



February 27, 2023

The Honorable Glenn Youngkin
Governor of Virginia
P.O. Box 1475
Richmond, VA 23218

Dear Governor Youngkin,

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I write to express support for House Bill 2317/Senate Bill 789, which would increase the daily compensation rate for jurors in Virginia from its current rate of \$30 to \$50. This is a critical step needed to increase the diversity of juries in the Commonwealth.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. NACDL's more than 10,000 members (40,000 with state affiliate members) include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal legal system. Critical to this mission are NACDL's efforts to identify and reform flaws and inequities in the criminal legal system, and specifically address systemic racism and its impact on the administration of justice.

Across the country, our nation's juries fail to represent the racial, ethnic, and socio-economic diversity of the communities from which they are drawn, and Virginia is no exception. While a variety of factors contribute to these disparities, including the use of limited source lists and exclusion of those with prior criminal convictions, one of the most impactful is the actual cost for participation. Responding to the civic call for jury service requires individuals to take time off work, secure childcare, and/or obtain transportation. While some who receive summons may be salaried employees, working in jobs that provide paid time off to attend jury service, the same cannot be said for the millions of Virginians who work hourly jobs, where a lost day's work is a lost day of pay.

Currently jurors are paid \$30 per day. By comparison, Virginia's current minimum wage is \$11.00/hour. This means an individual working a minimum wage job will earn nearly three times as much as what they receive in compensation for a day's jury service. Those who report may face expenses for meals, transportation, and in some places, even parking.¹ People selected to serve may find themselves on a case that lasts several days or weeks and even if they are not seated for

¹ See e.g. Arlington County, which advises jurors "There is no free parking, even for jurors, in the Courthouse area." <https://www.arlingtonva.us/Government/Departments/Courts/Circuit-Court/Jury-Duty#section-5>



a particular date, in some parts of the Commonwealth summoned jurors are expected to be available for multiple days of service, further compounding the financial burdens of service.

Virginia's compensation rate has stagnated at \$30 per day for more than 25 years. Set in 1996², the \$30 per day compensation was more reasonably suited to times when gas prices were \$1.23 a gallon³ and minimum wage was \$4.75 per hour.

Inadequate juror compensation is more likely to prevent communities of color from fulfilling their civic duty because they simply cannot afford to participate. According to an analysis by Virginia Commonwealth University, Black people and other minorities in Virginia are over-represented within the population of minimum wage workers. Poverty rates are also disproportionately high amongst Black Virginians.⁴ This means that by underpaying jurors, communities of color are disproportionately shut out from serving on juries, further contributing to a lack of diversity, a practice that has many significant implications. Some courts attempt to mitigate these harms by excusing, for cause, jurors who face significant financial hardship. While this may have a short-term benefit to the individual juror, it produces a direct harm to the parties who are denied the benefits of a more diverse jury as well as a systemic harm, undermining community confidence in the legal system as a whole, and pulling the jury system away from its intended role as reflecting the voice of the community.

Research has shown diverse juries do their job better. Racially diverse juries deliberate longer, get more facts correct, rectify more errors, are more willing to discuss issues of race, and consider a broader range of evidence.⁵ In short, they get it right more often. In addition, public confidence in the accuracy, fairness, and legitimacy of a jury's decision increases substantially when the jury that rendered the verdict reflects the community it is supposed to be representing.⁶

A lack of jury diversity can lead to irreparable harm. Because of the systemic racism rooted in many of our institutions, all-white juries are more likely to presume guilt and less likely to hold prosecutors to their burden of proof, when a defendant is Black, and even more so when the victim

² Evan Seamone, *A Refreshing Jury Cola: Fulfilling the Duty to Compensate Jurors Adequately*, 2002.

<https://www.nyujlpp.org/wp-content/uploads/2012/11/Evan-R.-Seamone-A-Refreshing-Jury-Cola-Fulfilling-the-Duty-to-Compensate-Jurors-Adequately.pdf>.

³ Office of Energy Efficiency and Renewable Energy. 2015. <https://www.energy.gov/eere/vehicles/fact-888-august-31-2015-historical-gas-prices>

⁴ Burr, G, et. al. *A Racial Impact Analysis of HB 32: Minimum Wage Increase*. Virginia Commonwealth University, Grace E. Harris Leadership Institute. 2014.

https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1045&context=wilder_pubs

⁵ Sommers, Samuel R. *On Racial Diversity and Decision Making: Identifying Multiple Effects on Racial Composition on Jury Deliberations*. 2006. <https://www.apa.org/pubs/journals/releases/psp-904597.pdf#page=10>

⁶ Chopra, Sonia. *Preserving Jury Diversity by Preventing Peremptory Challenges*. 2014. <https://www.njp.com/wp-content/uploads/article/article30.pdf>



is white.⁷ Juror compensation directly impacts the potential racial and ethnic diversity of a jury. Raising the daily compensation rate is an important step toward increasing the racial and ethnic make-up of juries in the Commonwealth, making participation more accessible to a wider range of Virginians and contributing to a more just legal system.

For these reasons, NACDL strongly urges you to approve HB 2317/SB 789.

Sincerely,

Lisa M. Wayne, Executive Director
National Association of Criminal Defense Lawyers

⁷ Race and the Jury: Illegal Discrimination in Jury Selection. Equal Justice Initiative. 2021.
<https://eji.org/report/race-and-the-jury/>