

No. 25-6623

In the Supreme Court of the United States

HAMED KIAN,
Petitioner,

v.

FLORIDA,
Respondent.

*ON WRIT OF CERTIORARI TO THE FLORIDA DISTRICT
COURT OF APPEAL, FOURTH DISTRICT*

**BRIEF FOR AMERICA FIRST LEGAL
FOUNDATION AS *AMICUS CURIAE* IN
SUPPORT OF RESPONDENT**

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INTEREST OF *AMICUS CURIAE*

America First Legal Foundation (AFL) is a nonprofit organization dedicated to promoting the rule of law in the United States by ensuring due process and equal protection for every American citizen, and encouraging understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

AFL has a substantial interest in this case. Ensuring that States can prosecute criminal offenders without suffering extra-constitutional burdens promotes citizens' safety, supports federalism, and reinforces the rule of law. And constitutionalizing rules beyond the law's original meaning based on purported social-science consensus is troubling—especially when that “consensus” disregards on-the-ground evidence.*

* No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

The Constitution is silent about how many jurors sit on a jury. Significant evidence shows that “jury,” in both 1791 and 1868, named an institution that functioned to check the government—not a number. Because the jury’s core meaning lies in its function, Petitioner’s claim is testable.

Petitioner says that “a six-person jury” is “more likely to rule against a criminal defendant than a jury of 12.” Pet. Br. 30. Yet Petitioner and his *amici* rely on decades-old research that generally did not focus on outcome differences between six- and twelve-person juries. This brief presents a new empirical analysis of jury outcomes in Florida and in States that mostly use larger juries. This analysis casts doubt on Petitioner’s claim that Florida’s six-person juries disadvantage criminal defendants.

First, Florida’s six-person juries consistently check prosecutors. Over the last five fiscal years, about 27.7% of noncapital Florida prosecutions failed before a jury, by acquittal or dismissal—a figure that never moved more than a point and a half. The larger-jury States do no better on similar measures. New York acquits in about one felony verdict in five; Washington and Texas land in the same range.

Second, the evidence does not show that Florida’s juries disadvantage racial minorities. Measured against population, black and white conviction records diverge by a ratio of about 2.53. But measured against arrests for the same offenses in the same counties, the ratio is 0.995—in other words, parity. So

whatever produces observed disparities precedes Florida's juries.

Third, bigger juries cost more, and costlier juries are convened less often. Across 200 circuit-year observations, Florida courts that asked more of their citizens per trial tried fewer of their cases to juries. Smaller juries may thereby promote citizen participation.

Fourth, Petitioner's own authorities do not show otherwise. The leading meta-analysis he cites asked whether jury size changes verdicts and found "no significant effects." Michael J. Saks & Mollie Weighner Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 Law & Hum. Behav. 451, 461 (1997). Measurements about who sits on juries and how long they deliberate are not relevant to the core meaning of a "jury" or whether six jurors get it wrong more often than twelve.

Empirical evidence does not set constitutional meaning. But Petitioner and his *amici* rely heavily on empirical assumptions that lack applicability to Florida's six-person juries. Six jurors, drawn from the community and placed between the accused and the State, supply what original meaning and this Court's precedents identify as the jury's essential feature. The Court should affirm.

ARGUMENT

I. The constitutional significance of the jury lies principally in its core functions.

“The Constitution itself is silent with respect to a jury’s proper size.” Kurt D. Engelhardt et al., *The Jury Trial Clause, in The Heritage Guide to the Constitution* 662 (Josh Blackman & John G. Malcolm eds., 3d ed. 2025). So Petitioner’s constitutional claim requires that the original meaning of the “jury” implicitly include a twelve-person requirement. Petitioner leads with an attack on this Court’s decision in *Williams v. Florida*, 399 U.S. 78 (1970), for upholding Florida’s six-person jury even while “acknowledging that the Framers ‘may well’ have had ‘the usual expectation’ in drafting the Sixth Amendment ‘that the jury would consist of 12’ members.” Pet. Br. 2 (quoting *Williams*, 399 U.S. at 98–99).

But expected applications are “relevant only insofar as [they] can be thought to be reflected in the understood meaning of the text.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 386 (2010) (Scalia, J., concurring). “[O]riginal meaning” “controls,” not “expectations about how the text would apply.” *United States v. Rahimi*, 602 U.S. 680, 739 n.* (2024) (Barrett, J., concurring). In other words, “[s]pecific expectations about the consequences of a legal rule are distinct from the meaning of the rule itself.” *Ibid.* (quoting Keith E. Whittington, *Originalism: A Critical Introduction*, 82 Fordham L. Rev. 375, 383 (2013)).

Thus, evidence that most applications of the jury right in fact involved twelve jurors does not establish that the term “jury” itself was understood to require that number. Substantial evidence from all relevant periods—including around the Sixth Amendment’s ratification in 1791 and the Fourteenth Amendment’s ratification in 1868—suggests that the term “jury” was principally understood by reference to the body’s function in the justice system. Cf. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 37 (2022) (acknowledging “an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope”).

Early dictionaries reflected that petit juries were “usually” twelve—suggesting that the term “jury” was not necessarily understood to require that number. *Jury*, 2 Noah Webster, *An American Dictionary of the English Language* (New York, S. Converse 1828). The overarching definition was “[a] number of freeholders, selected in the manner prescribed by law, empaneled and sworn to inquire into and try any matter of fact, and to declare the truth on the evidence given them in the case.” *Ibid.*; see also *Jury*, Noah Webster, *Webster’s International Dictionary of the English Language: Being the Authentic Edition of Webster’s Unabridged Dictionary, Comprising the Issues of 1864, 1879, and 1884*, at 806 (London, George Bell & Sons 1907) (“A body of men, usually twelve, selected according to law, impaneled and sworn to inquire into and try any matter of fact, and to render their true verdict according to the evidence legally adduced.”).

So while dictionary definitions explained that the term “[i]n a narrower sense” meant “twelve men, selected and sworn according to law,” the term more generally meant “[a] certain number of men, selected according to law, and *sworn (jurati)* to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them.” *Jury*, 2 Alexander M. Burrill, *A Law Dictionary and Glossary* 113 (2d ed. New York, John S. Voorhies 1860).

Early legal sources likewise suggest that twelve was not part of the public understanding of the broad term “jury.” The Judiciary Act of 1789 was “adopted by the same Congress that passed the Sixth Amendment.” *Ramos v. Louisiana*, 590 U.S. 83, 100 n.47 (2020); cf. *Cohens v. Virginia*, 19 U.S. 264, 420 (1821) (“A contemporaneous exposition of the constitution . . . is the judiciary act itself.”); Sandra Day O’Connor, *The Judiciary Act of 1789 and the American Judicial Tradition*, 59 U. Cin. L. Rev. 1, 3 (1990) (calling the Act “the last of the triad of founding documents, along with the Declaration of Independence and the Constitution itself”).

That Act specified that “in cases punishable with death, the trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence.” Judiciary Act of 1789, ch. 20, § 29, 1 Stat. 73, 88. In *all* cases, jurors were to be “designated by lot or otherwise in each State respectively according to the mode of forming juries therein now practised.” *Ibid.* The Act emphasized that Congress did not want “to incur an unnecessary expense, or unduly to burthen the

citizens of any part of the district with such services.”
Ibid.

Congress thought it necessary to specify that “at least” “twelve petit” jurors be summoned for capital cases. If “jury” already meant twelve, the specification would have been unnecessary. And Congress did *not* specify a number of jurors in other federal criminal cases; at least “the composition of federal juries varied both geographically and over time” based on the relevant State practices. *Ramos*, 590 U.S. at 100 n.47. Participants in the Constitutional Convention emphasized that “[t]he constitution of Juries is different in different States.” 2 *The Records of the Federal Convention of 1787*, at 628 (Max Farrand ed., 1911).

The Act’s floor of “at least” twelve in capital cases, and its silence on the number otherwise, are hard to square with the theory that “jury” at the time inherently meant a body of precisely twelve. And around 1868, many States allowed juries of fewer than twelve—while still understanding each set of jurors to be a “jury.” See, e.g., Mich. Const. of 1850, art. VI, § 28 (“In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than twelve men in all courts not of record”); Colo. Const. of 1876, art. II, § 23 (similar); Iowa Const. of 1857, art. I, § 9 (“the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts”).

When States wanted to address the number of jurors, they often did so expressly. See Me. Const. of 1820, art. I, § 7 (“The legislature shall provide by law

a suitable and impartial mode of selecting juries, and their usual number and unanimity, in indictments and convictions, shall be held indispensable.”); Cal. Const. of 1879, art. I, § 7 (“In civil actions, and cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open Court.”).

In sum, significant evidence suggests that “jury” was understood as a broader term about an institution—a lay body, selected according to law, that decides facts—rather than implicitly fixing the institution’s size.

II. Florida’s six-person juries perform the jury’s core functions.

If the term “jury” did not inherently require twelve persons, the question is whether Florida’s six-person juries satisfy the core, definitional functions of the institution. This Court has said—and Petitioner does not appear to contest—that “the essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group’s determination of guilt or innocence.” *Williams*, 399 U.S. at 100. The Court thus considered the effects of smaller juries on outcomes, including whether there is any “discernible difference between the results reached by the two different-sized juries.” *Id.* at 101. Finding a lack of “evidence” suggesting such a difference, the Court held that smaller juries are permissible. *Id.* at 101–03.

Petitioner and his *amici* try to second-guess this conclusion as a matter of empirical research, claiming that “a six-person jury” is “more likely to rule against a criminal defendant than a jury of 12.” Pet. Br. 30. Below is an analysis of Florida’s experience, with data assembled by the Florida State University Institute for Governance & Civics, that casts doubt on those claims.¹

Data for Florida’s jury-trial outcomes come from the circuit criminal chapters of the Florida Office of the State Courts Administrator’s annual *Trial Court Statistical Reference Guide*; the statewide series excludes capital murder so that it reflects six-person juries. Measures of jury burden come from the same office’s quarterly *Jury Management Indices Reports*. The comparisons with larger-jury systems draw on New York’s OCA-STAT data for felony cases that ended in a trial verdict, Washington’s Superior Court annual criminal caseload reports, and Texas’s fiscal year 2024 felony case-activity report. The demographic analyses use ten-year conviction extracts from the Florida Department of Corrections; arrest and conviction data from the Florida Department of Law Enforcement’s Criminal Justice Data Transparency program; and census-derived

¹ See Adam Feldman, *FSU Jury Project Comprehensive Raw Source Data* (2026), <https://igc.fsu.edu/research-data/fsu-jury-project-comprehensive-raw-source-data>.

population estimates.² Because units of analysis, trial modes, and selection into trial differ across these systems, the cross-state comparisons provide sound descriptive evidence but do not show causation.

This analysis suggests that Florida’s six-person juries regularly reject the prosecution’s case, at rates above several larger-jury benchmarks. The available data do not identify six-person juries as the source of

² Fla. Off. of the State Cts. Adm’r, *Trial Court Statistical Reference Guide* ch. 3 (Circuit Criminal) (FY 2015–16 to FY 2024–25), <https://www.flcourts.gov/Data/trial-court-statistical-reference-guide>; Fla. Off. of the State Cts. Adm’r, *Jury Management Indices Report* (FY 2015–16 to FY 2024–25), <https://www.flcourts.gov/Data/jury-management-dashboard>; N.Y. State Unified Ct. Sys., Off. of Ct. Admin., *OCA-STAT Act Report* (felony cases arraigned 2021–2024), <https://www.nycourts.gov/division-technology-court-research/oca-stat-act-report>; Wash. Admin. Off. of the Cts., *Superior Court Annual Caseload Reports: Criminal Case Resolutions After Trial Commencement* (2021–2025), <https://www.courts.wa.gov/caseload/?fa=caseload.showIndex&freq=a&level=s&tab=criminal>; Tex. Off. of Ct. Admin., *District and Statutory County Courts Felony Case Activity Detail: September 1, 2023 to August 31, 2024*, <https://www.txcourts.gov/media/1460561/felony-activity-detail-print-2024.xlsx>; Fla. Dep’t of L. Enf’t, *Criminal Justice Data Transparency*, <https://www.fdle.state.fl.us/cjab/cjdt>; Fla. Dep’t of Corr., *Ten Years of Convictions Data Extract* (Sept. 21, 2026) (unpublished data provided to counsel; on file with counsel); Nat’l Inst. on Minority Health & Health Disparities, *Florida Population, Table—Black or African American*, <https://perma.cc/X3ZE-E34L>; Nat’l Inst. on Minority Health & Health Disparities, *Florida Population, Table—White*, <https://perma.cc/M5QH-2XK5>; U.S. Census Bureau, *County Population by Characteristics: 2020–2025* (June 2026), <https://www.census.gov/data/datasets/time-series/demo/popest/2020s-counties-detail.html>.

observed racial disparities. Smaller juries make jury trials less costly to provide, and less costly jury trials are associated with greater jury use. And the studies Petitioner relies on do not show that six-person juries disadvantage defendants.

A. Florida juries regularly reject the prosecution’s case.

To begin, Florida juries regularly reject prosecution positions, so six-person juries are not producing near-automatic convictions. Analyzing noncapital Florida outcomes from fiscal years 2020–21 through 2024–25 (excluding guilty pleas entered after trial began), prosecutions were rejected—through either acquittal or dismissal—at a rate of about 27.7%. The rate held between 27.0% and 28.5% every year, with no statistically significant year-to-year variation. Thus, this finding is not an artifact of one anomalous period.

The Florida result is also geographically broad, not the product of a few atypical counties.³ Sixteen of the twenty circuits exceed a 20% rejection rate, and nineteen exceed 15%. Removing any single circuit—Miami-Dade, Broward, Orange, or any other—shifts the statewide rate by no more than 1.1 percentage points. So a robust prosecution rejection rate reflects the operation of the Florida system generally.

The result holds across offense categories as well. Over the three most recent years, rejection rates ran roughly 17–20% for noncapital murder, 23–26% for

³ The circuit-level data include a small number of capital cases, which involve twelve-person juries.

sexual offenses, 21–26% for drugs, and 35–38% for other crimes against persons.

Another way to analyze Florida’s experience is to consider similar States with larger-jury requirements. Those States can provide helpful empirical benchmarks, albeit not causal natural experiments.

Start with New York, which uses twelve-person juries. In New York felony cases arraigned from 2021 through 2024 that ended in a trial verdict, 20.2% ended in acquittal. New York combines jury and bench verdicts, and does not separately report dismissals. Because Florida’s figure includes dismissals and New York’s does not, the two rates cannot be precisely ranked against each other. What the New York data show is that a twelve-person system acquits in roughly one felony verdict in five—a rate that does not show a defendant-protection superiority over Florida.

The same is true of Washington, which has an acquittal rate of about 21.2% in the predominantly larger-jury Superior Court between 2021 and 2025 (excluding King County, whose data are unavailable). Again, the statistics are slightly different, as Washington combines jury, nonjury, and stipulated outcomes, but the point is similar.

Likewise, in fiscal year 2024, Texas felony juries returned 473 acquittals in 2,162 verdicts—a 21.9% rate. Once again, the comparison is not exact: Texas’s statewide source combines district courts (where juries are twelve) and statutory county courts (where

juries can be smaller). But district courts, which seat twelve, generally try Texas felonies.⁴

These larger-jury benchmarks suggest that Florida's six-person system does not produce an obviously less defendant-protective pattern. A jury that repeatedly rejects prosecution positions across years, circuits, and offenses is functioning as a genuine intermediary between government and accused. The comparative evidence gives no sign that jurors seven through twelve supply measurable protection for defendants. Thus, if the constitutional concern is preservation of the jury's protective function, contemporary evidence does not demonstrate that twelve is necessary to secure that function.

B. Observed demographic disparities do not identify Florida's six-person juries as their source.

A distinct question could be whether minority defendants are disadvantaged by Florida's juries. Petitioner dwells on this question, even though the original understanding of "jury" does not appear to focus on it. And this Court has refused to indulge the assumption that a juror "would be partial to the defendant because of their shared race." *Flowers v. Mississippi*, 588 U.S. 284, 299 (2019) (quoting *Batson v. Kentucky*, 476 U.S. 79, 97 (1986)). Petitioner's argument appears to depend on this rejected assumption. See Pet. Br. 33 (claiming that

⁴ See Texas Judicial Branch, *About Texas Courts*, <https://perma.cc/8T83-4JZ6>.

“increas[ing] black representation” will “make trial outcomes more equal for white and black defendants”). Plus, “[d]efendants are not entitled to a jury of any particular composition.” *Holland v. Illinois*, 493 U.S. 474, 483 (1990).

Of course, *Williams* recognized that a jury should be large enough “to provide a fair possibility for obtaining a representative[] cross-section of the community.” 399 U.S. at 100. And as a theoretical matter, larger juries—including juries with more than twelve people—are mechanically more likely to contain members of minority groups. But composition probabilities and defendant outcomes are distinct empirical questions.

Here, though data are limited, the black-white conviction-record ratio relative to population (and adjusted for county and offense category) is about 2.53. But that ratio becomes 0.995 when normalized by race-specific arrests for the same offenses in the same counties. A value of 1 represents aggregate parity, so this result indicates that most of the population-based racial disparity is present before the conviction stage. This ratio remained near 1 when minimum sample-size requirements were changed, and when individual counties or offense categories were removed, suggesting a relatively robust measure. The available data therefore do not identify Florida’s six-person jury rule as the source of observed racial disparities.

C. Jury size bears on the availability of citizen adjudication.

The jury right reflects an “insistence upon community participation in the determination of guilt or innocence.” *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968). “The opportunity for ordinary citizens to participate in the administration of justice has long been recognized as one of the principal justifications for retaining the jury system.” *Powers v. Ohio*, 499 U.S. 400, 406 (1991). But a jury right that becomes materially more burdensome to invoke can reduce actual citizen participation.

Twelve-person juries inherently require substantially greater citizen inputs than six-person ones. The Florida Supreme Court’s jury-management goals provide a benchmark of 18.3 prospective jurors brought in for six-person trials and 30.5 for twelve-person trials—about two-thirds more.⁵

Florida’s data also associate heavier jury burdens with less jury use. The State’s jury-management reports span twenty judicial circuits over ten fiscal years—200 circuit-year observations. Setting aside the pandemic-disrupted years, circuits that brought in more people per trial tried a smaller share of their criminal cases to juries. The relationship is proportional and statistically significant. Controlling for circuit and year, a 10% increase in people brought in per trial is associated with about 2.4% less jury use.

⁵ Fla. Off. of the State Cts. Adm’r, *Jury Management Indices Report 1* (quarter ending Dec. 31, 2025), <https://perma.cc/8JDC-66NY>.

And because twelve-person trials call for about two-thirds more prospective jurors than six-person trials, this estimate suggests that a twelve-person mandate could mean noticeably fewer jury trials—and fewer occasions for ordinary citizens “to participate in the administration of justice.” *Powers*, 499 U.S. at 406.⁶

In sum, Florida’s six-person jury rule preserves the jury’s check on prosecutors while lowering the institutional cost of providing juries. In that way, Florida’s rule appears to advance, rather than undermine, the historical function of adjudication by citizen juries.

D. Petitioner’s empirical evidence does not show that Florida’s system disadvantages defendants.

Petitioner and his *amici* invoke empirical studies for four distinct propositions: (1) larger juries are more likely to include minorities; (2) larger juries deliberate differently; (3) those differences make verdicts more accurate; and (4) six-person criminal juries therefore produce worse outcomes for defendants. The evidence gets progressively weaker as one moves down that chain. And much of the available literature relies on experiments, civil juries, process measures, or modeled implications rather

⁶ The underlying Florida management measures combine six- and twelve-person proceedings, so the data cannot isolate the effect of jury size. The closest proxy—the average number of prospective jurors per voir-dire panel—is not significantly related to jury-trial rates in these data.

than contemporary six-versus-twelve criminal-outcome comparisons.

Starting with the first proposition, there is no question that a larger random sample is more likely to include members of a minority group. So a random sample of eighteen people is more likely to include more members of a minority group than a sample of twelve. But this says nothing about verdicts. The study Petitioner and his *amici* rely on here finds that representation in actual trials is “not significantly different from the predicted proportions from a random draw.” Shari Seidman Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. Empirical Legal Stud. 425, 445 (2009) (cited at Pet. Br. 33). That study says nothing about how jury size affects *verdicts*, much less criminal ones—it considered civil trials in which “the assignment of cases” to juries of different sizes “was not random.” *Id.* at 434, 444 n.63. Nor can the study explain, even assuming that some undefined level of “greater heterogeneity” is part of the original meaning of “jury,” Pet. Br. 33, why courts or States can stop at twelve jurors.

Next, Petitioner and his *amici* rely on a study of felony trials in two Florida counties finding a black-white conviction gap that was eliminated when the jury pool included at least one black prospective juror. Shamena Anwar et al., *The Impact of Jury Race in Criminal Trials*, 127 Q.J. Econ. 1017, 1019 (2012) (cited at Pet. Br. 33). The study held jury size constant, excluding Florida’s twelve-person capital juries and focusing instead on venire composition. See *id.* at 1024–25, 1027. So it cannot provide direct

evidence about the effect of increasing the number of seated jurors on outcomes. The sentence Petitioner relies on from this study—that “[i]ncreasing the number of jurors on the seated jury would . . . make trial outcomes more equal”—is a policy proposal by the authors, not a finding. *Id.* at 1049. The study does not support Petitioner’s proposed chain from jury size to minority representation to racial outcome disparity.

Last, Petitioner and his *amici* rely on a 1997 meta-analysis of prior studies. Michael J. Saks & Mollie Weighner Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 Law & Hum. Behav. 451 (1997). Petitioner uses this analysis to suggest that twelve-person juries “deliberate longer,” Pet. Br. 34, but the analysis itself notes that “process inefficiencies associated with greater numbers of decision-makers” could explain any difference—and that the observed “mean time difference is not great.” Saks & Marti, *supra*, at 458. More importantly, the analysis found “no significant effects” on the accuracy of verdicts, in the sense of “the best available estimation of what the full community would decide regarding that trial.” *Id.* at 461. Thus, this analysis does not support the proposition that twelve-person juries produce more accurate verdicts, fewer wrongful convictions, or lower conviction rates than six-person ones.

* * *

A jury of twelve has a historical pedigree. But if a twelve-person requirement is not specifically part of the original public meaning of the “jury,” Florida’s smaller juries fit the jury’s purpose as an institution of lay judgment and checking power. None of this is to

suggest that these types of empirical analyses “shed light on the meaning of the Constitution.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 273 (2022). Rather, empirical evidence can test Petitioner’s claims about the institutional function of the jury, assessing whether Florida’s juries match the core constitutional meaning. And the available evidence does not show functional failure in Florida. It shows Florida’s juries rejecting the prosecution’s case at a substantial and steady rate across circuits and offense categories—at rates above larger-jury benchmarks in other States.

CONCLUSION

For these reasons, the Court should affirm.

Respectfully submitted,

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