



**Testimony of Mark Cebert**  
**Third Year Law Student, Lewis & Clark Law School in Support of SB 1511**  
**February 2, 2022**

Chair Prozanski, Vice Chair Thatcher and members of the Committee.

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. Thank you for the opportunity to provide testimony in support of SB 1511.

For the last several years, students in the Clinic along with its director, 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 was the only other state with a non-unanimous verdict system, which it abandoned 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. Available data suggests that defendants of color were disproportionately convicted by non-unanimous juries.

The U.S. Supreme Court's ruling in *Ramos* 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.

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."

SB 1511 grants *Ramos* retroactivity to petitioners who can prove that they were convicted by a non-unanimous jury. Providing post-conviction relief for petitioners who can meet this burden ensures the integrity of the system. These individuals are not asking to escape justice; quite the opposite, they are asking for justice. SB 1511 will simply allow defendants to show that their conviction involved an unconstitutional non-unanimous jury verdict. If such a showing is made, a defendant will have their conviction vacated and the district attorney will exercise their discretion to pursue a new trial under constitutional standards, offer a plea agreement, or drop the charges.

As our Department of Justice and others have noted, SB 1511 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 the correct result is reached 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.

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 SB 1511, allowing petitioners who can show they were convicted by a non-unanimous jury verdict to obtain post-conviction relief in the form of a vacation of their convictions.

Judiciary Committee Chair Prozanski, Vice Chair Thatcher, and all Committee Members, I encourage you to support SB 1511 and thank you.