

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 OF AMICUS CURIAE NAACP LEGAL
DEFENSE & EDUCATIONAL FUND, INC. AND
THE NATIONAL ASSOCIATION FOR THE AD-
VANCEMENT OF COLORED PEOPLE IN SUP-
PORT OF PETITIONER**

BRITTANY CARTER
Counsel of Record

SAMUEL SPITAL

NAACP Legal Defense and
Educational Fund, Inc.

40 Rector Street, 5th Floor
NEW YORK, NY 10006

bcarter@naacpldf.org

(212) 965-2200

JANAI NELSON

*President and Director-
Counsel*

DANIEL HARAWA,

CHRISTOPHER KEMMITT

NAACP Legal Defense and
Educational Fund, Inc.

700 14th St. NW, Suite 600

(202) 682-1300

*Counsel for Amicus Curiae
Additional Counsel on Signature Page*

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
INTERESTS OF AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT.....	5
ARGUMENT	11
I. <i>Ramos Requires this Court to Confront the Racist History of Florida’s Six-Person Jury Law</i>	11
II. Florida’s Six-Person Jury Law Was Designed to Thwart Black Jury Service and to Make it Easier to Convict Black Defendants.....	16
III. Florida’s Six-Person Jury Law Still Operates Today to Thwart Black Jury Service and Leads to Higher Conviction Rates for Black Defendants.....	30
CONCLUSION	37

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alexander v. Louisiana</i> , 405 U.S. 625 (1972)	2
<i>Apodaca v. Oregon</i> , 406 U.S. 404 (1972) (plurality opinion) 13, 14, 15	
<i>Ballew v. Georgia</i> , 435 U.S. 223 (1978)	32, 33
<i>Brown v. Bd. of Educ. of Topeka</i> , 347 U.S. 483 (1954)	1
<i>Castaneda v. Partida</i> , 430 U.S. 482 (1977)	8
<i>Cooper v. Aaron</i> , 358 U.S. 1 (1958)	1
<i>Cunningham v. Florida</i> , 144 S. Ct. 1287 (2024) (Gorsuch, J., dissenting from denial of certiorari)	15, 37
<i>Edwards v. Vannoy</i> , 593 U.S. 255 (2021) (Kagan, J., dissenting)	6
<i>Ham v. South Carolina</i> , 409 U.S. 524 (1973)	1

<i>Hunter v. Underwood</i> , 471 U.S. 222 (1985)	36
<i>Ramos v. Louisiana</i> , 590 U.S. 83 (2020) 2, 5, 6, 9, 11-14, 16, 27, 29, 37	
<i>Seminole Tribe of Fla. v. Florida</i> , 517 U.S. 44 (1996) (Souter, J., dissenting)	7
<i>Strauder v. West Virginia</i> , 100 U.S. 303 (1879)	5
<i>Swain v. Alabama</i> , 380 U.S. 202 (1965)	2
<i>Thompson v. Utah</i> , 170 U.S. 343 (1898), <i>overruled on other grounds by Collins v. Youngblood</i> , 497 U.S. 37 (1990)	10
<i>Trump v. Barbara</i> , 143 S.Ct. 2438 (2026) (Jackson, J., concurring)	10
<i>Williams v. Florida</i> , 399 U.S. 78 (1970)	15, 31, 37, 38
Statutes	
Ch. 2090, Laws of Fla. (1877)	8
Ch. 3010 § 1, Laws of Fla. (1877)	8
Ch. 3010, § 6, Laws of Fla. (1877)	27

Ch. 3034, Laws of Fla. (1877)	8
Fla. Const. of 1868, art. VI, § 12	23
Fla. Const. of 1868 Art. XIV, § 1	22
Fla. Const. of 1868, art. XIV, § 2	25
Fla. Const. of 1868, art. XIV, § 4	24
Fla. Const. Art. XIV, § 7	24

Other Authorities

Alisa. Smith & Michael J. Saks, <i>The Case for Overturning Williams v. Florida and the Six-Person Jury</i> , 60 FLA. L. REV. 441 (2008)	35
Allan Arbman and James McConnell, <i>Trial By Jury: The New Irrelevant Right 27</i> SMU LAW REVIEW 436 (1973)	26
DONALD G. NIEMAN, <i>TO SET THE LAW IN MOTION: THE FREEDMEN'S BUREAU AND THE LEGAL RIGHTS OF BLACKS, 1865-1868</i> (1979)	20
DOUGLAS A. BLACKMON, <i>SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II</i> (2008)	8, 29

Douglas L. Colbert, <i>Challenging the Challenge: Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenges</i> , 76 CORNELL L. REV. 1 (1990)	8, 21, 28, 29
ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877 (1988)	17, 22, 26, 30
ERIC FONER, THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION (2019)	26
Erika L. Wood, <i>Florida: An Outlier in Denying Voting Rights</i> , BRENNAN CTR. FOR JUSTICE	18, 19, 21, 24, 30
Expert Report by Prof. Jerrell H. Shofner, Ph.D., <i>Johnson v. Bush</i> , No. 00-CV-3542, 2001 WL 34842925 (S.D. Fla. June 20, 2001).	22
The Florida Timeline, 1865 - Establishment of Vagrancy Laws at the Constitutional Convention	19
Jerrell H. Shofner, <i>Custom, Law, and History: The Enduring Influence of Florida's "Black Code"</i> , 55 FLA. HIST. Q. 277 (1976)	18, 21

JERRELL H. SHOFNER, NOR IS IT OVER YET: FLORIDA IN THE ERA OF RECONSTRUCTION, 1863-1877 (Univ. Press of Fla. 1974).....	19, 20
Jerrell H. Shofner, Reconstruction and Renewal, 1865-1877, in <i>The History of Florida</i> (Michael Gannon, ed., first paperback edition 2018).....	30
Michael J. Saks & Mollie Weighner Marti, <i>A Meta-Analysis of the Effects of Jury Size</i> , 21 LAW & HUM. BEHAV. 451 (1997).....	33
Patrick E. Higginbotham, et al., <i>Better by the Dozen: Bringing Back the Twelve- Person Civil Jury</i> , 104 JUDICATURE 47 (2020)	33
Samuel R. Sommers, <i>On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations</i> , 90 J. PERSONALITY & SOC. PSYCH. 597 (2006)	36
Shamena Anwar, et al., <i>The Impact of Jury Race in Criminal Trials</i> , 127 Q.J. ECON. 1017 (2012)	34, 35
Shari Seidman Diamond, et al., <i>Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge</i> , 6 J. EMPIRICAL LEGAL STUD. 425 (2009)	33

INTERESTS OF AMICUS CURIAE¹

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first and foremost civil rights organization. Since its founding in 1940, LDF has fought to secure equal justice under the law for all Americans, and to break down barriers that prevent Black Americans from realizing their basic civil and human rights. LDF's advocacy has included efforts to enforce the Fourteenth Amendment's promise of equality, *see, e.g., Cooper v. Aaron*, 358 U.S. 1 (1958), *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954), and to overcome the persistent and pernicious influence of race in the criminal justice system by fighting to eradicate discrimination that affects jury verdicts,

¹ Pursuant to Supreme Court Rule 37.6, counsel for amicus curiae state that no counsel for a party authored this brief in whole or in part and that no person other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

see, e.g., *Ham v. South Carolina*, 409 U.S. 524 (1973), *Alexander v. Louisiana*, 405 U.S. 625 (1972), *Swain v. Alabama*, 380 U.S. 202 (1965).

LDF submitted an amicus brief in *Ramos v. Louisiana*, 590 U.S. 83 (2020), urging this Court to hold that Louisiana’s non-unanimous jury rule was unconstitutional under the Sixth Amendment’s jury guarantee, which applies to all States through the Fourteenth Amendment. Like the question presented in *Ramos*, the question presented in this case—whether six-person juries violate the Sixth Amendment’s jury guarantee—has major implications for the rights of both Black jurors *and* Black defendants, who are more likely to be deleteriously affected by six-person juries.

Founded in 1909, and with more than 2,200 local units across the country, the National Association

for the Advancement of Colored people (“NAACP”) is the nation’s oldest and largest grassroots civil rights organization. The NAACP’s mission is to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color.

Among the NAACP’s core objectives is eliminating longstanding racial inequities that impede Black people and other persons of color from serving on juries, thereby undermining the fairness and integrity of jury selection and, ultimately, jury verdicts. The current discriminatory law permitting six-person juries in non-capital criminal matters exacerbates these concerns by limiting the diversity and representativeness of juries. The NAACP has a strong interest in

ensuring that Black people and all persons of color have unequivocal and unfettered access to jury service and that all individuals are afforded the fair and impartial trial that the Constitution demands.

SUMMARY OF THE ARGUMENT

After the Civil War, Congress passed the Fourteenth Amendment and the Civil Rights Act of 1875 to protect the rights of newly freed Black Americans. One of the most important rights protected by those provisions was the right to serve on a jury. Not long after, this Court confirmed the centrality of jury service to Black Americans' citizenship. *See Strauder v. West Virginia*, 100 U.S. 303, 308–09 (1879).

Before that right could be fully realized, however, recalcitrant southern states went to work crafting schemes to deny Black Americans this important badge of citizenship. This Court confronted one such scheme not long ago: Louisiana's adoption of a non-unanimous jury provision. *See Ramos v. Louisiana*, 590 U.S. 83 (2020). As *Ramos* recounted: “[A]ware that this Court would strike down any policy of overt

discrimination against African-American jurors as a violation of the Fourteenth Amendment,” Louisiana “sought to undermine African-American participation on juries in another way. With a careful eye on racial demographics, the convention delegates sculpted a ‘facially race-neutral’ rule permitting 10-to-2 verdicts in order ‘to ensure that African-American juror service would be meaningless.’” *Id.* at 88. And in doing so, this Court “vindicated core principles of racial justice.” *Edwards v. Vannoy*, 593 U.S. 255, 295 (2021) (Kagan, J., dissenting).

Florida’s six-person jury law is of the same ilk and should therefore suffer the same fate. Florida enacted its six-person jury provision in the wake of the Compromise of 1877, “when the Republican Party agreed effectively to end Reconstruction and to withdraw federal troops from the South in return for

Southern acquiescence in the decision of the Electoral Commission that awarded the disputed 1876 presidential election to Rutherford B. Hayes.” *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 120 (1996) (Souter, J., dissenting). Passed a part of a package designed to undermine Black citizenship, the Florida legislature would have understood that it would be easier to secure all-white juries if the jury size were smaller, much like the Louisiana legislature understood that non-unanimous juries made it easier to nullify Black jurors’ votes. This is especially true given the other laws Florida enacted that session. During the same legislative session, Florida reinstated a discretionary “integrity, fair character, sound judgment and intelligence” test for jury service, a standard used across the South to purge Black citizens from the

venire.² And under the law, the list of potential jurors was compiled by the board of county commissioners—a “key man system,” which has been a tool often used to discriminate against potential jurors of color. *See Castaneda v. Partida*, 430 U.S. 482, 497 (1977). That same session, Florida enacted convict-leasing statutes, by which thousands of Black people were forced into a system of labor that was essentially “slavery by another name.”³

In short, Florida’s six-person jury law was not an isolated piece of legislation; it was “one pillar of a comprehensive and brutal program of racist Jim Crow

² Ch. 3010 § 1, Laws of Fla. (1877); *see also* Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenges*, 76 CORNELL L. REV. 1, 89–90 (1990) (explaining that such standards were “used to eliminate almost every black citizen from the southern trial venire”).

³ DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2008); *see* Ch. 3034, Laws of Fla. (1877) (state prisoners); Ch. 2090, Laws of Fla. (1877) (county prisoners).

measures against African-Americans, especially in voting and jury service.” *Ramos*, 590 U.S. at 126–27 (Kavanaugh, J., concurring in part).

Ramos teaches that this history of racism matters, especially when its racial effects still linger. Studies show that a six-person jury is mathematically far more likely than a 12-person one to include no Black jurors. *See infra* pp. 32–33. And Florida’s own trial data confirms that the racial makeup of a jury makes a difference: The gap in conviction rates between Black and white defendants appears almost entirely in cases where no Black juror is included in the panel and disappears once even a single Black juror is. *See infra* pp. 33–34. In other words, Florida’s six-person jury law is still having its intended, racial effect—it makes it easier to exclude Black people from

juries, which in turn makes it easier to convict Black defendants (and acquit white defendants) of crime.

To ensure that Black Americans are equally allowed to exercise their right to serve on juries, and are guaranteed the fair trial that the Constitution demands, this Court should hold that the Constitution requires 12-person juries. This is how the right to a jury was originally understood at the time of the Founding. *See Thompson v. Utah*, 170 U.S. 343, 349–50 (1898), *overruled on other grounds by Collins v. Youngblood*, 497 U.S. 37 (1990), (explaining that, “at common law,” a jury was “of twelve persons, neither more nor less”). And Florida’s law only deviated from this understanding in an effort to undermine Black Americans’ full citizenship after the Nation’s Second Founding. *See Trump v. Barbara*, 143 S.Ct. 2438, 2468 (2026) (Jackson, J., concurring) (explaining that

the passage of the Reconstruction Amendments was a “kind of ambitious transformation—nothing less than the remaking of the soul of a Nation beset by rank, entrenched race-based prejudice and inequity”). Having invalidated Louisiana’s nonunanimous jury law with a similar discriminatory design, this Court should strike down Florida’s six-person jury law as well.

ARGUMENT

I. ***Ramos Requires this Court to Confront the Racist History of Florida’s Six-Person Jury Law.***

In *Ramos v. Louisiana*, this Court had to decide whether the Sixth Amendment, as incorporated against the states by the Fourteenth Amendment, requires that guilty verdicts in state criminal trials be unanimous for serious offenses. *Ramos*, 590 U.S. at 88. In holding that it does, *Ramos* based its decision

in part on the racist history of Louisiana’s and Oregon’s nonunanimous jury provisions—the only two states that had them.

Justice Gorsuch, writing for the majority, explained that Louisiana’s nonunanimity rule dated to a state constitutional convention in 1898, where a committee chair said the purpose of the convention was to “establish the supremacy of the white race.” *Id.* at 87. After the U.S. Senate expressed concern that Louisiana was “systemically excluding African-Americans from juries,” the state passed a “facially race-neutral” rule to thwart federal oversight that all but ensured “African-American jury service would be meaningless.” *Id.* at 88. The story of Oregon’s nonunanimous jury provision was just as odious. Oregon’s nonunanimous jury law dated back to the 1930s and the rise of the Ku Klux Klan in the state. *Id.* The law

was rooted in rank anti-Semitism, expressly designed to “dilute ‘the influence of racial, ethnic, and religious minorities on Oregon juries.’” *Id.* (citation omitted). In the words of *Ramos*, the “racist origins” of both laws “are clear.” *Id.* at 87, 106.

Previously, this Court had held that the Sixth Amendment requires unanimity in federal jury trials but not in state jury trials. *See Apodaca v. Oregon*, 406 U.S. 404, 406 (1972) (plurality opinion). But *Apodaca* failed to grapple with the racist history of nonunanimity laws when reaching this conclusion.

Ramos overruled *Apodaca* and held that the Sixth Amendment requires unanimity in state jury trials too. *See Ramos*, 590 U.S. at 106. This Court made clear why this history of racism is important as a matter of constitutional analysis: “if the Sixth Amendment calls on judges to assess the functional

benefits of jury rules, . . . how can that analysis proceed to ignore the very functions those rules were adopted to serve?” *Id.* at 99 n.44. In other words, a jury law’s constitutionality today cannot be assessed in isolation from the constitutionality of the purpose that produced it. The majority also made clear that *Apodaca*’s failure to wrestle with the racist origins of non-unanimity laws undermined the quality of its reasoning and thus the deference that decision was due. *See id.* at 106. Justice Kavanaugh emphasized this latter point, explaining that a history of racism—and whether previous precedent grappled with it—is relevant to *stare decisis* considerations. *Id.* at 128. (Kavanaugh, J., concurring). And in his view, “the origins and effects of the non-unanimous jury rule strongly support[ed] overruling *Apodaca*.” *Id.* at 126.

The year before *Apodaca* was decided, this Court upheld Florida’s six-person jury law as constitutional. *See Williams v. Florida*, 399 U.S. 78 (1970). It 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 (citation omitted).

Williams should be overruled. As Justice Gorsuch has explained, that decision “turned its back on the original meaning of the Constitution, centuries of historical practice, and a battery of this Court’s precedents.” *Cunningham v. Florida*, 144 S. Ct. 1287, 1287–88 (2024) (Gorsuch, J., dissenting from denial of certiorari) (citation modified).

However, the focus of this brief is what *Williams* did *not* discuss: the racial history and continued

racial effects of Florida's six-person jury law. Under *Ramos, Williams*' failure to grapple with that history undermines its stare decisis effect. *See Ramos*, 590 U.S. at 106. Moreover, *Ramos* teaches that this history is necessary to consider when determining the constitutionality of a jury provision that deviates from the common law understanding of the jury. *Id.* at 99 n.44. A review of this history underscores why this Court must strike down Florida's six-person jury law as unconstitutional.

II. Florida's Six-Person Jury Law Was Designed to Thwart Black Jury Service and to Make it Easier to Convict Black Defendants.

Florida first permitted six-person juries for non-capital criminal trials through Chapter 3010 of the Laws of Florida (February 17, 1877). Enacted at the close of Reconstruction as former Confederates regained power in the state legislature, the statute

codified a reduction from the traditional common law 12-person panel. This legislative enactment was reflective of the state's long pattern of defiance against federal protection of formerly enslaved people.

From the moment the Civil War ended, Florida's search for legal means of limiting Black participation in governing and deliberative bodies began.⁴ As new legislatures were assembling across the South in the aftermath of emancipation, Florida explicitly limited the right to vote to "free white males" and enacted "Black Codes," a series of laws designed to restrict the activities of freed Black people, through its 1865 Constitution and subsequent 1866 legislative statutes.⁵ This process was an early indication of

⁴ See ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877* 200–207 (1988).

⁵ Erika L. Wood, *Florida: An Outlier in Denying Voting Rights* 4, BRENNAN CTR. FOR JUSTICE, <https://www.brennancenter.org/our-work/research-reports/florida-outlier-denying-voting-rights> (2016).

Florida's preference for placing consequential determinations in the hands of small, racially exclusive groups.

Black Codes were the means by which Florida updated its comprehensive antebellum slave code to conform to postbellum society. At the 1865 constitutional convention, a three-member special committee “bemoaned the loss of that *highly efficient* institution which had existed on the plantations for the punishment of those ‘minor offenses to which Negroes are addicted.’”⁶ In other words, the abolition of slavery also necessitated an updated system of “justice” to ensure that Black Codes were effectively applied. “[T]he committee recognized that the circuit courts [justices of the peace] were too limited in capacity to handle the

⁶ Jerrell H. Shofner, *Custom, Law, and History: The Enduring Influence of Florida's "Black Code"*, 55 FLA. HIST. Q. 277, 282 (1976) (emphasis added)

increased volume of minor offenses” and “recommended as the solution the establishment of a criminal court in each county.”⁷ As a result, the assembly passed a law that established county criminal courts for the administration of the new regime of increased penalties and prosecution.⁸

This new punishment system reserved decisional power for white people through limitations on jury service and composition.⁹ Florida was the only southern state whose Codes specifically provided that only white males could serve as jurors;¹⁰ a Black

⁷ JERRELL H. SHOFNER, *NOR IS IT OVER YET: FLORIDA IN THE ERA OF RECONSTRUCTION, 1863-1877* 54 (Univ. Press of Fla. 1974); see The Florida Timeline, 1865 – Establishment of Vagrancy Laws at the Constitutional Convention, <https://www.floridatimeline.org/timeline/1865-establishment-of-vagrancy-laws-at-the-constitutional-convention/> (last visited Aug. 12, 2026).

⁸ See SHOFNER, *NOR IS IT OVER YET*, *supra* note 7 at 54; Wood, *supra* note 5 at 4.

⁹ See SHOFNER, *NOR IS IT OVER*, *supra* note 7 at 42.

¹⁰ See DONALD G. NIEMAN, *TO SET THE LAW IN MOTION: THE FREEDMEN’S BUREAU AND THE LEGAL RIGHTS OF BLACKS, 1865-1868*, 89–90 (1979).

person's sworn deposition could not be admitted evidence;¹¹ and Black people could only testify in criminal cases involving members of their own race.¹² Thus, juries were designed to implement a discriminatory statutory regime and guarantee biased outcomes.

Narrow deliberative bodies reflected the narrow civil rights afforded in society at large. As targeted offenses like “strolling and wandering,” known today as vagrancy and loitering, were specifically created to punish minor infractions or no infractions at all, racially exclusive juries were given the authority to prescribe discretionary punishments—such as deciding to penalize a crime punishable by fine and imprisonment with whipping or standing in the pillory

¹¹ See *id.* at 99-100

¹² See Shofner, *Nor Is It Over* *supra* note 7 at 54

instead—specifically for Black individuals convicted of crimes.¹³ Meanwhile, white violence during this period went virtually unpunished.¹⁴

In response, Congress passed the Reconstruction Act of 1867 requiring Florida to formally ratify the Fourteenth Amendment, which granted citizenship and equal protection under the law to all people born in the United States.¹⁵ Nevertheless, recalcitrant state legislators maneuvered to ensure that the promise was never realized. During the Florida constitutional convention in 1868, Florida delegates “adopted ingenious methods of making Reconstruction palatable to white voters and minimizing [...] ‘the danger of negro suffrage.’”¹⁶ The end result was the

¹³ See Shofner, *Custom, Law, and History*, *supra* note 6 at 283.

¹⁴ See Colbert, *Challenging the Challenge*, *supra* note 2 at 127–28.

¹⁵ See Wood, *supra* note 5 at 4

¹⁶ FONER, RECONSTRUCTION, *supra* note 4 at 323.

1868 Florida Constitution, which achieved readmission into the Union for the state, while assuring the continued political, economic, and social control of the former Confederates through “extensive parliamentary maneuvering.”¹⁷

Article XIV, Section 1 of the Florida Constitution granted the right of suffrage to “[e]very male person of the age of twenty-one years and upwards, of whatever race, color, nationality, or previous condition.”¹⁸ And Section 12 stated that jurors must be taken from the registered voters of their respective counties.¹⁹

While these provisions made it seem that jury service was openly available to all Floridians as the

¹⁷ Expert Report by Prof. Jerrell H. Shofner, Ph.D., *Johnson v. Bush*, No. 00-CV-3542, 2001 WL 34842925, at 16 in original (S.D. Fla. June 20, 2001).

¹⁸ Fla. Const. of 1868, art. XIV, § 1.

¹⁹ see Fla. Const. of 1868, art. VI, § 12.

Federal Constitution requires, the surrounding provisions simultaneously suppressed Black participation through a combination of numerical arrangements and restrictive qualifications.

The drafters of the Florida Constitution took pains to make sure that the electorate and jury pool remained white. Article XIV, Section 7 of the Florida Constitution mandated that the legislature “enact laws requiring educational qualifications for electors” but prevented these new qualifications from applying to “any elector who may have registered or voted in any election previous.”²⁰ This provision assured that the educational requirements excluding people from voting and serving on juries would not apply to white voters.²¹ Further circumscribing the pool of jurors,

²⁰ Fla. Const. of 1868, art. XIV, § 7.

²¹ See Wood, *supra* note 5 at 5.

Article XIV, Section 4 directed the legislature to “enact the necessary laws to exclude from every office of honor, power, trust, or profit, civil or military, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, larceny, or of infamous crime”—these were the exact species of crimes the legislature had utilized and expanded through Black Codes.²² According to Florida historian Jerrell Shofner, “[f]elony disenfranchisement was a way of reducing the effect of the despised black suffrage that [Florida] Conservatives knew they had no alternative but to accept. Larceny, which included the new category added by the 1865 legislature, was added to the earlier lists of crimes” through which disfranchisement could be achieved.²³ Finally, Article XIV, Section

²² Fla. Const. of 1868, art. XIV, § 4; see Wood, *supra* note 5 at 5.

²³ Shofner Expert Report, *supra* note 17 at 17.

2, imposed a lifetime voting ban for people with felony convictions.²⁴

Restricting access to the franchise in these ways necessarily translated into restricting the eligible finders of fact available for participation in the judicial system given that, under the Florida Constitution, the ability to vote was directly tied to the ability to serve on a jury. It worked, exemplified by the fact that during Congressional hearings conducted in 1870 regarding widespread Ku Klux Klan activity, a Florida sheriff testified that, “If a white man kills a colored man in any of the counties of this State . . . you cannot convict him.”²⁵

In March 1875, the federal government attempted to enforce the constitutional requirement of

²⁴ Fla. Const. of 1868, art. XIV, § 2.

²⁵ Foner, *Reconstruction*, *supra* note 4 at 435.

racial equality once more. The Civil Rights Act of 1875 was enacted, prohibiting the exclusion of citizens from jury service based on race.²⁶ Just two months later, eligible Florida voters ratified and adopted a Jury Clause Amendment to Florida's Constitution, stripping the requirement for traditional 12-person juries and granting the state legislature the power to dictate the number of jurors.²⁷ This amendment paved the way for the Legislature's 1877 enactment of Chapter 3010, allowing juries of only six persons in non-capital criminal cases.²⁸ Chapter 3010 also re-established a discretionary "integrity, fair character, sound judgment and intelligence" test for jury service. *Id.*

²⁶ See ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* 141–142 (2019).

²⁷ See Allan Arbman and James McConnell, *Trial By Jury: The New Irrelevant Right* 27 SMU LAW REVIEW 436, 438 (1973).

²⁸ See Ch. 3010, § 6, Laws of Fla. (1877).

The reduced size of the jury plus the discretionary qualification standard were “facially race-neutral rule[s]” designed to ensure the right to serve on a jury and the right to a fair and impartial jury “would be meaningless” for Black Floridians. *Ramos*, 590 U.S. at 88 (internal quotation mark omitted). The math was simple: Smaller juries plus discretionary standards made it easier to obtain all-white juries, which in turn made it easier to convict Black defendants.

The laws were incredibly effective at serving their racist purpose. A survey conducted during the first decade of the twentieth century targeting counties where Black people constituted one-half or more of the population reported that, in three of the five counties surveyed, clerks answered that Black people had not served on juries for “many years” because it was “a thing of the past” during “the days of

Carpetbag Rule.”²⁹ In the other two counties, the clerks answered that a “large number” served on federal juries, although “it is very rare” in the state courts because “there are but few Negroes, about one per cent,” who have the “approved integrity, fair character, sound judgment and intelligence” to serve as state jurors.³⁰ Thus, because there were so few Black people deemed qualified to serve under Florida jury’s law, reducing the available number of seats made it easier to ensure that no Black person served on a jury.³¹

Lest there was any doubt that the 1877 Florida’s legislature was searching for ways to “establish

²⁹ See Colbert, *Challenging the Challenge*, *supra* note 2 at 77 n.389.

³⁰ See *id.*

³¹ See *id.* at 77 (“The link between voter and juror eligibility, combined with administration of discretionary juror selection statutes, virtually eliminated black citizens’ participation in the administration of justice.”).

the supremacy of the white race,” *Ramos*, 590 U.S. at 87 (internal quotation marks omitted), during the same legislative session that Chapter 3010 was enacted, Florida enacted convict-leasing statutes.³² Under these statutes, African Americans were “aggressively arrested and imprisoned under expanded criminal codes,” and “leased out to work on private plantations and factories throughout the state with proceeds being paid back to the state.”³³

This suite of laws was passed less than one month after the last federal troops were withdrawn from Florida in January 1877.³⁴ The removal of federal troops ended a fourteen-year Reconstruction policy to secure federal protection of Black citizens’

³² Blackmon, *Slavery by Another Name*, supra note 3 at 53–54.

³³ See Wood, supra note 5 at 6.

³⁴ See Jerrell H. Shofner, *Reconstruction and Renewal, 1865–1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018).

fundamental rights and marked the beginning of Redemption, where Southern states systematically dismantled Black Americans' nascent political power.³⁵ Tampering with the jury system was but one piece of this project. By restricting access to jury service and reducing the size of juries, Florida made it easier to prosecute and convict Black people during the Jim Crow era and beyond.

III. Florida's Six-Person Jury Law Still Operates Today to Thwart Black Jury Service and Leads to Higher Conviction Rates for Black Defendants.

Given the historical backdrop of Florida's six-person jury law, it is clear that it was designed to thwart Black jury service and to make it easier to convict Black defendants. And the law works to do just that. Contemporary studies confirm that reducing jury size is a surefire way to reduce Black jury

³⁵ Foner, *Reconstruction*, *supra* note 4 at 575–82.

participation, which in turns leads to higher conviction rates of Black defendants. When the *Williams* Court upheld Florida’s six-person law, it ignored not only its racist history but also its lasting racially discriminatory effect.

As this Court recognized in *Ballew v. Georgia*, “the opportunity for meaningful and appropriate representation . . . decrease[s] with the size of the panels.” 435 U.S. 223, 237 (1978). Even a modest reduction in jury size “foretells problems . . . for the representation of minority groups in the community.” *Id.* at 236–37. *Ballew* cited contemporary social-science research to illustrate its point: where a minority group constitutes just 10% of the community, a randomly selected six-member jury will include *no* minority member more than half the time. *Id.* at 236 n.26 (citing Richard O. Lempert, *Uncovering “Nondiscernible”*

Differences: Empirical Research and the Jury-Size Cases, 73 MICH. L. REV. 643, 669, 673 (1975)).

Since then, leading jury scholars have repeatedly explained that reducing jury size “*inevitably* has a drastic effect on the representation of minority group members on the jury.”³⁶ Indeed, one “meta-analytical review of all relevant empirical studies conducted to determine what effect, if any, results from reducing the size of juries from the traditional 12 people down to six” confirmed what this Court said in *Ballew*, finding that “[s]maller juries are more likely to contain *no* members of minority groups.”³⁷ In other

³⁶ Shari Seidman Diamond, et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. EMPIRICAL LEGAL STUD. 425, 427 (2009).

³⁷ Michael J. Saks & Mollie Weighner Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 LAW & HUM. BEHAV. 451, 452, 465 (1997) (emphasis added).

words, decreased minority participation is a structural property of smaller juries.³⁸

Data also show that because smaller juries decrease Black participation, they produce racial disparities in conviction rates. In a landmark study of 785 non-capital felony trials tried before six- and seven-person juries in two Florida counties between 2000 and 2010, researchers found that “[w]here the jury pool included no Black members, Black defendants were convicted of at least one charge 81% of the time, compared to 66% of white defendants.³⁹ Where even one Black person appeared among the pool of

³⁸ See Patrick E. Higginbotham, et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 JUDICATURE 47, 52 (2020), <https://judicature.duke.edu/articles/better-by-the-dozen-bringing-back-the-twelve-person-civil-jury/> (explaining that larger juries are “more inclusive and more representative of the community,” while “cutting the size of the jury dramatically increases the chance of excluding minorities”).

³⁹ See Shamena Anwar, et al., *The Impact of Jury Race in Criminal Trials*, 127 Q.J. ECON. 1017, 1019, 1027–28 (2012).

prospective jurors, that gap collapsed almost entirely: conviction rates were 71% for Black defendants and 73% for white defendants.⁴⁰ Because representation in the jury pool is correlated to representation on the seated jury,⁴¹ the study modeled the effect of jury *size* and concluded that increasing the number of seated jurors “would substantially reduce the variability of . . . trial outcomes . . . and make trial outcomes more equal for white and black defendants.”⁴²

These results are perhaps not surprising given the research showing that the size and racial composition of a jury affect the quality of its deliberations. Studies demonstrate that smaller juries deliberate less thoroughly, recall trial evidence less completely, and are more susceptible to the dominance of a single

⁴⁰ *Id* at 1019–20.

⁴¹ *Id.* at 1030,

⁴² *Id.* at 1049.

viewpoint.⁴³ Moreover, the mere *presence* of minority jurors matters to deliberations, as studies also show that “White jurors processed the trial information more systematically when they expected to deliberate with a heterogeneous group” and were less likely to be predisposed to believing Black defendants were guilty.⁴⁴ Thus, Florida’s six-person jury system adversely affects the quality of jury deliberations twice over, frustrating the wisdom that comes with the common law 12-person jury.

That six-person juries both systematically underrepresent Black citizens and harm Black defendants is not an unintended byproduct of Florida’s law.

⁴³ See Alisa. Smith & Michael J. Saks, *The Case for Overturning Williams v. Florida and the Six-Person Jury*, 60 FLA. L. REV. 441, 466 (2008).

⁴⁴ 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, 607 (2006), <https://www.apa.org/pubs/journals/releases/psp-904597.pdf>.

It is the predictable and intended consequence of a law enacted in resistance to Reconstruction. *Cf. Hunter v. Underwood*, 471 U.S. 222, 229-233 (1985) (holding that a post-Reconstruction law passed as “part of a movement that swept the post-Reconstruction South to disenfranchise” Black people that “continues to this day to have that effect” violates the Fourteenth Amendment”). Those are the “functions” Florida’s six-person jury law was “adopted to serve,” and Florida’s law still serves those same functions today. *Ramos*, 590 U.S. at 99 n.44.

Williams failed to grapple with both the racial history of Florida’s six-person jury law and its lasting racial effects. This Court now has the opportunity to “correct [its] mistake in *Williams*.” *Cunningham*, 144 S. Ct. at 1288 (Gorsuch, J., dissenting). Given that Florida’s six-person law is antithetical to the common

law understanding of the jury embodied by the Sixth Amendment, and undermines Black jury service in derogation of the Fourteenth Amendment, this Court should overrule *Williams* and hold that Florida's six-person jury law is unconstitutional.

CONCLUSION

LDF and the NAACP respectfully urge this Court to hold that the Sixth and Fourteenth Amendments require a trial by a 12-person jury when a defendant is charged with a serious felony.

Respectfully Submitted,

BRITTANY CARTER
Counsel of Record

SAMUEL SPITAL

NAACP Legal Defense and
Educational Fund, Inc.
40 Rector Street, 5th Floor
NEW YORK, NY 10006
bcarter@naacpldf.org
(212) 965-2200

JANAI NELSON

*President and Director-
Counsel*

DANIEL HARAWA,

CHRISTOPHER KEMMITT

NAACP Legal Defense and
Educational Fund, Inc.
700 14th St. NW, Suite 600
(202) 682-1300

KRISTEN M. CLARKE

QUIANA-JOY N. OCHIAGHA

National Association for the
Advancement of Colored
People
4805 Mt. Hope Drive
Baltimore, MD 20215
(410) 580-5777

August 13, 2026