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Picking the Lock: A Proposal for a Standard Fee Waiver in Texas for Identification Documents

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**PICKING THE LOCK:
A PROPOSAL FOR A STANDARD FEE WAIVER IN TEXAS
FOR IDENTIFICATION DOCUMENTS**

GREGORY ZLOTNICK*

I.	DEFINITION OF IDENTIFYING DOCUMENTS	355
	A. Government-Issued	355
	B. Necessary for Fundamental Activities	356
	C. Identifying Documents the State of Texas Issues	358
II.	AN UNFUNDED INDIVIDUAL MANDATE: THE ACUTE NEED IN TEXAS FOR FEE WAIVERS FOR ADMINISTRATIVE DOCUMENTS ...	359
	A. <i>Veasey v. Perry</i> 's Examination of Low-Income Texans	359
	B. The Many Identities of Low-Income Texans	362
III.	HISTORICAL AND PRESENT CONTEXT	363
	A. <i>In Forma Pauperis</i> Pleadings	363
	B. Free Identifying Documents	365
	C. Fee Waiver as a Bridge	366
IV.	RECENT IDENTIFYING DOCUMENT FEE WAIVER EFFORTS	367
	A. Older Resident Fee Waivers	367
	B. Fee Waivers for Residents Experiencing Homelessness	368

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I thank my family, especially my wife, Jillian Duran, for their steadfast support of the collective work of justice that our programs seek.

This proposal is dedicated to the individuals experiencing homelessness with whom I have been privileged to work through the Identification Recovery Program. As the work to build Dr. King's Beloved Community continues, my hope is that this piece can be a contribution, however humble, to advancing equity and justice in Texas.

346	<i>THE SCHOLAR</i>	[Vol. 22:345
V.	MODEL FORM.....	370
VI.	AVENUES FOR IMPLEMENTATION.....	371
	A. Legislative Mandate	371
	B. Alternate Pathways.....	374
	1. <i>Administrative Rulemaking</i>	374
	2. <i>Local Creation of Identifying Document Voucher</i> <i>Programs</i>	375
	CONCLUSION.....	376
	APPENDICES.....	377
	Appendix A: Statement of Inability to Afford Payment of Court Costs or an Appeal Bond	378
	Appendix B: Statement of Inability to Afford Payment of Costs for Identifying Documentation.....	380

Up to 11% of adult Americans do not have a valid government-issued photo identification card.¹ Many of these adults do not have a photo identification card because they lack another identifying document—such as a birth certificate—which is required to obtain the photo identification in the first instance.² For example, the Texas Department of Public Safety requires American-born applicants to present their birth certificate for an identification card or driver's license.³ In Texas, a photo identification card, or multiple alternative forms of identification, are required to obtain a birth certificate.⁴ The *Washington Post* accurately captured this phenomenon as a Catch-22.⁵

The effects of this conundrum fall disproportionately on Texans who belong to groups that society too often marginalizes: the re-entering citizen and the LGBTQ+ youth; the man experiencing homelessness and the woman surviving family violence; the student born to unauthorized immigrants and the senior citizen seeking to vote.⁶ The burdens also fall disproportionately on low-income Texans.⁷

Being without these identifying documents further marginalizes these

1. Wendy R. Weiser et al., *A Response to Von Spakovsky and Ingram*, BRENNAN CTR. JUST. (Sept. 8, 2011), <https://www.brennancenter.org/our-work/research-reports/citizens-without-proof-stands-strong> [<https://perma.cc/FS9S-BHYC>].

2. See Sara Cline, *San Antonio ID Recovery Program is First Step to Getting Out of Homelessness*, SAN ANTONIO EXPRESS-NEWS (Jan. 18, 2020), <https://www.expressnews.com/news/local/article/San-Antonio-ID-Recovery-program-is-first-step-to-14985412.php> [<https://perma.cc/QAN6-DNA6>] (statement of Police Officer Joe Farris) (“You need a driver’s license to apply for a birth certificate, a birth certificate to get a Social Security card, and a Social Security card to get a driver’s license. It’s a vicious cycle.”).

3. *How to Apply for a Texas Identification Card*, TEX. DEP’T PUB. SAFETY, <https://www.dps.texas.gov/DriverLicense/applyforID.htm> [<https://perma.cc/277G-2YE5>].

4. *Acceptable Identification (ID)*, TEX. DEP’T ST. HEALTH SERVS. (Jan. 21, 2020), <https://www.dshs.texas.gov/vs/reqproc/Acceptable-IDs/> [<https://perma.cc/XJ3G-FMHT>].

5. Patrick Marion Bradley, *The Invisibles: The Cruel Catch-22 of Being Poor with No ID*, WASH. POST (June 15, 2017, 7:00 AM), https://www.washingtonpost.com/lifestyle/magazine/what-happens-to-people-who-cant-prove-who-they-are/2017/06/14/fc0aaca2-4215-11e7-adba-394ee67a7582_story.html [<https://perma.cc/N873-CMSV>].

6. *Cf. Veasey v. Perry*, 71 F. Supp. 3d 627, 665 (S.D. Tex. 2014) (detailing how decades of discrimination disproportionately restrict underrepresented populations).

7. See *id.* at 664 (“[T]hey [low-income Texans] are less likely to own . . . one of the seven qualified IDs to navigate their lives. A legacy of disadvantage translates to a substantial burden when these people are confronted with the time, expense, and logistics of obtaining a photo ID . . .”).

individuals from full engagement in civic life.⁸ In the view of Maria Foscarinis, the Executive Director of the National Law Center on Homelessness and Poverty, “[i]f you don’t have ID, you basically don’t exist.”⁹ While Foscarinis’s assessment undoubtedly expresses the severity of the challenges that individuals without identifying documents face, it can reveal too much.¹⁰

Consider a woman who returns to her hometown in Del Rio on parole after spending several years in the Texas state prison system.¹¹ Having used her bus pass to travel from East Texas and spent her \$50 on food and a pre-paid cell phone, a family member has provided her with a temporary place to stay and, importantly, with a lead for a job.¹² The employer, however, will not let her use her Texas Department of Criminal Justice offender card as proof of her identification.¹³ The employer is insisting that the woman obtain her birth certificate and an identification card from the Department of Public Safety before she starts.¹⁴ She still exists, even living outside the prison system, but she may be forced to work under the table or in an illicit industry—risking fines and reincarceration.¹⁵

Imagine a twenty-two-year-old transgender woman who resides in a shelter for LGBTQ+ youth in San Antonio.¹⁶ Having couch-surfed since

8. See Bradley, *supra* note 5 (detailing how people need government-issued identification to be considered for employment or housing vouchers).

9. *Id.*

10. *Id.*

11. Cf. John Burnett, *Newly Released Texas Inmates Prepare for a Long Ride to Freedom*, NPR (Apr. 12, 2015, 5:23 AM), <https://www.npr.org/2015/04/12/398763933/newly-released-texas-inmates-prepare-for-a-long-ride-to-freedom> [<https://perma.cc/S9V5-TQHJ>] (sharing the stories of newly released inmates boarding Huntsville Greyhound station buses to return to their hometowns).

12. Cf. *id.* (portraying the release of ex-inmate Damian Francis, who secured housing with his mother in Houston and devised plans to become a full-time writer after authoring eleven novels during incarceration).

13. Cf. Bradley, *supra* note 5 (recounting Darryl Lawrence’s frustrations, a former firefighter who wishes that his arrest papers could be a substitute for his birth certificate).

14. Cf. Cline, *supra* note 2 (quoting Nicholas Hunt, “I had a good resume put together. I got interviews. But I needed an ID. Without it, it’s difficult to obtain employment.”).

15. See Bradley, *supra* note 5 (detailing stories of those who cannot secure employment without proper identification and who fear that they will be arrested on the street without it).

16. See RYAN M. CARLINO, *OUT OF SIGHT: LGBTQ YOUTH AND ADULTS IN TEXAS’ JUSTICE SYSTEMS*, TEX. CRIM. JUST. COAL. 12 (Oct. 2018), <https://www.texasjc.org/system/files/publications/Out%20of%20Sight%20LGBTQ%20Youth%20and%20Adults%20in%20Texa>

aging out of the foster care system a year ago, she is looking forward to a more stable and rewarding life.¹⁷ A local community college is ready to enroll her in this semester's classes—provided she can demonstrate that she graduated high school and that she currently resides in Bexar County.¹⁸ The only identification in her possession demonstrating residence is a school identification card from three years ago, when she lived in El Paso and before she affirmed her gender identity and presentation as a woman.¹⁹ The State of Texas recently created a fee exemption for foster and homeless youth to obtain new identification documents; however at twenty-two years of age, she is too old to take advantage of this new program.²⁰ In addition to outdated residency information, she will not be able to continue her education until she can pay for a transcript that is only available online.²¹

Think of a fifty-eight-year-old man with disabilities who sleeps under an Interstate 35 overpass in downtown Austin.²² He has lived on the streets for most of the past decade, but his life has improved since the city of Austin decriminalized certain aspects of living while homeless.²³ Furthermore, a social worker has identified a housing voucher the man is

s%20Justice%20Systems.pdf [https://perma.cc/HS8M-KT77] (stating that the LGBTQ+ community is more vulnerable to poverty or homeless).

17. See *Housing for Youth Aging Out of Foster Care*, MATHEMATICA (2020), <https://www.mathematica.org/our-publications-and-findings/projects/housing-for-youth-aging-out-of-foster-care> [https://perma.cc/H3WC-U7XR] (“Researchers estimate that 11 to 36 percent of youth who age out of foster care become homeless, and 25 to 50 percent experience unstable housing arrangements, such as ‘couch surfing.’”).

18. Cf. *Enrollment: Steps for Enrolling*, ALAMO CS. DIST. (2020), <https://www.alamo.edu/admission—aid/special-populations/military/enrollment/> [https://perma.cc/FZ3F-73DJ] (requiring a high school or General Educational Development (GED) transcript and proof of residency).

19. Cf. *Office of Access and Enrollment Services*, SAN ANTONIO INDEP. SCH. DIST. (2020), <https://www.saisd.net/page/oaes-howtoregister> [https://perma.cc/VZT6-BEQR] (listing the requisite documents one must provide in order to be enrolled in a school and receive a school identification card).

20. See TEX. TRANSP. CODE ANN. § 521.1811 (limiting the fee waivers for a new driver's license to foster youth under the age of 21).

21. See, e.g., *Student Records Request*, N. E. INDEP. SCH. DISTRICT, <https://neisdtx.scribborder.com> [https://perma.cc/C3UT-LF6S] (explaining that the school district has gone paperless and records will only be transmitted electronically).

22. See generally *Homelessness in Austin*, ECHO (2020), <https://www.austinecho.org/about-echo/homelessness-in-austin/> [https://perma.cc/2QTE-RHQE] (identifying 46% of Austin's homeless population as being between the ages of 45 and 64).

23. Austin, Tex., Code of Ordinances §§ 9-4-11; 9-4-14 (2019).

eligible for—as long as he can produce his birth certificate.²⁴ He still exists and can sleep on a sidewalk, but he may remain ineligible for public housing programs without proper government-issued identification.²⁵

Picture a mother and her children, who have endured years of family violence, now living safely in a home sponsored by a faith-based community in Denton.²⁶ The faith-based community has booked plane tickets for the family to relocate to Chicago, where relatives are ready to help them live safely.²⁷ Having left quickly, the mother left her driver's license, her children's birth certificates, and her credit card at her unsafe home.²⁸ She cannot go back to retrieve them—and assumes the violent family member has already destroyed them.²⁹ The family members still exist and may have found temporary safety through their church—but they will remain unable to travel to greater safety and peace of mind.³⁰

Think of a fifteen-year-old McAllen boy, born to Mexican citizen parents, riding in a car that is stopped at an interior Immigration and Customs Enforcement (ICE) checkpoint in Falfurrias.³¹ He presents his social security card and a current school identification card to ICE

24. Cf. *Project Access Program*, TEX. DEP'T HOUSING & COMMUNITY AFF., <https://www.tdhca.state.tx.us/section-8/project-access/index.htm> [<https://perma.cc/XR7V-X888>] (listing a birth certificate as one of the application materials for Section 8 Housing Choice vouchers).

25. *Public Housing Admissions and Continued Occupancy Policy*, HOUSING AUTHORITY OF THE CITY OF AUSTIN 23, 34 (Dec. 21, 2017), <https://www.hacanet.org/wp-content/uploads/2018/03/ACOP-12-21-17.pdf> [<https://perma.cc/Q5K6-QF3M>].

26. Cf. *What We Do*, MILLIGAN FOUND., <http://www.themilliganfoundation.org/what-we-do> [<https://perma.cc/ST7F-PKG7>] (explaining the high number of domestic violence victims who must relocate in order to escape violence and poverty).

27. See, e.g., *id.* (providing the information for a non-profit organization that purchases airline tickets to relocate victims of domestic violence).

28. See Cline, *supra* note 2 (signifying the importance of identification for victims who are trying to escape violence and relocate).

29. Cf. *id.* (“The reasons people give for not having an ID vary: ‘It was stolen.’ ‘When I got outta jail, I never got it back.’ ‘It was destroyed in a house fire.’”).

30. Cf. *Identification*, TRANSP. SEC. ADMIN., U.S. DEPT. OF HOMELAND SEC., <https://www.tsa.gov/travel/security-screening/identification> [<https://perma.cc/W238-X449>] (requiring that adult passengers over the age of eighteen must show valid identification to travel).

31. Cf. Meagan Flynn, *U.S. Citizen Freed After Nearly a Month in Immigration Custody, Family Says*, WASH. POST (July 24, 2019, 8:25 PM), <https://www.washingtonpost.com/nation/2019/07/23/francisco-erwin-galicia-ice-cpb-us-citizen-detained-texas/> [<https://perma.cc/SM4Z-MP5A>] (detailing a similar experience by an eighteen-year-old high school senior from Edinburg, Texas).

agents.³² The agents do not accept those as forms of valid identification and detain him at an adult detention center.³³ Until they see his birth certificate, he will remain in ICE custody.³⁴ He still exists and can still live in his home country—but he may remain incarcerated indefinitely and coerced into forfeiting both his rights and his citizenship.³⁵

Finally, reflect upon the stories of two Houstonians looking to obtain an identification card from the Department of Public Safety in order to have the photo identification necessary to vote.³⁶ For one of the Houstonians, the problem lies with the slight discrepancy in the spelling of his name on his birth certificate and the spelling of his name on his social security card.³⁷ Until this discrepancy is resolved, the Department of Public Safety will not issue him a photo identification card.³⁸ He still exists and can still attempt to cast a ballot, but he may be improperly steered into casting a provisional ballot, which will not be counted.³⁹

32. See generally *Proof of U.S. Citizenship and Identification When Applying for a Job*, U.S. CITIZENSHIP & IMMIGR. SERVS. (July 10, 2018), <https://www.uscis.gov/us-citizenship/proof-us-citizenship-and-identification-when-applying-a-job> [<https://perma.cc/KZC9-WA8M>] (identifying a birth certificate and a valid United States passport as the two documents accepted as proof of citizenship for citizens born in the United States).

33. Cf. Flynn, *supra* note 31 (showing that ICE agents maintain the discretion to reject forms of identification presented at immigration checkpoints).

34. Cf. *id.* (showing that an American citizen was detained even after his lawyer faxed paperwork proving his citizenship status and that he was not released until his lawyer traveled to the detention facility in person to secure his release).

35. Cf. Obed Manuel, *No Shower for 23 Days: U.S. Citizens Says Conditions Were So Bad That He Almost Self-Deported*, DALLAS MORNING NEWS (July 24, 2019, 6:16 PM), <https://www.dallasnews.com/news/immigration/2019/07/24/no-shower-for-23-days-u-s-citizen-says-conditions-were-so-bad-that-he-almost-self-deported/> [<https://perma.cc/LZL6-JDZV>] (statement of Francisco Erwin Galicia) (“It was inhumane how they treated us. It got to the point where I was ready to sign a deportation paper just to not be suffering there anymore. I just needed to get out of there.”).

36. Sari Horowitz, *Getting a Photo ID So You Can Vote is Easy. Unless You’re Poor, Black, Latino or Elderly*, WASH. POST (May 23, 2016), https://www.washingtonpost.com/politics/courts-law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html [<https://perma.cc/AG4V-G3TA>].

37. *Id.*

38. *Id.*

39. Cf. Emily Eby & Beth Stevens, *Texas Election 2018: How Election Administration Issues Impacted Hundreds of Voters*, TEX. CIV. RTS. PROJECT 10 (Mar. 2018), <https://texascivilrightsproject.org/wp-content/uploads/2019/03/2019-Election-Protection-Report.pdf> [<https://perma.cc/ay4L-ESLB>] (“We received a report from a Dallas voter whose poll worker told her the ‘dirty little secret’ that ‘they don’t count the provisional ballots’ so there’s ‘no point’

These Texans all exist.⁴⁰ However, without identifying documents, these Texans exist on the margins of civic life—locked out of dignity, security, liberty, and opportunity.⁴¹ And while these Texans hail from different parts of the State and possess various personal identities, they are united not only by their lack of identifying documents but may also have an inability to pay the fees necessary to obtain or replace these documents.⁴²

In 2017, a federal court found lower-income Texans—due to a convergence of structural and economic challenges—were over eight times more likely to lack the photo identification required under Texas law to vote.⁴³ These challenges also impact obtaining other documents.⁴⁴ As a witness in that case, Mrs. Bates testified about her difficulty obtaining a birth certificate from Mississippi:

I had to put the \$42.00 where it was doing the most good. It was feeding my family, because we couldn't eat the birth certificate . . . [a]nd we couldn't pay rent with the birth certificate, so, [I] just wrote it off.⁴⁵

In Texas, birth certificates cost at least \$22.⁴⁶ Photo identification cards that the Department of Public Safety issues cost between \$6 and \$21.⁴⁷ Driver's licenses cost between \$9 and \$25.⁴⁸ Certified copies of marriage licenses vary by county and can cost more than

in casting one. When this interaction attracted the attention of other voters, the poll worker insisted that provisional ballots were thrown in the trash.”)

40. See, e.g., Horowitz, *supra* note 36 (providing the story of an individual who could not get any form of identification because of a clerical error on his birth certificate).

41. See, e.g., Veasey, 71 F. Supp.3d at 664 (discussing Texas's strict voting laws which limit the acceptable forms of photo identification and thereby afford the fewest opportunities for individuals to exercise their right to vote).

42. See Cline, *supra* note 2 (recognizing the various unfortunate circumstances surrounding Texans and their inability to obtain identifying documents).

43. Veasey, 71 F. Supp.3d at 664.

44. *Id.* at 642–43.

45. *Id.* at 665.

46. See TEX. HEALTH & SAFETY CODE ANN. § 191.0045(b) (granting the commissioner for Health and Safety Services authority to set the administrative fees for birth certificates); see also *Frequently Asked Questions*, TEX. DEP'T ST. HEALTH SERVS. (Jan. 6, 2020), <https://www.dshs.texas.gov/vs/reqproc/faq/default.shtm#How%20much%20does%20a%20birth%20certificate%20cost?> [<https://perma.cc/6NXY-CKQX>] (providing the price of a birth certificate in Texas).

47. TEX. TRANSP. CODE ANN. § 521.421 *et. seq.*

48. *Id.* § 522.029.

\$20.⁴⁹ Certified copies of divorce decrees can cost \$1 per page.⁵⁰ Transcript requests from high schools can cost \$5 or more and are increasingly moving to online portals that require a credit card.⁵¹

Money, then, becomes another deadbolt on the door excluding Texans without identifying documents; a lock that, while legal, is unjust.⁵² Theoretically, constitutional and statutory protections against discrimination on the basis of race, gender, national origin, religion, and disability, should benefit Texans trying to obtain identifying documents.⁵³ With the recent adoption of House Bill 123, Texas law now provides assistance for children who are homeless or in foster care to obtain identification;⁵⁴ however, no assistance exists for low- or no-income Texans outside of those categories.⁵⁵ As with Mrs. Bates in the Texas voter identification challenge, Texas forces the indigent to choose between meeting immediate needs like food, clothing, shelter, and

49. TEX. GOV'T CODE ANN. § 118.001; *see* ST. OF TEX. CTY. OF WEBB, MARRIAGE SEARCH REQUEST APPLICATION, <https://www.webbcountytexas.gov/CountyClerk/Forms/MarriageLicenseSearch.pdf> [<https://perma.cc/4GKP-6SVL>] (“If more than one certification of the same record is requested at the same time, the fee for the first copy is \$21 and \$8 for each additional copy.”).

50. TEX. GOV'T CODE ANN. § 51.318(b)(11).

51. *See, e.g.*, N. E. INDEP. SCH. DIST., *supra* note 21 (providing an example of school district that has gone paperless).

52. *See* William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. SOC. JUST. 7, 15 (2007), https://law.duke.edu/curriculum/pdf/interested_social_justice.pdf [<https://perma.cc/SAW4-CYRG>] (“What is legal is often not just. And what is just is often not at all legal.”).

53. *See, e.g.*, U.S. CONST. amend. XIV, § 1 (prohibiting states from denying any person the equal protection of the law); Civil Rights Act of 1964, 42 U.S.C. § 2000a-2 (2018) (prohibiting the deprivation of, interference with, and punishment for exercising rights and privileges on the basis of race, color, religion, or national origin); Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 (2018) (prohibiting the exclusion or denial of public services, programs, or activities to a disabled person on the basis of their disability).

54. *See* TEX. FAM. CODE ANN. § 264.121(e-3) (providing assistance to foster youth when obtaining identifying documents); *see also* TEX. HEALTH & SAFETY CODE ANN. § 191.0049 (stating foster or homeless youth will be provided with identifying documents without cost or parental consent); TEX. TRANSP. CODE ANN. § 521.1015 (defining who qualifies as foster or homeless youth).

55. *See generally* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, *reh'g denied*, 411 U.S. 959 (1973) (“[Poor Americans are] not saddled with such disabilities or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.”).

securing documents that confirm their identity.⁵⁶

This article proposes a lock-picking solution to an obstacle that prevents low- and no-income Texans from accessing identifying documents.⁵⁷ Specifically, a standardized fee waiver, accepted throughout Texas, for Texans unduly burdened by document fees.⁵⁸ Drawing upon the Texas judicial system's standardized statement of inability to pay court costs or an appeal bond, while also building upon the recent success of House Bill 123—which created a fee waiver for foster and homeless youth in Texas needing birth certificates, driver's licenses, and identification cards—this proposal applies fundamental fairness to a niche of administrative law deeply intertwined with personal identity.⁵⁹

This article has six parts. Part I suggests a definition for identifying documents and provides tangible examples.⁶⁰ Part II surveys and details the need for free access to personal identifying documents for low- to no-income Texans.⁶¹ Part III offers historical and contemporary context for fee waivers, discussing the use of fee waivers administratively and by the State Judicial System.⁶² Part IV looks at recent efforts to implement fee waivers for certain populations seeking certain identifying documents.⁶³ Part IV highlights the Texas Legislature's recent adoption of a fee waiver

56. *See* *Veasey v. Abbott*, 830 F.3d 216, 255 (5th Cir. 2016) (“[S]he was not able to obtain SB 14 ID in time to cure her provisional ballot because she could not afford to purchase her Mississippi birth certificate at a \$42 cost on her \$321 fixed monthly income.”).

57. *Cf. id.* (demonstrating the obstacles indigent individuals face when attempting to obtain identification documents).

58. *See* *Tex. Dep't St. Health Servs.*, *supra* note 46 (providing the price of a birth certificate); *see also* *ST. OF TEX. CTY. OF WEBB*, *supra* note 49 (providing the price of a marriage certificate).

59. *See* SUP. CT. OF THE ST. OF TEX., STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS OR AN APPEAL BOND, <https://www.txcourts.gov/media/1435953/statement-final-version.pdf> [<https://perma.cc/AGC9-77U6>]; H.B. 123, 86th Tex. Legis. (Tex. 2019); TEX. HEALTH & SAFETY CODE ANN. § 191.0049; TEX. TRANSP. CODE ANN. §§ 521.1015, 521.1811.

60. *Cf. Bradley*, *supra* note 5 (emphasizing the need for a standardized definition of identifying documents).

61. *Cf. Texas v. Holder*, 888 F. Supp. 2d, 113, 144 (D.D.C. 2012) (explaining certain bills that the Texas legislature tabled which would have waived fees or reimbursed indigent citizens who sought to obtain identifying documents).

62. *See* Andrew Hammond, *Pleading Poverty in Federal Court*, 128 YALE L. J. 1478, 1486–87 (2019) (detailing the history of fee waivers).

63. *See, e.g.*, TEX. HEALTH & SAFETY CODE ANN. § 191.0049; TEX. TRANSP. CODE ANN. §§ 521.1015, 521.1811 (waiving fees for foster or homeless youth who seek to obtain administrative documents).

for homeless, unaccompanied, and foster youth, and how that effort can provide a path forward for a broader, standardized fee waiver for low- and no-income Texans.⁶⁴ Part V proposes a model fee waiver form, drawing heavily from the Texas courts' statement of inability to pay court costs or appeal bond.⁶⁵ Finally, Part VI identifies pathways for the adoption and implementation of this fee waiver and considers alternatives for cities and counties to consider, should statewide action prove difficult.⁶⁶

I. DEFINITION OF IDENTIFYING DOCUMENTS

This Part suggests a standard definition of identifying documents for use in this article, as well as in the statute or regulation authorizing the proposed fee waiver and in the fee waiver itself.⁶⁷ The definition of publicly issued identifying documents is limited to the documents necessary for conducting fundamental activities in contemporary Texas life.⁶⁸

A. *Government-Issued*

For purposes of this article and proposal, identifying documents are those issued by a governmental entity that prove that the individual is who the individual claims to be.⁶⁹ Specifications for the identifying documents draw upon existing definitions of identification in the Texas Administrative Code.⁷⁰ Certainly, Texans may possess other documents

64. Act of June 14, 2019, 86th Leg., R.S., ch. 1024, § 8, 2019 Tex. Gen. Law. 1024 (codified at TEX. FAM. CODE ANN. § 264.121(e-3); TEX. HEALTH & SAFETY CODE ANN. § 191.0049; TEX. TRANSP. CODE ANN. §§ 521.1015, 521.1811).

65. Tex. R. Civ. P. 145.

66. Cf. Holder, 888 F. Supp. 2d at 144 (signifying the importance of fee waivers and Texas's previously tabled bills, which would have cleared a pathway to waiving fees and expanding the range of acceptable identifications for voters to present at polls).

67. Cf. 25 TEX. ADMIN. CODE § 181.1(12) (listing one definition of identifying documents).

68. See Bradley, *supra* note 5 (providing the many fundamental activities government-issued identification is necessary for—such as voting, gaining employment, and obtaining housing vouchers).

69. Cf. 25 TEX. ADMIN. CODE § 181.1(12) (providing the requirements for photo identification).

70. See *id.* (“Each applicant must present a current form of government issued photo identification along with his or her application [for a state-issued vital record].”); see also 37 TEX. ADMIN. CODE § 15.24 (comparing the different types of acceptable documentation for obtaining a driver's license or identification card and noting the small number of non-governmental forms of

that can demonstrate their identification to an interested party.⁷¹ Indeed, baptismal certificates,⁷² employer identification cards,⁷³ immunization records,⁷⁴ utility bills,⁷⁵ leases, and insurance policies⁷⁶ are all examples of documents that, even if issued by private entities, Texas agencies will accept as proof of an individual's identity.⁷⁷ However, for the purpose of this proposal—which would affect state, county, and municipal offices—identifying documents will refer to government-issued documents.⁷⁸

B. *Necessary for Fundamental Activities*

In addition to being a government-issued document, identifying documents will have an impact on a Texan's ability to engage in fundamental activities of modern civic life.⁷⁹ Identifying documents are required for securing public housing,⁸⁰ and, in some circumstances, even

identification, which are designated as acceptable even as a supporting document); 37 TEX. ADMIN. CODE § 15.182 (detailing similar requirements for a Texas Election Identification Certificate).

71. See TEX. DEP'T ST. HEALTH SERVS., *supra* note 4 (providing a list of acceptable forms of identification in Texas).

72. See *Delayed Birth Certificate of Birth Registration*, TEX. DEP'T ST. HEALTH SERVS., <https://www.dshs.texas.gov/vs/delayed/default.shtm?terms=baptismal> (Jan. 2, 2012), [<https://perma.cc/2X85-TVFX>] (permitting official baptismal certificates to support an application for a birth not officially registered in Texas).

73. See 25 TEX. ADMIN. CODE § 181.28(i)(11)(D)(xii) (allowing employer identification cards as an acceptable supporting document for obtaining a birth certificate).

74. See generally TEX. DEP'T PUB. SAFETY, TEXAS DRIVER LICENSE AND IDENTIFICATION CARD DOCUMENT REQUIREMENTS (Mar. 6, 2018), <https://www.dps.texas.gov/internetforms/Forms/DL-57.pdf> [<https://perma.cc/W7EP-JUXK>] (listing immunization records as a document for obtaining a license or photo identification card).

75. See *Required Identification for Voting in Person*, TEX. SEC'Y OF STATE (2012), <https://www.votetexas.gov/register-to-vote/need-id.html> [<https://perma.cc/M4HU-DGCH>] (listing a utility bill as an alternate form of identification for voting purposes).

76. See 37 TEX. ADMIN. CODE § 15.24(3)(B) (allowing an insurance policy over two years old to support the application for a driver's license).

77. See *id.* § 15.24 (listing the acceptable documents for obtaining government-issued identification).

78. See *id.* (providing the documents that Texas considers acceptable when attempting to obtain government-issued identification).

79. See Bradley, *supra* note 5 (illustrating how government-issued identification is required for voting, employment, and housing vouchers).

80. See, e.g., SAN ANTONIO HOUS. AUTH., FY 2019–2020 ADMISSIONS & CONTINUED PRACTICE POLICY 7-14 (Apr. 4, 2019), https://www.saha.org/wp-content/uploads/2020/01/FY19-20_A COP.pdf [<https://perma.cc/Y5E7-G2L5>] (requiring a birth certificate or “other document” to verify an applicant seeking public housing assistance).

accessing homeless service providers.⁸¹ By federal law, identifying documents are required before beginning employment.⁸² To cast a ballot in Texas, a voter must present sufficient documentation as to their identification.⁸³ Accessing certain medicines and medical records in Texas can require an identification card.⁸⁴ Enrollment in public schools requires, with certain exceptions, identifying documents for both parents and children.⁸⁵ Texans need to present identifying documents before a county clerk issues a marriage license.⁸⁶ Texans need identifying documents to legally operate a motor vehicle,⁸⁷ fly on an airplane, and may need to produce identifying documents on Amtrak⁸⁸ and Greyhound buses.⁸⁹ The federal government requires banks to ask for identifying documents from customers,⁹⁰ and even those with no bank need identifying documents to access check cashing, payday loans, and other financial services.⁹¹ Texas requires its residents to present identifying documents before obtaining a handgun license.⁹² In short, Texans cannot

81. See, e.g., *Get Help*, HAVEN FOR HOPE (2019), <https://www.havenforhope.org/GetHelp> [<https://perma.cc/72ZS-RX32>] (“To be eligible for our shelter and services you must . . . have government[-]issued photo ID.”).

82. 8 C.F.R. § 274a(2).

83. TEX. ELEC. CODE ANN. § 63.001(b).

84. See TEX. HEALTH & SAFETY CODE ANN. § 481.074 (listing identification requirements for receiving controlled substances from a pharmacist); see also City of San Antonio Metro. Health Dist., *Immunization Records Request*, SANANTONIO.GOV, <http://www.sanantonio.gov/Portals/0/Files/health/HealthServices/Immunizations/AcceptableUnacceptableFormsID.pdf> [<https://perma.cc/SR5R-R5SK>] (listing identification requirements for requesting immunization records).

85. See, e.g., SAN ANTONIO INDEP. SCH. DIST., *supra* note 19 (requiring photo identification and the child’s birth certificate to register a student in an SAISD public school).

86. TEX. FAM. CODE ANN. § 2.005.

87. TEX. TRANSP. CODE ANN. § 521.021.

88. *Passenger ID, Safety & Security*, AMTRAK (2020), <https://www.amtrak.com/passenger-identification> [<https://perma.cc/D7RB-5W24>].

89. Jeremy Stahl, *Greyhound Says It’s Keeping Drivers Safe by Allowing CBP Searches. The Drivers Disagree.*, SLATE (Aug. 14, 2019, 2:56 PM), <https://slate.com/news-and-politics/2019/08/greyhound-bus-union-firstgroup-cbp-border-patrol-searches.html> [<https://perma.cc/DSE8-SD2Y>].

90. 31 C.F.R. § 1020.220 (2019).

91. See, e.g., *Payday Loan Requirements*, SPEEDY CASH, <https://www.speedycash.com/faqs/payday-loans/requirements/> [<https://perma.cc/37JM-39GJ>] (including valid identification on its list of requirements for a cash advance).

92. TEX. GOV’T CODE ANN. § 411.174(b)(6).

properly exercise a variety of constitutionally protected activities—from marrying to bearing arms to traveling to voting—without possessing and producing identifying documents.⁹³

C. *Identifying Documents the State of Texas Issues*

In addition to its residents needing to produce identifying documentation for a range of quotidian-to-profound activities, the State of Texas, for a fee, also provides identifying documentation to its residents.⁹⁴ The Department of Public Safety issues driver's licenses and personal identification cards.⁹⁵ The Department of State Health Services Vital Statistics Unit, as well as local offices, issues birth certificates.⁹⁶ County clerks issue marriage licenses,⁹⁷ a particularly important identifying document for individuals using a different last name after marriage.⁹⁸ District clerks typically keep and produce copies of divorce decrees.⁹⁹

Should Texans not be able to obtain another acceptable form of identification, Texas offers its residents the option of obtaining an election identification certificate.¹⁰⁰ Texas school districts and institutions of higher education maintain school records for current and former students.¹⁰¹ Local public health agencies in Texas are also required to maintain records created in the course of their service to the public.¹⁰² Texas issues identification cards to its residents who seek to lawfully carry a handgun.¹⁰³

93. *Id.*

94. *Id.*

95. 37 TEX. ADMIN. CODE § 15.1.

96. *Id.* § 181.28; TEX. HEALTH & SAFETY CODE ANN. § 192.

97. TEX. FAMILY CODE ANN. § 2.208(a).

98. *Id.*

99. *Id.*

100. TEX. ELEC. CODE ANN. § 63.0101.

101. 13 TEX. ADMIN. CODE §§ 7.125(a)(1),(6)–(7), (12).

102. *Id.* § 7.125(a)(1)(12).

103. 4 TEX. GOV'T. CODE ANN. § 411.171 *et. seq.*

II. AN UNFUNDED INDIVIDUAL MANDATE: THE ACUTE NEED IN TEXAS FOR FEE WAIVERS FOR ADMINISTRATIVE DOCUMENTS

Essentially, Texas imposes an unfunded mandate upon its residents.¹⁰⁴ While the State does provide many avenues for Texans to obtain documents it deems necessary for the citizens to carry out their daily activities and constitutional rights, it does so without regard for the financial impact on its residents.¹⁰⁵ This creates an undue burden on low-income Texans—who comprise a considerable portion of the State’s population.¹⁰⁶

This Part uses the opinion of the United States District Court for the Southern District of Texas in *Veasey v. Perry*, which explored in great detail the substantial burden that Texas’s 2011 voter identification law on low-income Texans—as a point of departure for how fees for identifying documents harm groups with a “legacy of disadvantage” in the State.¹⁰⁷ In addition to the financial burden on low-income Texans, this Part explores the intersections between low-income status and an individual’s identification with groups that society has historically marginalized, such as those highlighted in the introduction to this article.¹⁰⁸

A. *Veasey v. Perry’s Examination of Low-Income Texans*

In 2014, Judge Nelva Gonzales Ramos issued a 147-page opinion in *Veasey v. Perry*, in which plaintiffs challenged the validity and constitutionality of Senate Bill 14, a voter identification law that the Texas Legislature passed and then-Governor Rick Perry signed in

104. See Julie A. Roin, *Reconceptualizing Unfunded Mandates and Other Regulations*, 93 NW. U. L. REV. 351, 352 (1999) (“[U]nfunded mandates’ refers to directives emanating from one level of government to subordinate levels, unaccompanied by the funds necessary to defray the costs of implementation.”).

105. See Holder, 888 F. Supp. 2d at 144 (outlining the bills the Texas legislature tabled, such as legislation that would have waived fees or reimbursed indigent and impoverished Texans seeking to obtain identifying documents).

106. See, e.g., *id.* (discussing Texas’s draconian voter identification laws: “That law will almost certainly have retrogressive effect: it imposes strict, unforgiving burdens on the poor, and racial minorities in Texas are disproportionately likely to live in poverty.”).

107. 71 F. Supp. 3d 627, 633 (S.D. Tex. 2014).

108. Cf. *id.* at 664–76 (providing details on the Texas population who are negatively affected by costly, identifying documents).

2011.¹⁰⁹ In this opinion, Judge Ramos found that the law violated the Voting Rights Act and that the United States Constitution had been superseded by subsequent litigation over the State's voter identification law.¹¹⁰ However, using statistical findings and historical context, the opinion provides a template for understanding the hardship that accompanies obtaining identifying documents.¹¹¹

In a section titled "SB 14 Disproportionately Burdens the Poor," Judge Ramos's opinion summarizes testimony that establishes the scope of the Texas population who are affected by costly, identifying documents.¹¹² The opinion cites a survey that showed that low-income Texans—those earning less than \$20,000 a year—were over eight times more likely than high-income Texans—those making between \$100,000 and \$150,000—to lack one of the identification forms that Senate Bill 14 was to require.¹¹³ While the poverty rate in Texas has declined in recent years,¹¹⁴ in 2018, 14.7% of Texans lived in poverty.¹¹⁵ Even after years of economic expansion,¹¹⁶ over 1.3 million Texan households live in precarious economic circumstances, even by the conservative measure of the federal poverty line.¹¹⁷ By at least one measure, the number of Texas households that are unable "to afford basic household necessities" is three times that figure, bringing the percentages of economically-insecure households in Texas to 42%.¹¹⁸ Dr. Jane Henrici, who testified as an

109. *See id.* at 632 ("[Plaintiffs] claim that SB 14, which requires voters to display one of a very limited number of qualified photo identifications (IDs) to vote, creates a substantial burden on the fundamental right to vote . . .").

110. *See Veasey*, 830 F.3d at 265 (providing the latest opinion over Senate Bill 14 and its unconstitutional violation of the Voting Rights Act).

111. *Veasey*, 71 F. Supp. 3d at 634–36, 661.

112. *Id.* at 664–76.

113. *Id.* at 664.

114. Alexa Ura & Albert Wang, *Poverty in Texas Drops to Lowest Levels in More Than a Decade*, TEX. TRIB. (Sept. 13, 2018, 12:00 AM), <https://www.texastribune.org/2018/09/13/360exas-poverty-census-2017-lowest-levels-decade/> [<https://perma.cc/JB4P-N2RP>].

115. *QuickFacts: Texas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/TX/RHI125218> [<https://perma.cc/2DCJ-M92T>].

116. *See Ura & Wang, supra* note 114 ("2017 proved to be a year of solid economic improvement for Texas with ongoing gains that are reflective of the state's post-recession bounce.").

117. U.S. CENSUS BUREAU, *supra* note 115.

118. UNITED WAYS OF TEX., ALICE: A STUDY OF FINANCIAL HARDSHIP IN TEXAS 101, 114 (2018), https://www.uwtexas.org/sites/uwtexas.org/files/18UW_ALICE_Report_FullReport-Texas-12.18.18Final_w%20Entergy%20logo.pdf [<https://perma.cc/P758-ZYVX>].

expert witness, stated in a report to the court that “lower-income Texans have difficulties obtaining, keeping, replacing, and renewing government-issued documentation.”¹¹⁹ Henrici explained:

[U]nreliable and irregular wage work and other income . . . affect the cost of taking the time to locate and bring the requisite papers and identity cards, travel to a processing site, wait through the assessment, and get photo identifications. This is because most job opportunities do not include paid sick or other paid leave; taking off from work means lost income. Employed low-income Texans not already in possession of such documents will struggle to afford income loss from the unpaid time needed to get photo identification.¹²⁰

Judge Ramos’s opinion also detailed, at both a theoretical and practical level, how poor Texans experience disproportionate hardships while discerning whether or not to obtain costly identifying documents.¹²¹ To highlight the concept of “the marginal utility of wealth”—a precept from economics that explains why someone with little income or wealth has greater use for the same, limited amount of money than someone with greater income or wealth—Judge Ramos quoted the testimony of Mrs. Bates.¹²²

Mrs. Bates, a retiree who lived on a \$321 monthly income, struggled to save the \$42 required to purchase her birth certificate from the State of Mississippi.¹²³ However, detailing her quotidian challenges, Mrs. Bates explained that she instead had to reallocate those hard-earned funds on feeding her family and paying her rent.¹²⁴ To paraphrase the received wisdom that Matthew Desmond helped popularize in his groundbreaking work *Evicted*—the rent eats first.¹²⁵ An identifying document may be a

119. Veasey, 71 F. Supp. 3d at 664–65.

120. *Id.* at 664.

121. *Id.* at 675 (“[I]t costs on average, \$45 to \$100 per person in document and transportation costs to get a photo ID.”).

122. *See id.* at 665 (“The concept is simple—a \$20 bill is worth much more to a person struggling to make ends meet than to a person living in wealth.”).

123. *Id.*

124. *Id.*

125. *See* Aram Goudsouzian, *The Rent Eats First*, CHAPTER 16 (Aug. 15, 2016), <https://chapter16.org/the-rent-eats-first/> [<https://perma.cc/KC2M-4RRV>] (quoting Matthew Desmond, “Today, the majority of poor renting families are spending at least half of their income on housing—and one in four is spending over seventy percent just on rent and utilities.”).

prerequisite for future earnings, but it does not, on its own, satisfy basic human needs.

B. The Many Identities of Low-Income Texans

Judge Ramos's opinion underscores how low-income identities frequently share membership in other social groups that society has historically marginalized.¹²⁶ For example, members of racial minority groups are more likely to live in poverty,¹²⁷ making access to identifying documents challenging.¹²⁸ Homeless Texans have particular challenges in obtaining and maintaining identifying documents.¹²⁹ Elderly and disabled Texans are not only likely to be burdened by obtaining identifying documents, but also are unlikely to marshal effective opposition to the law.¹³⁰

Furthermore, while Judge Ramos's opinion did not make note of other intersections between economic insecurity and marginalized groups, they are prevalent in Texas.¹³¹ A recent report detailed how LGBTQ+ individuals are considerably more likely than the general population to become homeless or incarcerated.¹³² Formerly incarcerated Texans, in turn, face considerable barriers to housing and employment that elevate

126. See Veasey, 71 F. Supp. 3d at 667 (“And compared to adult Anglos throughout the state, minorities in Texas experience higher levels of health impairment—particularly those minorities who are low-income. This is a predictable effect of discrimination because health, education, and employment opportunities are all interdependent.”).

127. See *id.* at 665 (“African[]Americans and Hispanics are substantially more likely than Anglos to live in poverty throughout Texas because they continue to bear the socioeconomic effects caused by decades of discrimination.”); see also Ura & Wang, *supra* note 114 (“With poverty rates twice as high as those for white Texans, Hispanic and black residents are disproportionately burdened by poverty, . . .”).

128. Veasey, 71 F. Supp. 3d at 675.

129. See *id.* (“The \$45.00 cost to obtain a Texas ID card is equivalent to what these clients would pay for a two-week stay in a shelter.”).

130. See *id.* at 656 (“[T]hose likely to be burdened by SB 14—the poor, minorities, disabled, and elderly—are persons unlikely to have the wherewithal to register a complaint in any officially meaningful way.”).

131. See *id.* (failing to consider the consequential relationship between marginalized groups and poverty).

132. See RYAN M. CARLINO, *supra* note 16 (“LGBTQ people are more likely to experience homelessness, unemployment, and poverty—all factors that are common in justice system involvement.”).

their odds of being financially insecure.¹³³ By imposing a series of fees upon these Texans, the State creates another series of barriers that prevent its own residents from participating fully in contemporary life, contributing their gifts, and living with the dignity associated with being able to document one's own identity.¹³⁴

III. HISTORICAL AND PRESENT CONTEXT

With so many Texans vulnerable to the pernicious effects of unaffordable administrative costs on its residents' own identifying documents, the State of Texas owes a responsibility to ensure that participation in the fundamental activities of society is not limited only to those who can afford it.¹³⁵ The State need only look to its court system, and to the examples of other states, to fulfill this responsibility.

A. In Forma Pauperis Pleadings

Access to the court system, regardless of ability to pay, has deep roots in the common law.¹³⁶ A federal statute formally authorized this practice in 1892, and Congress has updated and expanded this practice on multiple occasions in subsequent years.¹³⁷

In state courts—where poor litigants are more likely to pursue claims than federal court—a variety of guidelines govern fee waivers for parties of limited means.¹³⁸ In Texas, the standard for proceeding *in forma pauperis* is relatively broad, as long as it is done in good faith.¹³⁹ Rule

133. See BAILEY GRAY ET AL., RETURN TO NOWHERE: THE REVOLVING DOOR BETWEEN INCARCERATION AND HOMELESSNESS, TEX. CRIM. JUST. COAL. 2, 8, 10 (Feb. 2019), <https://www.texascjc.org/system/files/publications/Return%20to%20Nowhere%20The%20Revolving%20Door%20Between%20Incarceration%20and%20Homelessness.pdf> [https://perma.cc/LC9Q-QSE4] (“Formerly incarcerated individuals are almost 10 times more likely to be homeless than the general public.”).

134. Veasey, 71 F. Supp. 3d at 693.

135. Cf. *id.* at 627 (holding unconstitutional a Texas law that disproportionately affected low-income citizens in violation of the Voting Rights Act).

136. See Hammond, *supra* note 62 (providing a history of the *in forma pauperis* right to sue, and explaining how the common law extended the right to sue regardless of the ability to pay).

137. *Id.* at 1481.

138. See *id.* at 1511 (citing, among others, Hannah Lieberman *Uncivil Procedure: How State Court Proceedings Perpetuate Inequality*, 35 YALE L. & POL'Y REV. 257, 260 (2016) (“Defendants in these millions of [state] civil cases tend to be persons of low or modest income.”)).

139. Clark v. Clark, No. 01-13-00577-CV, 2014 Tex. App. LEXIS 12998 (Tex. App.—Houston [1st Dist.] Dec. 4, 2014, no pet.) (mem. op.).

145 of the Texas Rules of Civil Procedure governs fee waivers in Texas courts.¹⁴⁰ Low-income litigants can certify they are eligible for representation by a legal aid organization with income-eligibility requirements (regardless of whether a legal aid organization is representing the party).¹⁴¹ They can also demonstrate they receive means-tested government benefits, or simply that they do not have sufficient funds to pay court costs.¹⁴²

This final catchall category seems particularly instructive for the State—as it considers how its residents can access their own identifying documentation housed within the administrative state.¹⁴³ Think back to the examples of individuals lacking identifying documents described above.¹⁴⁴ Many, if not all, of these individuals may not be receiving means-tested benefits despite being eligible.¹⁴⁵ Moreover, some may be ineligible for certain benefits, whether due to items on their criminal history,¹⁴⁶ their citizenship status,¹⁴⁷ or their work history (or lack thereof).¹⁴⁸ Allowing Texas litigants to self-certify their inability to pay court costs creates a procedure for parties to access the courts without spending time obtaining documentation, from other agencies, of their financial circumstances.¹⁴⁹

Self-certification, while straightforward, is not without an enforcement mechanism.¹⁵⁰ The consequences for a false statement are those that

140. Tex. R. Civ. P. 145(e).

141. *Id.*

142. *Id.*

143. *Cf. id.* (governing fee waivers for the many groups of low-income litigants).

144. *See* Bradley, *supra* note 5 (providing the many obstacles individuals face when they lack identification).

145. *See, e.g.,* TEX. ADMIN. CODE ANN. § 372.101 (listing the benefits of the Temporary Assistance for Needy Families Program).

146. *Id.* § 372.501(b)(3).

147. *Id.* § 372.201; *see Fact Sheet: Immigrants and Public Benefits*, NAT'L IMMIGR. F. (Aug. 21, 2018), <https://immigrationforum.org/article/fact-sheet-immigrants-and-public-benefits/> [<https://perma.cc/FTU9-BGSR>] (showing that undocumented immigrants are ineligible for a range of means-tested benefits and that legal permanent residents also face restrictions on accessing means-tested benefits).

148. *See Employment & Benefit Amounts*, TEX. WORKFORCE COMM'N (Oct. 11, 2019), <https://twc.texas.gov/jobseekers/eligibility-benefit-amounts> [<https://perma.cc/69CD-M8SY>] (understanding that unemployment benefits, for example, would be unavailable to the student, the returning Texan, the retiree, and the former stay-at-home parent).

149. Tex. R. Civ. P. 145(e).

150. Tex. R. Civ. P. 145(a).

accompany perjury.¹⁵¹ However, its use is not uncommon within other state administrative agency applications, particularly within the realm of state-issued identifying documents.¹⁵² From voter registration applications to birth certificate applications, Texas administrative agencies employ various measures of self-certification subject to penalty for false statements.¹⁵³ Its practice could easily extend to a fee waiver application for low-income Texans seeking identifying documents.¹⁵⁴

B. Free Identifying Documents

While self-certification of a Texan's inability to pay costs for identifying documents would lessen barriers for low- and no-income Texans to obtain such records, there exist other agencies that issue identifying documents with an even lower barrier—those that issue documents without a fee regardless of an applicant's ability to pay.¹⁵⁵ The Social Security Administration does not charge number holders for either an initial or a replacement card.¹⁵⁶ While the Social Security Administration does place a limit (with exceptions) on the number of replacement cards a number holder can obtain in their lifetime,¹⁵⁷ at no point does it charge number holders for a new or replacement card.¹⁵⁸

151. *Id.*

152. Tex. R. Civ. P. 145(e).

153. *See* TEX. SEC'Y STATE, TEXAS VOTER REGISTRATION APPLICATION, <https://www.sos.state.tx.us/elections/forms/vr-with-receipt.pdf> [<https://perma.cc/Q89W-D4LD>] (requiring applicant to acknowledge that giving false information is a crime with penalties); *see also* TEX. HEALTH & HUM. SERVS., TEXAS BIRTH CERTIFICATE APPLICATION (Sept. 2018), https://www.dshs.texas.gov/uploadedFiles/Content/Chief_Operating_Officer/vs/reqproc/forms/Issuance_Birth_Final.pdf [<https://perma.cc/HJX7-MLAK>] (warning applicants that falsifying information will result in harsh penalties).

154. Tex. R. Civ. P. 145(a).

155. *See, e.g., Student Academic Record or Transcript Requests*, TEX. HIGHER EDUC. COORDINATING BOARD, <http://www.thecb.state.tx.us/institutional-resources-programs/private-postsecondary-institutions/school-closures-records/student-academic-record-or-transcript-requests/> [<https://perma.cc/GQ56-TQEH>] (providing one context where an individual can receive a certified copy of documents without a fee); *Register to Vote*, TEX. SEC'Y OF STATE (2012), <https://www.votetexas.gov/register-to-vote/index.html> [<https://perma.cc/BY5U-6S8M>] (stating how to register to vote without a fee).

156. *How Do I Apply for a New or Replacement Social Security Number Card?*, SOCIAL SEC. ADMIN. (Jan. 14, 2019), <https://faq.ssa.gov/en-us/Topic/article/KA-02017> [<https://perma.cc/RA3D-9746>].

157. 20 C.F.R. § 422.103(e)(2).

158. SOCIAL SEC. ADMIN., *supra* note 156.

Similarly, certain school records are available to former students at no cost.¹⁵⁹ Voter registration cards and their replacements are issued to Texas voters at no cost.¹⁶⁰

In many ways, it would be an ideal policy and practice for Texas agencies issuing identifying documents to do so free of charge.¹⁶¹ Agencies could adopt many protections against fraud and abuse, including penalties for false statements and lifetime limits on the number of documents issued.¹⁶² However, removing fees for identifying documents would signal clearly that, while the State of Texas issues and safeguards its residents' personal information, the underlying information itself belongs not to the State, but to the individual.¹⁶³ The State's role is that of a trustee, rather than an owner that licenses information to interested parties.

C. *Fee Waiver as a Bridge*

Then, an expanded fee waiver for low- and no-income Texans would be a bridge between the current fee-oriented system and an ideal no-fee system.¹⁶⁴ Rather than imposing a regressive tax of sorts that most negatively impacts those Texans who are least able to afford these documents—and who, perversely, may disproportionately benefit from possessing those documents—a fee waiver program allows access for low- and no-income Texans, while preserving a source of revenue for the State, which, absent a state income tax,¹⁶⁵ relies upon “licenses, fees,

159. See, e.g., TEX. HIGHER EDUC. COORDINATING BOARD, *supra* note 155 (“There is no fee for a certified copy of a student’s own academic records.”).

160. See generally TEX. SEC’Y OF STATE, *supra* note 155 (mentioning no fee when changing or replacing one’s voter registration card).

161. See Veasey, 71 F. Supp. 3d at 708 (listing the proposed amendments to Senate Bill 14 that call for “eliminating the fees for underlying documents (needed to obtain photo ID) ordinarily charged by Texas agencies, institutions, and political jurisdictions.”).

162. Cf. Tex. R. Civ. P. 145(a) (enforcing a penalty of perjury); 20 C.F.R. § 422.103(e)(2) (limiting the number of lifetime replacement social security cards to ten).

163. Tex. R. Civ. P. 145(e).

164. See, e.g., Memorandum from Shared Prosperity Phila. on Hardship Waivers for IDs in Pa. (Jan. 29, 2015), <http://sharedprosperityphila.org/documents/Revised-ID-Waiver-Appendices-5.15.15.pdf> [<https://perma.cc/9XMM-LLL7>] [hereinafter *Hardship Waivers Memo*] (demonstrating fee waivers are available in other states and can help low-income individuals get identifying documents).

165. TEX. CONST. art. VIII, § 24(a).

permits, fines, and penalties” for over 5% of its state budget funding.¹⁶⁶

IV. RECENT IDENTIFYING DOCUMENT FEE WAIVER EFFORTS

In so doing, Texas will be able to expand further upon its recent efforts for increased access to administrative documents that it granted in House Bill 123.¹⁶⁷ Texas can also incorporate the approaches used in several states to help make identifying documents free of charge to certain low- and no-income individuals—in particular, older residents, those with disabilities, and those experiencing homelessness.¹⁶⁸

A. Older Resident Fee Waivers

Alaska,¹⁶⁹ Arizona,¹⁷⁰ California,¹⁷¹ Colorado,¹⁷² the District of Columbia,¹⁷³ Illinois,¹⁷⁴ Louisiana,¹⁷⁵ Maryland,¹⁷⁶ New Mexico,¹⁷⁷ New York,¹⁷⁸ Rhode Island,¹⁷⁹ Michigan,¹⁸⁰ and Oklahoma¹⁸¹ all offer some form of a complete fee waiver for older residents—starting at, variously, fifty-nine to sixty-five years of age—for either state-issued

166. *Revenue by Source for Fiscal Year 2018*, TEX. COMPTROLLER PUB. ACCTS., <https://comptroller.texas.gov/transparency/reports/revenue-by-source/>. [<https://perma.cc/G5K9-VALQ>].

167. See Act of June 14, 2019, 86th Leg., R.S., ch. 1024, § 8, 2019 Tex. Gen. Law. 1024 (codified at TEX. FAM. CODE ANN. § 264.121(e-3); TEX. HEALTH & SAFETY CODE ANN. § 191.0049; TEX. TRANSP. CODE ANN. §§ 521.1015, 521.1811 (waiving fees for foster or homeless youth when they seek to obtain administrative documents)).

168. See generally *Hardship Waivers Memo*, *supra* note 164 (listing several state approaches to fee waivers for state-issued identification cards that increase vulnerable populations’ access to administrative documents).

169. ALASKA STAT. ANN. § 18.65.310(g) (West 2019).

170. ARIZ. REV. STAT. § 28-3165 (West 2018).

171. CAL. VEH. CODE § 13000 (West 2018).

172. COLO. REV. STAT. § 42-2-306 (West 2018).

173. D.C. CODE ANN. § 50-1401.05 (West 2017).

174. ILL. COMP STAT. 335/4(d) (2020).

175. LA. STAT. ANN. § 40:1321(H) (West 2018).

176. MD. TRANSP. CODE ANN. § 12-301(b)(2) (West 2017).

177. N.M. STAT. ANN. § 66-5-19(B) (West 2016).

178. N.Y. VEH. & TRAF. § 491 (McKinney 2017).

179. R.I. GEN. LAWS § 31-10-31 (West 2018).

180. MICH. COMP. LAWS. tit. § 28.292(O) (West 2019).

181. OKLA. STAT. ANN. tit. 47, § 6-101 (West 2020).

identification cards or driver's licenses.¹⁸² Other states, such as Texas, allow for fee reductions for older residents seeking identification cards or driver's licenses.¹⁸³

B. Fee Waivers for Residents Experiencing Homelessness

Eight states—California,¹⁸⁴ Connecticut,¹⁸⁵ the District of Columbia,¹⁸⁶ Florida,¹⁸⁷ Illinois,¹⁸⁸ Nevada,¹⁸⁹ North Carolina,¹⁹⁰ and now Texas¹⁹¹—make allowances to waive fees for certain individuals experiencing homelessness who apply for state-issued identification cards.¹⁹² Furthermore, California,¹⁹³ Indiana,¹⁹⁴ Kentucky,¹⁹⁵ Nevada,¹⁹⁶ Oregon,¹⁹⁷ and Utah¹⁹⁸ all have adopted legislation that waives fees for certain individuals experiencing homelessness who apply for their birth certificates.¹⁹⁹ Many of these laws affect homeless youth and their families—the result of grassroots lobbying efforts supported by organizations such as the Schoolhouse Connection.²⁰⁰

182. *See, e.g., id.* (utilizing a fee waiver for older individuals who seek to obtain a form of identification).

183. TEX. TRANSP. CODE ANN. §§ 521.271; 521.2711.

184. CAL. VEH. CODE § 14902(d) (West 2020).

185. CONN. GEN. STAT. ANN. § 1-1h (West 2020).

186. D.C. CODE ANN. § 50-1401.05 (West 2017).

187. FLA STAT. ANN. § 332.051(9) (West 2019).

188. ILL. COMP STAT. 335/12 (2020).

189. NEV. REV. STAT §§ 483.417; 483.825 (West 2020).

190. N.C. GEN. STAT. § 20-37.7(d)(4) (West 2018).

191. TEX. TRANSP. CODE ANN. § 521.1811.

192. *See, e.g.,* N.C. GEN. STAT. § 20-37.7(d)(4) (West 2018) (waiving fees for homeless individuals who want to apply for an identification card).

193. CAL. HEALTH & SAFETY § 103577 (West 2019).

194. IND. CODE ANN. § 16-37-1-9(d) (West 2019).

195. KY. REV. STAT. ANN. § 213.141 (West 2019).

196. NEV. REV. STAT ANN. § 440.700(4a) (West 2020).

197. OR. REV. STAT. ANN. § 432.450 (West 2017).

198. UTAH CODE ANN. § 26-2-12.6 (West 2019).

199. *See, e.g., id.* UTAH CODE ANN. § 26-2-12.6 (West 2019) (adopting legislation that waives fees for individuals experiencing homelessness who are seeking to obtain their birth certificates).

200. Telephone Interview with Patricia Julianelle, Director of Program Advancement and Legal Affairs, Schoolhouse Connection (Oct. 11, 2019) [on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*] [hereinafter *Patricia Julianelle Interview*].

California has provisions that allow for identification card fee reductions for residents who participate in certain public benefits programs.²⁰¹ Applicants must submit paperwork that a “verifier of income” completes to establish the applicant’s eligibility for a fee reduction.²⁰² Similarly, California allows for identification card and birth certificate²⁰³ fees to be waived for individuals who, upon submission of a verification form, can document that they are experiencing homelessness.²⁰⁴ California also waives fees for residents sixty-two years or older seeking an identification card.²⁰⁵

In Nevada, fee waivers are available for individuals experiencing homelessness who seek a replacement driver’s license, identification card, or instruction permit.²⁰⁶ An applicant can self-certify their homelessness in an application signed before a Department of Motor Vehicles representative.²⁰⁷ Nevadans experiencing homelessness, as well as those released from the Department of Corrections in the past ninety days, can also have fees waived when applying for their birth certificate.²⁰⁸ Further, Nevadans experiencing homelessness need to sign a state-issued affidavit to obtain the fee waiver.²⁰⁹ Nevadans recently returning from incarceration are required to produce Department of Corrections documentation.²¹⁰

The District of Columbia’s No-Fee Birth Certificate Program allows homeless District residents to present a form, completed by a qualifying homeless service provider, to the District of Columbia Department of

201. CAL. VEH. CODE § 14902 (West 2020).

202. *Id.*; Cal. Dep’t of Pub. Health, St. of Cal. Health and Hum. Servs. Agency, Affidavit of Homeless Status for Fee Exempt Certified Copy of Birth Certificate (Oct. 2018), <https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/Affidavit%20for%20Free%20Certified%20Copy%20of%20Birth%20Certificate%20-%202018-15.pdf> [<https://perma.cc/A6RK-KQCB>].

203. CAL. HEALTH & SAFETY § 103577 (West 2019); CAL. DEP’T OF PUB. HEALTH, *supra* note 202.

204. CAL. HEALTH & SAFETY § 103577 (West 2019).

205. CAL. VEH. CODE § 14902 (West 2020).

206. NEV. REV. STAT §§ 483.417; 483.825 (West 2020).

207. *Id.*; NEV. DEP’T MOTOR VEHICLES, DECLARATION OF HOMELESS STATUS (Dec. 2019), <https://dmvnev.com/pdfforms/dmv128.pdf> [<https://perma.cc/86E8-SNAB>].

208. 40 NEV. REV. STAT. § 440.700(4)(a)–(b) (West 2020).

209. *Id.* § 440.700(5)(a).

210. *Id.* § 440.700(4)(b).

Health to obtain a no-fee birth certificate.²¹¹ Homeless service providers must be within the District of Columbia Continuum of Care and initiate the voucher application before obtaining a voucher on behalf of the birth certificate applicant.²¹² The District of Columbia also allows seniors sixty-five years of age or older, residents who have returned from incarceration within the past six months, and residents experiencing homelessness to obtain a no-fee identification card.²¹³

Recent efforts to implement limited-scope fee waivers in Texas have seen some level of success.²¹⁴ This past legislative session, Governor Greg Abbott signed House Bill 123 into law.²¹⁵ Effective September 1, House Bill 123 creates a pathway for foster youth, unaccompanied youth, and homeless youth to obtain birth certificates, driver's licenses, and personal identification cards without a fee and "without a parent or guardian's signature, presence, or permission."²¹⁶

V. MODEL FORM

This Part suggests that the State of Texas base its administrative fee waiver for identifying documents off of its own form—namely, the Statement of Inability to Afford Payment of Court Costs or an Appeal Bond.²¹⁷ That Statement, included in Appendix A, demonstrates the feasibility of designing a form that can be straightforward for applicants to complete, while also being simple for government personnel to review and analyze.²¹⁸ As previously discussed, the provision for a self-certification of the inability to pay will create administrative efficiencies for both applicants and for the administrative

211. *Important Information and Facts About DHS No-Fee Birth Certificate Program*, DEP'T HUM. SERVS., (Feb. 22, 2018), https://dhs.dc.gov/sites/default/files/dc/sites/dhs/service_content/attachments/DHS%20No-Fee%20Birth%20Certificate%20Program%20Fact%20Sheet_1.pdf [<https://perma.cc/D8SU-VCNL>].

212. *Id.*

213. D.C. CODE ANN. § 50-1401.05 (West 2017).

214. *See, e.g.*, Act of June 14, 2019, 86th Leg., R.S., ch. 1024, § 8, 2019 Tex. Gen. Law. 1024 (codified at TEX. FAM. CODE ANN. § 264.121(e-3)) (providing the details of House Bill 123, which creates an avenue for vulnerable youth to obtain certain forms of identification).

215. *Id.*; TEX. HEALTH & SAFETY CODE ANN. § 191.0049; TEX. TRANSP. CODE ANN. §§ 521.1015, 521.1811.

216. Act of June 14, 2019, 86th Leg., R.S., ch. 1024, § 8, 2019 Tex. Gen. Law. 1024 (codified at TEX. FAM. CODE ANN. § 264.121(e-3)).

217. SUP. CT. OF THE ST. OF TEX., *supra* note 59.

218. *Id.*

agency.²¹⁹ It would behoove the State to draw heavily upon this successful form when creating a fee waiver for identifying documents.

Included in Appendix B, this proposed fee waiver is lightly adapted from the form the Supreme Court of Texas has approved.²²⁰ Largely, the form is untouched.²²¹ Envisioning the form's origin within the Secretary of State's office, the Model Form's header and footer now use that state office instead of the Supreme Court of Texas.²²² The Model Form's footer also envisions where, in the Texas code, references to this affidavit may be made.²²³ Elsewhere in the Model Form, references to cause numbers, plaintiffs, defendants, and court locations now refer to applicants and administrative offices.

VI. AVENUES FOR IMPLEMENTATION

This Part argues for legislation and regulation to adopt this proposal and make clear that, under state law, Texans will have access to their identifying documents—regardless of their ability to pay for fees.²²⁴

A. *Legislative Mandate*

As suggested in the Model Form, legislation authorizing the adoption of fee waivers for low- and no-income Texans seeking identifying documents will be required.²²⁵ While such an approach requires strategic and tactical considerations that go beyond traditional lawyering, the policy arguments in favor of its adoption are quite strong.²²⁶

219. *Cf.* Tex. R. Civ. P. 145(e) (requiring plaintiff to provide her own documents to prove inability to pay, rather than requiring various government agencies to do so).

220. *Compare* SUP. CT. OF THE ST. OF TEX., *supra* note 59 (providing the Texas Supreme Court's form), *with* Model Form by Gregory Zlotnick (Oct. 14, 2019) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) [hereinafter *Appendix B*] (providing the author's proposed Model Form).

221. *Compare* SUP. CT. OF THE ST. OF TEX., *supra* note 59, *with Appendix B, supra* note 220 (identifying striking similarities between the two documents).

222. *Appendix B, supra* note 220.

223. *Id.*

224. *See id.* (providing a way for Texas citizens to have access to crucial identifying documents).

225. *Cf. Veasey*, 71 F. Supp. 3d at 693 (finding that state administrative fees for birth certificates may be unduly burdensome to underrepresented populations).

226. *Cf. Holder*, 888 F. Supp. 2d at 144 (showing how many bills—that would have waived fees for low-income—were tabled when Texas enacted its discriminatory and unconstitutional voting laws).

In addition to the moral imperative for increasing access to identifying documentation described in previous parts, the Model Form itself should hold persuasive power for legislators considering its creation.²²⁷ This Model Form's strengths lie in its similarity to accepted practices in Texas courts and in its ease of use for both applicants and for government employees who will process the forms.²²⁸ At two pages, and in relatively plain language, the form poses a limited burden for both Texans seeking identifying documents and for Texans entrusted with issuing those records.²²⁹ By drawing upon the established practice within Texas courts for a broadly accessible inability to pay affidavit, Texas agencies can further rest assured that their efforts are within the mainstream of government administration in their state.²³⁰

Furthermore, there are not strong financial arguments against the adoption of fee waiver provisions.²³¹ According to advocate Patricia Julianelle, the fiscal impact of such fee waiver statutes on states tends to be negligible.²³² While this proposal targets a broader population than the subset of youth experiencing homeless on which Julianelle's organization and collaborators focus, the financial impact on the state figures is minimal.²³³ Indeed, Texas House Bill 123, as enrolled, merited a fiscal note that anticipated "[n]o significant fiscal implication to the State"²³⁴

However, even if legislators feared a greater fiscal impact to the State from an expanded fee waiver program for low- and no-income Texans, recent legislative activity suggests an appetite for a state government that does not permit burdensome fees to become barriers for participation in everyday activities.²³⁵ On September 1, 2019, legislation ended the

227. *Appendix B, supra* note 220.

228. *Id.*

229. *Id.*

230. SUP. CT. OF THE ST. OF TEX., *supra* note 59; see Edward C. Fritz & Robert E. Keeton, *Affidavit of Inability to Pay Costs in Federal and Texas Civil Actions*, 7 SMU L. REV. 427, 472 (1953) ("The affidavit of inability to pay costs has replaced the 'pauper's oath' in Texas and federal courts.").

231. *Cf. Hickey v. Rhine*, 16 Tex. 576 (1856) ("[N]o man should be prevented from prosecuting a suit, seeking redress for an outrage upon his person, on the ground of his poverty.").

232. *Patricia Julianelle Interview, supra* note 200.

233. *Id.*

234. Fiscal Note, Tex. H.B. 123, 86th Leg., R.S. (2019).

235. See Act of June 21, 2003, 78th Leg., 3d C.S., ch. 1325, § 10.01, 2003 Tex. Gen. Laws 4942, *repealed by* Act of June 14, 2019, Tex., 86th Leg., R.S., ch. 1094, § 15, 2019 Tex. Gen. Law.

Texas Driver's Responsibility Program—an effort that subjected Texas drivers with convictions for certain driving offenses to surcharges that, if left unpaid, could cause a Texan's license to be suspended.²³⁶ Many advocates decried the program,²³⁷ and the Bill was passed with bipartisan support²³⁸—despite the anticipated costs to the State.²³⁹ The fiscal note describing the financial impact of the end of the program anticipated at least a \$141.2 million loss of revenue from surcharges for each fiscal year.²⁴⁰ The legislation found other revenue sources to offset the loss of revenue.²⁴¹

Given the size of the Texas state budget, a \$141.2 million figure may strike policymakers as a rounding error.²⁴² However, to low-income Texans, that amount of money each year could be transformative in their efforts to obtain identifying documents.²⁴³ Annually, \$141.2 million would be enough to provide a \$16 state identification card for each of the 4.2 million Texans living below the poverty line, with enough money left over to give 3.2 million Texans living in poverty a \$23 Texas birth certificate *each fiscal year*.²⁴⁴

1094 (repealing surcharges and pending surcharges imposed before September 1, 2019, and reinstating any driver's license that was suspended for failure to pay surcharges).

236. *See id.* (“[If] the person fails to pay the amount of a surcharge on a person's license . . . the license of the person is automatically suspended.”).

237. *See, e.g., A Texas Program That Larded Fines on Drivers is Dead at Last*, DALLAS MORNING NEWS (June 20, 2019, 2:00 AM), <https://www.dallasnews.com/opinion/editorials/2019/06/20/a-texas-program-that-larded-fines-on-drivers-is-dead-at-last/>, [<https://perma.cc/8QN6-64MU>] (“Between the surcharges and services fees (not to mention the initial price of a traffic ticket), this program was unfairly bleeding drivers dry.”).

238. *See generally* H.J. of Tex., 86th Leg., R.S. 4863–915 (2019) (showing near unanimous support for House Bill 2048).

239. Fiscal Note, Tex. H.B. 123, 86th Leg., R.S. (2019).

240. H.J. of Tex., 86th Leg., R.S. 4863–915 (2019).

241. Act of June 14, 2019, Tex., 86th Leg., R.S., ch. 1094, § 15, 2019 Tex. Gen. Law. 1094 (codified at TEX. TRANSP. CODE ANN. §§ 709.001–002).

242. *See* LEGIS. BUDGET BD., SUMMARY OF CONFERENCE COMMITTEE REPORT FOR SENATE BILL 1: APPROPRIATIONS FOR THE 2018–19 BIENNIUM 23 (May 2017), http://www.lbb.state.tx.us/Documents/Appropriations_Bills/85/Conference_Bills/4083_Summary_CCR_SB1_2018-19.pdf [<https://perma.cc/AY56-3JNA>] (“The 2018–19 biennial budget . . . is \$216.8 billion.”).

243. *See Our Top Takeaways from the New Census Data*, CPPP BLOG (Sept. 26, 2019), <http://bettertexasblog.org/2019/09/our-top-takeaways-from-the-new-census-data-2/> [<https://perma.cc/J93L-NZA2>] (providing the figures and data on Texas citizens who live in poverty).

244. *See id.* (reporting that 4.2 million Texans live below the poverty line).

Naturally, not each of those Texans will need a \$16 identification card or a \$23 birth certificate each year.²⁴⁵ That allows advocates of fee waivers to push for an ambitious, far-reaching waiver form—available widely to low- and no-income Texans.²⁴⁶ Even if Texas followed the implicit breadth of the Model Form and permitted those living outside the strict federal definition of poverty to waive fees for identifying documents, such a resource allocation would still be meaningful.²⁴⁷ According to a study by the United Ways of Texas, 2.6 million Texas households are asset-limited, income-constrained, and employed (ALICE).²⁴⁸ To fund each of these households, \$141.2 million would allow each individual to obtain one \$16 identification card each year—still a remarkably impactful shift.²⁴⁹ If Texas legislators could find the political will to end a punitive program that nevertheless provided the State with seven figures worth of funding, then there should be an avenue for advocates to pursue an ambitious approach to fee waivers with costs.²⁵⁰

B. Alternate Pathways

1. Administrative Rulemaking

Given the Model Form's contemplated origin within the Secretary of State's office, advocates and policymakers should give consideration to any possible adoption of fee waivers through administrative rulemaking.²⁵¹ However, as Patricia Julianelle noted, state statutes usually require the collection of fees for state-issued identifying documents.²⁵² Indeed, in Texas, fees for driver's licenses and

245. *Cf. id.* (listing the details of the census data for Texas citizens).

246. *See Appendix B, supra* note 220 (proposing a fee waiver which would provide crucial documents to citizens without charging burdensome fees).

247. *See, e.g., UNITED WAYS OF TEX., supra* note 118 at 7 (“In Texas, there are 2,648,163 ALICE households that have income above the FPL [Federal Poverty Level] but below the ALICE Threshold. When combined with households below the poverty level, in total, 4,025,176 households in Texas—42 percent—struggled to make ends meet in 2016.”).

248. *Id.*

249. *Id.*

250. *See Appendix B, supra* note 220 (providing a practical fee waiver form which would benefit both the citizens and the State).

251. *Cf. TEX. HEALTH & SAFETY CODE ANN. § 191.0045(b)* (demonstrating how current fees for birth certificates are not set by statute—thereby making administrative rule making crucial).

252. *Patricia Julianelle Interview, supra* note 200.

identification cards are statutorily prescribed.²⁵³ However, birth certificate fees are not set by statute.²⁵⁴ Rather, the Texas Health and Safety Code merely authorizes the Executive Commissioner of the Health and Human Services Commission to make rules establishing a fee structure.²⁵⁵ Should legislative action not take place—or take place incompletely—advocates could focus on administrative rulemaking to implement a fee waiver program for Texas birth certificates.²⁵⁶

2. *Local Creation of Identifying Document Voucher Programs*

Should state-level action prove to be challenging, advocates could consider accessing county- and city-level funding to offset state-imposed fees on their low- and no-income residents.²⁵⁷ Currently, cities such as San Antonio provide funding for legal services, including “identification recovery for homeless.”²⁵⁸ Similarly, cities could appropriate funds, either indirectly through service providers or through direct assistance programs like the city of San Antonio’s Risk Mitigation Fund, to provide funding to residents seeking identifying documents.²⁵⁹ Given the potential economic benefits that identifying documents can create, such strategic allocation of public resources—even if it is essentially the left hand of local government paying the right hand of state government—could yield considerable returns for local communities.²⁶⁰

253. TEX. TRANSP. CODE ANN. § 521.421.

254. See TEX. HEALTH & SAFETY CODE ANN. § 191.0045(b) (permitting the Commissioner for Health & Safety Services to set the administrative fees for birth certificates).

255. *Id.*

256. *Cf. id.* (demonstrating a lack of administrative rulemaking in Texas laws, such as birth certificate fees).

257. See, e.g., *Homeless Assistance Services*, CITY OF SAN ANTONIO, <https://www.sanantonio.gov/humanservices/HomelessServices#173731843-homeless-services> [<https://perma.cc/7PWF-LZZR>] (providing some of the ways the City of San Antonio funds efforts to help the homeless community).

258. See, e.g., *id.* (listing the homeless service providers the city funds).

259. See RISK MITIGATION FUND POLICY, CITY OF SAN ANTONIO (Mar. 21, 2019), https://www.sanantonio.gov/Portals/0/Files/NHSD/RiskMitigation/RM-Policy_FINAL_3_21_2019_WEB_POSTED.pdf?ver=2019-06-05-091418-973 [<https://perma.cc/6PRP-HE5N>] (supporting efforts to mitigate and minimize the effects of displacement in San Antonio).

260. See TEX. TRANSP. CODE ANN. § 521.421 (requiring states to collect a fee for identifying documents); see also Cline, *supra* note 2 (demonstrating the efforts of local programs to work around fees and regulations to help those in need).

CONCLUSION

State-issued identifying documents sit at a peculiar intersection of modern life.²⁶¹ The records, particular and personal to an individual, are essential to that individual's well-being, participation, and flourishing in contemporary society.²⁶² Yet, government entities, in their roles as gatekeepers, charge individuals fees for their own information.²⁶³ We collectively entrust our public officials with the stewardship of our most sensitive and often-intimate records—and we pay for the privilege of obtaining those records with fees separate and apart from general revenues.²⁶⁴

This practice, hardly defensible in the abstract, becomes even harder to accept when the State, in its majestic equality, applies the same fees to its most- and least-resourced residents alike.²⁶⁵ Texas, which has taken steps in recent years to remove barriers to identifying documents for certain subgroups, can readily adapt its processes for accessing its court system to broaden access to the administrative state.²⁶⁶ With slight changes to statutes or regulations, minimal financial offsets to the state budget, and a lightly adapted two-page form, the State of Texas can ensure that its most vulnerable residents can access their own identifying documents—the very documents that affirm their identities—without financial penalty and with the hope of obtaining a more secure and meaningful future.²⁶⁷

261. See Bradley, *supra* note 5 (showing that citizens use government-issued identification to vote, verify identification to employers, and even qualify for public housing vouchers).

262. See Cline, *supra* note 2 (demonstrating how obtaining identifying documents can be the first step towards a better life for low-income individuals).

263. TEX. TRANSP. CODE ANN. § 521.421.

264. See Weiser et al., *supra* note 1 (reporting approximately eleven percent of voting-age citizens did not have a form of identification readily accessible).

265. Cf. ANATOLE FRANCE, *THE RED LILY* 95 (Frederic Chapman ed., Winifred Stephens trans., The Bodley Head 1910) (1894) (“The law, in its majestic equality, forbids rich and poor alike to sleep under the bridges, to beg in the streets, and to steal their bread.”).

266. See, e.g., Act of June 14, 2019, 86th Leg., R.S., ch. 1024, § 8, 2019 Tex. Gen. Law. 1024 (codified at TEX. FAM. CODE ANN. § 264.121(e-3); TEX. HEALTH & SAFETY CODE ANN. § 191.0049; TEX. TRANSP. CODE ANN. §§ 521.1015, 521.1811 (waiving identification fees for foster or homeless children).

267. See, e.g., SUP. CT. OF THE ST. OF TEX., *supra* note 59 (adopting an amended Waiver of Fees Due to Inability Pay Form in order to increase access to an individual's own identifying information).

APPENDICES

Appendix A: Statement of Inability to Afford Payment of Court Costs or an Appeal Bond	378
Appendix B: Statement of Inability to Afford Payment of Costs for Identifying Documentation	380

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA



Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: _____
(Print first and last name of the person filing the lawsuit.)

And

In the *(check one):*
_____ Court Number
 District Court
 County Court / County Court at Law
 Justice Court

Defendant: _____ Texas
(Print first and last name of the person being sued.) County _____

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

1. Your Information

My full legal name is: _____ My date of birth is: ____/____/____
First Middle Last Month/Day/Year

My address is: *(Home)* _____
(Mailing) _____

My phone number: _____ My email: _____

About my **dependents**: "The people who depend on me financially are listed below."

<i>Name</i>	<i>Age</i>	<i>Relationship to Me</i>
1 _____	_____	_____
2 _____	_____	_____
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____
6 _____	_____	_____

2. Are you represented by Legal Aid?

I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.

-or-

I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

or-

I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

I do not receive needs-based public benefits. - or -

I receive these **public benefits/government entitlements** that are based on indigency:

(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

- Food stamps/SNAP TANF Medicaid CHIP SSI WIC AABD
- Public Housing or Section 8 Housing Low-Income Energy Assistance Emergency Assistance
- Telephone Lifeline Community Care via DADS LIS in Medicare ("Extra Help")
- Needs-based VA Pension Child Care Assistance under Child Care and Development Block Grant
- County Assistance, County Health Care, or General Assistance (GA)
- Other: _____

4. What is your monthly income and income sources?

"I get this monthly income:

\$ _____ in monthly wages. I work as a _____ for _____.
Your job title Your employer

\$ _____ in monthly unemployment. I have been unemployed since (date) _____.

\$ _____ in public benefits per month.

\$ _____ from other people in my household each month: (List only if other members contribute to your household income.)

\$ _____ from Retirement/Pension Tips, bonuses Disability Worker's Comp
 Social Security Military Housing Dividends, interest, royalties
 Child/spousal support
 My spouse's income or income from another member of my household (If available)

\$ _____ from other jobs/sources of income. (Describe) _____

\$ _____ is my **total monthly** income.

5. What is the value of your property?

"My property includes:	Value*
Cash	\$ _____
Bank accounts, other financial assets	\$ _____
_____	\$ _____
_____	\$ _____
Vehicles (cars, boats) <small>(make and year)</small>	\$ _____
_____	\$ _____
_____	\$ _____
Other property (like jewelry, stocks, land, another house, etc.)	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total value of property	→ \$ _____

6. What are your monthly expenses?

"My monthly expenses are:	Amount
Rent/house payments/maintenance	\$ _____
Food and household supplies	\$ _____
Utilities and telephone	\$ _____
Clothing and laundry	\$ _____
Medical and dental expenses	\$ _____
Insurance (life, health, auto, etc.)	\$ _____
School and child care	\$ _____
Transportation, auto repair, gas	\$ _____
Child / spousal support	\$ _____
Wages withheld by court order	\$ _____
Debt payments paid to: <small>(List)</small>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total Monthly Expenses	→ \$ _____

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

7. Are there debts or other facts explaining your financial situation?

"My debts include: (List debt and amount owed) _____

 _____"

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page.

8. Declaration

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

- I cannot afford to pay court costs.
- I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is _____ . My date of birth is : ____ / ____ / ____.

My address is _____
Street City State Zip Code Country

_____ signed on ____ / ____ / ____ in _____ County, _____
Signature Month/Day/Year county name State

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA



Applicant: _____

Office: (circle one) Vital Statistics Unit / District Clerk/ County Clerk/
Municipal Clerk/ School District Office/ Department of Public Safety/ Other

Statement of Inability to Afford Payment of Costs for Identifying Documentation

1. Your Information

My full legal name is: _____ My date of birth is: ____/____/____
First Middle Last Month/Day/Year

My address is: (Home) _____
(Mailing) _____

My phone number: _____ My email: _____

About my **dependents**: "The people who depend on me financially are listed below.

<i>Name</i>	<i>Age</i>	<i>Relationship to Me</i>
1 _____	_____	_____
2 _____	_____	_____
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____
6 _____	_____	_____

2. Are you represented by Legal Aid?

I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.

-or-

I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

or-

I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

I do not receive needs-based public benefits. - or -

I receive these **public benefits/government entitlements** that are based on indigency:

(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

- Food stamps/SNAP TANF Medicaid CHIP SSI WIC AABD
- Public Housing or Section 8 Housing Low-Income Energy Assistance Emergency Assistance
- Telephone Lifeline Community Care via DADS LIS in Medicare ("Extra Help")
- Needs-based VA Pension Child Care Assistance under Child Care and Development Block Grant
- County Assistance, County Health Care, or General Assistance (GA)
- Other: _____

4. What is your monthly income and income sources?

"I get this monthly income:

\$ _____ in monthly wages. I work as a _____ for _____.
Your job title Your employer

\$ _____ in monthly unemployment. I have been unemployed since (date) _____.

\$ _____ in public benefits per month.

\$ _____ from other people in my household each month: (List only if other members contribute to your household income.)

\$ _____ from Retirement/Pension Tips, bonuses Disability Worker's Comp
 Social Security Military Housing Dividends, interest, royalties
 Child/spousal support
 My spouse's income or income from another member of my household (If available)

\$ _____ from other jobs/sources of income. (Describe) _____

\$ _____ is my **total monthly** income.

5. What is the value of your property?

"My property includes:	Value*
Cash	\$ _____
Bank accounts, other financial assets	\$ _____
_____	\$ _____
_____	\$ _____
Vehicles (cars, boats) <small>(make and year)</small>	\$ _____
_____	\$ _____
_____	\$ _____
Other property (like jewelry, stocks, land, another house, etc.)	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total value of property	→ \$ _____

6. What are your monthly expenses?

"My monthly expenses are:	Amount
Rent/house payments/maintenance	\$ _____
Food and household supplies	\$ _____
Utilities and telephone	\$ _____
Clothing and laundry	\$ _____
Medical and dental expenses	\$ _____
Insurance (life, health, auto, etc.)	\$ _____
School and child care	\$ _____
Transportation, auto repair, gas	\$ _____
Child / spousal support	\$ _____
Wages withheld by court order	\$ _____
Debt payments paid to: <small>(List)</small>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total Monthly Expenses	→ \$ _____

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

7. Are there debts or other facts explaining your financial situation?

"My debts include: (List debt and amount owed) _____

 _____"

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page.

8. Declaration

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

I cannot afford to pay costs associated with identifying documents such as a state-issued identification card, a driver's license, a birth certificate, a marriage license, a divorce decree, court records, a concealed weapons license, and/or school records.

My name is _____ . My date of birth is : ____ / ____ / ____.

My address is _____
Street City State Zip Code Country

_____ signed on ____ / ____ / ____ in _____ County, _____
Signature Month/Day/Year county name State