

No. 25-6623

In the
Supreme Court of the United States

HAMED KIAN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA DISTRICT COURT OF APPEAL, FOURTH
DISTRICT

**Brief of *Amicus Curiae* Maricopa County
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TABLE OF CONTENTS

INTERESTS OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
1. Foundational rights like the right to a jury trial “may not be submitted to a vote; they depend on the outcome of no elections.”	3
2. Before <i>Williams</i> , Arizona accurately understood that the right to a jury meant a 12-person jury.	4
3. <i>Williams</i> did more than change the rule—it changed the question.....	5
4. After <i>Williams</i> , Arizona treated the right to a 12-person jury like a policy decision and put it up for a vote.....	6
5. Fifty years later, Arizonans facing life-altering sentences are deprived of a 12-person jury.....	8
CONCLUSION	11

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bowden v. Nugent</i> , 226 P. 549 (Ariz. 1924)	5
<i>Carrol v. Byers</i> , 36 P. 499 (Ariz. 1894).....	4
<i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968)	3
<i>Ex parte Davis</i> , 236 P. 715 (Ariz. 1925)	5
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015)	3, 8
<i>Patton v. United States</i> , 281 U.S. 276 (1930).....	4
<i>Rasmussen v. United States</i> , 197 U.S. 516 (1905).....	4
<i>State v. Armendaris</i> , 567 P.3d 755 (Ariz. App. 2026).....	8
<i>State v. Cousins</i> , 397 P.2d 217 (Ariz. 1964)	5
<i>State v. Fontes</i> , 2024 WL 3791966 (Ariz. App. 2024, unpub)	9, 10
<i>State v. Johnson</i> , 588 P.3d 1138 (Ariz. App. 2026).....	9
<i>State v. Kuck</i> , 129 P.3d 954 (Ariz. App. 2006)	8
<i>State v. Prince</i> , 689 P.2d 515 (Ariz. 1984).....	9
<i>State v. Soliz</i> , 219 P.3d 1045 (Ariz. 2009).....	9, 10
<i>Thompson v. Utah</i> , 170 U.S. 343 (1898)	4
<i>Trump v. Slaughter</i> , 609 U.S. __ (2026)	3
<i>W. Va. Bd. of Ed. v. Barnette</i> , 319 U.S. 624 (1943).....	3, 8
<i>Weaver v. Palmer Bros. Co.</i> , 270 U.S. 402 (1926).....	3
<i>Williams v. Florida</i> , 399 U.S. 78 (1970).....	1-8, 11

TABLE OF AUTHORITIES

	Page(s)
Constitutional Provisions	
U.S. Const. Amend. 6.....	2, 5, 11
Ariz. Const. Art. 2, § 23	4, 7
 Statutes	
Ariz. Rev. Stat. § 21-102.....	7
 Other Authorities	
Editorial, “11 propositions deserve approval,” <i>Tucson Citizen</i> , pg. 29 (10/25/1972)	7
Editorial, “Vote Yes On All 11 Propositions,” <i>Arizona Daily Star</i> , pg. 102 (10/08/1972).....	7
Editorial, “How to help the courts,” <i>Arizona</i> <i>Republic</i> , pg. 6 (10/31/1972)	7
Hon. Richard S. Arnold, <i>Trial by Jury: The</i> <i>Constitutional Right to a Jury of Twelve in</i> <i>Civil Trials</i> , 22 Hofstra L. Rev. 1 (1993).....	4
Robert H. Miller, <i>Six of One is Not a Dozen of the</i> <i>Other: A reexamination of Williams v. Florida</i> <i>and the size of state criminal juries</i> , 146 U. Penn. L. Rev. 321 (1998).....	4
Joel Nilsson, “Propositions 104, 107 Involve Changes In Judicial Procedures,” <i>Arizona</i> <i>Daily Star</i> , pg. 3 (10/23/1972).....	6, 7

INTERESTS OF AMICUS CURIAE¹

Maricopa County is the fourth most populated county in the United States.² Since 2015, more than 28,000 felony cases have been filed in its Superior Court every year on average.³ Many of these cases involve defendants who cannot afford counsel.

The Maricopa County indigent representation offices handle most of the indigent-client cases filed in Maricopa County. The Office of Public Defense Services oversees the Office of Contract Counsel and the staffed offices—the Office of the Public Defender, Office of the Legal Advocate, Office of the Legal Defender, and Office of the Public Advocate.

Arizona's experience offers a unique perspective. It is not merely the story of a state that reduced jury size. It's the story of what happens when a constitutional guarantee is transformed into a policy choice. *Williams* didn't simply authorize smaller juries; it changed who decides what the Constitution requires. Arizona's experience illustrates the consequences of that methodological shift.

¹ The parties have consented to the filing of this amicus brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *Amicus Curiae* and its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

² Maricopa County Quick Facts, Maricopa County, <https://www.maricopa.gov/3598/County-Quick-Facts> (last accessed July 22, 2026).

³ *Statistics: Felony Filings by Fiscal Year*, Ariz. Sup. Ct., <https://www.azcourts.gov/statistics/Interactive-Data-Dashboards/Felony-Filings> (last accessed July 22, 2026).

SUMMARY OF ARGUMENT

Fundamental constitutional rights are not meant to be determined through the political process. The right to a jury trial should not be put to a vote or altered according to political convenience.

Before *Williams v. Florida*, courts determined jury size by looking to the original meaning of the Sixth Amendment. A jury required 12 people.

Williams changed the inquiry. Rather than asking what the Constitution required, states were allowed to decide what jury size they believed sufficient. Arizona accepted that invitation. The Legislature proposed an amendment to the Arizona Constitution to reduce jury size in most criminal cases. It justified the change on grounds of cost and efficiency. And Arizona's voters approved the measure.

Since then, Arizona has illustrated what happens when constitutional meaning is replaced by political judgment. People facing life-altering sentences—and life-altering charges like second-degree murder, aggravated assault, burglary, and sexual offenses—have their fates decided by juries of just 8 people.

This Court should overrule *Williams* and restore the original meaning of the Sixth Amendment's jury guarantee.

ARGUMENT

1. Foundational rights like the right to a jury trial “may not be submitted to a vote; they depend on the outcome of no elections.”

“A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government.” *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968). That protection is fundamental for defendants. “Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.” *Id.*

That right should not be subject to social whims or political compromise. As this Court explained a century ago, “The constitutional guaranties may not be made to yield to mere convenience.” *Weaver v. Palmer Bros. Co.*, 270 U.S. 402, 415 (1926).

That remains true today. A decade ago, this Court said that our “fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.” *Obergefell v. Hodges*, 576 U.S. 644, 678 (2015) (quoting *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943)). And just this year this Court explained that “political inventions must remain subject to the demands of the Constitution, lest the political branches amend by agreement integral parts of the constitutional design.” *Trump v. Slaughter*, 609 U.S. ___, *33 (2026) (quotation modified).

But when it adopted a functionalist approach in *Williams*, that’s what this Court allowed. And Arizona’s history is proof.

2. Before *Williams*, Arizona accurately understood that the right to a jury meant a 12-person jury.

The right to a 12-person jury was “firmly established” in English common law by 1367. *See* Hon. Richard S. Arnold, *Trial by Jury: The Constitutional Right to a Jury of Twelve in Civil Trials*, 22 Hofstra L. Rev. 1, 8 (1993).

Colonial practice followed suit. By “1791 it was clear that the colonists believed a jury of fewer than twelve to be a concept both alien and ominous.” *Id.* at 14; *see also* Robert H. Miller, *Six of One is Not a Dozen of the Other: A reexamination of Williams v. Florida and the size of state criminal juries*, 146 U. Penn. L. Rev. 321, 640 (1998).

And this court recognized that construction. *See Thompson v. Utah*, 170 U.S. 343, 350 (1898); *Rasmussen v. United States*, 197 U.S. 516, 529 (1905); and *Patton v. United States*, 281 U.S. 276, 292 (1930).

Arizona’s framers understood this. Before statehood, the Supreme Court of the Territory of Arizona acknowledged, “At common law a lawful jury was composed of 12 jurors” *Carrol v. Byers*, 36 P. 499 (Ariz. 1894). And when enacted in 1912, the Arizona Constitution required a 12-person jury for all felony offenses: “The right of trial by jury shall remain inviolate, but provision may be made by law for a jury of a number less than twelve in courts not of record” Ariz. Const. Art. 2, § 23 (1912).⁴

⁴ Available at [Arizona Memory Project](#).

The right to a jury of 12 was so clear that litigation did not center on jury size; it focused on whether the offense warranted a jury at all. *See, e.g., Bowden v. Nugent*, 226 P. 549, 551 (Ariz. 1924); *Ex parte Davis*, 236 P. 715, 716 (Ariz. 1925); *State v. Cousins*, 397 P.2d 217, 218–19 (Ariz. 1964).

But *Williams* changed the inquiry—and how Arizona looked at jury size.

3. *Williams* did more than change the rule—it changed the question.

The majority in *Williams v. Florida* acknowledged this historical understanding of the jury trial right—and then broke from Sixth Amendment precedent. *See Williams v. Florida*, 399 U.S. 78, 86-91, 99-100 (1970).

The *Williams* majority looked instead to **function**. *Id.* at 99-100. “The relevant inquiry, as we see it, must be the function that the particular feature performs and its relation to the purposes of the jury trial.” *Id.* And the majority did not believe 12 people were necessary for a jury to perform its function. *Id.* at 100-01.

Williams changed the inquiry. Before *Williams*, history drove the inquiry. After *Williams*, legislatures and voters were free to decide jury size through policy judgments.

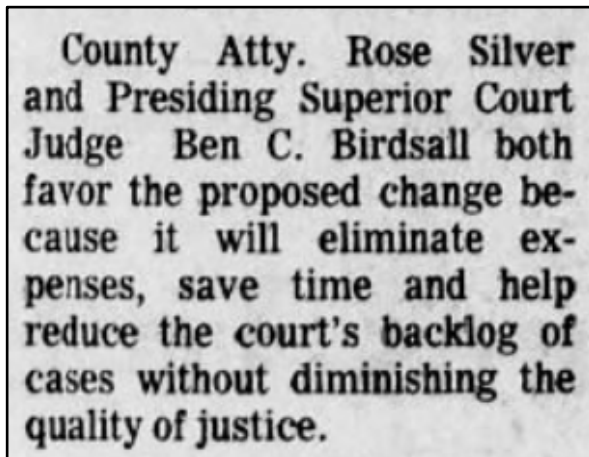
And with the inquiry changed, Arizona chose a new answer.

4. After *Williams*, Arizona treated the right to a 12-person jury like a policy decision and put it up for a vote.

Within two years of this Court's decision in *Williams*, the Arizona Legislature proposed an amendment to the Arizona Constitution to allow for juries of fewer than 12 people in almost all felony cases.

The public debate didn't focus on constitutional meaning. Supporters and opponents alike accepted that Arizona was now free to decide jury size. Instead, both sides focused on the policy reasons underlying their position.

Proponents said the amendment would save time and money:



County Atty. Rose Silver
and Presiding Superior Court
Judge Ben C. Birdsall both
favor the proposed change be-
cause it will eliminate ex-
penses, save time and help
reduce the court's backlog of
cases without diminishing the
quality of justice.

Joel Nilsson, "Propositions 104, 107 Involve Changes In Judicial Procedures," *Arizona Daily Star*, pg. 3 (10/23/1972).⁵

⁵ All news articles are available on newspapers.com.

In the Editorial pages, newspapers encouraged readers to support the proposition (and the 10 other propositions) because it was “aimed directly at upgrading and streamlining Arizona’s government in response to the burdens imposed on it by an expanding population.” Editorial, “11 propositions deserve approval,” *Tucson Citizen*, pg. 29 (10/25/1972); see also “Vote Yes On All 11 Propositions,” *Arizona Daily Star*, pg. 102 (10/08/1972); Editorial, “How to help the courts,” *Arizona Republic*, pg. 6 (10/31/1972).

Opponents questioned whether smaller juries would reach equally reliable results or represent a sufficient cross-section of the community:

DeConcini agreed it would save time and money, but like Bolding, his counterpart, he said it would reduce the chances of a jury being an equitable cross-section of the community.

Nilsson, “Propositions 104, 107,” *Arizona Daily Star*, pg. 3.

Arizona voters approved the proposal. Since 1972, Arizona has reserved 12-person juries for only a narrow class of criminal cases while requiring 8 person juries in most felony prosecutions. Ariz. Const. Art. 2, § 23. Ariz. Rev. Stat. § 21-102(B).

Arizona’s history is important because it proves how the inquiry changed. Before *Williams*, Arizona understood the jury guarantee as a constitutional

command. After *Williams*, the right to a jury was subject to negotiation and compromise.

And that shift is the problem.

The right to a jury trial is foundational and should “not be submitted to a vote” See *Obergefell v. Hodges*, 576 U.S. 644, 677 (2015) (quoting *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943)).

Yet Arizona did precisely that—submit the right to a jury to an election. And because of that election, Arizonans now regularly face life-altering charges and sentences without the benefit of the 12-person jury our founders intended.

5. Fifty years later, Arizonans facing life-altering sentences are deprived of a 12-person jury.

Today, 8-person juries are used in Arizona to decide some of the most significant cases. Ones that carry some of the harshest criminal penalties and collateral consequences.

Like murder cases. Albert Kuck was charged with second-degree murder. *State v. Kuck*, 129 P.3d 954, ¶ 1 (Ariz. App. 2006). He faced a prison sentence of up to 25 years. *Id.* at ¶¶ 9, 13. And after he was convicted by the 8-person jury, the court sentenced him to twenty years. *Id.* at ¶ 5.

Or sex offenses. Robert Armendaris was charged with luring a minor for sexual exploitation and attempted sexual conduct with a minor. *State v. Armendaris*, 567 P.3d 755, ¶ 1 (Ariz. App. 2026). He faced up to 8.75 years in prison. *Id.* at ¶ 20. The court ultimately sentenced him to lifetime supervised probation and required him to register as a sex

offender. *Id.* at ¶ 11. A jury of just 8 people convicted him. *Id.* at ¶ 10.

Violent offenses are often tried by 8-person juries. Xavier Johnson was charged with aggravated assault and was eventually sentenced to 9 years in prison. *State v. Johnson*, 588 P.3d 1138, ¶¶ 1, 22 (Ariz. App. 2026). His case was tried by a jury of 8 people. *Id.* at ¶ 21.

As are serious property crimes. LeFon Prince was charged with burglary in the second degree and eventually sentenced to 15 years in prison. *State v. Prince*, 689 P.2d 515, 516 (Ariz. 1984). Yet he was tried by an 8-person jury. *Id.* at 518.

Even when Arizona’s statutory scheme authorizes a sentence of 30 years or more—and the defendant would be entitled to a 12-person jury—an 8-person jury may still decide the case.

Basilio Soliz, for example, faced 35 years in prison for possession of dangerous drugs for sale. *State v. Soliz*, 219 P.3d 1045, ¶ 2 (Ariz. 2009). Yet the trial court empaneled an 8-person jury. *Id.* at ¶ 3. And the Arizona Supreme Court affirmed the conviction, ruling that “the State effectively waived its ability to obtain a sentence of thirty years or more” when it did not ask for a 12-person jury. *Id.* at ¶ 16.

The consequences of Arizona’s policy approach reached a disturbing endpoint in *State v. Fontes*, 2024 WL 3791966 (Ariz. App. 2024, unpub). Although he was entitled to a 12-person jury, his conviction was affirmed because the 8-person jury that deliberated convicted him of a lesser-included offense. *Id.* at ¶ 11. Mr. Fontes was charged with reckless manslaughter, criminal damage, and two counts of aggravated assault. *Id.* at ¶ 3. He faced a

cumulative sentence of more than 30 years, and the trial court seated 12 jurors, plus 3 alternates. *Id.* at ¶ 5. But the court eventually excused 4 jurors, bringing the total to 11 serving jurors. *Id.* Over Mr. Fontes’s objection, the trial court submitted the case to the 8-person jury. *Id.* at ¶ 6. “Neither the state nor the court dismissed any allegations that would reduce Fontes’s sentencing exposure to less than thirty years.” *Id.* But following *Soliz*, the Arizona Court of Appeals excused this failure. *Id.* at ¶ 11. The 8-person jury ultimately convicted Mr. Fontes of negligent homicide, a lesser-included offense of reckless manslaughter. *Id.* at ¶¶ 3, 11. This verdict thus reduced Fontes’s possible sentence to under 30 years. *Id.* at ¶ 11.

Every day, Arizonans charged with serious offenses and facing decades in prison are deprived of the 12-person jury our country’s founders envisioned. Even when they should receive a 12-person jury under Arizona law, prosecutorial decisions and after-the-fact rationalizations may nonetheless deprive them of that right.

CONCLUSION

The rights in the U.S. Constitution should be enforced. Not discarded or reduced in the name of convenience or money. Not subjected to a vote.

But after *Williams* adopted its functionalist approach, that's just what Arizona did—subject the right to a vote. As a result, the right to a 12-person jury has been diluted.

This Court should abandon *Williams's* functionalist approach and recommit to the original understanding of the Sixth Amendment—the right to a jury requires a jury of 12.

Respectfully submitted,

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