



**Testimony of Aliza Kaplan,
Professor & Director of the Criminal Justice Reform Clinic
Lewis & Clark Law School
akaplan@lclark.edu
March 21, 2023**

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

Thank you for the opportunity to provide comments on SB 321, more specifically the -1 amendment. My name is Aliza Kaplan. I am a law professor and the director of the Criminal Justice Reform Clinic at Lewis & Clark Law School. For many years, I have researched non-unanimous juries in Oregon and advocated to abolish our non-unanimous jury verdict system.

Oregon's non-unanimous jury law was struck down after the United States Supreme Court ruled in *Ramos v. Louisiana* that convictions of serious crimes by non-unanimous juries were unconstitutional. The *Ramos* ruling 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 convicted by a non-unanimous jury whose judgments of conviction were final.

After SB 1511 (2022) failed to move forward, the issue of retroactivity was left to the Oregon Supreme Court. On December 30, 2022, the Court ruled in *Watkins v. Ackley* that requirement of unanimous verdicts in serious criminal cases applies retroactively to final cases.

After *Watkins*, the Oregon Department of Justice (DOJ), Oregon Judicial Department (OJD), and the Oregon Public Defense Services (OPDS) worked together tirelessly to implement the Court's decision on retroactivity through the post-conviction review (PCR) process. The parties divided the cases into buckets (groups) and agreed on how each group of cases would be handled at the PCR level:

- Bucket 1: Case where petitioner's convictions were obtained by nonunanimous verdicts. (93)
- Bucket 2: Case where petitioner was convicted by both unanimous and nonunanimous verdicts. (168)
- Bucket 3: Case where petitioner alleges ineffective assistance of counsel in relation to *Ramos* but has not alleged a stand-alone *Ramos* claim. (7)
- Bucket 4: Case where a petitioner was convicted by a plea or as a result of a bench trial. (212)
- Bucket 5: Case with no poll or ambiguous. (58)
- Bucket 6: Case where petitioner's claims cases were unanimous. (16)

Since the agreements between PCR trial and appellate level attorneys, cases have been moving. DOJ has conceded all Bucket 1 cases (provable nonunanimous convictions and nothing else) and at this time, most of these have been agreed upon and stipulated to reversal, with many already

back in the county of conviction. DOJ and OPDS have also agreed on how to handle Bucket 2 cases (provable nonunanimous convictions and unanimous convictions) and these are currently in various stages of negotiation or reversal. Bucket 3 cases will require the petitioner to decide if they want to amend their petition to add a stand-alone *Ramos* claim. Bucket 4 cases are already moving towards the Court of Appeals and will be resolved through just a handful of cases. Bucket 5 cases will be resolved on a case-by-case basis before PCR judges and are in discussion now. Many of these hearings are already being scheduled over the next few months. Bucket 6 cases, unanimous cases, will all be dismissed.

Based on the agreements on how to handle the cases, any outstanding issues to be addressed in the *Ramos* retroactivity PCR cases can be and are being decided by the courts as I speak.

Moreover, if any legislation is created at this point that is different from the current process agreed upon and the Post-Conviction Hearing Act, the legislature will be creating a two-tiered system with like cases being treated differently; that will most certainly lead to unnecessary litigation adding additional years onto to these cases and this issue. This will only prolong the process for everyone involved. Specifically, the proof of unanimity provision in the bill will do this if passed because cases addressing proof of unanimity are already underway and being decided by PCR courts right now under the PCR statute.

With regard to the other components in the -1 amendment, I am neutral on the two-year statute of limitations and the transcripts provision. However, I fully support funding for victims' services throughout the *Ramos* retroactivity process. It is important that we recognize how victims are being impacted by this process and that there is funding available to support them.

Thank you for your time today and I am available to answer any questions.