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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*

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I offer my gratitude for the staff and editors of The Scholar for both offering the opportunity to explore this topic and for their unflagging assistance in the publication process. Any errors or omissions that remain are my own.

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.

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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

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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. 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.” While Foscarinis’s assessment undoubtedly expresses the severity of the challenges that individuals without identifying documents face, it can reveal too much.

Consider a woman who returns to her hometown in Del Rio on parole after spending several years in the Texas state prison system. 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. The employer, however, will not let her use her Texas Department of Criminal Justice offender card as proof of her identification. The employer is insisting that the woman obtain her birth certificate and an identification card from the Department of Public Safety before she starts. 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 re-incarceration.

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

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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.
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).
aging out of the foster care system a year ago, she is looking forward to a more stable and rewarding life.\footnote{17} \hspace{1em} 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.\footnote{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.\footnote{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.\footnote{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.\footnote{21} 

Think of a fifty-eight-year-old man with disabilities who sleeps under an Interstate 35 overpass in downtown Austin.\footnote{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.\footnote{23} Furthermore, a social worker has identified a housing voucher the man is

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\footnote{17}{See \textit{Housing for Youth Aging Out of Foster Care}, \textsc{Mathematica} (2020), \url{https://www.mathematica.org/our-publications-and-findings/projects/housing-for-youth-aging-out-of-foster-care} \footnoteurl{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.’”).}

\footnote{18}{\textit{Cf.} \textit{Enrollment: Steps for Enrolling}, \textsc{Alamo Cs. Dist.} (2020), \url{https://www.alamo.edu/admission-aid/special-populations/military/enrollment} \footnoteurl{https://perma.cc/FZ3F-73DJ} (requiring a high school or General Educational Development (GED) transcript and proof of residency).}

\footnote{19}{\textit{Cf.} \textit{Office of Access and Enrollment Services}, \textsc{San Antonio Indep. Sch. Dist.} (2020), \url{https://www.saisd.net/page/oaes-howtoregister} \footnoteurl{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).}

\footnote{20}{See \textsc{Tex. Transp. Code Ann.} § 521.1811 (limiting the fee waivers for a new driver’s license to foster youth under the age of 21).}

\footnote{21}{\textit{See, e.g.,} \textit{Student Records Request}, \textsc{N. E. Indep. Sch. District}, \url{https://neisdtx.scriborders.com} \footnoteurl{https://perma.cc/C3UT-LF6S} (explaining that the school district has gone paperless and records will only be transmitted electronically).}

\footnote{22}{See \textit{generally} \textit{Homelessness in Austin}, \textsc{Echo} (2020), \url{https://www.austinecho.org/about-echo/homelessness-in-austin} \footnoteurl{https://perma.cc/2QTE-RHQE} (identifying 46% of Austin’s homeless population as being between the ages of 45 and 64).}

\footnote{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


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.’”).


agents.\textsuperscript{32} The agents do not accept those as forms of valid identification and detain him at an adult detention center.\textsuperscript{33} Until they see his birth certificate, he will remain in ICE custody.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{37} Until this discrepancy is resolved, the Department of Public Safety will not issue him a photo identification card.\textsuperscript{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.\textsuperscript{39}


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

\textsuperscript{34} \textit{Id.}

\textsuperscript{35} \textit{Cf.} Obed Manuel, \textit{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.”).


\textsuperscript{37} \textit{Id.}

\textsuperscript{38} \textit{Id.}

These Texans all exist. However, without identifying documents, these Texans exist on the margins of civic life—locked out of dignity, security, liberty, and opportunity. 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.

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. These challenges also impact obtaining other documents. 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.

In Texas, birth certificates cost at least $22. Photo identification cards that the Department of Public Safety issues cost between $6 and $21. Driver’s licenses cost between $9 and $25. Certified copies of marriage licenses vary by county and can cost more than
Certified copies of divorce decrees can cost $1 per page. Transcript requests from high schools can cost $5 or more and are increasingly moving to online portals that require a credit card.

Money, then, becomes another deadbolt on the door excluding Texans without identifying documents; a lock that, while legal, is unjust. 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. 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; however, no assistance exists for low- or no-income Texans outside of those categories. 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.webbcountytx.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.”)].


51. See, e.g., N. E. Indep. Sch. Dist., supra note 21 (providing an example of school district that has gone paperless).


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, rev’d 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.\textsuperscript{56}

This article proposes a lock-picking solution to an obstacle that prevents low- and no-income Texans from accessing identifying documents.\textsuperscript{57} Specifically, a standardized fee waiver, accepted throughout Texas, for Texans unduly burdened by document fees.\textsuperscript{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.\textsuperscript{59}

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

\begin{footnotes}
\item[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.”).
\item[57] Cf. id. (demonstrating the obstacles indigent individuals face when attempting to obtain identification documents).
\item[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).
\item[60] Cf. Bradley, supra note 5 (emphasizing the need for a standardized definition of identifying documents).
\item[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).
\item[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).
\end{footnotes}
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.\footnote{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.} Part V proposes a model fee waiver form, drawing heavily from the Texas courts’ statement of inability to pay court costs or appeal bond.\footnote{Tex. R. Civ. P. 145.} 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.\footnote{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).}

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.\footnote{Cf. 25 TEX. ADMIN. CODE § 181.1(12) (listing one definition of identifying documents).} The definition of publicly issued identifying documents is limited to the documents necessary for conducting fundamental activities in contemporary Texas life.\footnote{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).}

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.\footnote{Cf. 25 TEX. ADMIN. CODE § 181.1(12) (providing the requirements for photo identification).} Specifications for the identifying documents draw upon existing definitions of identification in the Texas Administrative Code.\footnote{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 identification).} Certainly, Texans may possess other documents

\footnote{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.}

\footnote{65. Tex. R. Civ. P. 145.}

\footnote{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).}

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

\footnote{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).}

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

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

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. Identifying documents are required for securing public housing, and, in some circumstances, even

71. See Tex. Dept. St. Health Servs., supra note 4 (providing a list of acceptable forms of identification in Texas).
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).
accessing homeless service providers. By federal law, identifying documents are required before beginning employment. To cast a ballot in Texas, a voter must present sufficient documentation as to their identification. Accessing certain medicines and medical records in Texas can require an identification card. Enrollment in public schools requires, with certain exceptions, identifying documents for both parents and children. Texans need to present identifying documents before a county clerk issues a marriage license. Texans need identifying documents to legally operate a motor vehicle, fly on an airplane, and may need to produce identifying documents on Amtrak and Greyhound buses. The federal government requires banks to ask for identifying documents from customers, and even those with no bank need identifying documents to access check cashing, payday loans, and other financial services. Texas requires its residents to present identifying documents before obtaining a handgun license. In short, Texans cannot

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.
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 2011. The court found the law unconstitutional, stating that it placed an “undue burden” on citizens, especially those with limited financial resources.

104. See Julie A. Roin, Reconceptualizing Unfunded Mandates and Other Regulations, 93 NW. U. L. REV. 351, 352 (1999) (“‘Unfunded 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.”).


108. Cf. id. at 664–76 (providing details on the Texas population who are negatively affected by costly, identifying documents).
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. However, using statistical findings and historical context, the opinion provides a template for understanding the hardship that accompanies obtaining identifying documents.

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. 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. While the poverty rate in Texas has declined in recent years, in 2018, 14.7% of Texans lived in poverty. Even after years of economic expansion, over 1.3 million Texan households live in precarious economic circumstances, even by the conservative measure of the federal poverty line. 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%.

Dr. Jane Henrici, who testified as an
expert witness, stated in a report to the court that “lower-income Texans have difficulties obtaining, keeping, replacing, and renewing government-issued documentation.”

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.

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. 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.

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. 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. To paraphrase the received wisdom that Matthew Desmond helped popularize in his groundbreaking work Evicted—the rent eats first. An identifying document may be a

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/ (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 LGTBQ+ 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, . . . .").

\(^ {128}\) See 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. CARLINIO, 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.\textsuperscript{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.\textsuperscript{134}

III. \textsc{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.\textsuperscript{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.\textsuperscript{136} A federal statute formally authorized this practice in 1892, and Congress has updated and expanded this practice on multiple occasions in subsequent years.\textsuperscript{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.\textsuperscript{138} In Texas, the standard for proceeding \textit{in forma pauperis} is relatively broad, as long as it is done in good faith.\textsuperscript{139} Rule


\textsuperscript{134} Veasey, 71 F. Supp. 3d at 693.

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

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

\textsuperscript{137} Id. at 1481.

\textsuperscript{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.”)).

145 of the Texas Rules of Civil Procedure governs fee waivers in Texas courts.\textsuperscript{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).\textsuperscript{141} They can also demonstrate they receive means-tested government benefits, or simply that they do not have sufficient funds to pay court costs.\textsuperscript{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.\textsuperscript{143} Think back to the examples of individuals lacking identifying documents described above.\textsuperscript{144} Many, if not all, of these individuals may not be receiving means-tested benefits despite being eligible.\textsuperscript{145} Moreover, some may be ineligible for certain benefits, whether due to items on their criminal history,\textsuperscript{146} their citizenship status,\textsuperscript{147} or their work history (or lack thereof).\textsuperscript{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.\textsuperscript{149}

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

\begin{itemize}
\item \textsuperscript{140} Tex. R. Civ. P. 145(e).
\item \textsuperscript{141} Id.
\item \textsuperscript{142} Id.
\item \textsuperscript{143} Cf. id. (governing fee waivers for the many groups of low-income litigants).
\item \textsuperscript{144} See Bradley, supra note 5 (providing the many obstacles individuals face when they lack identification).
\item \textsuperscript{145} See, e.g., Tex. Admin. Code Ann. § 372.101 (listing the benefits of the Temporary Assistance for Needy Families Program).
\item \textsuperscript{146} Id. § 372.501(b)(3).
\item \textsuperscript{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).
\item \textsuperscript{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).
\item \textsuperscript{149} Tex. R. Civ. P. 145(e).
\item \textsuperscript{150} Tex. R. Civ. P. 145(a).
\end{itemize}
accompany perjury. However, its use is not uncommon within other state administrative agency applications, particularly within the realm of state-issued identifying documents. From voter registration applications to birth certificate applications, Texas administrative agencies employ various measures of self-certification subject to penalty for false statements. Its practice could easily extend to a fee waiver application for low-income Texans seeking identifying documents.

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. The Social Security Administration does not charge number holders for either an initial or a replacement card. 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, at no point does it charge number holders for a new or replacement card.

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 (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/regproc/forms/issuance Birth_Final.pdf (warning applicants that falsifying information will result in harsh penalties).
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/ (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 (stating how to register to vote without a fee).
157. 20 C.F.R. § 422.103(c)(2).
158. SOCIAL SEC. ADMIN., supra note 156.
Similarly, certain school records are available to former students at no cost.\footnote{159} Voter registration cards and their replacements are issued to Texas voters at no cost.\footnote{160}

In many ways, it would be an ideal policy and practice for Texas agencies issuing identifying documents to do so free of charge.\footnote{161} Agencies could adopt many protections against fraud and abuse, including penalties for false statements and lifetime limits on the number of documents issued.\footnote{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.\footnote{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.\footnote{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,\footnote{165} relies upon “licenses, fees,

\section*{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.\footnote{\textit{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).}} 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.\footnote{\textit{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).}}

\subsection*{A. Older Resident Fee Waivers}


\begin{thebibliography}{10}
\bibitem{168} \textit{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).}
\bibitem{169} \textit{Alaska Stat. Ann. \$ 18.65.310(g) (West 2019)}.\footnote{\textit{Alaska Stat. Ann. \$ 18.65.310(g) (West 2019)}.}
\bibitem{173} \textit{D.C. Code Ann. \$ 50-1401.05 (West 2017)}.\footnote{\textit{D.C. Code Ann. \$ 50-1401.05 (West 2017)}.}
\bibitem{178} \textit{N.Y. Veh. & Traf. \$ 491 (McKinney 2017)}.\footnote{\textit{N.Y. Veh. & Traf. \$ 491 (McKinney 2017)}.}
\bibitem{179} \textit{R.I. Gen. Laws \$ 31-10-31 (West 2018)}.\footnote{\textit{R.I. Gen. Laws \$ 31-10-31 (West 2018)}.}
\end{thebibliography}
identification cards or driver’s licenses. Other states, such as Texas, allow for fee reductions for older residents seeking identification cards or driver’s licenses.

B. Fee Waivers for Residents Experiencing Homelessness

Eight states—California, Connecticut, the District of Columbia, Florida, Illinois, Nevada, North Carolina, and now Texas—make allowances to waive fees for certain individuals experiencing homelessness who apply for state-issued identification cards. Furthermore, California, Indiana, Kentucky, Nevada, Oregon, and Utah all have adopted legislation that waives fees for certain individuals experiencing homelessness who apply for their birth certificates. Many of these laws affect homeless youth and their families—the result of grassroots lobbying efforts supported by organizations such as the Schoolhouse Connection.

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).
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.\textsuperscript{201} Applicants must submit paperwork that a “verifier of income” completes to establish the applicant’s eligibility for a fee reduction.\textsuperscript{202} Similarly, California allows for identification card and birth certificate\textsuperscript{203} fees to be waived for individuals who, upon submission of a verification form, can document that they are experiencing homelessness.\textsuperscript{204} California also waives fees for residents sixty-two years or older seeking an identification card.\textsuperscript{205}

In Nevada, fee waivers are available for individuals experiencing homelessness who seek a replacement driver’s license, identification card, or instruction permit.\textsuperscript{206} An applicant can self-certify their homelessness in an application signed before a Department of Motor Vehicles representative.\textsuperscript{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.\textsuperscript{208} Further, Nevadans experiencing homelessness need to sign a state-issued affidavit to obtain the fee waiver.\textsuperscript{209} Nevadans recently returning from incarceration are required to produce Department of Corrections documentation.\textsuperscript{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

\begin{footnotes}
\item[201.] \textsc{Cal. Veh. Code} § 14902 (West 2020).
\item[203.] \textsc{Cal. Health & Safety} § 103577 (West 2019); Cal. Dep’t of Pub. Health, supra note 202.
\item[204.] \textsc{Cal. Health & Safety} § 103577 (West 2019).
\item[205.] \textsc{Cal. Veh. Code} § 14902 (West 2020).
\item[206.] \textsc{Nev. Rev. Stat} §§ 483.417; 483.825 (West 2020).
\item[208.] 40 \textsc{Nev. Rev. Stat.} § 440.700(4)(a)–(b) (West 2020).
\item[209.] \textit{Id.} § 440.700(5)(a).
\item[210.] \textit{Id.} § 440.700(4)(b).
\end{footnotes}
Health to obtain a no-fee birth certificate. 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. 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.

Recent efforts to implement limited-scope fee waivers in Texas have seen some level of success. This past legislative session, Governor Greg Abbott signed House Bill 123 into law. 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.”

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. 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. 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

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212. Id.


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).


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.\textsuperscript{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.\textsuperscript{220} Largely, the form is untouched.\textsuperscript{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.\textsuperscript{222} The Model Form’s footer also envisions where, in the Texas code, references to this affidavit may be made.\textsuperscript{223} Elsewhere in the Model Form, references to cause numbers, plaintiffs, defendants, and court locations now refer to applicants and administrative offices.

\section*{VI. \textsc{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.\textsuperscript{224} 

\subsection*{A. \textsc{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.\textsuperscript{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.\textsuperscript{226}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{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).
\item \textsuperscript{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).
\item \textsuperscript{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).
\item \textsuperscript{222} Appendix B, supra note 220.
\item \textsuperscript{223} Id.
\item \textsuperscript{224} See id. (providing a way for Texas citizens to have access to crucial identifying documents).
\item \textsuperscript{225} Cf. Veasey, 71 F. Supp. 3d at 693 (finding that state administrative fees for birth certificates may be unduly burdensome to underrepresented populations).
\item \textsuperscript{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).
\end{itemize}
\end{footnotesize}
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{230}

Furthermore, there are not strong financial arguments against the adoption of fee waiver provisions.\textsuperscript{231} According to advocate Patricia Julianelle, the fiscal impact of such fee waiver statutes on states tends to be negligible.\textsuperscript{232} While this proposal targets a broader population than the subset of youth experiencing homelessness on which Julianelle’s organization and collaborators focus, the financial impact on the state figures is minimal.\textsuperscript{233} Indeed, Texas House Bill 123, as enrolled, merited a fiscal note that anticipated “[n]o significant fiscal implication to the State . . . .”\textsuperscript{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.\textsuperscript{235} On September 1, 2019, legislation ended the

\textsuperscript{227} Appendix B, supra note 220.
\textsuperscript{228} Id.
\textsuperscript{229} Id.
\textsuperscript{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.”).
\textsuperscript{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.”).
\textsuperscript{232} Patricia Julianelle Interview, supra note 200.
\textsuperscript{233} Id.
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. Many advocates decried the program, and the Bill was passed with bipartisan support—despite the anticipated costs to the State. 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. The legislation found other revenue sources to offset the loss of revenue.

Given the size of the Texas state budget, a $141.2 million figure may strike policymakers as a rounding error. However, to low-income Texans, that amount of money each year could be transformative in their efforts to obtain identifying documents. 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. 

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.”).


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.\textsuperscript{245} That allows advocates of fee waivers to push for an ambitious, far-reaching waiver form—available widely to low- and no-income Texans.\textsuperscript{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.\textsuperscript{247} According to a study by the United Ways of Texas, 2.6 million Texas households are asset-limited, income-constrained, and employed (ALICE).\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{251} However, as Patricia Julianelle noted, state statutes usually require the collection of fees for state-issued identifying documents.\textsuperscript{252} Indeed, in Texas, fees for driver’s licenses and

\begin{footnotes}
\item[245] Cf. id. (listing the details of the census data for Texas citizens).
\item[246] See Appendix B, supra note 220 (proposing a fee waiver which would provide crucial documents to citizens without charging burdensome fees).
\item[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.”).
\item[248] Id.
\item[249] Id.
\item[250] See Appendix B, supra note 220 (providing a practical fee waiver form which would benefit both the citizens and the State).
\item[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).
\item[252] Patricia Julianelle Interview, supra note 200.
\end{footnotes}
identification cards are statutorily prescribed. However, birth certificate fees are not set by statute. 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. 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.

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. Currently, cities such as San Antonio provide funding for legal services, including “identification recovery for homeless.” 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. 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.

253. TEX. TRANS. 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).
260. See TEX. TRANS. 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.\(^\text{261}\) The records, particular and personal to an individual, are essential to that individual’s well-being, participation, and flourishing in contemporary society.\(^\text{262}\) Yet, government entities, in their roles as gatekeepers, charge individuals fees for their own information.\(^\text{263}\) 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.\(^\text{264}\)

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.\(^\text{265}\) 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.\(^\text{266}\) 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.\(^\text{267}\)

\(^{261}\) See Bradley, supra note 5 (showing that citizens use government-issued identification to vote, verify identification to employers, and even qualify four 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).


\(^{264}\) 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.”).


\(^{267}\) 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
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.

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Relationship to Me</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
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<tr>
<td>4</td>
<td></td>
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<tr>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 ______________.

$__________ 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:

<table>
<thead>
<tr>
<th>Value*</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$__________</td>
</tr>
<tr>
<td>Bank accounts, other financial assets</td>
<td>$__________</td>
</tr>
<tr>
<td>Vehicles (cars, boats) (make and year)</td>
<td>$__________</td>
</tr>
<tr>
<td>Other property (like jewelry, stocks, land, another house, etc.)</td>
<td>$__________</td>
</tr>
<tr>
<td>Total value of property</td>
<td>$__________</td>
</tr>
</tbody>
</table>

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

6. What are your monthly expenses?

“My monthly expenses are:

<table>
<thead>
<tr>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent/house payments/maintenance</td>
<td>$__________</td>
</tr>
<tr>
<td>Food and household supplies</td>
<td>$__________</td>
</tr>
<tr>
<td>Utilities and telephone</td>
<td>$__________</td>
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<td>Clothing and laundry</td>
<td>$__________</td>
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<td>Medical and dental expenses</td>
<td>$__________</td>
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<td>Insurance (life, health, auto, etc.)</td>
<td>$__________</td>
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<td>School and child care</td>
<td>$__________</td>
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<td>Transportation, auto repair, gas</td>
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<td>Wages withheld by court order</td>
<td>$__________</td>
</tr>
<tr>
<td>Debt payments paid to: (List)</td>
<td>$__________</td>
</tr>
</tbody>
</table>

Total Monthly Expenses $__________

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 __________________________________________

________________________________________________________________________

Signature ___________________________ signed on / / in _____________ County, ____________

© Form Approved by the Supreme Court of Texas by order in Misc. Docket No. 16-9122

Statement of Inability to Afford Payment of Court Costs
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.

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

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☐ 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: ____________________________

Form Approved by the Texas Secretary of State Pursuant to Texas Transportation Code § 521.1813, Texas Health and Safety Code § 191.0046, and Texas Government Code §101 et. seq.

http://commons.stmarytx.edu/thescholar/vol22/iss3/2

Page 1 of 2
4. What is your monthly income and income sources?

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$________ is my total monthly income.

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Cash $________ Bank accounts, other financial assets

$________ $________ $________

Vehicles (cars, boats) (make and year) $________

$________

Other property (like jewelry, stocks, land, another house, etc.) $________

$________ $________

Total value of property $________

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

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Amount

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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: (List) $________

$________ $________

Total Monthly Expenses $________

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, __________ State

Signature ___________________________