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Sent via Email and via Testimony Submission Form

SENATE JUDICIARY COMMITTEE

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Senator Floyd Prozanski
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Senator Kim Thatcher
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Senate Judiciary Committee
900 Court St. NE
Salem, Oregon 97301

RE: Support for Senate Bill (SB) 1511

Dear Chair Prozanski and Vice Chair Thatcher, and Members of the Senate Judiciary Committee:

We are a group of attorneys and legal staff at Schwabe, Williamson & Wyatt, P.C. As a group, we serve as *pro bono* counsel to different clients who were wrongfully convicted under Oregon's and Louisiana's unconstitutional laws permitting criminal convictions with non-unanimous juries. We write to urge you to pass Senate Bill (SB) 1511 to retroactively apply the constitutional rule from *Ramos v. Louisiana* to all criminal convictions in Oregon resulting from non-unanimous jury verdicts. Oregon must do the right thing as soon as possible to ensure the integrity of our criminal justice system and to provide a remedy for all persons who have been wrongfully convicted under Oregon's unconstitutional and discriminatory system. Please support SB 1511 and do not let people languish in prison without fair constitutional trials.

With the national reckoning on racial discrimination and violence perpetuated against the Black community following the tragic deaths of George Floyd, Breonna Taylor, Ahmaud Arbery, and many others, Schwabe recognized that it had a duty to increase its efforts to address the issues of systemic racism and oppression that the Black community, indigenous people, and other communities of color continue to experience in Oregon and other parts of the United States, including in the criminal justice and court systems. As part of its efforts, Schwabe made

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a commitment as a firm to dedicate at least 50% of our annual *pro bono* hours to racial justice issues.

Among our other *pro bono* work on racial justice issues, Schwabe attorneys and legal staff have partnered with the Lewis & Clark Criminal Justice Reform Clinic in Oregon and the Promise of Justice Initiative in Louisiana to provide *pro bono* representation for defendants who were convicted by unconstitutional non-unanimous juries. This work is critically important and urgent. We understand the racist and xenophobic origins of the non-unanimous jury rules in Oregon and Louisiana. Part of a long and shameful history of racial discrimination, those rules specifically were designed to be a “facially race-neutral” way to lessen the influence of jurors from racial, ethnic, and other minorities. Just as the unconstitutional non-unanimous jury rules were designed to do, those rules have created serious racial disparities in the criminal justice system and have disproportionately impacted Black defendants and other defendants of color.

As members of the bar and legal community, we appreciate the constitutional importance of establishing guilt beyond a reasonable doubt and the jury system. Our clients have been imprisoned—sometimes for life—even though one or more jurors were not persuaded of their guilt. At least 21 Schwabe lawyers have assisted with these cases, and we are deeply committed to obtaining justice for our clients. Attached to this letter is testimony from one of our *pro bono* clients, Eric Deshaunte Russell, who was convicted under these unconstitutional laws.

Our representation of these clients has only deepened our commitment to advocating for reversals and new trials in these cases of unconstitutional convictions. We have observed first-hand the trauma resulting from these unconstitutional convictions—both for our clients and for their families and loved ones. Sentenced to prison based on unconstitutional convictions, many of our clients have missed out on the ability to raise and support their families, care for sick and dying loved ones, and experience important life events like graduations, weddings, and funerals.

The *Ramos* decision gave our clients hope. In *Ramos*, the Supreme Court of the United States held in no uncertain terms that Oregon’s system of allowing non-unanimous convictions was unconstitutional. Our clients have been unfailingly committed to the process of vindicating their rights, often calling about their cases on a weekly basis. So too have their families and loved ones. Many of our lawyers are in regular contact—whether via phone, text message, or emails—with our clients’ parents, grandparents, and children, all of whom have been anxiously awaiting decisions in these post-conviction relief cases.

The excitement and hope that surrounded the *Ramos* decision was crushed by the United States Supreme Court’s ruling in *Edwards v. Vannoy*, which refused to apply *Ramos* retroactively in the context of federal habeas proceedings. Many of our clients had been following the briefing and oral argument in *Edwards* and were anxiously awaiting a decision. In the days following its issuance, our clients reached out with sophisticated questions about how *Edwards* would impact the chances of having their cases reviewed. It was difficult to explain to our clients why—if they had just been tried later, or if the *Ramos* decision had just issued

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earlier—their convictions would be invalidated with a right to a new trial, but they now may be forced to remain in prison with no chance to challenge their unconstitutional convictions.

Doing nothing to address these unconstitutional convictions would be a patent, conspicuous, and wide-reaching injustice. That injustice undermines the integrity of Oregon’s criminal justice system and our community’s faith in that system.

Men and women are sitting in prison, some for decades, despite the fact that one or more of their jurors was not persuaded of their guilt. Oregon’s non-unanimous jury rule disregards the reasonable doubts of those jurors, as it disregards the prosecution’s burden of proof “beyond a reasonable doubt.” That is not how our criminal justice system is intended to function. Oregon has a duty to right this wrong.

We strongly urge the legislature to pass SB 1511 to rectify the harm that has been imparted by these non-unanimous convictions.

Sincerely,

s/Graciela Gomez Cowger
s/Anne E. White
s/Joshua P. Dennis
s/Jay T. Waldron
s/Kelly M. Walsh
s/Lindsay M. Thane
s/Darien Loiselle
s/Amanda T. Gamblin
s/CaroLea W. Casas
s/Mario E. Delegato
s/Samantha MacBeth
s/Sara Sayles
s/Anna C. Laird
s/Kate Acosta
s/Connie Sue M. Martin
s/Andrew J. Lee
s/CaroLea Casas

s/Aukjen Ingraham
s/Sara Kobak
s/Jessica A. Schuh
s/Jason A. Wrubleski
s/Lillian K. Hubbard
s/Bailey M. Oswald
s/Savannah J. Wolfe
s/Connie Sue M. Martin
s/Erin M. Forbes
s/Thomas J. Payne
s/David Hepler
s/David R. Boyajian
s/Alex Bish
s/Darien Loiselle
s/Jay Waldron
s/Lillian K. Hubbard
s/W. Michael Gillette

TESTIMONY OF ERIC DESHAUNTE RUSSELL IN SUPPORT OF SB 1511

(Offered through pro bono counsel at Schwabe, Williamson & Wyatt)

My name is Eric Deshaunte Russell, and I respectfully submit the following testimony in support of SB 1511.

I was convicted on seven criminal counts related to a series of five robberies that occurred between March and June of 2013. No one was harmed as a result of my crimes, and I was acquitted on two of the charges brought against me. My trial was held in Multnomah County in December of 2013. Of the seven charges on which I was convicted, only two of the jury's verdicts were unanimous. On three of non-unanimous verdicts, one juror voted to acquit; on the other two verdicts, two jurors voted to acquit. As a result of those nonunanimous convictions, I was sentenced under Measure 11 to serve 16 years and eight months in prison. I have now served the full sentence for the unanimous convictions, and the remaining 8 years of my sentence is attributable to the non-unanimous convictions.

At my trial, my lawyer did not request a jury instruction requiring the verdicts to be unanimous, and he also didn't object to the verdicts after the jury was polled. My lawyers on appeal also didn't raise the unanimity issue as a grounds for relief, and I didn't have the resources or legal expertise to raise that issue on my *pro se* petition for post-conviction relief ("PCR").

I was ecstatic when I learned about the Supreme Court's decision in *Ramos v. Louisiana* because I knew that it might provide a real opportunity to have my unconstitutional convictions reviewed. I filed a PCR petition based on that decision on June 15, 2020, just two months after it was issued. I worked closely with my pro bono lawyers to prepare and present my case at my PCR trial, which occurred on May 4, 2021, and I attended that hearing by video conference. However, my petition was denied on September 1, 2021. My PCR claims are now on appeal.

All but one of the jurors on my case were white, and the lone Black juror was an immigrant from Africa. I'm familiar with the complex racial dynamics that impact the ability of people from different backgrounds to identify with or understand my experience as Black man in America, and I also understand the racist origins of the old non-unanimous jury rules in Oregon and Louisiana. I want to be clear that I take full ownership of—and have genuine remorse for—my crimes and have done everything in my power to make amends and better myself and those around me. But I do view the systemic inequities that pervade the criminal justice system as having contributed to the ultimate result in my case.

My crime did not occur in a vacuum. Before my arrest, I had struggled with addiction and had little in the way of community or family support because my mom was living in Atlanta at the time. I was on probation for two prior DUIs and had experienced some success in staying sober after receiving in-patient treatment in East Portland. After completing that program, I maintained regular contact with my probation officer and reached out for additional support. But, like many addicts, I experienced a debilitating relapse that ultimately lead to my crime.

I've used my time in prison to address those issues. I understand that my addictive behavior contributed to my downward spiral, and I've done my best to recondition myself and

acknowledge and treat that condition. I attend narcotics anonymous (“NA”) regularly, which has led to a deeper understanding of my addictive personality and provided the tools I need to deal with triggers and life stress in a positive and productive way. The more formal treatment opportunities available to me have been somewhat limited because I was sentenced under Measure 11. But I knew I needed help dealing with my issues and have taken advantage of multiple services and programs, even though I had little external incentive to do so, given the limited opportunities for early release on Measure 11 sentences. I realize that change comes from within, and I used these opportunities to change my thought patterns and behavior in a positive way.

The most impactful of those programs has been my work with Getting Out By Going In (“GOGI”), which delivers evidence-based prison programming geared toward helping inmates grow individually and create a positive force within their communities. As part of that program, I attend group sessions with other inmates where we engage in deep conversations about our big picture goals and more menial every day experiences and challenges. Participating in GOGI has been transformative for me and has helped me to become a better person and develop the tools necessary to deal with my current challenges, as well as lingering issues from my childhood and early adult experiences. I’ve also participated in Toastmasters and taken classes through the University of Oregon’s Inside Out Program. My favorite classes have been focused on the restorative justice and the art of communication. I also spent many years working at the call center at Snake River to remain engaged, build the interpersonal and occupational skills I’ll need upon release, and make a positive contribution to my current environment. I was recently transferred to Oregon State Correctional Institution in order to enroll at Corban University, a Christina-based college, where ultimately I will be able to earn my Bachelor’s degree.

I’ve done my best to use my time in prison wisely and to devote myself to making positive change. I’ve developed a renewed sense of purpose and am confident that I am a good person who can contribute to society. Although I have 8 years remaining on the sentence for my non-unanimous convictions, I’ve already mapped out a detailed plan for my release that includes family, professional, and community-service oriented goals. My primary concern is being a good father to my three boys, Christian, Jarrell, and Jabari. I have created a business proposal to start a janitorial service company to support them financially upon my release, and I eventually hope to open a barber shop. I also plan to regularly attend NA meetings and church, and I’m devoted to doing volunteer work in my community. I very much look forward to having the opportunity to make a difference for others and to make something of myself. I want to help people avoid going down the road that lead to my incarceration. If I could just make a difference in one person’s life, that would be my goal.

The biggest hardship in being incarcerated for all this time has been missing out on the opportunity to be a positive influence for Christian, Jarrell, and Jabari. When I was locked up, Christian was 10, Jarrell was 3 or 4, and Jabari was only six-months old. Christian now lives with my mother in Atlanta, and I’m grateful that we’ve been able to maintain regular contact throughout my prison term. Christian will graduate from high school this year, and I would give anything to see him walk across the stage. He plans to go to college the following year. I know he is just about to begin really experiencing life, and I want to be there for him. I understand the struggles that he will go through and the questions that he will have, and I’d love to help him avoid mistakes like the ones I made as a young man. I value our current relationship, but it’s also

difficult to have real conversations over the phone, especially with a teenager dealing with school, sports, and girls. I'm confident in his ability to thrive, but I know that he would benefit from a more meaningful fatherly presence in his life.

My ability to foster a close relationship with my younger sons, Jarrell and Jabari, has been more difficult. Jabari turned 9 in November, and Jarrell is 12. They live with their mother in Portland, which is an 8-hour drive from Snake River, where I was housed for the majority of my incarceration. Early on, we were able to maintain regular contact over the phone and through video calls, but in the last year and a half, their mother has been less responsive to my efforts to contact them. Sometimes I go for several months without hearing their voices, which is devastating, but I do write them letters regularly with the hope that their mother will share them.

It would be a huge blessing to have an opportunity to help raise my boys and to be in their lives in a more meaningful way during their formidable years. They have never really had the benefit of a present father figure, and they deserve that more than anything. When it comes to parenting, I'm committed to establishing an open line of communication with Jarrell and Jabari's mom. In the past, we haven't always seen eye to eye, but I now have the communication skills necessary to develop a parenting plan that will give the boys the support they need.

I'm also very close with my mother, even though she lives in Atlanta. We speak every week, and those conversations almost always center on my plans to start a new life on the outside. Now that she's getting older, it's very important to me to be able to support her, just as she's provided a steadfast guidepost throughout my life, including during my time in prison. My mom is proud of the work I've done to better myself in prison, and we were both very excited about my PCR case. She was thrilled when she learned that I might have a viable opportunity to have my unconstitutional verdicts reviewed based on the *Ramos* decision, and we were both devastated when my petition was denied.

I acknowledge that my crime was the result of my own personal choices and recognize that the first 7.5 years of my sentence were related to legitimate unanimous verdicts. That 7.5 years was enough time to allow me to address the issues that lead to my crime and to develop the skills necessary to succeed on the outside. The remaining 8 years of my sentence are attributable to nonunanimous convictions that were obtained in violation of my constitutional rights. But I may never have an opportunity to have that part of my sentence reviewed—not because of anything I've done, but simply because my conviction occurred in 2013 rather than 2020. And if I'm deprived of a meaningful path to have my sentence revisited, I will miss out on even more of my boys' lives, I won't be able to support my mom as she ages, and my ability to make something of myself upon release will be delayed for nearly a decade.

I hope you will consider my experience and, ultimately, that you will support SB 1511.