

Jury Pools Likely Expanding in the Eastern District of Texas

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Since U.S. Supreme Court Justice Thurgood Marshall recognized the immeasurable “varieties of the human experience” diverse juries bring to the jury room in *Peters v. Kiff* 407 U.S. 493 (1972), federal courts have sought to ensure diversity in the jury selection process. With his recent April 4 General Order (No. 19-06), the Honorable Rodney Gilstrap, Chief United States District Judge of the United States District Court for the Eastern District of Texas, advances this goal by seeking to expand the jury pools in the Eastern District of Texas to include persons selected from lists of licensed drivers from all counties with each division of the district.

Judge Gilstrap’s order amends the plan for the random selection of Jurors pursuant to the Jury Selection and Service Act of 1968 means the names of all potential petit jurors in the Eastern District of Texas will be selected from a master jury wheel using the names selected at random from both the voter registration lists and the licensed drivers lists. Many practitioners, judges and scholars alike recognize that drawing potential jurors from other sources beyond voter registration rolls like driver license databases likely taps into a greater, more diverse cross-section of the population, leading to diverse juries with a variety of perspectives and a tendency to avoid groupthink.

Judge Gilstrap’s decision to widen the available jury pool also advances the dual policies of providing litigants the right to a fair cross section of jurors and of ensuring that all citizens have the opportunity to serve on a jury, which were articulated in the seminal jury selection decisions *Batson v. Kentucky*, 476 U.S. 79 (1986) (holding that prosecutors may not use race as a factor in making peremptory challenges because the Fourteenth Amendment provides a right to a jury drawn from a cross section of the community) and *J.E.B. v. Alabama*, 511 U.S. 127 (1994) (holding that the Fourteenth Amendment prohibits discrimination in jury selection on the basis of gender). Judge Gilstrap’s decision to amend the plan to select jurors keeps in line with these

decisions and promotes the goal of providing litigants in the Eastern District of Texas with a wide cross section of the community within the potential jury pool. Indeed, he recognizes that “it is not clear that voter registration lists... alone provide litigants in the divisions in the Eastern District of Texas with a fair cross section of relevant communities.”

Judge Gilstrap’s decision is seen as a welcome and much needed step by those practicing in the Eastern District of Texas. As Judge Gilstrap often tells prospective jurors during jury selection, “jury duty is the second highest form of public service that any American can perform” right behind serving in the armed forces of our nation. Prior to Judge Gilstrap’s Amended Plan, lists of potential jurors in the Eastern District of Texas were pulled exclusively from a list of registered voters.

A panel of the Fifth Judicial Circuit Counsel must now review and approve the Amended Plan. When approved, the Eastern District of Texas would join the Northern District of Texas as districts in Texas to include licensed drivers in their jury pools. The plan will go into effect on Jan. 1, 2020.

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