



**Testimony of Laney Ellisor, Staff Attorney, Ramos Project, Criminal Justice Reform
Clinic, Lewis & Clark Law School**

RE: Senate Bill 1511

Senate Judiciary Committee Chair Prozanski, Vice Chair Thatcher, and all other committee members—thank you for the opportunity to submit testimony on Senate Bill (SB) 1511. The draft legislation would effectively retroactively apply in Oregon the U.S. Supreme Court’s decision in *Ramos v. Louisiana*, which held that conviction by non-unanimous jury verdict is unconstitutional.

I am Laney Ellisor, a staff attorney of the Ramos Project, a special project of the Criminal Justice Reform Clinic at Lewis & Clark Law School. Following the U.S. Supreme Court’s decision in *Ramos v. Louisiana*, 590 U.S. __ (2020), we were hired by the Ramos Project to assist people with final judgments affected by Oregon’s non-unanimous jury system who potentially had claims for post-conviction relief (PCR), as well as their attorneys.

The racist origins and purpose of Oregon’s non-unanimous jury system are well documented. *See, e.g.*, Shane Dixon Kavanaugh, [Inside the Gangland Murder that Gave Oregon its Unusual Jury System](#), Oregonian (Sept. 21, 2017); Aliza B. Kaplan & Amy Saack, *Overturing Apodaca v. Oregon Should be Easy: Nonunanimous Jury Verdicts in Criminal Cases Undermine the Credibility of Our Justice System*, 95 Or. L. Rev. 1 (2016); Clayton Tullos, [Non-Unanimous Jury Trials in Oregon, Or. Crim. Def. Laws. Ass’n](#) (Sept. 29, 2014). However, to the best of our knowledge, no one has ever before attempted to compile and analyze information or data regarding the race and ethnicity of those convicted by non-unanimous jury verdicts in Oregon.

The absence of such studies is, at least in part, due to the limited information and data available regarding those who have been convicted by non-unanimous verdicts in Oregon. Oregon law and courts have never required that juror votes be recorded, preserved, or put into the record. Juror vote counts are not known or kept unless a jury poll is requested by an attorney or judge. Even in cases where a juror poll is conducted, juror votes are often only recorded on court audio recordings and in any transcripts of those proceedings. Audio recordings and transcripts can only be obtained (at least by non-State entities) directly from Oregon’s county and appellate courts via requests in each individual case. This makes it exceedingly difficult to obtain statewide information or data on all recorded non-unanimous jury verdicts.

However, following *Ramos*, at least some cases with records of non-unanimous jury verdicts became more easily identifiable. Convictions pending on direct appeal were reversed where there was evidence of a non-unanimous jury verdict. The Oregon Attorney General, Oregon Department of Justice, Oregon Public Defense Services Commission, and criminal defense

attorneys began identifying cases that would be fully or partially reversed on appeal because of *Ramos*. Additionally, people with final judgments began filing PCR petitions, challenging convictions they asserted were issued pursuant to non-unanimous jury verdicts.

In December 2020, in light of the well-documented racist origins and purpose of Oregon's non-unanimous jury system, the dearth of information and analysis of non-unanimous jury verdicts in Oregon, and the identifiability of at least some cases with non-unanimous jury verdicts, we at the Ramos Project decided to review the information and data that was reasonably available to us regarding the race/ethnicity of people convicted by non-unanimous jury verdicts.

We gathered our information and data regarding non-unanimous jury verdicts and the race and ethnicity of those convicted through publicly available information and documents and documents received through public records requests (more information about our sources of data and information can be made available upon request). For comparison purposes, we used state and county population statistics regarding race and ethnicity from the United States' Census Bureau website. We also obtained for comparison purposes, from the Oregon Criminal Justice Commission, statewide and county statistics regarding the race and ethnicity of all criminal defendants convicted of a felony between 2015 and 2019.

We identified 427 cases pending or resolved on direct appeal that had evidence of at least one count being the result of a non-unanimous jury verdict. We believe this dataset is the most representative and reliable available to us because the non-unanimous verdicts were identified by attorneys and pending direct appeal during a specific time period. We were last able to update our data and information on these direct appeal cases on April 13, 2021.

Of the 427 direct appeal cases with known non-unanimous jury verdicts:

- **63.00%** (269) involved **white defendants**, despite white people making up 75.1% of Oregon's population and 75.82% of Oregon's total felony convictions between 2015-2019.
- **15.46%** (66) involved **Black defendants**, despite Black people making up just 2.2% of Oregon's population and 6.49% of Oregon's total felony convictions between 2015-2019.
- **14.99%** (64) involved **Latinx/Hispanic defendants**, despite Latinx/Hispanic people making up just 13.4% of Oregon's population and 13.96% of Oregon's total felony convictions between 2015-2019.
- **2.81%** (12) involved **Asian/Pacific Islander defendants**, despite Asian/Pacific Islander people making up 5.4% of Oregon's population and 1.36% of Oregon's total felony convictions between 2015-2019.
- **2.11%** (9) involved **Native American defendants**, despite Native American people making up just 1.8% of Oregon's population and 2.28% of Oregon's total felony convictions between 2015-2019.
- 1.64% (7) involved defendants whose race and ethnicity could not be determined.

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Racial disparities were especially stark in particular Oregon counties, often the most populous. For example:

- There were 74 convictions from **Multnomah County** pending or resolved on direct appeal due to one or more non-unanimous jury verdicts. **37.84%** (28) of those cases had **Black defendants**, despite Black people making up only 6.00% of Multnomah County’s general population and 23.84% of Multnomah County’s total felony convictions between 2015-2019.
- There were 89 convictions from **Washington County** pending or resolved on direct appeal due to one or more non-unanimous jury verdicts. **20.22%** (18) of those cases had **Black defendants**, despite Black people making up only 2.50% of Washington County’s general population and 8.85% of Washington County’s total felony convictions between 2015-2019.
- There were 50 convictions from **Marion County** pending or resolved on direct appeal due to one or more non-unanimous jury verdicts. **38.00%** (19) of those cases had **Latinx/Hispanic defendants**, despite Latinx/Hispanic people making up only 27.20% of Marion County’s general population and 29.26% of Marion County’s total felony convictions between 2015-2019.

We also identified 497 post-conviction cases raising at least one PCR claim relating to *Ramos* and where the petitioner has been deemed indigent and appointed a PCR attorney. Of these “*Ramos* PCR cases,” only 244 have self-identified, or have had their attorney identify, their convictions as being the result of at least one non-unanimous jury verdict. We believe that this dataset is less representative and reliable than the direct appeal dataset because it relies primarily on self-identification of non-unanimous jury verdicts, spans convictions over many decades, and includes only those appointed a PCR attorney and therefore determined by the PCR court to be indigent. We were last able to update our data and information on these PCR cases on September 9, 2021.

Of the 244 *Ramos* PCR cases asserting conviction by at least one non-unanimous jury verdict:

- **61.48%** (150) involved **white petitioners**, despite white people making up 75.1% of Oregon’s population and 75.82% of Oregon’s total felony convictions between 2015-2019.
- **18.03%** (44) involved **Black petitioners**, despite Black people making up just 2.2% of Oregon’s population and 6.49% of Oregon’s total felony convictions between 2015-2019.
- **16.39%** (40) involved **Latinx/Hispanic petitioners**, despite Latinx/Hispanic people making up just 13.4% of Oregon’s population and 13.96% of Oregon’s total felony convictions between 2015-2019.
- **1.23%** (3) involved **Asian/Pacific Islander petitioners**, despite Asian/Pacific Islander people making up 5.4% of Oregon’s population and 1.36% of Oregon’s total felony convictions between 2015-2019.
- **2.87%** (7) involved **Native American petitioners**, despite Native American people making up just 1.8% of Oregon’s population and 2.28% of Oregon’s total felony convictions between 2015-2019.

Again, racial disparities were especially stark in particular Oregon counties, for example:

- There were 67 PCR cases with underlying convictions from **Multnomah County** asserting conviction by at least one non-unanimous jury verdict. **47.76%** (32) of those cases involved **Black petitioners**, despite Black people making up only 6.00% of Multnomah County's general population and 23.84% of Multnomah County's total felony convictions between 2015-2019.
- There were 37 PCR cases with underlying convictions from **Washington County** asserting conviction by at least one non-unanimous jury verdict. **35.14%** (13) of those cases involved **Latinx/Hispanic petitioners**, despite Latinx/Hispanic people making up only 17.10% of Washington County's general population and 21.50% of Washington County's total felony convictions between 2015-2019.
- There were 19 PCR cases with underlying convictions from **Lane County** asserting conviction by at least one non-unanimous jury verdict. **15.79%** (3) of those cases involved **Black petitioners**, despite Black people making up only 1.30% of Lane County's general population and 4.97% of Lane County's total felony convictions between 2015-2019.
- There were 11 PCR cases with underlying convictions from **Clackamas County** asserting conviction by at least one non-unanimous jury verdict. Only 36.36% (4) of those cases involved white petitioners, despite white people making up 81.10% of Clackamas County's general population and 79.96% of Clackamas County's total felony convictions between 2015-2019. In contrast, **63.64%** (7) of those cases involved **non-white petitioners**, despite non-white people making up 18.9% of Clackamas County's general population.

In sum, we believe the information and data that is reasonably available to the Ramos Project leads to the conclusion that Oregon's non-unanimous jury system was disproportionately used to convict defendants of color. This was precisely what it was intended to do when originally enacted in 1934, by suppressing the viewpoints of dissenting and minority jurors on Oregon juries. The Ramos Project is also happy to provide this committee with the raw datasets and our full analyses upon request.

The 244 indigent PCR cases, as of September 9, 2021, asserting conviction by at least one non-unanimous jury verdict, are also worth considering beyond what they show about racially disproportionate impact. Should the Oregon Legislature enact SB 1511, it would provide relief to many of these 244 PCR petitioners and potentially others.

We do not know how many total people would be able demonstrate, pursuant to the requirements of SB 1511, that they were convicted by a non-unanimous jury verdict. There are likely at least a handful of PCR petitioners represented by private counsel who are also raising these claims asserting known non-unanimous jury verdicts. There are also likely more people that could file such claims, although we do not know how many. But it is worth noting that, after 86 years of Oregon allowing non-unanimous jury verdicts, only 244 people qualifying as indigent have raised "*Ramos* PCR claims," challenging their convictions on the basis that they were entered pursuant to a known non-unanimous jury verdict.

Under SB 1511, granting post-conviction relief would mean petitioners' convictions by non-unanimous jury verdicts would be vacated and remanded to the circuit court level. There, district attorneys would have the chance to review each case and decide how to proceed. The 244 PCR cases with indigent petitioners asserting conviction by at least one non-unanimous jury verdict have underlying convictions that are spread out amongst Oregon counties as follows:

County	Number of Indigent PCR Cases with Underlying Convictions in the County
Multnomah	67
Washington	37
Clackamas	11
Lane	19
Marion	30
Jackson	11
Deschutes	9
Linn	0
Douglas	3
Yamhill	9
Benton	1
Josephine	7
Polk	2
Umatilla	6
Klamath	5
Coos	8
Columbia	2
Lincoln	8
Clatsop	2
Malheur	1
Tillamook	2
Union	0
Wasco	1
Jefferson	0
Hood River	0
Crook	0
Curry	2
Baker	0
Morrow	1
Lake	0
Harney	0
Grant	0
Wallowa	0
Gilliam	0
Sherman	0
Wheeler	0

Due to the spread of underlying convictions across Oregon counties, mostly clustered in Oregon's most populous counties with the largest district attorney offices, we do not believe district attorneys would be severely overwhelmed by the proposed remands.

In light of the racially disproportionate use of Oregon's non-unanimous jury system to convict defendants of color, and the relatively minimal impact vacating convictions would have on Oregon's court system, we urge this committee to approve SB 1511 and send it to the full Oregon Legislature this legislative session. We believe that vacating convictions resulting from non-unanimous jury verdicts is the only just option to remedy the racist origins and racially disparate impact of Oregon's non-unanimous jury system.

We are available by email if the Senate Judiciary Committee has any follow-up questions or requests. Thank you for the opportunity to submit testimony about this important issue.

Respectfully,

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