

IN THE SUPREME COURT
STATE OF LOUISIANA

Docket number 2020-KP-01411¹

**STATE OF LOUISIANA, *EX REL*
EYBA BROWN
V.
MARCUS MEYERS, WARDEN
RAYMOND LABORDE CORRECTIONAL CENTER**

Writ of Certiorari and/or Review from
The First Circuit Court of Appeal, 2020-KW-0917

From the 32nd Judicial District Court
Parish of Terrebonne, State of Louisiana
295,969
Hon. Judge John R. Walker

ORIGINAL APPLICATION FOR WRIT OF REVIEW

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF THE LAW FIRM ANTIRACISM ALLIANCE
AND THOMAS AIELLO, PHD IN SUPPORT OF APPLICATION FOR WRIT OF *CERTIORARI* OR
REVIEW ON BEHALF OF THE STATE OF LOUISIANA, *EX REL* EYBA BROWN**

NOW INTO COURT, through undersigned counsel, comes the LAW FIRM ANTIRACISM ALLIANCE ("LFAA") and THOMAS AIELLO, PHD, who respectfully move this Honorable Court for leave of court to file the *Amici Curiae* brief attached as Exhibit B to this motion in support of the appeal filed in this case, by or on behalf of the *State of Louisiana, ex rel. Eyba Brown*.

¹ Movants respectfully request that this Motion for Leave be deemed filed and considered in all cases identified on Exhibit "A" to this Motion; so as not to overburden the Clerk's office, it is only being filed once.

I. STATEMENT OF INTEREST OF *AMICI CURIAE*

The Law Firm Antiracism Alliance (“LFAA”) is a 501(c)(3) non-profit, nonpartisan U.S. and international alliance of nearly 300 law firms (with over 160,000 lawyers and professionals, and with twelve Alliance Firms that have offices in Louisiana). The LFAA is dedicated to analyzing our legal system and advocating to change laws and policies that encourage, perpetuate or allow racial injustice. Formed in the aftermath of George Floyd’s murder, the LFAA works with legal services organizations to identify and dismantle structural and systemic racism in the law. In addition to focusing on a wide variety of racial equity issues—including voting rights, access to justice, education, and criminal legal reform—numerous LFAA Alliance Firms from all over the United States have filed post-conviction petitions on behalf of clients who were convicted by non-unanimous juries in Louisiana.

The LFAA’s expansive engagement and involvement gives the LFAA a unique perspective on the over 100 years of implementation of non-unanimous juries across state district court jurisdictions and the cumulative impact of non-unanimous juries on the state’s citizenry and their communities. As required by Louisiana Supreme Court Rule VII (Section 12(3)), the LFAA’s perspective on retroactive application of the right to a unanimous jury verdict will be particularly important for the Court to consider given the LFAA’s nation-wide reach and representation of the private law firm bar across the United States and abroad. One of the particular focuses of the LFAA is to analyze and explain how explicitly racist policy and legal rules in our history led to unjust outcomes for African Americans. But it is not enough to simply announce that our history was deeply infected by racism. In order to truly move forward, and in order to engender broad confidence in the fair and equitable application of the law, it is absolutely necessary to deliver justice to the victims of racism. Providing retroactive relief to those convicted by unconstitutional, non-unanimous juries is precisely the kind of result that the LFAA, and its nearly 300 Alliance Firms are working to promote.

Thomas Aiello is a professor of history and Africana studies at Valdosta State University. He

received his PhD from the University of Arkansas in 2007. The bulk of his courses relate to all measures of African American history, from early slavery to Black Power. His research interests are broader, covering twentieth century United States cultural and intellectual history and twentieth century African American cultural and intellectual history in a variety of different settings. Professor Aiello is the author of the leading academic examination of Louisiana's non-unanimous jury system. (See *Jim Crow's Last Stand: Nonunanimous Criminal Jury Verdicts In Louisiana* (Baton Rouge: Louisiana State University Press, 2015). Professor Aiello's research revealed the racist roots of the non-unanimous jury system. Moreover, in the years following the release of *Jim Crow's Last Stand*, Professor Aiello has continued studying the non-unanimous jury system, and pursuant to Louisiana Supreme Court Rule VII (Section 12(2)), his explanation of the relevant history constitutes a matter of fact that might otherwise escape the Court's attention. In particular, in order to fully and fairly assess the retroactivity of the right to a unanimous jury, the Court needs to understand the relevant history from Professor Aiello about how the Louisiana Constitution of 1898 was the culmination of the full turn from the principles of Reconstruction in Louisiana, and how the convention's enactment of non-unanimous juries was aimed at codifying one of the state's original attempts at re-enslaving its freed African-American population.

II. ARGUMENTS CONTRIBUTED BY *AMICI CURIAE*

Undersigned counsel for LFAA and Thomas Aiello, PhD suggest that *Amici Curiae* have arguments that are not duplicative of those made in any of the briefs already filed.

Amici Curiae respectfully submit that their arguments will assist this Honorable Court in considering the historical context within which the laws at issue were enacted, and the meaning of adopting a new standard for retroactive application of the right to a unanimous jury verdict. Amici believe that, in order to ensure the constitutional rights of hundreds of people in Louisiana are respected, this Court should adopt a new rule for retroactive application of the right set out in *Ramos v. Louisiana*. Amici contextualize Louisiana's 1898 non-unanimous jury law by explaining its racist history and the lasting,

pernicious effects it continues to have on Louisiana's citizens today as reflected in the more than 1,500 Louisianians incarcerated after being convicted by a non-unanimous jury. This is particularly compelling in that more than 120 writ petitions are before this Court for relief, with nearly nine hundred cases currently proceeding in lower courts. This Court should adopt a new rule for retroactive application, as made possible by *Danforth v. Minnesota*. Amici further provide a statistical analysis of the disparities in conviction accuracy between unanimous and non-unanimous juries—establishing that the right to a unanimous jury verdict is one of fundamental fairness and accuracy, and therefore a “watershed” rule.

This Court now has an opportunity to remedy the effects of intentional racial animus so entrenched in Louisiana's criminal justice system. This Court should retroactively apply the right to a unanimous jury, thereby allowing hundreds of people deprived of their constitutional right a chance to seek judicial relief.

WHEREFORE, for the foregoing reasons, *Amici Curiae* respectfully request that the Court grant it leave to file the attached *Amici Curiae* brief in this proceeding.

Respectfully submitted,



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*Attorneys for Amici Curiae Law Firm
Antiracism Alliance and Thomas Aiello, PhD.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Motion for Leave to File *Amici Curiae* Brief of Law Firm Antiracism Alliance and Thomas Aiello, PhD, in Support of Application for Writ of *Certiorari* or Review on Behalf of the State of Louisiana, *ex rel.* Eyba Brown, has been served upon all counsel of record, all of whom are identified, as follows:

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by placing a copy of same in the United States Mail, properly addressed and postage pre-paid,
on this 23rd day of September, 2021.



David F. Bienvenu

EXHIBIT "A"

Eyba Brown	2020-KP-01411	Allen Nguyen	2021-KP-1041
Arlen Brown	2021-KP-734	Michael Glaub	2021-KP-1042
Eddie Robert Lane Jr.	2021-KP-748	Derrick Francois	2021-KP-1043
Steven Tauzin	2021-KP-769	Raymond Melancon	2021-KP-1045
Calvin Mitchell	2021-KP-778	Samuel Richardson	2021-KP-1046
Alvin T. Welch	2021-KP-834	Donald Angelo Logan	2021-KP-1047
Lionel Edwards	2021-KP-879	Wade Tyler	2021-KP-1048
Ross Kelly	2021-KP-915	Ezekiel Toussaint	2021-KP-1049
April George	2021-KP-916	Jerry Magee	2021-KP-1050
James Darby	2021-KP-920	Richard Ray	2021-KP-1053
Marvin Maurice Wallace	2021-KP-959	Luhron Gorman	2021-KP-1054
Dessie Rae Tucker	2021-KP-00963	Glen Barbarin	2021-KP-1055
Ozaki Trice	2021-KP-964	Stanley Stirgus	2021-KP-1059
German Hernandez Zuniga	2021-KP-969	Jeffrey C. Ham	2021-KP-1064
Randy Kaysen	2021-KP-974	Javontae Simmons	2021-KP-1064
Willie John Franklin	2021-KP-978	Wesley Young	2021-KP-1069
Jose Manuel Licon Rivera	2021-KP-989	Ronald Fairman Jr	2021-KP-1072
Rodney Mason	2021-KP-991	Timothy Turner	2021-KP-1076
Michael Gaddis	2021-KP-996	Luis Rodriguez	2021-KP-1080
Javar Johnson	2021-KP-999	Kedrick Anderson	2021-KP-1083
Herman Eisbruckner	2021-KP-1000	Eddy Dominguez	2021-KP-1084
Carey Garrison	2021-KP-1003	Robert Guccione	2021-KP-1087
Derrick Nellon	2021-KP-1010	Kareem Price	2021-KP-1088
Adolphus Green Duncan	2021-KP-1012	Robbreion T. Green	2021-KP-1089
Joseph Humbles	2021-KP-1013	Jerome Duplessis	2021-KP-1091
Jonathan Johnson	2021-KP-1014	Carlos Hernandez	2021-KP-1092
Ellzey Crossley	2021-KP-1015	Kenneth Hill	2021-KP-1093
Nakeith Sparkman	2021-KP-1019	Jamario Alexander	2021-KP-1094
Troy Kelly	2021-KP-1020	Darnell Turner	2021-KP-1096
Travis Carter	2021-KP-1021	Akando Ducksworth	2021-KP-1097
Frederick Patterson	2021-KP-1023	David Lapell	2021-KP-1102
Trent Lyons	2021-KP-1026	John McGinnis	2021-KP-1104
Aaron Wilford	2021-KP-1028	Sean Griffin	2021-KP-1111
Kevin Johnson	2021-KP-1034	Benjamin Bruce	2021-KP-1115
Roland Dibartolo	2021-KP-1035	Edwin Codrington	2021-KP-1116
Henry Isaac, Jr.	2021-KP-1036	Charles Allen	2021-KP-1118
Michael Videau	2021-KP-1039	Sean Smith	2021-KP-1121
Joshua Burse	2021-KP-1040	Hampton Robinson III	2021-KP-1123
		Dondi Chism	2021-KP-1130
		Barry Johnson	2021-KP-1131
		Kenneth Simmons	2021-KP-1132

EXHIBIT "A"

Eddie L Jackson Jr	2021-KP-1133
Cody L Wright	2021-KP-1137
Cleveland Lawson	2021-KP-1138
Manuel Dale Plaisance	2021-KP-1140
Brandon Earls	2021-KP-1143
Darius Jones	2021-KP-1146
Ronnell Anderson	2021-KP-1154
Lawrence W Bruce	2021-KP-1170
Emile Pierce	2021-KP-1173
Leonard Graves	2021-KP-1176
Cody Vedol	2021-KP-1182
Carlos Zaldivas	2021-KP-1183
Arthur Thomas	2021-KP-1184
Glen Lampkin	2021-KP-1185
Carlos Berroa Reyes	2021-KP-1186
Honore Estes	2021-KP-1187
Theodore Niles Arita	2021-KP-1189
Damion Savage	2021-KP-1190
Nolan Grant	2021-KP-1191
Mark Cambrice	2021-KP-1193
Abron Mickel	2021-KP-1197
Prince Franklin	2021-KP-1202
Andrel Johnson	2021-KP-1205
Frederick Leday	2021-KP-1210
Bennie Bannister	2021-KP-1212
Rajel Johnson	2021-KP-1220
Charles E Daniels	2021-KP-1221
Levell Johnson	2021-KP-1224
Eugene Fredericks	2021-KP-1244
Rigoberto Funes	2021-KP-1261
Howard Jackson	2021-KP-1304
Surge Sherman	2021-KP-1314