

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
Florida District Court of Appeal
Fourth District**

**BRIEF FOR *AMICUS CURIAE* THE
UNITED STATES CONFERENCE OF CATHOLIC
BISHOPS IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Amicus the U.S. Conference of Catholic Bishops (USCCB) is a nonprofit corporation whose members are the active Catholic Bishops in the United States. The USCCB provides a framework and forum for the Bishops to teach Catholic doctrine, set pastoral direction, and develop policy positions on contemporary social issues. On behalf of the Christian faithful, the USCCB promotes the common good and the Bishops' pastoral teaching on a wide range of issues such as the free expression of ideas, immigration, fair employment and equal opportunity, the rights of religious organizations, the dignity and wellbeing of the vulnerable, the value of education, the rights of parents and children, and the sanctity of human life.

The USCCB's interest in this suit stems from the scriptural command to "judge your neighbor justly." Leviticus 19:15. The Catholic Church teaches that political authorities are obligated to "dispense justice humanely by respecting the rights of everyone." *Catechism of the Catholic Church* ¶ 2237 (2d ed. 1997); accord Pontifical Council for Justice & Peace, *Compendium of the Social Doctrine of the Church* ¶ 404, at 173 (2004) ("The activity of offices charged with establishing criminal responsibility ... must be conducted in full respect for the dignity and rights of the human person [including] guaranteeing the rights of the guilty").

¹ Counsel certifies that no party or counsel for a party authored this brief in whole or in part. No entity, aside from USCCB, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

Particularly given the Church's central role in shaping the legal culture from which the common-law jury emerged, the USCCB has a strong interest in the proper development of this Court's jurisprudence on this issue. The Catholic intellectual tradition has long recognized that texts and institutions are properly understood in light of the traditions that give them meaning. For that reason, the Conference has frequently urged courts to consider the historical understandings and legal traditions that inform constitutional guarantees.

SUMMARY OF ARGUMENT

I. The Catholic Church has played an important role in the historical development of safeguards that protect the moral legitimacy of criminal adjudication. The jury-trial right is no exception. Jury trials emerged when the Church forbade clergy from participating in earlier methods of adjudicating criminal disputes. And the USCCB believes that a fair criminal process requires faithful adherence to the procedural protections that a legal system has established for safeguarding the dignity of the accused.

II. The Founders believed that, too. At the Founding, the word "jury" referred, in the context of criminal trials, to an adjudicatory body of *twelve* people. The word's original public meaning is not complicated by a vague record or conflicting evidence. Every source that this Court traditionally consults supports that conclusion.

A. As a textual matter, a host of Founding-era dictionaries included the requirement of a twelve-person body in the very definition of a criminal "jury."

This understanding was likewise reflected in publications intended for common consumption.

B. These textual sources reflect centuries of common law that cemented the twelve-person body as the *sine qua non* of the criminal jury trial. By the Founding, a host of common-law luminaries—from Edward Coke to William Blackstone—instructed that juries in criminal trials required twelve members. And in the rare cases where jury size became an issue, verdicts would not stand if the jury had fewer than twelve members.

C. That understanding of the jury persisted through and after the Founding. A host of evidence, ranging from declarations of the First Continental Congress to preratification decisions from state courts, demonstrates that criminal juries were required to have twelve members. Ratification debates reflected a shared understanding of the same rule, with numerous members using variations of “twelve men” as a synonym for a jury. And following Ratification, an impressive body of judicial decisions and scholarly analyses took the same approach through Reconstruction.

III. Given this history, this Court’s prior holding in *Williams v. Florida*, 399 U.S. 78 (1970), that the Sixth Amendment does not require twelve-person juries in criminal trials is demonstrably erroneous as a matter of original public meaning. This Court should overrule that decision and return to its previously long-held understanding that the Constitution entitles criminal defendants to a jury of twelve of their peers.

ARGUMENT

I. THE CATHOLIC CHURCH PLAYED AN IMPORTANT ROLE IN THE DEVELOPMENT OF JURIES AND OTHER STRUCTURAL SAFEGUARDS IN CRIMINAL TRIALS.

It would be an understatement to say that the Catholic Church's interest in the fairness of criminal adjudication is longstanding. For two millennia, the Church has grappled with the proper processes for administering justice. In so doing, it helped cultivate a culture and legal system in which unjust convictions are morally intolerable.

“As a legal system, canon law predates the United States’ founding by over fifteen hundred years and remains in force today.” Paul M. Matenaer, *Public Access to Criminal Trials in U.S. Law and Canon Law*, 2021 Wis. L. Rev. 891, 896 (2021). It “was part of the essential fabric of medieval England.” Brian E. Ferme, *Canon Law Culture of Medieval England*, 82 *Periodica* 27, 29 (1993).

Then, as now, canon law “preserved for mankind” “many ... fundamental and human maxims” regarding trial protections. *Coffin v. United States*, 156 U.S. 432, 455 (1895). Precursors to an array of modern criminal procedural protections can be found in early canon law. These include such fundamental rights as the right to written notice of charges, the placement of the burden of proof on the accuser, and rules for venue. See Gratian, *Concordia Discordantium Canonum* (*Decretum*) (c. 1140) C.2.q.1.c.3-7, C.3.q.1.c.1-6, C.3.q.2.c.1-4, C.3.q.6.c.1-8, C.3.q.8.c.1-7, C.4.q.4.c.1-3, C.5.q.2.c.1-4, C.7.q.1.c.1-2 (E. Friedberg

ed., 2d ed. 1879).² Likewise, the Catholic bishops of England were “central[]” in the framing of the Magna Carta. Robin Griffith-Jones, *Magna Carta and Religion*, in *Magna Carta: Muse and Mentor* 47, 48-54 (Randy J. Holland ed. 2014).³

More broadly, the Church helped shape the legal culture from which the common-law jury emerged. Indeed, the “most important event in the history of the criminal jury was the abolition of the ordeal by edict of the Roman church in 1215.” Roger D. Groot, *The Early Thirteenth-Century Criminal Jury*, in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, at 3, 3 (J.S. Cockburn & Thomas A. Green eds. 1988). Trials by “ordeal,” the primary predecessor to juries, sought truth through (often painful) physical tests that ostensibly revealed God’s judgment. See Albert E. Wilson Eastman, *The History of Trial by Jury*, 3 Nat’l Bar J. 87, 88-90 (1945). Disputing the legitimacy of that method, Pope

² Because of its wide distribution, *Decretum* became an “all-important” influence on the common law. I Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 24 (2d ed. 1903).

³ Reflecting this legacy, common-law authorities later imbued some of these protections with religious significance, including the requirement that criminal juries have twelve members. See 1 Edward Coke, *The First Part of the Institutes of the Laws of England* § 234, at 155 (1628) (“And that number of twelve is much respected in holy writ, as 12 apostles, 12 stones, 12 tribes, etc.”); 1 Giles Duncomb, *Trials per Pais* 92–93 (8th ed. 1766) (“If the twelve Apostles on their twelve Thrones, must try us in our eternal State, good Reason hath the Law to appoint the Number of Twelve to Try our Temporal.”); see also Sam Bray, *When Catholicism Was Part of the Common Law*, in *Faith in Law, Law in Faith* 238 & n.18 (Rafael Domingo et al., eds. 2024) (noting that these scriptural references then held “apparent force for judges and lawyers”).

Innocent III prohibited clergy from participating in it. See John W. Baldwin, *The Intellectual Preparation for the Canon of 1215 Against Ordeals*, 36 *Speculum* 613, 616, 630-31, 634 (1961). Because courts saw clergy participation as “essential,” they soon eliminated trials by ordeal. *Id.* at 613-14, 630-31; see II Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 599, 619 (2d ed. 1905). Juries soon became the “only possible mode of proof.” *Id.*; see Groot, *supra*, at 10-34.

In its own proceedings today, the Church recognizes that a “fair trial is a right of the faithful.” Pope John Paul II, *Address to the Tribunal of the Roman Rota* (Jan. 18, 1990), <https://perma.cc/4JMP-E7B2>. And it maintains a reticulated system for administering justice. See, e.g., *Code of Canon Law* canons 1400-1752 (Eng. trans. 1998). These adjudications “must be entirely marked by a genuine desire to contribute to shedding light on the just sentence to be reached” and “constant striving of all towards the truth.” Pope Leo XIV, *Address of the Holy Father to the Prelates of the Roman Rota* (Jan. 26, 2026), <https://perma.cc/47JU-6G8R>.

After all, to the Church, “justice and truth represent the concrete requisites for reconciliation.” *Compendium, supra* ¶ 518. And “[a]mong the safeguards demanded by the law there is none, perhaps, more important or more difficult to secure than deciding culpability.” Pope Pius XII, *An International Code for the Punishment of War Crimes*, 28 *St. John’s L. Rev.* 1, 10 (1953).

While the Catholic Church provides other procedural protections to criminal defendants, the

central safeguard for the accused in the United States is an “insistence upon community participation in the determination of guilt or innocence” through a jury. *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968).⁴ The jury right “raises the people itself ... to the bench of judicial authority.” 1 Alexis de Tocqueville, *Democracy in America* 334-37 (Henry Reeve trans., Schocken 1st ed. 1961) (1835). Its power comes from the fact that “[j]urors are ordinary people,” protecting defendants “from being judged by a special class of trained professionals.” *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 236 (2017) (Alito, J., dissenting). That includes religious jurors, who rightly bring their experiences and faith into jury deliberations. *See, e.g., United States v. Brown*, 996 F.3d 1171, 1190-91 (11th Cir. 2021) (en banc) (Pryor, J.) (reversing conviction following improper exclusion of religious juror).

Amicus embraces this form of jury participation. Indeed, “the common good require[s] citizens to fulfill their roles in the life of the political community.” *Catechism, supra* ¶ 2239. That is why the USSCB has long encouraged the faithful to serve on juries. *See From Newcomers to Citizens All Come Bearing Gifts*, USSCB (1999), <https://perma.cc/QYM2-QA6K>. It believes that “whether [society] will exercise [its] responsibility to hold the offender accountable without violating his or her basic rights” is the core “test” of criminal adjudication. USSCB,

⁴ The Church does not maintain jury-based tribunals and does not contend that all legal systems must employ juries. Different legal traditions have developed different institutional means of protecting the rights of the accused. The question here is not what procedures every legal system should adopt, but what institution the Constitution incorporated.

Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice 23 (2000). And given the ancient tradition underlying the requirement, it believes that twelve-member juries are crucial for protecting those basic rights within the American constitutional tradition inherited from the common law.

II. AT THE TIME THE SIXTH AMENDMENT WAS RATIFIED, THE TERM “JURY” UNAMBIGUOUSLY REFERRED TO A GROUP OF TWELVE.

Because “[r]atification is a democratic act that renders constitutional text part of our fundamental law,” interpreting the Sixth Amendment demands an inquiry into “the meaning of constitutional text ... fixed at the time of its ratification.” *United States v. Rahimi*, 602 U.S. 680, 737 (2024) (Barrett, J., concurring); see, e.g., *CFPB v. Cmty. Fin. Servs. Ass’n of Am.*, 601 U.S. 416, 426 (2024); *Gamble v. United States*, 587 U.S. 678, 683-84 (2019). The “objective of this inquiry is to discern what ‘ordinary citizens’ at the time of ratification would have understood” the provision at issue to mean. *McDonald v. City of Chi.*, 561 U.S. 742, 813 (2010) (Thomas, J., concurring in judgment) (quoting *Dist. of Columbia v. Heller*, 554 U.S. 570, 577 (2008)). To do so, this Court looks to both the text of the provision and the historical context surrounding it. See, e.g., *id.* at 813-38; *Rahimi*, 602 U.S. at 715-28 (Kavanaugh, J., concurring). That is particularly true where the term in question refers to an established legal institution at the Founding. In such circumstances, constitutional interpretation requires attention to the historical understanding of the institution incorporated by the text. See, e.g., *Smith v. United States*, 599 U.S. 236,

246-49 (2023); *Kilbourn v. Thompson*, 103 U.S. 168, 200-03 (1880).

Every source this Court traditionally consults in assessing original public meaning confirms that a “trial by an impartial jury” in “criminal prosecutions,” U.S. Const. amend. VI, unambiguously refers to a trial before a body of twelve jurors. In the context of criminal trials, the word “jury” was synonymous with bodies of twelve at the Founding. That meaning was the product of centuries of materially unbroken history in which a twelve-member body became the defining feature of a criminal jury. As the early history of the American Colonies, the public debates over ratification, and the tradition of jury practice in the following years all underscore, the Sixth Amendment inherited this longstanding understanding.

1. Start with the text itself. A raft of Founding-era dictionaries—both general and legal—made clear that the word “jury” meant a body of twelve people in the context of petit juries and twenty-four people in the context of grand juries. Samuel Johnson, for example, defined “jury” as “a company of men, as twenty-four, or twelve, sworn to deliver a truth upon such evidence as shall be delivered them touching the matter in question.” 1 *Jury*, *A Dictionary of the English Language* (6th ed. 1785). Numerous other general dictionaries likewise found jury size important enough to include in the term’s definition. See, e.g., *Jury*, N. Bailey, *An Universal Etymological English Dictionary* (21st ed. 1770) (“a Company of twenty-four or twelve Men, sworn to inquire of the Matter of Fact, and declare the Truth upon such Evidence as shall be given to them”); *Jury*, Thomas

Dyche & William Pardon, *A New General English Dictionary* (14th ed. 1771) (“signifies those 24 or 12 men who are sworn to inquire into the truth of the matter of fact, according to the evidence given”); *Jury*, Thomas Sheridan, *A General Dictionary of the English Language* (1780) (“a company of men, as twenty-four or twelve, sworn to deliver a truth upon such evidence as shall be delivered them”); *Jury*, William Kenrick, *A New Dictionary of the English Language* (1773) (“company of men, as twenty-four or twelve; sworn to deliver a truth upon such evidence as shall be delivered them”).

Legal dictionaries reflected the same understanding. Giles Jacob’s dictionary, for example, explained that the word jury “[s]ignifies a *certain Number of Men* sworn to inquire of and try the Matter of Fact” before clarifying that “the petit jury consisteth of twelve men.” *Jury*, *A New Law Dictionary* (10th ed. 1782). And Richard and John Burn’s dictionary made clear that “upon a trial by a petit jury, it can be no more, nor less, than 12.” 2 *Jurors*, *A New Law Dictionary* (1792). Others are similar. *Jury*, Timothy Cunningham, 3 *A New and Complete Law Dictionary* (3d ed. 1783) (“signifies either twenty-four or twelve men, sworn to enquire of the matter of fact and declare the truth upon such evidence as shall be delivered to them”); *Jury*, 3 William Marriot, *A New Law Dictionary* (1798) (“verdict of twelve honest and impartial men of his neighbourhood”); *see also Juror*, *id.* (“One of those twenty-four or twelve men, which are sworn to declare a truth upon such evidence as shall be given them touching the matter in question.”). Taken together, the twelve-member requirement was so associated

with juries that it was reflected in the term's very definition in many of the founding era's "most useful and authoritative [dictionaries] for the English language." Antonin Scalia & Bryan A. Garner, *Reading Law* 419-20 (2012) (identifying Johnson, Bailey, Dyche & Pardon, Cunningham, Jacob, Burn, and Marriot as seven of eight recommended dictionaries for the Founding).

Indeed, criminal juries were so associated with groups of twelve that "twelve" was frequently used as a synonym for a jury in popular culture. Shakespeare and other playwrights, for example, trusted their audiences to understand that "the sworn twelve" and similar phrases referred to a "jury." William Shakespeare, *Measure for Measure*, 40, act 2, sc. 1, ll. 18-21 (1623) ("The jury passing on the prisoner's life / May in the sworn twelve have a thief or two / Guiltier than him they try."); *see, e.g.*, Richard Brome, *A Mad Couple Well Match'd* 16, act 1, sc. 1, ll. 535-37 (1653) ("Could be pick'd out a twelve good men and true, To finde you guilty, I would then condemne you, But such a Jury must be pannell'd first."); Thomas Randolph, *The Muses Looking-Glasse* 79, act 4, sc. 4 (1638) ("I had rather zee him remitted to the jayle, and haue his twelve God-vathers, good men and true contemne him to the Gallowes."); *see also, e.g.*, William Shakespeare, *The Merchant of Venice* act 4, sc. 1, ll. 413-16 (1600) (referring to "two godfathers" and "ten more" as a jury to "bring thee to the gallows").

The same equivalence can be found in books, poems, devotionals, and trial pamphlets that remained popular through the eighteenth century, all of which used then-famous phrases like "Twelve good men and true" as synonyms for a jury. Clement

Walker, *The Triall of Lieut. Collonell John Lilburne* 55 (1649); see, e.g., *The Honest Jury; or, Caleb Triumphant: A New Ballad* 1-6 (1729) (repeatedly using “jury” and “twelve honest men” interchangeably); Henry Fielding, *The History of the Life of the Late Mr. Jonathan Wild the Great*, in 3 *Miscellanies* 1, 10 (2d ed. 1743) (describing a jury conviction as “a Combination between twelve Men ... who after some Consultation unanimously agreed on the said Murder”); Richard Baxter, *The Saints’ Everlasting Rest* 644 (1650) (“these twelve Considerations shall be as a Jury to convict thee, which I propounded, hoping they might be effectual to persuade thee”); John Dryden, *Epistle to the Whigs* (1682), in 1 *The Poetical Works of John Dryden* 161, 163 (George Gilfillan ed. 1855) (“you see the nation is not so easy to believe as your own jury ... twelve men in Newgate who would acquit a malefactor”).

2. Common-law history points the same way. By enshrining the right to a trial by jury, this Court has explained, the Sixth Amendment incorporated “a vital right protected by the common law.” *Ramos v. Louisiana*, 590 U.S. 83, 90-91 (2020). And the twelve-person requirement was the defining feature of the common-law right.

For centuries prior to the Founding, the “nucleus” of common-law criminal adjudication was “the trial by twelve men.” II Pollock & Maitland, *supra*, at 620. By at least the fourteenth century, “it had already become an ‘ancient prerogative’ to have twelve laymen stand between [an Englishman] and the vengeance of the king in a criminal prosecution.” Felix Frankfurter & Thomas G. Corcoran, *Petty Federal Offenses and the Constitutional Guarantee of Trial by Jury*, 39 Harv. L.

Rev. 917, 923 (1926); *accord*, e.g., James B. Thayer, *The Jury and Its Development*, 5 Harv. L. Rev. 295, 296-97 (1892) (recognizing that the “requirement of twelve in the petty jury ... seemed ... to have become the settled rule” in the fourteenth century).

That right remained materially unchanged through the Founding. The “eminent common-law authorities (Blackstone, Coke, Hale, and the like),” *Kahler v. Kansas*, 589 U.S. 271, 279 (2020), thus made clear that the criminal jury right included a numerical mandate. To Coke, twelve was a conscious requirement: the law “delighteth herselfe in the number of 12; for there must ... be 12 jurors.” 1 Coke, *supra* § 234, at 155. And, he added, the “very ancient” right of “trial of the fact *per duodecim liberos et legales homines*” [by twelve free and lawful men] “excells others.” *Id.* Blackstone agreed, explaining that “the truth of every accusation” against a criminal defendant must “be confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen, and superior to all suspicion.” 4 William Blackstone, *Commentaries* *343; *accord* 3 *id.* at *379 (“[I]t is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected ... but by the unanimous consent of twelve of his neighbours and equals.”). Matthew Hale was more emphatic, stressing that “twelve of them [jurors], neither more nor less, are sworn” following a plea of not guilty. 2 Matthew Hale, *History of the Pleas of the Crown* 293 (1736).

It naturally followed that verdicts from fewer than twelve were not valid. Hale explained that “[i]f after the jury [is] sworn ... one of them ... wilfully goes out of town, whereby only eleven remain, these eleven

cannot give any verdict without the twelfth.” *Id.* at 295; *see also id.* at 296 (“a verdict ... taken by eleven ... was void”). In the rare cases in which the issue arose, decisions at common law adhered to that rule. *See, e.g.*, Bushel’s Case (1670) 124 Eng. Rep. 1006, 1014; Vaugh. 135, 151 (discussing earlier decision holding that “[j]udges err’d in taking the verdict of 11” after imprisoning the twelfth juror for disagreeing); J. Thayer, *Evidence at the Common Law* 88-89 n.4 (1898) (“As the verdict was by eleven and judgment cannot be rendered, sue out a new inquest and let the man imprisoned be discharged.” (quoting Anonymous Case (1367) YB 41 Edw. III fol. 31, pl. 36; 41 Lib. Assisarum 11 (Moubrey, J.))); *see also* London v. Wood (1706) 88 Eng. Rep. 1592, 1601; 12 Mod. 669, 685 (Holt, C.J.) (noting that a trial record certifying that “there were but eleven jurors” would be a “fatal error”); Rex v. Pritchard (1733) 87 Eng. Rep. 1210, 1211; 7 Mod. 232, 234 (Page, J.) (explaining that empaneling a juror not properly summoned would be error “because one being sworn who ought not, the trial is by eleven jurors only”).

Similarly, trial courts declined to proceed with prosecutions in the absence of twelve valid jurors. *See, e.g.*, Rex v. Lowfield (1731) 93 Eng. Rep. 952, 953; 2 Str. 937, 937 (continuing case because only eleven jurors appeared and the parties would not call to add more jurors); Wharton’s Case (1601) 80 Eng. Rep. 17, 17-18; Yel. 24, 24 (“eleven of the jury appear’d and were sworn; but one was challeng’d by the prisoners, and so for that time the trial was stay’d”).

3. The twelve-member requirement crossed the Atlantic. Indeed, the General Fundamentals of Plymouth, the earliest codified legal system by

English colonists in North America, guaranteed “that all Trials, whether Capital, Criminal, or between man and man, be Tried by a Jury of twelve good and lawful men.” General Fundamentals § 5 (1636 & rev. 1671); *see also* I *The Records of the Colony of Plymouth in New England: Laws 1623 to 1682*, at 2 (David Pulsifer ed. 1861) (reporting a 1623 standing order that “all Criminall facts ... should [be tried] by the verdict of twelve Honest men to be Impanelled by Authority in forme of a Jury upon their oaths”). The same principle was soon reflected in other foundational documents in the colonies. *See, e.g.*, Massachusetts Body of Liberties ¶ 57 (1641), in *Sources of Our Liberties* 154 (Richard L. Perry & John C. Cooper eds. 1959) (guaranteeing “a Jury of twelve free men” when detailing rights in murder trials).

Closer to Independence, the First Continental Congress declared in one of its letters to Quebec that the “great right ... of trial by jury ... provides, that neither life, liberty nor property, can be taken from the possessor, until twelve of his unexceptionable countrymen and peers of his vicinage, ... shall pass their sentence upon oath against him.” 1 *Journals of the Continental Congress, 1774-1789*, at 104, 107 (Worthington C. Ford ed., 1904) (1774). And in a widely circulated publication, Thomas Jefferson discussed juries at length, opining that “the common sense of twelve honest men gives still a better chance of just decision, than the hazard of cross and pile.” Thomas Jefferson, *Notes on the State of Virginia* 134 (1788); *accord id.* at 136 (explaining that defendants are “tried by a jury of 12 men of the county where the offense was committed”).

At least three preratification courts also reaffirmed that petit juries required twelve people. The first, *Holmes v. Walton* (N.J. 1780), concerned a New Jersey statute that provided for trial of certain smugglers before a magistrate and jury of six people. See Roscoe Pound, *The Development of Constitutional Guarantees of Liberty* 97 (1957). A defendant challenged the statute as violating the guarantee in New Jersey's constitution to the "Right[] ... of Trial by Jury." N.J. Const. of 1776 art. XXII. In the earliest recorded example of judicial review in the United States, the New Jersey Supreme Court declined to follow the statute because "a jury of six men ... was not a constitutional jury," leading the New Jersey legislature to repeal that provision of the act. *State v. Parkhurst*, 9 N.J.L. 427, 444 (1802) (recounting the 1780 decision); see Pound, *supra*, at 97-98.

The second, *Hague v. Stratton*, concerned a juror who admitted after voting to convict that he had misunderstood the record. 8 Va. 84, 88 (1786). The Virginia Supreme Court reversed the conviction, with a majority reasoning that the error meant that the defendant was not "found guilty by the unanimous opinion of twelve of his peers." *Id.* at 87 (Henry, J.); see *id.* at 88 (Carey, P.J.) ("the law has required the unanimous opinion of the whole twelve, to convict the party").

The final decision, *Respublica v. Shaffer*, 1 Dall. 236, 236 (Pa. O. & T. 1788), offered its view on what was "well known" about the jury right while debates over ratification were actively ongoing. In that court's view, it was "a matter well known, and well understood, that by the laws of our country, every

question which affects a man's life, reputation, or property, must be tried by twelve of his peers." *Id.*

Records from the ratification debates are similarly uniform. Some participants spoke directly to the issue. Edmund Randolph, for example, made clear that under Article III's requirement for "trial by jury," "[t]here is no suspicion that less than twelve jurors will be thought sufficient." 3 *Debates on the Constitution* 467 (J. Elliot ed. 1836) ("*Elliot's Debates*"). And responding to Anti-Federalist objections that the Constitution did not specifically preserve the right to challenge jurors, both James Madison and Edmund Pendleton stressed that incorporation of the jury right included its "incidents." *Id.* at 530 (Madison) ("The right of challenging is incident to the trial by jury, and therefore, as one is secured, so is the other."); *id.* at 546 (Pendleton) ("When the Constitution says that trial shall be by jury, does it not say that every incident will go along with it?").

More broadly, the ratification debates were laced with references to "twelve" people as a synonym for the jury right. They repeatedly appeared during formal ratification proceedings. *See, e.g.,* 4 *Elliot's Debates* 154 (Spencer) (noting that a "trial by jury" is "decided, in a great measure, by the consent of twelve honest, disinterested men"); 3 *Elliot's Debates* 544 (Henry) (equating "trial by jury" with the "unanimous verdict of twelve impartial men"); 2 *Elliot's Debates* 540 (McKean) ("Juries are not infallible because they are twelve in number.").

These references recurred over and over again in public dueling between Federalists and Anti-

Federalists. *See, e.g.*, Centinel No. 2 (Oct. 24, 1787), in 2 *The Complete Anti-Federalist* 148 (H. Storing ed. 1981) (“Storing”) (describing the jury right as “12 men, whose verdict should be unanimous, to be taken from the vicinage”); Timoleon (Nov. 1, 1787), in 38 *The Documentary History of the Ratification of the Constitution and the Bill of Rights* 85 (John P. Kaminski *et al.* eds. 2022) (“Kaminski”) (recognizing that the jury right protected against the “encroachments of the more powerful and wealthy citizens” because “the fact of his oppression must be examined and decided by twelve indifferent men”); A Countryman (Dec. 6, 1787), in 6 Storing 73 (praising “the trial by jury” as “a verdict of twelve of my honest neighbors”); Fabius No. 4 (Apr. 19, 1788), in 17 Kaminski 182-84 (discussing historical regulations on juries as regulating “twelve men” and “twelve jurors”); *Letter from William Pierce to St. George Tucker*, Gazette of the State of Ga. (Mar. 20, 1788), reprinted in 38 Kaminski 379-81 (concluding that the “solemnity of the jury trial is suited to the nature of criminal cases” where facts must “be confirmed by the unanimous suffrage of twelve good men”); Aristocrotis (Apr. 27, 1788), in 3 Storing 204 (satirically criticizing the “trial by jury” as involving “twelve ignorant plebeians”); A Farmer No. 3 (June 6, 1788), in 4 Storing 213-14 (reading Blackstone’s discussion of juries, including the requirement of “unanimous consent of twelve” members).

4. Post-ratification history confirms what all other evidence already supports. *See, e.g., Smith*, 599 U.S. at 250-52 & n.16. At the Founding and thereafter, the jury right had been “secured in every state constitution in the union.” *Parsons v. Bedford*,

28 U.S. 433, 446 (1830) (Story, J.). And a host of decisions in the courts of those States spoke clearly: “The term *jury* [was] well understood to be twelve men.” *Footte v. Lawrence*, 1 Stew. 483, 483 (Ala. 1828). And so, “[t]o constitute a jury, every lawyer kn[ew] that twelve lawful men are necessary, and that without this number no jury can exist.” *State v. Burket*, 9 S.C.L. 155, 155 (1818) (holding that eight sworn people “were not a jury, and, therefore, were incompetent to pronounce a verdict”).⁵

Leading treatises shared the same view. *See, e.g.*, 2 James Kent, *Commentaries on American Law* 13 n.b. (3d ed. 1836) (“[T]he judgment of his peers means, trial by a jury of twelve men according to the course of the common law ...”); 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 345 (1819) (“The petit jury, when sworn, must consist precisely of twelve ...

⁵ *See, e.g.*, *Whitehurst v. Davis*, 3 N.C. 113, 113 (1800) (reversing verdict by jury of thirteen); *Burk v. State*, 2 H&J 426, 426 (Md. 1809) (confirming that “the legal number of twelve sworn on the jury” was present); *Doebler v. Commonwealth*, 3 Serg. & Rawle 237, 237 (Pa. 1817) (reversing conviction because “from [the] record it d[id] not appear that the defendant was tried by twelve jurors, lawfully sworn”); *Crawford v. State*, 10 Tenn. 60, 64-65 (1821) (“[T]his prisoner had ... the constitutional and undoubted right of having the impartial and unprejudiced judgment of twelve jurors of his guilt.”); *Ross v. Neal*, 23 Ky. 407, 408 (1828) (recognizing that an objection to a jury of thirteen “must have vitiated the verdict”); *Wolfe v. Martin*, 2 Miss. 30, 31 (1834) (rejecting verdict from thirteen people, reasoning that “[t]here is no jury for the trial of issues known to the constitution and laws of this state, except that which consists of twelve good and lawful men, who are tried, elected and sworn”); *see also, e.g.*, *Phil. Cnty. Comm’rs v. Snowden*, 2 Yeates 95, 95 (Pa. 1796) (recognizing that a statute mandating that decisions by approved referees “have the same effect ... as a verdict given by twelve men” gave those decisions the effect of “a jury trial”); *Robbins v. Windover*, 2 Tyl. 11, 13 (Vt. 1802) (“The common law requires, that the twelve Jurors shall unite in a verdict.”).

If, therefore, the number returned be less than twelve, any verdict must be ineffectual, and the judgment will be reversed for error.”); Francis Hilliard, *The Elements of Law* 338 (2d ed. 1848) (“A jury consists of twelve men.”); *see also, e.g.*, James Wilson, *Lectures on Law: Of Juries* (1790), in 2 *Collected Works of James Wilson* 985 (2007) (“To the conviction of a crime, the undoubting and the unanimous sentiment of the twelve jurors is of indispensable necessity.”).

This evidence only mounted further in decisions and treatises released in the years prior to the ratification of the Fourteenth Amendment. *See, e.g.*, *Opinion of Justices*, 41 N.H. 550, 552 (1860) (“[N]o such thing as a jury of less than twelve men, or a jury deciding by less than twelve voices, had ever been known, or ever been the subject of discussion in any country of the common law. ... [N]o body of less than twelve men, ... would be a jury within the meaning of the constitution.”); *State v. Cox*, 8 Ark. 436, 446 (1848) (holding that “the term *jury*” means “a body of twelve citizens”); Thomas M. Cooley, *Treatise on the Constitutional Limitations* 319 (1868) (“A petit, petty, or traverse jury is a body of twelve men ... Any less than this number of twelve would not be a common law jury, and not such a jury as the constitution preserves to accused parties.”); Pet. Br. 9-11, 19-23 (collecting sources).⁶ As the Missouri Supreme Court

⁶ *See also, e.g.*, *Jackson v. State*, 6 Blackf. 461, 461 (Ind. 1843) (“This judgment must be reversed. It appears from the transcript of the record, that the jury that tried the cause was composed of eleven men only, and not twelve as the law requires.”); *Norval v. Rice*, 2 Wis. 22, 29-30 (1853) (holding that statute restricting juries to six people “conflict[s] with ... the right to a trial by jury of *twelve* men”); *Work v. State*, 2 Ohio St. 296, 304 (1853) (extensively discussing the common law to “show[] beyond controversy the number of the jury at common law ... must be

reasoned when interpreting the “term ‘trial by jury’” in Missouri’s bill of rights, “if there are any essential requisites in a jury trial, among them must be the number of jurors.” *Vaughn v. Scade*, 30 Mo. 600, 603 (1860). And so “where there is a constitutional guaranty of the right to a trial by jury, twelve is the number of which the jury must be composed.” *Id.* at 604.

* * *

The original public meaning of “jury” in the Sixth Amendment is not ambiguous. “From the earliest period of the common law the term *jury* has had a technical and specific meaning, and has ever signified a body of twelve citizens.” *Cox*, 8 Ark. at 446. Because of this overwhelming evidence, it is unsurprising that this Court repeatedly—and in strong terms—found it “self evident” that a “constitutional jury means twelve men as though that number had been specifically named.” *Patton v. United States*, 281 U.S. 276, 292 (1930); *accord Thompson v. Utah*, 170 U.S. 343, 349-50 (1898) (concluding that “the word ‘jury’ and the words ‘trial by jury’” meant “a jury composed of not less than twelve persons”); *Capital Traction Co. v. Hof*, 174 U.S. 1, 13 (1899) (“‘Trial by jury,’ in the primary and usual sense of the term at the common

twelve”); *Bowles v. State*, 37 Tenn. 360, 362-63 (1858) (reversing judgment because “it appear[ed] that the jury who tried the prisoner, was composed of only eleven men”); *Cowles v. Buckman*, 6 Iowa 161, 163 (1858) (reversing conviction by eleven-person jury, recognizing that it was “a fatal defect in criminal cases, without hesitation”); *Cancemi v. People*, 18 N.Y. 128, 138-39 (1858) (reversing conviction by eleven jurors, reasoning that it “could not lawfully be recognized by the court, ... and was a nullity”); 3 John Bouvier, *Institutes of American Law* 327 (1854) (“[J]ury is understood [to mean] a body of twelve men.”).

law and in the American constitutions, is ... a trial by a jury of 12 men..."); *Maxwell v. Dow*, 176 U.S. 581, 586 (1900) ("That a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution, there can be no doubt."); *Rassmussen v. United States*, 197 U.S. 516, 527 (1905) (concluding that the Constitution includes "the right to be tried by a jury of twelve persons").

III. As a Matter of Original Public Meaning, *Williams v. Florida* Is Demonstrably Erroneous.

In light of the uniform understanding that "jury" in the context of criminal trials meant a body of twelve people, Respondent's position rises and falls on the continuing vitality—to the extent it has not already been overruled, *see* Pet. Br. 24-27—of *Williams v. Florida*'s holding that a six-man jury in criminal trials complies with the Sixth Amendment. While members of this Court take different approaches to *stare decisis*, one common thread is that an important factor—dispositive for some—is whether the precedent in question falls within "the realm of permissible interpretation" of the Constitution. *Gamble*, 587 U.S. at 711 (Thomas, J., concurring). That is, *stare decisis* turns on "whether or not a precedent qualifies as 'demonstrably erroneous' or 'egregiously wrong.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 425 (2024) (Gorsuch, J., concurring) (first quoting *Gamble*, 587 U.S. at 711 (Thomas, J., concurring), and then quoting *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part)).

However that standard is described, *Williams* fails it. Although *Williams* purported to analyze historical meaning, it did so only to justify its reliance on “other than purely historical considerations.” 399 U.S. at 99. The Court rejected the force of the common law tradition because it viewed the twelve-member requirement as a “accidental feature of the jury” due to its unknown origins and purpose. *Id.* at 90. And it dismissed historical records from ratification because the twelve-member requirement was not openly debated. *Id.* at 99. In their place, *Williams* considered whether the twelve-member requirement furthered the “purpose of the jury trial ... to prevent oppression by the Government.” *Id.* at 100. Reiterating its view that twelve-member juries were a “historical accident, unnecessary to effect” that purpose, the Court concluded that the Sixth Amendment does not require twelve-member juries. *Id.* at 102.

Williams does not cast doubt on the unambiguous meaning of “jury” discussed above. Instead, it embodies at least three clear errors that obfuscated original meaning. Once those errors are corrected, that decision presents no “knotty issues about the original meaning of the [Sixth] Amendment” that could support *stare decisis*. *Gamble*, 587 U.S. at 722 (Thomas, J., concurring).

1. *Williams* first erred by discarding the robust common-law history of the jury right, citing uncertainty regarding the twelve-member requirement’s historical origin and purpose. That the precise *origins* of the twelve-person requirement are lost to history is beside the point. Even assuming, *arguendo*, that juries originated for reasons incompatible with an expansive understanding of the

modern right, that would mean only that the jury right “stood for very different things at the time of the separation of the American Colonies from what [it] represented originally.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 35 (2022) (quoting *Hurtado v. California*, 110 U.S. 516, 529 (1884)). Insofar as history is concerned, what matters is its influence on original public meaning at the Founding. And by that time, the common law had been clear for centuries. To place load-bearing weight on a gap during the Middle Ages would require the exact sort of “indiscriminate[] attribut[ion]” of ancient history to the Founding generation that this Court has decried. *Id.*

The ostensible purposes of the twelve-member requirement are equally immaterial. Whatever the jury right’s “ultimate goal, ... it is a procedural rather than a substantive guarantee.” *Crawford v. Washington*, 541 U.S. 36, 61-62 (2004). It thus “reflects a judgment, not only about the desirability of” fair trials, “but about *how* [fair trials] can best be determined.” *Id.* By guaranteeing a “trial ... by an impartial jury,” the Sixth Amendment mandated a *particular form* of criminal trial. *See* Scalia & Garner, *supra*, at 56 (“[P]urpose must be derived from the text”). And as reflected in a mountain of Founding-era sources, that form of trial required twelve jurors. *See supra* at 9-18. It is “not the role of courts to extrapolate from the words of the Sixth Amendment to the values behind it, and then to enforce its guarantees only to the extent they serve (in the courts’ views) those underlying values.” *Giles v. California*, 554 U.S. 353, 375 (2008) (opinion of Scalia, J.).

The *Williams* Court’s misplaced focus on ancient history and simplified purpose thus reflects a more

fundamental error: Despite repeatedly expressing concern that the Sixth Amendment did not incorporate every possible nuance of criminal jury trials, *Williams* never examined the relative centrality of the twelve-member requirement at common law. It instead stipulated to the bare fact “that at common law the jury did indeed consist of 12.” 399 U.S. at 91. In doing so, it drained the force from the requirement. Again, that criminal juries had twelve members was not simply a part of the jury right; it was the *sine qua non* of the right when it came to criminal trials.

The centrality of the twelve-member requirement—rather than its mere existence—drives the common law’s probative value in this case. “The common law offers a vast legal library” that “must be used thoughtfully.” *Torres v. Madrid*, 592 U.S. 306, 345 (2021) (Gorsuch, J., dissenting). And so “when it comes to interpreting the Constitution, not all history is created equal.” *Bruen*, 597 U.S. at 34. For any number of reasons, historical sources can be “unmoored from original meaning” and thus “not binding law” under the Constitution. *Rahimi*, 602 U.S. at 738 (Barrett, J., concurring). They could, for example, be “a muddle,” *Gamble*, 587 U.S. at 691, or reflect an “outlier legal rule,” *Wolford v. Lopez*, 146 S. Ct. 2032, 2050 (2026), or have been obscure or “obsolete in England at the time of the adoption of the constitution,” *Dimick v. Schiedt*, 293 U.S. 474, 477-78 (1935). Conversely, rules “[w]ell entrenched in the common law,” *Rahimi*, 602 U.S. at 695 (majority op.), and part of a “long, unbroken line of common-law precedent” are “far more likely to be part of our law,” *Bruen*, 597 U.S. at 35. There is no doubt that the

twelve-member requirement falls into the latter category. Whatever difficult questions may exist at the outer contours of the jury right, the twelve-member requirement is not one of them. To reiterate, it lies at the right’s “nucleus.” Pollock & Maitland, *supra*, at 620. And that is powerfully probative of original meaning. The *Williams* Court’s failure to grapple with this history was error.

2. *Williams* also faltered when it rejected Founding-era evidence due to the absence of an “explicit decision” to require twelve-member juries in the ratification record. 399 U.S. at 99. That set far too high a bar for historical relevance. This Court has long relied on evidence from the Founding short of an “explicit decision.” Indeed, this Court drew the opposite inference in *Smith*, where it concluded that silence about the remedy for violations of the jury right evidenced that the Constitution retained “the remedy prescribed by common law.” 599 U.S. at 249; *see also, e.g., Heller*, 554 U.S. at 598-99 (drawing meaning from shared assumptions reflected in debates over the Second Amendment); *Powell v. McCormack*, 395 U.S. 486, 532-41 (1969) (drawing inferences on the meaning of the Qualifications Clause); *Ex parte Wells*, 59 U.S. (18 How.) 307, 311 (1855) (reasoning that the fact “no effort was made to define or change [the] meaning” of “pardon” in Article II “at the time of the adoption of the Constitution” supported “giv[ing] [pardon] the same meaning as prevailed here and in England at th[at] time” because “American statesmen were conversant with the laws of England, and familiar with the prerogatives exercised by the crown”).

History is relevant where it “help[s] the interpreter discern the meaning of the constitutional text and the principles embodied in that text.” *Rahimi*, 602 U.S. at 717 (Kavanaugh, J., concurring). And that is precisely the supporting role ratification history plays here. Some Founders expressly noted that the jury right included the right to twelve members, others stressed that it incorporated the “incidents” of the right at common law, and still others simply used “twelve men” as synonyms for “jury”; none of these statements were corrected or challenged. *See supra* at 17-18. That is plainly probative of the Founding-era understanding of “jury.”

Williams appeared to base its demand for more on the Sixth Amendment’s drafting history, which it concluded raised doubts about the scope of the jury right. Specifically, the initial draft of the Sixth Amendment required trial “by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites.” *Williams*, 399 U.S. at 94 (quoting 1 *Annals of Cong.* 435 (1789)). But following extensive debate over the propriety of the “vicinage” requisite, the Founders ultimately amended the language to guarantee a “jury of the State and district” of the crime. *See Smith*, 599 U.S. at 248-49; *Williams*, 399 U.S. at 95-97. The amended version, however, no longer expressly protected the jury right’s “other accustomed requisites.” *Id.* Reasoning that the deletion must have some “substantive effect,” the Court found it at least “plausible” that it meant the requisites to the jury right were not included. *Id.*

Williams was wrong. Indeed, this Court has since not only already rejected this exact argument, but did so while overruling a prior, contrary decision that adopted *Williams*'s reading of the record. *See Ramos*, 590 U.S. at 97-98. This Court was right to do so. As two members of the Court have observed, "the meaning of this [amendment] is wholly speculative." *Id.* at 135 (Thomas, J., concurring in judgment) (quoting *Baldwin v. New York*, 399 U.S. 66, 123 n.9 (1970) (Harlan, J., dissenting)); *accord id.* at 97-98 (majority op.). It cannot be a reliable basis for meaning. After all, "the private intent behind a drafter's rejection of one version of a text is shoddy evidence of the public meaning of an altogether different text." *Gamble*, 587 U.S. at 684.

3. Finally, *Williams* erred in what it did not consider. Even if it appropriately discounted evidence from the common law and ratification, it conspicuously neglected the most critical evidence of the Sixth Amendment's meaning: text. Preferring now-contested "experiments" analyzing the efficacy of smaller juries, *Williams* sought to intuit whether a smaller jury could equally safeguard the ostensible purpose of a jury trial. Had *Williams* attempted to understand how the word "jury" was understood at the Founding, it would have confronted the fact that criminal trials had involved twelve jurors for so long that the twelve-person requirement formed part of the very definition of "jury." *See supra* at 9-11. That conclusion is itself all but dispositive of original public meaning.⁷

⁷ *Williams* likewise declined to address historical sources outside the ratification debates, including preratification

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Centuries of experience led the trial by jury to become “the glory of the English law.” 3 Blackstone, *Commentaries* *379. The practice was likewise “justly dear to the American people,” *Parsons*, 28 U.S. at 446 (Story, J.), “which is why the jury-trial guarantee was one of the least controversial provisions of the Bill of Rights,” *Apprendi v. New Jersey*, 530 U.S. 466, 498 (2000) (Scalia, J., concurring). It now sits as a “fundamental reservation of power in our constitutional scheme,” ensuring “the people’s ... control in the judiciary.” *Blakely v. Washington*, 542 U.S. 296, 305-06 (2004).

Williams’ continuing force disserves the ancient legacy of the jury right. It aggrandizes judicial authority through a “functionalist assessment” of whether particular features of the jury right are “‘important enough’ to retain.” *Ramos*, 590 U.S. at 100. And it ignores that the “very enumeration of the [jury] right” forecloses the power “to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Heller*, 554 U.S. at 634. The meaning of “jury” at the Founding was unambiguous. This Court should return to that understanding.

CONCLUSION

The judgment below should be reversed.

decisions and records, as well as the uniform consensus of courts and scholars in the interim between Ratification and Reconstruction. *See supra* at 14-21.

Respectfully submitted,

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