

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA

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v.

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Case No. CC-13-0000

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JOE CLIENT

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**MOTION CHALLENGING THE COMPOSITION OF THE VENIRE  
FOR SYSTEMATIC UNDERREPRESENTATION OF COGNIZABLE GROUPS**

Joe Client respectfully moves this Court to strike the jury venire that has been summoned, and order that a new venire be summoned from a master jury list that adequately represents African Americans in proportion to their representation in the community. In support of his motion, Mr. Client submits the following:

1. Mr. Client is before the Court on an indictment returned on February 28, 2013, by a grand jury of Maycomb County. The trial in this case is currently scheduled to begin on October 5, 2020.

2. As the Court is aware, Alabama Governor Kay Ivey has declared a public health emergency exists in the State of Alabama due to the spread of COVID-19 in our state. This Court has adopted new procedures for summoning and qualifying jurors in light of this pandemic. These procedures include electronic verification of qualifications, and granting greater numbers of excuses or deferrals to prospective jurors who are considered high risk for serious cases of COVID-19 or for other concerns related to the pandemic. *See* Ala. R. Jud. Admin. 46; Maycomb County COVID-19 Jury Trial Order.

3. Alabama’s Unified Judicial System has acknowledged that the changes in jury procedures due to the pandemic may lead to the underrepresentation of African American prospective jurors.<sup>1</sup> The Constitution, however, does not permit courts to knowingly adopt procedures that will underrepresent any racial group. *See Castaneda v. Partida*, 430 U.S. 482, 493 (1977) (“[T]he systematic exclusion of [African Americans] is itself . . . an ‘unequal application of the law . . . .’”); *Duren v. Missouri*, 439 U.S. 357, 366 (1979) (“[P]etit juries must be drawn from a source fairly representative of the community . . . .” (citation omitted)).

4. The Supreme Court has found that it is unconstitutional to remove “even a single prospective juror” in a discriminatory manner. *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008) (citation omitted). By finding that improper elimination of even a single prospective

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<sup>1</sup>See State of Alabama, Unified Judicial System, *Resuming Jury Trials in the Alabama Unified Judicial System: COVID-19 Guidelines for Alabama Trial Courts*, at 5 (Aug. 2020).

juror is unconstitutional, the Supreme Court reaffirmed that the court system has a duty “to eliminate, not merely to minimize, racial discrimination in jury selection.” *United States v. David*, 803 F.2d 1567, 1571 (11th Cir. 1986). This is because “selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.” *Batson v. Kentucky*, 476 U.S. 79, 87 (1986).

5. Additionally, given the tragic events that have recently drawn the public’s attention to the persistent problem of racial bias in the administration of criminal justice, the duty of the judicial system not to tolerate underrepresentative juries is particularly critical.<sup>2</sup> “The purpose of the jury system is to impress upon the criminal defendant and the community as a whole that a verdict of conviction or acquittal is given in accordance with the law by persons who are fair.” *Powers v. Ohio*, 499 U.S. 400, 413 (1991). Where any racial group is excluded from the jury selection process, “the composition of the trier of fact itself is called in question, and the irregularity may pervade all the proceedings that follow.” *Id.* at 412–13.

## **I. THE VENIRE SYSTEMICALLY UNDERREPRESENTS AFRICAN AMERICANS IN VIOLATION OF STATE AND FEDERAL LAW.**

6. “For over a century, th[e United States Supreme] Court has been unyielding in its position that a defendant is denied equal protection of the laws when tried before a jury from which members of his or her race have been excluded by the State’s purposeful conduct.” *Powers*, 499 U.S. at 404. The Court has also made clear that “the 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.” *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975). Therefore, “jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof.” *Id.* at 538. The Supreme Court’s decisions make clear that the Constitution does not tolerate the underrepresentation of any cognizable group. This is no less true in the midst of a global pandemic.

7. The venire from which the jury in this case will be selected underrepresents African Americans in comparison to their representation in Maycomb County. African Americans constitute 40% of the population of Maycomb County, and the black population that is eligible for jury service is 38% of the county. *See* Census Data for Maycomb County

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<sup>2</sup>*See, e.g.,* Kirsten Fiscus & Melissa Brown, *Montgomery Mayor Steven Reed urges ‘long term’ change amid Floyd protests*, *Montgomery Advertiser*, June 1, 2020, available at <https://www.montgomeryadvertiser.com/story/news/2020/06/01/george-floyd-protest-riot-police-violence-looter-montgomery-steven-reed-alabama/5311884002/>.

(attached as Exhibit A). However, the venire from which the jury for this case will be drawn is only 20% African American.

8. In 2019, prior to the pandemic, jury venires in Maycomb County were on average 35% African American. Since the resumption of jury trials under the new procedures, jury venires in Maycomb County have been on average 20% African American. Thus, the new procedures adopted due to the pandemic have resulted in a significant increase in the underrepresentation of African Americans on venires in Maycomb County. *See Duren*, 439 U.S. at 366 (finding underrepresentation systemic where it is “inherent in the particular jury-selection process utilized”); *Berguis v. Smith*, 559 U.S. 314, 331 (2010) (recognizing that significant change in level of representation after policy change could establish underrepresentation was systematic).

9. The absolute disparity between the percentage of eligible black prospective jurors in the county and the percentage of black prospective jurors in the venire is 20%. *See* Expert’s Affidavit (attached as Exhibit B). Calculating the comparative disparity demonstrates that nearly 50% of the black community in Maycomb County is not represented in the jury venire that has been summoned to try the case of Mr. Client. *Id.* Such a disparity between the community and the venire is constitutionally significant. *Duren*, 439 U.S. at 365–66; *see also Berghuis*, 559 U.S. at 323; *Swain v. Alabama*, 380 U.S. 202 (1965), *overruled on other grounds by Batson v. Kentucky*, 476 U.S. 79 (1986); *Hernandez v. Texas*, 347 U.S. 475 (1954).

10. African Americans constitute a cognizable, distinctive class of persons in this community under both state and federal law. *Strauder v. West Virginia*, 100 U.S. 303 (1879). The exclusion of African Americans from the venire violates Mr. Client’s right to a jury drawn from a fair cross-section of the community, *Duren*, 439 U.S. at 357, and denies him the equal protection of the law. *J.E.B. v. Alabama*, 511 U.S. 127 (1994); *Vasquez v. Hillery*, 474 U.S. 254 (1986); *Castaneda*, 430 U.S. at 482.

11. Underrepresentation of black persons also violates §§12-16-55 and 12-16-56 of the Alabama Code, as well as the Alabama Constitution. Alabama Code §12-16-55 specifically states:

It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity, in accordance with this article, to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose.

Ala. Code §12-16-55. Section 12-16-55 of the Alabama Code further states, “[a] citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin or economic status.”

## **II. THIS COURT SHOULD ORDER THAT A NEW VENIRE BE SUMMONED FOR JURY SERVICE IN THIS CASE.**

12. The defendant, Mr. Client, is an African American who has been accused of shooting a white woman. Interracial crimes make the obligation to avoid racial bias in jury selection crucial. *See Turner v. Murray*, 476 U.S. 28 (1986) (requiring special voir dire procedures to eliminate racial bias in capital cases involving interracial crimes). To avoid these problems, this Court should order that a new venire be summoned that adequately represents black people.

13. The exclusion of black people and other cognizable groups undermines the overall integrity of criminal proceedings. *Johnson v. California*, 545 U.S. 162, 172 (2005) (“[T]he overriding interest in eradicating discrimination from our civil institutions suffers whenever an individual is excluded from making a significant contribution to governance on account of his race.”). Black people in Maycomb County have a right to serve on juries in numbers equal to their population without jury pools or venires that systematically underrepresent them. “The Fourteenth Amendment’s mandate that race discrimination be eliminated from all official acts and proceedings of the State is most compelling in the judicial system.” *Powers*, 499 U.S. at 415. Whether through peremptory strikes or underrepresentation in the jury pool or venire, the unexplained exclusion of black people is unconstitutional. *See Bui v. Haley*, 321 F.3d 1304 (11th Cir. 2003); *Yancey v. State*, 813 So. 2d 1 (Ala. Crim. App. 2001). This is particularly true where the selection of a new venire or some other remedy might avoid the problem.

14. In light of these important interests, there is no compelling interest that could justify the underrepresentation of African Americans on venires in this county, even during the pandemic. There are a number of steps that the Court can take to ensure representative venires. First, this Court could delay the trial in this case until the modifications necessitated by the pandemic are no longer required, and a representative venire can be summoned. Second, additional summons could be sent to the same portion of the community, based either on race or geographic area, to compensate for non-responses, excusals, or deferrals. A number of jurisdictions have successfully adopted this approach to improve the

representativeness of their venires,<sup>3</sup> and some have specifically recognized the importance of these measures during the pandemic.<sup>4</sup>

15. The underrepresentation of African Americans in the venire called for this case violates Mr. Client's rights pursuant to Sections 1 and 7 of Article I of the Alabama Constitution, Sections 12-16-55 and 12-15-56 of the Alabama Code, and the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. This Court should order that a new venire be summoned for jury service in this case and that underrepresentation be eliminated in venires in Maycomb County, Alabama.

WHEREFORE, Joe Client respectfully requests that this Court:

- (1) dismiss the current jury venire because it underrepresents African Americans in comparison to the Maycomb County community;
- (2) order the summoning of a new jury venire that represents a fair cross-section of the community; and
- (3) order such other relief as is necessary and proper in light of the circumstances of this motion.

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<sup>3</sup>See, e.g., *In re the Matter of Jur Selection Process in Maricopa County*, Maricopa County Superior Court Case No. No. CV 2006–012150 (Ariz. 2006); United States District Court for the Northern District of Illinois, PLAN FOR RANDOM SELECTION OF JURORS (as approved by the Seventh Circuit Court of Appeals, January 8, 2020), available at [https://www.ilnd.uscourts.gov/\\_assets/\\_documents/\\_forms/\\_press/ILNDJuryPlan.pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_press/ILNDJuryPlan.pdf); Standing Order 2019-8, *In re 2019 Jury Selection Plan for the United States District Court for the Western District of Virginia* (plan approved July 30, 2019), available at [http://www.vawd.uscourts.gov/media/1608/vawd\\_jury\\_plan.pdf](http://www.vawd.uscourts.gov/media/1608/vawd_jury_plan.pdf); Chief Judge Juan R. Sánchez, *A Plan of Our Own: The Eastern District of Pennsylvania's Initiative to Increase Jury Diversity*, 91 TEMP. L. REV. ONLINE 1, 19 (2019); United States District Court for the District of Massachusetts, GENERAL ORDER 15-3 REGARDING MODIFICATION TO THE JURY PLAN (effective 2015), available at <https://www.mad.uscourts.gov/general/pdf/a2015/11%2001%202015%20D-MA%20General%20Order%2015-3%20Jury%20Plan%20-%20signed.pdf>; see also Supreme Court of Minnesota, *In re Hennepin County Attorneys Task Force on Racial Composition of the Grand Jury*, Order No. c8-90-2693, C5-85-837 (October 1993), available at <https://www.mncourts.gov/mncourtsgov/media/AdministrativeFileArchive/Racial%20Bias%20in%20Courts%20C8-90-2693/1993-10-21-Order-Hennepin-Co-Grand-Jury.pdf>.

<sup>4</sup>See *In re Court Operations Under Exigent Circumstances Created by Outbreak of Coronavirus Disease 2019 (Covid-19): Revised Schedule for Resumption of Criminal Jury Trials*, No. 2:20MC7, 2020 WL 3545671, at \*4–5 (E.D. Va. June 30, 2020).

Respectfully submitted,

/s/ Jane Lawyer

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[CERTIFICATE OF SERVICE OMITTED]

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**ORDER**

Upon consideration of Defendant Joe Client's Motion Challenging the Composition of the Venire for Systematic Underrepresentation of Cognizable Groups, it is hereby

ORDERED that the jury venire in this case is DISMISSED; and it is further

ORDERED that the Court will summon a new venire that represents a fair cross-section of Maycomb County.

Done and ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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CIRCUIT JUDGE