No. 23 - 5103

# IN THE
# SUPREME COURT OF THE UNITED STATES

*In re* **Brandon Tate,**
Petitioner

Versus

**Tim Hooper, Warden**, et. al,
Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA**

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* **The Orleans Parish case**, wherein, pleadings now presented to this Honorable Court for review, unmistakably, in the courts below, challenged State Laws which clearly suffered Federal-Preemption by the express prohibitory language of the 14th Amendment.

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PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted By:

Brandon Tate #589945
Brandon Tate #589945
Main Prison, Cyp 4
Louisiana State Penitentiary
Angola, Louisiana 70712

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DIRECT COLLATERAL REVIEW

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Angola, Louisiana 70712

## QUESTIONS PRESENTED

I

Whether this Honorable United States Supreme Court 'must" investigate and resolve jurisdiction if raised by one of the petitioning party(ies) to the litigation?

II

Whether when jurisdiction is found wanting in the lower court which seeks to transfer jurisdiction to this Honorable court, the matter must be remanded back to the last court to have proper jurisdiction?

III

Whether the absence of jurisdiction is sufficient to void all subsequent proceedings?

IV

Whether the open challenge to jurisdiction requires the lower State Court forum to address jurisdiction prior to any other undertakings?

V

Whether the time is ripe in the proceedings for this Honorable United States Supreme Court to impose upon the States the mandatory substantive prohibitions of the 14th Amendment?

## PARTIES TO THE PROCEEDINGS

[ ] All Parties appear in the caption of the case on the cover page

[X] All Parties **do not** appear in the caption of the case on the cover page. A list all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

**PETITIONER:**

1. Brandon Tate #589945
   Main Prison, Cypress-4
   Louisiana State Penitentiary
   Angola, Louisiana 70712

**RESPONDENTS:**

2. Tim Hooper, Warden
   Louisiana State Penitentiary
   Angola, LA 70712

3. Jason Roger Williams, District Attorney, Orleans Parish
   619 S. White
   New Orleans, Louisiana 70119

There are no parties to this action within the scope of *Supreme Court Rule 29.1.*

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## JURISDICTION

The Supreme court for the State of Louisiana, erroneously, denied petitioner's Direct Federal Preemption of State Law Claim on February 07, 2023. The jurisdiction of this Honorable court is hereby invoked pursuant *28 § 1254(1) and/or 28 U.S.C. § 1257(a)* and/or *28 U.S.C. § 2101(e).*

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The *Fifth Amendment* to the United States Constitution provides, in pertinent part:

> No person shall .... in any criminal case .... be deprived of life, liberty, or property, without due process of law . . . -

The *Fourteenth Amendment* to the United States Constitution, provides, in pertinent part:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

In the court's below, petitioner set out a clear and unquestionable reason for equitable tolling. In constitutional error the courts below failed to honor the mandates of precedents of this Honorable Court granting relief (in the form of equitable tolling) under similar circumstances.

## STATEMENT OF THE CASE

This is a case about three primary issues: **1.)** State-Sponsored Racism being Legislated into State Law targeting a race of people on the basis of race, color and previous condition of servitude, **2.)** this is a case about Federal-Preemption of State Law and **3.)** this is a case about the disregard for the Supremacy of the united States Constitution within the borders of the State of Louisiana.

## STANDING TO CHALLENGE SUBJECT-MATTER JURISDICTION

Objections to subject-matter jurisdiction may be raised at any time; thus, a party, after losing at trial, may move to dismiss the case because the trial court lacked subject-matter jurisdiction, and indeed, a party may raise such an objection even if the party had previously acknowledged the trial court's jurisdiction. *Henderson v. Shinseki*, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011)

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## CHALLENGE OF CAPACITY TO PROCEED LEGALLY WHEN JURISDICTION OF LOWER COURT LOST DUE TO USE OF FEDERALLY PREEMPTED STATE LAWS

In controversy in the State Court forums below was the legality of the State of Louisiana using, State Legislated laws which suffered Federal Preemption by the black letter of the Constitution of the United States, specifically, the *14th Amendment*. In the court's below, petitioner brought those court's attention to this Honorable Court's holdings in *Ramos*. A an investigation into the history of the origins of Louisiana's Non-Unanimous Jury Verdict System yielded that its origins was rooted in an elaborate plan to make White-Supremacy the order of the day in the State of Louisiana for all time and a matter of State Legislated reality. The review of these facts in the Ramos case, netted an eloquently written opinion; one wherein, the holdings of this Honorable Court directed the readers attention to the legal writings of the Historical Legal Scholar, Blackstone.

In the case of *Ramos v. State of Louisiana*, (April 20, 2020) 590 U.S. _____, – S.Ct. – , WL 1906545, it is clearly and unequivocally set forth that: **a verdict by less than a unanimous jury is no verdict at all**. As a direct quote, this Court stated:

> "As Blackstone explained, no person could be found guilty of a serious crime unless "the truth of every accusation ... should ... be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion." A verdict, taken from eleven, was no verdict at all.""

Accordingly, absent unanimity in the rendering of the trial jury's verdict, there was no verdict ever rendered and the charged party would only stand accused of the crime charged in the record, no legally recognizable nor legally enforceable conviction could be had by use of Federally-Preempted State laws. Petitioner is "forced" to come before this Honorable Court for a remedy because, the State of Louisiana refuses to let goes of its past racist legislation. Instead, the State of Louisiana is digging in its heals by proposing even more damaging legislation.

In this State of Louisiana, at this immediate time, before the Louisiana Legislature is **House Bill 588**. This bill proposes that as a remedy to the injury suffered, (not jury trial within the meaning of the *6th*

and/or *14th Amendments*, the wish to further desecrate these rights and substitute them with a "forced" bench trial before three retired Judges a prosecutor and a representative of the Public Defenders Association.

What's the significance of this. This proposed legislation does not fix the fact that these persons who are under false representation of having been convicted and who remain illegally confined, still have not been brought within the realms of their substantive constitutional protections. Instead, **H.B. 588 (2023)**, would "force them to permanently forgo their right to trial by jury, and their right to appeal any subsequent outcome. The bill commands that the persons convicted[1] by non-unanimous juries would appear before the committee of three retired judges, a prosecutor and a Public Defender who will determine if they were in fact convicted by a Non-unanimous Jury; whether they are guilty of the charged crime, and whether they should be remanded back to prison for the crime an no appeal lies from that decision, and more importantly, the proceeding is void of the adversarial protections of the *6th* and *14th Amendment* trial mechanism as provided for in the Constitution of the United States. .

**ABSENT INTERVENTION OF THIS HONORABLE COURT DECLARING THAT ENOUGH IS ENOUGH AND THAT THE JURY TRIAL RIGHT IS OF FEDERAL SUPERIOR LAW TO WHICH THE STATE IS BOUND TO RECOGNIZE, THE 6TH, 8TH 13TH AND 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION OF THIS COUNTRY HAS BEEN REPEALED WITHIN THE BORDERS OF LOUISIANA**

Should this Honorable Court be curious as to what makes La. Const. *Art. 1 § 17* and *La.C.Cr.P. art. 782* federally preempted, void, annulled and rendered to have "never" had legal existence, the Court only need look at their origin. Even Governor Mike Foster, who facilitated their enactment in (1898), commended the legislature, in these words, for what had been done:

> The white supremacy for which we have so long struggled at the cost of so much precious blood and treasure, is now crystallized into the

[1] And this is a continuation of false representing the facts, this Honorable Court specifically stated in *Ramos* that a verdict returned by eleven is no verdict at all. So with no verdict, this petitioner has never been convicted of the charged offense within the recognizable parameters of the law. Worthy of notation is the fact that Ramos has since been retired under the Unanimous Jury Requirement as was found not guilty. (See: theadvocate.com (Friday, March 10, 2023), author: Jillian Kramer. She may be reached at: jillian.kramer@theadvocate.com.

> Constitution as a fundamental part and parcel of that organic instrument, and that, too, by no subterfuge or other evasions. With this great principle thus firmly imbedded in the Constitution, and honestly enforced, there need be no longer any fear as to the honesty and purity of our future elections. (See *U.S. v. Louisiana*, 225 F.Supp. 353, id at *374)

Thereafter, Lieut. Governor Snyder presided at a conference of 35 or 40 delegates, and said he was in favor of the proposition that:

> "every white man shall vote because he is white, and no black man shall vote, because he is black. We cannot put it in those words, .... but we can attain that result."

Judge Coco wrote to the Picayune:

> "**The very reason of this Convention is, in morals, dishonest, for its purposes are to do in an indirect way what we cannot do directly.** The Fifteenth Amendment, to protect the negro and for that purpose alone, provides that the right of suffrage shall not be denied or abridged on account of race, color, or previous condition of servitude. **We propose to deny him that right on account of his race, color, or previous condition of servitude.** This **unconstitutional measure** we propose to enact through constitutional and honest means. **Well, I say it cannot be done through constitutional and honest means.** Whilst we might and must surround the right, after conferred, with proper safeguards, such as will secure an honest and fair expression of the suffragans' will at the polls, **we must limit the right to white men, and this we are of necessity compelled to do through dishonest means.**"

Note: Emphasis are Movant's own to enable him to point to the intent of the 1898 Constitutional delegation as declared by them which ultimately falls directly in the cross-hairs of preemption.

Ernest B. Kruttschnitt, President of the Convention, who spoke after Judge Semmes, closing the Convention, said:

> "We have not drafted the exact Constitution we should have liked 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. ... What care I whether the test we have put be a new one or an old one? What care I whether it be more or less

> ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for?" (Applause.)

By far, the focus and most important matter passed upon was the question of suffrage, the admitted purpose being the adoption of a plan that would keep out the Negroes and admit the whites and yet that would not be open to the charge of violating the *Fifteenth Amendment* to the United States Constitution. The records of the Convention, movant asks that this Honorable Court take Judicial notice of these truths from its recognition and adoption of the facts as true in *Ramos* (referencing *State of Louisiana v. Melvin Cartez Maxie*, Docket No.: 13-CR-72522, 11th Judicial District, Parish of Sabine).

Louisiana as a State, simply just does not get it. Since at least as far back as 1939, this United States Supreme Court stated in *Pierre v. Louisiana*, 59 S.Ct. 536, 306 U.S. 354 (U.S. La. 1939), *18 U.S.C.A. § 243 "the rules which govern the petit jury are the same as those which govern the Grand Jury."* Even after that, this Honorable Supreme Court, been obliged to repeatedly hold the State of Louisiana accountable for racism in the Grand and Petit Jury processes. The need for this remains today. The deprivations of rights in these areas are routinely re-packaged and made effectual again or the State simply transfers to an already in place fail-safe hidden within other laws already on the books for the State of Louisiana. The time has come, this Honorable Court should openly require the State of Louisiana to align itself with the Constitution of the United States on these issues. Otherwise, it becomes fact that the Constitution of the United States is the Supreme Law of the Land in every State belonging to the union known as the United States, except in Louisiana.

It is requested that, in order to preserve the Supremacy of the Constitution of the united States, this Honorable Court grant Certiorari, appoint Counsel and fully adjudicate this matter for both clarity and permanence. The instant petitioner still lays claim to the fact that he remains clothed in all the rights he is due as a pre-trial detainee, and despite this truth, he is "forced" to initiate these proceedings without the protections and guiding hand of Appointed Counsel to aid in the preparation of a defense to the charged allegations. With no legal nor binding trial legal to a legally recognizable verdict, nor valid

guilty plea (free from organized fraudulent misrepresentations of the law), all proceedings had in the case thus far, are thence absolutely nullities and the only court which this case would be rightly before would be the trial court of the State, or this Honorable Supreme Court of the Land which is the final authority on the Constitution of this Country.

**The Formula:**

1st there is no legal nor binding verdict, nor valid guilty plea in this case, the guilty plea tendered s rooted in fraud upon the petitioning party hear

2nd absent a valid verdict or guilty plea, there can be no legal pronouncement of conviction

3rd with no verdict or guilty plea, no legal pronouncement of conviction can be made, as there is nothing in existence upon which to rest a valid sentence

4th with no valid verdict nor/or valid guilty plea, no conviction, and no sentence, appellate jurisdiction cannot and does not attach, and there exists nothing to be finalized.

Due to the absence of these critical elements set forth above (which are Federal Constitutionally required elements in order to justify confinement at hard labor) the jurisdiction exercised by all courts subsequent to the state trial court have been awry of the Constitution of the United States, the *5th, 6th, 13th and 14th Amendments*.

Absent a valid jury verdict or guilty plea, the instant petitioner does meet the criteria of: of having ever been convicted of anything, however, as clearly put forth here by his return address, this petitioner has been ordered to suffer illegal confinement. In order to compound the constitutional deprivations, the Louisiana Legislature (in Session Right Now) seek to pass legislation which will forever do away with petitioner's right to adequate and legal remedy for the deprivation of the substantive constitutional right.

Petitioner further avers that, in the absence of a valid verdict or guilty plea, the trial court was wholly without jurisdiction to impose a sentence. No person can consent to subject-matter jurisdiction before a court which does not rightfully have such jurisdiction. All actions so taken (and despite there false appearance of legality), are in fact illegal and void, with no effect.

Petitioner is hereby and thus far has been constructively and continuously denied counsel despite

his pre-trial status. Inherent in this scenario, wherein petitioner was duped into believing (by State Actors) in the legal existence and legal operation of *La. Const. Art. 1, § 17*, and *La. C.Cr.P. art. 782. When threatened with their use against his liberty interests, he surrendered, under false pretenses and deception, his right to trial by jury. However, even if he had not, he still would have suffered a constitutional deprivation of being subject to La. Const. Art. 1, § 17, and La. C.Cr.P. art. 782, both of which, are direct-derivatives of the racist still-born law enacted to install, promote and protect State-wide White Supremacy. So, in this context, petitioner would suffer constitutional damnation regardless of the choice he made: be tried by a jury and suffer possible illegal non-unanimous jury verdict, or believe that the danger of being subject to an unconstitutional non-unanimous jury was not worth the risk and plead guilty.* These are the decisions the instant petitioner was confronted with. So either way, the constitution of the United States would not protect him because the State of Louisiana was not functioning in accordance with the Constitution of the United States.

Petitioner was misled into believing that it was constitutional to for the trial court to falsely represent that a Louisiana Trial Jury could legally return a non-unanimous verdict, and that the same would suffice as a constitutionally sound verdict reflecting the jury's finding that the defendant guilty. It was only through the *Ramos*, 140 S.Ct. 1390 (U.S. Supreme Court 4/20/2020) decision that petitioner learned that he nor anyone else ever lost the Constitutional mandate of a unanimous jury verdict.

In order to lure the instant petitioner into pleading guilty, it was falsely represented to him that he could be tried by a jury and legally convicted if the verdict returned was non-unanimous. Because this false representation was made by the trial court and prosecution as well as his own attorney, he had no legitimate reason to believe that they (working in sync) would falsely represent to him that he could suffer a legal and binding conviction by a non-unanimous jury. Rather than face that false representation, petitioner plead guilty.

For petitioner's defense counsel to allow anything other than what the 6th Amendment required is an absolute denial of counsel, as a classic *Cronic* violation. How is this true? Because a non-unanimous

verdict, is no verdict at all, petitioner never lost his absolute rights to counsel, to bond, to pre-trial hearings, experts, speedy trial (State and Federal protections). Counsel allowed a sentence to be imposed upon his client without his client having been convicted of anything. As the Supreme Court held in *Burton v. Stewart*, that under federal law, "[f]inal judgment in a criminal case means sentence. The sentence is the judgment.

For some enlightenment on the issue petitioner is advancing, per operation of law, because there is no recognizable verdict, legal and binding pronouncement of conviction and legally binding sentencing proceedings, then this habeas proceeding and all subject-matter jurisdiction invoked by each individual court since the jury went into deliberations is wanting. Therefore, the lower court proceedings are subject to dismissal/nullification on subject-matter jurisdiction grounds. Why? Because in the absence of a legal and binding verdict which comports with the mandates of the *Constitution of the United States* and the operation of the *Supremacy Clause* contained therein, petitioner could not be subjected to a term of hard labor for a serious offense unless the requirements below were met. The *Ramos* Court quoted **Blackstone** as saying:

> ""no person could be found guilty of a serious crime unless "the truth of every accusation ... should ... be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion." A verdict, taken from eleven, was no verdict at all.""

For the State to demand and/or the Court to permit the continued incarceration of Mr. Brandon Tate, this would constitute an inherent violation of the *13th Amendment of the United State's Constitution*. As, per the *13th Amendment*, **slavery nor involuntary servitude shall exist within the United States**, except as punishment for a crime wherein one one has been duly convicted (deceived by State and Judicial Officials alongside one's attorney regarding Non-unanimous jury verdicts in order to solicit a guilty plea does not qualify as duly-convicted) and couple that with the *Supremacy Clause* of said Constitution to prevail prevail against the unconstitutional laws (La. Const. *Art. 1, § 17*, (prior to 2019) and *La.C.Cr.P.Art. 782*.)

The aims and purpose of judicial review is to have the court review the validity of pre-trial and

trial events preserved in the record, seeking whether there exists a prejudicial effect upon the trial mechanism, the validity of the verdict, the valid imposition of sentence and appropriate rulings on subsequent post-trial proceedings.

In the instant case, non of this could occur, as the Court and its Officers misled the accused into surrendering his right to a trial jury. Consequently, in this case, there has NEVER been a verdict returned has legal standing in law nor has there been a guilty plea free from fraud in which to lure petitioner into a legally void guilty plea contract. The subsequent proceedings resting thereon can NEVER be valid, can never be affirmed, because the threatened prospect of a non-unanimous jury verdict was deliberately misleading and had he not been misled into waiver his right to trial by jury, a non-unanimous jury, as stated by the United States Supreme Court, "a verdict returned by eleven is no verdict at all." So, petitioner faced no conviction by a non-unanimous jury.

In short, through deception, the Court, Prosecution and Defense Counsel misled petitioner into a forfeiture of his right to a substantive right to a *6th Amendment* trial by jury and his right to a direct appeal if warranted. The record bares that those elements of a legitimate criminal conviction which absolutely must be present are wanting here.

In the complete absence of a legally binding verdict or guilty plea, the trial court was absolutely void of jurisdiction to impose a sentence. In the absence of those essential elements, the lower State Courts were completely divested of standing and/or jurisdiction to arrive at an enforceable sentence.

*Also, as an alternative presentation*, petitioner avers that in the case of ***Pierre v. Louisiana (1939)***, this Honorable United States Supreme Court directed the State of Louisiana to abandon all forms of discrimination in the Grand and Petit jury processes. So, this Honorable Court gave the State of Louisiana "NOTICE" in 1939, that persistence in the practice of discrimination would someday visit legal consequences, still Louisiana kept with its tradition of discrimination. Even the State of Louisiana on its own accord has recognized this, "A valid sentence cannot rest upon a verdict which is not returned by the proper number of jurors." Therefore, this is not a new principle of law. No person charged with a felony

crime in the State of Louisiana, has nor ever had a right (be it Federal or State) to an unlawful verdict or a guilty plea borne of deception by the Court, prosecution and Defense Counsel.

Not unlike *Article 1, § 17*, and *La.C.Cr.P. Art. 782*, the defendant's in *Siebold*, attacked the judgments on the ground that they had been convicted under unconstitutional statutes. The Court explained that if "this position is well taken, it affects the foundation of the whole proceedings." Id., at 376. A conviction under an unconstitutional law

> "is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But ... if the laws are unconstitutional and void, the Circuit Court Acquired no jurisdiction of the causes." Id. At 376-377
>
> Montgomery v. Louisiana

Most importantly, *Montgomery* goes on to state the following:

> "It follows, as a general principle that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.."

In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the *Siebold* Court explained that "[a}n unconstitutional law is void, and is no law." A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids.

Here, the State of Louisiana lack "standing" to insist that this Honorable Court maintain the order for his imprisonment within the Louisiana Department of Public Safety and Corrections. If the State of Louisiana cannot constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own post-conviction proceedings. Under the *Supremacy Clause of the United States Constitution*, state collateral review review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. To mandate the continued imprisonment of one without a valid verdict/valid guilty plea,

valid conviction nor valid sentence because all are void and null on arrival due to the unconstitutional guilty plea having been achieved by giving threatening to subject him to a trial by jury while simultaneously giving operation to laws whose historical record of enactment reveal declarations of those who created them to be wholly racist in origin and of a design to install promote and protect White-Supremacy as a permanent institution throughout the State of Louisiana. To allow this to remain, violates the substantive birthright protections set forth in the *5th, 6th, 8th, 13th and 14th Amendments.*

This petitioner has no other remedy available before any other court wherein he can obtain the relief besides this one. Lastly, since the questions raised here have never been decided it would be both in furtherance of this Honorable Court's Supervisory and Appellate Jurisdiction to make a decisions upon which other courts can rely when confronted with the same question of law.

Contrarily, **the decisions of the State and lower Federal Courts squarely raises several Federal Constitutional Questions which have not previously been decided by this Honorable Court to the satisfaction of Louisiana Officials**. The questions of: *What effect does a state court's prosecution facilitated in the absence of in jurisdiction have on subsequent proceedings?*

This is not a limited question which will affect only a small portion of the citizens of this country. Rather it is one of the greatest importance, as it goes directly to the State and Federal Court's legal capacity/standing to act. Appellant urges that it would be proper for this Honorable Court to agree to entertain and answer these questions in this day and time as a part of this countries ever-evolving standards of decency and justice for all. These questions are presented to inspire; in both concept and in practice, the uniformity of decision making in the state and federal courts throughout this great nation when a question of federal law which questions the State Court's jurisdiction to use laws which suffer federal preemption are the basis for the state level prosecution. This matter has been placed squarely before the judiciary for resolution and all thus far have evaded the issue entirely.

This Honorable Court is not called upon to alter a conviction or sentence (as a legal fact, he has none, because the prosecution was/is rooted in state laws which suffer federal preemption). Petitioner,

asks for this Honorable Court to adjudicate: Whether the lower court forum, after being placed on "notice" that the lower State and Federal Courts rooted all their actions in State Laws which were preempted by the *14th Amendment*, those courts can Constitutionally disregard settling the questions of federal Preemption of State Law as applied in the instant case?

Petitioner seeks to have this Honorable Court to end his illegal detention which he suffers as a result of arbitrary actions taken by a State Officials in violation of petitioner's substantive Federal Constitutional Protections, Privileges and Immunities; for the instant petition this is the court of last resort/remedy.

## STATEMENT OF FACTS

Brandon Tate was charged with one counts of attempted murder of Trevor Blackwell. After being lured into a guilty plea,the trial court sentenced the relator to a term of custodial imprisonment at hard labor. There was no appeal prior to the *Ramos* decision. That decision triggered investigation into the legality of appellant's guilty plea. Appellant had been threatened with being subjected to a (now known) illegal non-unanimous jury verdict. A verdict which would have been rooted in *La.Const. Art. 1, § 17* and *La.C.Cr.P. art 782,* both of which suffer Federal-Preemption by the *14th Amendment.*

## FEDERAL QUESTIONS

The facts and circumstances of this case all combine to equate to severe problems which ultimately raises several additional Federal Questions which all are incorporated within the realm of this pleading.

1. Does the Supremacy Clause of the United States Constitution still reign supreme over state law and the state's attempt's to interpret and apply federal law?

2. Are federal court's bound by a U.S. Supreme Court precedent on facts and circumstances present in a case which involves the same settled principle of law which was heard in a prior case?

3. Is there a remedy when the court arrives at a decision which is "contrary to" or involved and "unreasonable application" of Federal Law as determined by the United States Supreme Court in another case with nearly identical facts?

4. Whether or not the purpose of the "Great Writ" is vindicated when the Courts ignore or are willing to ignore critical decisions of the United States Supreme Court clearly establishing federal law?

## RELEVANT HISTORY OF CASE

In November 2021, petitioner filed a "Motion to Challenge the Constitutionality of Petitioner's guilty under the premise that he was lured into the plea by threatening to prosecute him using provisions of the State Law, *La. Const. Art. 1, § 17* and *La.C.Cr.P. art. 782,* which suffer federal-preemption. The State Trial Court and the Court of Appeal have erroneously assessed petitioner's claim as a Ramos claim when it is not.

The beginning and ending of the claim is that the State of Louisiana, intimidated him and made use of laws which they know that, although on their books, those laws never acquired the status of legally existing, could never be legally put in force. Because these laws originated within the event particularly called together for the purpose enacting State Laws which would disenfranchise Negroes because of their race color and previous condition of servitude. They said it themselves that was their intent. And the Judicial System became their primary tool in disenfranchising Negroes and simultaneously funneling them to the State Penitentiary to be readied for convict-leasing.

Brandon Tate was charged with two counts of attempted second-degree murder a*nd accessory after* the fact to second degree murder on October 13, 2011. The trial court sentenced the relator to 25 years of imprisonment at hard labor on each of the attempted second-degree murder counts, and five years imprisonment at hard labor on the accessory count, with all terms to run concurrently. Relator did not appeal. Instead, after learning of the historical context of the laws which he was threatened with being used against him had he chosen to go to trial, he sought redress, albeit unsuccessfully

## QUESTION(S) OF LAW

Does the Constitution of the United States strictly forbid states to deprive citizens of their life liberty or property using State laws illegally created and federally preempted by the *14th Amendment of the United States Constitution*?

## ARGUMENT

Since the early 1900's Louisiana has allowed a person to be convicted by verdict of at least ten to two. This applies in all cases where in the punishment for the crime being tried is necessarily confinement at hard labor. (La. Const. Art. I, Sec. 17; La.C.Cr.P. art. 782.)

However, under closer scrutiny, the provision does violate substantive equal protection (State and Federal) because there is evidentiary proof that the origin of the enactment and the practice it embodies as well as promotes is that of substantial discrimination. There is no dispute that the original enactment which was carried over to the Louisiana Constitution of 1974, had the motivating factor behind that provision. Ref. Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 265, 97 S.Ct. 555, 50 L.Ed. 450 (1977).

Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Id. Evidence of an improper motive may be gleaned from the "historical background" of the law, including the "specific sequence of events leading up to" it enactment, "particularly if it reveals a series of official actions taken for invidious purposes." Id. at 268. Another potential "highly relevant" source of such evidence includes "contemporary statements by members of the decision-making body, minutes of its meetings, or reports." Id. at 267. Yet another indication of an improper motive may include an otherwise unexplained "substantive departure" from a law usually regarded as important. Finally, an indication of improper motive may arise when the impact of the law "bears more heavily on one race than another." Id. at 266.

### HISTORICAL OVERVIEW OF THE PASSAGE OF THE LAW WHICH PETITIONER WAS THREATENED TO FACE OR PLEAD GUILTY

Pursuant to *Art. 116, of the La. 1898 Constitution*, jury trial were abolished for misdemeanors and were reduced to trial by a jury of five for lesser felonies. The requirement of unanimity was removed for all other felonies except capital offenses. In cases where hard labor was a necessary punishment, defendants were to be tried before a jury of twelve, requiring only nine concurring votes.

Originally, however, Louisiana had provided for the common law right to trial by jury, including unanimity in jury verdicts. By the Act of 1805, the Territory of Orleans adopted the **Forms and Procedures of the Common Law of England** in its criminal proceedings, including "the method of trials". Following the Civil War and pursuant to the *Military Reconstruction Act of 1867*, a Constitutional Convention was convened in Louisiana with equal numbers of black and white delegates. *Act of 1805, § 33*; See generally, A. Voorhies A Treatise on the Criminal Jurisprudence of Louisiana's first Bill of Rights, which was modeled on the Federal *Bill of Rights* and included the right to trial by jury, *La. Const. Art. VI (1868)*.

After federal troops withdrew from Louisiana in 1877, Southern Democrats immediately retook political control, electing a Democratic Governor and winning three quarters of the seats in the legislature by 1878. By April 1879, a Constitutional Convention had been called, a new Constitution was ratified in December 1879. See Labbe, Ronald M. "**That the Reign of Robbery Will Never Return to Louisiana: The Constitution of 1879.**" **In Search of Fundamental Law**. pp. 81-92.

Through the early 1890s, while the white Democrats maintained power, black citizens continued to make up the majority of registered voters, and the Democrats feared their voting power and a possible alliance between blacks and working class whites. Close-call election victories has shaken up the Democrats and added urgency to the need to cement their power and to remove blacks and poor whites from meaningful participation in Louisiana's political and civil institutions. Furthermore, only a few years earlier, in 1880, the U.S Supreme Court decided *Strauder v. West Virginia, 100 U.S. 303*, which held that the *Fourteenth Amendment* prohibited states from excluding persons from jury service based upon race. It was against this backdrop and "a desire of Louisiana's reactionary oligarchies to disfranchise blacks and poor whites, [which] prompted the Constitutional Convention of 1898." **In Search of Fundamental Law**. Pp 93-109.

In his closing remarks, President Kruttschnitt bemoaned that the delegates had been constrained by the *Fifteenth Amendment* from achieving "universal white manhood suffrage and the exclusion from the suffrage of every man with a trace of African blood in his veins." Id. at 380.

He went on to proclaim that:

> I say to your that we can appeal to the conscience of the nation, both judicial and legislative and I don't believe they will take the responsibility of striking down the system which we have reared in order to protect the purity of the ballot box and to perpetuate supremacy of the Anglo-Saxon race in Louisiana. Id. at 381.

This sentiment was echoed in the closing remarks of Hon. Thomas J. Semmes, who stated that the "mission" of the delegates had been to "establish the supremacy of the white race in this state." *Official Journal at 374.*

**SUBSTANTIVE DEPARTURE BY THE STATE (THE THREATENED REGIME FORBIDDEN BY CONSTITUTIONAL LAW) WHICH THE INSTANT PETITION WOULD HAVE BEEN SUBJECTED HAD HE GONE TO TRIAL**

Further, evidence of discriminatory intent is apparent from the "substantive departure" from the universal rule that jury verdicts must be unanimous. As noted above, prior to the 1898 convention, unanimous jury verdicts were the unquestioned, long-standing, well-established method of deciding whether an accused is to be held to account for the crimes with which he is accused of committing. Given the singularly trumpeted mission of reestablishing white supremacy, the unprecedented departure from that hallowed tradition of unanimous juries can only be explained by the drafters' concern over the Supreme Court's recent decision *Strauder v. West Virginia, 100 U.S. 303*, 25 L.Ed 664 (1879) which held that the *Fourteenth Amendment* prohibited states from excluding persons from jury service based upon race. As depicted below, the institution of non-unanimous jury verdicts very effectively annulled the applicability of the *14th Amendment's* "substantive application" to trial juries throughout Louisiana.

## DISCRIMINATORY IMPACT EVEN IF PETITIONER HAD NOT PLEAD GUILTY

That the impact of this particular departure from tradition "bears more heavily" on black citizens further confirms the racial motivation behind the law. In 1989, blacks represented 14.7% of all citizens registered to vote in Louisiana. **Official Journal.**

Thus proportionate representation on juries would have seen an average of two black jurors per trial. The selection of nine votes for a verdict served to guarantee that white-majority control over jury verdicts. And, as juries in 1898, were highly unlikely to contain more than three black jurors, the absolute nullification of the votes of the "peers" of black defendants was almost inevitable.

Accordingly, with non-unanimous jury verdicts, the fate of white defendants, especially those charged with committing crimes against black victims, were not likely to be determined in any part by black jurors. At the same time, black citizens charged with a crime were more likely to end up being convicted if the votes of one or two potentially sympathetic black jurors could be nullified by the votes of the remaining white jurors. In short, the immediate effect of the law was a de facto nullification of the holding in *Strauder*, whose holding was to uphold the very purpose of the *14th Amendment* against overtly racist sentiments of the Louisiana power brokers.

## THE DISCRIMINATORY IMPACT OF LOUISIANA'S HISTORICALLY RACIST NON-UNANIMOUS JURY LAW CONTINUES TO THIS DAY WITH NO REMEDY IN SIGHT

Louisiana non-unanimous jury provision has survived constitutional conventions and has undergone a change from a requirement that an acceptable guilty verdict have nine (9) voting guilty of the twelve, to the current requirement of ten (10) guilty votes of the twelves for it to be an acceptable determination of guilt or innocence. This is amazing because, all findings of guilty are supposed to be found "beyond a reasonable doubt" and a single juror's doubt in a death penalty case to warrant that the death penalty is unacceptable and therefore the justification for a sentence of death (was not found beyond a reasonable doubt). But in any case where hard labor could be imposed as part of the sentence, two (2) jurors are insufficient for the court to deem that there was a verdict of guilt which did not reach

the requirement of guilty beyond a reasonable doubt. One more juror than in a death penalty votes for not guilty, yet, both jurors are silenced and essentially treated as if non-existent.

On each business day of the court across the state of Louisiana, wherein felony trial are held where the death sentence is not a possibility, the racist objectives of President of the Convention, E.B. Kruttschnitt, are being carried out:

> I say to you, that we can appeal to the conscience of the nation, both judicial and legislative and I don't believe they will take the responsibility of striking down the system which we have reared in order to protect the purity of the ballot box and to perpetuate supremacy of the Anglo-Saxon race in Louisiana. Id. at 381.

As with the Alabama provision, the discriminatory impact intended by the drafters of the Louisiana Constitution of 1898 survives today, and as a result, the State cannot rely on the argument that Louisiana's non-unanimous verdict law no longer runs afoul of the Equal Protection Clause.

This practice continues. See, *State v. Cheatteam*, 07-272, p. 10 (La. App. 5 Cir. 5/27/08) 986 So.2d 738, 745 ("Defense counsel] pointed out that it appeared the prosecutor was attempting to ensure that only two African-Americans would serve on the jury. And in order to convict, the prosecutor needed only 10 votes.")

To show the preservation of and variation of the race discrimination, in 2003, large-scale study of the pattern of prosecution of peremptory challenges in Jefferson Parish----which today makes up one of the largest judicial districts in the state----Professor Joel Devine of Tulane University's Center for Applied Science Research, demonstrated that prosecutors peremptorily challenged black jurors at more than three times the rate at which they challenged other jurors. See **Blackstrikes, A Study of the Racially Disparate Use of Peremptory Challenges By the Jefferson Parish District Attorney's Office, A Report of the Louisiana Crisis Assistance Center**, (Sept. 2003), available at www.blackstrikes.com.

Professor Devine analyzed data gathered from 390 trial involving over 10,000 prospective jurors in Jefferson Parish. His analysis showed that prosecutors used peremptory strikes to remove 55% of otherwise-eligible black prospective jurors but only 16% of non-black jurors in the same position. Id.

Researchers then analyzed the actual representation of blacks on Jefferson Parish juries and compared it to the expected distribution of blacks on juries in the parish, based on a black population of 23%. their analysis yielded the following results.

| No. of Blacks Serving *on* Jury | How often that *should* happen | How often that *does* happen |
|---|---|---|
| 0 | 6% | 22% |
| 1 | 17% | 35% |
| 2 | 24% | 23% |
| 3 | 22% | 12% |
| 4 | 15 | 6% |
| 5 | 8% | 1% |
| 6 | 4% | 1% |

These results show that as a result of the extensive use of prosecution peremptory challenges against blacks, the number of all white juries was more than three times what should have been expected in the judicial district. And while 47% of juries should have been expected to have two or fewer black jurors, in fact, 80% of the Jefferson Parish juries had two or fewer black jurors.

In a system of unanimous verdicts and evenhanded use of peremptory strikes, there should be on 6% of juries in Jefferson Parish in which there is no guaranteed African-American voice; that is, those cases where an all-white jury is empaneled. Given the reality of jury selection methods and the use of majority votes, however, 80% of the juries in Jefferson Parish have no guaranteed African-American voice. This result portends Justice Potter Stewart's warning made long ago about Louisiana's jury system: "[Ten] jurors can simply ignore the views of their fellow panel members of a different race or class." *Johnson v. Louisiana*, 406 U.S. 366, 397 (1972)(Stewart, J., dissenting). See also Devine, Dennis J., et al., **Jury Decision making: 45 Years of Empirical Research on Deliberating Groups**, 7 Psychol. Pub. Pol'y 622, 669 (2001) (Unanimous verdicts protect jury representativeness – each point of view must be considered and all jurors persuade."); id ("minority jurors participate more actively when decisions must be unanimous").

Moreover, the law today disproportionately affects black citizens in two additional serious ways, both resulting directly from the statistical fact that black citizens make up 32% of Louisiana's population but comprise 70% of Louisiana's prison population. U.S. Department of Justice. Prison Inmates at Midyear 2007 (June 2008) available at http://www.ojp.usdoj.gov/bjs/pbb/pdf/pim07pdf See also, U.S. Census. Louisiana Quickfacts, available at http://quickfacts.census.gov./qfd/states/22000.html. First, the law disproportionately disenfranchises black citizens in a manner very similar to the law struck down in *Hunter*. Second, the law disproportionately results in black persons being convicted of crimes of which they would not otherwise be convicted; and there other recognizable groups of society are immunized from this, therefore all do not stand equal before the law.

As blacks make up a disproportionate 70% of the inmate population, it follows statistically that they are convicted by non-unanimous juries in roughly the same proportion. It is readily apparent that the law in its design, operation and results, disproportionately puts black persons under an order of imprisonment inherently more than any other sector of society, thereby disenfranchising them disproportionately.

This effect is very similar to the racially disproportionate impact that the Supreme Court identified in *Hunter*. In that case, Alabama's misdemeanor disenfranchisement law had the current effect of African-Americans being "at least 1.7 times as likely as white to suffer disenfranchisement." 471 U.S. at 227. This discriminatory impact is even more compelling when considered alongside the evidence that non-unanimous juries too often reach the "wrong" verdict, as illustrated by the fact that 53% of the clients of the Innocence Project of New Orleans who have been exonerated were convicted by non-unanimous juries. Study cited in Amicus Brief of the Louisiana Association of Criminal Defense Lawyers, *Herrera v. Oregon*, 10-344, (Dec. 2, 2010). pp. 17-20 available at: http://cdn.volokh.com/wp/wp-content/uploads/2010/12amicuslacdl.pdf

As the statistical analysis reveals, to the extent that the law produces an unacceptable rate of wrongful convictions/incarcerations, black persons comprise a disproportionate percentage of those

wrongfully convicted (by appearances) when in truth, in Louisiana, due to the preempted status of the laws governing jury trials, no conviction could legally be had.

This threatened jury-verdict system must be struck down as offensive to the constitutional guarantee of equal protection of the laws and Tate's false conviction must be nullified. The matter should be ordered held out for a "New Trial" at which the jury shall be instructed that any verdict rendered must be unanimous.

**DEPRIVATION OF TATE'S RIGHT TO SUBSTANTIVE DUE PROCESS (FEDERAL AND STATE) BY SUBJECTING THE PETITIONER TO A DISCRIMINATORY CHOSEN NON-UNANIMOUS JURY**

It is settled that jury verdicts must be unanimous expressions of the jury's conclusion, was the clear expectation of the drafters of the *Bill of Rights*. The first Principles involved are so clear that any ambiguity in United States Supreme Court opinions must be resolved against the constitutionality of non-unanimous verdicts.

The precedent often cited for upholding the peculiar institution of the non-unanimous verdict is *Apodaca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628 (1972)[2] *Apodoca* was the only United States Supreme Court case in which this issue was squarely presented. *Apodaca*, however, did not allow for non-unanimous juries in all State's of chosen, there was a qualifier. Louisiana did not meet the mark on the qualifier, so it was barred from ever using the non-unanimous jury verdict system. The *Apodaca* court specifically wrote:

> "**All that the Constitution forbids, however, is systematic exclusion of identifiable segment of the community from jury panels and from juries ultimately drawn from those panels**; a defendant may not, for example, challenge the make-up of a jury merely because no members of his race are on the jury, but move prove that his race has been systemically excluded. .... No group has the right to block convictions; it has only the right to participate in the overall processes by which criminal guilt and innocence are determined."
>
> Emphasis Petitioner's

[2]The recent well-publicized denial of writs on this issue by the United States Supreme Court in *Bowen v. Oregon*, ___ U.S. ___, 130 S.Ct. 52 (2009) is of no precedential value.

As set out above, even the *Apodaca* decision imposed a prohibition on systemic discriminatory acts with regard to the jury, and declared open support of each juror's right to full participation, as well as that of the accused to enjoy the protection of having all jurors, ... "right to participate in the overall processes by which criminal guilt and innocence are determined" to be free from systemic discrimination. The discrimination which prohibited Louisiana's use of a non-unanimous jury system even before Ramos was the openly declared reason for the calling of the **1898 Louisiana Constitutional Convention** – to deal with one question and one question alone, deal with the Negro Problem.

Because non-unanimous verdicts are entrenched in Louisiana practice, they are perceived as normal.[3] They are, in fact, a rarity. Aside from Louisiana, only Oregon allowed non-unanimous verdicts in felony cases. As does Louisiana, Oregon allows ten out of twelve jurors to convict or acquit in criminal cases, except for guilty verdicts in first degree murder cases) (Or. Const. Art. I, §§11)

In *Duncan v. Louisiana*, 391 U.S. 145 (1968), the Supreme Court found that the right to trial by jury in felony cases is a matter of such fundamental fairness that the *Fourteenth Amendment* requires that it be respected by the states just as the Sixth Amendment requires that it be respected by the federal government.

It was settled in *Ramos v. Louisiana* (U.S. (2020)) that all persons prosecuted under the Constitution of the United States Constitution are entitled to a trial wherein only a unanimous jury can find a person guilty of charged offense.

**WHAT DISTINGUISHES APODACA V. OREGON FROM WHAT IS HAPPENING HERE IN LOUISIANA**

In Louisiana, for non-capital first-degree murder and second degree murder, the sentence is an automatic term of natural life, unlike Oregon, where the options span from: life with or without parole, to imprisonment in excess of 25 years and lastly the option of a death sentence.[4]

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[3]The Supreme Court readily rejected the earlier Louisiana practice of permitting non-unanimous verdicts in six member juries, holding that five out of six jurors could not return a constitutional verdict. *Burch v. Louisiana*, 411 U.S. 130 (1979).

[4]See La. R.S. 14:30.1(B); La. R.S. 14:30(C); O.R.S. § 163.115; O.R.S. § 163.150

Moreover the origins of Oregon's law differs. Oregon's law arose in the early 1930's where the Ku Klux Klan was very popular around the state with a lot of ... political power.[5] Oregon's system was adopted in 1934 in direct response to a single case where it was believed that a single hold-out juror prevented a second-degree murder (causing a manslaughter conviction).[6] The murdered victim was Protestant and the murderer was a Jewish man suspected of mob ties.[7] Anti-immigrant and anti Jewish sentiments underlay Oregon's switch to a non-unanimous jury system.[8] Unlike Louisiana, Oregon's system originated by constitutional vote of the people. A 1933 Oregon voter pamphlet explicitly said the vote to change from a unanimous system to a non-unanimous system was "to prevent one or two ... from controlling the verdict and causing disagreement.[9] The motivation behind Louisiana's change from a unanimous system is very different, and so is the manner in which these systems were adopted in Oregon and Louisiana.

In 1803, Louisiana became a territory, unanimous verdicts were required. Louisiana required Unanimous votes from 1803 until the end of Reconstruction and the withdrawal of federal troops. Non-unanimous verdict were introduced in Louisiana in 1880, after slavery ended; at that time defendants could be convicted by vote of 9 of 12 jurors. Non-unanimous verdicts made their way to the Constitution of 1898 through Article 116, where the officials announced: "We need a system better adapted to the peculiar conditions existing in our State." [10] Louisiana citizens did not vote to adopt the 1898

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[5]Conrad Wilson, Even When Juries Can't Agree, Convictions are Still possible In Oregon, OPB.org, Dec. 12, 2016, available at http://www.opb.org/news/article/critics-challenge-oregon-non-unanimous-jury-law/.

[6]See Clayton M. Tullos, Non-Unanimous Jury Trial in Oregon, the Oregon Defense Attorney (08/10/2014), available athttp://clatontullos.com/wp-content/uploads/2014/11/Non-Unanimous-Jury-Trial-in-Oregon- (discussing the *State v. Silverman* case.).

[7]See Aliza Kaplan & Amy Saak, n. 4 at 3., Overturning Apodaca v. Oregon Should be Easy: Nonunanimous Jury Verdict in Criminal Cases undermine the Credibility of Our Justice System, 95 Oregon Lw Review 1, 19-20 (2016)

[8]Id at 3-4

[9]See State v. Sagdal, 356 Or. 639, 647 (2015)

[10]Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana 76 (1898); La. Const. Art. 116 (1898)

Constitution. At this convention of all white males, these words were spoken in reflection: "Our mission was ... to establish the supremacy of the white race ... ."[11]

At the time of the 1898 Convention, 44 percent of the registered voters in Louisiana were African-American. The change from unanimity was to: (1) obtain quick convictions that would facilitate the use of free prisoner labor (vis-a-vis Louisiana's convict leasing system) as a replacement for the recent loss of free slave labor;[12] and (2) ensure that African-Americans jurors would not use their voting power to block convictions of other African-Americans.

## CONCLUSION

The Petitioner, Mr. Brandon Tate has done his best to make it clear to this Honorable Court that the below court violated his human, constitutional, civil rights. The issues are clear and the records support all the contentions placed before this Higher Court of Honor. Let the Constitution of the United States speak loudly for all of it's citizens..

Respectfully submitted,

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[11]Id at 374-75

[12]Douglas Blackmon, Slavery by Another name 41 (2008)