

# **FAIR CROSS SECTION: Nuts & Bolts** **(and a discussion about COVID-19)**

**NC REN, December 2020**

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# Three requirements of *Duren*

1. Distinctive group (traditionally race, ethnicity, gender)
2. Not a fair and reasonable representation
  - Absolute disparity
  - Comparative disparity
3. **Systematic exclusion**
  - If successful, burden shifts to State – significant state interest

# File a Motion for Discovery ASAP

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Sample motion & materials available on the [REN Website](#).

What you are seeking:

1. The jury lists at each stage of the process (For a description of the editing process in your county, request the publicly available “Jury Commission’s Statement of Sources and Procedures”)
2. People who were summonsed but won’t be there:
  - An accounting/documentation of people who were excused/deferred prior to reporting
  - An accounting/documentation of summons that were undeliverable
3. The race information of the jury pool for your trial
  - Obtain that via a questionnaire (sample also on REN website).
  - Obtain it the harder way via looking at [Board of Elections Data](#).

# Quick Detour: NC SBE Data

Text file (ugh!) vs. excel spreadsheet (yay!).

How to fix it: [Follow this easy tutorial in how to convert a txt file to excel.](#)

[Race codes](#) on the SBE website.

The screenshot shows the top navigation bar of the North Carolina State Board of Elections website. The logo on the left reads 'VOTE NORTH CAROLINA STATE BOARD OF ELECTIONS'. To the right is a search bar and a notification bell icon with the number '1'. Below the navigation bar, the 'Results & Data' section is highlighted. It contains a grid of links: Election Results, Voter History Data, Voter Registration Data, Voting Maps/Redistricting, Absentee Data, Candidate Lists, Polling Place Data, and FTP Site.

The screenshot shows a page titled 'When are the files updated?' with the text 'The files are updated weekly on Saturday mornings.' Below this is a dark blue button that says 'Download Current Statewide Voter Registration Data (all counties)' with an external link icon. To the right of the button is a search input field labeled 'Search:'. Below the search field is a table with two columns: 'county' and 'title'. The table lists four counties: Alamance, Alexander, Alleghany, and Anson, each with a link to 'Voter Registration Data' and an external link icon.

county	title
Alamance	<a href="#">Voter Registration Data</a>
Alexander	<a href="#">Voter Registration Data</a>
Alleghany	<a href="#">Voter Registration Data</a>
Anson	<a href="#">Voter Registration Data</a>

last_name	first_name	middle_name	name_suffix_lbl	res_street_address	res_city_desc	state_cd	zip_code	mail_addr1	race_code	ethnic_code	party_cd	gender_code
A-VENT	PHILLIP	LEE		407 CECIL ST	DURHAM	NC	27707	407 CECIL ST	I	NL	DEM	M
AAGAARD	AMBER	WOOD		1314 LANCASTER ST	DURHAM	NC	27701	1314 LANCASTER ST	W	NL	UNA	F
AAGAARD	BRIAN	PATRICK		1314 LANCASTER ST	DURHAM	NC	27701	1314 LANCASTER ST	W	NL	DEM	M
AALBRITTON	DNITA	LAFONDA		1 DUKE UNIVERSITY WEST CAMPUS	DURHAM	NC	27708	DUKE WEST CAMPUS	U	UN	UNA	U
AAMOT	RAQUEL	CHAVES		9 ZELKO CT	DURHAM	NC	27705	9 ZELKO CT	M	UN	DEM	F
AARIM	RACHIDA			5619 RUSSELL RD	DURHAM	NC	27712	5619 RUSSELL RD	O	NL	DEM	F
AARON	AYANNA	SHEKEIA		1801 FAYETTEVILLE ST	DURHAM	NC	27707	POB 20679	B	UN	DEM	F
AARON	BARBARA	GAIL		5106 LAZYWOOD LN	DURHAM	NC	27712	5106 LAZYWOOD LN	W	NL	DEM	F
AARON	CHARLES	ALAN		1306 VIRGINIA AVE	DURHAM	NC	27705	1306 VIRGINIA AVE	W	NL	DEM	M
AARON	JAMES	STEDMAN	II	104 SADDLE CREEK LN	DURHAM	NC	27703	104 SADDLE CREEK LN	B	NL	DEM	M
AARON	JOAN	HELEN		3007 PICKETT RD #218	DURHAM	NC	27705	3007 PICKETT RD # 218	U	UN	DEM	U
AARON	JORDAN	CAMERON		1801 FAYETTEVILLE ST	DURHAM	NC	27707	1801 FAYETTEVILLE ST	B	UN	DEM	M
AARON	JULIAN			1503 W KNOX ST	DURHAM	NC	27705	1503 W KNOX ST	U	UN	DEM	U
AARON	KORA	PATRICIA		REMOVED					B	NL	DEM	F
AARON	MALCOLM	MEREDITH	JR	104 SADDLE CREEK LN	DURHAM	NC	27703	104 SADDLE CREEK LN	B	UN	UNA	M
AARON	MALCOLM	MEREDITH		104 SADDLE CREEK LN	DURHAM	NC	27703	104 SADDLE CREEK LN	B	NL	DEM	M
AARON	MONIQUE	SIMS		104 SADDLE CREEK LN	DURHAM	NC	27703	104 SADDLE CREEK LN	B	NL	DEM	F
AARON	NORMA	WELLS		48 DAVISSON DR	DURHAM	NC	27705	48 DAVISSON DR	W	UN	UNA	F
AARON	SAMANTHA			300 DARBY CREEK LN #334	MORRISVILLE	NC	27560	300 DARBY CREEK LN # 334	W	NL	DEM	F
AARON-COACHMAN	TOYNETTE	DENISE		1516 BAPTIST RD	DURHAM	NC	27704	1516 BAPTIST RD	B	UN	DEM	F
AARON-SIMON	KATHERINE	AB		5106 LAZYWOOD LN	DURHAM	NC	27712	5106 LAZYWOOD LN	W	NL	DEM	F
AARONSON	CAROLYN			7324 ABRON DR	DURHAM	NC	27713	7324 ABRON DR	W	NL	DEM	F
AARONSON	HANNAH	LEIGH		6 WYNMORE DR	DURHAM	NC	27713	6 WYNMORE DR	W	NL	DEM	F
AARONSON	MATTHEW	ADOLPH		6 WYNMORE DR	DURHAM	NC	27713	6 WYNMORE DR	W	NL	UNA	M
AARONSON	NATHAN	SAMUEL		6 WYNMORE DR	DURHAM	NC	27713	6 WYNMORE DR	U	UN	UNA	U
AASHAD	DOMINECK	QUAMEL	JR	1608 SEDGEFIELD ST #C	DURHAM	NC	27705	1608 SEDGEFIELD ST # C	B	NL	LIB	M
AASHAD	DOMINECK	QUAMEL	SR	2903 LUTZ LN	DURHAM	NC	27703	2903 LUTZ LN	B	NL	DEM	M
AASHAD	KATOSHI	RENEE		411 WALTON ST	DURHAM	NC	27703	411 WALTON ST	B	NL	DEM	F
AAZAMI	AMIR	BABAK		610 W MORGAN ST #209	DURHAM	NC	27701	610 W MORGAN ST # 209	W	NL	UNA	M
ABAD	HAZEL	FINONES		4600 UNIVERSITY DR #1607	DURHAM	NC	27707	4600 UNIVERSITY DR # 1607	U	UN	UNA	U
ABADA	ABDELGHANI			1 DUKE UNIVERSITY WEST CAMPUS	DURHAM	NC	27708	PO BOX 95283	O	UN	UNA	M
ABADI	EHSAN			1601 CAPSTONE DR	DURHAM	NC	27713	1601 CAPSTONE DR	O	NL	UNA	M
ABADIA	JAMES			1117 HOOPER PL	DURHAM	NC	27703	1117 HOOPER PL	O	HL	REP	M
ABADIA	MARY	KATHERINE		1117 HOOPER PL	DURHAM	NC	27703	1117 HOOPER PL	W	NL	UNA	F
ABADIE	CHARLES	VINCENT		602 CHANCELLOR'S RIDGE DR	DURHAM	NC	27713	602 CHANCELLOR'S RIDGE DR	U	UN	UNA	U
ABADIE	KATARINA	VELICKOVIC		REMOVED					W	NL	UNA	F

# The three prongs of *Duren* discussed

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Example: underrepresentation of African Americans in my jury pool

Let's say I show up to court and I have my questionnaires (or I've compared my list of the jury pool to the NC SBE data) and it appears that there is underrepresentation of African Americans

1. Prong 1 – Distinctive Group

2. Prong 2 – not a fair and reasonable representation.

- 5 out of 134 potential jurors in court were African American= 3.7% of jury pool is African American.
- Census is 12%
- Absolute disparity: 8.3%; Comparative disparity: 69% (69% less likely, when compared with the overall jury population, to be on the jury-service list.) [Explanation of the disparities here](#).

3. Prong 3 - Systematic exclusion???

# Systematic Exclusion

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- Are the source lists underrepresentative?
- Inherent problems in the editing process?
- Mistakes in the jury summons process?
  - Example from Connecticut. The jury software program read the “d” in “Hartford” to mean that the person was “deceased.” Everyone in Hartford left off the jury summons for 3 years. Hartford accounted for a large number of the minority population
  - Example from Louisiana. Some computer error did not summons anyone under the age of 26.
  - Is something like that happening in your county? You won’t know unless the court gives you the opportunity and info you need to investigate.
- Underrepresentation related to the excusal/deferral policy?  
(COVID-19 alert!!!)
- Is it happening in every venire over a period of time?

## Jury Summonses

### Deferrals and Excusals:

- The jury summons shall include clear information regarding how to contact the court if the juror has safety concerns, such as a recent exposure to COVID-19, up to and including the day of jury service, to prevent a juror from appearing in-person who may have been recently exposed and not within the local court's deadline to request an excuse or deferral. Jury summonses shall also include information about the safety protocols that are in place in the judicial facilities and during jury trials to reduce the chances of exposure to COVID-19.
- The chief district court judge or her designee, shall revise the district's excusal or deferral policy to include the following:
  - a. Allow for remote or telephonic requests for excusal or deferral to reduce the number of people from visiting the courthouse in person for such requests.
  - b. Grant deferrals rather than excuses from jury service, where appropriate.
  - c. Consider requests due to COVID, including schooling children (virtually/in-person).
  - d. Take into account those who may be elderly, high-risk and not in a position to serve.
  - e. Consideration of those essential workers, caregivers and those working in health and service industries and exposed to a higher risk of contracting COVID-19.

# Sources re COVID and minorities/women

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<https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>

<https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7436547/>

<https://www.axios.com/black-workers-essential-coronavirus-c502fc2e-a4fc-4c4f-ae0c-722a50d74ecd.html>

<https://www.nytimes.com/2020/05/06/upshot/pandemic-chores-homeschooling-gender.html>

<https://www.census.gov/library/stories/2020/08/parents-juggle-work-and-child-care-during-pandemic.html>

# Final important step: Motion to Quash Venire

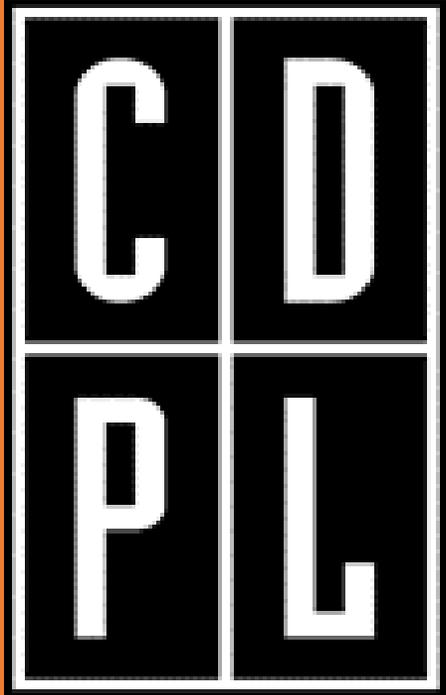
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- Must raise the motion and judge must decide on issue BEFORE the questioning of any juror, pursuant to G.S. 15A-1211(c)(4).
- Sample available on [REN Website](#).
- Either you're able to show the 3 prongs, or you can't show the 3 prongs because the judge denied your discovery requests. File the motion anyway to preserve the issue.

# Resources

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- [SOG: Raising Issues of Race in North Carolina Criminal Cases \(Chapter six\)](#)
- [SOG: NC Defender Manual – Trial Vol. 2, Ch. 25.1](#)
- Law Review articles by professor Nina Chernoff and others



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