



**Hearing on *Ramos v. Louisiana* & Retroactivity
November 15, 2021**

**Testimony of Mark Cebert
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Senate Judiciary Committee Chair Prozanski, Vice Chair Thatcher and members of the Committee—thank you for the opportunity to testify regarding the issue of retroactive application of the U.S. Supreme Court’s decision in *Ramos v. Louisiana*.

My name is Mark Cebert. I am a third year law student at Lewis & Clark Law School and a member of Law School’s Criminal Justice Reform Clinic.

For the last many years, students in the Clinic along with its director, Professor Aliza Kaplan, have researched the history of and advocated to abolish Oregon’s non-unanimous jury verdict system. In April 2020, the U.S. Supreme Court held that the system was an unconstitutional violation of defendants’ Sixth Amendment right to trial by jury, *Ramos*, 590 U.S. ___ (2020). Soon after, the Clinic started the Ramos Project to help people impacted by Oregon’s unconstitutional jury verdict system obtain post-conviction relief.

In 1934, in an effort to more easily convict religious and ethnic minority defendants, Oregon amended its Constitution to allow criminal convictions where just 10 of 12 jurors vote that a defendant is guilty. Louisiana—the most carceral state in the nation—was the only other state with a non-unanimous verdict system, which it abandoned via legislatively referred constitutional amendment in 2018. Thus, by the time *Ramos* was decided, Oregon was the only state in the nation allowing conviction by non-unanimous verdict.

As noted by the U.S. Supreme Court in *Ramos*, Oregon’s non-unanimous jury system can be traced to “the rise of the Ku Klux Klan and efforts to dilute the influence of racial, ethnic, and religious minorities on Oregon juries.” *Ramos v. Louisiana*, 140 S. Ct. 1390, 1394 (2020). In fact, all of the justices who discussed the system’s history made clear that the law was based in racism. In addition to its racist intent, the system appears to have had a racist impact. The lack of verdict records makes it impossible to conduct a formal scientific study here in Oregon, but available data suggests that defendants of color were disproportionately convicted by non-unanimous juries.

The U.S. Supreme Court’s ruling in *Ramos*, requiring jury unanimity to convict, automatically applied going forward to criminal defendants who had yet to be tried and to people

already convicted non-unanimously but whose cases were still pending on direct appeal before the Oregon appellate courts. *Ramos*, however, did not automatically apply to people whose judgments of conviction were final. Those people have been petitioning for post-conviction relief (a state collateral review known as PCR), arguing for retroactive application of *Ramos* to their cases since the *Ramos* ruling in April 2020. The Oregon Department of Justice has fought every single PCR case, arguing against retroactive application of *Ramos* under federal and state law.

On May 17, 2021, the U.S. Supreme Court held in *Edwards v. Vannoy* that *Ramos* does not retroactively apply to cases on federal collateral review. In the Court’s decision, the new conservative majority went one step further and held that no new rules of criminal procedure will ever apply retroactively to federal habeas corpus cases. However, the Court re-iterated that, “[s]tates remain free, if they choose, to retroactively apply the jury-unanimity rule as a matter of state law in state post-conviction proceedings.”

The proposed bill language discussed today provides a claim under Oregon’s Post-Conviction Hearing Act—it grants *Ramos* retroactivity to those individuals who can prove they were convicted by a non-unanimous jury. These individuals are not asking to escape justice; quite the opposite, they are asking for justice. Post-conviction relief under the proposed claim simply means petitioners’ non-unanimous convictions will be vacated and their cases remanded to the circuit-court level. There, district attorneys would have the chance to review each case and decide whether to pursue a new trial under constitutional standards, offer a plea agreement, or drop the charges (for example, in cases where the person has already served their sentence).

As our Department of Justice has noted, allowing *Ramos* to be applied retroactively to people who can prove they were convicted by non-unanimous jury may have an impact on crime victims and may create some expense and difficulties relitigating old cases. We recognize the validity of those concerns; at the same time, we believe affording people fair trials that ensure reaching the correct result is in the best interests of defendants, victims, and the State. Providing a constitutional process not tainted by racism or discrimination is the only way to undo the harm caused by Oregon’s non-unanimous jury system and the only way to maintain integrity in our justice system.

Moreover, because Oregon never had a process to officially record when individuals were convicted by non-unanimous jury, the numbers of people who can prove it is quite limited. In fact, as of September 16, 2021, only 244 people with court-appointed attorneys have filed PCR petitions asserting they were convicted by a non-unanimous jury verdict. There may be another 50 or so petitioners represented by private counsel, and perhaps a few more people will file petitions over the course of the next year, but Oregon courts and district attorneys have the capacity to handle these cases. The number of petitions being filed is hardly the thousands that our Attorney General has predicted. More importantly, it is the right thing to do.

If Oregon is committed to fairness, justice, and eradicating systemic racism in its criminal justice system, then we must address the wrongs done under Oregon’s racist, unconstitutional non-unanimous jury system by applying *Ramos* retroactively. Just like people yet to be convicted or with cases on direct appeal, PCR petitioners deserve a criminal process that does not violate their constitutional rights or perpetuate systemic racism.

To ensure that justice is done on this issue, the Oregon Legislature should pass a law allowing anyone who can show that they were convicted by a non-unanimous jury verdict to obtain post-conviction relief in the form of a reversal of those convictions. Legislation could easily be used to amend the Post-Conviction Hearings Act, ORS 138.510-680, to include an additional claim for relief. The State would of course retain the opportunity to re-prosecute vacated convictions.

Judiciary Committee Chair Prozanski, Vice Chair Thatcher, and all Committee Members, I am available if you have any further questions. Thank you again for the opportunity to testify about this important issue.