

Preliminary Jury Questions

1. What is your occupation, or former occupation if retired, and do you, or did you, supervise others?
2. What is your spouse's occupation, or if you are divorced or your spouse is deceased, their occupation or former occupation?
3. Do you have children? If so, what are their ages and occupations?
4. Have you ever been selected as a member of any jury, whether it be a grand jury or district, municipal or federal court? If so, when and in what court?
5. If you have been a juror before, was the case civil or criminal?
6. What is your education?
7. Have you ever studied law?

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

NAME NAME,

Plaintiff,

v.

NAME NAME,

Defendants.

Case No. 1:11-cv-00111-DCN

VOIR DIRE

I. Preliminary Questions

Each of you have been given a sheet of paper showing your juror number. On the back of that paper are seven questions. We will begin by having each of you, in turn, answer the questions listed on that document. Please state your juror number and then answer the questions to the best of your ability. Juror number one will please read each question before answering. Thereafter, each person need not read all seven questions, but may simply answer each question.

Judge calls on each juror to answer preliminary questions

II. Substantive Questions

1. I recognize that jury service is probably an inconvenience to you, taking you away from your jobs and families and disrupting your daily routine. It is, however, one of the most important duties that citizens of this country are called upon to perform. The attorneys estimate that this case will last roughly [X] days (through [XXX] of this week). Do any of you have a conflict that cannot be rescheduled or moved that would prevent you from serving on the jury in this case for that length of time?

2. Is there any member of the panel who has any special disability or problem that would make serving as a member of this jury difficult or impossible?
3. Do any of you have a problem seeing or hearing that may prevent you from understanding the testimony or observing the evidence?
4. Do any of you have difficulty understanding the English language?
5. Now, I will have the lawyers introduce themselves, state who they work for, and introduce their clients. We will begin with the Plaintiff.

have Plaintiff's counsel complete introduction

- a. Do any of you know the Plaintiff, **NAME**, on a social or professional basis?

If yes:

- i. In what capacity have you known **NAME**?
 - ii. Will your knowledge or relationship prevent you from acting impartially in this case?
 - iii. Will your knowledge or relationship cause you to give greater or lesser weight to any statement that he/she might make in this case?
- b. Do any of you know Plaintiff's Counsel on a professional or social basis?
 - c. Do any of you have a professional or social relationship with any other lawyer from Plaintiff's counsel's law firm?

have defendant's counsel complete introduction

- a. Have any of you ever worked for, or with, Defendant, **NAME**?

If yes:

- i. How have you been engaged with **NAME**?
- ii. Will your knowledge or relationship prevent you from acting impartially in this case?
- iii. Will your knowledge or relationship cause you to give greater or lesser weight to any statement that he/she might make in this case?

- b. Do any of you know Defense counsel on a professional or social basis?
 - c. Do any of you have a professional or social relationship with any other lawyer from Defense counsel's law firm?
6. The case tried today is a civil case. For context, I will provide a brief summary of the case.

INSERT AGREED UPON SUMMARY HERE.

7. Have any of you acquired any information about this case, or either party, from the news media or any other source? If so, would that information you have acquired affect your impartiality in this case?
8. Do any of you have any interest in the trial or the outcome of this case?
9. Does any member of the panel have any feeling of sympathy toward either party or a prejudice against either party that may affect your ability to be fair to both sides?
10. Have you, any members of your family or close friends ever been involved in a situation like this?

If yes:

- a. Was a lawsuit filed?
- b. How was the matter resolved?
- c. Is there anything about the matter which would make it difficult for you to be fair and impartial?

have plaintiff's counsel identify all witnesses

- a. Do any of you know any of these witness(es)?

have defendant's counsel identify all witnesses

- b. Do any of you know any of these witness(es)?

11. Have any of you ever served as a juror in a criminal or a civil case or as a member of a grand jury in either a federal or state court?

- a. **If yes:** Is there anything about that experience that would cause you to not be impartial in this case?
12. Has any member of the panel ever served as an expert witness for any party to a lawsuit? (Or a fact witness?)
13. Have you or has anyone in your immediate family ever participated in any lawsuit as a party or in any other capacity? If so, what was the nature of the claim? Did the case go to trial? What was the outcome?
14. Do any of you have a religious or moral position that would make it impossible to render a judgment in this particular case?
15. If you are selected to sit on this case, I will give you some preliminary instructions on the law. At the conclusion of the trial, I will fully instruct you on the applicable law. As a juror, you are obligated to follow the law given to the jury by the court. Is there anyone who would be unwilling or unable to follow the law as given in the instructions, disregarding your own notions or ideas as to what the law is or ought to be?
16. Is there anyone who will be unable to render a verdict solely on the evidence presented at the trial and in the context of the law as instructed, disregarding any other ideas, notions, or beliefs about the law that you may have encountered in reaching your verdict?
17. Do any of you know any other member of this prospective jury panel?

If yes:

- a. Is there a supervisory relationship between the two of you?
 - b. Would service on this case place you in an awkward or difficult position should you both be selected to serve?
 - c. Should you both be selected to serve, could you exercise independent judgment in considering the evidence and deciding the case?
18. Is there any other reasons, whether I have asked about such a subject or not, that any of you cannot serve as a fair and impartial juror in this

case?

VII. Follow Up Questions from Counsel

allow counsel for both sides to asking follow-up questions for 20 minutes

counsel is only allowed to ask follow-up questions to those already asked by the judge – original questions will not be allowed

19. **After counsel asks questions:** Having heard the questions put to you by the court and counsel, does any other reason suggest itself to you as to why you could not sit on this jury and render a fair verdict based on the evidence presented to you and in the context of the court's instructions to you on the law?

VIII. Finalizing the Jury

20. **To the attorneys:** Do both sides pass the panel for cause?

21. Ladies and gentlemen, the attorneys will now exercise their peremptory challenges. Please wait quietly while they do this. It is done by passing a paper back and forth. While waiting, don't discuss the case or anything connected with it among yourselves or anyone else.

Proceed with peremptory challenge process

22. The Court finds the jury free from exception. I will now ask the courtroom deputy to administer the oath to the impaneled jury. Ladies and gentlemen of the jury, please rise and raise your right hand.

Court gives thanks to jurors not selected and excuses them

[Take a short recess]

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

SHAAKIRRAH R. SANDERS,

Plaintiff,

vs.

**THE UNIVERSITY OF IDAHO, a public
university governed by the BOARD OF
REGENTS OF THE UNIVERSITY OF
IDAHO aka the STATE BOARD OF
EDUCATION, an executive department of
the STATE OF IDAHO, et al.,**

Defendants.

**PLAINTIFF'S MOTION FOR JURY
QUESTIONNAIRE AND VOIR DIRE**

Case No.: 3:19-cv-00225-BLW

Judge Winmill

MOTION FOR JURY QUESTIONNAIRE

Plaintiff, by and through her counsel of record, the firm of Strindberg Scholnick Birch Hallam Harstad Thorne, does hereby file this *Motion for Jury Questionnaire and Voir Dire*, and requests that this Court exercise its discretion and allow Plaintiff to (1) include questions in the

jury questionnaire regarding explicit or implicit bias of the potential jury panel and (2) for additional voir dire of potential jurors.

The function of voir dire is to ferret out prejudices in the venire that threaten the right to a fair and impartial jury. *United States v. Howell*, 231 F.3d 615, 627 (9th Cir. 2000). The Constitution empowers the trial court to determine the need for questions for the venire related to bias, with “ample discretion” accorded to the Court to determine how best to conduct voir dire. *Rosales-Lopez v. United States*, 451 U.S. 182, 189-190 (1981). *See also Howell*, 231 F.3d at 628 (“Whether to allow supplemental questions proposed by counsel is within the ‘sound judicial discretion’ of the district court.”)(citations omitted). Voir dire provides a means of discovering actual or implicit bias and the foundation for parties exercising their peremptory challenges intelligently. *See, e.g., Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 602 (Brennan, J., concurring in the judgment) (voir dire “facilitate[s] intelligent exercise of peremptory challenges and [helps] uncover factors that would dictate disqualification for cause.”) (brackets in original).

This Court should exercise its discretion in the instant matter and allow additional questions to be included in the jury questionnaire, along with additional follow-up voir dire questions as necessary. As the Court is aware, Plaintiff, a Black woman, alleges that she suffered race and gender discrimination by a governmental entity and governmental employees. America has a unique history with race and racism issues making this issue a sensitive topic for many Americans. Recent events, such as the murder of George Floyd, have reinvigorated these topics as something that many have strong beliefs about. Moreover, and perhaps more importantly, the trial will take place, in Northern Idaho, which has historical and more recent issues associated with racial bias.¹

¹ *See generally Memorandum in Support of Plaintiff’s Motion to Change Venue* (Dkt. 086-1), at page 8-9. *See also* “U-Haul Full of White Supremacists, Preparing to Disrupt Pride Event, Arrested in Idaho,”

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The trial takes place shortly after the Idaho legislature has “defunded” our state higher education institutions related to allegations that they were focusing too much on diversity and inclusion efforts and/or teaching “critical race theory.” Indeed, during the 2022 session of the Idaho legislature, a concurrent resolution (No. 118)² and a House Bill (HB 377)³ addressed alleged “divisive” curriculum in Idaho schools. This is all to say that issues surrounding race, racism and race discrimination are hot button topics for many and particularly within our jury pool. Thus, the parties in this case must be able to explore whether member of the venire harbor, consciously or unconsciously, any racial prejudice or bias that might affect their ability to fairly and impartially judge this case. As such, this Court should GRANT Plaintiff’s *Motion for Jury Questionnaire and Voir Dire* to allow the questions below to be asked on the Proposed Jury Questionnaire, along with the supplemental voir dire questions to be asked by the counsel and/or by the Court, and with the possibility that additional follow-up occur in camera as this Court deems fit.

I. Additional Jury Questionnaire Questions are Justified and will Save Time

Plaintiff’s proposes the following additional questions, which are designed to identify possible bias or animus in members of the venire which could require additional voir dire.

1. Are you or a family member a graduate of the University of Idaho?

Yes, self Yes, family No

If you marked “Yes”, what year(s)?

2. Have you or a family member worked for the University of Idaho?

Yes, self Yes, family No

If you marked “Yes”, what were the dates of employment and position?

vanityfair.com, June 12, 2022, <https://www.vanityfair.com/news/2022/06/white-supremacists-pride-event-arrested-in-idaho>

² <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2022/legislation/SCR118.pdf>

³ <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2021/legislation/H0377.pdf>

3. Do you think employers have a duty to prevent race discrimination/gender discrimination/retaliation from occurring in their workplaces?

Yes No

4. Which of these statements do you most agree with: (select one)

- Racism still exists as a major problem in society.
- Racism still exists but has gotten better.
- Racism is no longer a problem in society.
- Racism against white people is now a problem in society.

5. Do you think black people are more likely to be dishonest than others? (circle one)

0 1 2 3 4 5 6 7 8 9 10

0 = *Not likely at all*

10 = *Definitely more likely*

6. Some of you may have heard about the stereotype of an angry black woman, do you believe that stereotype is justified? (circle one)

0 1 2 3 4 5 6 7 8 9 10

0 = *Not justified*

10 = *Absolutely justified*

Allowing jurors the ability to provide answers to these questions on a questionnaire form, as opposed in open court during voir dire, will: 1) increase the chances that the responses are more truthful and forthcoming without embarrassing any particular juror; 2) highlight areas where additional and possibly in camera voir dire might be appropriate; 3) be more efficient than requiring counsel or the Court to poll the venire on these questions in voir dire.

II. Additional Voir Dire In Response to these Questions

Should the Court decline to add the questions above to the questionnaire, Plaintiff requests that the Court ask the same or similar questions to the venire in voir dire. Additionally, depending on the answers given by the potential jurors at issue to any of the above questions – whether asked in questionnaire form or voir dire, Plaintiff request the Court to conduct separate (and private voir

dire in chambers, if necessary) follow up voir dire. In the follow up voir dire, Plaintiff proposes that the Court ask the potential jurors the following questions:

I see that you answered _____ to question(s) _____ on your jury questionnaire. Because there are issues in this matter surrounding racial discrimination, I wanted to ask you some follow up questions on these topics. I've chosen to do this in Chambers as we understand that these issues involve sensitive and private details and we wanted to respect that. I again ask you to be completely honest and forthcoming in your responses so that we can ensure that both sides receive the opportunity to select an impartial jury for this particular case. Bearing that in mind, I'll ask you the following:

1. Can you explain why you answered the question the way you did?
2. What experiences have you had or are you aware of that informed your answers?
3. How did those experiences make you feel/what did they make you think?

Depending on the particular juror's answers, additional voir dire may be necessary to ferret out whether a for-cause challenge is appropriate.

III. Proposed Additional Voir Dire Topics/Questions to Each Prospective Juror

In addition to the above, Plaintiff requests that the following voir dire be asked of each prospective juror:

Questions Regarding Race and Gender Issues/Potential Bias:

1. Have you ever felt like you were the target of racial prejudice? Tell us about that situation or your experience.
2. Have you ever had racially prejudiced thoughts about another person, even if those thoughts made you feel uncomfortable or uneasy?
3. If your child used a racial slur, what would you tell your child?

4. How would you feel if a member of your family wanted to marry someone who was African American?
5. Is there any other feeling or opinion you have regarding race that you feel you should share with us?
6. Do you feel that women are treated differently than men in the workplace? Please explain.
7. Have you ever heard of the “Glass Ceiling”? If so, do you believe it exists? Please explain.

General Questions:

8. Do you know any of the lawyers or other jurors in the courtroom? If so, please explain any relationship or how you know the person.
9. Do you know any of the individuals who may testify in this case:
 - a. Shaakirrah Sanders
 - b. Mark Adams
 - c. Jerrold (“Jerry”) Long
 - d. Erin Agidius
 - e. Barbara Cosens
 - f. Jennifer Cossel
 - g. Gary Couillard
 - h. Katherine Macfarlane
 - i. Amy Oppenheimer
 - j. Mike Satz
 - k. Richard “Dick” Seamon

- l. Sarah Haan
 - m. Elizabeth Brandt
 - n. John Miller
 - o. John Wiencek
10. Do you know the attorneys for the Plaintiff, Erika Birch or Guy Hallam, or other individuals who work for the Strindberg Scholnick Birch Hallam Harstad Thorne law firm?
11. Do you know the attorneys for the Defendants, Bentley Stromberg, Tully FitzMaurice, or Sonyalee Nutsch, or other individuals who work for the Clements, Brown & McNichols law firm?
12. Have you or anyone in your immediate family worked for the University of Idaho?
- a. If so, who?
 - b. What was your/their job or job title?
 - c. What were the years of employment?
13. Have you or anyone in your immediate family taken classes or graduated from the University of Idaho?
- a. If so, who?
 - b. When did you/they graduate?
14. Have you ever worked in a human resources department? If so, what was involved in your job duties?
15. Have you ever been responsible for investigating complaints of discrimination? If so, what was involved?

16. Have you or has any close friend or family member ever been a victim of discrimination? If so, please explain.
17. Have you heard or read about any claims of discrimination that you thought were false, exaggerated, or unjustified? If so, what was the nature of the claim and why did it appear false or unjust?
18. Would any of you be reluctant to award damages as part of a lawsuit? Please explain.
19. Emotional Distress damages are the type of damages that can't be punched into a calculator. How many of you would have a hard time awarding those damages because of that? Please explain.
20. Punitive damages are meant to punish the wrong-doers for the harm they caused and deter similar acts in the future. Would anyone have an issue with or objection to awarding punitive damages if the evidence supports such an award? Please explain.
21. Does anyone have negative feelings about or objections to employees bringing a lawsuit against their employer? If so, please explain.
22. A governmental employer acts through its supervisory employees, agents, and administrators. Does anyone have a problem with the law holding a governmental entity liable for the statements and actions of its supervisory employees and administrators?
23. Does anyone believe that because a case goes to trial there must be some merit to the claims? If so, please explain.
24. This trial may go on for up to 10 days. Is there anyone who would be unable to serve as a juror for this length of time? If so, please explain.
25. Is there anyone who really does not want to be here today? If so, please explain.

WHEREFORE, Plaintiff respectfully requests this Court grant this motion and allow Plaintiff's supplement jury questions to be asked as part of the jury questionnaire in this matter, and that the Court also grant additional voir dire, both as follow-up and potentially in camera.

Dated this 13th day of September, 2022.

Respectfully submitted,

**STRINDBERG SCHOLNICK BIRCH
HALLAM HARSTAD THORNE**

/s/ Erika Birch_____

Erika Birch

T. Guy Hallam, Jr.

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2022 a true and correct copy of the foregoing pleading was served on the following via the Court's CM/ECF system:

Bentley G. Stromberg
Tully Fitzmaurice
Sonyalee Nutsch
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/s/ Dunja Subasic
Dunja Subasic, of the firm



«part_no»0102

PROSPECTIVE JUROR QUESTIONNAIRE

*Please complete and return this form with your Juror Qualification Questionnaire. To avoid questions being asked in open court during jury selection and to shorten the jury selection process, you are asked to complete the enclosed questionnaires and return them within ten (10) days. **Please print, using black or blue ink.***

1. Name: «fname» «lname»
2. What city do you reside in? _____ How long have you resided there? _____
3. How many years and/or months have you lived in Idaho? _____
4. Residence: Do you? ___ own ___ rent ___ live with homeowner ___ other
5. Are you a citizen of the United States? ___ Yes ___ No
6. Place of birth (Please list city and state): _____
7. Education: ___ above high school ___ high school graduate ___ GED/high school equivalent
 ___ some high school ___ completed grade school ___ some schooling
8. Have you or are you attending (college, graduate school, trade school, etc.)? If yes, please indicate where attended, dates, and if completed, degree: _____

9. Employment: Are you currently? ___ employed full-time ___ employed part-time ___ self-employed
 ___ unemployed ___ homemaker ___ student ___ retired ___ disabled
10. Name of current or most recent employer and occupation: _____
 Please also include: start date: _____ end date: _____
11. Has your occupation changed in the last ten (10) years? (Including retirement and/or disability) ___ Yes ___ No
12. If your occupation has changed in the last ten (10) years, what was your previous occupation and how long did you hold that job? _____
13. What is your current marital status? ___ single ___ married ___ divorced ___ separated ___ widowed
 ___ other
14. Has your marital status changed in the last ten (10) years? ___ Yes ___ No
15. If you have children, please provide their age and occupation (if applicable). **Please do not list names of minor children under the age of 18.** _____
16. For adults residing in your household, please provide their name, current employer, occupation and indicate whether they are a state or federal employee: _____

17. If you or any member(s) of your immediate family or close personal friend(s) have ever been employed by law enforcement, please indicate the person's name, agency, position, and approximate time of service: _____

18. If you or any member(s) of your immediate family have ever been employed by the United States or served in the armed forces, please indicate the person's name, agency, position, and approximate time of service: _____



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19. What is your primary source(s) of news? internet magazine newspaper radio
 social media television other
20. In what social, volunteer, or other organizations do you actively participate? _____
21. What do you do in your spare time (social activities, hobbies, recreation, etc.)? _____
22. Have you ever served as a juror on a jury trial? If yes, was it civil or criminal and did your jury reach a verdict? _____

23. Do you have any strong negative feelings about serving on a jury? Yes No
24. Have you or any immediate member(s) of your family ever been involved in or have been a party to a lawsuit? If yes, please specify type of lawsuit and outcome: _____
25. Have you ever been a witness at a trial? Yes No
26. Have you ever been convicted of a crime other than traffic or driving offenses, which is punishable by imprisonment for more than one (1) year? Yes No If yes, please provide the following: date of offense, nature of offense, name of court (specifically the state/county or federal district), date of conviction, and sentenced imposed: _____

- Was the sentence satisfactorily completed? Yes No Were your civil rights restored? Yes No
27. Have any member(s) of your immediate family ever been convicted of a crime other than traffic or driving offenses, which is punishable by imprisonment for more than one (1) year? If yes, please describe:

28. Do you have reliable transportation to appear for jury selection? If no, please explain. Yes No

29. We are able to excuse jurors for scheduled vacations, business trips, and doctor appointments during your month of service. We will excuse up to one (1) continuous week only; however, if your dates do not meet these criteria, you may request a one-time postponement of your jury service. Please list upcoming dates you would like to be excused: _____

30. Based on the excuse dates provided or a hardship, would you like to request a one-time postponement of your jury service? **If you do not want a postponement, please skip question #31.**
 Yes No
31. When selecting a month within the next year, please be prepared to keep that month available for jury service because a second postponement will most likely be denied. Please provide a month and year of requested postponement:
 _____ Month _____ Year

PLEASE NOTE: Confirmation of granted or denied excuse requests, postponements and partial excuse dates will be emailed or mailed to you within the next ten (10) business days. This allows our jury staff time to review and process your request. If the court determines that you are qualified for jury service, you will receive your reporting status when calling the Automated Jury Information Line at 1-800-699-9840 on the required call-in dates listed on your jury summons.

I declare under penalty of perjury that all answers are true to the best of my knowledge and belief.

Signature: _____ Date: _____