

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
Fourth District Court of Appeal of Florida

**BRIEF AMICUS CURIAE OF THE UTAH
ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The **Utah Association of Criminal Defense Lawyers** (UACDL) is a non-profit voluntary professional legal organization that brings together criminal defense attorneys to develop education, support, and advocacy for criminal defense in Utah. As a professional organization committed to protecting the last resort of any defendant: the jury trial. Felony juries in Utah are tried to eight members excepting capital cases. UACDL seeks to strengthen the trial rights of Utah's defendants.

Because the criminal legal system in Utah would be affected by a decision in this case, along with a handful of other States, UACDL writes in support of Petitioner and urges reversal. A ruling that the Sixth and Fourteenth Amendments require a jury of twelve in serious cases would provide the defendants of our State with juries that properly embody the original meaning and spirit of the criminal jury.

As the organized criminal-defense bar of one of the affected States, UACDL members try these cases to juries of fewer than twelve see first-hand what a reduced jury costs the accused and the public.

¹ Pursuant to this Court's Rule 37.6, UACDL states that no counsel for any party authored this brief in whole or in part, and no person or entity other than UACDL, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

SUMMARY OF THE ARGUMENT

In this brief we address what we believe is one of the central flaws of *Williams v. Florida*: its position that juries with as few as six members are functionally equivalent to juries of twelve since the “purpose of the jury trial . . . is to prevent oppression by the Government,” which the *Williams* Court thought a six-person jury could accomplish just as well as a twelve-person jury.²

This Court’s decision in *Ramos v. Louisiana*³ confirms the stakes. It holds that the scope of the jury-trial right is fixed by its original public meaning, and it rejected the functionalist mode of analysis on which *Williams* rested. Petitioner explains why that history requires a jury of twelve. UACDL writes to add what the parties do not develop: the purposes the founding generation attached to the jury confirm that original meaning, and even measured against *Williams*’s own functional test, a jury of six cannot serve the jury’s role.

In drawing that conclusion, the *Williams* Court missed three other foundational purposes for which juries were designed, and in doing so missed what is lost when cases are decided by juries of six or eight members. These three additional purposes of the jury are to: (1) secure the community’s participation in the administration of justice as an act of self-government, (2) protect defendants from the vindictiveness of the

² 399 U.S. 78, 100, 90 S. Ct. 1893, 26 L. Ed. 2d 446 (1970).

³ *Ramos v. Louisiana*, 590 U.S. 83 (2020).

community, and (3) ensure popular respect for the outcome of cases.

The jury simultaneously serves both majoritarian and counter-majoritarian roles by representing the community and also serving as a check on the community's occasional unjust vindictiveness. The desirable balance of these competing roles falls flat when the jury is not appropriately comprised to serve both roles. As discussed below, juries of twelve members balance these roles better than smaller juries. Additionally, twelve-member juries matter because that is the kind of jury that the public anticipates as giving just verdicts.

When these three additional purposes are given their fair consideration, the analysis demonstrates that juries of twelve achieve the purpose of the Sixth Amendment better than smaller juries do. The practice of the very States that shrink their juries confirms the point: each keeps a jury of twelve for its most serious cases. The judgment below should be reversed.

ARGUMENT

In *Williams v. Florida*, this Court determined that the historical purpose of why juries exist is to "prevent oppression by the Government."⁴ From that position the Court concluded that a six-person jury can just as effectively accomplish that objective as a twelve-

⁴ *Williams*, 399 U.S. at 100.

person jury.⁵ Missing from the Court's analysis, however, were other reasons for why juries exist and why trial by jury matters. These other purposes factor into the strategic decision of why defense attorneys and their clients assert the right to trial by jury. Moreover, these other purposes are better accomplished through juries of twelve members over smaller juries. A jury's purpose is to:

1. Secure the community's participation in the administration of justice.
2. Serve as a check on the community's proclivity for vindictiveness.
3. Satisfy society's, and the defendant's, interest that the case was decided fairly.⁶

Smaller juries do not reflect these important purposes the way that a twelve-person jury can. These purposes are not a functionalist substitute for the

⁵ *Id.*

⁶ Of note, there are additional reasons for why juries exist. For example, juries have been recognized as a tool to educate the public on civic matters. *Powers v. Ohio*, 499 U.S. 400, 407, 111 S. Ct. 1364, 1368 (1991). The more people serve on juries the more effective this is accomplished, which makes twelve-person juries superior to smaller ones. That said, defendants do not choose juries to help educate the populace, so this function is not explored further in this brief.

Constitution's original meaning; they are part of what that meaning protected. And even measured against *Williams's* own functional test, each is better served by twelve than by six.

**I. The Jury is the People's Share in the
Administration of Justice; a Six Member
Jury Halves That Participation.**

The jury is not merely a fact-finder assembled for the defendant's benefit. It is the institution through which the people themselves take part in governing. The right to a jury was, at the founding, primarily a right of the people to be involved in the administration of justice.⁷ In this sense the jury has always been a political institution, a form of the sovereignty of the people exercised in the courtroom.⁸ Because the jury is the community's participation in justice, its size is not a matter of administrative convenience. It measures how much of the community actually sits in judgment.

⁷ Laura I. Appleman, *The Lost Meaning of the Jury Trial Right*, 84 Ind. L.J. 397 (2009) (explaining that the jury-trial right was originally, and primarily, a right of the people to participate in the administration of justice).

⁸ See 1 Alexis de Tocqueville, *Democracy in America* (Henry Reeve trans., 1835) (describing the jury as, above all, a political institution and a form of the sovereignty of the people); Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* (1998) (treating the jury as a populist, self-governing institution).

From its inception, the jury served as the voice of the community. “[I]n its origins the jury is of a representative character; the basis of its composition in the early days . . . was clearly the intention to make it representative of the community. . .”.⁹ The pluralist purpose of the jury was also recognized as a central feature in early America. As John Adams wrote in his diary:

In the Administration of Justice too, the People have an important Share. . . [N]o Man can be condemned of Life, or Limb, or Property or Reputation, without the Concurrence of the Voice of the People.¹⁰

Not only does the jury represent the community’s decision to hold defendants accountable; but it also represents the community’s interest in protecting defendants against governmental overreach. This is a right not only for the defendant,¹¹ but as this Court has also recognized that *the people themselves* have a right to act as jurors as a means to “prevent [the]

⁹ Theodore Plucknett, *A Concise History of the Common Law*, 127 (1956), <https://tinyurl.com/2924e8hw>.

¹⁰ *Founders Online*, NATIONAL ARCHIVES, “[February 1771]” in *The Adams Papers, Diary and Autobiography of John Adams*,” vol. 2, 1771-1781, ed. L. H. Butterfield (1961). <https://founders.archives.gov/?q=important%20share&s=1511311112&r=8>; see also Laura I. Appleman, *The Lost Meaning of the Jury Trial Right*, 84 IND. L.J. 397 (2009) (describing that the right of a jury trial was originally primarily a right of the people to be involved in the administration of justice).

¹¹ *Williams*, 399 U.S. at 100.

arbitrary use or abuse" of judicial power.¹² The requirement of a unanimous jury gives the right to each juror, as an individual, to stop governmental overreach.¹³

Although the *Williams* Court recognized the jury's importance in protecting against oppression, the Court brushed over the reasons why the jury protects individuals from the government, and in doing so missed the reason why a twelve-person jury matters to accomplish this important function.

Jurors do not adjudicate guilt or innocence simply as a small body of non-governmental officers or non-judges; they reach their verdicts as a diverse body of individuals representing the community. As one early commentator wrote:

If justice be done to the wheel by placing
in it the most intelligent citizens of all
occupations, every traverse jury of
twelve men should possess an aggregate

¹² *Powers v. Ohio*, 499 U.S. 400, 406, 111 S. Ct. 1364, 1364, 113 L. Ed. 2d 411 (1991) (quoting Chief Justice Taft in *Balzac v. Porto Rico*, 258 U. S. 298 (1922)).

¹³ *Founders Online*, NATIONAL ARCHIVES, "Adams' Diary Notes on the Right of Juries: 1771. Feby. 12.," in *The Adams Papers, Legal Papers of John Adams*, vol. 1, *Cases 1-30*, ed. L. Kinvin Wroth and Hillier B. Zobel (1965), available at <https://founders.archives.gov/documents/Adams/05-01-02-0005-0005-0004> ("It is not only his right but his Duty in that Case to find the Verdict according to his own best Understanding, Judgment and Conscience, tho in Direct opposition to the Direction of the Court.").

of practical information, that should be greater than the judge on the bench, however good his legal information. . . .¹⁴

Juries are valued for defendants because of their ability to apply “common-sense judgment.”¹⁵ That judgment stems from the jury’s connection to “community values.”¹⁶ The “community’s sense of justice” that flows from a jury brings “the quality of mercy” to the courts.¹⁷ As the Kentucky Supreme Court noted over a century ago:

The jury are drawn from the various walks of life, and their combined knowledge and experience afford the very best opportunity for safe and wise conclusions. Judge Dillon is quoted as saying, "twelve good and lawful men are better judges of disputed facts than twelve learned judges."¹⁸

¹⁴ Eli Price, *Discourse on the Trial by Jury*, 9 (1863), available at <https://tinyurl.com/2pavjym8>.

¹⁵ *Duncan v. Louisiana*, 391 US 145, 156, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968).

¹⁶ *Parkland Hosiery Co. v. Shore*, 439 U.S. 322, 355, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979) (Rehnquist, J. Dissent).

¹⁷ William O. Douglas, *The Right of the People*, 183-84 (1958).

¹⁸ *Steelevest, Inc. v. Scansteel Service Center, Inc.*, 908 S.W.2d 104 (Ky. 1995) (quoting *Hudson v. Adams' Adm'r*, Ky., 49 S.W. 192 (1899)).

Other commentators have made similar observations, praising “the judgment of 12 impartial (people), of the average of the community, applying their separate experiences of life to the solution of such doubts as may arise” as the model of justice,¹⁹ and recognizing that the value of a jury is in its “composite intelligence, dedication, comprehension, evidence recall, and [] emotional balance . . .”.²⁰

Not only do smaller juries decrease the power of the citizenry’s right to serve as a check against government overreach, but they also diminish the ability of each individual juror to draw from the collective background of her peers in making just verdicts. A jury of six is less likely to reflect the broader community accurately than a jury of twelve. It has half the life experience. It has half the collective wisdom. And it gives the people half the share in the administration of justice that the founding generation thought their due.

This participatory understanding is not UACDL’s invention; it is the premise of this Court’s jury jurisprudence. As the Court has recognized, “[W]ith the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process.”²¹ Community participation in the

¹⁹ *Travelers’ Ins. Co. v. Selden*, 78 F. 285 (4th Cir. 1897).

²⁰ Joseph T. Karcher, *The Case for the Jury System*, CHICAGO-KENT L. REV., 157, 168 (1968).

²¹ *Powers*, 499 U.S. at 407.

administration of the criminal law, the Court has likewise explained, “is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system.”²² The jury is how the community takes part in governing, and its representative character is what lends its verdicts their legitimacy.

Because the jury’s representative character matters so much, this Court has vigilantly guarded it. When jurors are excluded on the basis of race, the injury is not the defendant’s alone. “The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.”²³ The wrong condemned in *Batson* is a wrong to the community’s stake in a representative jury and to the public’s confidence that justice is evenhanded.

That principle is not confined to the means by which a jury is made less representative. A State narrows the community’s representation whether it strikes qualified jurors one at a time or simply seats fewer of them from the outset. A six-member panel does the latter as a matter of course, and in nearly

²² *Taylor v. Louisiana*, 419 U.S. 522, 530, 95 S. Ct. 692, 42 L. Ed. 2d 690 (1975).

²³ *Batson v. Kentucky*, 476 U.S. 79, 87, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986); see also *Georgia v. McCollum*, 505 U.S. 42, 49, 112 S. Ct. 2348, 120 L. Ed. 2d 33 (1992) (reaffirming).

every felony case rather than the exceptional one. As the empirical record the petitioner marshals shows, halving the jury predictably thins the representation of minority members of the community and shrinks the cross-section that renders the verdict. The injury *Batson* identified, to the community's participation and to public confidence in the fairness of the system, follows in either case. A jury reduced by law to six inflicts a kindred harm. The difference between striking jurors and shrinking the jury is one of means, not of kind.

II. The Jury Serves a Counter-Majoritarian Function; a Smaller Jury Cannot Serve that Function as Well as a Jury of Twelve.

Not only do juries serve as the voice of the community, but commentators have also recognized the important role jurors serve as a counter-majoritarian check on the community's vindictiveness.

[T]he trial by jury has been steadily regarded, from the earliest judicial history in England, as the great safeguard of the lives, liberty, and property of the subject against the abuses of arbitrary power, *as well as against undue excitements of popular feeling*.²⁴

²⁴ William E. Chandler, *State Reporter, Reports of Cases Argued and Determined in the Supreme Judicial Court of New*

The jury's role as a counter-majoritarian body is critical to fair outcomes.

Jurors often serve as the gate through which the community expresses disapproval of a defendant's acts. But as participants of the court, it also moderates the community's anger. As one Court pointed out, "Jury trials have historically served to vent community pressures and passions."²⁵ When the jury does this responsibly, it serves as "the lid of a tea kettle releas[ing] steam," allowing "peaceful expression of community outrage at arbitrary government or vicious criminal acts."²⁶

However, the jury has not always served this moderating influence, requiring courts to occasionally intervene to protect this function. Among the most well-known illustrations of juries failing their counter-majoritarian role comes from the Jim Crow South, where juries packed with white community members would unfairly convict black defendants on the barest of evidence but would acquit white defendants who harmed black individuals.²⁷ Courts, including this one, had to step in.

Hampshire, vol. 41, 550 (1861) *available at* <https://tinyurl.com/6nru7nzp>. (emphasis added).

²⁵ *United States v. Lewis*, 638 F. Supp. 573, 580 (W. D. Mich. 1986).

²⁶ *Id.*

²⁷ Arthur L. Rizer III, *The Race Effect on Wrongful Convictions*, WILLIAM MITCHELL L. REV. 29, 845, 850-52 (2003).

This Court has repeatedly intervened to restore the jury's deliberative, counter-majoritarian function when it has failed, beginning with *Strauder v. West Virginia*.²⁸ The discriminatory origins of reduced and manipulated juries are set out at length in the petitioner's brief, and UACDL does not repeat that history here. The point for present purposes is structural: the jury checks the community's passions only when it is constituted to deliberate as a genuine body, and a smaller jury is a weaker check.

But racial animosity is not the only basis on which courts intervene to safeguard the deliberative jury from the community's sense of outrage. In cases where the "court of popular opinion" has decided guilty before trial, prospective jurors are screened for biases they may have acquired by having heard about and discussed the case with others in the community.²⁹ Relatedly, when a defendant suspects that he cannot get a fair trial in the court's jurisdiction, his motion to change the trial venue is typically brought after public polling of the community's sentiment shows that the defendant will not get an impartial jury.³⁰ And while the public

²⁸ *Strauder v. West Virginia*, 100 U.S. 303, 25 L. Ed. 664 (1879).

²⁹ *Mu'Min v. Virginia*, 500 U.S. 415, 425-26, 111 S. Ct. 1899, 1905 (1991).

³⁰ See generally, *Irvin v. Dowd*, 366 U.S. 717, 81 S. Ct. 1639 (1961).

would have no trouble convicting a defendant after hearing about the defendant's criminal record, juries are frequently kept from hearing about the defendant's record so that they make measured decisions that the public would not. To that end, popular sentiment may quickly decide a dispute on little evidence, whereas the jury inhabits a microcosm of evidentiary rules, legal instructions, and procedural presentations of the case. Put simply, the jury not only represents the community, but it also serves a counter-majoritarian or moderating function against public vindictiveness.

Jury size directly affects this counter-majoritarian function. If a jury is too large it may too greatly reflect the community's outrage, hampering its moderating purpose. But when juries are too small, they run other risks.

Although defendants "are not entitled to a jury of any particular composition," juries are meant to be a "fair cross-section of the community."³¹ Jury size bears directly on this moderating capacity. Smaller juries are more likely to have "extreme oversampling" issues. A jury of six draws on fewer independent voices to temper the community's passions, and is the more easily swept toward the very outrage the jury exists to check. As a well-known statistical phenomenon, when a random selection of a population is too small to reflect the population's characteristics, there is an increased risk that the

³¹ *Taylor v. Louisiana*, 419 US 522, 538 (1975).

small sample will contain a disproportionate number of atypical members of the overall population.³²

A jury of fewer than twelve is thus less able to moderate the vindictiveness of popular sentiment against the accused. That is a cost *Williams* never counted.

III. The Jury System Is Designed to Satisfy Society's Interest, as Well as the Defendant's Interest, that Justice Is Done; a Small Jury Does Not Symbolize the Justice-Serving Role of a Jury.

The jury serves a symbolic purpose. It provides the community with assurance that a just outcome was reached. While a defendant has a limited right to challenge a jury that erroneously convicts,³³ the integrity of a jury's verdict is otherwise unassailable: a judge may not direct a criminal jury to convict nor may a jury's decision to acquit be appealed.³⁴ The

³² Chittaranjan Andrade, *Sample Size and its Importance in Research*, INDIAN J. PSYCH. MED. 42, 102-103 (2020) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6970301/>.

³³ *Jackson v. Virginia*, 443 U.S. 307, 317, 99 S. Ct. 2781, 2788 (1979).

³⁴ Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. CHI. L. REV. 867, 912-13 (1994).

finality of a jury's verdict is an important feature of the legal system.³⁵

The public's ability to identify with juries aids its perception that juries get things right. Reflecting on the English jury system in 1883, one historian noted:

The public at large feel more sympathy with jury-men than they do with judges, and accept their verdicts with much less hesitation and distrust than they would feel towards judgments however ably written or expressed.³⁶

Perception matters in the legal system. "It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."³⁷ When juries do not conform to the public's perception of a just jury, it shakes confidence in the system.

This concern about unjust juries has been aptly captured in media. The manipulative jury selection

³⁵ *United States v. Scott*, 437 U.S. 82, 92, 98 S. Ct. 2187, 2194 (1978) (explaining the reasoning for why that finality may be challenged when the result is a conviction).

³⁶ Sir James FitzJames Stephen, *A History of the Criminal Law of England*, vol 1, 573 (1883).

³⁷ *The King v. Sussex Justices, Ex Parte McCarthy*, [1924] 1 KB 256, [1923] EWHC KB 1, [1924] KB 256, available at <https://tinyurl.com/bdd5bumr>.

scene in the blockbuster film *Runaway Jury* reveals that the gun manufacturer has spent enormous sums of money to select its ideal jury, helping the audience to see that the manufacturer is the story's villain.³⁸ And in Harper Lee's *To Kill a Mockingbird*, the reader knows that the jury will inevitably convict the innocent Tom Robinson because the author tells the reader that the jury "seemed to be all farmers," pointing out that "townsfolk rarely sat on juries, they were either struck or excused."³⁹ As Justice Frankfurter pointed out, a jury's "broad representative character" of the community is meant to be an "assurance of diffused impartiality."⁴⁰

Juries depicted in popular culture show twelve individuals.⁴¹ When described in media, they are shown as twelve people.⁴² As criminal defense

³⁸ RUNAWAY JURY (Regency Enterprises 2003).

³⁹ Judge Royal Furgeson, *The Jury in To Kill A Mockingbird: What Went Wrong?*, TEX. BAR. J. 488 (2010) available at <https://tinyurl.com/2p8ztxfm>.

⁴⁰ *Thiel v. S. Pac. Co.*, 328 U.S. 217, 227, 66 S. Ct. 984, 989 (1946) (Frankfurter, J. dissenting).

⁴¹ 12 ANGRY MEN (Orion-Nova Productions 1957); MARVEL'S DAREDEVIL, se. 2, ep. 8 (Marvel Television 2016) (showing a twelve-person jury) <https://www.youtube.com/watch?v=vSg0mNAgx4s>; THE UNTOUCHABLES (Paramount Pictures 1987) (same) <https://www.youtube.com/watch?v=peie8WvkKP0>.

⁴² See e.g., Joel Moore, Lydian Coombs, and Dorothy Sedovic, *Jury Acquits Man Charged with Planning Rapper Young Dolph's Murder*, KCTV 5 (Aug 22, 2025) (describing the twelve-

attorneys, we see in close detail just how important the jury's composition is to our clients. When our clients are fairly convicted by a jury, it is important for the client to be able to recognize the legitimacy of the jury's verdict. We have repeatedly seen that when defendants feel that they were fairly convicted, they fare much better at complying with their sentence than defendants who witness injustices in their trials. The justice system has worse results when it does not appear to be just.

As attorneys who handle jury trials before juries of eight members, we often find ourselves explaining to clients why they do not get a jury of twelve like they expect. Our clients are sometimes surprised to see that Utah's juries fall out of step with the well-known expectation of twelve-person juries. They are occasionally troubled when they do not see twelve people sitting in the jury box on their case.

The reaction our clients have is not naïve; it reflects a sound intuition, created by history, about what a jury is supposed to be. And it matters after verdict as well. In experience, defendants who believe they were fairly judged are far more likely to accept their convictions and comply court orders than those who leave the courtroom convinced the process shortchanged them.⁴³ A jury that does not look like

person jury composition) *available at*
<https://www.kctv5.com/2025/08/22/jury-acquits-man-charged-with-planning-rapper-young-dolphins-murder/>.

⁴³ See Tom R. Tyler, *Why People Obey the Law* (1990) (perceived procedural fairness increases acceptance of, and compliance with, legal outcomes).

the jury the public expects invites precisely that corrosive doubt. When the State seats six jurors where the community expects twelve, it saves little and risks much: it trades away the appearance of justice that gives a verdict its legitimacy.

For both the public and defendants, the jury system carries symbolic power that ensures right outcomes are reached. For that reason, it is not only important for the jury to be just, but it also must be seen to be just. Integral to that purpose is the public's, and the defendant's, expectation that the jury is constituted of twelve members.

IV. The States That Seat Smaller Juries Concede That Twelve Matters, and a Twelve-Juror Floor Is Workable.

There is a final, practical confirmation that a jury of twelve differs in kind from a jury of six, and it comes from the reduced-jury States themselves. Every one of them keeps a jury of twelve for its most serious cases. Utah, Connecticut, Arizona, Indiana, and Florida each require twelve jurors in capital cases, and several require twelve for grave non-capital felonies as well.⁴⁴ Massachusetts, which has

⁴⁴ See Ariz. Const. art. 2, sec. 23; Conn. Const. amend. art. IV; Fla. Rule Crim. Proc. § 3.270 (2019); Ind. Code § 35-37-1-1(b)(1); Utah Const. art. I, sec. 10. Louisiana requires twelve person juries for all cases except for those which “may” result in imprisonment at hard labor. C.f. Louis. Const. of 1974 art. 1, § 17 (requiring twelve person juries for capital offenses) and LA Code Crim. Pro. 782 (allowing juries of six for cases which “may”

abolished capital punishment, still requires a jury of twelve in its felony sessions and reserves smaller juries for lesser matters.⁴⁵

This is a telling concession. A State would not reserve its largest jury for the cases that matter most unless it believed, at some level, that twelve jurors deliberate differently, and better, than six. And jury size is not only a sentencing protection; it goes to the reliability and legitimacy of the guilt determination itself. If twelve jurors are necessary to fairly decide whether a defendant lives, it is difficult to explain why six jurors suffice to decide whether he spends years in prison. The right to a fairly constituted jury does not rise and fall with the severity of the sentence; it attaches to the meaning of a trial and the power of the government to deprive an individual of life, liberty, and property.

Nor is a twelve-juror rule any burden to administer. The reduced-jury States already empanel twelve-person juries as a matter of routine in their capital and most serious cases; they have the venires, the courtrooms, and the procedures in place. UACDL's

result in imprisonment at hard labor); see also LA R.S. 14:2 §2(A)(4) (defining felony as a crime that "may be sentenced to death or imprisonment at hard labor").

⁴⁵ See Ariz. Const. art. 2, sec. 23 (requiring juries for felonies in which the term of imprisonment is thirty or more years). Massachusetts has abolished capital offenses, see Mass. Const. art. XII. However, it requires twelve person juries for felony cases except for certain felonies tried before the district court. Cf. Mass. G. L. C. 218, § 26A and Mass. R. Crim. P. 19(c).

members try cases in both configurations and can attest that seating twelve rather than six or eight asks nothing of the system it does not already supply. Florida has warned that overruling *Williams* would work broad disruption, but the everyday practice of the affected States is the answer. They already seat twelve where it counts. The concession those States have made in part should now be made complete.

CONCLUSION

The *Williams* Court was too dismissive of the importance of a twelve-person jury. It considered one reason for why juries matter but missed out on a number of other crucial reasons why criminal defendants pick juries over judges. A jury that is too small does not adequately reflect the community. A jury that is too large would not serve the counter-majoritarian purpose of the jury since it would reflect the community too greatly. A jury of twelve has withstood the test of time in managing this tension. Moreover, its broad recognition in American culture has the symbolic value of representing justice. Accordingly, UACDL urges this Court to reverse the judgment below and hold that the Sixth and Fourteenth Amendments require a twelve member jury in the trial of serious crimes. That ruling would restore to the defendants of our State's juries that properly embody the original meaning and spirit of the criminal jury.

Respectfully submitted,

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