No. 23-668

In The
Supreme Court of the United States

WARREN KING,

Petitioner,

v.

SHAWN EMMONS, Warden,
Georgia Diagnostic and Classification Prison,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF MARILYN GARRETT AND EDDIE HOOD, GEORGIA CITIZENS EXCLUDED FROM JURY SERVICE BASED ON RACE, AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI CURIAE[1]

Marilyn Garrett and Eddie Hood are Black citizens who were excluded from jury service based on their race in a capital trial in Rome, Georgia, in 1987. As this Court explained in *Foster v. Chatman*, 578 U.S. 488 (2016), the State used peremptory strikes to exclude Garrett and Hood from a qualified jury pool and then offered "race-neutral" reasons for the strikes. However, as this Court held, the State's reasons were "implausible" and "fantastic," and the prosecutors' notes confirmed that "the strikes of Garrett and Hood were motivated in substantial part by discriminatory intent." *Id.* at 509, 512-13.

During jury selection in *Foster*, prosecutors wrote of amicus party Marilyn Garrett[2] that if it "comes down to having to pick one of the black jurors, Garrett, might be okay." *Id.* at 514. Prosecutors highlighted Garrett's name in green marker and placed her on the State's list of "Definite NO's." To justify striking Garrett, the State offered a "laundry list" of reasons, many of which were belied by the record. *Id*. at 502-07.

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[1] Pursuant to this Court's Rule 37, amici state that no counsel for any party authored this brief in whole or in part, and no person or entity other than amici made a monetary contribution to the preparation or submission of the brief. Amici also affirm that they provided notice to counsel for both the Petitioner and the Respondent at least ten days prior to the submission of this brief.

[2] After Foster's case concluded, Ms. Garrett married and changed her name to Marilyn Whitehead.

Prosecutors similarly highlighted amicus party Eddie Hood's name in green marker; labeled Hood "B#1"; placed him on the State's list of "Definite NO's"; and wrote "*NO.* NO *Black* Church" next to his name. *Id.* at 494, 504, 511 (emphasis in original). The State provided eight shifting justifications for striking Hood, many of which this Court refused to credit. *Id.* at 507.

Amici respectfully submit this brief to share their perspective on the impact felt by Black citizens of Georgia who are excluded from jury service because of their race.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has recognized that race discrimination in jury selection causes harm not only to the defendant on trial, but also to the excluded jurors and to society as a whole. *Rose v. Mitchell*, 443 U.S. 545, 556 (1979); *Powers v. Ohio*, 499 U.S. 400, 402 (1991). Amici, who have experienced that harm firsthand as Black jurors excluded on the basis of race, respectfully request that this Court grant certiorari to address the jury discrimination in this capital case.

Race discrimination has plagued jury selection in Georgia for generations. In the 1950s and 1960s, state officials routinely manipulated jury panels to ensure that Black citizens were not summoned for jury service. *See Avery v. Georgia*, 345 U.S. 559 (1953); *Williams v. Georgia*, 349 U.S. 375 (1955); *Whitus v. Georgia*, 385

U.S. 545 (1967). In the 1970s, as jury panels began to reflect the community more accurately, Georgia prosecutors shifted their discriminatory efforts to peremptory strikes. *See Horton v. Zant*, 941 F.2d 1449 (11th Cir. 1991) (establishing a pattern of discriminatory strikes between 1974 and 1981). After this Court decided *Batson v. Kentucky*, 476 U.S. 79 (1986), the State continued to exclude Black prospective jurors through peremptory strikes, often providing pretextual race-neutral justifications to overcome *Batson* objections. *See Foster*, 578 U.S. at 512-14.

Against this backdrop, Petitioner Warren King, a Black 18-year-old, went to trial in 1998 in Georgia's Brunswick Judicial Circuit. Assistant District Attorney John Johnson used the State's peremptory strikes to remove 87.5% of the Black qualified prospective jurors. When the defense challenged the strikes, Johnson launched into a "very angry" "soliloquy" denouncing *Batson* and its progeny, giving this Court a window into his concerted effort to keep Black prospective jurors off the jury. *King v. Warden, Georgia Diagnostic Prison*, 69 F.4th 856, 863-64 (11th Cir. 2023). The evidence of a *Batson* violation in this case is overwhelming.

Amici Marilyn Garrett and Eddie Hood can attest to the harm that results from jury discrimination and the importance of confronting such discrimination when it arises. In *Foster v. Chatman*, 578 U.S. 488 (2016), this Court found that Georgia prosecutors were "motivated in substantial part by discriminatory intent" when they used peremptory strikes to exclude

Garrett and Hood from a qualified jury pool. *Id.* at 512-13. The experience had a profound effect on both amici. Garrett recalled, "I felt like I never wanted to be on a jury [again] because of the way I was treated."[3] As for Hood, he expected to be excluded before the strike process even began. After voir dire, he went home and told his wife, "More than likely, [the prosecutors are] not going to want too many of 'us' on the jury."[4] Amici's recollections and reactions are echoed by many other Black citizens who have been excluded from jury service on the basis of race, from Louisiana to North Carolina.

Given the evidence of discrimination in this capital case and the importance of the issue presented, amici respectfully submit that this Court's review is warranted.

ARGUMENT

I. RACE DISCRIMINATION IN JURY SELECTION HAS PLAGUED THE STATE OF GEORGIA FOR DECADES.

Nearly 150 years ago, this Court held that the Fourteenth Amendment prohibits the exclusion of

[3] Bill Rankin, "High Court Finds Race Discrimination in Georgia Death Case," Atlanta Journal-Constitution (Sept. 3, 2016), https://www.ajc.com/news/local/high-court-finds-race-discrimination-georgia-death-case/GotB4s3ciNMIzshWKI0TNM/.

[4] Bobby Ross, Jr., *Why a Georgia Church Elder is Making News at U.S. Supreme Court*, Christian Chronicle (Nov. 18, 2015), https://christianchronicle.org/why-a-georgia-church-elder-is-making-news-at-u-s-supreme-court/.

Black citizens from juries because of their race. *See Strauder v. West Virginia*, 100 U.S. 303, 307-08 (1880). Yet, as this Court recently observed, "critical problems persisted" long after *Strauder*, as states "employed various discriminatory tools to prevent black persons from being called for jury service." *Flowers v. Mississippi*, 139 S. Ct. 2228, 2239 (2019). Perhaps no State has employed as many "discriminatory tools" as Georgia.

In the 1950s, Georgia state officials routinely manipulated jury panels to ensure that Black citizens were not summoned for jury service. One of the more blatant examples of this occurred in Fulton County, where officials printed the names of white prospective jurors on white tickets and Black prospective jurors on yellow tickets. *Avery v. Georgia*, 345 U.S. 559, 560-61 (1953). A judge would then draw sixty tickets from a box to create a panel, selecting only white tickets in the process. *Id.* at 562. The State denied that any discrimination was occurring. But recognizing that this "practice makes it easier for those to discriminate who are of a mind to discriminate," this Court concluded that the practice violated the Fourteenth Amendment. *Id.* at 562-63. *See also Williams v. Georgia*, 349 U.S. 375, 391 (1955) (condemning the same use of white and yellow tickets that continued to occur "almost a year after the [Georgia] Supreme Court had condemned the practice").

The exclusion of Black citizens from jury panels continued into the 1960s. The state's jury lists were drawn from tax digests, Ga. Code Ann. § 59-106 (1933), and until 1966, the law required these digests to be

segregated into two sections—one for white taxpayers and one for Black taxpayers. Ga. Code Ann. § 92-6301 (1933); *Whippler v. Dutton*, 391 F.2d 425, 428 (5th Cir. 1968). The digests designated Black taxpayers with a "(c)" or the word "COLORED" next to their name. *Whitus v. Georgia*, 385 U.S. 545, 549 (1967); *Whippler*, 391 F.2d at 428; *Jones v. Smith*, 420 F.2d 774, 776-77 (5th Cir. 1969). The effect of the segregated lists was palpable. For example, at the time of Phil Whitus's death penalty trial in 1960 in Mitchell County, Georgia, not a single Black person had ever served on a grand or petit jury in Mitchell County.[5] *Whitus v. Balkcom*, 333 F.2d 496, 498 (5th Cir. 1964). Whitus's defense attorney—without consulting Whitus—unilaterally decided not to object to the all-white jury selection system. *Id.* Whitus was convicted and sentenced to death by an all-white jury. On appeal, the State denied that any discrimination occurred. This Court intervened, finding purposeful discrimination and condemning that discrimination as "evil." *Whitus v. Georgia*, 385 U.S. at 551-52.

In the 1970s, state officials continued to exclude Black citizens from jury lists, but they took further steps to conceal their efforts. In Putnam County, Georgia, the district attorney authored a memorandum instructing the jury commissioners to develop jury lists that would underrepresent Black citizens as much as possible without rendering the lists vulnerable to legal

[5] According to the 1960 census, the population of Mitchell County, Georgia, was approximately 45% Black and 55% white. *Whitus v. Balkcom*, 333 F.2d 496, 498 n.2 (5th Cir. 1964).

challenges. *Amadeo v. Zant*, 486 U.S. 214, 217-19 (1988). During post-conviction proceedings in the Putnam County death penalty case of Tony Amadeo, the State ultimately conceded that the jury composition procedures were unconstitutional, *id.* at n.3; however, it argued that Amadeo's challenge was procedurally barred. This Court rejected the State's argument and vacated Amadeo's conviction. *Id.* at 228-29.

In the face of mounting challenges to the composition of jury lists, Georgia prosecutors shifted their efforts, employing a different "discriminatory tool"—peremptory strikes. Between 1974 and 1981, a statistical analysis of three counties in the Ocmulgee Judicial Circuit demonstrated that one district attorney used a total of 234 peremptory strikes in capital cases. Of those 234 peremptory strikes, 184 (or 79%) were used to remove Black qualified prospective jurors. *Horton v. Zant*, 941 F.2d 1449, 1457 (11th Cir. 1991). A statistician testified that the likelihood that the district attorney "was using a race neutral method for exercising the strikes was less than 1 in 100,000." *Id.*

Prosecutors in the Chattahoochee Judicial Circuit took a similar approach. Between 1975 and 1979, multiple prosecutors in Muscogee County, which is part of the Chattahoochee Circuit, brought capital cases against seven Black men. In six of the capital trials, the prosecutors used their peremptory strikes to remove every Black qualified prospective juror.[6] The

[6] The seventh capital case contained a single Black alternate juror, whom the prosecution was unable to strike because the

Black defendants were then convicted and sentenced to death by all-white juries.[7] Years later, in post-conviction proceedings in one of the cases, *State v. Johnny Lee Gates*, the District Attorney's Office was forced to disclose its jury selection notes from the late 1970s. The notes demonstrated that, in these cases and others, the prosecutors routinely labeled white prospective jurors as "W" and Black prospective jurors as "N"; singled out Black prospective jurors by marking dots in the margins next to their names; described Black prospective jurors using discriminatory terms such as "slow," "old + ignorant," "hostile," "con artist," and "fat"; and routinely ranked Black prospective jurors as "1" on a scale of 1 to 5 without any further explanation.[8] Even in the face of this overwhelming evidence, the State again denied any wrongdoing. *See* Extraordinary Motion for New Trial Transcript at 391-92, *State v. Johnny Lee Gates*, No. SU-75-CR-38335

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alternate pool had more Black prospective jurors than the prosecution had strikes.

[7] *See* Order on Defendant's Extraordinary Motion for New Trial at 8-9, *State v. Gates*, No. SU-75-CR-38335 (Ga. Super. Ct. Jan. 10, 2019) (hereinafter "Gates Order") (discussing the pattern of State strikes across seven Muscogee County cases).

[8] *See* Gates Order at 5-8 (discussing the State's jury selection notes and finding that "the notes demonstrate a purposeful and deliberate strategy to exclude black citizens and obtain all-white juries"); *State v. Gates*, 308 Ga. 238, 265 n.22 (2020) (affirming the grant of a new trial based on DNA evidence and noting that "the record supports the trial court's very troubling findings regarding the selection of jurors in Gates' 1977 trial and other capital trials . . . between 1975 and 1979").

(Ga. Super. Ct. May 8, 2018). Gates's conviction was later overturned based on exculpatory DNA evidence.

In 1986, this Court decided *Batson v. Kentucky*, 476 U.S. 79 (1986), in an effort to address the continuing problem of jury discrimination. But as amici Marilyn Garrett and Eddie Hood experienced, the problem continued in Georgia. In 1987, less than a year after *Batson*, the prosecution in Timothy Foster's death penalty case tried Foster before an all-white jury by using its peremptory strikes to remove all the Black qualified jurors. As in the Muscogee County cases, the prosecutors authored racially discriminatory jury selection notes. The State denied that any discrimination occurred, claiming that it had "race-neutral" reasons for its strikes. But this Court later found that the State violated *Batson*, concluding that "the focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury." *Foster v. Chatman*, 578 U.S. 488, 514 (2016).

The State also sought to use procedural arguments to shield its *Batson* violations from review. In *Ford v. Georgia*, the prosecutors used nine of their ten peremptory strikes to exclude Black qualified prospective jurors, resulting in a jury with just one Black juror. 498 U.S. 411, 415 (1991). The State argued that Ford's claim of discrimination in jury selection was procedurally barred because the trial occurred before *Batson*. This Court rejected the State's procedural argument, *id.* at 425, leading to a finding of intentional discrimination, *Ford v. State*, 423 S.E.2d 245, 246-48 (Ga. 1992).

With this history of discrimination as the backdrop, the Petitioner in this case, Warren King, went to trial in 1998 in Georgia's Brunswick Judicial Circuit. King, a Black 18-year-old, was prosecuted by Assistant District Attorney John Johnson, whose repeated misconduct would lead to several overturned convictions and sentences.[9] Here, Assistant District Attorney John Johnson used peremptory strikes to remove 87.5% of the Black qualified prospective jurors. The unique record, including Johnson's "very angry" "soliloquy" denouncing *Batson* and its progeny, gives this Court a window into his concerted effort to keep Black prospective jurors off the jury. *King v. Warden, Georgia Diagnostic Prison*, 69 F.4th 856, 863-64 (11th Cir. 2023). Johnson condemned the trial court as "improper" for telling him that he could not exercise a strike of a Black juror based on where the juror was from. *Id.* at 863. He complained that "[i]f this lady were a white lady there . . . would not be a question in this case" and "that's the problem [he] ha[d] with all of this." *Id.* He further criticized *Batson* as "not racially neutral." *Id.* at 864. Despite the overwhelming evidence in this case that race played a role in jury selection, the State again denies any wrongdoing.

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[9] *See* Bill Rankin & Brad Schrade & Joshua Sharpe, *Dark Legacy of Overturned Convictions Trails Longtime Prosecutor*, Atlanta Journal-Constitution (July 24, 2020), https://www.ajc.com/news/dark-legacy-of-overturned-convictions-trails-longtime-prosecutor/4SDCY5SP3FGKPJ4GVUTM4OLAMM/ (detailing multiple cases in which Johnson committed prosecutorial misconduct, resulting in courts overturning convictions and death sentences).

Johnson's conduct in this case is egregious on its own terms. But it is made worse by the context in which it occurred—a long pattern of discrimination perpetrated through the use of multiple "discriminatory tools." *Flowers*, 139 S. Ct. at 2239. Even as this Court and other courts invalidated discriminatory schemes like those in *Avery* and *Whitus*, prosecutors like Johnson "could still exercise peremptory strikes in individual cases to remove most or all black prospective jurors." *Id.* And when such discrimination occurred, it harmed not only the defendant on trial, but the "entire community" from which the jury was selected. *Batson*, 476 U.S. at 87.

II. STRIKING JURORS BASED ON RACE CAUSES LASTING HARM TO JURORS AND UNDERMINES PUBLIC CONFIDENCE IN OUR CRIMINAL JUSTICE SYSTEM.

Georgia's sordid history of race discrimination in jury selection comes at a tremendous cost—to "society as a whole," *Rose v. Mitchell*, 443 U.S. 545, 556 (1979), and to the jurors who were excluded. Jury service has long been the backbone of the American criminal legal system. A jury "preserves in the hands of the people that share which they ought to have in the administration of public justice." 3 William Blackstone, *Commentaries on the Laws of England* 379 (Phila., J.B. Lippincott Co., 1893); *see also Strauder*, 100 U.S. at 308-09. Jury service is a promise from the government to provide "the most substantial opportunity that most citizens have to participate in the democratic process,"

other than voting. *Flowers*, 139 S. Ct. at 2238 (citing *Powers*, 499 U.S. at 407).

This Court has recognized the irreparable harm caused to Black citizens who are removed from juries because of their race. Race discrimination in the selection of jurors "offends the dignity of persons and the integrity of the courts." *Powers*, 499 U.S. at 402. "A venireperson excluded from jury service because of race suffers a profound personal humiliation heightened by its public character." *Id.* at 413-14. In addition, this type of discrimination "casts doubt on the integrity of the judicial process" and places the fairness of a criminal proceeding in doubt. *Rose*, 443 U.S. at 555-56. "People excluded from juries because of their race are as much aggrieved as those indicted and tried by juries chosen under a system of racial exclusion." *Carter v. Jury Comm'n of Greene Cty.*, 396 U.S. 320, 329 (1970); *see also J.E.B. v. Alabama*, 511 U.S. 127, 128 (1994) (recognizing the rights of "potential jurors").

Amici Marilyn Garrett and Eddie Hood can attest to the harm felt when prosecutors excluded them from jury service because of their race. In *Foster v. Chatman*, 578 U.S. 488 (2016), this Court found that the State used peremptory strikes to remove all four Black qualified jurors—including Garrett and Hood—to secure an all-white jury for Foster's death penalty trial. The State offered "race-neutral" reasons for the strikes. But the State's reasons were belied by the record, including the prosecutors' own racially discriminatory jury selection notes. *Id.* at 512-14.

According to the State, on the morning of jury selection, the prosecutor had not yet made up his mind to remove amicus party Marilyn Garrett. *Id.* at 501. After striking Garrett, the prosecutor offered an "elaborate explanation" to justify the strike, including a "laundry list" of no less than *eleven* different reasons. *Id.* at 502-03. The prosecutor explained that, in his jury notes, he "listed this juror as questionable." As this Court recognized, that was false. *Id.* at 503-04. In reality, prosecutors had placed Garrett's name on the State's list of "Definite NO's." *Id.* at 504. "The State from the outset was intent on ensuring that *none* of the jurors on that list would serve." *Id.* at 504 (emphasis on original).

Many of the eleven "race-neutral" reasons offered by the State to justify striking Garrett were also demonstrably false. For example, the State told the trial court that it struck Garrett because the defense did not ask her questions about pertinent trial issues including insanity, alcohol, or pre-trial publicity. *Id.* at 505. But the defense asked Garrett multiple questions on each topic. *Id*. Prosecutors claimed that they struck Garrett because she was divorced; but they declined to strike three out of four prospective white jurors who were also divorced. *Id.* Prosecutors also claimed they struck 34-year-old Garrett because she was too young. Yet the State declined to strike eight white perspective jurors under the age of 36. *Id.* at 505-06.

Garrett, who attended segregated schools as a child in the 1950s and 1960s, has recounted her "humiliating" memories of discrimination during jury

selection. *See* Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection* at 62 (2021), https://eji.org/report/race-and-the-jury/. As a mother of two, Garrett worked as a teacher's aide and in a textile factory at the time of the trial. *Id.* She recalled that the prosecutors treated her like she was a "criminal" during jury selection, asking her "over and over why [she] had two jobs." *Id.* By the end of jury selection, prosecutors had her in tears because she "didn't expect to be treated like that." *Id.* Garrett was so impacted by the discrimination that she "felt like [she] never wanted to be on a jury [again] because of the way [she] was treated." Bill Rankin, "High Court Finds Race Discrimination in Georgia Death Case," Atlanta Journal-Constitution (Sept. 3, 2016), https://www.ajc.com/news/local/high-court-finds-race-discrimination-georgia-death-case/GotB4s3ciNMIzshWKI0TNM/.

According to the State, amicus party Eddie Hood "was exactly what [the State] was looking for" in a juror. *Id.* at 507. Yet prosecutors also placed Hood's name on the State's list of "Definite NO's"; highlighted his name in green, with a key indicating that "[Green highlighting] represents Blacks"; labeled him "B#1"; and wrote "*NO.* NO *Black* Church" next to his name. *Id.* at 494, 504, 511 (emphasis in original). The State offered *eight* shifting "race-neutral" justifications for striking Hood, many of which this Court refused to credit. *Id.* at 507.

At first, the prosecutor claimed that "the only thing [he] was concerned about" was that Hood's son

had been convicted of "basically the same thing" as Foster. *Id.* at 507-08. But as this Court explained, this was "nonsense": "Hood's son had received a 12-month suspended sentence for stealing hubcaps from a car in a mall parking lot five years earlier. Foster was charged with capital murder of a 79-year-old widow after a brutal sexual assault." *Id.* at 509. The State also claimed that it struck Hood because he "appeared to be confused and slow in responding to questions concerning his views on the death penalty" and he was a member of the Church of Christ. *Id.* at 508, 511. Prosecutors claimed that "The Church of Christ people, while they may not take a formal stand against the death penalty, they are very, very reluctant to vote for the death penalty." *Id.* at 508. Again, these reasons were belied by the record. Hood "unequivocally voiced his willingness to impose the death penalty" no fewer than four times during voir dire. *Id.* at 509-11.

Hood immediately understood that he was likely to be excluded from the jury based on his race.[10] After voir dire, he returned home and told his wife: "More than likely, [the prosecutors are] not going to want too many of 'us' on the jury." Bobby Ross, Jr., *Why a Georgia Church Elder is Making News at U.S. Supreme Court*, Christian Chronicle (Nov. 18, 2015),

[10] Hood grew up in the Jim Crow era of segregation in Cave Springs, Alabama. As a teenager, he was bussed 32 miles, round trip, to an all-Black high school. In 1963, his family gained notoriety when Governor George Wallace blocked Hood's younger brother's entry to the University of Alabama. Hood's brother was later allowed to enroll after President John F. Kennedy federalized the Alabama National Guard.

https://christianchronicle.org/why-a-georgia-church-elder-is-making-news-at-u-s-supreme-court/; *Supreme Court to Review Selection of All-White Jury in Murder Case*, PBS News (Oct. 31, 2015), https://www.pbs.org/newshour/politics/supreme-court-review-selection-white-jury-murder-case.

Amici's experiences are not unique. Numerous other qualified Black prospective jurors suffered harm because they were removed from jury service because of their race. For example, Odell Jarvis was upset, but not surprised, when a Louisiana prosecutor used a peremptory strike to remove him from the jury in *State of Louisiana v. Leroy Knighten*. *See State v. Knighten*, 609 So. 2d 950, 958 (La. Ct. App. 1992) (holding that the State's peremptory strike against Jarvis and other Black prospective jurors violated *Batson*). Jarvis, a Black man, recalls receiving a jury summons in New Orleans in 1991. He diligently reported to court for jury duty multiple times over several weeks. Time and time again, Jarvis noticed that the young Black men, like himself, were dismissed from service. He felt as though the State was saying he wasn't good enough to fulfill his civic duty of being on a jury because of the color of his skin. "It's not fair to just kick Black people off the jury. Things shouldn't work that way." *See* Hearing Ex. 10, Aff. of Odell Jarvis, *Louisiana v. Williams*, No. 508-064 (La. Ct. App. June 15, 2021). To this day, Jarvis has never served on a jury.

Melodie Harris was removed by prosecutors from the capital trial of Alvin Robinson, a Black man accused of killing a white man in Lee County,

Mississippi.[11] Harris was struck when a prosecutor claimed she had "no ties to the community." EJI Report at 63. But she had lived in Lee County for a decade and worked at the same local company for six years. *Id*. Harris immediately recognized the "blatant" unfair treatment, which caused her to lose faith "in a system she wanted to trust." *Id.* The Mississippi Court of Appeals found that the reasons offered by the State were "so contrived, so strained, and so improbable" that they were "'pretexts for purposeful discrimination.'" *Robinson v. State*, 773 So. 2d 943, 949-50 (Miss. Ct. App. 2000) (quoting *Purkett v. Elem*, 514 U.S. 765, 768 (1995)).

And in one North Carolina case, several Black people removed from the jury pool described the harm that they suffered as a result of their exclusion. After Sonya Waddel, a Black woman, learned that prosecutors cited her race as a reason to remove her from the jury, Waddell felt "angry because [she had] always had faith in our criminal justice system" and she felt that her "faith has been abused." Brief of Amicus Curiae North Carolina Citizens Excluded from Jury Service Based on Race at 9, *North Carolina v. Robinson*, No. 411A94-5 (N.C. Aug. 9, 2013), 2013 WL 9047376, at *9. Similarly, when John Murray learned that he was excluded because of his race, he experienced disappointment

[11] *See* Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection* at 63 (2021), https://eji.org/report/race-and-the-jury/ (hereinafter "EJI Report"); Equal Justice Initiative, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* at 28 (2010), https://eji.org/reports/illegal-racial-discrimination-in-jury-selection/.

with the system, which he felt reinforced harmful and inaccurate stereotypes about Black people. *Id.* at 11-12.

At least one former Justice on the Supreme Court of Georgia has recognized the harm that arises from discrimination in jury selection. Justice Robert Benham, the first Black justice to serve on the court, recalled, as a young lawyer, watching as prospective Georgia jurors were struck time and time again merely because of their race or gender:

> I would watch the prospective jurors, with subpoena in hand beaming with pride and anticipation that they too would be allowed to become a part of government as jurors. As they entered the jury box they made sure that they were well-groomed, polite and well-mannered. They would look up at the judge and out at the lawyers with pride and respect. But, as the process began, their joy turned to gloom as white citizens were retained and black citizens were stricken even though they gave almost identical answers. Looking disappointed and dejected they would leave the jury box crestfallen, sad and feeling less than a full citizen.

Toomer v. State, 292 Ga. 49, 60-61 (2012) (Benham, J., concurring); *see also id.* at 61 n.2 (detailing a specific encounter with one such potential juror).

Amici's experiences are consistent with Justice Benham's observations. As this Court explained long ago, when people are excluded from jury service

because of their race, that exclusion "is practically a brand upon them . . . an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." *Strauder*, 100 U.S. at 308. This Court should grant King's petition to prevent further harm to jurors and ensure that Georgia prosecutors do not remove people from the jury because of their race.

CONCLUSION

For the foregoing reasons, amici respectfully request that the Court grant certiorari in this case.

Respectfully submitted,

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