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Ramos, Race, and Juror Unanimity in Capital Sentencing
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I. OVERRULING *APODACA* AND NON-UNANIMITY IN SENTENCING

Until recently, Louisiana and Oregon relied on *Apodaca v. Oregon* to allow a non-unanimous jury to convict a criminal defendant of a felony.17 A non-unanimous jury is also referred to as a "majority vote" where only ten out of twelve jurors vote for a guilty conviction—and that majority vote is sufficient for the conviction, where in most other states that majority vote would result in a mistrial.18

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The Court reconsidered *Apodaca* in *Ramos v. Louisiana* in 2020 after Evangelisto Ramos, who had been found guilty of second-degree murder by a ten to two jury vote in Louisiana,25 successfully petitioned for writ of certiorari in 2019.26 Ten jurors voted to convict Ramos, while two voted for his acquittal.27 In any other state besides Louisiana (or Oregon), Ramos' trial would have been a mistrial because of the non-unanimous jury verdict.28 Ramos argued that the Supreme Court should overturn *Apodaca* because unanimity is a historical component of the right to a jury trial,29 the Court had already rejected the notion of partial incorporation,30 and because Louisiana's non-unanimous jury rule was adopted as a strategy to establish white supremacy.31

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[In the Supreme Court] Louisiana argued that there was no compelling reason to overturn *Apodaca,* and that the Sixth Amendment does not require a unanimous verdict in a criminal case.33 Louisiana also maintained that recent provisions of the Louisiana Constitution involving majority jury verdicts show that the scheme was not based on race or white supremacy when it was updated after 1898.34

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The states in favor of non-unanimity claimed that the text of the Sixth Amendment does not contain any unanimity requirement and that if the Founders wanted to ensure that the Sixth Amendment protected the common-law tradition of unanimity, they could have done so.38 Additionally, these states argued that the unanimity requirement makes it more difficult to convict defendants, and that there is no clear data that non-unanimous juries are more inaccurate than unanimous juries such that a trial cannot be considered just if a non-unanimous verdict is rendered.39 Unanimity gives too much power to a single "holdout juror," these states contended --citing that 42 percent of hung juries were deadlocked with only one or two jurors holding out—resulting in more hung juries and mistrials.

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The Innocence Project and the Innocence Project of New Orleans also filed an amicus brief in favor of Ramos arguing that non-unanimous jury verdicts create a high risk of wrongful convictions.48 Out of

the fifty-six wrongful conviction cases in Louisiana to date, thirteen of those cases were wrongful convictions by verdicts handed down by a non-unanimous jury.49 In ten of those thirteen cases, the wrongfully convicted defendants were Black men.50 Indeed, records of those juror deliberations in which the juror vote was non-unanimous and led to wrongful convictions revealed that the deliberations were short and that it was Black jurors whose votes and opinions were nullified.51 Ultimately, in deciding *Ramos*, the Court gave more weight to the arguments in favor of Ramos.52

B. The* Ramos *Ruling

Justice Gorsuch wrote for the majority and relied heavily on history and values to rule in Ramos's favor.53 Justice Gorsuch declared that the Sixth Amendment's "trial by an impartial jury" language must have referred to a unanimous jury because unanimity emerged as a "vital" common-law right in fourteenth century England,54 and during the founding of the United States, courts regarded unanimity as "essential" to jury trials.55 James Madison drafted the Sixth Amendment with that history of unanimity as the "backdrop"—at which point unanimous jury verdicts had been required for around 400 years.56 Justice Gorsuch wrote that the historic right to a unanimous jury trial is incorporated against the states because the Court had already recognized that incorporated provisions of the Bill of Rights "bear the same content" when asserted against the states—in other words, the Court had already established that the Fourteenth Amendment is not incorporated in a "watered-down" version against the states

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Excerpt from the majority Supreme Court opinion by Justice Gorsuch

"4In 48 States and federal court, a single juror's vote to acquit is enough to prevent a conviction. But not in Louisiana. Along with Oregon, Louisiana has long punished people based on 10-to-2 verdicts like the one here. So instead of the mistrial he would have received almost anywhere else, Mr. Ramos was sentenced to life in prison without the possibility of parole.

Why do Louisiana and Oregon allow nonunanimous convictions? Though it's hard to say why these laws persist, their origins are clear. Louisiana first endorsed nonunanimous verdicts for serious crimes at a constitutional convention in 1898. According to one committee chairman, the avowed purpose of that convention was to "establish the supremacy of the white race," and the resulting document included many of the trappings of the Jim Crow era: a poll tax, a combined literacy and property ownership test, and a grandfather clause that in practice exempted white residents from the most onerous of these requirements.[1]

Nor was it only the prospect of African-Americans voting that concerned the delegates. Just a week before the convention, the U. S. Senate passed a resolution calling for an investigation into whether Louisiana was systemically excluding African-Americans from juries.[2] Seeking to avoid unwanted national attention, and aware that this Court would strike down any policy of overt discrimination against African-American jurors as a violation of the Fourteenth Amendment,[3] the delegates sought to undermine African-American participation on juries in another way. With a careful eye on racial demographics, the convention delegates sculpted a "facially race-neutral" rule permitting 10-to-2 verdicts in order "to ensure that African-American juror service would be meaningless."[4]

Adopted in the 1930s, Oregon's rule permitting nonunanimous verdicts can be similarly traced to the rise of the Ku Klux Klan and efforts to dilute "the influence of racial, ethnic, and religious minorities on Oregon juries."[5] In fact, no one before us contests any of this; courts in both Louisiana and Oregon have frankly acknowledged that race was a motivating factor in the adoption of their States' respective nonunanimity rules.[6]"