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VIA E-MAIL SEN.FLOYDPROZANSKI@OREGONLEGISLATURE.GOV

PROVIDED ORALLY

Honorable Floyd Prozanski
Senate Committee on Judiciary and Ballot Measure 110 Implementation
Oregon Legislature
Salem, OR 97301

Re: Testimony to Oregon Legislature on Nonunanimous Juries

Chair Prozanski and Members of the Committee, my name is Danny Newman and I am an attorney at Tonkon Torp in Portland. Thank you for inviting me to speak today on behalf of *pro bono* practitioners who represent *Ramos* plaintiffs.

I am pleased to provide testimony in favor of the proposed *Ramos* retroactivity legislation by giving historical context, detailing why and how firms like Tonkon got involved, and explaining the importance of immediate and effective remedies to those whose constitutional rights Oregon has violated for nearly a century.

The History of Non-Unanimous Jury Verdicts

As Justice Gorsuch wrote in *Ramos v. Louisiana*, the requirement of juror unanimity in the English and American justice systems has existed since the 14th-century. 140 S. Ct. 1390, 1395 (2020). The jury unanimity requirement appeared in the early American state constitutions, and provided the backdrop against which James Madison drafted, and the states ratified, the Sixth Amendment. Indeed, the United States Supreme Court confirmed that the Sixth Amendment provided the right to be free from criminal conviction absent a unanimous jury of one's peers no less than 13 times in the years since 1900.

Despite all the history and precedent to the contrary, Oregon was one of only two states that passed a rule permitting criminal convictions by 10-2 and 11-1 jury votes in a racist Jim Crow fervor in 1934 and enforced that rule until last year. As members of the Committee are aware, Oregon's history with racist laws dates back to its founding; and the nonunanimous jury rule came only decades after Oregon

entered the union with a constitutional clause excluding Black people from residing here or accessing Oregon's courts. The nonunanimous jury rule itself was presented and passed against a backdrop of rising racial animus after World War I. As the Supreme Court identified in *Ramos*, "Oregon's rule permitting nonunanimous verdicts * * * can be traced to the rise of the Ku Klux Klan." Throughout the 1920s, the Klan's numbers grew to more than 10,000, and it stoked an atmosphere that led to several new laws restricting the rights of minorities in the state, including restrictions from owning or leasing land, starting businesses, and other forms of segregation. Further, a series of articles in the Oregonian highlighted crimes committed by people of color and Jews across the country and Oregon, including instances where single jurors "held out" and prevented harsh criminal convictions against minority defendants. The whole point of this unconstitutional nonunanimous jury law, therefore, was to dilute the influence of racial, ethnic, and religious minorities in Oregon juries and increase the likelihood that minorities could be convicted of alleged crimes against the ruling majority.

For the almost 90 years the rule was enforced in Oregon, that initial racial animus resulted in a disparate impact on communities of color, the results of which we see in who is challenging these convictions today.

Why Tonkon Torp and Other Firms Joined With the Criminal Justice Reform Clinic at Lewis & Clark Law School to Pursue Post-Conviction Relief Cases

After the Supreme Court entered its decision in *Ramos*, many across the country rejoiced that this sad piece of Jim Crow history was finally gone.

Instead, much to my surprise, months later, people were still serving prison sentences under convictions that are indisputably unconstitutional, and there are many others that at least arguably had their Sixth Amendment rights violated by the nonunanimous jury rule. With the lack of action from Oregon officials in the wake of *Ramos*, people impacted by non-unanimous jury convictions had no choice than to go through protracted litigation while sitting in prison based on unconstitutional convictions with uncertain prospects of success.

So, in August 2020, as efforts to categorically undo those unconstitutional convictions stalled, Professor Aliza Kaplan at Lewis and Clark and others who had been working to correct Oregon's non-unanimous jury verdict system began discussions with prominent private firms to collaborate in litigating the copious post-conviction relief matters that the State was fighting. Dozens of lawyers from several prominent Portland firms, including Tonkon Torp; Perkins Coie; Schwabe,



Williamson, and Wyatt; and Davis, Wright, Tremaine volunteered to represent dozens of folks in their post-conviction relief cases, and off we went.

With the significant time commitment required to properly litigate a PCR case, the universality, eagerness, and resolve shown by all the lawyers involved proves an important point, too. Regardless of traditional political leanings, for those of us who participate in the justice system every day, it is imperative that Oregon's leadership act to alleviate the harms the state's unconstitutional nonunanimous jury verdicts continue to cause.

We stand together seeking relief for our clients however we can achieve it, and, especially given the events of the last 18 months since *Ramos* came down, an immediate legislative fix is clearly the best way to right this wrong.

The Importance of Granting Retroactive Relief to Everyone with a Non-Unanimous Jury Verdict As Soon As Possible

The importance of passing this proposed *Ramos* legislation quickly cannot be overstated. This is about the integrity of Oregon's justice system. Because the Supreme Court's 2021 decision in *Edwards v Vannoy* left resolution of this issue to the States, and because ODOJ has decided that it cannot agree to relief sought by *Ramos* petitioners, this is the moment for the Legislature to provide swift and clear relief to all those whose constitutional rights were and continue to be violated by the State every day.

If the Legislature does not act, some citizens will continue to serve sentences for convictions that, as of last year, could not be entered against them; sentences which, even at the time they were entered, were as unconstitutional as they are now. In just the year and a half since *Ramos* came down, their incarceration has meant increased exposure to COVID-19 and risks associated with wildfires. During this time, these cases should have been returned to district attorneys to review and decide whether to re-prosecute. Instead, they are in prison and stuck in litigation; wasting time and resources that could have been used to resolve these cases whatever the outcome.

Justice Gorsuch wrote for the Court in *Ramos* that everyone "must learn to live with the fact that he or she will make some mistakes * * * [b]ut it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right." 140 S. Ct. at 1408. With this admonition in mind, we urge the legislature to correct a 90-year-old racist wrong by protecting the constitutional rights of all those who were convicted by a nonunanimous jury verdict. Anyone who can prove they were convicted by a nonunanimous jury verdict should be granted a new trial by the Legislature now.



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All Oregonians deserve fair criminal trials and to have their constitutional rights intact.

Thank you again for the opportunity to speak today. Please let me know if you have questions I can answer or concerns I can address.

Respectfully,

/s/ Danny F. Newman

Danny Newman

