

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 PROFESSOR FRANCESCO PARISI AS
AMICUS CURIAE IN SUPPORT OF RESPONDENT**

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INTEREST OF AMICUS CURIAE

Professor Francesco Parisi is the Oppenheimer Wolff and Donnelly Professor of Law at the University of Minnesota Law School and a Professor of Economics at the University of Bologna. His scholarship applies economic analysis to legal institutions, including jury size, voting rules, standards of proof, hung juries, and retrials.¹

Professor Parisi has a longstanding interest in jury design and standards of proof. He has written extensively on the topic, including *Beyond Six Versus Twelve: Kian v. Florida and the Design of the Criminal Jury* (2026); *Juries in Flux* (with Ram Singh, 2026); *Accuracy of Verdicts Under Different Jury Sizes and Voting Rules* (with Alice Guerra and Barbara Luppi, 2020); *Quantifying Reasonable Doubt* (with Daniel Pi and Barbara Luppi, 2020); and *Jury Size and the Hung-Jury Paradox* (with Barbara Luppi, 2013).

SUMMARY OF ARGUMENT

Petitioner's functional argument is that twelve-person juries produce superior adjudicatory outcomes, including that they are uniformly more protective of criminal defendants. Petitioner and its supporting *amici*, however, rely on empirical scholarship that does not establish that proposition. Instead, their cited studies often measure representation or deliberative process. They do not speak to the ultimate distribution of convictions, acquittals, and mistrials. In

¹ No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or person other than *amicus* or his counsel made a monetary contribution intended to fund its preparation or submission.

addition, several of the studies involve civil juries, mock juries, or the composition of jury pools. They are not a controlled comparison of criminal outcomes under otherwise identical six- and twelve-person systems.

These studies do establish that twelve-person juries are more likely to include members of minority groups. They also show that larger juries often deliberate longer, recall more evidence, and give minority viewpoints a greater chance to be heard.

These are serious and important institutional benefits that should not be minimized. But they do not show that larger juries are more protective of defendants. That shortcoming is underscored by the literature on hung juries. Conventional probability reasoning predicts that unanimity becomes more difficult as jurors are added. Yet the empirical studies surveyed in the hung-jury literature generally found no significant difference in deadlock rates between six- and twelve-person juries. Barbara Luppi & Francesco Parisi, *Jury Size and the Hung-Jury Paradox*, 42 J. Legal Stud. 399, 402–05 (2013). Differences among jurors, deliberative dynamics, and informational cascades can offset — and in some cases reverse — the effect of jury size. The functioning of the two sizes of juries may differ, while the observed rate of unresolved prosecutions remains similar.

More fundamentally, deadlock is neither a conviction nor an acquittal. A mistrial may lead to retrial, dismissal, or a plea. The best comprehensive study reported that only about 32 percent of hung-jury cases proceeded to a second jury trial; among the remainder, many were dismissed or resolved by plea. Paula L. Hannaford-Agor, et al., *Are Hung Juries a Problem?* 26-28 (Nat'l Ctr. for State Courts 2002). Court records frequently replace the initial deadlock with the case's

final disposition, so reliable nationwide data linking the first jury’s deadlock to the final outcome are scarce. A functional analysis should not rest on an empirical chain whose most critical link is largely unobserved.

Economic theory provides a second reason for caution. Condorcet’s jury theorem shows that a larger group deciding by majority rule is more likely to be correct when voters are independent and each is more likely than not to choose correctly. But criminal juries do not operate under that model after *Ramos v. Louisiana*, 590 U.S. 83 (2020). Conviction requires unanimity, and most jurisdictions also require unanimity for acquittal. Under two-sided unanimity, adding jurors decreases the probability of both unanimous convictions and unanimous acquittals and increases the residual probability of a deadlock.

That tradeoff does not affect all defendants alike. A factually guilty² defendant may benefit when a larger jury makes conviction more difficult and shifts cases toward mistrial. A factually innocent defendant, however, has an interest not merely in avoiding conviction but in receiving a prompt, definitive acquittal. For that defendant, a larger jury can reduce the likelihood of correct acquittal by more than it reduces the likelihood of a wrongful conviction. The resulting deadlock permits a potential retrial at the State’s discretion. In most situations, this prevents factually

² For clarity, this brief uses “factually guilty” and “factually innocent” to indicate whether a defendant committed the charged act, while reserving “legal guilt” for guilt established under the prosecution’s burden of proof. See Tamara Rice Lave, et al., *Juries on Trial* 4–5, in *LAW AND ECONOMICS OF CRIME AND PUNISHMENT* (Klaus Mathis & Avishalom Tor eds., Springer Nature forthcoming 2027).

innocent defendants from obtaining the vindication and finality of an acquittal.

Increasing jury size is therefore a double-edged sword in terms of protecting defendants. It may reduce the risk of conviction, including wrongful conviction, but it may also shift cases from potential acquittal to mistrial, denying factually innocent defendants the prompt vindication and finality afforded by a “not guilty” verdict. A complete analysis must account for the cost of these unresolved prosecutions, retrial rates, the effective standard of proof, and the selection of cases that reach trial. Once those variables are included, no general economic argument establishes that twelve-person juries are functionally superior to six-person juries. The Constitution therefore should not be reinterpreted on the premise that such a consensus exists.

Accordingly, the judgment should be affirmed. If the Court nevertheless holds that the Sixth and Fourteenth Amendments require twelve jurors, it should make clear that neither its decision in this case nor *Ramos* reaches the question of whether a State has the authority to permit acquittal by a substantial non-unanimous majority. This clarification would preserve State authority to mitigate the burden jury enlargement may place on innocent defendants without weakening *Ramos*’s unanimity safeguard against conviction.

ARGUMENT

I. The Empirical Record Identifies Benefits of Larger Juries But Does Not Establish Superior Outcomes.

Williams v. Florida asked whether six jurors could perform the essential functions of the criminal jury. 399 U.S. 78, 99–103 (1970). Petitioner answers that question by invoking research developed after *Williams*, much of it anticipated in *Ballew v. Georgia*, 435 U.S. 223, 231–39 (1978). That literature demonstrates meaningful differences between six- and twelve-person groups. But identifying a difference is not the same as establishing a constitutionally relevant inferiority. The proper unit of functional analysis is the jury system, not jury size in isolation. See Francesco Parisi, *Beyond Six Versus Twelve: Kian v. Florida and the Design of the Criminal Jury*, Pub. Choice §§ 2–4 (2026).³

A. Petitioner Correctly Identifies Important Benefits of Larger Juries.

The case for larger juries begins with representation. A larger random sample is more likely to contain members of groups that comprise a minority of the eligible population. That point is mathematical and important. It also finds empirical support. In a study of 277 civil trials in Cook County, Illinois, approximately 28 percent of six-person juries had no Black member, compared with about 2 percent of twelve-person juries, and approximately 66 percent of six-person juries had no Hispanic member, compared with about 40

³ Available at <https://doi.org/10.1007/s11127-026-01464-9>.

percent of twelve-person juries. Shari S. Diamond, et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. Empirical Legal Stud. 425, 434–35, 443–49 (2009).

Diversity can improve deliberation. An experiment involving jury-eligible adults found that racially diverse mock juries considered a wider range of information, discussed more facts, made fewer factual errors, and were more willing to address race-related issues than all-white juries. Samuel R. Sommers, *On Racial Diversity and Group Decision Making*, 90 J. Personality & Soc. Psych. 597, 606-08 (2006). A meta-analysis likewise reported that larger juries generally deliberated longer and, in one study of mock criminal juries, discussed trial testimony more accurately. Michael J. Saks & Mollie Weighner Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 L. & Hum. Behav. 451, 457–61 (1997).

Composition may also affect outcomes. A study of felony trials in two Florida counties found a substantial racial gap in conviction rates when the jury pool was all white, but no statistically significant gap when the pool included at least one Black prospective juror. Shamena Anwar, Patrick Bayer & Randi Hjalmarsson, *The Impact of Jury Race in Criminal Trials*, 127 Q.J. Econ. 1017, 1034–35, 1049 (2012). That finding properly highlights how the source pool, voir dire, and jury composition shape adjudication.

This Court has long recognized the jury’s role in guarding against governmental overreach and bringing community judgment into the courtroom. *See, e.g., Duncan v. Louisiana*, 391 U.S. 145, 156 (1968). More representative juries can advance those values. These studies thus merit consideration. They show that jury size can affect representation and deliberative process. They also explain why twelve-person juries may

be desirable as a matter of policy even if the Constitution permits six.

The limits of these studies, though, are equally important. The Diamond study involved civil juries in just one county. The Sommers study involved mock juries and isolated racial composition, rather than jury size. The Anwar study concerns the racial composition of the venire and resulting seated jury, not a controlled six-versus-twelve comparison. The Saks and Marti meta-analysis synthesized heterogeneous studies, many experimental or civil. These limitations do not negate the findings. But they do mean that process measures cannot simply be relabeled as proof that one jury size produces superior criminal outcomes across jurisdictions.

If the empirical concern is demographic exclusion, a rule constitutionalizing jury size is an indirect intervention that leaves the direct determinants of the jury-pool problem unresolved. The existence of alternative and complementary tools, such as reforming source lists, summons practices, hardship excusals, voir dire, and peremptory challenges, further weakens any claim of functional superiority or constitutional necessity based on representation alone.

B. The Hung-Jury Literature Undermines Any Simple Claim of Functional Superiority.

The rule of jury unanimity further complicates the evidence on the relative performance of differently sized juries. A twelve-person jury may contain more information and more viewpoints, but more jurors also create more potential points of disagreement. Under a simple model in which jurors vote independently and each possible vote has positive probability, the probability of unanimous agreement falls as the number of

jurors rises. That prediction supports the common claim that larger juries will hang more often.

The observed evidence has not cleanly confirmed that prediction, however. The studies surveyed by Luppi and Parisi generally found no statistically significant difference in hung-jury rates between six- and twelve-person juries. *See* Luppi & Parisi, *supra*, at 402–05. That is the hung-jury paradox: the theoretical predictions and the observed outcomes diverge.

But the paradox is not evidence that jury size has no effect. It is instead evidence that the effect is mediated by behavior. Jurors differ in competence, confidence, evidentiary thresholds, and willingness to maintain dissent. Deliberation can produce informational cascades, and a lone dissenter may be more likely to revise a view when faced with a larger apparent consensus. The additional perspectives supplied by a larger jury can generate disagreement, while the social influence of a larger majority can reduce it. Those forces can offset one another, leaving similar observed deadlock rates even though the deliberative processes differ. *Id.* at 405–16.

This matters for Petitioner’s claim that smaller juries disproportionately harm defendants by reaching fewer deadlocks. *See* Pet. Br. 31–34. That assertion may be a plausible prediction, but it is not a settled empirical fact. *Ballew* itself reviewed evidence suggesting that smaller juries might hang less often. *See* 435 U.S. at 236. The later literature does not yield a stable, contemporary national estimate establishing the magnitude or even the persistence of that relationship between six and twelve.

The studies are also dated. The most comprehensive court-based hung-jury project examined cases from 1996 through 1998. Hannaford-Agor, et al., *supra*, at 26–28. Changes in charging, plea bargaining,

jury selection, trial length, digital evidence, and prosecutorial practice may affect both deadlock and its aftermath. It would be a mistake to fault *Williams* for relying on sparse 1970 evidence and treat that limited body of older evidence as conclusive of the national experience in 2026, let alone the basis for an enduring constitutional rule.

Larger juries may have representational and deliberative advantages and deliberate differently from smaller juries. But the empirical record does not establish that twelve-person juries produce more deadlocks, fewer deadlocks, or more defendant-protective outcomes. On one of the central pathways through which size is said to affect defendants, the jury is still out.

C. The Available Evidence Does Not Link Jury Size to Final Outcomes.

Even a reliable estimate of first-trial deadlock would not answer the question of the superior jury size. A hung jury is an intermediate event. It may be followed by a second jury trial, a guilty plea, dismissal, or prosecutorial abandonment. A verdict measure asks what the first jury did. An outcome measure asks what ultimately happened to the defendant. The two are not interchangeable. Parisi, *Beyond Six Versus Twelve*, *supra*, §§ 3–4; Francesco Parisi & Ram Singh, *Juries in Flux*, 206 Pub. Choice 391, 411–17 (2026).

The legal distinction is clear. A jury's inability to agree does not terminate the process, and retrial after a hung jury ordinarily does not violate the Double Jeopardy Clause. *Richardson v. United States*, 468 U.S. 317, 323–26 (1984); *Arizona v. Washington*, 434 U.S. 497, 505 (1978). A mistrial therefore cannot be counted as an acquittal merely because it prevents immediate conviction.

The data needed to trace that intermediate event to a final disposition are unusually poor. Court information systems often record the later plea, dismissal, or retrial outcome in place of the initial deadlock because a hung jury is not a final disposition. In its study, the National Center for State Courts reported that approximately 32 percent of hung-jury cases proceeded to a second jury trial, 21.6 percent were dismissed, and 31.8 percent produced a guilty plea. Hannaford-Agor, et al., *supra*, at 26–28; Parisi & Singh, *supra*, at 411–13 & nn.35–39. Of the cases that reached a second jury, 69 percent resulted in conviction, 19 percent in acquittal, 8 percent in another hung jury, and 4 percent in another form of mistrial. Hannaford-Agor, et al., *supra*, at 28. Those figures are informative but neither current nor nationally representative.

The absence of data connecting initial jury size to ultimate outcomes precludes confident claims about outcome accuracy. A larger jury might improve the conditional reliability of verdicts when a verdict is reached yet leave more cases unresolved. A smaller jury might reach more verdicts, or reach them through a different deliberative path, while producing a similar final distribution after prosecutorial selection and plea bargaining. If deadlocked cases are frequently dismissed, deadlock resembles non-conviction for a factually guilty defendant but still lacks the formal finality of acquittal for a factually innocent defendant. If deadlocked cases are routinely retried, the first jury's decisiveness matters less, but the defendant bears the cost and risk of another trial.

Selection before trial compounds the problem. Prosecutors choose which charges to file and which weak cases to dismiss; defendants choose whether to plead; judges rule on evidence; and both sides shape

the seated jury. A change in jury size can alter plea incentives and the mix of cases that reach trial. Observed conviction rates are therefore endogenous to institutional design. A jurisdiction with a lower trial conviction rate therefore may not have less accurate juries; it may try a different pool of cases. *See* Parisi, *Beyond Six Versus Twelve*, *supra*, § 3.

There is accordingly no empirical basis for the categorical claim that twelve-person juries produce superior outcomes in criminal cases. The evidence supports a more nuanced proposition: jury size affects several important features of adjudication, sometimes in opposing directions, and those effects are filtered through voting rules, retrials, standards of proof, and case selection. That proposition counsels against overruling *Williams* based on evidence that is ultimately inconclusive on the central question of superiority.

II. Where Unanimity is Required, A Larger Jury Is a Double-Edged Sword for Defendants.

A. Condorcet’s Jury Theorem Does Not Resolve the Choice Between Six and Twelve Under Unanimity.

The strongest theoretical intuition favoring larger groups comes from Condorcet. If voters decide by majority rule, vote independently, and are each more likely than not to choose the correct alternative, adding voters increases the probability that the majority is correct. Marquis de Condorcet, *Essai Sur L’Application De L’Analyse À La Probabilité Des Décisions Rendues À La Pluralité Des Voix* (1785). The insight is powerful: independent information aggregates, and individual errors tend to cancel.

But the theorem's institutional assumptions matter. A majority-vote rule always produces an outcome, except for a possible tie that can be resolved by an odd group size or a tie-breaking rule. A unanimous jury can produce another result: no verdict. Adding jurors can improve the information in the room while making the required agreement more difficult. The model must therefore distinguish the correctness of verdicts from the decisiveness of the process.

Strategic and correlated voting further complicate the classical theorem. Jurors deliberate rather than cast isolated ballots. Their votes may respond to common evidence and shared biases. See Timothy J. Feddersen & Wolfgang Pesendorfer, *Convicting the Innocent: The Inferiority of Unanimous Jury Verdicts Under Strategic Voting*, 92 Am. Pol. Sci. Rev. 23 (1998); Peter J. Coughlan, *In Defense of Unanimous Jury Verdicts*, 94 Am. Pol. Sci. Rev. 375 (2000). This literature does not deny the informational advantages of a larger jury, as articulated above. But it shows why those advantages cannot provide a solid basis for claims that larger juries produce superior outcomes.

A further strand in the economics literature cautions against assuming that larger juries bring more to the table. The familiar Condorcet intuition treats individual jurors' information and resulting voting as independent of group size. But if acquiring and processing information requires effort, that assumption may fail. Mukhopadhaya models juror attention as endogenous and shows that, as the jury size grows, each juror may have less incentive to invest in acquiring information and be more likely to free-ride on the effort of fellow jurors. The free-riding effect can offset—and under some assumptions reverse—the informational advantage commonly attributed to a larger jury. See Kaushik Mukhopadhaya, *Jury Size and the*

Free Rider Problem, 19 J.L. Econ. & Org. 24, 24, 38–40 (2003). Bag, Levine, and Spencer qualify Mukhopadhyaya’s strongest result: under alternative equilibria, accuracy may reach a maximum at a particular jury size and not improve as additional jurors are added. See Parimal Bag, Paul Levine & Christopher Spencer, *A Note on: Jury Size and the Free Rider Problem*, 4 Econ. Bull. 1, 1–2 (2006).

Related research on group deliberation identifies another possible countervailing effect. A mock-jury study found that members of large groups did not necessarily contribute equally to collective decisionmaking and that restructuring twelve-person groups into smaller conversational units increased participants’ perceived equality of contribution and reduced inhibition. See Bridget M. Waller et al., *Twelve (Not So) Angry Men: Managing Conversational Group Size Increases Perceived Contribution by Decision Makers*, 14 Group Processes & Intergroup Rel. 835, 835, 839–40 (2011). Experimental work outside the jury setting similarly found that discussion in five-person groups operated more as interactive dialogue, while discussion in ten-person groups tended toward serial monologue in which the dominant speaker exercised greater influence. See Nicolas Fay, Simon Garrod & Jean Carletta, *Group Discussion as Interactive Dialogue or as Serial Monologue: The Influence of Group Size*, 11 Psych. Sci. 481, 481, 483 (2000). These studies identify another reason to doubt the view that increasing the number of jurors necessarily adds valuable perspectives.

Finally, there is the risk that larger juries operating under the rule of unanimity may, in addition to reducing the risk of erroneous verdicts, also reduce the likelihood of correct verdicts. The mechanism, again, is deadlock. If one models outcome likelihood

for both factually innocent and factually guilty defendants, the likelihood of unanimity decreases and the likelihood of deadlock rises as jury size increases. Put differently, Condorcet's monotonic result under majority rule does not hold because unanimity converts some potential correct and incorrect verdicts into unresolved cases. *See* Alice Guerra, Barbara Luppi & Francesco Parisi, *Accuracy of Verdicts Under Different Jury Sizes and Voting Rules*, 28 Sup. Ct. Econ. Rev. 221, 227–36 (2020).

B. Deadlock Must Be Treated as a Distinct Cost.

Blackstone's maxim gives wrongful conviction greater moral and social weight than wrongful acquittal: it is better that ten guilty persons escape than that one innocent suffer. 4 William Blackstone, *Commentaries on the Laws of England* 352 (1765). Modern economic analysis expresses the same idea as an error-cost ratio. The ratio identifies how much more heavily the legal system values one adjudicatory error than the other. *See* Daniel Pi, Francesco Parisi & Barbara Luppi, *Quantifying Reasonable Doubt*, 72 Rutgers U. L. Rev. 455, 468–78 (2020).

That familiar ratio provides the relative weight of two erroneous verdicts: wrongful conviction and wrongful acquittal. But a unanimous jury system also produces deadlocks. The cost of a deadlock is not accounted for on either side of Blackstone's ratio.

A complete Blackstonian analysis should also account for the costs imposed when the accusation remains unresolved. This expanded accounting prevents the analysis from treating unresolved prosecutions as costless.

There are six possible first-trial outcomes: each defendant type (factually innocent or factually guilty)

may be convicted, acquitted, or left without a verdict. Four of these outcomes generate adjudicatory losses: wrongful conviction of the factually innocent, wrongful acquittal of the factually guilty, and deadlock for each defendant type.

These outcomes are costly, not only for the justice system, but also for individual defendants, who may suffer from fewer definitive acquittals. And these outcomes may be more likely for larger juries, even if larger juries also may improve representation and conditional verdict reliability. Which jury size minimizes social loss depends on variables separate from jury size and not measured with sufficient consistency across jurisdictions.

C. Jury Enlargement Can Protect Factually Guilty Defendants While Burdening Factually Innocent Defendants.

The phrase “defendant protection” can obscure an important distributional effect. A factually guilty defendant and a factually innocent defendant share an interest in avoiding conviction, but they do not value the other first-trial outcomes in the same way. The guilty defendant may prefer deadlock to conviction because it creates another opportunity to avoid punishment. By contrast, the innocent defendant prefers a definitive acquittal, not a mistrial.

If both conviction and acquittal require unanimity, adding jurors makes both wrongful convictions and correct acquittals less likely. The first effect is desirable; the second is not. Additionally, as the jury grows in size, these two effects differ in magnitude. With six jurors, a wrongful conviction already requires six mistaken votes, leaving comparatively little room for additional jurors to reduce that risk. A correct acquittal

is more likely, but it, too, can be blocked by a single dissenting vote.

Expanding the jury therefore creates more deadlocks that prevent correct acquittals than it prevents wrongful convictions. In other words, most of the additional deadlock comes at the expense of correct acquittals, not from eliminating wrongful convictions. Parisi & Singh, *supra*, at 405–10, 414–17. The mirror image applies to a factually guilty defendant. Enlarging the jury reduces the probability of a correct conviction by more than it reduces the probability of a wrongful acquittal.

The resulting increase in deadlock therefore largely benefits guilty defendants because the predominant shift is away from conviction. Thus, the same rule change can reduce wrongful convictions while moving even more cases from correct verdicts—acquittals or convictions—into the limbo of a deadlock.

This comparison is nonlinear. Increasing jury size reduces the probabilities of both wrongful conviction and correct acquittal. As the jury grows, however, wrongful conviction becomes increasingly rare, leaving progressively less risk for each additional juror to eliminate. Beyond a threshold that depends on juror accuracy and the relative harms of these outcomes, the cost of leaving more innocent defendants without definitive acquittals exceeds the benefit of preventing additional wrongful convictions.

Once that threshold is crossed, the marginal costs of jury expansion outweigh its marginal benefits, rendering further enlargement undesirable. Each additional juror supplies another safeguard against wrongful conviction but also becomes an obstacle to correct acquittal. The benefit of preventing wrongful conviction diminishes rapidly because wrongful conviction requires every juror to err. The cost of

preventing correct acquittal grows more rapidly. Jury enlargement may therefore reach a point at which another juror is more likely to prevent a correct acquittal than to prevent a wrongful conviction, and the cost of the former exceeds the benefit of the latter, independently of the weight assigned to wrongful conviction and wrongful acquittals (Blackstonian ratios) in the local jurisdictions.

This insight has serious implications. A mistrial may allow the defendant to go home, but it does not allow the innocent defendant to go home vindicated. For the innocent defendant, the limbo of an unresolved prosecution carries distinctive legal and human costs. The prosecution may retry after a hung jury. *Richardson*, 468 U.S. at 323–26. Whether to seek a retrial rests with the State. An unresolved accusation lacks the exonerating force of a “not guilty” verdict. The Court has recognized that a pending accusation may expose a defendant to public scorn, damage employment, burden associations, and produce prolonged anxiety and insecurity. *Klopper v. North Carolina*, 386 U.S. 213, 221–22 (1967). And although the State may retry a deadlocked case, defendants have no general corresponding right to demand that the State either prosecute anew or accept entry of an acquittal. See Francesco Parisi, *The Right to a Jury Retrial* (Minnesota Legal Studies Research Paper, 2026).⁴

These costs show why deadlock cannot be counted as uniformly defendant-protective. By making unanimity harder to achieve, it reduces both unanimous convictions and unanimous acquittals, shifting cases at both ends toward deadlock. Under the conventional assumption that factually guilty defendants are more

⁴ Available at <http://dx.doi.org/10.2139/ssrn.7498818>.

likely to be convicted and factually innocent defendants are more likely to be acquitted, that shift will tend to benefit the former by preventing otherwise correct convictions, while harming the latter by preventing otherwise correct and final acquittals.

This tradeoff must be acknowledged in assessing the relative merits of larger and smaller juries. Jury enlargement cannot simply be assumed to provide greater protection to defendants. And it undermines the claim, advanced by Petitioner and his *amici*, that twelve-person juries are functionally superior.

The pursuit of uniformity in jury size may, in fact, produce greater variation in jury outcomes. A constitutional requirement of twelve jurors would alter both the frequency of deadlock and the consequences of retrial. Those effects, however, depend on prosecutorial screening, the evidentiary strength of the cases reaching trial, and the treatment of cases following deadlock. Unless those features are also uniform, the same jury-size rule may operate quite differently across jurisdictions. That raises broader questions of federalism and may well counsel against a nationwide rule. At a minimum, standardizing one component of the jury system does not standardize the system as a whole.

III. Although Not Presented, One-Sided Unanimity Should Not Be Foreclosed.

The constitutionality of one-sided unanimity is not encompassed by the question presented in *Kian*, and the Court need not decide it to resolve this case. *Amicus* addresses the issue only because a ruling requiring twelve-person juries would sharpen the burden described above for factually innocent defendants. If the Court reverses the judgment below, it should clearly note, consistent with the scope of the question

presented in this case, that neither its decision in this case nor *Ramos* forecloses a State's authority to permit acquittal by a substantial nonunanimous majority.

A. *Ramos* Requires Unanimity for Conviction But Did Not Address Acquittal.

Ramos held that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious offense. 590 U.S. at 90, 93. The case involved a 10-to-2 conviction, and its defendant-protective holding concerns the agreement necessary before the State may impose criminal punishment. Importantly, it did not decide that the Constitution requires the same agreement to terminate a prosecution in the defendant's favor.

Most jurisdictions, including Florida, use two-sided unanimity as a matter of rule or practice. Florida Rule of Criminal Procedure 3.440 provides that no verdict may be rendered unless all trial jurors concur. A State's decision to require unanimity for both conviction and acquittal does not establish that the Constitution requires unanimity in both directions. The constitutional concern that no person be convicted over a juror's reasonable doubt is not mirrored when a substantial majority votes to acquit.

Oregon illustrates the distinction after *Ramos*. Its law now requires unanimous agreement for a guilty verdict but allows a not-guilty verdict with the concurrence of at least ten of twelve jurors. Or. Rev. Stat. § 136.450(1)-(2). That asymmetry preserves the unanimity safeguard against conviction while reducing the number of cases in which a minority favoring guilt prevents the final acquittal of a factually innocent defendant.

Scholars have likewise defended asymmetric rules on democratic and defendant-protective grounds. See Ethan J. Leib, *Supermajoritarianism and the American Criminal Jury*, 33 Hastings Const. L.Q. 141, 141-42, 184-96 (2006) (arguing for a demanding threshold to convict and majority rule to acquit). The optimal number of votes needed to acquit may depend on jury size, proof standards, and the social cost of deadlock. The relevant point is that one-sided unanimity may mitigate the problems associated with larger juries, allowing more factually innocent defendants to obtain a “not guilty” verdict, without weakening the unanimity requirement for conviction. *See also* Barbara Luppi & Francesco Parisi, *Jury Size and the Blackstonian Tradeoff* (Minn. Legal Stud. Rsch. Paper No. 2026-43, 2026); Francesco Parisi, *The Unsettled Side of Unanimity: Jury Verdicts After Ramos* (Minn. Legal Stud. Rsch. Paper No. 2026-44, 2026).⁵

B. Nonunanimous Acquittals Can Mitigate the Burden Jury Enlargement Places on Innocent Defendants.

If this Court requires twelve jurors, the number of potential dissenters doubles in jurisdictions that currently use six. Under two-sided unanimity, that change can move cases away from both conviction and acquittal. Requiring unanimity to convict prevents the enlargement from increasing the State’s power to punish. But requiring unanimity to acquit can cause the enlargement to reduce the innocent defendant’s chance of obtaining final exoneration.

A one-sided rule directly addresses that imbalance. Suppose conviction still requires all twelve jurors,

⁵ Available at <https://doi.org/10.2139/ssrn.7349581> and <http://dx.doi.org/10.2139/ssrn.7380378>.

while acquittal may be returned by ten, nine, or another legislatively selected majority threshold. The change does not convert a single vote for acquittal into a conviction, and thus *Ramos* remains fully operative. It instead converts a subset of deadlocks in which a substantial majority favors acquittal into final not-guilty verdicts. That reduces retrial exposure and the stigma of unresolved accusation for defendants whom most jurors believe should be acquitted.

Amicus, however, is not suggesting constitutionalizing or approving a particular acquittal rule. Doing so would repeat the error of isolating one design variable from the system in which it operates. It is also beyond the scope of the question presented in this case. See Sup. Ct. R. 14.1(a); *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992) (noting the Court “ordinarily do[es] not consider questions outside those presented in the petition for certiorari”).

Accordingly, if the Court reverses, it should make clear it is not reaching the question of unanimity for acquittal. That limited clarification would preserve room for States to mitigate the costs of jury enlargement and preserve adequate protection for factually innocent defendants, avoiding unnecessary future litigation over *Ramos*’s reach.

CONCLUSION

The decision of the court below should be affirmed.

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