SUPREME COURT OF LOUISIANA
No. 2021-KP-01893

STATE OF LOUISIANA

v.

REGINALD REDDICK

Writ of Certiorari and/or Review from
The Court of Appeal, Fourth Circuit, Case No. 2021-K-0589
From the Twenty-Fifth Judicial District Court,
Parish of Plaquemines, State of Louisiana
No. 93-03922
Hon. Michael D. Clement, Presiding

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*, THE JUROR PROJECT, IN SUPPORT OF RESPONDENT, REGINALD REDDICK

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

COMES NOW, The Juror Project, through undersigned counsel, who respectfully requests, pursuant to Rule VII, Section 12 of the Rules of the Supreme Court of Louisiana, that this Honorable Court grant The Juror Project leave of court to file the attached Brief of *Amicus Curiae*.

I. Statement of Interest of *Amicus Curiae*

The Juror Project is a Louisiana nonprofit corporation that advocates for representative juries, including diversity of race, thought, experience, and socioeconomic background, as an imperative to achieving fair outcomes in the criminal justice system. The Juror Project aims to ensure that juries better represent the American population through community and public education about jury eligibility, the importance of jury service, and the discriminatory practices of some prosecutors.

This Honorable Court's decision whether to recognize the ongoing validity of past non-unanimous convictions in light of *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), involves not only the rights of criminal *defendants*, but also the interests of *jurors* whose votes were discounted and disregarded in those cases. The Juror Project thus has a "substantial, legitimate interests that will likely be affected by the outcome of the case" and submits that the unique concerns and perspectives of disenfranchised jurors may "not be adequately protected by those already party to the case." *See* Rule VII, § 12.

II. Arguments Contributed by *Amicus Curiae*

The Juror Project additionally submits that its unique perspective will highlight "matters of fact or law that might otherwise escape the court's attention." *Id.* Specifically, the attached brief focuses on the importance of this case for those jurors—particularly minority jurors—who

historically have been excluded and whose views have been deliberately discounted under the non-unanimous jury regime.

WHEREFORE, The Juror Project respectfully requests that this Court grant it leave to file a Brief of *Amicus Curiae* in support of respondent Reginald Reddick in this case.

Respectfully submitted,

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Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to File Brief of Amicus Curiae, The Juror Project, in Support of Respondent Reginald Reddick has been served by mail upon the following parties:

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Date: May 2, 2022

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ORDER

Upon consideration of the foregoing *Motion for Leave to File Brief of* Amicus Curiae, the motion is granted.

DONE, this _____ day of _____, 2022.

_____
Justice, Louisiana Supreme Court

SUPREME COURT OF LOUISIANA
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

HISTORICAL NEWSPAPERS

SCHOLARLY ARTICLES

OTHER AUTHORITIES

SUMMARY OF ARGUMENT

The retroactivity question presented in this case is unique insofar it implicates not only the rights of Louisiana criminal defendants, but also the rights of Louisiana jurors. Unconstitutional non-unanimous verdicts were first authorized in Louisiana not only to weaken "the grand bulwark of [our] liberties" for defendants, *see Strauder v. West Virginia*, 100 U.S. 303, 308 (1880), but also for a related invidious purpose: to minimize the influence of Black jurors. For over a century, the law worked precisely as it was intended. As the U.S. Supreme Court has recognized, adopting non-unanimous verdicts "ensure[d] that African-American juror service would be meaningless." *Ramos*, 140 S. Ct. 1390, 1394 (2020) (quoting *State v. Maxie*, No. 13-CR-72522 (La. 11th Jud. Dist., Oct. 11, 2018)). Until the abolition of non-unanimous verdicts in recent years, the law continued to work as it was initially designed, disproportionately silencing the views of minority jurors.

As a result, hundreds of Louisiana convictions are tainted by a legacy of discrimination against Black jurors. This is a significant problem that the Louisiana courts have a special responsibility to redress, even if 28 U.S.C. § 2254 does not permit a federal district court to do so in the context of federal habeas review. *See Buck v. Davis*, 137 S. Ct. 759, 778 (2017) (recognizing that racial bias is "odious in all aspects," but "especially pernicious in the administration of justice").

In deciding this case, the Court should take seriously the interests of silenced jurors, and it should rule that the "empty votes" cast by dissenting Louisiana jurors should finally be counted. *See* Kim Taylor-Thompson, *Empty Votes in Jury Deliberations*, 113 Harv. L. Rev. 1261 (2000). Recognizing the invalidity of criminal convictions obtained by unconstitutional non-unanimous verdicts is the only way to render the participation and service of once-silenced jurors

"meaningful" in the eyes of the law. *Johnson v. Louisiana*, 406 U.S. 356, 397 (1972) (Stewart, J., dissenting) (noting non-unanimity "eliminat[es] the one rule that can ensure that such participation [by historically excluded groups] will be meaningful."); *accord Ramos*, 140 S. Ct. at 1493 (observing adoption of non-unanimity rendered Black jury service "meaningless") (citation and internal quotation marks omitted).

ARGUMENT

I. Louisiana's adoption of non-unanimous verdicts was designed to silence the voices of Black jurors.

The U.S. Supreme Court has highlighted the racist origins of Louisiana's non-unanimous verdict system, and the importance of that history in assessing the law's validity. *Ramos*, 140 S. Ct. at 1394-95; *id.* at 1408 (Sotomayor, concurring); *id.* at 1417-18 (Kavanaugh, J., concurring in part). But the particular way in which the law targeted and impacted Black *jurors* warrants special emphasis.

In both the North and the South, "[p]utting blacks on juries was a radical idea," at least until shortly before the Civil War. James Forman, Jr., *Juries and Race in the Nineteenth Century*, 113 Yale L.J. 895, 910 (2004). As Congress debated the Thirteenth Amendment, however, Black Louisianans began publicly demanding (as they would for the next three decades) a critical component of full citizenship: the ability to serve as jurors on equal footing with white citizens. Cong. Globe, 38th Cong., 2d Sess. 289 (1865) (statement of Rep. Kelley) (quoting *Is There Any Justice for the Black?*, New Orleans Trib., Dec. 15, 1864). The "jury-box," no less than the "ballot-box" and "cartridge-box," was essential to the freedman becoming a citizen. Frederick Douglas, Life and Times of Frederick Douglas 420 (1882).

Congress and the Court acted assertively, at least initially, to ensure the participation of Black jurors in state court proceedings. In 1875, Congress made it a federal crime for state officials to disqualify jurors "on account of race, color or previous condition of servitude." Civil Rights Act of 1875, ch. 114, 28 Stat. 335, 335-37. While the U.S. Supreme Court struck down other parts of the Act, *see Civil Rights Cases*, 109 U.S. 3 (1883), it upheld the jury discrimination provisions, *Strauder v. West Virginia*, 100 U.S. 303 (1880); *Ex Parte Virginia*, 100 U.S. 339 (1880). Black jurors served in Louisiana throughout Reconstruction and beyond, affirming the

citizenship of those called to serve. *See, e.g.*, *Personal Mention*, Weekly Pelican (New Orleans, La.), Apr. 4, 1887, at 1 (publicizing names of Black community leaders empaneled as jurors); *see also* Michael Klarman, From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality 39 (2004) (discussing Black jury service "as a form of officeholding").

Black jury participation declined after Reconstruction, but, owing to the traditional requirement of unanimity, even limited Black participation posed a problem for many whites. Indeed, it is notable that the first known proposal for a non-unanimous jury in Louisiana came in response to the 1893 lynching of three Black men awaiting trial. *See* Thomas Ward Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593, 1612 (2018). A masked mob hanged two of the men and placed a rope around the neck of the third, "his dragged body 'bump[ing] into stumps, fall[ing] into ditches and roll[ing] over and over in the muddy road.'" *Id.* at 1613. While local newspapers expressed muted disapproval of such forms of extrajudicial violence, the *Daily Picayune* also suggested that such violence was the result of juries. Specifically, the unanimity requirement meant that "too often" juries would "not wish to punish criminals" through formal channels, and thus, a non-unanimous jury would make a preferable substitute to more extreme forms of racial violence. *Put a Stop to Bulldozing*, Daily Picayune (New Orleans, La.), Feb. 1, 1893, at 4.

In causally linking the unanimity requirement to lynching, Louisiana newspapers were not alone. Newspapers across the South similarly argued that the failure to convict defendants due to the unanimity requirement gave rise to lynchings, and thus, it was preferable to do away with the unanimity requirement altogether. *See The Remedy for Lynching*, Daily Com. Herald (Vicksburg, Miss.), Sept. 11, 1894, at 2 ("The first and most important thing to do, is to reform our weak and contemptible jury system. . . . [I]f the jury system be so reformed that a majority

may bring in a verdict,. . . lynching will be absolutely prevented."); *The Georgia Baptists on Lynchings and Crimes*, Semi-Weekly Messenger (Wilmington, N.C.), Apr. 14, 1899, at 2 ("The jury system is a dead failure. . . . [T]he one-man power is permitted to come in and to set aside the decisions of courts. . . . Hence, the increase in lynchings."). Some newspapers were more explicit in describing the problem with integrated juries: "[T]he jury system, with juries chosen from both races and unanimous verdicts required, is a failure." *Jury Trials*, Daily Com. Herald (Vicksburg, Miss.), Apr. 3, 1887 at 4. *See also Criticised as to the Jury System*, Semi-Weekly Messenger (Wilmington, N.C.), Aug. 4, 1899, at 4 ("You can put one negro on a jury in such a case and he will tie the jury every time and prevent a verdict. . . . Why not have nine of the twelve agreed rather than all?").

Black Louisianans fought back against efforts to limit their participation in the jury system. In 1895, the *Comité des Citoyens*, an Afro-Creole civil rights organization based in New Orleans, declared "THE JIM CROW JURY SHOULD BE FOUGHT TO THE DEATH" in fundraising for a campaign to assist a Black defendant accused of murder. *Citizens' Committee*, Daily Crusader (New Orleans, La.), Feb. 14, 1895 (Tulane University, Amistad Research Center, Charles B. Rousseve Papers, 1842-1994, New Orleans, La.). The Comité was again at the forefront of activist efforts in 1897, when all prospective Black jurors were dismissed from a high-profile federal criminal trial in New Orleans. Their protest landed before the U.S. Congress on the eve of the Constitutional Convention in Louisiana. *See* Resolution: Service on Juries in Louisiana, 31 Cong. Rec. 1019 (Jan. 26, 1898).

As the U.S. Supreme Court has recognized, Louisiana's abandonment of unanimity was designed to resolve the dilemma posed by continued (albeit limited) Black participation in Louisiana juries. The framers of the 1898 Constitution knew they could not put their racial

exclusion in explicit, race-conscious terms, so "the delegates sought to undermine African-American participation on juries in another way." *Ramos*, 140 S. Ct. at 1394. As they candidly explained with respect to the new Constitution's suffrage provision:

> [W]e have not drafted the exact Constitution that we should like to have drafted; otherwise we should have inscribed in it, if I know the popular sentiment of this State, universal white manhood suffrage, and the exclusion from the suffrage of every man with a trace of African blood in his veins. We could not do that, on account of the fifteenth amendment to the Constitution of the United States, and, therefore, we did what has been [required by] the Supreme Court of the United States.

See Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana 380 (H. Hearsey ed. 1898). Louisiana's adoption of non-unanimous verdicts in criminal trials effectively achieved the same result when it came to jury service: using colorblind language, Louisiana had nevertheless "ensure[d] that African-American juror service would be meaningless." *Ramos*, 140 S. Ct. at 1394 (quoting *State v. Maxie*, No. 13-CR-72522 (La. 11th Jud. Dist., Oct. 11, 2018)).

Only one aspect of the U.S. Supreme Court's historical overview in *Ramos* was inaccurate: it is simply untrue (as Justice Alito argued in dissent) that "no mention was made of race" during the Louisiana Constitutional Convention of 1973 when the non-unanimous verdict provision was renewed. *Ramos*, 140 S. Ct. at 1426 (Alito, J., dissenting) (citation and internal quotation marks omitted). To the contrary, during the very short debate on the non-unanimity provision, race figured prominently. As Vice Chairman of the Convention Chris J. Roy explained, the updated provision was an effort to ameliorate (but only partially) the discriminatory impact of the law:

> [I]f the rest of the United States can require unanimous verdicts . . . why can't we in Louisiana require at least five-sixths verdicts to convict? . . . [G]enerally ugly, poor, illiterate, and mostly minority groups are those people who are convicted by

> juries . . . . [J]uries just generally don't convict nice-looking . . . people like all you folks here in this convention.

7 Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts 1184-85 (La. Constitutional Convention Records Comm'n 1977). But "[t]aking cognizance of discrimination and not curing it, cannot, as the State argues, cure the policy of its discrimination, either in intent or in impact . . . . The [post-1973] scheme continue[d] to perpetuate the discrimination intended and adopted in 1898." *State v. Maxie*, No. 13-CR-72522 (La. 11th Jud. Dist., Oct. 11, 2018).

II. Louisiana's adoption of non-unanimous verdicts succeeded in silencing the voices of Black jurors.

The sordid history of Louisiana's non-unanimous jury provision and the substantial racial disparities in the casting of "empty votes" (i.e., the dissenting ballots rendered irrelevant under Louisiana's prior law) taint the convictions of those found guilty by non-unanimous juries. To be clear, these verdicts would be tainted regardless of the discriminatory impact on minority jurors, insofar as they were obtained in violation of the Sixth Amendment's unanimity requirement. But there is an additional reason for this Court to view such verdicts skeptically. While the discriminatory *intent* of the law has been a matter of public record for decades, only recently have researchers been able to establish that the discriminatory *impact* on minority jurors has continued to the present day.

As established by the Pulitzer Prize-winning series in the *Advocate*, Black jurors were far more likely than their white counterparts to cast votes that are essentially uncounted under a non-unanimous jury regime, and Black defendants were far likelier than their white counterparts to be convicted by non-unanimous votes. *See* Gordon Russell, *Tilting the scales: In Louisiana, is it truly a 'jury of one's peers' when race matters?*, The Advocate (New Orleans, La.), Apr. 1,

2018; *see also* Frampton, *Jim Crow Jury*, at 1622. Out of 199 nonunanimous verdicts analyzed in *The Advocate*'s dataset, white jurors cast 64.1% of the total votes, and Black jurors cast 31.3% of the total votes. Frampton, *Jim Crow Jury*, at 1622. If race were not correlated to the juror's vote, the racial distribution of cast votes would be roughly the same as the share of a racial group's total vote, i.e., white jurors should cast around 64% of the total "guilty" votes and also 64% of the total "not guilty votes." *Id.* But white jurors were responsible for casting just 43.4% of the "not guilty" votes, and Black jurors, who made up less than a third of the pool of total jurors, cast the majority of "not guilty" votes (51.2%). *Id.* at 1636-37; *see also id.* at 1637 ("Put slightly differently, compared to their white counterparts, black jurors were about 2.5 times as likely to be casting "empty votes" to acquit at the close of deliberations."); *State v. Maxie*, No. 13-CR-72522 (La. 11th Jud. Dist., Oct. 11, 2018 ("[T]he comparative disparities are statistically significant and startling[;] African-American jurors are casting empty votes 64 percent above the expected outcome[.]").

The discriminatory impact on Black defendants and Black jurors animated the 2018 effort to amend the Louisiana Constitution to eliminate non-unanimous verdicts. On the floor of the Louisiana Senate, Sen. Dan Claitor urged his white colleagues to consider not only whether "10 of 12 in a jury is good enough for those people . . . good enough . . . for African-American[s] . . . good enough for Hispanics," but also whether it was "good enough for your children . . . your wife . . . your neighbor?" S.B. 243, 2018 Reg. Sess., Debate on Final Passage (Apr. 4, 2018) (Statement of Sen. Claitor). Even opponents of the return to unanimity acknowledged the racist history behind the abandonment of unanimity. *See How Louisiana's Unanimous Jury Proposal Got on the Ballot*, WWNO.org, Oct. 23, 2018, available at https://www.wwno.org/politics/2018-10-23/how-louisianas-unanimous-jury-proposal-got-on-the-ballot. In November 2018, Louisiana

voters overwhelmingly approved the measure, with 64% of Louisianians voting in favor of unanimity, including the majority of voters in 61 out of 64 parishes. *See* John Simerman and Gordon Russell, *Louisiana voters scrap Jim Crow-era split jury law; unanimous verdicts to be required,* The Advocate (Nov. 6, 2018).

While the voters' revision to La. Const. art. I, § 17 applies only prospectively, an overwhelming majority of Louisianans demonstrated support for eradicating the continuing, illegitimate vestiges of racism ensconced within Louisiana's administration of criminal justice. This Court has an important interest in doing the same with respect to the unconstitutional verdicts returned by non-unanimous juries in years past.

III. By (finally) counting the "empty votes" of dissenting jurors, Louisiana courts can restore legitimacy to its criminal justice system

A central function of the jury in a pluralistic democracy is to allow members of different communities a voice in articulating public values; the exclusion of classes of citizens from a jury therefore plays a particularly sinister role in damaging the law in the eyes of the very citizenry upon whom the law's legitimacy depends. *Cf. Carter v. Jury Comm'n*, 396 U.S. 320, 330 (1970) (noting that racial exclusion "contravenes the very idea of a jury—'a body truly representative of the community'"). The historical record makes clear that the very purpose of Louisiana's initial abandonment of unanimity was to isolate and marginalize Black jurors and render their votes essentially void. The best available statistics show that the framers of non-unanimity in Louisiana in 1898 succeeded in this goal until well into the twenty-first century. The discriminatory purpose and discriminatory effect of the non-unanimity rule in Louisiana casts a pall over the convictions of those still incarcerated today based on non-unanimous verdicts.

Such a result has damaged and will continue to damage the legitimacy of Louisiana justice in the eyes of the public. By virtue of its representation of the people, which it embodies,

the jury is empowered to pronounce public values and enforce public norms—it is this very representative power that gives the jury its legitimacy and ensures that a defendant's liberty is entrusted to a properly represented collection of the public who are in turn assigned the powerful role of applying the law. *See* Nancy S. Marder*, Beyond Gender: Peremptory Challenges and the Roles of the Jury*, 73 Tex. L. Rev. 1041, 1056-59 (1995). By ensuring that the accused is entitled to a jury made up of his peers, the jury serves as a fundamental guarantor of liberty within the legal system. *See* Letter from Thomas Jefferson to the Abbé Arnoux (July 19, 1789), in *The Complete Bill of Rights* 595, 595-96 (Neil H. Cogan ed., 1997) ("[I]n America . . . it is necessary to introduce people into every department of government as far as they are capable of exercising it . . . . Were I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department, I would say it is better to leave them out of the legislative.").

The Supreme Court has long recognized that both the actual and *perceived* fairness of the jury is vital to the principles of impartial justice. The jury system is "dependent on the public's trust." *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855, 860 (2017); *see also id.* at 869 (underscoring importance of addressing racial bias in the jury system as "necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right."). The jury itself is also what maintains "public confidence in the fairness of our system of justice." *Batson v. Kentucky*, 476 U.S. 79, 87 (1986). Bias in the jury selection process "invites cynicism respecting the jury's neutrality and its obligation to adhere to the law." *Powers v. Ohio*, 499 U.S. 400, 412 (1991). Such bias also "create[s] the impression that the judicial system has acquiesced in suppressing full participation by one [group]," thus stacking the deck "in favor of one side." *J.E.B. v. Alabama* ex rel. *T.B.*, 511 U.S. 127, 140 (1994). The Supreme

Court's pronouncements on bias within the jury selection process and the resulting harm to legitimacy apply just as fully in the non-unanimous verdict context.

Decades of scholarship has similarly confirmed that unrepresentative juries "threaten the public's faith in the . . . legal system and its outcomes." Leslie Ellis & Shari Seidman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*, 78 Chi.-Kent L. Rev. 1033, 1038 (2003). Put simply, social science research demonstrates that when people view the administration of justice within the jury system as procedurally unfair, their negative assessment of that procedure weighs heavily in their determination of whether a decision is legitimate, even if they agree with the substantive result. *Id.*

Ultimately, then, this case presents the question whether Louisiana courts will continue to recognize the validity of convictions obtained (1) in violation of the Sixth Amendment, and (2) under a legal regime calibrated to silence the voices of Black jurors in Louisiana. The U.S. Supreme Court's § 2254 retroactivity analysis in *Edwards v. Vannoy*, 141 S. Ct. 1547 (2021), makes no attempt to resolve the question whether this Court should revisit these convictions; rules "tailored to the unique context of federal habeas" have "no bearing on whether States could provide broader relief." *Danforth v. Minnesota*, 552 U.S. 264, 277 (2008) (holding that *Teague* does not constrain the authority of state courts to give broader effect to new rules of criminal procedure). This case illustrates the soundness of this principle: the federal government, in contrast to the State of Louisiana, may have no special interest or concern for matters that may be of special importance to state courts. Given Louisiana's special status as one of only two states operating under a non-unanimity regime, and the unique history giving rise to non-unanimous verdicts in Louisiana, the retroactivity of *Ramos* presents exactly the types of concerns contemplated by *Danforth*.

Only by belatedly recognizing the interests of marginalized jurors—those whose "empty votes," to this day, remain uncounted—can this Court repair the harm that has been done. As Justice Gorsuch wrote in *Ramos*:

> On what ground would anyone have us leave Mr. Ramos in prison for the rest of his life? Not a single Member of this Court is prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment. . . . In the end, the best anyone can seem to muster against Mr. Ramos is that, if we dared to admit in his case what we all know to be true about the Sixth Amendment, we might have to say the same in some others. But where is the justice in that? Every judge must learn to live with the fact that he or she will make some mistakes; it comes with the territory. But 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. Through its legislature, lower court decisions, and direct referendum, the State of Louisiana and its citizens have rightly acknowledged that the regime of non-unanimity is a vestige of "the Jim Crow jury" system. This Court should do the same, and affirm that a "verdict" returned without the unanimous agreement of *all* its jurors, is "no verdict at all." *Ramos*, 140 S. Ct. at 1395 (cleaned up).

CONCLUSION

WHEREFORE, The Juror Project prays that this Court hold that convictions obtained in violation of the Sixth Amendment and pursuant to Louisiana's discriminatory jury laws are unlawful.

Respectfully submitted,

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