9-2 (2022).

<sup>255</sup> *Id.* § 9-9-1.1(a)(5).

<sup>256</sup> *Id.* § 9-9-1.1(d).

<sup>257</sup> *Id.* § 9-10-9.

<sup>258</sup> *State v. Berberian*, 374 A.2d 778, 781-82 (R.I. 1977).

<sup>259</sup> S.C. CODE ANN. § 14-7-810 (1986).

<sup>260</sup> *Id.* § 14-7-860(A).

<sup>261</sup> *Id.* § 14-7-860(B).

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<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* § 14-7-810(3).

<sup>265</sup> *Id.* § 14-7-860(B).

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *State v. Skipper*, 328 S.E.2d 58, 60 (S.C., 1985).

<sup>269</sup> S.D. CODIFIED LAWS § 16-13-10 (2006).

<sup>270</sup> *Id.* § 15-14-6.1.

<sup>271</sup> *Id.* § 16-13-10.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.* § 16-13-10.4 (2012).

<sup>274</sup> *Id.*

<sup>275</sup> TENN. CODE ANN. § 22-1-103(a) (2008).

<sup>276</sup> *Id.* § 22-1-103(b).

<sup>277</sup> *Id.* § 22-1-103(b)(5).

<sup>278</sup> *Id.*

<sup>279</sup> *Id.* § 22-1-103(d).

<sup>280</sup> *Lindsey v. State*, 225 S.W.2d 533, 537 (Tenn. 1949).

<sup>281</sup> TEX. CODE CRIM. PROC. ANN. § 35.16(a)(5) (2021).

<sup>282</sup> TEX. GOV'T CODE ANN. § 62.110(a) (2021).

<sup>283</sup> *Id.* § 62.109(a).

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- <sup>284</sup> *Id.* § 62.109(b).
- <sup>285</sup> *Id.* § 62.110(a).
- <sup>286</sup> *Id.* § 62.109(a).
- <sup>287</sup> *Id.* § 62.104(a).
- <sup>288</sup> *Id.* § 62.1041(a).
- <sup>289</sup> *Id.* § 62.1041(c); *Watson v. State*, No. 03-01-00258-CR, 2002 WL 1805378, at \*2 (Tex. Ct. App. Aug. 8, 2002).
- <sup>290</sup> *In re J.G.C.G.*, 283 S.W.3d 927, 932 (Tex. Ct. App. 2009).
- <sup>291</sup> TEX. GOV'T CODE ANN. § 62.104(b) (2021).
- <sup>292</sup> *Id.* § 62.1041(b).
- <sup>293</sup> *Barker v. Ash*, 194 S.W. 465, 467 (Tex. Ct. App. 1917).
- <sup>294</sup> TEX. GOV'T CODE ANN. § 62.106(a)(7) (2021).
- <sup>295</sup> *Id.* § 62.106(a)(2).
- <sup>296</sup> *Jennings v. State*, 748 S.W.2d 606, 610 (Tex. Ct. App. 1988).
- <sup>297</sup> UTAH CODE ANN. § 78B-1-103(2) (2023).
- <sup>298</sup> UTAH R. CRIM. P. 18(c)(2).
- <sup>299</sup> UTAH CODE ANN. § 78B-1-109(1).
- <sup>300</sup> *Id.* § 78B-1-109(1)(a)(iii).
- <sup>301</sup> *Utah v. Young*, 853 P.2d 327, 344-45 (Utah 1993).
- <sup>302</sup> VT. STAT. ANN. tit. 4, § 962(a)(4) (2023).
- <sup>303</sup> *Id.* § 962(b).
- <sup>304</sup> VA. CODE ANN. § 8.01-338 (2023).
- <sup>305</sup> *Id.*

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- <sup>306</sup> *Id.* § 8.01-2.
- <sup>307</sup> *Id.* § 64.2-2000.
- <sup>308</sup> *Id.* § 8.01-352.
- <sup>309</sup> *Id.* § 8.01-337; *Clarke v. Commonwealth*, No. 0930-08-2, 2009 WL 1438257, at \*4 (Va. Ct. App. May 26, 2009).
- <sup>310</sup> VA. CODE ANN. § 8.01-341.1(8) (2023).
- <sup>311</sup> *Id.* § 8.01-341.1(9).
- <sup>312</sup> WASH. REV. CODE. § 2.36.080 (2023).
- <sup>313</sup> *Id.* § 49.60.030.
- <sup>314</sup> *Id.* § 4.44.160(2).
- <sup>315</sup> *Id.* § 2.36.100(1).
- <sup>316</sup> *Id.*
- <sup>317</sup> *State v. Wilson*, 298 P.3d 148, 159 (Wash. Ct. App. 2013).
- <sup>318</sup> W. VA. CODE ANN. § 52-1-2 (2023).
- <sup>319</sup> *Id.* § 52-1-8(b)(3).
- <sup>320</sup> *Id.* § 52-1-11(b).
- <sup>321</sup> *Id.*
- <sup>322</sup> *Id.* § 52-1-8€.
- <sup>323</sup> WIS. STAT. ANN. § 756.03(1) (2023).
- <sup>324</sup> *Id.* § 756.03(2).
- <sup>325</sup> *Wisconsin v. Kettner*, 805 N.W.2d 132, 141 (Wis. Ct. App. 2011).
- <sup>326</sup> WYO. STAT. ANN. § 1-11-101(a)(ii) (2023).
- <sup>327</sup> *Id.* § 1-11-104(a).



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<sup>328</sup> *Skinner v. Wyoming*, 33 P.3d 758, 764 (Wyo. 2001).

<sup>329</sup> WYO. STAT. ANN. § 1-11-104(a).