

## Voting While Poor: Reviving the 24th Amendment and Eliminating the Modern-Day Poll Tax

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*The cost of voting is too high for millions of eligible voters. The Twenty-Fourth Amendment was ratified to address barriers which specifically prevent the poor from voting, after Post-Reconstruction politicians erected poll taxes as an end-run around universal enfranchisement. Today, costs associated with complying with burdensome voting requirements push voters into an untenable choice: pay a price they cannot afford to vote, or not vote at all. This Note challenges existing case law to argue that modern-day poll taxes should be impermissible under the Twenty-Fourth Amendment. This Note proposes a new theory under which to state Twenty-Fourth Amendment claims for modern-day poll taxes which unconstitutionally force the poor to waive their right to vote. Three modern-day poll taxes are addressed: voter registration procedures, strict voter identification requirements, and polling place closure and consolidation. In arguing for specific modern-day poll taxes, this Note quantifies the costs of voting barriers for people living in poverty and uses that quantity to justify reducing those costs and to state constitutional claims of burdens on the fundamental right to vote. Those costs bear stark resemblance to the costs of the literal poll taxes that precipitated the ratification of the Twenty-Fourth Amendment and constitute an impermissible burden under the Supreme Court’s existing doctrine regarding the Twenty-Fourth Amendment.*

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## I. INTRODUCTION

Litigating the fundamental right to vote typically involves allegations of race-based burdens or generalized burdens on voters under the First, Fourteenth, and Fifteenth Amendments. The Twenty-Fourth Amendment, however, was ratified specifically to alleviate the burdens low-income voters face by barring the poll tax in all federal elections. The Supreme Court generally makes conditions on the right to vote based on the inability of a voter to pay impermissible<sup>1</sup> but has addressed the constitutionality of the poll tax under the Twenty-Fourth Amendment only once.<sup>2</sup> Meanwhile, low-income voters face unique challenges resulting in widespread disenfranchisement, and advocates face difficulties stating successful claims of burdens on the fundamental right to vote based solely on socioeconomic status.

In my Note, I argue that election procedures that prevent low-income people from voting violate the Twenty-Fourth Amendment ban on poll taxes. Part II will expound on the consequences of voter suppression of low-income citizens. Part III will provide a history of the Twenty-Fourth Amendment’s purpose, ratification, and interpretation. Part IV will address three specific ways states impose undue burdens on voters which effectively act as poll taxes: precinct closures create long lines at the polls that burden voters with inflexible work and family obligations; strict voter identification laws impose additional costs to voters who do not possess proof of citizenship; and voter registration procedures fail to reach low-income voters.

Part IV will also provide solutions for states to leverage the interactions that poor and low-income people have with the government to increase accessibility to voting and mitigate the Twenty-Fourth Amendment concerns presented. Namely, the routine interactions low-income people have with public assistance agencies can be used to decrease the cost incurred by low-income people in exercising their right to vote. When states maintain inadequate election administration procedures, they impede on the rights of the poor that the Twenty-Fourth Amendment was ratified to protect.<sup>3</sup> In this country, many people are simply too poor to vote—while we seek new pathways to litigate burdens based on socioeconomic status, it is imperative that we meet low-income voters where they are to ensure accessibility to the franchise.

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1. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (declaring the poll tax unconstitutional under the Equal Protection Clause).

2. *Harman v. Forssenius*, 380 U.S. 528 (1965). *But see* *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612 (2017) (holding that a photo identification law in Texas did not violate the Twenty-Fourth Amendment).

3. *See Harman*, 380 U.S. 528 (noting that “[o]ne of the basic objections to the poll tax [during the ratification process] was that it exacted a price for the privilege of exercising the franchise”).

## II. VOTE SUPPRESSION OF THE POOR

Low-income citizens vote at some of the lowest rates in the country. According to Census data, eligible voters with a household income of less than \$20,000 voted at a less than a 50% rate in the 2016 election.<sup>4</sup> The turnout rate decreases with the income bracket; the turnout rate was 48.8% for those with a household income of \$15,000 to \$19,999; 47.7% for \$10,000 to \$14,999; and 41.4% for \$10,000 or below.<sup>5</sup> Every household income bracket above \$20,000 voted above a 50% rate—eligible voters whose household incomes top \$150,000 voted at an 80% rate.<sup>6</sup> Overall, voters with an annual family income of less than \$20,000 comprised 6% of all registered voters and 5.1% of all voters who voted in the 2016 election.<sup>7</sup>

As a result, those who do not live in poverty make most of the decisions regarding how the government should interact with those who do live in poverty. For example, President Trump did not win the votes of most low-income voters, contrary to popular belief.<sup>8</sup> Many policies that the Trump administration has put forward, however, disproportionately affect low-income people. Among other policy implications, the Trump administration has allowed states to include work requirements for Medicaid under the Affordable Care Act;<sup>9</sup> proposed cuts to affordable housing programs by more than nine billion dollars;<sup>10</sup> and lowered the standards for school lunches, on which low-income students primarily rely for healthy meals.<sup>11</sup>

These issues compound political apathy on the part of low-income citizens, who may feel there is no reason to participate because politicians do not care about the issues they face. By way of example, *The Nation* profiled a community organizer in Cincinnati, Ohio named Cassandra.<sup>12</sup> A former welfare recipient, Cassandra began attending public meetings after the passage of welfare reform in 1996, and became disillusioned with the political process after hearing “men and women in suits” talk

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4. U.S. Census Bureau, *Table 7. Reported Voting and Registration of Family Members, by Age and Family Income: November 2016*, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2016 (May 2017), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html>.

5. *Id.*

6. *Id.*

7. THOMAS FILE & U.S. CENSUS BUREAU, CHARACTERISTICS OF VOTERS IN THE PRESIDENTIAL ELECTION OF 2016 (2018), <https://www.census.gov/content/dam/Census/library/publications/2018/demo/P20-582.pdf>.

8. See Jeremy Slevin, *Stop Blaming Low-Income Voters for Donald Trump's Victory*, TALK POVERTY (Nov. 16, 2016), <https://talkpoverty.org/2016/11/16/stop-blaming-low-income-voters-donald-trumps-victory>.

9. Sarah Kliff, *Under Trump, the Number of Uninsured Americans Has Gone Up By 7 Million*, VOX (Jan. 23, 2019), <https://www.vox.com/2019/1/23/18194228/trump-uninsured-rate-obamacare-medicaid>.

10. *President Trump Proposes Drastic Cuts to Affordable Housing Programs*, NAT'L LOW INCOME HOUSING COALITION (Mar. 11, 2019), <https://nlihc.org/resource/president-trump-proposes-drastic-cuts-affordable-housing-programs>.

11. Evie Blad, *Trump Administration Further Relaxes School Lunch Rules*, EDWEEK (Dec. 6, 2018), [https://blogs.edweek.org/edweek/rulesforengagement/2018/12/trump\\_administration\\_further\\_relaxes\\_school\\_lunch\\_rules.html](https://blogs.edweek.org/edweek/rulesforengagement/2018/12/trump_administration_further_relaxes_school_lunch_rules.html).

12. See Daniel Weeks, *Why Are the Poor and Minorities Less Likely to Vote?*, THE NATION (Jan. 10, 2014), <https://www.theatlantic.com/politics/archive/2014/01/why-are-the-poor-and-minorities-less-likely-to-vote/282896>.

about how lazy welfare recipients are.<sup>13</sup> Cassandra came to the conclusion that “[f]olks that are on welfare, the [politicians] look down on us.”<sup>14</sup>

If numbers are any indication, Cassandra is not alone in this sentiment. As the Pew Research Center notes, “[f]inancial security is strongly correlated with nearly every measure of political engagement.”<sup>15</sup> According to Pew, people who experience financial insecurity are not only less likely to vote, but also less likely to contact their elected officials.<sup>16</sup> Those who Pew identifies as financially insecure are also more likely to agree that “the government should do more to help needy Americans, even if it means going deeper into debt.”<sup>17</sup> Political participation is tied with income. Low-income people, whose interactions with the government are perhaps the most consistent, comprise a strikingly low proportion of the electorate relative to their relationship with the government. This was not supposed to be; the Twenty-Fourth Amendment’s passage sought to include more low-income voters in the political process. As explained below, the Twenty-Fourth Amendment’s purpose in attempting to eliminate disenfranchisement based on inability to pay failed both in its interpretation by the courts and the lack of litigation broadly.

### III. THE TWENTY-FOURTH AMENDMENT’S DORMANT STATE

#### *A. A History of the Poll Tax and the Ratification of the Twenty-Fourth Amendment*

During the Jim Crow era, the former Confederate states implemented the poll tax to prevent Blacks and lower income whites from voting. The Jim Crow states primarily used the poll tax as an alternative means to disenfranchise Black Americans in the Jim Crow South after the Fifteenth Amendment granted Black Americans the right to vote.<sup>18</sup> History also indicates that policymakers who implemented the poll tax intended to disenfranchise poor whites as well, in order to entrench control of politics in the Jim Crow South. One observer noted that the poll tax served to mitigate “the danger of the rule of Negroes and the lower classes

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13. *Id.*

14. *Id.*

15. *The Politics of Financial Insecurity: A Democratic Tilt, Undercut by Low Participation*, PEW RES. CTR. (Jan. 8, 2015), [https://www.people-press.org/2015/01/08/the-politics-of-financial-insecurity-a-democratic-tilt-undercut-by-low-participation](https://www.people-press.org/2015/01/08/the-politics-of-financial-insecurity-a-democratic-tilt-undercut-by-low-participation/) (“Rather than relying on family income . . . as a surrogate for a person’s financial situation, this survey included detailed questions about economic security and insecurity, including measures of financial hardship (such as having difficulty paying bills and receiving means-tested government benefits), as well as financial assets and tools (such as having credit cards, bank accounts and retirement savings).”).

16. *Id.*

17. *Id.*

18. See *infra* note 65 and accompanying text. While the Fifteenth Amendment abolished disenfranchisement on the basis of race, poll taxes persisted in a more facially neutral form to disenfranchise black people after the Civil War.

of whites.”<sup>19</sup> The eventual ratification of the Twenty-Fourth Amendment came to be concurrent with the labor movement and the Civil Rights Movement.<sup>20</sup>

As Schultz and Clark note, the “post-Civil War poll tax was re-established deliberately with the expressed purpose of restricting the electorate by disenfranchising the Negroes and poor whites.”<sup>21</sup> Following the passage of the Fifteenth Amendment, eleven of the former Confederate states implemented the poll tax.<sup>22</sup> By 1962—during the Twenty-Fourth Amendment’s passage and the height of the Civil Rights Movement—Virginia, Alabama, Mississippi, Arkansas, and Texas still employed poll taxes to the detriment of its poor and Black voters.<sup>23</sup> These fees typically had to be paid for every election that a voter wanted to participate in.<sup>24</sup> The fee would equal approximately \$1.50, or \$12.90 in 2020;<sup>25</sup> while some of the lowest wage earners barely took home that much in a week’s work.<sup>26</sup> The poll tax in many states accumulated annually such that nonpayment would result in even larger fees in later years for the voter.<sup>27</sup> Suffice it to say, low-wage earners could not have possibly paid the tax and were disenfranchised as a result.

The consequences of the poll tax cannot be understated. At the passage of the Fifteenth Amendment, dissenting members of Congress bragged that they would simply implement the poll tax because it would have the same effect on Black voters as absolute disenfranchisement.<sup>28</sup> The poll tax naturally led to decreased turnout among low-income voters.<sup>29</sup> At the time leading up to the Twenty-Fourth Amendment’s ratification, the poll tax prevented some four million people from voting in this country.<sup>30</sup> The poll tax—like any regressive tax—funded government services at the expense of the poor, and to the benefit of those who

19. SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 75 (West Academic 5th ed. 2016).

20. See STEVEN F. LAWSON, *BLACK BALLOTS: VOTING RIGHTS IN THE SOUTH, 1944-1969*, at 56–58 (Columbia University Press, 1976); George C. Stoney, *Suffrage in the South Part I: The Poll Tax*, 29 *SURVEY GRAPHIC* 5 (1940), <https://socialwelfare.library.vcu.edu/issues/suffrage-south-poll-tax>.

21. See David Schultz & Sarah Clark, *Wealth v. Democracy: The Unfulfilled Promise of the Twenty-Fourth Amendment*, 29 *QUINNIPIAC L. REV.* 375, 388 (2011) (internal quotation omitted).

22. Andrew Kirshenbaum, *The Injustice of the Poll Tax and Why It Took a Constitutional Amendment to Stop It*, *FAIRVOTE* (May 2003), <https://web.archive.org/web/20170206135455/http://archive.fairvote.org/?page=875> (“Between 1889 and 1910, eleven states all concentrated in the South adopted a poll tax.”).

23. See *The 24th Amendment*, *HISTORY, ART, AND ARCHIVES*, UNITED STATES HOUSE OF REPRESENTATIVES (last visited Apr. 11, 2020), <https://history.house.gov/Historical-Highlights/1951-2000/The-24th-Amendment>.

24. See LAWSON, *supra* note 20, at 56.

25. See *infra* note 122. The average poll tax between 1889 and 1910 was about \$1.50.

26. In a report by the Department of Labor in 1890 of the average wages for different occupations across various cities and states in the U.S., some workers made as little as twenty cents per day. See *generally*, U.S. DEPARTMENT OF LABOR, *BULLETIN OF THE DEPARTMENT OF LABOR NO. 29*, H.R. Doc. No. 359-4, 766–812. See also LAWSON, *supra* note 20 at 56.

27. See LAWSON, *supra* note 20, at 56.

28. See *Harman*, 380 U.S. at 543 (1965) (quoting a state legislator at the Virginia Constitutional Convention of 1902, who remarked, “Discrimination! Why, that is precisely what we propose; that, exactly, is what this Convention was elected for—to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate.”).

29. See LAWSON, *supra* note 20.

30. *Id.* at 58.

could afford to buy in. The revenue paid for expenses such as election administration and public education.<sup>31</sup> Lowered turnout in the Jim Crow South helped to uphold and maintain the apartheid state. It is no wonder then, that a constitutional amendment would be required for the poll tax's abolishment.

Congress ratified the Twenty-Fourth Amendment in 1962 after three decades of debate, and it has seldom been used since.<sup>32</sup> The text of the Amendment, which provides that the right to suffrage in federal elections "shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax," meant to combat one of the most pernicious forms of oppression whose roots took hold after the enactment of the Fifteenth Amendment.<sup>33</sup> Unfortunately, poll tax claims under the Twenty-Fourth Amendment are wholly unsuccessful, and low-income voters remain *de facto* disenfranchised.

### B. Courts' Interpretation of the Twenty-Fourth Amendment

Little case law addresses the scope of the Twenty-Fourth Amendment. In the alternative, advocates sought relief in the Voting Rights Act of 1965, which passed soon after the ratification of the Twenty-Fourth Amendment and authorized the Department of Justice to enjoin states employing poll taxes as a precondition to voting.<sup>34</sup> The Court has alternatively addressed burdens on the right to vote for the poor by applying other doctrines. In *Harper v. Virginia State Board of Elections*, for example, the Court held that the poll tax in state and local elections violated the Equal Protection Clause of the Fourteenth Amendment.<sup>35</sup> Decided shortly after the ratification of the Twenty-Fourth Amendment, which only applies to federal elections, *Harper* affirmed the principle that the right to vote should not be contingent upon the voter's ability to pay at the state level.<sup>36</sup> Later, in *Lubin v. Panish*, the Court held that a state may not require indigent individuals to pay candidate filing fees unless that state provided a "reasonable alternative means of ballot access."<sup>37</sup> Additionally, in *Crawford v. Marion County Election Board*, the Court noted that a state's photo identification requirement could constitute a poll tax under *Harper* if "the state required voters to pay a tax or fee to obtain new identification"; thus, any state that provides free identification cards does not impose a substantial burden on the right to vote.<sup>38</sup>

Few cases directly address the burden on low-income voters under the Twenty-Fourth Amendment. In *Harman v. Forssenius*, the Court addressed the standard

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31. See *Abolition of the Poll Tax in Federal Elections: Hearings on H.R.J. Res. 404, 425, 434, 594, 601, 632, 655, 663, 670, S.J. Res. 29 Before H. Subcomm. No. 5 of the H. Comm. on the Judiciary*, 87th Cong. 6, 97 (1962) [hereinafter *House Poll Tax Hearing*] (discussing how poll taxes were used).

32. U.S. CONST. amend. XXIV; see also LAWSON, *supra* note 20, at 55–85.

33. U.S. CONST. amend. XXIV. While the poll tax's history predates Jim Crow, the desire to disenfranchise Black voters revived the practice. Schultz & Clark *supra* note 21, at 386, 400 ("Had it not been for the Civil War, Reconstruction, and the first civil rights era, the poll tax as an institution probably would have faded from American politics.")

34. See 52 U.S.C. § 10306 (1975).

35. *Harper*, 383 U.S. at 663.

36. *Id.* at 670 ("... [W]ealth or fee paying has, in our view, no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned.")

37. *Lubin v. Panish*, 415 U.S. 709, 718 (1974) (holding that California's filing fee requirements violated the Equal Protection Clause of the Fourteenth Amendment).

38. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198 (2008); see also *infra* Part IV.C.

under which a state violates the Twenty-Fourth Amendment for the first and only time.<sup>39</sup> At issue in *Harman* was a proposed amendment to the Virginia election code in light of the Twenty-Fourth Amendment's ratification, which would have required all voters who wished to vote in a federal election to either complete a certificate of residency, or else pay the customary poll taxes still required for state elections.<sup>40</sup> As a result, a voter could only vote in both state and federal elections upon payment of poll taxes; if the voter did not pay poll taxes, she could not vote in state elections and could only vote in federal elections upon completion of this certificate, which needed to be notarized and completed six months prior to the election.<sup>41</sup>

The Court held that the Virginia voter registration requirement violated the Twenty-Fourth Amendment.<sup>42</sup> In so holding, the Court determined that “[a]ny material requirement imposed upon the federal voter solely because of his refusal to waive the constitutional immunity [from the poll tax] subverts the effectiveness of the Twenty-Fourth Amendment and must fall under its ban.”<sup>43</sup> Because Virginia's voter registration requirement forced a choice upon the voter to waive their constitutional right to vote against paying a fee to vote in federal elections, it effectively constituted a poll tax in violation of the Twenty-Fourth Amendment.<sup>44</sup>

Subsequent cases attempt to address the issue, primarily under the theory that certain requirements constitute a poll tax due to the costs incurred in complying with the requirements. In *Indiana Democratic Party v. Rokita*, the district court held that the cost of obtaining photo identification in Indiana did not constitute a poll tax because “these same ‘costs’ also result from voter registration and in-person voting requirements, which one would not reasonably construe as a poll tax.”<sup>45</sup> Later, in *Gonzalez v. Arizona*, the Ninth Circuit held that Arizona's voter ID requirement did not violate the Twenty-Fourth Amendment under *Harman*, because “all voters are required to present identification at the polls,” which does not constitute a “material burden on a voter solely because of his refusal to waive [his] constitutional immunity to a poll tax.”<sup>46</sup> The Fifth Circuit held in *Veasey v.*

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39. *Harman v. Forssenius*, 380 U.S. 528 (1965).

40. *Id.* at 531–32.

41. *Id.* (“The statute provides that the certificate of residence must be filed no earlier than October 1 of the year immediately preceding that in which the voter desires to vote and not later than six months prior to the election. The voter must state in the certificate (which must be notarized or witnessed) his present address, that he is currently a resident of Virginia, that he has been a resident since the date of his registration, and that he does not presently intend to remove from the city or county of which he is a resident prior to the next general election. Va. Code Ann. s 24—17.2 (1964 Supp.). Thus, as a result of the 1963 Acts, a citizen after registration may vote in both federal and state elections upon the payment of all assessable poll taxes.”).

42. *Id.* at 538.

43. *Id.* at 542.

44. *Id.* Additionally, Virginia's state poll tax was soon after held unconstitutional under the Equal Protection Clause, see *supra* note 1, and residence requirements were later significantly restricted under the Equal Protection Clause in *Dunn v. Blumstein*, 405 U.S. 330 (1972).

45. *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 827 (S.D. Ind. 2006), *aff'd sub nom.*, *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008). See also *Common Cause/Georgia League of Women Voters of Georgia, Inc. v. Billups*, 439 F. Supp. 2d 1294, 1354 (N.D. Ga. 2006) (citing *Indiana Democratic Party v. Rokita* to hold that Georgia's identification requirement did not constitute a poll tax).

46. *Gonzalez v. Arizona*, 677 F.3d 383, 408 (9th Cir. 2012), *aff'd sub nom.*, *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

*Abbott* that Texas’s photo identification requirements, which imposed a cost on voters who were born out-of-state by requiring they obtain their birth certificate, was an “indirect cost” that fell under the state’s ability to regulate elections, not a poll tax.<sup>47</sup>

The courts’ interpretation of the Twenty-Fourth Amendment is severely limited. The Supreme Court and courts below have demonstrated in similar poll tax claims under the Fourteenth Amendment that any cost which the courts deem incidental to the election process would not constitute a material limitation—or “substantial burden” under the Equal Protection Clause—to the right to vote which would force waiver of constitutional immunity from a poll tax. Demonstrated below, the courts can consider whether the costs previously deemed “incidental” in fact pose a material burden on voters on the basis of income in violation of the Twenty-Fourth Amendment.

#### IV. HOW STATES IMPOSE MODERN-DAY POLL TAXES

The costs incurred in exercising the right to vote, imposed by the government on its citizens, is the modern-day poll tax. Just as the Jim Crow poll tax had facially neutral means to generate revenue and measure a citizen’s political interest, the modern-day poll tax is justified by the facially neutral means of preventing fraud and modernizing election administration. The Jim Crow poll tax and modern-day poll tax have both served a more insidious purpose: to disenfranchise low-income citizens. Discussed below, these modern-day poll taxes, which impact the ability to vote in federal elections, should constitute a violation of the Twenty-Fourth Amendment. Furthermore, States should reduce the financial burden on low-income voters by facilitating voting and voter registration through public assistance agencies.

##### *A. Identifying Modern-Day Poll Taxes*

In passing the Twenty-Fourth Amendment, Congress grappled with whether the federal government was exerting too much control over the elections process for the states.<sup>48</sup> Yet regardless of congressional intent, states across the country have exerted control by passing voting laws that prevent low-income voters from casting their ballots.<sup>49</sup> These impediments include voter identification requirements, voter registration procedures, and polling place locations. States can remove these impediments by leveraging public assistance agencies to facilitate voting and voter registration. This will allow the states and the federal government to strike a balance between the Twenty-Fourth Amendment’s prohibition on the right to vote based on the ability to pay, and a state’s control of its own elections.

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47. *Veasey v. Abbott*, 830 F.3d 216, 266 (5th Cir. 2016).

48. LAWSON, *supra* note 20, at 63–64.

49. The current wave of strict election laws began with the Supreme Court’s decision in *Shelby County v. Holder*, which struck down a key provision of the Voting Rights Act that previously prevented many states from passing election laws without prior approval from the Department of Justice. *See generally* *Shelby County v. Holder*, 570 U.S. 529 (2013) (holding that Section 4 of the Voting Rights Act, the “coverage formula” which provided the states subject to preclearance under the Act, was an unconstitutional use of federal powers against the states).



The following analysis will explore each impediment that low-income voters face and identify solutions in which public assistance agencies can serve as hubs for voter registration and voting to maximize political participation among low-income voters.

### 1. In-Person Voting: Voter Identification

According to the National Conference of State Legislatures, a voter identification requirement is defined as a state election law that requires some form of identification to vote in-person at the polls.<sup>50</sup> Of the thirty-five states with laws in force that require some form of voter identification for in-person voting, seven states have strict photo identification laws that greatly restrict the types of photo identification a voter is allowed to use.<sup>51</sup> Some estimate that as many as eleven percent of all eligible voters do not possess the requisite government-issued photo identification to vote.<sup>52</sup> Moreover, an estimated twelve percent of all citizens of voting age who earn less than \$25,000 per year do not possess documentation proving their citizenship, such as a birth certificate or passport, and at least fifteen percent of voting age citizens earning less than \$35,000 per year do not possess valid government-issued photo identification.<sup>53</sup> While states may provide a free photo identification for indigent voters, low-income voters incur additional costs in obtaining the proof of citizenship required for government-issued photo identification.<sup>54</sup> Transportation costs in obtaining the requisite identification compound the overall expense.

According to the Brennan Center for Justice, in the ten states with the most restrictive voter identification requirements nearly 450,000 eligible voters do not have access to a vehicle *and* live more than ten miles away from the nearest identification office; “overall, more than ten million eligible voters live more than ten miles from their nearest identification office open more than two days per week.”<sup>55</sup> Many of these offices have limited business hours, which may require an eligible voter to arrive during the work day.<sup>56</sup> Many of these eligible voters live in rural areas without access to public transit, or in states where investment in public transit is low; Alabama, one of the ten most restrictive states for voter identification, does not provide public transit funding at all.<sup>57</sup> For those voters who do not have documentary proof of citizenship to obtain identification, there is an additional cost of up to \$30 for a birth certificate, \$110 for a new passport, or \$345

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50. Wendy Underhill, *Voter Identification Requirements: Voter ID Laws*, NAT'L CONF. OF STATE LEG. (Feb. 24, 2020), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

51. *Id.*

52. THE BRENNAN CTR. FOR JUSTICE, *CITIZENS WITHOUT PROOF* 3 (2006), <https://www.brennancenter.org/analysis/citizens-without-proof>; *see* Underhill *supra* note 50.

53. THE BRENNAN CTR. FOR JUSTICE, *supra* note 52.

54. *See infra*, Part IV.A.1 (discussing the cost of obtaining voter identification).

55. KEESHA GASKINS & SUNDEEP IYER, THE BRENNAN CTR. FOR JUSTICE, *THE CHALLENGE OF OBTAINING VOTER IDENTIFICATION* 1, 3 (2012), [https://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge\\_of\\_Obtaining\\_Voter\\_ID.pdf](https://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge_of_Obtaining_Voter_ID.pdf). The ten states are: Alabama, Georgia, Indiana, Kansas, Mississippi, Pennsylvania, South Carolina, Tennessee, Texas, and Wisconsin.

56. *See id.* at 1, 2, 6–7.

57. *Id.* at 5.

for a certificate of citizenship.<sup>58</sup> Eligible voters can incur hundreds of dollars in expenses simply to obtain the requisite identification to vote, but the less money one earns, the higher one's expenses are likely to be.

The Supreme Court has only addressed the impact of modern voter identification laws on lower income voters once, in *Crawford v. Marion County Election Board*.<sup>59</sup> The petitioners in *Crawford* argued, unsuccessfully, that the burden imposed on low-income voters especially should constitute an unconstitutional burden on the right to vote in violation of the Fourteenth Amendment, since indigent voters could receive a free photo identification card for voting.<sup>60</sup> Justice Stevens's majority held that the state's interests in preventing voter fraud, modernizing its election systems, and "safeguarding voter confidence" outweighed the burden on voters in obtaining a photo identification to vote,<sup>61</sup> even though voters who have a religious objection to being photographed may provide an alternate government-issued identification, and the law does not apply to absentee ballots.<sup>62</sup>

In dissent, Justice Souter noted several conditions that created a cost prohibition for low-income voters: the travel cost and time for voters when there were fewer motor vehicle offices in each county than there were voting precincts; the additional cost to obtaining a birth certificate to prove a voter's identity to obtain the voter identification; and the high cost of the only other viable form of identification, a passport.<sup>63</sup> These conditions, Justice Souter concluded, would disenfranchise tens of thousands of voters and impose an unconstitutional burden on the right to vote for "the poor, the old, and the immobile."<sup>64</sup>

## 2. In-Person Voting: Polling Place Closures

Even if a voter is able to obtain the requisite identification, polling place closures and consolidations make in-person voting near-impossible for low-income voters, as long lines and transportation costs require voters to choose between their income and their right to vote. Since 2008, local election administrations across the country have been closing polling locations in rural areas or consolidating polling locations in urban areas; both problems severely limit the options for low-income citizens to vote in person.<sup>65</sup> This results in long lines for in-person voters, as well as farther distances to travel. This is cost-prohibitive for those voters who cannot afford to take time off work due to family care or work obligations, or do not have the transportation means to travel long distances.

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58. *Id.* at 14.

59. *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

60. *Id.* at 187.

61. *Id.* at 192–204. The states considered to have strict photo identification laws are Georgia, Indiana, Kansas, Mississippi, Tennessee, Virginia, and Wisconsin. *See supra* notes 21–23. Indiana's voter identification, which remains one of the strictest laws in the country, requires voters to present government-issued photo identification to vote in-person on Election Day. *Crawford*, 553 U.S. at 185.

62. *Crawford*, 553 U.S. at 185–86.

63. *Id.* at 209–16.

64. *Id.* at 216.

65. *See* Christopher Ingraham, *Thousands of Polling Places Were Closed Over the Past Decade. Here's Where*, WASH. POST (Oct. 26, 2018), [https://www.washingtonpost.com/business/2018/10/26/thousands-polling-places-were-closed-over-past-decade-heres-where/?noredirect=on&utm\\_term=.fdd2e0e0d2b6](https://www.washingtonpost.com/business/2018/10/26/thousands-polling-places-were-closed-over-past-decade-heres-where/?noredirect=on&utm_term=.fdd2e0e0d2b6).

According to the U.S. Census Bureau, about eight percent of eligible citizens who did not vote and earned less than \$15,000 per year cited transportation costs as a primary reason for not voting in 2016.<sup>66</sup> Studies show that the transportation costs associated with polling location changes affect overall turnout.<sup>67</sup> In 2018, for example, election officials in Ford County, Kansas, relocated the only polling location outside of the county's center, Dodge City.<sup>68</sup> The American Civil Liberties Union of Kansas filed suit against the county election officials, alleging that the new location would impermissibly burden all voters because election officials placed the polling location more than a mile away from the nearest public transportation, with no sidewalks, and required voters to cross railway tracks that are "often blocked by passing trains for 15–20 minutes during common voting times."<sup>69</sup> The suit alleged that low-income voters were especially burdened, as Dodge City has a 17.4% poverty rate and is "overrepresented in low wage [sic] service and manufacturing industries where [eligible voters] have inflexible and unpredictable schedules."<sup>70</sup> While the suit was eventually dismissed on other grounds, Ford County election officials provided free public transportation from Dodge City to the polling place after succumbing to public pressure.<sup>71</sup>

The wait times created by the closure and consolidation of polling locations impose a similar cost burden on those voters who cannot afford to take time away from work. Twenty-one states require employers to provide paid time off for workers to vote, and seven states require employers to provide at least unpaid time off to vote.<sup>72</sup> Many states have a minimum one- or two-hour limit for time off.<sup>73</sup> In those states where polling location closures and consolidations cause some voters to travel and wait hours to vote, the time off may be insufficient to supplement lost wages. In Arizona, for example, 15.5% of residents live in poverty, among the highest numbers in the country.<sup>74</sup> An Arizona voter is entitled to paid time off "if there are less than three consecutive hours between the opening of the polls and the beginning of his regular work shift or between the end of his regular work shift and the closing of the polls."<sup>75</sup> Arizona, however, faces some of the highest rates of polling location closures in the country, resulting in some voters waiting up to

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66. Brief of National Disability Rights Network, Disability Rights Ohio, as Amici Curiae in Support of Respondents at 13, *Husted v. A. Phillip Randolph Inst.*, 138 S. Ct. 1833 (2018) [hereinafter NDR Brief].

67. See Henry E. Brady & John E. McNulty, *Turning Out to Vote: The Costs of Finding and Getting to the Polling Place*, 105 AM. POL. SCI. REV. 115; NDR Brief, *supra* note 66, at 11–12.

68. See *KS LULAC and Rangel-Lopez v. Cox*, ACLU KANSAS, <https://www.aclukansas.org/en/cases/ks-lulac-and-rangel-lopez-v-cox> (last visited Apr. 11, 2020); The Kansas City Star Editorial Board, *Voter Suppression At Its Worst: This Kansas Town Aims to Keep People Away on Election Day*, KAN. CITY STAR (Oct. 23, 2018), <https://www.kansascity.com/opinion/editorials/article220341790.html>.

69. See ACLU KANSAS, *supra* note 68; Complaint at 1, *Rangel-Lopez v. Cox*, 344 F.Supp.3d 1285 (D. Kan. 2018) (No. 2:18-cv-02572-DDC-TJJ) [hereinafter ACLU Kansas Complaint].

70. See ACLU Kansas Complaint, *supra* note 69, at 5.

71. See The Kansas City Star Editorial Board, *supra* note 68; ACLU KANSAS, *supra* note 68.

72. Rachel Gillett & Grace Panetta, *In New York, California, Texas, and 27 Other States You Can Take Time Off from Work to Vote — Here's the Full List*, BUS. INSIDER (Nov. 6, 2018), <https://www.businessinsider.com/can-i-leave-work-early-to-vote-2016-11>.

73. *Id.*

74. U.S. CENSUS BUREAU, THE SUPPLEMENTAL POVERTY MEASURE: 2017, at 26 (2018), <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-265.pdf>.

75. ARIZ. REV. STAT. ANN. § 16-402 (2020).

five hours in line to vote.<sup>76</sup> In places like Arizona, voters exercise their right to vote for the steep cost of their hourly wages, a price that grows more costly the farther the voter has to travel.

### 3. Voter Registration Procedures

The first step to exercising one's right to vote, voter registration, is perhaps the most significant barrier to the franchise for low-income citizens. Strict voter registration procedures negatively affect low-income voters by privileging those voters who stay at the same residence, have access to reliable transportation and internet, and possess the requisite identification. This problem represents the reproduction of voter suppression for low-income voters; due to cost, low-income voters cannot register, and once they do register, they have consistently lower turnout due to in-person voting barriers.<sup>77</sup>

The National Voter Registration Act of 1993 (NVRA) sought to close the voter registration gap between low-income citizens and middle- and high-income citizens by standardizing voter registration procedures across the country for federal elections.<sup>78</sup> Among other provisions, the NVRA mandates states to set up "voter registration agencies" within government offices and to conduct a voter list maintenance program.<sup>79</sup> In the states that have diligently complied with this requirement, more lower-income voters have registered to vote.<sup>80</sup> As discussed below, this voter registration agency model can be applied to the burdens discussed in this Note to reduce the cost to the voter and encourage voter participation among low-income communities.

#### *B. Public Assistance Agencies as a One-Stop Shop for Voting and Voter Registration*

From Medicaid to family assistance benefits, public assistance agencies are the one place where most low-income citizens are guaranteed to go. In 2017, an estimated 73.3% of the population living below the poverty line received means-tested assistance, 69.6% received means-tested assistance excluding school lunch, and 61.4% lived in a household in which one or more persons were covered by Medicaid—the majority of these citizens were over eighteen years old.<sup>81</sup> By using

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76. Matt Vasilogambros, *Voting Lines Are Shorter — But Mostly for Whites*, THE PEW CHARITABLE TRUSTS: STATELINE (Feb. 15, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/02/15/voting-lines-are-shorter-but-mostly-for-whites>; Anne Ryman et al., *Arizona Primary: Maricopa County Had One Polling Site for Every 21,000 Voters*, AZCENTRAL.COM (Mar. 23, 2016), <https://www.azcentral.com/story/news/politics/elections/2016/03/22/live-arizona-primary-coverage-presidential-preference-election/82096726>. See also *supra* note 65.

77. See NDR Brief, *supra* note 66, at 7–8, 17–18 (“These obstacles are, by their nature, cumulative and interdependent.”).

78. 52 U.S.C. § 20501.

79. See 52 U.S.C. §§ 20506–7 (2012).

80. See LAURA WILLIAMSON ET AL., DÉMOS TOWARD A MORE REPRESENTATIVE ELECTORATE: THE PROGRESS AND POTENTIAL OF VOTER REGISTRATION THROUGH PUBLIC ASSISTANCE AGENCIES 7–10 (2018), <https://www.demos.org/research/toward-more-representative-electorate>.

81. U.S. CENSUS BUREAU, POV26: PROGRAM PARTICIPATION STATUS OF HOUSEHOLD - POVERTY STATUS OF PEOPLE: 2017: ALL RACES -- BELOW POVERTY LEVELS (2018),

public assistance agencies to register voters, the cost of voter registration compliance would be greatly reduced, because low-income voters would be simply registering to vote at a location in which their presence would already be required. Below, I imagine the steps a low-income voter would take to vote and register to vote at a public assistance agency if policies already proven to increase turnout among low-income voters were expanded and replicated within public assistance agencies. While not a perfect solution, public assistance agencies can lead the way in reducing or eliminating the cost to vote for low-income voters with little administrative burden for the states.

First, a voter applying for public benefits would be registered to vote at a public assistance agency, because the state expanded the NVRA's mandate to affirmatively register voters at public assistance agencies. A state's public assistance agency could do this through automatic voter registration or direct voter registration through public assistance applications.<sup>82</sup> When complied with,<sup>83</sup> the NVRA's voter registration agencies provision is a functional example of how government intervention can increase voter participation for low-income citizens. The voter registration agencies provision in particular intended to capture the voter registration gap for low-income citizens by requiring that states actively provide voter registration forms and ask citizens if they are registered to vote at certain government agencies which the state deems a "voter registration agency."<sup>84</sup> In addition to Departments of Motor Vehicles (DMVs), states can deem public assistance agencies, libraries, and other government offices as "voter registration agencies."<sup>85</sup>

A voter who registered through automatic voter registration would simply be registered at the moment of her first interaction with a public assistance agency upon turning eighteen-years-old.<sup>86</sup> The voter could then opt out of being registered to vote if she so chose.<sup>87</sup> Eighteen states and the District of Columbia have already implemented some form of automatic voter registration.<sup>88</sup> In those states that have implemented automatic voter registration at motor vehicle offices, the system would be expanded to public assistance agencies.<sup>89</sup> Studies show that states that

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<https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-26.2017.html> (visit the web address included in this citation, then click on the year 2017 in the year selection panel, then below the "All Income Levels" headline, click on the "All Races" hyperlink to download the Excel file that contains the report).

82. See 52 U.S.C. §§ 20506–7.

83. Studies have shown that many states are failing to comply with the voter registration agencies provision by not affirmatively registering voters at the designated agencies as required by the NVRA. See Williamson et al., *supra* note 80. See also Douglas R. Hess, *States Are Ignoring Federal Law About Voter Registration. Here's Why.*, WASH. POST (July 4, 2015), [https://www.washingtonpost.com/news/monkey-cage/wp/2015/07/04/states-are-ignoring-federal-law-about-voter-registration-heres-why/?utm\\_term=.e7c268befd1d](https://www.washingtonpost.com/news/monkey-cage/wp/2015/07/04/states-are-ignoring-federal-law-about-voter-registration-heres-why/?utm_term=.e7c268befd1d).

84. See 52 U.S.C. § 20506.

85. See *id.*

86. *Automatic Voter Registration*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx> (last visited Apr. 11, 2020).

87. *Id.*

88. *Id.*

89. See *id.* Several states already provide for automatic voter registration in certain public assistance agencies, such as Maryland and Massachusetts. These policies only went into effect in Summer 2019 for

implemented automatic voter registration saw overall voter turnout increases ranging from nine to ninety-four percent.<sup>90</sup> Those states also reported relatively low administrative costs because the agencies simply transferred the information to the states' election officials.<sup>91</sup>

Alternatively, case workers in public assistance agencies can assist the eligible voter in registering to vote while filing an application for public assistance. A study by Dēmos found that more than three million new voter registration applications have been filed at the public agencies in the dozen or so states that actively comply with the NVRA's voter registration agencies provision.<sup>92</sup> People making less than \$30,000 annually comprise forty-nine percent of the voters registered at state-designated public assistance agencies.<sup>93</sup> In Ohio, for example, the Ohio Department of Jobs and Family Services and the Ohio Department of Medicaid began distributing voter registration forms and offering assistance to those voters, resulting in more than 800,000 new registered voters through the program.<sup>94</sup> In North Carolina, public assistance agencies began posting advertisements to register to vote and identified NVRA coordinators in each county in addition to providing voter registration forms and registration assistance to public assistance clients; in the first year alone, public assistance agencies registered more than 34,000 voters.<sup>95</sup>

Next, during the election period, a voter need only go to her nearest public benefits office and pick up and/or drop off her mail-in ballot. This would be implemented in a manner similar to all-mail voting procedures. States like Washington and Colorado have incorporated mail-in voting systems, which could be further replicated within public agencies across the country.<sup>96</sup> Washington and Colorado automatically mail each voter their ballot for each election, and provide drop off stations where voters can leave their ballot starting at eighteen and twenty-two days before the election, respectively.<sup>97</sup> All-mail voting increases turnout by simultaneously increasing convenience, as well as accessibility. Studies show that all-mail voting increases voter turnout and decreases use of provisional ballots, which are known to disproportionately disenfranchise low-income voters.<sup>98</sup>

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those states; no national election has occurred at the time of publication, so the change might be too recent to gauge its effect.

90. KEVIN MORRIS & PETER DUNPHY, THE BRENNAN CTR. FOR JUSTICE, AVR IMPACT ON STATE VOTER REGISTRATION 1 (2019), <https://www.brennancenter.org/publication/avr-impact-state-voter-registration>.

91. *Id.* at 3.

92. WILLIAMSON ET AL., *supra* note 80, at 2 (discussing the results of NVRA-enforcement advocacy work undertaken by Dēmos and other advocates). Dēmos organized a national movement to compel compliance by the states with the voter registration provision. See LISA J. DANETZ & SCOTT NOVAKOWSKI, DĒMOS, EXPANDING VOTER REGISTRATION FOR LOW-INCOME CITIZENS: HOW NORTH CAROLINA IS REALIZING THE PROMISE OF THE NATIONAL VOTER REGISTRATION ACT 2 (2008), [https://www.demos.org/sites/default/files/publications/NVRA\\_North\\_Carolina\\_Demos.pdf](https://www.demos.org/sites/default/files/publications/NVRA_North_Carolina_Demos.pdf).

93. *Id.* at 8.

94. *Id.* at 15.

95. DANETZ & NOVAKOWSKI, *supra* note 92, at 3, 5.

96. See WASH. REV. CODE § 29A.40.010 (2013); WASH. REV. CODE § 29A.40.070 (2013); COLO. REV. STAT. § 1-7.5-107(3)(a)(i) (2019).

97. *See id.*

98. See PEW CHARITABLE TRUSTS, COLORADO VOTING REFORMS: EARLY RESULTS 1 (2016), <https://www.pewtrusts.org/-/media/assets/2016/03/coloradovotingreformsearlyresults.pdf>; ALL VOTING IS LOCAL, REJECTED: HOW THE PROVISIONAL BALLOT SYSTEM IN FRANKLIN COUNTY, OHIO FAILS VOTERS

Administrative costs also decrease in all-mail voting systems, and voters report a high satisfaction with the system.<sup>99</sup>

In a public assistance agency, the voter would simply drop off her ballot if that ballot was successfully mailed to her. If she did not receive the mail, or otherwise does not have a permanent mailing address, she could receive her ballot directly from the public assistance agency and choose to drop off the ballot in the same location. Concurrently, a voter's identity for voter registration purposes would be verified through the information she already gave to the public benefits caseworker.<sup>100</sup> At the time of voting, the voter need only provide proof of public benefits, such as an Electronic Benefits Transfer (EBT) or Medicaid enrollment card. Voters already identify themselves to public agencies when applying for public benefits; Alabama, one of the strictest voter identification states in the country, requires a private interview with a caseworker and an extensive application process to apply for Temporary Assistance for Needy Families (TANF) benefits.<sup>101</sup> Thus, the public assistance agency is already equipped for voting and voter registration, and can effectively serve as a one-stop shop for low-income voters.

### *C. Stating a Claim Under the Twenty-Fourth Amendment in the Use of Modern-Day Poll Taxes*

Constitutional implications remain regarding these burdens which constitute a modern-day poll tax, even with the aforementioned solutions. In *Crawford*, writing in dissent, Justice Souter came very close to calling the Indiana photo identification law a poll tax:

The State's requirements here, that people without cars travel to a motor vehicle registry and that the poor who fail to do that get to their county seats within 10 days of every election, likewise translate into unjustified economic burdens uncomfortably close to the outright \$1.50 fee we struck down 42 years ago [in *Harper*]. Like that fee, the onus of the Indiana law is illegitimate just because it correlates with no state interest so well as it does with the object of deterring poorer residents from exercising the franchise.<sup>102</sup>

The majority rejected the view that *Harper* applied because the state provided a “free” alternative identification for those voters who could not pay and held the additional costs as *de minimus*.<sup>103</sup> Justice Souter, however, understood the

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5 (2019), [https://allvotingislocal.org/wp-content/uploads/2019/05/2019\\_AVL-OH\\_Franklin-Co-Provisional-Ballot-Report.pdf](https://allvotingislocal.org/wp-content/uploads/2019/05/2019_AVL-OH_Franklin-Co-Provisional-Ballot-Report.pdf).

99. See PEW CHARITABLE TRUSTS, *supra* note 98, at 4.

100. For example, a public benefits caseworker might have already obtained residential and personal information about that voter when the voter first applied for public benefits.

101. See ALA. DEP'T OF HUM. RES., DHR-FAD-595, FAMILY ASSISTANCE PROGRAM SUMMARIZED ELIGIBILITY REQUIREMENTS (2019) <https://dhr.alabama.gov/wp-content/uploads/2020/01/DHR-FAD-595-1.pdf>.

102. *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 236–37 (2008) (Souter, J., dissenting) (internal citations omitted).

103. See *id.* at 198.

implications this law could have on low-income voters, against the spirit of the Court's decision in *Harper*:

If the Court's decision in [*Harper*] stands for anything, it is that being poor has nothing to do with being qualified to vote. Harper made clear that “[t]o introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor.”<sup>104</sup>

While Justice Souter analogized to *Harper*'s Fourteenth Amendment prohibition on the poll tax, a similar argument can be made for the prohibition on poll taxes in federal elections under the Twenty-Fourth Amendment. The “unjustified economic burdens” placed on voters who cannot comply with onerous voting requirements simply because of the inability to pay undermines the intent of the Twenty-Fourth Amendment.<sup>105</sup> All the burdens aforementioned, from polling place closures to voter identification and voter registration requirements, require the voter to incur an economic cost. When a voter is unable to pay due to her economic status, her vote is abridged because of the costs imposed on her by the government. Though seldom used, the Twenty-Fourth Amendment could be a way to mitigate the costs imposed on voters by the government. Those costs constitute a material burden under the Court's holding in *Harman v. Forssenius*.

Current Twenty-Fourth Amendment doctrine inadequately addresses the challenges imposed by the modern-day poll tax. Under *Harman*, an absolute poll tax for federal elections is *per se* abolished under the Twenty-Fourth Amendment, and “[f]or federal elections . . . no equivalent or milder substitute may be imposed.”<sup>106</sup> Thus, any “material requirement” which imposes upon the voter the choice between “surrender[ing] their constitutional right to vote in federal elections” or paying a poll tax is an unconstitutional requirement.<sup>107</sup> The state could justify this burden by showing that the requirement is “necessary to the proper administration of its election laws.”<sup>108</sup> As scholars note, developing a theory for the modern-day poll tax requires “overcoming certain doctrinal obstacles,” because so little case law deals with the Twenty-Fourth Amendment.<sup>109</sup> What little case law exists post-*Harman* primarily involves the poll tax as it applies to photo identification—the majority of the cases conclude that photo identification costs do not constitute a poll tax.<sup>110</sup> Accordingly, a new theory under the Twenty-Fourth Amendment should reject current precedent as it applies to photo identification, and demonstrate why these and other costs constitute a material burden requiring waiver of the right to vote by inability to pay for low-income voters.

In interpreting *Harman*, much of the case law misses the fact that a poll tax does not have to target low-income voters in order to impose a material burden on those voters. The Court in *Harman* expressly stated that for federal elections “the

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104. *Id.* at 236 (citing *Harper*, 383 U.S. at 668).

105. *Id.* at 237.

106. *Harman v. Forssenius*, 380 U.S. 528, 542 (1965) (emphasis added).

107. *Id.* at 541.

108. *Id.* at 543.

109. Elora Mukherjee, *Abolishing the Time Tax on Voting*, 85 NOTRE DAME L. REV. 177, 218 (2009).

110. *See supra* Part III.B.



poll tax, *regardless of the services it performs*, was abolished by the Twenty-fourth Amendment.<sup>111</sup> The two circuits that ruled on this issue both held that a material burden is not imposed on the voter when the requirement applies to all voters.<sup>112</sup> The poll tax struck down in *Harman*, however, applied to all voters. Specifically, the Virginia law required all residents who sought to vote in federal elections to file a certificate of residence, or else pay a poll tax.<sup>113</sup> The certificate of residence itself required a notary or a witness's signature, and the process for obtaining the certificate was unclear.<sup>114</sup> Those voters who failed to file a certificate of residence would then have to pay a poll tax.<sup>115</sup> The effect of the Virginia law, then, was to disenfranchise those voters who either could not afford to file the certificate of residence, or could not afford to pay the poll tax.<sup>116</sup> While this law applied to all voters, the law effectively disenfranchised low-income voters.

The trickier argument is the material burden standard under *Harman*. The cost of complying with strict voting requirements are not merely "indirect"; indeed, without paying for the requisite materials, a voter is unable to fulfil the requirement. However, lower courts held that a requirement does not impose a material burden when the cost of complying with the requirement is indirect.<sup>117</sup> In these cases, the courts concluded that the cost of obtaining the required identification to vote, which can include transportation costs, application fees, and the fees incurred while obtaining a birth certificate to verify one's identity, are "indirect." A voting requirement would only pose a material burden if the law provided no free alternative to the indigent voter—a similar analysis posed by the Court in *Crawford*.<sup>118</sup>

Compared to the burden imposed on Virginia voters in *Harman*, however, the costs of complying with voting requirements are far from indirect and impose a burden more material than the poll tax struck down in that case. While the court did not declare certificates of residence themselves unconstitutional, the court did declare that the process in obtaining the certificate of residence established a material burden which required voters to forfeit their right to vote or else pay a poll tax.<sup>119</sup> Likewise, the modern-day poll tax on voters can be found in the costs of complying with the material burdens from certain voting requirements imposed by states, such as obtaining identification. In this sense, the voter is forced to choose to pay a fee which she cannot afford, or else forfeit her right to vote in federal elections.

These fees, which go directly to the ability of the low-income voter to cast her ballot, constitute a material burden which is literally greater in cost than the poll tax in *Harman*, and figuratively more burdensome than the alternative certification process, which was struck down in *Harman*. When *Harman* was decided, the poll

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111. See *Harman*, 380 U.S. at 544 (emphasis added).

112. See *Veasey v. Abbott*, 830 F.3d 216, 266 (5th Cir. 2016); *Gonzalez v. Arizona*, 677 F.3d 383, 408 (9th Cir. 2012). Discussed *supra*, notes 45–47 and accompanying text.

113. See *Harman*, 380 U.S. at 532.

114. *Id.* at 532, 541–42.

115. *Id.*

116. *Id.*

117. See *Veasey*, 830 F.3d at 266 (5th Cir. 2016), discussed *supra*, note 112 and accompanying text.

118. See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 185–86 (2008).

119. See *Harman*, 380 U.S. at 532.

tax in Virginia was \$1.50, or \$12.32 in 2020<sup>120</sup> In contrast, the cost of obtaining a copy of your birth certificate to obtain a “free” voter identification card in the ten most restrictive voter identification states in the country can range from \$15 to \$30.<sup>121</sup> In the states that do not provide paid time off to vote—as well as those states whose in-person voting wait times exceed the minimum required paid time off to vote—the cost of voting is the number of hours in wages lost, which could well exceed \$12.32 since the federal minimum wage is \$7.25.<sup>122</sup> When polling locations are farther away, transportation costs to the polls compound the cost of lost wages is compounded; polling locations can be far from public transit or not within reasonable walking distance. Finally, the cost of registering to vote encompasses all of the former costs and more. In states that do not have online voter registration, this includes the transportation and lost wages in registering to vote in-person and obtaining the requisite identification to register. If a voter’s name is removed from the rolls, these costs can include the cost of time in challenging ones’ inactive status and re-registering to vote.

The modern-day poll tax should be declared unconstitutional as it pertains to federal elections under the *Harman* material burden standard. Under any of the discussed voting requirements—strict photo ID, polling place closure and consolidation, and voter registration—there is a real cost to the voter greater than the average poll tax in 1963. The process by which voters are forced to comply with these laws are a material burden, the alternative of which is forfeiture of the right to vote in federal elections without payment of a tax. Like the poll tax of Jim Crow, these costly requirements run afoul of the intent of the Twenty-Fourth Amendment to prohibit the denial of the right to vote based on inability to pay, and legal claims should be cognizable under this theory.

## V. CONCLUSION

Voting comes at a price, and many low-income voters cannot afford to pay. As a result, low-income voters comprise one of the lowest voter turnout brackets of any demographic in the country, and the policies at the federal level that result disadvantage the poor or misunderstand the issues poor people face.

The modern-day poll tax is the implementation of strict voting requirements that impose a real cost on the voter to comply with those requirements. The result is that the low-income voter is faced with a choice: exercise your right to vote and pay up or forfeit your right to vote altogether. This material burden should be cognizable under the Twenty-Fourth Amendment and its interpretation in *Harman v. Forsennius*. In the meantime, states can reduce the burden on low-income voters by leveraging the low-income citizen’s interaction with public assistance agencies to facilitate every stage of the process to vote. In a country where millions of the electorate live paycheck to paycheck, the right to vote should be free of cost.

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120. See Drew Desilver, *Anti-poll tax amendment is 50 years old today*, PEW RES. CTR. (Jan. 23, 2014), <https://www.pewresearch.org/fact-tank/2014/01/23/anti-poll-tax-amendment-is-50-years-old-today>.

121. See KEESHA GASKINS & SUNDEEP IYER, THE BRENNAN CENTER FOR JUSTICE, *THE CHALLENGE OF OBTAINING VOTER IDENTIFICATION* 14–15 (2012).

122. For the federal minimum wage figure, see U.S. DEP’T OF LABOR, *Minimum Wage*, <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Apr. 11, 2020),