

# The State Factor

*Jeffersonian Principles in Action*

## *The Jury Patriotism Act: Making Jury Service More Appealing and Rewarding to Citizens*

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### I. Introduction

The right to a jury trial is perhaps the most unique characteristic of the American justice system.<sup>1</sup> Jury service is often hailed as an important obligation of good citizenship and treasured as one of our society's most valued liberties.<sup>2</sup> In fact, the initial omission of the right to a civil jury in the Bill of Rights threatened ratification of the entire Constitution.<sup>3</sup> A century and a half ago, national observer Alexis de Tocqueville wrote, "the practical intelligence and political good sense of the Americans are mainly attributable to the long use they have made of the jury."<sup>4</sup> Not surprisingly, today's national polls indicate that Americans continue to hold the jury system in the highest regard. According to a 1998 American Bar Association (ABA) opinion poll, 78 percent of the public rates our jury system as the fairest method of determining guilt or innocence; 69 percent considers juries to be the most important part of the justice system.<sup>5</sup>

It is indeed ironic that despite the long-standing and strong support Americans have for the jury system, many appear to avoid jury service at virtually every opportunity. According to one study by the American Judicature Society, on average, about 20 percent of those summoned to jury duty each year in state courts do not respond.<sup>6</sup> Poor juror turnout in several jurisdictions has reached crisis levels.<sup>7</sup> In some urban jurisdictions, for example, fewer than 10 percent of all summoned citizens show up in court.<sup>8</sup> Likewise, in some rural areas, sheriffs' deputies recently have been forced to round up people shopping in the local Wal-Mart to fill the jury box.<sup>9</sup>

While a portion of this non-response rate is attributable to out-of-date records and summonses that are mailed to the wrong addresses, many citizens simply ignore their civic obligation and opportunity to serve. For example, a recent joint study conducted by the *Dallas Morning News* and Southern Methodist University found that in Dallas County, Texas, "at least 80 percent of the people summoned each week for jury duty disregard their summonses and refuse to participate in the system."<sup>10</sup> Take former baseball star Pete Rose, for example. Twice Mr. Rose failed to respond to a jury summons in Palm Beach County, Florida.<sup>11</sup> But, consider this fact: Only *one in four* jurors was showing up in Palm Beach County at the time Mr. Rose was a no-show.<sup>12</sup> Even those who do arrive at the courthouse often avoid service through "occupational exemptions" that benefit certain professions or present flimsy "hardship excuses" to escape jury duty. Avoidance of jury service has jeopardized the rights of litigants and, in more than one case, delayed a murder trial.<sup>13</sup>

All citizens should equally share the obligation of jury duty regardless of their occupation and income level. Not only does requiring all to serve more fairly distribute the burden of jury service throughout the public, it is also necessary to ensure a representative jury. The absence of a representative jury may mean that plaintiffs and defendants in both civil and criminal cases may not receive a fair trial before a true jury of their peers.

## **II. Identifying the Problems and Providing Solutions**

The contradiction between strong public support for the jury system and the avoidance of jury service suggests that the jury system needs to be reformed to better serve Americans. It needs to become more "user friendly."<sup>14</sup> This State Factor discusses several of the core problems undermining the American petit jury system. It then discusses innovative model jury service legislation recently developed by the American Legislative Exchange Council (ALEC). ALEC's "Jury Patriotism Act" promotes jury service by alleviating the inconvenience and financial burden placed on those called to serve, while making it more difficult for people to escape from jury service without showing true hardship.<sup>15</sup> The model act safeguards a citizen's right to serve on a jury as well as a litigant's right to a jury representing a true cross section of the community.

### **A. Breaking Down Barriers**

ALEC's Jury Patriotism Act would make important changes to the jury system by reducing the barriers to jury service that confront many working Americans. Women and minorities obtained their right to serve on juries only after lengthy legal battles. Although they, and others, now have a right to serve as a constitutional matter, some continue to be denied this right as a matter of practice. ALEC's model act will encourage people to serve on juries and make it easier for them to do so.

#### **1. Providing More Flexibility as to Scheduling of Jury Service**

Citizens called to jury service have other obligations in their lives. They have jobs that require their presence, children or other family members for whom they are responsible, travel plans that cannot be altered without penalty, and other personal and professional commitments. When faced with a jury summons that requires their presence at court on a particular date, many people simply choose to disregard the summons. Even if it is likely that the court will excuse them, some jurors may not be able to make the trip to the courthouse or may resent the time necessary to obtain an exemption.

In order to provide citizens with more flexibility, the Jury Patriotism Act provides jurors with one automatic postponement of jury service.<sup>16</sup> This means that if a juror receives a summons requiring him or her to report

on a date that is inconvenient for any reason, he or she may postpone service to another time. An automatic postponement of jury service works hand in hand with the elimination of occupational exemptions and tightening of the standard for hardship excuses, which are also accomplished by the model act. As the ABA observed, "Deferral of jury service accommodates the public-necessity rationale upon which most exemptions and automatic excuses were originally premised, while enabling a broader spectrum of the community to serve as jurors."<sup>17</sup>

The process for obtaining a postponement would be quick and easy. The summoned juror would simply contact the appropriate court official via telephone, electronic mail, or in writing. He or she would not have to provide any reason for the postponement. The only prerequisites would be that the requestor had not previously received a postponement and the requestor provides a date on which he or she will appear for jury service within six months. Subsequent postponements would be treated in a manner similar to hardship excuses and permitted only in the event of an extreme emergency, such as a death in the family or a sudden grave illness that could not have been anticipated at the time the court granted the initial postponement.

The Jury Patriotism Act also provides a second type of postponement aimed at protecting small businesses. Currently, it is possible for more than one employee of a business to be called for jury service during the same period. Such a situation may be particularly hard on labor-intensive, small businesses. For this reason, the model act requires the court to postpone and reschedule the jury service of a summoned juror if another employee of his or her business is already serving jury duty.<sup>18</sup> This postponement would not count toward the one postponement for any reason extended to all jurors. This provision of the model act is supported by employer groups, including the National Federation of Independent Business (NFIB).

#### **2. Reducing the Length of Jury Service**

Not only are the dates of jury service often inflexible, some jurisdictions require summoned jurors to sit in the courthouse or be available for jury duty for an extended period of time. For example, Kentucky requires that within any 12 month period, a person must be prepared to serve as a petit juror for up to 30 days.<sup>19</sup> According to the guidebook for Kentucky jurors, "In some metropolitan areas, a person may be required to serve

as few as 14 days, while in some rural areas, a person may be asked to serve as many as 150 days,” based on the discretion of the trial judge.<sup>20</sup> Idaho law requires citizens to serve up to 10 days of jury duty and be available for as long as six months for service within any two-year period.<sup>21</sup> Likewise, in Oregon, the length of a jury service term may be as long as 10 days<sup>22</sup> and, in Washington State, a juror may be required to be physically present at the courthouse for two weeks or longer.<sup>23</sup> In these and other jurisdictions, the commitment of a two-week, 30 day or longer service causes severe disruption in domestic schedules, personal plans, and business activities. In fact, one of the most frequent complaints about jury service is that it lasts too long.<sup>24</sup>

ALEC’s model act would make jury service more appealing by guaranteeing potential jurors that they will not be required to spend more than one day at the courthouse unless they are selected to serve on a jury panel.<sup>25</sup> This practice is generally known as the “one-day/one-trial” system, and has been adopted by about 50 percent of state courts.<sup>26</sup> Some courts have adopted variants of this system to suit their needs. For example, Harris County (Houston), Texas, which was ahead of its time when it became the first to adopt a one-day/one-trial system in 1972, has further increased juror convenience by moving to a half-day/one-trial system.<sup>27</sup> In 1999, the Missouri legislature adopted a law requiring its courts to implement a two-day/one-trial system by 2005.<sup>28</sup> This approach provides the court with greater administrative flexibility, but is less convenient for jurors than a one-day/one-trial system. Nevertheless, such reforms are a marked improvement from those requiring jurors to spend several frustrating days or weeks in the courthouse waiting to serve.

Over the past three decades, courts have transitioned to the one-day/one-trial system as a response to high excusal rates, the inconvenience and hardship resulting from lengthy terms on those who are unable to obtain an excuse, the frustration and boredom imposed on jurors, and “professional juror syndrome,” whereby jurors compare arguments from a previous trial with one they were currently hearing.<sup>29</sup> Adoption of the one-day/one-trial system has real results. For example, by adopting the one-day/one-trial system, New York reduced its statewide average term of service, previously above five days, to just 2.2 days — a decrease of more than 50 percent.<sup>30</sup> In Massachusetts, which has adopted the one-day/one-trial system, 85

percent of those who appear complete their jury service in just one day and 95 percent finish in three days.<sup>31</sup> Likewise, 95 percent of jurors in Jefferson Parish, Louisiana perform no more than one day of jury service, largely due to the parish’s adoption of the one-day/one-trial system.<sup>32</sup>

In an early study of juror attitudes, 90.8 percent of 5,500 jurors selected the one-day/one-trial system as preferable to a 30 day term, and a majority would not object to being called again.<sup>33</sup> The survey also revealed that the one-day/one-trial system increased positive attitudes about jury duty and about the justice system generally.<sup>34</sup>

Not only does the one-day/one-trial system result in less time spent in the courthouse for jurors, it also means fewer days of employee absences from work for jury duty. Research by the California Judicial Council found that the majority of employees return to work the next business day after reporting for jury service under the one-day/one-trial system.<sup>35</sup> In announcing the adoption of the one-day/one-trial system throughout the California judiciary, Los Angeles Superior Court Presiding Judge James Bascue commented, “We know that one-day/one-trial is in the best interest of our employers and the communities we serve.”<sup>36</sup>

Recently, the National Center for State Courts’ Best Practices Institute (NCSC) recognized the one-day/one-trial system as a particularly effective practice.<sup>37</sup> According to the NCSC, “no state court that has made the change to the shorter term of service has ‘looked back’ and returned to the former practice.”<sup>38</sup> In fact, “every statewide jury reform task force report of the past decade has recommended adopting the change.”<sup>39</sup>

In addition, experience has proven that implementation of a one-day/one-trial term of service can lead to large fiscal savings because the system is efficient.<sup>40</sup> Rather than have a large number of jurors sitting around in a jury room for days on end, reading the newspaper and playing cards while collecting a juror fee, the one-day/one-trial method brings in only the number of jurors that the court anticipates will be needed and dismisses those not selected for a trial.<sup>41</sup>

The one-day/one-trial system works hand in hand with other provisions of ALEC’s model act. It furthers the goal of promoting jury service by vastly reducing the need for hardship excuses. Indeed, the experience of one court found that requests for excusal after adoption of the one-day/one-trial

system dropped to 1.36 percent, and most of these requests were accommodated by the court's postponement policy.<sup>42</sup> As a Georgia commission recognized, this reduction in excuses "increased the representativeness and inclusiveness of the jury pool."<sup>43</sup> In addition, "[b]ecause this system requires courts to summon a greater number of prospective jurors, more persons have the educational experience of serving on a jury or, at least, undergoing juror orientation, which is generally a positive experience."<sup>44</sup> Furthermore, a one-day/one-trial system would protect employers from having to pay more than one day's wages if the employee is not selected for a trial – one more reason why employers support the model act.

### **3. Protecting Employment Rights**

Most state laws prohibit employers from terminating or threatening to terminate an employee because he or she takes time off to serve on a jury.<sup>45</sup> Several states go further and protect employees from any adverse action taken as a result of their responding to a juror summons.<sup>46</sup> The Jury Patriotism Act provides even more protection for employees. It explicitly states that a business may not require its employees to use their annual, vacation, or sick leave time for jury service.<sup>47</sup> Employees should not fear that by responding to a juror summons, they may be required to sacrifice their annual vacation. This provision is one reason why the AFL-CIO supports the ALEC model act.

### **4. Removing the Risk of Service on a Lengthy Trial Without Adequate Compensation**

A second major reason that people avoid jury duty is the financial burden that such service may impose and the anxiety that they may be selected to serve on a drawn-out trial without adequate compensation. Most state courts provide a nominal daily fee for those who serve, generally ranging from absolutely nothing on the first day<sup>48</sup> to \$40 per day in New York.<sup>49</sup> New Mexico may be the most generous state—it pays jurors the prevailing state minimum wage for each hour in attendance.<sup>50</sup> In some states, juror compensation is regarded as so insignificant that many who serve do not even bother to cash their juror checks.<sup>51</sup> Several jurisdictions increase the level of compensation after a certain number of days of service. For example, in Florida, jurors receive fifteen dollars per day for the first three days of service and thirty dollars

per day thereafter.<sup>52</sup> The average daily juror fee in state courts for less than five days of service is just \$18.53 per day.<sup>53</sup> After five days, the average amount increases to \$24.26 per day.<sup>54</sup> This small increase, however, is of little practical help to jurors who may not have other sources of compensation and whose travel and lunch expenses may exceed their juror fees. Today's juror fee often does not pay for a bus fare and a salami sandwich, let alone reimburse a juror for lost income. This lack of available compensation may be particularly troublesome for jurors who are selected to serve on lengthy civil trials. Although somewhere between half and three-quarters of trials conclude within three days, and very few cases extend beyond ten days,<sup>55</sup> jurors who find themselves called to serve on the rare, lengthy civil trial may be subject to extreme financial hardship.<sup>56</sup> For this reason, when it is apparent that a trial will be long and complex, it is likely that the court will excuse many jurors because of the financial burden jury service will place on them, their families, or their businesses. Courts often find they have no other choice, given that they do not have the resources to provide any significant compensation above the jury fee. As the ABA recognized:

The minimal size of the daily fee means that "[f]ew persons making more than the minimum wage can afford [the] . . . sudden and involuntary cut in pay" imposed by jury service. As a result, excuses from jury service because of economic hardship are common in many jurisdictions for laborers, salespeople, unemployed parents with child care expenses, and sole proprietors of small businesses. Only those who are not employed or whose employer will continue to pay their salary are then available for jury service.<sup>57</sup>

Consequently, the basic democratic right to be tried by a jury of one's peers<sup>58</sup> may "morph" into a jury that is disproportionately composed of retired and unemployed individuals, especially in lengthy trials. This result may produce non-diverse and unrepresentative juries, and may lead to arbitrary results for plaintiffs, defendants, and prosecutors. Such hardships also are unfair to the public, which has a right and an obligation to serve on a jury.<sup>59</sup>

Ideally, states would be able to provide greater compensation for jurors. After all, jury service is a civic obligation. In these times of tight state budgets, however,

significantly increasing the juror fee through payments out of the state treasury may not be a realistic option in most states. Even as long ago as 1993, the ABA recognized that “raising juror fees to compensate citizens for their time at current wage levels would place a nearly impossible burden on many financially hard-pressed jurisdictions.”<sup>60</sup> This observation is no less true today.

Although the number of jurors selected to serve on lengthy civil trials is relatively small, those who find themselves in the jury box on a long product liability, commercial litigation, or intellectual property case may suffer severe financial hardship. Absent extreme circumstances warranting the judge’s intervention, these jurors are required to serve for the entire trial, which may last several weeks or months. While jurors indeed have a civic duty to serve, there is a limit on how much an individual citizen can be asked to sacrifice for the civil justice system, particularly when the case involves a dispute between private parties. For this reason, ALEC’s Jury Patriotism Act contains an innovative provision establishing a “lengthy trial fund” to help relieve the burden on jurors serving on prolonged civil cases.<sup>61</sup>

The lengthy trial fund in ALEC’s model act would provide jurors who serve on civil trials lasting longer than three days with supplemental compensation of up to \$100 per day if they otherwise would be excused from service due to financial hardship.<sup>62</sup> In the rare case that a civil trial lasts ten days or more, all jurors who are not fully compensated by their employer during jury service would be eligible to receive as much as \$300 per day in supplemental compensation from the fund.<sup>63</sup> In order to qualify for payment, the juror would complete a form identifying the amount requested and provide the court with verification from an employer of his or her usual wage and how much the employer paid the employee during jury service. An individual who is self-employed or receives compensation other than wages would submit a sworn affidavit attesting to his or her approximate gross weekly income, together with supporting documentation, to obtain wage replacement or supplementation from the court.<sup>64</sup> States or individual courts would set the maximum daily rate available to jurors on the basis of the cost of living in the area or other considerations.

The lengthy trial fund would be financed by a minimal fee collected from each attorney who files a civil case.<sup>65</sup> In effect, the model act establishes a nominal user fee on civil litigants who make use of the jury system to resolve disputes. The fund is based on the premise that those

who use the jury system should help pay to finance it. The filing fee is not intended to be a barrier to the filing of lawsuits and would be the minimum necessary to fairly support jurors who serve on lengthy civil trials. A court administrator, hired by the judicial system and compensated by the fund, would manage the fund under rules and guidelines established by the state supreme court. This system would be self-sustaining and not require any allocation of resources by the legislature.

## **B. Eliminating Jury Service Loopholes**

The foundational principle of ALEC’s Jury Patriotism Act is that all citizens have a civic obligation to serve on juries regardless of their occupation or income level. This cross section of the public is necessary to ensure a diverse and representative jury, and to distribute the burden of jury service equally throughout the population. The privileged should not be allowed to escape jury duty, as some escaped military service in Vietnam, and leave those with less political or financial clout with the burden of service. Given the ease with which one can postpone and reschedule service, the guarantee of serving no more than one day or one trial, and the assurance of fair compensation if selected for a lengthy trial provided by the ALEC model, there are few legitimate reasons for not serving on a jury.

### **1. Everyone Serves: Repealing Automatic Exemptions from Jury Service for Professionals**

Some states unnecessarily limit the jury pool by automatically exempting potential jurors from service based on their occupations. For some reason or another, these people are regarded as too important, socially, politically or economically, to serve on a jury. Some citizens simply feel, “I don’t belong here with these people.”<sup>66</sup> But, as one Ohio state senator stated when asked why Ohio exempted attorneys, doctors and dentists from jury service, “It’s elitism. . . . I believe that real people ought to serve on juries and that includes professionals.”<sup>67</sup> Moreover, as the ABA has recognized, “broad categorical exceptions not only reduce the inclusiveness and representativeness of a jury panel, but also place a disproportionate burden on those who are not exempt,” most notably blue-collar workers, retirees and the unemployed.<sup>68</sup>

New York once held the record for occupational exemptions. Prior to its 1995 jury reform initiative, there were 26 occupational exemptions covering professions ranging from judges, lawyers, physicians, and police

officers to ministers, podiatrists, optometrists, and volunteer firefighters.<sup>69</sup> Remarkably, these exemptions excluded over 1 million of New York's citizens from the jury pool and contributed to a shortage of jurors in the 1990s.<sup>70</sup> In 1995, the New York legislature, upon the recommendation of the Citizens Jury Project, under the leadership of Chief Judge Judith Kaye, eliminated all occupational exemptions. Subsequent press reports hailed the increased diversity of the jury pool and the greater willingness of those summoned to serve.<sup>71</sup>

With the fall of broad occupational exemptions in New York, Tennessee now may hold the title of protector of the privileged and other special classes. Tennessee exempts from jury service all persons holding public office, practicing attorneys, certified public accountants, physicians, members of the clergy, acting professors or teachers, members of fire companies, full-time law enforcement officers, pharmacists, practicing registered nurses, and those serving in the National Guard.<sup>72</sup> Missouri provides another example of a state that allows many professionals out of jury service. Missouri law disqualifies lawyers and judges from jury service,<sup>73</sup> and allows clergymen, doctors, osteopaths, chiropractors, dentists, pharmacists, and certain police officers out of jury duty upon request.<sup>74</sup> Several other jurisdictions retain various occupational exemptions,<sup>75</sup> some of which are buried deeply in state codes.<sup>76</sup> Some exemptions appear to be remnants of a time past. For example, locomotive engineers, locomotive firemen, conductors, brakemen, switchmen, and engine foremen may be surprised to learn that they are exempt from jury service in Nevada.<sup>77</sup> Wyoming apparently considers embalmers too important for jury service.<sup>78</sup>

Evidence suggests that even those who receive special exemptions from jury service do not believe they are too valuable to take time off to sit on a jury, or too biased or influential to serve. For example, when New York doctors were asked whether they should be exempt from jury service following New York's reform, only 12 percent said that physicians should be exempt from service.<sup>79</sup> New York lawyers had a similar reaction. One attorney who was furious immediately following the elimination of occupational exemptions exclaimed, "Are they out of their minds in Albany? Lawyers are never going to let other lawyers, much less judges or docs, serve on a jury."<sup>80</sup> One year later, the same attorney was selected for a jury and was "quite proud" to have served.<sup>81</sup> "Both sides thought I could be fair," he said.<sup>82</sup> According to the study,

only 3 percent and 10 percent of Manhattan and Brooklyn attorneys, respectively, thought they should be exempt from jury service.<sup>83</sup> Even the New York judge that led the state's jury reform efforts, Chief Judge Judith Kaye, was called for jury duty. Rudolph Giuliani, despite being a sitting mayor, lawyer and former prosecutor, also made headlines when he was summoned and selected to serve on a jury hearing a \$7 million civil suit in 1999.<sup>84</sup> Most recently, it was revealed on an "anonymous" juror qualification form for federal jury duty in New York that Juror No. 142's former occupation was "President of the United States" and that he felt that he could be fair and impartial despite his "unusual experience with the O.I.C.," otherwise known as the Office of Independent Counsel.<sup>85</sup> If judges, mayors and ex-presidents are not beyond jury service, no one should expect that their profession puts them above this civic duty.

The first step to a more representative jury is the elimination of all occupational exemptions from jury service.<sup>86</sup> Many states have recognized that occupational exemptions to jury service are elitist and unnecessary, and that such exemptions place an unfair burden on those who do not qualify for special treatment. Like New York, approximately two-thirds of the states have now taken the positive step of repealing broad occupational exemptions to jury service.<sup>87</sup> They have, instead, adopted limited exemptions, such as for those actively serving in the National Guard.<sup>88</sup> Those states that have retained occupational exemptions should follow and ensure that all people have the opportunity and obligation to serve on a jury.

ALEC's model act repeals state laws establishing or recognizing excuses or exemptions for postponing or excusing service as a petit juror, including the repeal of occupational exemptions.<sup>89</sup> The model act also clarifies that "[u]ndue or extreme physical or financial hardship" does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment," a provision that lessens the chance that a doctor or lawyer will avoid jury service simply because he or she will be required to miss a day of work.<sup>90</sup>

Elimination of occupational exemptions not only would increase the representativeness of the jury pool, there is evidence that it also would lead to other improvements to the jury system. As Julia Vitullo-Martin, the former director of the Citizens Jury Project of the Vera Institute of Justice, which proposed and monitored

many of the reforms implemented in New York, recognized:

Now that highly educated, financially successful, influential New Yorkers serve, they are pressuring the courts to reconsider procedures that some argue infantilize jurors—such as bans on juror notetaking, questioning, internal discussions prior to formal deliberations, even taking the judge's charge into the deliberation room with them. They also demand clean courthouses, courteous civil servants and technology-equipped assembly rooms so they can continue working while serving. Jurors have long awaited these courtesies, but only recently have large numbers of jurors with access to top officials served. (And, of course, some of the complaining jurors are the top officials themselves.)<sup>91</sup>

## 2. Increasing the Penalty for No-Shows

As previously discussed in this article, a substantial and increasing number of people simply choose to ignore a jury summons—a situation that has led to a critical shortage of jurors in some areas. Research shows that a significant number of those who do not respond to jury summonses fail to do so because they have little fear of receiving a penalty, or believe that the penalty will be minimal—a mere “slap on the wrist.” Most states currently provide that a person can be held in contempt of court or required to pay a minimal civil fine, comparable to a parking ticket, for failing to appear for jury service.<sup>92</sup> It is no secret that such provisions, however minimal, are rarely imposed or enforced by courts.<sup>93</sup>

For this reason, ALEC's model act provides that a juror's failure to appear in court, or failure to obtain a postponement of service, is a misdemeanor, punishable by a fine, imprisonment, or both. The intent of the model act is to communicate to jurors the importance of jury service and to notify them that shirking one's civic obligation to serve will be severely punished. Those who fail to appear for jury service will have a criminal record, a threat sufficient to cause one to pause before ignoring a juror summons. The penalty for failing to appear in court for jury duty should be displayed conspicuously on the summons.

## 3. Limiting Excuses to Situations of True Hardship

While many potential jurors simply choose to ignore their summonses, others appear in court with innovative excuses to avoid jury service. One might be advised to avoid some especially poor excuses, such as “My dog is in heat and needs me,” “I never tell the truth,” “I'm 86 years old and deaf as a doornail,” “The legal system is perverted,” or “I'm a soccer mom.”<sup>94</sup> Even though the courts rejected these excuses, they provide a glimpse at what is regularly occurring today in America's courtrooms.

Both common sense and concern for our fellow citizens suggest that there should be some hardship situations when a person is excused from serving on a jury. But there are three primary problems with hardship excuses as they are currently written in some states. The first problem is that the standard for granting a hardship excuse is often vague or undefined. For example, in many states, the standard for an excuse is simply defined as “undue hardship, severe inconvenience, or public necessity.”<sup>95</sup> Such wording leaves a great deal of leeway for potential jurors to come up with reasons why they cannot serve. Furthermore, some “hardship” standards seem perfectly tailored to allow professionals to avoid service. In Virginia, for example, a person may plead a “particular occupation inconvenience” to receive an exemption from jury service.<sup>96</sup> Likewise, Illinois courts will excuse those called for service if they show an “undue hardship on account of the nature of the prospective juror's occupation [or] business affairs,” among other reasons.<sup>97</sup> Delaware's statute provides that “[t]he Court may determine that membership in specified groups of persons or occupational classes constitutes a showing of undue hardship, extreme inconvenience or public necessity.”<sup>98</sup>

The second problem with hardship excuses is that they accord a great deal of discretion to the court official responsible for making such decisions. In many cases, the court official making hardship determinations is not a judge, but rather he or she is an administrative employee or law clerk.<sup>99</sup> Jurors may feel less embarrassment in inventing hardship excuses when the court representative they appear before does not wear a robe and does not have the power to hold them in contempt of court. Furthermore, court staff or clerks may find themselves intimidated by ego-toting professionals.

A third problem with many existing hardship excuses is that they may be easy to invent. Not all states require jurors to substantiate the reasons for their excuses.

For example, the potential juror does not have to provide a physician's statement to support a medical problem or a tax return, pay stub or note from his or her employer documenting a financial hardship, or, at minimum, an affidavit under oath from the prospective juror in other circumstances.

ALEC's Jury Patriotism Act would make it more difficult for the privileged to avoid jury service by tightening the standard for hardship excuses. The model act moves away from the vague "undue hardship, severe inconvenience, or public necessity" standard used by many courts and provides a more precise definition of hardship. Under the model act, "undue or extreme physical or financial hardship" justifying an excuse from jury service is limited to three circumstances.<sup>100</sup> The first situation is when a person would be required to abandon a person under his or her personal care or supervision because of the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury.<sup>101</sup> This language does not permit any person with a child to claim hardship. Rather, only those who can demonstrate the *impossibility* of obtaining child care, for financial reasons or because of the age of the child, can obtain an excuse. Those who can afford to find child care, or have a relative or babysitter they can rely upon, are required to do so.

The second situation in which a prospective juror can claim hardship under the model act is when he or she would incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support.<sup>102</sup> Under this provision, loss of income from employment or other activities would not permit one to avoid jury service automatically. Professionals who stand to lose a substantial sum would be exempt only if they can show that the loss actually would impair their ability to live. While this may appear to place a burden on some, it serves to fairly distribute the burden of jury service equally among white-collar workers and those who make less money, but for whom lost income may place a greater strain.

The final situation in which a court would be allowed to excuse a person from jury service under the ALEC model bill would be if the prospective juror would suffer physical illness or disease by serving.<sup>103</sup> This provision generally codifies existing practice. The model act also is intended to make clear that the disabled can

productively serve, and indeed have a right to serve, on a jury.

ALEC's Jury Patriotism Act not only limits the available hardship excuses, it also establishes procedures that make it more likely that the excuses will be strictly applied.<sup>104</sup> Under the model act potential jurors cannot simply claim a hardship. Rather, they must provide the court with documentation that supports the need for an excuse.<sup>105</sup> This minimal requirement will ensure that jurors are not inventing or exaggerating claimed hardships. For instance, a person claiming a medical condition could provide a statement from a physician. One who claims financial hardship might submit a copy of his or her tax return or pay stub. Potential jurors who are caring for a young child or other family member might provide the court with a sworn statement providing the reason that he or she cannot obtain alternative care. The model act also places the responsibility for making hardship determinations with a judge, rather than with a clerk of the court or an administrative staff member.<sup>106</sup> This requirement demonstrates the seriousness of the jury service obligation within the judicial system. It also would have an important practical effect. People may think twice about articulating a bogus hardship excuse when in a courtroom, before a judge, and faced with the threat of a sanction.



### **III. Conclusion**

Americans continue to overwhelmingly support the jury system. Yet, many people fail to appear for jury duty when summoned, or strive to get out of jury duty once they enter the courthouse. Most of these individuals do not lack a sense of civic duty. Rather, they are discouraged from jury service caused by the hardship and headache imposed by antiquated systems that do not provide adequate financial compensation for jurors, leave little or no flexibility as to the dates of service, and may involve unnecessary time in a waiting room. Moreover, occupational exemptions give some privileged members of society an easy way out of service, while loosely defined hardship exemptions provide many others with a means of escape.

ALEC's Jury Patriotism Act addresses and breaks down each of the barriers that currently make many juries unrepresentative of the communities which they serve. Jurors would benefit from the flexibility of an easy method to postpone and reschedule service, and from adoption of a one-day/one-trial system that would reduce the frustrating and boring time spent in a courthouse waiting room. Moreover, under the ALEC model bill, jurors would not risk being selected to serve on lengthy civil trials without adequate compensation. Through these reforms, all citizens, regardless of income or occupation, will be expected and able to serve on a jury, and they will be welcomed by a more friendly jury system.

# JURY PATRIOTISM ACT

## Section 1. Short Title.

This Act shall be known and may be cited as the *Jury Patriotism Act*.

## Section 2. Full Participation on Petit Juries of All Citizens.

It is the policy of this State that all qualified citizens have an obligation to serve on petit juries when summoned by the courts of this State, unless excused.

## Section 3. Postponements of Petit Jury Participation.

- a. All provisions of the law of this State, or of any political subdivision thereof, that establish or recognize excuses or exemptions for postponing or excusing service as a petit juror are hereby repealed.
- b. Individuals scheduled to appear for jury service have the right to postpone the date of their initial appearance for jury service one time only. When requested, postponements shall be granted, provided that:
  1. The juror has not previously been granted a postponement;
  2. The prospective juror appears in person or contacts the [appropriate court official] by telephone, electronic mail, or in writing to request a postponement; and
  3. Prior to the grant of a postponement with the concurrence of the [appropriate court official], the prospective juror fixes a date certain on which he or she will appear for jury service that is not more than six months after the date on which the prospective juror originally was called to serve and on which date the court will be in session.
- c. A subsequent request to postpone jury service may be approved by a judicial officer only in the event of an extreme emergency, such as a death in the family, sudden grave illness, a natural disaster or a national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the individual will appear for jury service within six months of the postponement on a date when the court will be in session.
- d. An individual who fails to appear in person on the date scheduled for jury service and who has failed to obtain a postponement in compliance with the provisions for requesting a postponement, or who fails to appear on the date set pursuant to subsection (b)(3) or (c) of this Section, shall have committed a [Class A] misdemeanor and shall be subject to imprisonment or fines in accordance with the laws of this State.

## Section 4. Excuses From Petit Jury Service.

An individual may apply to be excused from jury service for a period of up to [ 24 ] months, instead of seeking a postponement when either:

- a. The prospective juror has a mental or physical condition that causes him or her to be incapable of performing jury service. The juror, or the juror's personal representative, must provide the court with documentation from a physician licensed to practice medicine verifying that a mental or physical condition renders the person unfit for jury service for a period of not less than the [ 24 ] month period for which the excuse is sought.

- b. 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.
1. A judge of the court for which the individual was called to jury service shall make undue or extreme physical or financial hardship determinations. The authority to make these determinations is delegable only to court officials or personnel who are authorized by the laws of this State to function as members of the judiciary.
  2. A person asking to be excused based on a finding of undue or extreme physical or financial hardship must take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.
  3. For purposes of this Act, “undue or extreme physical or financial hardship” is limited to circumstances in which an individual would:
    - (a) 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; or
    - (b) Incur costs that would have a substantial adverse impact on the payment of the individual’s necessary daily living expenses or on those for whom he or she provides the principal means of support; or
    - (c) Suffer physical hardship that would result in illness or disease.
  4. “Undue or extreme physical or financial hardship” does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment.
  5. Persons asking a judge to grant an excuse based on “undue or extreme physical or financial hardship” shall be required to provide the judge with documentation, such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused.
    - (a) After [ 24 ] months, 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 when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.

## **Section 5. Rights of Petit Jurors.**

- a. Jobs Preservation. Any person who is summoned to serve as a juror and who notifies his or her employer of such summons within a reasonable period of time after receipt of a summons and prior to his or her appearance for jury duty may not be removed or otherwise be subject to any adverse employment action as a result of such service.
- b. Benefits Protection. An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process or for time spent actually serving on a jury. Nothing in this provision shall be construed to require an employer to provide annual, vacation, or sick leave to employees under the provisions of this statute who otherwise are not entitled to such benefits under company policies.
- c. Length of Service. Service of prospective jurors shall be for no more than one court day in actual attendance, unless a prospective juror is selected to serve in a trial or is under consideration to serve on a trial and such consideration covers a period of two or more days. Once selected, a juror shall serve on the jury for the duration of the trial unless excused by the presiding judge.
- d. Frequency of Service. A juror who has served on a petit jury in this State shall not be summoned to serve again as a petit juror in any court of this State for [ ] years following the last day of such service.

