

No. 25-6623

IN THE
Supreme Court of the United States

HAMED KIAN,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Writ of Certiorari to the
District Court of Appeal of Florida,
Fourth District**

**BRIEF FOR THE JUROR PROJECT AS
AMICUS CURIAE IN SUPPORT OF
PETITIONER**

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**BRIEF FOR THE JUROR PROJECT AS
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STATEMENT OF INTEREST

The Juror Project submits this brief as *amicus curiae* in support of Petitioner.¹

The Juror Project is a Louisiana nonprofit corporation that advocates for representative juries, including diversity of race, thought, experience, and socioeconomic background, as an imperative to achieving fair outcomes in the criminal justice system. The Juror Project aims to ensure juries better represent the American population through community and public

¹ No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amicus curiae* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

education about the importance of jury service, technical assistance for jury administrators, and special litigation targeting discriminatory jury selection practices.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Sixth Amendment guarantees that, “[i]n all criminal prosecutions, the accused shall enjoy the right to *** an impartial jury of the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI. This jury trial right includes three interrelated protections: The jury must reach a unanimous verdict. *Ramos v. Louisiana*, 590 U.S. 83, 90 (2020). The jury must be a constitutionally adequate size. *Ballew v. Georgia*, 435 U.S. 223, 232–237 (1978). And the jury must be drawn from a pool that represents a fair cross-section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 537 (1975).

In *Williams v. Florida*, 399 U.S. 78 (1970), this Court held that a 12-member panel “is not a necessary ingredient” of the right to trial by jury. *Id.* at 86. The Court conceded that the Framers “may well” have had “the usual expectation *** that the jury would consist of 12” members. 399 U.S. at 98–99. But the Court claimed that such “purely historical considerations” are not dispositive. *Id.* at 99. The Court instead took a “function[al]” approach, reasoning that “the essential feature” of a jury is the reliance on the “commonsense judgment of a group of laymen” with “shared responsibility” for the verdict. *Id.* at 100–101. Because the Court believed that this function could be served by smaller juries, the Court concluded that the Sixth Amendment does not require a 12-member panel. *Id.*

Williams was wrongly decided. *Williams*'s rejection of "historical considerations" was already foreclosed by precedent when *Williams* was decided, and has been repudiated since. This Court acknowledged long ago that "a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment." *Maxwell v. Dow*, 176 U.S. 581, 586 (1900). And this Court has recently reaffirmed that the Sixth Amendment's scope is determined by its "original public meaning." *Ramos*, 590 U.S. at 92. *Williams*'s functional analysis was also wrong. Larger juries engage in "more substantive deliberation: the sharing of more facts, more ideas, and more challenges to the tentative conclusions of others," and ultimately render more accurate verdicts. Michael J. Saks & Mollie Weighner Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 Law & Hum. Behav. 451, 458 (1997).

Worse, *Williams*'s error threatens and undermines the *other* rights guaranteed by the Sixth Amendment, including the fair-cross-section requirement. The fair-cross-section requirement—much like the requirement that the jury be composed of 12 members—"is derived from the traditional understanding of how an 'impartial jury' is assembled." *Holland v. Illinois*, 493 U.S. 474, 480 (1990) (Scalia, J.). That historical tradition calls for a jury drawn from "every stratum of society"—rich and poor, young and old, from "business executives" to "bricklayers" and everything in between. *Thiel v. Southern Pac. Co.*, 328 U.S. 217, 219–222 (1946). But the smaller a jury becomes, the less likely it is to achieve the "broad representative character" that ensures "a diffused impartiality." *Taylor*, 419 U.S. at 530 (citation omitted).

The Court should overrule *Williams* and restore the Sixth Amendment to its original meaning. The *Williams* Court was wrong about the historical foundation of and the function served by a 12-member jury. And it was wrong in a way that disserves the fair-cross-section requirement. The various components of the Sixth Amendment’s jury trial right are mutually reinforcing: together, they enable the jury to supply the “commonsense judgment of the community” as a check on the State. *Taylor*, 419 U.S. at 530. An unrepresentative jury does not speak with the community’s voice. A nonunanimous jury does not reflect the community’s judgment. And a jury of fewer than 12 undermines the purposes of the other two requirements—narrowing the perspectives in the room and discouraging thorough deliberation.

A jury is—and for centuries has been—a body of twelve people chosen from a pool reflecting a fair cross-section of the community who reach a unanimous conclusion about the accused’s guilt. That understanding predates the Founding, was confirmed by the Framers, and has been vindicated by modern empirical research. *Williams* is “not just wrong”—it is “egregiously wrong.” *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part). It is time to correct that error.

ARGUMENT

I. A JURY DRAWN FROM A FAIR CROSS-SECTION OF THE COMMUNITY IS FUNDAMENTAL TO THE SIXTH AMENDMENT JURY-TRIAL RIGHT.

The Sixth Amendment guarantees the defendant in a criminal prosecution the right to trial by a fair and

impartial jury. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). From the earliest days of this nation, Americans have understood that an impartial jury—representative of the community and drawn from one’s peers—is essential to American liberty and democracy.

A. The Fair-Cross-Section Requirement Ensures That a Jury Is Chosen From a Pool Representative of the Community.

“[T]he American concept of the jury trial contemplates a jury drawn from a fair cross section of the community.” *Taylor*, 419 U.S. at 527. To ensure fairness and impartiality, the jury must be “a body that is truly representative of the community *** and not the organ of any special group or class.” *Id.* (citation and quotation marks omitted).

States do have some “leeway in application;” they “remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions so long as it may be fairly said that the jury lists or panels are representative of the community.” *Id.* at 538. For example, while “petit juries must be drawn from a source fairly representative of the community,” there is “no requirement that petit juries actually chosen” reflect precisely “the distinctive groups in the population.” *Id.* Thus, “[d]efendants are not entitled to a jury of any particular composition,” “but the jury wheels, pools of names, [and] panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof.” *Id.* The jury venire is not constitutionally required to precisely mirror the community. *Swain v. Alabama*, 380 U.S. 202, 208 (1965).

What states cannot do is “open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.” *Thiel*, 328 U.S. at 220. “[T]he exclusion from jury service of otherwise qualified groups is in direct opposition to our fundamental democratic concepts and ideals of representative government” because “the established tradition” is that “juries [serve] as instruments of public justice *** [and must] be a body truly representative of the community.” *Smith v. Texas*, 311 U.S. 128, 130 (1940). The Sixth Amendment guarantee is not protected “if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool.” *Taylor*, 419 U.S. at 530.

These principles reflect the simple truth that each juror brings “their own perspectives and values that influence both jury deliberation and result.” *Id.* at 532 n.12. So, a “broad[ly] representative” jury ensures “a diffused impartiality.” *Id.* at 530 (citation omitted). An unrepresentative jury, on the other hand, denies a defendant “the benefit of the common-sense judgment of the community” that “guard[s] against the exercise of arbitrary power” and “hedge[s] against the overzealous or mistaken prosecutor.” *Lockhart v. McCree*, 476 U.S. 162, 174–175 (1986) (citation omitted).

B. The Fair-Cross-Section Requirement Reflects the Centuries-Old Understanding That a Jury Must Be Drawn from the Defendant’s Peers and Neighbors.

1. “[T]he jury’s historic role,” this Court has explained, is to serve “as a bulwark between the State and the accused.” *Southern Union Co. v. United States*, 567 U.S. 343, 350 (2012). The Framers were adamant on this point.

John Adams declared that “[r]epresentative government and trial by jury are the heart and lungs of liberty.” Letter from Clarendon to William Pym (Jan. 27, 1766), in 1 Papers of John Adams 164, 169 (Robert J. Taylor ed., 1977). “Without them we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds.” *Id.*

Thomas Jefferson, too, saw a trial by jury as “the only anchor *** by which a government can be held to the principles of its constitution.” Letter from Thomas Jefferson to Thomas Paine (1789), *quoted in* 3 The Writings of Thomas Jefferson 71 (Andrew A. Lipscomb ed., 1903).

2. Consistent with its function as a bulwark against government overreach, the jury has long been understood to require a body of twelve people fairly chosen from the defendant’s peers and neighbors. “[I]n the words of *Magna Charta*,” “[n]o freeman ought to be *** deprived of his life, liberty or property, but by the judgment of his peers.” *Bank of Columbia v. Okely*, 17 U.S. 235, 241 (1819). In the Fifteenth Century, John Fortescue, Chief Justice of the King’s Bench, stated that a jury must comprise “good and lawful men of the neighbourhood, where the fact is supposed, who stand in no relation to either of the parties.” Sir John Fortescue, *Sir John Fortescue’s Commendation of the Laws of England: The Translation into English of De Laudibus Legum Angliæ* 38 (Francis Grigor trans., Sweet & Maxwell 1917). Blackstone similarly explained centuries later that a jury must be drawn from the defendant’s “equals and neighbours, indifferently chosen.” 4 William Blackstone, *Commentaries on the Laws of England* *343 (1769).

Carrying that tradition to the American colonies, the First Continental Congress declared that the colonists were entitled to the “great and inestimable privilege of being tried by their peers of the vicinage.” 1 *Journals of the Continental Congress 1774–1789*, at 69 (Worthington Chauncey Ford ed., 1904). Thus, one member explained, “neither Life, Liberty, or property can be taken from the [defendant], until twelve of his unexceptional Countrymen and Peers” reach a verdict. 1 *Letters of Delegates to Congress, 1774–1789*, at 236, 238 (Paul H. Smith ed., 1976) (Statement of John Dickinson).

Indeed, the denial of trial by a jury of one’s peers was among the Founders’ core grievances against King George III. See Steven A. Engel, *The Public’s Vicinage Right: A Constitutional Argument*, 75 N.Y.U. L. Rev. 1658, 1680–81 (2000). The Crown sought to circumvent colonial juries by transporting defendants accused of crimes in the colonies to England to stand trial before English jurors. *Id.* The Founding generation was “well aware that an English jury was not the same thing as a Boston jury” because “the English jury would be more likely to acquit an accused redcoat or convict an accused patriot.” *Id.* at 1695. The signers of the Declaration of Independence accordingly charged the King with “depriving us, in many cases, of the benefits of trial by jury” and “transporting us beyond seas to be tried for pretended offences.” The Declaration of Independence paras. 20–21 (U.S. 1776).

And as this Court repeatedly recognized shortly after the founding, that right to a trial by one’s peers formed part of the jury-trial right enshrined in the Constitution. For example, when the Territory of Iowa

enacted a law requiring “the court, and not a jury,” to adjudicate certain offenses, this Court held that the law violated the Sixth Amendment. *See Webster v. Reid*, 52 U.S. 437, 439, 455 (1850). As the Court explained, “[t]he words ‘trial by jury’ and ‘judgment of his peers’ would seem to be nearly equivalent in meaning.” *Id.* at 455. A statute depriving a defendant of a trial by his peers “jeopardize[d] *** the integrity of the trial by jury,” was “absolutely irreconcilable” with the Sixth Amendment, and “ought to be *** condemned.” *Id.* at 453–454; *see also, e.g., Pope Mfg. Co. v. Gormully*, 144 U.S. 224, 234 (1892) (describing as “fundamental” a defendant’s “right to be tried by a jury of his peers”).

C. The Fair-Cross-Section Requirement Is a Cornerstone of This Court’s Sixth Amendment Jurisprudence.

This Court’s fair-cross-section precedent rests on a simple premise: to serve as an impartial check on the State, a jury must be drawn from—and representative of—the *whole* community, not favored segments of it. *Taylor v. Louisiana*, 419 U.S. 522 (1975), is the Court’s landmark Sixth Amendment decision applying that principle, building on a century of jurisprudence recognizing that representative juries are essential to the jury’s constitutional function.

1. In *Taylor*, the Court held unconstitutional a state law providing that a woman was ineligible for jury service unless she had previously filed a written declaration stating her desire to serve. 419 U.S. at 525. Consistent with centuries of tradition, the Court held that “the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial.” *Id.*

at 530. “The purpose of a jury,” after all, “is to guard against the exercise of arbitrary power—to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge.” *Id.* at 530. But “[t]his prophylactic vehicle” fails “if the jury pool is made up of only special segments of the populace.” *Id.*

2. That understanding did not begin in 1975. Nearly one century earlier, during Reconstruction, this Court held in *Strauder v. West Virginia* that the Constitution bars the government from excluding a person from a jury on account of his race. 100 U.S. 303, 307–308 (1879). “The very idea of a jury,” the Court explained, “is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds.” *Id.* at 308. The Court therefore concluded that a state “deni[es]” a black defendant “equal legal protection,” when it requires him to “submit to a trial for his life by a jury drawn from a panel from which the State has expressly excluded every man of his race, because of color alone, however well qualified in other respects.” *Id.* at 309.

Although *Strauder*’s analysis was grounded in the Fourteenth Amendment’s Equal Protection Clause, after Reconstruction, the Court issued several decisions confirming that the Sixth Amendment’s fair-cross-section requirement similarly guards against that form of discrimination, and many others.

In *Smith v. Texas*, the Court reversed the conviction of a black defendant prosecuted in a county in which

less than 2% of grand jurors selected in the prior seven years had been black. 311 U.S. at 129. The Court found it “inescapable” that the county had engaged “in racial discrimination” “result[ing] in the exclusion from jury service of otherwise qualified groups.” *Id.* at 130. Although the Court cited and discussed the Equal Protection Clause, the Court also rooted its reasoning in “the established tradition in the use of juries as instruments of public justice that the jury be a body *truly representative of the community.*” *Id.* (emphasis added).

A few years later, in *Glasser v. United States*, the Court reaffirmed that juries must be chosen in ways that “comport with the concept of the jury as a cross-section of the community” and “insure a trial by a representative group.” 315 U.S. 60, 85–86 (1942) (citing *Smith*, 311 U.S. at 130). There, defendants argued “they were denied an impartial trial because of the alleged exclusion from the petit jury panel of all women not members of the Illinois League of Women Voters.” *Id.* at 83. The Court explained that “the proper functioning of *** our democracy itself[] requires that the jury be truly representative of the community.” *Id.* at 86 (quotation marks omitted). The Court thus would have been “compelled to set aside” the defendants’ convictions; it declined to do so only because they had “fail[ed] *** to prove their contention” that women were excluded from jury service in the manner alleged. *Id.* at 87.

Building on those principles, the Court in *Thiel v. Southern Pacific Company* reversed a jury verdict from a federal district court in which the clerk had a policy of “exclud[ing] from the jury lists all persons who work for a daily wage.” 328 U.S. at 221. Wage

earners were more likely to be unable to miss work for jury service, so the clerk “excluded ‘all the iron craft, bricklayers, carpenters, and machinists,’” such that “business men and their wives constituted at least 50% of the jury lists.” *Id.* at 222. The Court held this arrangement incompatible with “[t]he American tradition of trial by jury,” which “necessarily contemplates an impartial jury drawn from a cross-section of the community.” *Id.* at 220. “One who is paid \$3 a day may be as fully competent [to serve on a jury] as one who is paid \$30 a week or \$300 a month.” *Id.* at 223. So wage earners “cannot be intentionally and systematically excluded *** without doing violence to the democratic nature of the jury system.” *Id.* The Court thus “refuse[d]” to “breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged.” *Id.* at 224.

3. As this Court has recognized and reaffirmed in more modern cases, its holdings in fair-cross-section cases derive from the Sixth Amendment’s original meaning.

For example, in *Holland v. Illinois*, Justice Scalia, writing for the Court, explained that the fair-cross-section requirement is “not explicit in the text” of the Sixth Amendment, “but is derived from the traditional understanding of how an ‘impartial jury’ is assembled.” 493 U.S. at 480 (emphasis added). “That traditional understanding includes a representative venire, so that the jury will be *** ‘drawn from a fair cross section of the community.’” *Id.* (quoting *Taylor*, 419 U.S. at 527) (emphasis omitted). The fair-cross-section requirement serves the goal of impartiality because it prevents the government from drawing up “jury lists in such manner as to produce a pool of

prospective jurors disproportionately ill disposed towards one or all classes of defendants.” *Id.*

And in *Ramos v. Louisiana*, Justice Gorsuch, writing for the Court, similarly recognized that the scope of the Sixth Amendment jury trial right is defined by its “original public meaning,” and “the Sixth Amendment’s promise of a jury of one’s peers means a jury selected from a representative cross section of the entire community.” 590 U.S. at 90, 100 n.47 (citing *Strauder*, 100 U.S. at 307–308; *Smith*, 311 U.S. at 130; *Taylor*, 419 U.S. at 527); *see also, e.g., Ramos*, 590 U.S. at 90 (noting Blackstone’s view that “no person could be found guilty of a serious crime unless ‘the truth of every accusation’ was ‘confirmed by the unanimous suffrage of twelve of his equals and neighbors.’”) (quoting 4 William Blackstone, *Commentaries* *343).

D. The Fair-Cross-Section Requirement Supports the Impartiality of the Criminal Justice System.

1. Representative Juries Deliberate More Thoroughly and Reach More Reliable Verdicts.

The wisdom of centuries has shown that the fair-cross-section requirement “guards against the exercise of arbitrary power” and ensures that the community will serve as a check “against the overzealous or mistaken prosecutor.” *Lockhart*, 476 U.S. at 174 (quoting *Taylor*, 419 U.S. at 530) (quotation marks omitted). “Those eligible for jury service are to be found in every stratum of society.” *Thiel*, 328 U.S. at 220. And the diversity of experience within our society strengthens the jury’s ability to perform its fact-finding function. *See Taylor*, 419 U.S. at 530 (emphasizing

the value of the “commonsense judgment of the community as a hedge against” the “exercise of arbitrary power”).

Modern empirical evidence confirms that homogeneous juries render less-reliable verdicts. Group deliberation leads to better outcomes when “competing views are stated and exchanged.” Cass R. Sunstein, *The Law of Group Polarization*, John M. Olin Program L. & Econ. Working Paper No. 91, at 3 (1999). But homogeneous juries are less likely to weigh competing views—studies show that they deliberate for shorter periods and consider fewer facts. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. Personality & Soc. Psych. 597, 604–605 (2006). As a result, they are more susceptible to individual jurors’ biases and their decisions less consistently “reflect the decisions that would prevail if the entire community could judge the trial for itself.” Richard O. Lempert, *Uncovering “Nondiscernible” Differences: Empirical Research and the Jury-Size Cases*, 73 Mich. L. Rev. 643, 679, 681–683 (1975).

The fair-cross-section requirement supports the critical governmental interest in impartial jury verdicts by counteracting these biases. When individuals deliberate in heterogeneous groups, their biases are counterbalanced and they are “forced to become more objective.” *Id.* at 687. Heterogeneous juries spend more time discussing facts and are more likely to correct inaccurate factual statements. Sommers, *supra*, at 605. And even before any deliberation, the mere *presence* of diversity prompts jurors to confront their own biases. *Id.* at 607. A juror with a minority view is also more likely to find an ally on a heterogeneous jury,

and “[w]ith even a single ally, they are much less likely to cave to the group.” Patrick E. Higginbotham, Lee H. Rosenthal & Steven S. Gensler, *Better By the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 *Judicature* 47, 53 (2020).

2. *Representative Juries Bolster Public Confidence in Criminal Verdicts and the Criminal Justice System.*

The fair-cross-section requirement also furthers the participatory aims of representative democracy. The absence from jury service of distinct groups is “at war with our basic concepts of a democratic society and a representative government.” *Smith*, 311 U.S. at 130. The fair-cross-section requirement “preserv[es] ‘public confidence in the fairness of the criminal justice system,’ and *** implement[s] our belief that ‘sharing in the administration of justice is a phase of civic responsibility.’” *Lockhart*, 476 U.S. at 174–175 (quoting *Taylor*, 419 U.S. at 530–531).

Representative juries bolster confidence in the procedural fairness of the criminal justice system. Leslie Ellis & Shari Seidman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*, 78 *Chi.-Kent L. Rev.* 1033, 1043–48 (2003). Empirical evidence shows that juries representing a fair cross-section of the community are perceived as less biased and therefore more legitimate. *E.g., id.*; Robert J. MacCoun & Tom R. Tyler, *The Basis of Citizens’ Perceptions of the Criminal Jury*, 12 *L. & Hum. Behav.* 333, 346–347 (1988).

Drawing jurors from a fair cross-section of the community “deprives the State of the ability to ‘stack the deck’ in its favor.” *Holland*, 493 U.S. at 480–481. Otherwise, the State could “draw up jury lists in such

manner as to produce a pool of prospective jurors disproportionately ill disposed towards one or all classes of defendants.” *Id.* at 480; accord *United States v. Grisham*, 63 F.3d 1074, 1078 (11th Cir. 1995).

Representative juries are also critical to the perceived legitimacy of the justice system because juries are the community’s voice in decision making. E. Allan Lind & Tom R. Tyler, *The Social Psychology of Procedural Justice* 90 (1988). When juries do not reflect the composition of the community, their verdicts are “not perceived as a legitimate expression of the community’s sentiments.” Valerie P. Hans & Neil Vidmar, Jury Selection, in *The Psychology of the Courtroom* 39, 43–44 (Norbert L. Kerr & Robert M. Bray eds., 1982).

Indeed, when minority groups perceive juries as non-representative, they self-select out of participating in the system. Hans & Vidmar, *supra*, at 43–44. On the other hand, serving on a jury increases “the likelihood of civic or political participa[tion] in other settings”—for example, jury service is linked to higher voting rates. John Gastil et al., *Jury Service and Electoral Participation: A Test of the Participation Hypothesis*, 70 J. Pol. 351, 363 (2008). Thus, “the proper functioning of the jury system and *** our democracy” is rooted in the “jury as a cross-section of the community.” *Glasser*, 315 U.S. at 85–86.

II. THE SIXTH AMENDMENT’S PROTECTIONS ARE MUTUALLY REINFORCING.

For centuries before *Williams v. Florida*, 399 U.S. 78 (1970), a “jury” meant a body of twelve people fairly drawn from the defendant’s community who were

charged with reaching a unanimous decision about the defendant's guilt. Those characteristics were fundamental to the jury-trial right the Framers enshrined in the Sixth Amendment. And until *Williams*, panels lacking these characteristics were permitted to adjudicate a defendant's guilt only where the defendant had no jury right at all. Erosion of any one of these components of the Sixth Amendment's jury trial right undermines the others.

A. The 12-Member Requirement—Like The Fair-Cross-Section and Unanimous-Verdict Requirements—Forms Part Of The Sixth Amendment Jury-Trial Right.

1. *At The Founding, A "Jury" Meant A Body Of Twelve Selected From Among The Defendant's Peers Who Reached A Unanimous Verdict.*

Many of the same sources that confirm the fair-cross-section requirement's and the unanimity requirement's historical roots *also* reference the 12-member requirement. For example, the Chief Justice of the King's Bench described a jury as "*twelve men*" who are "neighbours where the fact was committed." Fortescue, *supra*, at 46 (emphasis added). Decades before the Founding, Blackstone explained that a "trial by jury" includes "the *unanimous* suffrage of *twelve* of [the defendant's] *equals and neighbours, indifferently chosen*, and superior to all suspicion." 4 William Blackstone, *Commentaries* *343 (emphases added). In Blackstone's view, unanimity, numerosity, and representation were each pillars of the jury trial right.

Joseph Story similarly tied these three concepts together. When he explained that America's forebears "brought this great privilege" of the jury trial right

“with them, as their birthright and inheritance,” 2 Joseph Story, *Commentaries on the Constitution of the United States* § 1779, at 559 (Boston, Little, Brown & Co. 1891), he also noted that these forebears “understood” the jury right as a right to “a trial by a jury of *twelve* men, *impartially* selected, who must *unanimously* concur in the guilt of the accused before a legal conviction can be had,” *id.* at 559 n.2 (emphases added).

“One indication of public meaning at ratification is remarks made during the state conventions on adoption of the federal Constitution,” where attendees spoke of the jury trial right in connection with unanimity, numerosity, and representation. Wanling Su & Rahul Goravara, *What Is a Jury?*, 103 N.C. L. Rev. 969, 991 (2025). For example, Virginia Governor Patrick Henry stated at the Virginia ratifying convention that “trial by jury” is “an excellent mode of trial” in which “[t]he *unanimous* verdict of *twelve impartial* men cannot be reversed.” *Id.* (quoting 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 544 (Jonathan Elliot ed., 2d ed. 1891)) (emphases added).

Early American courts were in accord. “The trial by jury,” one court reasoned, “shall be forever inviolably preserved” as a body of “12 men,” “indiscriminately drawn from every class of their fellow citizens.” *Zylstra v. Corporation of City of Charleston*, 1 S.C.L. (1 Bay) 382, 389 (Ct. Com. Pl. 1794). “Diminishing the number,” the Ohio Supreme Court warned, “impairs the right, lessens the security of the accused, and increases the danger of conviction.” *Work v. State*, 2 Ohio St. 296, 305 (1853). And “[i]f corruption or prejudice are to be feared and avoided, they are much

more likely to influence the conduct of six [jurors] than of twelve.” *Id.*

2. *In Early America, Panels Of Fewer Than Twelve, Not Fairly Drawn From The Community, And Not Required To Reach A Unanimous Verdict, Were Permitted Only Where The Defendant Had No Jury Trial Right At All.*

The few contexts in which early American law tolerated adjudication of guilt by fewer than twelve—and by a body not fairly drawn from the community or not reaching a unanimous verdict—are telling.

In early South Carolina, for instance, enslaved people were tried in the “Courts of Magistrates and Freeholders”—colloquially, “slave courts”—before panels of five or fewer. Su & Goravara, *supra*, at 987. Proceedings in slave courts “were uniformly described as non-jury trials.” *Id.* And because slave courts did not involve juries, the panelists did not have to be fairly drawn from the community either; they could instead be selected “from a single family or neighborhood.” *Id.* at 989 (quoting John William Wertheimer, *Race and the Law in South Carolina: From Slavery to Jim Crow* 56 (2023)).

As one South Carolina court explained, the words “trial by jury” in the South Carolina Constitution meant “trial by twelve good and lawful men of the vicinage,” and trial by fewer than twelve was “not a trial by jury, in any sense in which the words have ever been legally used.” *State ex rel. Kohne v. Simons*, 29 S.C.L. (2 Speers) 761, 768 (S.C. Ct. Err. 1844). Nor “could a judgment pronounced by” a slave court “be regarded as the judgment of [the defendant’s] peers.” *Id.* Such a procedure was permissible for enslaved

persons only because they did not “fall within the inhibition of the Constitution.” *Id.*

3. *As The American Constitutional Community Expanded, So Too Did The Understanding Of What A Representative Jury Pool Required.*

States have changed their practices as they expanded their understanding of their own political communities.

For example, before the Revolution, North Carolina tried enslaved people in slave courts before panels of four. *See An Act Concerning Servants and Slaves*, ch. 24, § 48, *reprinted in* Acts of the North Carolina General Assembly, 1741, 23 Colonial & St. Recs. N.C. 191, 202. But after the Framing, the North Carolina legislature changed course, extending to enslaved persons the right to a “trial by jury” and, accordingly, raising the number of factfinders required from four to twelve. *See An Act to Extend the Right of Trial by Jury to Slaves*, ch. 5, 1793 N.C. Sess. Laws 38. The change “ensured that the verdict rendered would more accurately reflect community values, rather than those of outliers.” Su & Goravara, *supra*, at 989–990.

Similarly, “at points and places in our history, women were not permitted to sit on juries.” *Ramos*, 590 U.S. at 100 n.47. But “the people themselves adopted further constitutional amendments that prohibit invidious discrimination.” *Id.* So today, the jury-trial right protects *all* Americans—and requires “a jury selected from a representative cross section of the *entire* community.” *Id.* (emphasis added).

Put another way, in 1791, a “jury meant ‘twelve men, good and true.’” Akhil Reed Amar, *Reinventing Juries: Ten Suggested Reforms*, 28 U.C. Davis L. Rev.

1169, 1187–88 (1995). But today, “in light of the Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments,” “‘men’ must include women, too, and ‘good and true’ jurors include the black, the poor, and the young. But twelve should still mean twelve.” *Id.* A six-person jury does not formally exclude the groups once omitted from the jury box, but it does reduce the likelihood that the jury will reflect the full range of perspectives in the community.

B. The 12-Member Requirement Promotes the Jury’s Representative Function.

1. In *Williams*, this Court held that the Sixth Amendment does not require a jury in a criminal trial to consist of 12 members. 399 U.S. at 102. The petitioner there had been convicted in state court of robbery by a six-member jury. *Id.* at 86. He argued that he had been denied his right to a “trial by jury” under the Sixth Amendment because the Florida court had not empaneled 12 jurors. *Id.* This Court rejected that argument. *Id.* at 102.

The Court’s reasoning in *Williams* turned primarily on the Court’s understanding of “the function that the particular feature performs and its relation to the purposes of the jury trial.” *Id.* at 99–100. And, in considering the function of the jury’s size, the Court seized on several functions of the numerosity requirement that are *also served by the fair cross-section component* of the jury trial right: the Court observed that “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.

Because “[t]he performance of this role is not a function of the particular number of the body that makes up the jury,” *id.*, the *Williams* Court concluded that “the fact that the jury at common law was composed of precisely 12 is a historical accident, unnecessary to effect the purposes of the jury system and wholly without significance ‘except to mystics,’ ” *id.* at 102 (quoting *Duncan*, 391 U.S. at 182 (Harlan, J., dissenting)). And though the Court admitted that empirical evidence was limited, it said that “[w]hat few experiments have occurred—usually in the civil area—indicate that there is no discernible difference between the results reached by the two different-sized juries.” *Id.* at 102.

2. The *Williams* Court was wrong about the function served by a 12-member jury. And it was wrong in a way that disserves the fair-cross-section requirement, too.

Today, a mountain of empirical evidence shows that twelve-person juries represent the community far better than six-person juries do. This evidence refutes *Williams*’s speculation that “the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible.” 399 U.S. at 101–102. And it contradicts *Williams*’s conclusion that the twelve-juror requirement is a “historical accident.” *Id.* at 89–90.

Rather, the data confirms ancient tradition: Twelve is “the number that optimizes the jury’s two conflicting goals—to represent the community and remain manageable.” Hans Zeisel, *And Then There Were None: The Diminution of the Federal Jury*, 38 U. Chi. L. Rev. 710, 712 (1971). The flaws in *Williams*’s empirical analysis—or its lack thereof—were

immediately and extensively documented. *Supra* pp. 13–16; *see also, e.g.*, Hans Zeisel & Shari Seidman Diamond, *Convincing Empirical Evidence*, 41 U. Chi. L. Rev. 281, 281–295 (1974); ABA, *Principles for Juries and Jury Trials* 5 (Aug. 2005).

To start, researchers have explained that six-person juries are *mathematically* less likely to faithfully represent a cross-section of the community. Suppose a minority group makes up 10% of a community. If a six-person panel is randomly drawn from that community, there is a 53% chance that the panel will not include *a single* member of the minority group. Zeisel, *supra*, at 716. By contrast, there is only a 28% chance that a twelve-person jury will not include a member of the minority group. Those numbers are a matter of basic probability; the same mathematics as rolling a ten-sided die and calling ten—the more times you roll the die, the more likely it is to come up ten.

The same principle applies for every subgroup in a community. Thus, 12-person juries are mathematically more likely to contain “populations of any given stratification.” Alisa Smith & Michael J. Saks, *In Honor of Walter O. Weyrauch: The Case for Overturning Williams v. Florida and the Six-Person Jury: History, Law, and Empirical Evidence*, 60 Fla. L. Rev. 441, 458 (2008).

Researchers have tested these mathematical hypotheses through numerous studies, repeatedly confirming that six-person juries are substantially less likely to include minority groups—and therefore less likely to represent the community. A 1997 meta-analysis surveyed 17 such studies. Saks & Marti, *supra*, at 452, 457. The combined data—which included more than 2,000 jury panels—showed that “the effect of

jury size on minority representation is highly significant,” and that “12-person juries are more likely than 6-person juries to contain at least one member of whatever minority group is under consideration.” *Id.* at 457. Some studies showed that “the actual difference in minority representation on twelve- and six-member juries was *even more* pronounced than the [mathematical] sampling theory had suggested.” Robert H. Miller, *Six of One Is Not a Dozen of the Other: A Re-Examination of Williams v. Florida and the Size of State Criminal Juries*, 146 U. Pa. L. Rev. 621, 655 (1998) (emphasis added).

Experts continue to replicate those results. A 2009 study examined 277 jury trials in one community—Cook County, Illinois—split between six-person and twelve-person juries. Shari Seidman Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. Empirical Legal Stud. 425, 434 (2009). The jury pool was 25% black, yet “28.1 percent of the six-member juries lacked even one black juror.” *Id.* at 435, 442. By contrast, “only 2.1 percent of the 12-member juries were entirely without black representation.” *Id.* at 442.

Other studies confirm that six-person juries perform poorly along numerous important dimensions. Six-person juries less faithfully represent the “attitudinal characteristics” of the community than twelve-person juries do, Miller, *supra*, at 666, 674–675, and are more likely to “return a verdict outside of community norms,” Higginbotham, Rosenthal & Gensler, *supra*, at 52. And their deliberations are of lower quality: They remember testimony less accurately, recall less probative information, and rely more on conclusory statements. *Id.*; Saks & Marti, *supra*, at 458–459; see

also, e.g., *Brown v. Louisiana*, 447 U.S. 323, 332 (1980) (op. of Brennan, J.) (collecting “a number of empirical studies” showing that “a decline in jury size leads to less accurate factfinding and a greater risk of convicting an innocent person”).

To make matters worse, as the *Ballew* plurality warned, these shortcomings disproportionately harm *defendants*—the very people the jury-trial right is supposed to protect. 435 U.S. at 236 (op. of Blackmun, J.). Six-person juries are less critical of ambiguities in the prosecution’s case and convict at a higher rate than twelve-person juries do. Miller, *supra*, at 671. They also hang at a lower rate, likely because solo dissenters are less likely to find an ally and persist in their opposition. Zeisel, *supra*, at 719–720; Lempert, *supra*, at 673–677; cf. *Ramos*, 590 U.S. at 99 (explaining that a hung jury can represent a jury “deliberating carefully and safeguarding against overzealous prosecutions”).

III. THIS COURT SHOULD OVERRULE WILLIAMS.

The Court should overrule *Williams* and restore the Sixth Amendment to its original meaning.

1. *Williams* is out-of-step with the rest of the Court’s Sixth Amendment jurisprudence. The Sixth Amendment’s scope turns on “the Framers’ paradigm for criminal justice,” not “whether or to what degree” a modern jurist thinks a particular feature of that paradigm affects “efficiency or fairness.” *Blakely v. Washington*, 542 U.S. 296, 313 (2004). Courts should not “extrapolate from the words of the Sixth Amendment to the values behind it,” enforcing the Amendment’s “guarantees only to the extent they serve (in the courts’ views) those underlying values.” *Giles v.*

California, 554 U.S. 353, 375 (2008). The *Williams* Court gave short shrift to history, *supra* pp. 17–21, and as a result undersold “the great purposes which gave rise to the jury,” 399 U.S. at 89–90.

In particular, this Court has hewed closely to the “traditional understanding of how an ‘impartial jury’ is assembled.” *Holland*, 493 U.S. at 480. “That traditional understanding includes a representative venire, so that the jury will be *** ‘drawn from a fair cross section of the community.’ ” *Id.* (quoting *Taylor*, 419 U.S. at 527) (emphasis omitted). It includes, too, the “historical unanimity requirement.” *Ramos*, 590 U.S. at 107. And it includes—as *Williams* itself acknowledged—panels “fixed generally at 12.” 399 U.S. at 89.

But while this Court has required unanimity and a fair cross-section precisely *because* those were “historic features of common law jury trials,” *Ramos*, 590 U.S. at 98, *Williams* cast aside the 12-juror requirement as a “historical accident,” 399 U.S. at 89–90. That anomalous conclusion sticks out like a sore thumb among this Court’s Sixth Amendment cases, which otherwise honor Constitutional history and tradition.

2. In any event, *Williams*’s functionalist analysis was flawed on its own terms. It only hesitantly acknowledged that a jury “*probably*” should provide the “*possibility*” of a representative cross-section of the community, *id.* at 100 (emphases added), when in fact, the representative-cross-section promise is an essential feature of the traditional right. *Supra* pp. 6–9. The “few experiments” the *Williams* Court cited to support six-person juries, 399 U.S. at 101, “were not empirical studies,” Higginbotham, Rosenthal &

Gensler, *supra*, at 52. Instead, they were “conclusory statements *** supported at best by limited experience and anecdote.” *Id.*

And we now know that *Williams*’s speculation about the function of the jury was mistaken. The “difference between the 12-man and the six-man jury in terms of the cross-section of the community represented” is *not* “negligible.” Miller, *supra*, at 655–675. Replicated empirical studies show that “minority representation” and “community representativeness *** decrease when six-person juries are used,” and that six-person juries decide cases “at greater variance from larger community preferences.” *Id.* at 682–683.

* * *

Williams broke from centuries of tradition based on the assumption that twelve- and six-person juries are functionally equivalent. 399 U.S. at 101–102. That assumption has been thoroughly debunked. This Court should fix that mistake, overrule *Williams*, and restore the Sixth Amendment’s original meaning: A jury is a body of twelve people fairly chosen from a pool “reflect[ing] a fair cross-section of the community.” *Smith v. United States*, 599 U.S. 236, 245 (2023).

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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