No. 25-1

IN THE

Supreme Court of the United States

JAMES SKINNER,

Petitioner,

v.

LOUISIANA,

Respondent.

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

BRIEF OF *AMICUS CURIAE* PATRICK O'NEAL IN SUPPORT OF PETITIONER

EVAN J. BERGERON
Counsel of Record
WINSTON BERGERON, LLP
8120 Oak Street
New Orleans, LA 70118
(504) 577-2500
evan@winstonbergeron.com

WILLIAM C. SNOWDEN
THE JUROR PROJECT
7905 Jahncke Road
New Orleans, LA 70128

NICOLE V. ROSENBERG
LAW OFFICE OF DARIN MARGULES
P.O. Box 260466
Encino, CA 91426

Counsel for Amicus Curiae

384002

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

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I. INTEREST OF *AMICUS CURIAE*[1]

Patrick O'Neal tried to prevent all this. He was at the trial. He sat in the jury box. He heard every witness and argument and saw every piece of evidence. He listened intently to the court's instructions, considered the whole trial carefully, and came to a thoughtful, reasoned conclusion—that the State's case to convict Mr. Skinner was insufficient. He did exactly what our justice system demands of jurors.

The law gave him a voice to do justice for Mr. Skinner. And the law simultaneously took that voice away.

Mr. O'Neal was the lone dissenting vote on the jury that convicted Mr. Skinner under Louisiana's former non-unanimous jury scheme. He feels a deep civic and moral duty to share his experience with the Court to finally achieve the justice for Mr. Skinner he couldn't achieve before. More broadly, Mr. O'Neal intends his submission to contribute to the movement for positive change in our shared criminal justice system. Ultimately, he wants his time served on Mr. Skinner's second jury to have been meaningful in the eyes of the law. As Mr. O'Neal puts it, "my vote was all I could do."

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1. No counsel for a party authored this brief in whole or in part, and no other person or entity other than *amicus curiae* has made a monetary contribution to the preparation or submission of this brief. Counsel of record for both parties received timely notice of *amicus'* intent to file this brief and both Petitioner and Respondent have consented to the filing of this brief.

II. SUMMARY OF THE ARGUMENT

Mr. Skinner was convicted by a non-unanimous jury verdict from which Mr. O'Neal was the lone dissenter. That cannot be ignored when considering the gravity and consequence of the State's *Brady* violations underpinning that conviction. Rather, Louisiana's then-existing non-unanimous jury scheme encouraged rather than prevented an unfair result that led to Mr. Skinner's wrongful conviction.

Jury service is important to both the juror and the justice system. For the former, it is a tangible avenue to participate in governance and to check the government's power. For the latter, it lends legitimacy to judicial proceedings and fosters faith in the people that the answers to weighty questions of a compatriot's guilt or innocence rest with the governed rather than the government. At the same time, the dignity and validity of jury determinations rest on the presumption that selected jurors will carefully scrutinize the evidence presented, discuss and debate their conclusions at length, and come to a reasoned verdict after every juror's voice is heard. The non-unanimous jury scheme under which Mr. Skinner was convicted actively undermines these fundamental principles.

At the close of the evidence at trial, Mr. O'Neal immediately recognized the multiple, legitimate questions left open by the State's case. But the jury here convened, took an initial poll for a verdict and, finding the requisite number of votes for conviction, ended its work there. The jury had no reason to hear Mr. O'Neal's conclusions because his vote could simply be disregarded in reaching a verdict.

The jury's approach to this case employed "verdict-driven" rather than "evidence-driven" deliberations, i.e., deliberations with the end goal of reaching a verdict as quickly as possible rather than engaging thoughtfully with the evidence in order to reach a verdict. In a non-unanimous system, juries most often use verdict-driven deliberations. This approach poses the significant danger that the jury will engage in no deliberations at all when, as here, the votes to convict in the jury's first poll meet or exceed the required threshold for a verdict. The result is that a jury never hears or considers dissenting voices, no matter how strong or reasoned those dissents are.

Here, the State's *Brady* violations contributed to the jury's incuriosity and failure to discuss the evidence or Mr. O'Neal's countervailing opinions. Mr. O'Neal strongly believes that, had the jury been presented with the exculpatory evidence the State withheld, the other 11 jurors would have been much more receptive to discussing his objections. But Louisiana's non-unaniumous jury system prevented that.

True, Mr. O'Neal's submissions to the Court constitute information as to the internal workings of the jury—traditionally a third rail that cannot be touched by the trial court or a reviewing tribunal. Mr. O'Neal's experience does speak to what happened with this specific jury but, more importantly, illustrates a pervasive ill of the non-unanimous jury system as a whole. While the Federal Rules of Evidence shields some testimony about a jury's deliberations, this is not the sort of information the Rules are designed to exclude.

But on a broader point, the non-unanimous jury system this case employed both diminishes a criminal

defendant's right to a trial by jury and perpetuates a system of minority oppression tracing its roots to Jim Crow. As this Court holds, a fair and impartial jury must be one whose verdict is unanimous. Anything less is an affront to the Sixth and Fourteenth Amendments. This Court likewise recognizes the racist and oppressive history of non-unanimous jury systems. These systems can be traced back to subjugation of the Black race and the creation of a cheap labor force through mass incarceration. The Court's failure to intervene here would continue the perpetuation of these systems and eliminate the progress made to relegate Jim Crow to the dustbin of history.

This Court should therefore grant Mr. Skinner's petition and reverse his conviction.

III. ARGUMENT

A. The Non-Unanimous Verdict Convicting Mr. Skinner is Flawed and Exacerbated the State's *Brady* Violations.

One element of Mr. Skinner's conviction cannot be ignored. His 2005 guilty verdict was derived from a non-unanimous jury—a jury on which Mr. O'Neal was the lone dissenter. True, this Court has precluded this result from serving as an independent basis for reversal. *See Edwards v. Vannoy*, 593 U.S. 255, 262 (2021). Nevertheless, the verdict, coupled with the State's serious *Brady* violations, shows that justice was far from served.

The non-unanimous jury system employed in Louisiana pre-*Ramos* fostered an environment of cursory review rather than deep and comprehensive consideration

of trial evidence. When ten jurors agreed, there was no reason to deliberate further even in the face of strong, considered objections from the others. Excluding jurors whose votes are not required for a verdict means the jury had no reason to consider reasonable doubts and, in this case, significant holes in the State's case. Mr. Skinner's non-unanimous guilty verdict therefore must factor into this Court's consideration, and weighs strongly in favor of granting Mr. Skinner's petition.

1. Mr. O'Neal's Experience as a Juror in This Case Illustrates Why Non-Unanimous Verdicts Are Inherently Unreliable and Unfair.

Mr. O'Neal, as a juror in Mr. Skinner's second-degree murder trial, was a consequential participant in the process—or so it would seem. While he was presented with every witness and every piece of evidence, was instructed by the court, and was present in the jury room for (what should have been) their deliberations, his participation meant nothing because his colleagues could ignore him to reach their verdict. His experience is a condemnation not only of the State's *Brady* violations here, but of the non-unanimous jury system as a whole.

As a threshold matter, this Court recognizes the importance of a citizen's jury service, finding that it "guards the rights of the parties and ensures continued acceptance of the laws by all of the people." *Powers v. Ohio*, 499 U.S. 400, 407 (1991). A citizen's jury service gives him the assurance that he, "being part of the judicial system of the country, can prevent its arbitrary use or abuse." *Balzac v. Porto Rico*, 258 U.S. 298, 347 (1922). Mr.

O'Neal agrees—his jury service here was one of his "most significant opportunit[ies] to participate in the democratic process." *Powers*, 499 U.S. at 407. Mr. O'Neal's experience on this jury is therefore consequential to his sense of civic duty, to the result of Mr. Skinner's trial, and to our system of ordered justice writ large.

At the same time, this Court has discussed at length how lack of a jury unanimity requirement silences dissenting views and prejudices a criminal defendant. In *Brown v. Louisiana*, this Court retroactively applied its prior holding requiring unanimity when a jury was composed of only six persons. 447 U.S. 323, 330 (1980). Comparing Louisiana's nonunanimous six-juror verdict system with Florida's previously-invalidated unanimous five-juror system, the Court found the two constitutionally indistinguishable:

> The threat which conviction by a 5-to-0 verdict poses to the fairness of the proceeding and the proper role of the jury is not significantly alleviated when conviction is instead obtained by the addition of a sixth, but dissenting, ballot. When the requirement of unanimity is abandoned, the vote of this "additional" juror is essentially superfluous . . . . And while the addition of another juror to the five-person panel may statistically increase the representativeness of that body, relinquishment of the unanimity requirement removes any guarantee that the minority voices will actually be heard.

Id. at 333. This Court was rightfully concerned not just with juror *service*, but with juror *participation*.

Mr. O'Neal's was one of those dissenting voices the Court found important to protect. At the close of the evidence here, Mr. O'Neal had serious doubts as to Mr. Skinner's guilt; specifically, that the evidence presented did not correlate with the State's theory of the case. The State posited that Mr. Skinner had run over the victim with a car. But in all of the crime photos entered into evidence, the victim's scalp showed no evidence of gravel deposits. This, to Mr. O'Neal, made no sense. In his mind, had the victim been run over by a car, gravel would have adhered to the victim's blood. But while the photos showed blood on the victim's scalp, they did not show gravel. For this reason, Mr. O'Neal had serious doubts about convicting Mr. Skinner of the charges.

Despite Mr. O'Neal expressing real concerns about how the physical evidence presented did not support the State's theory of guilt, he had no way to engage his fellow jurors in deliberation since his vote was not needed for a verdict. Because there were already at least ten votes to convict Mr. Skinner, there was no reason to even acknowledge Mr. O'Neal or his reasoned conclusions. It was almost as if the State of Louisiana called Mr. O'Neal for a solemn civic duty, charged him with the weighty task of determining the fate of a man's freedom, admonished him to thoroughly scrutinize everything he saw and heard down to the smallest detail, encouraged him to reach his own reasoned conclusion, and then simply pretended he did not exist. What was the point? What was the point of any of it?

On the contrary, had Mr. Skinner's trial proceeded in a jurisdiction requiring a unanimous verdict, Mr. O'Neal's meaningful conclusions, as he was charged by the State

to make, would have mattered just as much as any other juror's. He would have been equal with his peers and capable of fostering a genuine and thorough evaluation of the evidence. And, most importantly, he would have been able to discuss and leverage his reasonable doubts to engage his fellow jurors in meaningful, evidence-based deliberation.

But Louisiana did not require a unanimous verdict; it did not require Mr. O'Neal at all. Mr. O'Neal had no opportunity to explain his doubts about the physical evidence being used to suggest Mr. Skinner's guilt. He couldn't speak out; he couldn't object; he couldn't stop what he thought was a grave miscarriage of justice. His attempts would fall on deaf ears. Instead, he could only watch. He was, for all intents and purposes, not even in the room.

Mr. O'Neal's experience demonstrates the jury engaged in a verdict-driven style of deliberation, *see infra* at § A.2, which focuses on the end result of the deliberations rather than the deliberations themselves. Because it was late in the day on a Sunday and the other jurors were hungry and wanted to go home, Mr. O'Neal's doubts about the prosecutors meeting their burden of proof could be ignored. His conclusions were neither needed nor heeded. As this Court considers whether to deliver the same justice it delivered to Mr. Skinner's co-defendant, Mr. Wearry, on the basis of *Brady* violations, it should also weigh the ways in which non-unanimity has eroded the faith and confidence in the justice system of all Louisianans—and, in particular, Mr. O'Neal.

2. Verdict-Driven Deliberations in the Absence of Unanimity Lead to Careless Consideration of Trial Evidence and of Jurors' Reasonable Doubts.

The jury here, like many other non-unanimous juries, deliberated on a verdict-driven rather than evidence-driven basis. This means that in practice, when jurors know they only need ten votes to convict, they tend to begin their deliberations by first polling themselves to see if they are close to the requisite ten. *See* Psychological Science and the Law, 342, Neil Douglas Brewer & Amy Bradfield Douglass, eds., Guilford Press, 2019. When this first poll is dispositive or nearly so, there is little reason for the jury to discuss the evidence even in the face of strong opposition from one or two jurors. This was Mr. O'Neal's experience. Even after voicing his concerns about the evidence, no deliberation followed since his vote was not needed for a verdict.

This Court, of course, gives strong deference and protection to a jury's deliberations and conclusions in the interest of protecting jurors from harassment, *McDonald v. Pless*, 238 U.S. 264, 267-68 (1915), maintaining trust in our judicial system, and preserving the stability and finality of verdicts, *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 218 (2017). But that deference is predicated on "deliberations that are honest, candid, robust, and based on common sense." *Id.* at 211. Mr. O'Neal's experience here demonstrates that a jury not required to engage in such dynamic discussions, won't.

The effect of non-unanimity on the jury itself is therefore profound, causing inaccuracy and unfairness.

This Court has even recognized that when one or two jurors' belief in the defendant's innocence may be disregarded by their colleagues, the likelihood of an erroneous conviction is substantially higher. *See Brown,* 447 U.S. at 333 ("The prosecution's demonstrated inability to convince all the jurors of the defendant's guilt certainly does nothing to allay our concern about the reliability of the jury's verdict.").

This verdict-driven style of deliberation thwarts the deliberation process by removing any leverage jurors in the minority may have to continue discussion and evaluation of the evidence. This Court in *Ramos*, citing to information from the Constitutional Convention establishing Louisiana's 10-2 verdict system, noted that when ten jurors can effectively disregard the opinion of two, it renders the two dissenters' votes "meaningless." 590 U.S. at 88, n. 4 (citing *State v. Maxie*, No. 13-CR-72522 (La. 11th Jud. Dist., Oct. 11, 2018)); *see also Johnson v. Louisiana,* 406 U.S. 399, 402-403 (Marshall, J., dissenting) ("the fencing-out problem goes beyond the problem of identifiable minority groups. The juror whose dissenting voice is unheard may be a spokesman, not for any minority viewpoint, but simply for himself"). The result is an incurious jury focused more on reaching *any* verdict rather than the *correct* verdict.

3. The State's Undisclosed *Brady* Material Would Have Facilitated Actual Deliberation Amongst Jurors.

Mr. O'Neal's doubts arose from the State's lack of evidence and testimony from some of the witnesses. From Mr. O'Neal's perspective, had the undisclosed *Brady* material been incorporated as part of the trial, his fellow

jurors would have had more cause to deliberate—and more reasons to doubt.

Mr. O'Neal did not find the State's star witness, Sam Scott, believable. Indeed, this Court characterized Mr. Scott's testimony in Mr. Weary's state capital murder trial as, "dubious." *Wearry v. Cain*, 577 U.S. 385, 393 (2016). Had the following *Brady* material relating to Mr. Scott been presented to the jury, Mr. O'Neal believes it would have influenced his fellow jurors and the deliberation process:

- Reports that Scott told other incarcerated people to falsely accuse people of crimes to "get out of jail." *Wearry,* at 389.

- The details of Scott's plea offer from the State allowing Scott to plead to a reduced charge of manslaughter and receive credit for the time already served prior to the commission of the crime, enabling Scott's release shortly after the trial. Pet. App. 31a-32a.

- Randy Hutchinson's medical records, which would have cast doubts on Scott's testimony of Hutchinson's physical role in the crime since Hutchinson was recovering from knee surgery and physically incapable of performing the tasks Scott testified about. *Wearry*, 577 U.S. at 390.

Likewise, Mr. O'Neal did not find State witness Ryan Stinson believable. Mr. Stinson claimed Mr. Skinner

confessed to him in a jail cell they shared shortly after Mr. Skinner's arrest. Pet. App. 66a-69a. Had the following *Brady* material relating to Mr. Stinson made it into the trial and been presented to the jury, Mr. O'Neal believes it would have influenced his fellow jurors and the deliberation process:

- The State did not disclose that Stinson was receiving a prison facility transfer in exchange for his testimony. Pet. App. 60a–64a.

- This deal was struck only after Mr. Stinson told the judge in Mr. Skinner's second trial that he didn't remember anything and was not going to testify until his memory was refreshed after meeting with the prosecutors. *Id.* 64a, 71a–73a.

Even further, Mr. O'Neal did not find State witness Raz Rogers believable. Mr. Rogers claimed Mr. Skinner confessed to him about committing the murder. Had the following *Brady* material relating to Mr. Rogers made it into the trial and been presented to the jury, Mr. O'Neal believes it would have influenced his fellow jurors and the deliberation process:

- Mr. Rogers confessed to the crime himself. Pet. App. 76a.

- Mr. Rogers previously gave statements about Mr. Walber's murder that did not implicate Mr. Skinner. *See* Supp.App.D.2. 673–75; Supp.App.D.3. 913; Supp.App.E.1 199.

Mr. O'Neal had his own doubts with these witnesses prior to learning about the State's *Brady* violations. He is convinced that had the *Brady* material been brought up during trial, he not only would have had more doubts to point to for discussion, but his other jurors would have as well. This *Brady* material may have prevented the ten votes needed for a verdict from initially being present and therefore would have required the jurors to deliberate.

4. Mr. O'Neal's Experience is Distinguishable From Post-Verdict Testimony Prohibited by Federal Rule of Evidence 606(b).

Mr. O'Neal's experience on this jury is appropriate for this Court to consider because it doesn't concern the kind of information precluded by Federal Rule of Evidence 606(b). While it touches on the specific deliberations in Mr. Skinner's case, it more broadly demonstrates the ills of the non-unanimous jury system. It is therefore essential for this Court's consideration of Mr. Skinner's petition.

There is a significant difference between a juror who refrains from participating in deliberations while empowered to do so and a juror who sincerely desires to participate but is precluded by his peers. This Court has determined that post-verdict testimony concerning juror intoxication was inadmissible and would not provide a basis to impeach the verdict, *see Tanner v. United States*, 483 U.S. 107, 125 (1987), but it has also held that, "where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement

and any resulting denial of the jury trial guarantee." *Peña-Rodriguez,* 580 U.S. at 225; *see also U.S. v. Villar*, 586 F. 3d 76, 83 (1st. Cir. 2009) (the court should only conduct a post-verdict inquiry when, "there is clear, strong, substantial and incontrovertible evidence that a specific, nonspeculative impropriety has occurred which could have prejudiced the trial of a defendant." (internal citations omitted)). But this Court has never considered what happens when a juror is closed off from deliberations or when his opinion is plainly ignored by the other jurors. How could it? Only a non-unanimous jury system would permit such an absurdity.

As a result, Federal Rule of Evidence 606(b) does not bar consideration of Mr. O'Neal's juror experience. His submissions to the Court highlight important considerations necessary for disposition of Mr. Skinner's petition.

B. The Non-Unanimous Jury System Diminishes a Defendant's Right to Trial By Jury and Perpetuates Systemic Racial Bias.

In *Ramos v. Louisiana*, this Court provided a thorough exposition of the history of non-unanimous juries in both Louisiana and Oregon, identifying their racist origins and questioning their persistence. 590 U.S. 83, 87-88 (2020). The Court likewise explained why and how juror unanimity is both a near universally-accepted historical standard and a necessary element of the Sixth Amendment's right to a trial by jury. *Id.* at 89-92. Using these two considerations, this Court prohibited states from using non-unanimous jury verdicts to convict defendants.

1. A Defendant's Sixth Amendment Right to a Jury Trial Means Less Under a Non-Unanimous System.

The guarantee in the Sixth and Fourteenth Amendments of the right of criminal defendants to a speedy and public trial by an impartial jury has been declared by this Court to be "a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants." *Duncan v. Louisiana,* 391 U.S. 145, 158 (1968). The non-unanimous system Louisiana employed here lessened the constitutional protections to which Mr. Skinner was otherwise entitled.

Trial by jury in serious criminal cases has long been regarded as an indispensable protection against the possibility of governmental oppression. History reveals "a long tradition attaching great importance to the concept of relying on a body of one's peers to determine guilt or innocence as a safeguard against arbitrary law enforcement." *Williams v. Florida,* 399 U.S. 78, 87 (1970). Given this purpose, "the essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group's determination of guilt or innocence." *Id.,* at 100.

The requirement of juror unanimity emerged in 14th century England and was soon accepted as a vital right protected by the common law. *Ramos*, 590 U.S. at 90*; see also* Thomas Regnier, *Restoring the Founders' Ideal of the Independent Jury in Criminal Cases*, 51 Santa

Clara L. Rev. 775, 788, 843 (2011) (unanimity serves as a proxy representing the community since it is impractical to assemble the entire community to judge the accused). Furthering this long, consistent line of courts interpreting the right to a trial by jury as requiring unanimity, this Court in *Ramos* held with finality that the Sixth Amendment defines an "impartial jury" to be one that reaches a unanimous verdict in order to convict.

Justice Thomas concurred similarly but with a more simple proposition: that he "would resolve the case based on the Court's longstanding view that the Sixth Amendment includes a protection against nonunanimous felony guilty verdicts." *Ramos*, 590 U.S. at 132 (Thomas, J., concurring). He cited to *Thompson v. Utah*, 170 U.S. 343, 346 (1898), for the proposition that the right to a jury trial makes it impossible to deprive one of his liberty except by a unanimous verdict, and then proceeded with a recitation of cases affirming this unanimity requirement: *Patton v. United States,* 281 U.S. 276 (1930); *Andres v. United States,* 333 U.S. 740, (1948); *Southern Union Co. v. United States,* 567 U.S. 343, 356 (2012); *Blakely v. Washington,* 542 U.S. 296, 301 (2004); and *Apprendi v. New Jersey,* 530 U.S. 466, 477 (2000). *Ramos,* 590 U.S. at 133 (Thomas J., concurring). He then posed a simple and clearly answered question: "whether these decisions are entitled to *stare decisis* effect." *Id.*

This rich jurisprudential history acknowledges that a right to a trial by a non-unanimous jury isn't much of a right at all.

2. The Prejudice and Racial Bias Intended by and Inherent in Non-Unanimous Verdicts Originates from Purposeful Subjugation of Black People and the Need for Cheap Labor.

As this Court is aware and as historians and legal scholars have confirmed for decades, the non-unanimous jury system under which Mr. Skinner was convicted was born of Jim Crow and persisted through the twentieth century as a way to disproportionately incarcerate Black people. That history likewise cannot be ignored here.

Louisiana first endorsed nonunanimous verdicts for serious crimes at a constitutional convention in 1898, reducing the requirements for felony convictions in trials to only nine of twelve jurors. As this Court noted in *Ramos*, one committee chairman speaking at the 1898 constitutional convention confirmed that the convention's avowed purpose was to establish the supremacy of the white race, "and the resulting document included many of the trappings of the Jim Crow era: a poll tax, a combined literacy and property ownership test, and a grandfather clause that in practice exempted white residents from the most onerous of these requirements." 590 U.S. at 87. The Court likewise pointed out that "courts in both Louisiana and Oregon have frankly acknowledged that race was a motivating factor in the adoption of their States' respective nonunanimity rules. *Id.* at 88.

Thus, Louisiana lawmakers and courts had for over 125 years recognized that non-unanimity substantially increased the risk of erroneous convictions. But that risk was tolerated, in large part, because the harm was borne

predominantly by minority defendants. In fact, a body of scholarship posits that the institutions of slavery and mass incarceration are historically linked by the *Code Noir*[2] and the carve-out in the Thirteenth Amendment abolishing slavery, "except as punishment for crime whereof the party shall have been duly convicted," U.S. Const. Amend. XIII, § 1. *See* John K. Bardes, The Carceral City, Slavery and the Making of Mass Incarceration in New Orleans, 1803-1930, p. 242, University of North Carolina Press, 2024.

A convict leasing scheme developed in Louisiana in the early 1800s whereby the State would lease out prisoners, a population composed primarily of enslaved people who had run away from plantations or free Black people who were accused of violating the *Code Noir*. Bardes, *supra*, at pp. 29-30, 73, 216. After the abolition of slavery in 1865, this system of convict leasing became the state's primary method for extracting cheap labor from a largely Black population. *Id.* at 190-192.

The 1898 Louisiana State Constitution ended convict leasing, returning custody of prisoners to the State. *Id.* at 219. Three years after its passage, the state purchased the plantations owned by the last convict lessee and turned them into the new Louisiana State Penitentiary, which became known as "Angola" after one of the plantations. *Id.* ("Today, Angola Penitentiary is the largest maximum-

2. The Code Noir ("Black Code") was a set of laws issued by the French Crown in 1724 that regulated the status, treatment, and behavior of enslaved and free Black people. *See* John K. Bardes, The Carceral City, Slavery and the Making of Mass Incarceration in New Orleans, 1803-1930, pp. 29-30; 73, 216, University of North Carolina Press, 2024).

security prison in the United States." It remains an active plantation.")

The split-jury law led to more guilty pleas and verdicts, which in turn supplied a steady stream of prisoners to the state. As a result, Louisiana today has the dubious distinction of being the world's incarceration capital, with Black people disproportionately affected. *See* Historic New Orleans Collection Exhibition, Captive State: Louisiana and the Making of Mass Incarceration (July 19, 2024- February 16, 2025); N. Weldon, "A Long Arc of Injustice, (Exhibition Catalog), https://hnoc.org/publishing/first-draft/a-long-arc-of-injustice.

The Louisiana Constitution of 1898 was followed in the 1970s and subsequent decades by Louisiana legislators adding a litany of "tough-on-crime" penalties, resulting in more Louisianians being sent to prison for longer terms and with fewer opportunities for parole than ever before. This predictably exploded Louisiana's incarceration rates. As a result, a growing number of people in Louisiana are serving life sentences without parole. *Id.*

Louisiana shifted from requiring 9-3 verdicts to 10-2 verdicts for serious felony trials at the Constitutional Convention of 1973. 7 Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts 1184 (La. Constitutional Convention Records Comm'n 1977). When this Court established in *Burch v. Louisiana* that the concurrence of six jurors in a misdemeanor trial was constitutionally required, Louisiana prosecutors would, when handling a particularly difficult low-level felony case, upcharge to a more serious felony because it was easier to convict with ten out of twelve jurors

rather than six out of six. S.B. 243, 2018 Reg. Sess., Debate on Final Passage (Apr. 4, 2018) (Statement of Sen. Claitor). This practice finally ended in 2018 when Louisiana voters amended their constitution to require unanimity of verdicts in felony convictions. Vera Inst. of Justice, Unanimous Juries Bring 21st Century Justice to Louisiana, (Nov. 20, 2018), https://www.vera.org/news/unanimous-juries-bring-21st-century-justice-to-louisiana (Louisiana's Constitutional Amendment #2 aims "to uproot the racist history of our criminal justice system in slavery and Jim Crow").

Mr. Skinner's non-unanimous conviction here is just another instance of Louisiana's mass incarceration system at work, perpetuated in part by juries who the law excused from full discharge of their duties when the votes were right. While so many have tried (and continue trying) to finally root out the ubiquitous and pervasive vestiges of Jim Crow from our legal system, there are still so many injustices that endure and can never be rectified.

But this is not one such irreparable injustice. This Court has the power to right this wrong by granting Mr. Skinner's petition and reversing his conviction.

IV. CONCLUSION

Mr. O'Neal knew the State was wrong. He knew Mr. Skinner could not have committed the murder the State charged. But at that trial in 2005, no one would listen. The law allowed them not to listen. And their willful deafness put an innocent man behind bars.

This Court cannot consider Mr. Skinner's conviction outside the lens of his nonunanimous jury verdict. Mr. O'Neal implores the Court to see how a fatally flawed, racist system unjustly took Mr. Skinner's liberty, and to give him the justice Mr. O'Neal couldn't.

Respectfully submitted,

Evan J. Bergeron
Counsel of Record
Winston Bergeron, LLP
8120 Oak Street
New Orleans, LA 70118
(504) 577-2500
evan@winstonbergeron.com

William C. Snowden
The Juror Project
7905 Jahncke Road
New Orleans, LA 70128

Nicole V. Rosenberg
Law Office of Darin Margules
P.O. Box 260466
Encino, CA 91426

Counsel for Amicus Curiae