

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 ARIZONA, CONNECTICUT,
DELAWARE, LOUISIANA, MICHIGAN,
MINNESOTA, MISSISSIPPI, NEW MEXICO,
OHIO, OKLAHOMA, UTAH, WASHINGTON,
AND WEST VIRGINIA AS AMICI CURIAE IN
SUPPORT OF RESPONDENT**

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INTEREST OF AMICI CURIAE

Amici Curiae States of Arizona, Connecticut, Delaware, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, Ohio, Oklahoma, Utah, Washington, and West Virginia (“Amici States”) submit this brief in support of Respondent State of Florida and urge this Court to reaffirm its holding in *Williams v. Florida*, 399 U.S. 78 (1970). The Sixth Amendment does not require a jury of exactly 12 people for serious offenses—i.e., any offense “where imprisonment for more than six months is authorized.” *Baldwin v. New York*, 399 U.S. 66, 69 (1970).

Most states have criminal justice systems that permit juries of fewer than 12 for some serious offenses. Indeed, several of the Amici States changed their laws to allow for juries of fewer than 12 in reliance on *Williams*.

Overturning *Williams* would significantly disrupt the criminal justice systems and pending criminal trials and appeals in at least the seven states—Arizona, Connecticut, Florida, Indiana, Louisiana, Massachusetts, and Utah—that permit fewer than 12 person juries for felony offenses.¹

¹ See Ariz. Const. art. II, § 23 & Ariz. Rev. Stat. § 21-102(A)–(B) (requiring 12-person juries for criminal cases involving death penalty or imprisonment for thirty years or more, and providing for eight-person juries for criminal cases in courts of record); Conn. Const. art. I, § 19 & Conn. Gen. Stat. § 54-82(c) (requiring 12-person jury for capital cases, and providing for six-person jury in all criminal cases not punished by death or life imprisonment); Fla. Stat. § 913.10 (providing for six-person juries in all non-capital criminal cases); Ind. Code 35-37-1-1(b) & 35-50-2-1

In total, these seven states have hundreds of felony convictions on direct review that may require a retrial if *Williams* is overruled. These cases involve serious felonies, including homicides, sexual offenses, and violent crimes. Further, if *Williams* is not upheld, these states expect substantial post-conviction litigation, as well as significant additional expenditures such as rebuilding courtrooms to accommodate juries of 12 in jurisdictions that have traditionally used panels of six or eight. It will also pose greater challenges for rural communities that already face difficulties in seating sufficient jurors.

But Petitioner Kian has not limited his briefing to only “felony” offenses as he first presented in his petition for writ of certiorari. Pet. at ii. Instead, his merits brief seeks to expand the issue to all “serious crime[s],” Pet. Br. at 1, 16–24, which includes, at a minimum, all crimes that carry a maximum sentence of more than six months’ incarceration, *see, e.g., Lewis v. United States*, 518 U.S. 322, 326 (1996) (holding an offense is presumptively “petty” if it carries a “maximum prison term of six months or less”); Pet. Br. at 17 n.5 (appearing to agree that the term “serious

(mandating a 12-person jury for murder and Level 1–5 felonies, and six-person juries for any remaining crimes, including Level 6 felonies); La. Const. art. I, § 17(A) (stating six-person juries required for cases “in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months”); Mass. Gen. Laws ch. 218 §§ 26, 26A (providing for six-person jury trials in district courts and Boston municipal court department, which have jurisdiction over some felonies); Utah Const. art. I, § 10 & Utah Code Ann. § 78B-1-104(1) (providing for juries of fewer than 12 in any non-capital criminal case).

crime” is used to distinguish “petty offenses,” for which there is no right to a jury trial and which applies “where no more than six months imprisonment is authorized” (citation and internal quotation marks omitted)).

Thus, overturning *Williams* could affect another 21 states, all of which permit smaller juries for misdemeanor offenses that carry maximum sentences of more than six months’ incarceration.² The impact might be even greater than that, because the six-month line between petty and serious offenses, while presumptive, is not dispositive. This Court has acknowledged that even offenses with a maximum statutory penalty of fewer than six months may require jury trials if the defendant demonstrates “that any additional statutory penalties, viewed in conjunction with the maximum authorized period of

² See Alaska Stat. §§ 12.55.135(a), 22.15.150 & 22.15.060(a); Colo. Rev. Stat. §§ 18-1-406(a) & 18-1.3-501(a.5); Ga. Code Ann. §§ 15-12-125 & 17-10-3(a); Idaho Code §§ 19-1902 & 18-2408(3); Kan. Stat. Ann. §§ 21-6602(a) & 22-3404(1)–(2); Ky. Rev. Stat. Ann. §§ 24A.110(2), 29A.280(1) & 532.090; Mich. Const. art. I, § 20; Mich. Comp. Laws § 600.8311(a); Mich. Ct. R. 6.620(A); Minn. Const. art. I, § 6; Minn. Stat. § 609.02(2)–(4); Minn. Gen. R. Prac. 802(f); Miss. Code Ann. §§ 11-9-143 & 99-33-9; Mont. Code Ann. §§ 45-5-802(2)(a), 45-10-105 & 46-17-201; Neb. Rev. Stat. §§ 24-517(6), 25-2705(2) & 28-106(1); N.M. Stat. Ann. §§ 35-3-4(A), 35-8-3(A) & 31-19-1(A); N.Y. Crim. Proc. Law §§ 10.30(1)(b) & 360.10(1); N.Y. Penal Law § 70.15(1); Ohio Crim. R. 2(C), 23(B); Ohio Rev. Code §§ 2901.02(F), 3905.33, 3905.99(B) & 6111.99; Okla. Stat. tit. 21, § 10 & tit. 22, § 601; Or. Rev. Stat. §§ 136.210(2) & 161.615; Tex. Code Crim. Proc. Ann. art. 33.01; Tex. Penal Code § 12.21; Va. Code Ann. §§ 18.2-11 & 19.2-262(B); Wash. Const. art. I, § 21; Wash. Rev. Code 3.66.060; W. Va. Code §§ 50-5-8(b), (d) & 61-3-13(b); Wyo. Stat. Ann. § 1-11-119, 5-9-129, 6-2-507(b) & 7-11-101.

incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a ‘serious’ one.” *Blanton v. City of N. Las Vegas, Nev.*, 489 U.S. 538, 543 (1989).

In short, under Kian’s expanded framing, this case could affect more than half the states. Amici States respectfully request that the Court give that impact due weight in its stare decisis analysis.

SUMMARY OF ARGUMENT

For all but two years of this nation’s history, this Court’s precedents have clearly permitted states to use juries of fewer than 12 persons in criminal trials. Several of Amici States’ individual histories reflect this tradition and exercise of self-determination. Until 1968, the Sixth Amendment’s jury trial right did not apply to the states. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). Before *Duncan*, at least three states experimented with smaller jury sizes in criminal trials involving serious offenses. Florida, Louisiana, and Utah enshrined smaller juries in their constitutions in 1875, 1879, and 1895, respectively. Then, just two years after *Duncan*, this Court held that the Sixth Amendment does not require 12 jurors in a criminal case. *See Williams*, 399 U.S. at 102–03. Instead, Congress and the states had discretion to determine the size of their juries. *Id.* at 103. In the years immediately following *Williams*, several more states, including Arizona, Indiana, Massachusetts, and Connecticut, amended their constitutions or statutes to reduce the size of juries in criminal trials.

Because states have historically utilized smaller juries for at least some criminal offenses, whether the Sixth Amendment requires a specific number of jurors

is a wholly different question than the unanimity question this Court faced in *Ramos v. Louisiana*, 590 U.S. 83 (2020). In *Ramos*, this Court described the unanimity requirement as an “ancient guarantee” rooted in “400 years of English and American cases requiring unanimity.” *Id.* at 97, 100. No similar ancient guarantee existed for the size of juries.

Williams correctly determined the Sixth Amendment did not incorporate every feature of the common-law right to a jury trial, including the exact number of jurors required. Stare decisis supports retaining *Williams*, which “engag[ed] in a detailed discussion of the original meaning of the Sixth Amendment jury-trial right.” *Ramos*, 590 U.S. at 152 (Alito, J., dissenting). States have enacted laws, amended constitutions, constructed courthouses, and tried thousands of cases with smaller juries in reliance on *Williams*. Overturning *Williams* now after more than a half century of reliance would require a substantial legislative and financial response from a majority of states to adjust not only their laws, but their infrastructure, to support 12-person juries for serious offense prosecutions. Thus, the reliance interests here are nothing like the two-state outlier situation in *Ramos*.

Upholding *Williams* reaffirms the principle that the Sixth Amendment preserves the core right to a jury trial without constitutionalizing every procedural feature that existed at common law. Requiring states to adopt common law jury practices would improperly constrain their sovereign authority to structure their criminal justice systems.

ARGUMENT

I. **Historical Development for Juries of Fewer Than Twelve in Each State.**

Seven states permit juries of fewer than 12 for offenses where a defendant faces more than a year of incarceration. And 21 more states permit small juries for misdemeanor offenses where a defendant faces up to a year of incarceration. *See supra* note 2. The histories of these laws reflect the unique approaches states took when drafting their constitutions, establishing their court systems, and defining their criminal offenses.

A. **Early Experimentation with Smaller Juries.**

In what would later become part of the modern State of Connecticut, the New Haven colony, founded in 1638, had no jury system at all. *The Judicial and Civil History of Connecticut* 28, 68 (Hon. Dwight Loomis & J. Gilbert Calhoun, eds., 1895). At the same time, the Connecticut colony, which also later became part of the modern State of Connecticut, permitted magistrates to determine whether cases would require 6 or 12 jurors. *Id.* at 127; *The Code of 1650, Being a Compilation of the Earliest Laws and Orders of the General Court of Connecticut* 60–62 (Silas Andrus, 1822). It was not until after the two colonies merged that 12-person juries were required. *See The Laws of Connecticut: An Exact Reprint of the Original Edition of 1673* 37 (1865). The 12-person jury was statutorily guaranteed only after statehood, though certain city courts were permitted juries of six. *See Acts and Laws of the State of Connecticut, in America* 5 (Timothy Green, 1784); *see also Acts and Laws of the State of*

Connecticut, in America 71 (Hudson & Goodwin, 1796) (Hartford City Court); *id.* at 83 (Middletown City Court); *id.* at 105 (New London City Court); *id.* at 114 (Norwich City Court). In 1818, Connecticut’s first written constitution stated, “The right of trial by jury shall remain inviolate.” See Wesley W. Horton, *Annotated Debates of the 1818 Constitutional Convention*, 65 Conn. B.J. SI-1, SI-87, SI-103 (1991); Conn. Const. of 1818 art. I, § 21.

Louisiana, established as a French territory in 1682, had a long tradition of trial without a jury. See Warren Perrin, *Revisiting the Genesis of French Louisiana: It’s No Coincidence the Civil Code Was Adopted—We Ain’t Anglos!*, 18 J. Civ. L. Stud. 5, 6 (2026); Judith M. Arnette, *Jury Trial in Louisiana – Implications of Duncan*, 29 La. L. Rev. 118, 119–20 (1968). Under French rule, the Superior Council and local inferior courts had jurisdiction over criminal cases; under later Spanish rule, two *alcaldes* (a justice of the peace) sat as judges. H. Ward Fontenot, *The Louisiana Judicial System and the Fusion of Cultures*, 63 La. L. Rev. 1149, 1150–53 (2003); *Hays v. United States*, 175 U.S. 248, 258 (1899). Even after the Louisiana Purchase, the act of Congress establishing the Territory of Orleans required jury trials only for capital offenses. Act of March 26, 1804, ch. 38, § 5, 2 Stat. 283, 284. As Louisiana approached statehood in 1811, Congress included the jury-trial right in the enabling act. Louisiana Enabling Act, ch. 21, § 3, 2 Stat. 641, 642 (1811).

Louisiana’s 1868 Reconstruction constitution provided for no jury trial in cases where the punishment was “not necessarily hard labor or death”

and where the accused waived a jury trial and proceeded to trial in a parish court.³ La. Const. of 1868 tit. IV, art. 87.⁴ Waiving a jury trial was significantly speedier; parish courts met regularly, while the district courts required for jury trials only met twice per year. *See State v. Lartigue*, 29 La. Ann. 642, 645 (La. 1877). Louisiana’s post-Reconstruction 1879 constitution later required juries for criminal cases where the punishment was “not necessarily imprisonment at hard labor or death,” but permitted the General Assembly to set the jury size at fewer than 12. La. Const. of 1879 art. 7. The current constitution provides for a jury of six when the punishment “may be confinement at hard labor or confinement without hard labor for more than six months.” La. Const. art. I, § 17(A); *State v. Breaux*, 408 So. 3d 899, 904 (La. 2025) (explaining Louisiana’s “relative felony” classification). Thus, six-member juries in Louisiana continue to adjudicate serious offenses. *See, e.g.*, La. Stat. Ann. § 14:89.1(C)(1) (aggravated crime against nature punishable by imprisonment “with or without hard labor, for a term not less than five years nor more than twenty years, or both”); *State v. Doyle*, 388 So.3d

³ “Hard labor” in Louisiana means state prison rather than parish jail. *See State v. Hamilton*, 54 So. 482, 482 (La. 1911) (explaining that “hard labor” means “hard labor to be performed in the State Penitentiary”); *see, e.g., State v. Flunder*, 517 So.2d 1057, 1059 (La. Ct. App. 1987) (noting that hard labor is spent in the state Department of Corrections in contrast with time spent in parish jail).

⁴ This constitution was approved by Congress before readmission to the United States. Act of June 25, 1868, ch. 70, § 1, 15 Stat. 73, 73.

1226, 1228, 1246 (La. Ct. App. 2024) (12-year sentence and 60-year exposure with six-person jury).

Florida’s smaller jury trials were first permitted by an 1875 amendment to its constitution (which permitted the number of jurors to be “fixed by law”), and later by statute in 1877. *See Gibson v. State*, 16 Fla. 291 (1877); Fla. Const. of 1875 art. VI, § 12; Fla. Laws 1877, ch. 3010, § 6.

In the mid-1800s, more adjustments began to appear in state constitutions outside the context of felonies or serious misdemeanors. When Iowa became a state in 1846, its constitution permitted smaller juries in “inferior courts,” and when Michigan adopted its new constitution in 1850, it specifically permitted smaller juries in criminal cases in courts “not of record.” Iowa Const. of 1846 art. 1, § 9; Mich. Const. of 1850 art. VI, § 28. Similar exceptions appeared in additional state constitutions in the mid to late 19th century. *See* Colo. Const. art. I, § 23 (1876); Ga. Const. of 1865 art. 5, § IV; Ky. Const. § 248 (1891); Mo. Const. of 1875 art. II, § 28; Neb. Const. of 1866 art. I, § 5 (1866); S.C. Const. art. IX, § 7 (1865); Tex. Const. art. V, § 17 (1876); Wash. Const. art. I, § 21 (1889); Wyo. Const. art. I, § 9 (1889).

Utah enshrined smaller juries in its constitution just before statehood. The issue, in both the civil and criminal context, was discussed several times during the constitutional convention of 1895. The first proposed language provided for 12 jurors for felony cases and fewer for civil cases and non-felony offenses. *Official Report of the Proceedings and Debates of the Convention Assembled to Adopt a Constitution for the State of Utah* 274 (1895). One delegate who supported

a reduction argued there was no empirical basis to conclude that 12 jury members were superior to nine, and that nine jurors “will prove just as effectual.” *Id.* at 276. He also noted that, if Utah were admitted to the United States, the additional taxation imposed would “bear heavily upon the people of the Territory of Utah,” and a jury of nine would result in “three less men for which the State of Utah will have to pay.” *Id.* One delegate also noted the practical burdens created by maintaining a 12-person jury in a large, sparsely populated territory. He explained that witnesses and jurors in Utah’s four judicial districts often travelled long distances to attend court and waited “five or six days” while daily per-diem expenses accumulated. *Id.* at 278–79. He argued “the expense of the jury system is something enormous” and supported identifying “ways to economize,” including the adoption of smaller jury sizes. *Id.*

Due in part to its unique history as “the only state in the Union which is known primarily because of the religion of its leading denomination,” the Utah territory unsuccessfully sought statehood in 1849, 1856, 1862, 1867, 1872, 1882, and 1887 before it was finally admitted to the Union in 1895. *Soc’y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 921–29 (Utah 1993) (internal quotation marks omitted). Utah’s resulting first constitution was therefore arguably one of the most scrutinized constitutions in all American history.

Yet despite this close scrutiny, President Grover Cleveland proclaimed that Utah’s constitutional draft—which included an eight-person-jury provision—was “not repugnant to the Constitution of

the United States[.]” and Utah duly gained admission to the Union and the authority to define its own jury-trial structure. Proclamation 382, 29 Stat. 876, 876–77 (1896). Utah law now provides for 12 jurors in capital cases, eight jurors in noncapital cases with exposure to 1 year of incarceration or more, and six jurors in cases where the potential term of incarceration is between 6 months and 1 year. *See* Utah Code Ann. § 78B-1-104.

B. States Changing Jury Size After *Williams*.

The remaining states that permit felony trials with sub-12-member juries made the change after *Williams*. Connecticut was first. In 1971, the Connecticut legislature discussed amending the constitution to reduce the size of juries to six in civil cases. This was to “make the jury system more effective and more efficient.” 14 H.R. Proc., pt. 3, 1971 Sess., at 1036 (Conn.) (remarks of Rep. Carrozzella). <https://collections.ctdigitalarchive.org/node/1603380>. Smaller juries meant not only less time selecting a jury but also ensured that jurors were comfortable in the courthouses, which were not equipped to accommodate large panels. *Id.* at 1035–36. Ultimately, in 1972, the voters of Connecticut approved a constitutional amendment permitting the legislature to establish the size of juries in both civil and criminal cases, and set the minimum number of jurors at six in all but capital cases, which still required 12. Conn. Const. art. I, § 19. The statutes followed the next year. Conn. Gen. Stat. §§ 54-82(c), 54-82b(c) (1973).

Massachusetts also considered a statutory change to permit trials by juries of six beginning in 1971. *Opinion of the Justices*, 271 N.E.2d 335, 336 (Mass. 1971). The state established six-person juries in some district courts in 1972, then expanded that to all divisions of the district court in 1978. *See Commonwealth v. Nicoll*, 897 N.E.2d 1226, 1231 (Mass. 2008). Current state laws provide for six-member juries in certain felony cases tried in district court, and the sentencing exposure is no more than 2.5 years. Mass. Gen. Laws ch. 218, §§ 26, 26A, 27; Mass. Gen. Laws ch. 279, §§ 19, 23; *Commonwealth v. Zawatsky*, 670 N.E.2d 969, 972–73 (Mass. App. Ct. 1996).

In 1972, then-Arizona State Senator Sandra Day O'Connor introduced S.B. 1131. *See* S.B. 1131, 30th Leg., 2nd Reg. Sess. (Ariz. 1972). The bill provided for a 12-member jury in cases punishable by death and six-member juries in other criminal cases. Introduced Version, S.B. 1131, 30th Leg., 2d Reg. Sess. (Jan. 20, 1972), <https://azmemory.azlibrary.gov/nodes/view/304245?showbacklinknav=303128>. It conditioned the enactment on a constitutional amendment being passed by popular vote. *Id.* State senators amended it to expand 12-person juries to cases where potential punishment was death or 30 years or more of imprisonment, and changed all other criminal trials to eight-person juries. Senate Engrossed Version, S.B. 1131, 30th Leg., 2d Reg. Sess. (March 24, 1972). Ultimately, voters approved a constitutional amendment providing a floor of six jurors for cases where sentence exposure was less than 30 years. *1972 Arizona Referendum and Initiative Publicity Pamphlet*, at 11–

12. And the eight-person jury statute became law. *See* 1972 Ariz. Sess. Laws, ch. 94, § 2 (eff. Nov. 7, 1972); Ariz. Rev. Stat. § 21–102(A), (B).

In 1973, a task force formed by the Department of Justice recommended juries of fewer than 12. Nat’l Advisory Comm’n on Crim. Just. Standards and Goals, *Report on Courts*, Standard 4.14, Jury Size and Composition, at 101 (1973). The task force concluded that smaller juries could “provide group deliberation on the issue of guilt, resist outside influences, and provide a fair possibility for obtaining a representative cross section of the community,” and recommended reductions to save time and money. *Id.* Although the federal courts still generally require 12-member juries in criminal cases, in 1983, this Court amended Federal Rule of Criminal Procedure 23 to permit a verdict from 11 jurors if the 12th is excused for good cause after retiring to deliberate. Fed. R. Crim. P. 23(b)(3); *see also* Fed. R. Crim. P. 23 advisory committee’s note to 1983 amendment (relying on *Williams*).

Indiana adopted smaller juries in 1975. The state created a county court system that mandated six-member juries in civil and misdemeanor criminal cases; the state supreme court found it constitutional, citing *Williams*. *See In re Public Law No. 205 & Public Law No. 309*, 334 N.E.2d 659, 662–63 (Ind. 1975); *O’Brien v. State*, 422 N.E.2d 1266, 1268–69 (Ind. Ct. App. 1981). In 1979, the jurisdiction of county courts was extended to include class D felonies. *O’Brien*, 422 N.E.2d at 1268. Now known as a “Level 6” felony, these offenses can result in a prison term of 2.5 years. *See* Ind. Code 35-50-2-7(b). A six-person jury is mandated. Ind. Code 35-37-1-1.

Additionally, outside the felony context, several states with smaller jury trials for misdemeanors expressly adopted changes relying on *Williams*. By way of example, New York’s Court of Appeals altered court procedure in 1970 in response to *Duncan* and *Williams*, and the applicable statute was changed the next year. *See People v. Dargan*, 261 N.E.2d 633, 714 (N.Y. 1970); *see also* N.Y. Laws 1971, ch. 815, § 4. Minnesota altered its applicable statute in 1971. *See Baker v. State*, 590 N.W.2d 636, 638 (Minn. 1999). And Oregon voters altered their constitution in 1972. *See State v. Sagdal*, 343 P.3d 226, 232 (Or. 2015).

In sum, there is no singular path states took to seating smaller juries for felonies and other serious offenses—Louisiana first joined the union with limited jury trials due to its past as a continental European territory, while Utah joined the union with smaller juries reflecting the cost concerns of a rural state in the midst of the 1890s recession. Other states experimented with smaller juries in inferior courts as they organized, or re-organized, their court systems. As Connecticut’s history demonstrates, the tradition of experimentation goes back hundreds of years. This Court’s decision in *Williams* then triggered additional changes, resulting in what is now seven states with sub-12-member juries in felony trials, and 21 more states with smaller juries where the defendant faces more than six months’ incarceration.

II. *Williams* Correctly Held the Sixth Amendment Does Not Require 12-Member Juries in the States.

“In the view of the Court that is considering whether to overrule, the precedent must be

egregiously wrong as a matter of law in order for the Court to overrule it.” *Ramos*, 590 U.S. at 122 (Kavanaugh, J., concurring in part). *Williams*’s reasoning is sound and it is not egregiously wrong.

The Sixth Amendment’s text does not contain a 12-member jury requirement. U.S. Const. amend. VI. *Williams* thoroughly examined the history of the Sixth Amendment, as incorporated by the Fourteenth Amendment, and correctly concluded that history does not require state criminal juries to be composed of 12 members. *See Williams*, 399 U.S. at 92–100; *see also Ramos*, 590 U.S. at 152 (Alito, J., dissenting) (stating *Williams* engaged in a “detailed discussion of the original meaning of the Sixth Amendment jury-trial right”). As *Williams* noted, the “relevant constitutional history casts considerable doubt on the easy assumption in our past decisions that if a given feature existed in a jury at common law in 1789, then it was necessarily preserved in the Constitution.” *Id.* at 92.

Williams rightly decided that—in the face of an ambiguous historical record—it could not conclude that the 12-person jury was a constitutional requirement. 399 U.S. at 102–03. That holding left considerations about the proper number of jurors “to Congress and the states, unrestrained by an interpretation of the Sixth Amendment that would forever dictate the precise number that can constitute a jury.” *Id.* at 103. Indeed, “something more than ambiguous historical evidence is required” before this Court will overturn precedent. *See Gamble v. United States*, 587 U.S. 678, 691 (2019) (internal quotation marks omitted). *Williams* reasonably interpreted the

Sixth Amendment. Amy C. Barrett, *Stare Decisis and Due Process*, 74 U. Colo. L. Rev. 1011, 1058 (2003) (“If a precedent reasonably interprets a constitutional or statutory provision, a successor court should not substitute its judgment for that of the predecessor court.”).

Kian asks the Court to adopt language from *Thompson v. Utah*, 170 U.S. 343 (1898), Pet. Br. at 2, 6, 10, 22, but that is asking too much. In *Thompson*, the Court failed to consider whether the Framers intended “every feature of the jury as it existed at common law—whether incidental or essential to that institution—[to be] necessarily included in the Constitution wherever that document referred to a ‘jury.’” *Williams*, 399 U.S. at 91. *Thompson* did not engage in any originalist analysis at all. Rather, it simply assumed, without citation to authority, that the Framers “were of opinion that life and liberty, when involved in criminal prosecutions, would not be adequately secured except through the unanimous verdict of twelve jurors.” 170 U.S. at 353.

Williams found *Thompson*’s reasoning to be inconsistent with the Constitution’s original meaning. 399 U.S. at 90–92; see also *id.* at 107 (Black, J., concurring in part) (“The broad implications in early cases indicating that only a body of 12 members could satisfy the Sixth Amendment requirement arose in situations where the issue was not squarely presented and were based, in my opinion, on an improper interpretation of that amendment.”). And later cases repeating *Thompson*’s language, “often in dictum,” failed to engage in any meaningful analysis to discern whether the number of jurors was, in fact, an

“essential element” of the jury-trial right. *Id.* at 91–92 (citing *Patton v. United States*, 281 U.S. 276, 288 (1930), *Rasmussen v. United States*, 197 U.S. 516, 519 (1905), and *Maxwell v. Dow*, 176 U.S. 581, 586 (1900)).

Thompson’s Sixth Amendment analysis was not the only way in which that case drifted from the Constitution’s original meaning. Significantly—20 years after *Williams*—the Court expressly overruled *Thompson’s* Ex Post Facto Clause analysis because it was inconsistent “with the understanding of the term ‘*ex post facto* law’ at the time the Constitution was adopted.” *Collins v. Youngblood*, 497 U.S. 37, 47 (1990). While overruling *Thompson*, the Court reaffirmed *Williams*. *Collins*, 497 U.S. at 52 n.4 (noting that *Thompson’s* holding “that the Sixth Amendment requires a jury panel of 12 persons” was rendered “obsolete” by *Williams*).

III. The Stare Decisis Doctrine Compels Adherence to *Williams*.

“*Stare decisis* promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Gamble*, 587 U.S. at 691 (internal quotation marks omitted); see also *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 455 (2015) (“*Stare decisis*—in English, the idea that today’s Court should stand by yesterday’s decisions—is a foundation stone of the rule of law.”) (internal quotation omitted). “[A] departure from precedent demands special justification.” *Gamble*, 587 U.S. at 691 (internal quotation marks omitted).

Generally, when considering whether to apply stare decisis, this Court considers “the quality of [the past decision’s] reasoning, the workability of the rule it established, its consistency with other related decisions, and ... reliance on the decision.” *Knick v. Township of Scott*, 588 U.S. 180, 203 (2019) (internal quotation omitted). In addition to *Williams* being correctly decided, the other factors weigh strongly in favor of upholding *Williams*.

A. This Court Has Repeatedly Affirmed *Williams* Throughout the Past Half-Century.

Kian contends that *Williams* is an outlier, Pet. Br. at 29, but this Court’s precedent shows the opposite. Unlike the plurality opinion in *Apodaca v. Oregon*, 406 U.S. 404 (1972), this Court has not been “studiously ambiguous” or “inconsistent” about what *Williams* held. *Ramos*, 590 U.S. at 95–96.

In the 56 years since *Williams* was decided, this Court has reaffirmed and extended its holding on several occasions. See *United States v. Gaudin*, 515 U.S. 506, 510 n.2 (1995) (endorsing *Williams*’s analysis while holding that the jury’s role in determining guilt, not the number of jurors, is indispensable to the right to trial by jury); *Burch v. Louisiana*, 441 U.S. 130, 134–37 (1979) (detailing development of *Williams* and related cases); *Ballew v. Georgia*, 435 U.S. 223 (1978) (expressly reaffirming *Williams* while holding constitutional minimum jury size is six); *Ludwig v. Massachusetts*, 427 U.S. 618, 625–26 (1976) (discussing *Williams* and upholding constitutionality of Massachusetts’s two-tiered jury system).

Civil jury trials in the federal courts rest on a foundation built by *Williams*. In the wake of *Williams*, more than 50 federal district courts adopted local rules providing for six-person civil juries. See *Colgrove v. Battin*, 413 U.S. 149, 150 n.1 (1973); H. Richmond Fisher, *The Seventh Amendment and the Common Law: No Magic in Numbers*, 56 F.R.D. 507, 535–42 (1973) (cited in footnote 1 of *Colgrove*).

Colgrove considered a challenge to the District of Montana’s six-person civil jury rule. 413 U.S. at 149–50. Relying heavily on *Williams*, the Court held that just as the Sixth Amendment does not constitutionalize a right to a 12-person jury in criminal cases, neither does the Seventh Amendment in civil cases. *Id.* at 156–58.

In 1991, this Court amended Federal Rule of Civil Procedure 48 to allow six-person juries nationwide. See Fed. R. Civ. P. 48(a). Given *Colgrove*’s heavy reliance on *Williams*, overruling *Williams* could call into doubt a great number of federal civil jury verdicts—and current widespread practice—nationwide.

This Court has also relied on *Williams* to require a minimum of six people on a criminal jury. In *Ballew* (five years after *Colgrove*), the Court restated *Williams*’s holding and endorsed it again: “Rather than requiring 12 members, [] the Sixth Amendment mandate[s] a jury only of sufficient size to promote group deliberation, to insulate members from outside intimidation, and to provide a representative cross-section of the community.” *Ballew*, 435 U.S. at 230 (citing *Williams*, 399 U.S. at 100). The Court then noted that *Williams* and *Colgrove* “generated a

quantity of scholarly work on jury size.” *Id.* at 231. But those writings did not “draw or identify a bright line below which the number of jurors would not be able to function as required by the standards enunciated in *Williams*.” *Id.* at 231–32. However, “they raise[d] significant questions about the wisdom and constitutionality of a reduction below six.” *Id.* at 232. The Court thoroughly examined those concerns, “reaffirm[ed] [its] holding in *Williams*,” and decided the post-*Williams* studies compelled a conclusion that “the purpose and functioning of the jury in a criminal trial is seriously impaired, and to a constitutional degree, by a reduction in size to below six members.” *Id.* at 232–39.

Because this Court has not only reaffirmed but extended *Williams*, stare decisis provides powerful support for maintaining *Williams* intact. See *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798–99 (2014) (affirming precedent when it “was no one-off” and it had been subsequently relied on); see also Barrett, 74 U. Colo. L. Rev. at 1069 (“The fact that a long line of predecessor courts has affirmed and reaffirmed a proposition is a valid indication that the proposition is sound.”).

B. *Williams* Has Not Caused Significant Negative Jurisprudential or Real-World Consequences.

Kian contends *Williams* has caused jurisprudential difficulties and negative real-world consequences. Pet. Br. at 34–37. Not so. In conducting this inquiry, courts “may consider jurisprudential consequences,” such as “workability,” “consistency and coherence with other decisions,” and “the precedent’s

real-world effects on the citizenry, not just its effects on the law and the legal system.” *Ramos*, 590 U.S. at 122 (Kavanaugh, J., concurring in part).

As an initial matter, *Williams*’s holding that 12-member juries are not mandated by the Sixth Amendment is workable, which Kian does not dispute. *Williams* and its progeny allow states flexibility in trying criminal jury trials by deciding whether to empanel 6, 8, 12, or some other number of jurors. *Williams*’s rule is clear and “can be understood and applied in a consistent and predictable manner.” *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 280–81 (2022). Indeed, both the states and federal courts have readily adapted to *Williams* in a manner that leads to predictable jury sizes.

Similarly, in 1983, this Court—relying on *Williams*—approved Federal Rule of Criminal Procedure 23(b)(3), which allows a jury of 11 to return a verdict if there is good cause to excuse a juror during deliberation. See Fed. R. Crim. P. 23(b), Advisory Comm. Note to 1983 Amendments. The Advisory Committee specifically stated that “the alignment of the Court and especially the separate opinion by Justice Powell in [*Apodaca*] makes it at best uncertain whether less-than-unanimous verdicts would be constitutionally permissible in federal trials,” but “it hardly follows that a requirement of unanimity of a group slightly less than 12 is similarly suspect.” *Id.* (internal citation omitted). Consistent with Rule 23(b)(3), federal courts have routinely upheld 11-person verdicts. See *United States v. Golobic*, 170 F.4th 515, 518–19 (6th Cir. 2026) (upholding 11-person verdict under Rule 23(b)(3)); *United States v.*

Paulino, 445 F.3d 211, 225–26 (2d Cir. 2006) (same); *United States v. Hively*, 437 F.3d 752, 766–67 (8th Cir. 2006) (same); *United States v. Geffrard*, 87 F.3d 448, 450–52 (11th Cir. 1996) (same); *United States v. Acker*, 52 F.3d 509, 515–16 (4th Cir. 1995) (same); *United States v. Egbuniwe*, 969 F.2d 757, 760–63 (9th Cir. 1992) (same); *United States v. O’Brien*, 898 F.2d 983, 986 (5th Cir. 1990) (same); *see also United States v. Johnson*, 117 F.4th 28, 40–43 (2d Cir. 2024) (holding that Rule 23(b)(3) error does not affect a constitutional or substantial right).

Williams also did not create other jurisprudential difficulties. Kian points to *Ballew*, but acknowledges that “*Ballew* declined to overrule *Williams*,” Pet. Br. at 31–32. The only concern the concurring Justices expressed with the majority’s approach was that the validity and methodology of the statistical studies the Court considered had not been subjected to the adversarial process, and those Justices questioned the wisdom of relying on them at all. *Ballew*, 435 U.S. at 245–46 (Powell, J., concurring). Notably, the same Justices maintained the Sixth Amendment should not have been fully incorporated in the first place. *Id.*

Further, Kian cannot show that *Williams* has resulted in other negative real-world consequences. *See Ramos*, 590 U.S. at 122 (Kavanaugh, J., concurring in part). The non-unanimous juries permitted by *Apodaca* allowed for convictions where unanimous juries would have hung or at least deliberated more, essentially “sanction[ing] the conviction at trial or by guilty plea of some defendants who might not be convicted under the proper constitutional rule.” *Id.* at 126 (Kavanaugh, J.,

concurring in part). No study was necessary to illustrate that real-world consequence.

Here, Kian and several amici point to academic studies, and to *Ballew*, but these arguments are speculative at best. Kian further alleges, without evidence, that *Williams* “does real harm to public perception of the jury as a legitimate, representative body,” Pet. Br. at 35. But in Connecticut and Arizona, it was the voters who approved the reduction in jury sizes in 1971 and 1972. And states like Utah and Florida have continuously used sub-12-person juries since the late 19th century; no one alive in these states today has ever known another system. If there truly were widespread public concerns about sub-12-person juries, as Kian suggests, then surely Kian would be able to offer some evidence of the existence of that public concern over the past century. He offers none.

**C. The States’ Significant Reliance
Interests Support Adherence to
Williams.**

Finally, stare decisis counsels against overruling *Williams* because doing so would upset significant reliance interests of not only Florida but at least six other states, and many more if the Court were to adopt Petitioner’s expanded framing of the question presented to include jury trials for “serious crimes.” *Cf. Ramos*, 590 U.S. at 108–09 (concluding reliance interests were not as weighty when “only two States are potentially affected by our judgment”).

1. Overturning *Williams* would require an extensive legislative response.

Stare decisis has added force when the legislature has acted in reliance upon a previous decision because overruling such a decision would require an extensive legislative response. *See Hilton v. S.C. Pub. Rys. Comm’n*, 502 U.S. 197, 202 (1991). As detailed above, multiple state legislatures (and state electorates) amended their statutes or constitutions in reliance on *Williams*. Revisiting *Williams* and imposing a 12-member jury requirement would invalidate state constitutional provisions or statutes in at least six other states, and potentially up to 28 states. Such sweeping invalidation of state laws would require a substantial legislative overhaul for a majority of jurisdictions.

Additionally, pursuant to 28 U.S.C. § 2074, Congress might need to approve an amendment to Rule 23, Federal Rules of Criminal Procedure, which permits the district court to accept a verdict from a jury of 11, “even without a stipulation by the parties.” At least two other jurisdictions with similar provisions would also require amendments to those rules. *See* D.C. Super. Ct. R. Crim. P. 23(b)(3); Mass. Gen. Laws ch. 234A, § 68. Kian argues this Court need not resolve the constitutionality of Rule 23 because it involves procedures applicable to emergencies but provides no authority to support that assertion. Pet. Br. at 13 n.4. Nor does he explain why a constitutional provision would carry less force after the jury is sworn, but before it returns its verdict, particularly when the rule

allows the trial court to order an 11-person jury without the consent (or waiver) of the defendant.

2. Overruling *Williams* would trigger significant fiscal impacts.

Overruling *Williams* would also require another legislative response from affected jurisdictions to address the fiscal impacts of increasing jury sizes. At least three fiscal impacts would result from overturning *Williams*: (1) courthouses built for juries of fewer than 12 would need to be reconstructed to accommodate larger juries, (2) juror compensation funds would need additional appropriations, and (3) affected jurisdictions would see an immediate increase in retrials and post-conviction relief litigation.

1. In affected jurisdictions, many state and municipal courtrooms are simply not built to handle 12-person juries for every serious offense. Some amici suggest otherwise, pointing to the states' practice of trying at least some cases by a jury of 12 or seating alternate jurors. *See, e.g.*, Brief Amicus Curiae of the Utah Association of Criminal Defense Lawyers in Support of Petitioner, at 20–21; Amicus Brief of the Florida Association of Criminal Defense Lawyers and the Florida Public Defender Association, Inc. in Support of Petitioner, at 24–25. But the fact that each state holds at least some 12-person trials does not mean that every courtroom is built for a jury of 12. This is especially true for courthouses designated to handle misdemeanor offenses, and for states like Utah and Florida, which reserve 12-person juries only for a handful of capital trials each year. *See, e.g.*, State of Utah Judiciary, *Utah Judicial Facility Design*

Standards 100 (2021), <https://perma.cc/JDJ2-3BTA> (providing that the “standard jury box” in Utah courthouses “should accommodate eight jurors” and that “[o]nly one courtroom in each facility needs to accommodate a 14 person jury box”).

Nor does the practice of seating alternate jurors necessarily mean every courtroom is equipped to handle 12-person juries. States are not seating up to six alternate jurors for every trial. Rather, the common practice is to seat one to two alternates. *See* William R. Pabst, Jr., *Statistical Studies of the Costs of Six-Man Versus Twelve-Man Juries*, 14 Wm. & Mary L. Rev. 326, 328 (1972) (“In practice, the number selected for the six-man jury was either seven or eight (six, plus one or two alternates)[.]”).

In many states, at least some portion of the jury boxes and deliberation rooms likely cannot accommodate 12-person juries, plus alternates. Jury assembly rooms built in anticipation of smaller pools of prospective jurors may likewise struggle to accommodate larger jury pools required for a 12-person jury. Even spectator seating may need to be adjusted in some courtrooms to accommodate larger groups of prospective jurors during jury selection. *See, e.g.*, Off. of the State Court Adm’r, *19th Judicial District of Colorado Weld County Facility and Space Needs Assessment with 20-Year Projections*, App. Section C: Colo. Jud. Space Standards and Guidelines at 104 (2026), <https://perma.cc/5S7G-9MYW> (“The size of the spectator seating area is often determined by the size of the jury panel that needs to be seated during voir dire.”).

In this respect, the reliance factors at issue here are far more substantial than in *Ramos*. There, this Court reasoned that Louisiana and Oregon had not claimed “anything like the prospective economic, regulatory, or social disruption litigants seeking to preserve precedent usually invoke.” *Ramos*, 590 U.S. at 84. And this Court noted that “[n]o one, it seems, has signed a contract, entered a marriage, purchased a home, or opened a business based on the expectation that, should a crime occur, at least the accused may be sent away by a 10-to-2 verdict.” *Id.*

Here, a decision contrary to *Williams* would likely require extensive changes to many courthouses. A courthouse is a generational investment, reflecting the community’s commitment to the justice system and its expectation that the courthouse will serve for decades to come. Since *Williams*, federal, state, county, and municipal courthouses across the country have been built with at least some courtrooms designed for juries of fewer than 12. *See, e.g.*, Admin. Off. of the U.S. Courts, U.S. Courts Design Guide 132 (1991), <https://perma.cc/5F6G-YR98> (recommending that “[i]n the 6-member jury trial courtrooms, 8 juror seats should be provided in the jury box”).

In fact, even state courthouses built before *Williams* were not necessarily designed with the Sixth Amendment right in mind because this Court did not hold that the Sixth Amendment applied to the states until *Duncan* in 1968. *See, e.g.*, 14 H.R. Proc., pt. 3, 1971 Sess., at 1035–37 (Conn.) (remarks by two representatives in support of reducing juror size to alleviate current problems with small rooms, with one representative describing “[t]he conditions the jurors

are asked to serve under [as] almost ... criminal”). If this Court overrules *Williams* and holds that all serious offenses require 12-person juries, the fiscal impact of rebuilding courthouses to accommodate those larger juries will likely be substantial. This fiscal impact stands in stark contrast to *Ramos*, where overturning *Apodaca* had no effect on the infrastructure of the affected states.

2. State legislatures will need to either appropriate additional funds to cover the increased costs to seat larger juries or impose higher court fees to account for the additional costs in administering jury trials.

Because of Connecticut’s unique jury selection process, which was adopted after jury sizes were reduced from 12 to 6, the cost to Connecticut will be significant. In Connecticut, there is a constitutional and statutory guarantee to individually voir dire each venireperson outside the presence of other venirepersons. *See* Conn. Const. art I, § 19 (“The right to question each juror individually by counsel shall be inviolate”); Conn. Gen. Stat. § 54-82f. These rights were first enshrined in Connecticut’s state constitution following the 1972 constitutional amendment reducing jury sizes to six persons. Wesley W. Horton, *The Connecticut State Constitution* 91 (Oxford University Press, 2d ed. 2012). Given this required procedure and that there is no fixed time limit for voir dire, *see State v. Roberson*, 376 A.2d 1087, 1088 (Conn. 1977), jury selection can take parties multiple days, even weeks, to select six-person juries, and multiple weeks, if not months, to select twelve-person juries, *see, e.g., State v. Komisarjevsky*,

258 A.3d 1166, 1187 (Conn. 2021) (noting that jury selection “began on March 16, 2011, and ended on June 14, 2011”). Increasing the size of juries in Connecticut will slow criminal proceedings, utilize more judicial resources, and delay parties’ access to justice.

Requiring 12-person juries will impose even greater burdens on rural counties, many of which already struggle to empanel juries in high-profile cases. For example, in a sexual assault case in Beaver County, Utah, which had a population of just 6,005, the Utah Court of Appeals ordered retrial in a different venue because “a few of the jurors knew one another, several jurors knew either the prosecutor or one of the State’s witnesses, and a majority of the jurors knew [the victim’s] family.” *State v. Stubbs*, 84 P.3d 837, 840 (Utah Ct. App. 2004), *aff’d*, 123 P.3d 407 (Utah 2005). And Beaver County is not alone. According to recent census data, many states have counties or parishes with populations of less than 10,000, including: Minnesota (21 counties), Oklahoma (20), Mississippi (15), West Virginia (12), Utah (9), Louisiana (8), Michigan (8), New Mexico (8), Washington (4), and Arizona (1). *See* U.S. Census Bureau, County Population Totals and Components of Change: 2020-2025 2025, <https://www.census.gov/data/tables/time-series/demo/popest/2020s-counties-total.html> (providing each state’s county populations). Kian insists that 12-person juries are necessary to ensure that juries “include a true cross-section of the community.” Pet. Br. at 35. But ironically, his rule is likely to *decrease* citizen representation by forcing more changes of

venue away from small, tight-knit communities where assembling juries is already a significant challenge.

3. Overruling *Williams* would also initiate a wave of litigation. At a minimum, all defendants convicted of a serious offense by a jury of fewer than 12 whose cases are still on direct appeal would be entitled to press this claim. Utah currently has approximately 254 non-capital felony cases which were tried before eight-person juries and are currently on direct appeal, and which would therefore be similarly threatened by overruling *Williams*. Arizona estimates approximately 180 cases currently on direct appeal could be similarly affected (about 40% of the criminal felony appeals). Connecticut estimates such a ruling could affect approximately 70% of its felony cases. And retrials could be required not only in states that have felony convictions, but also the states that have fewer than 12-person juries for misdemeanor offenses carrying a sentence of more than six months' imprisonment.

The *Ramos* majority dismissed warnings from the dissent that overturning *Apodaca* would “provoke a ‘crushing’ ‘tsunami’ of follow-on litigation,” as an “overstatement ... intended for dramatic effect.” *Ramos*, 590 U.S. at 108. It further dismissed warnings that if its ruling were made retroactive, finalized convictions could be overturned through collateral review. *Id.* at 109. But the last six years have confirmed Oregon’s prediction that hundreds of cases could be reversed. Although this Court ruled that *Ramos* was not retroactive under its own retroactivity test, see *Edwards v. Vannoy*, 593 U.S. 255 (2021), the Oregon Supreme Court found the holding *was*

retroactive, *see Watkins v. Ackley*, 523 P.3d 86, 103 (Or. 2022).

Recognizing *Watkins* would call into question hundreds of convictions, the Oregon Legislature appropriated about \$4.1 million toward litigation related to cases impacted by *Watkins* and *Ramos* and directed the Oregon Public Defense Commission to provide a report on caseloads and costs. *See* Or. Leg. Fiscal Off., 2025 Joint Comm. on Ways and Means, Analysis, Pub. Def. Comm., *Nonunanimous Jury Convictions*, <https://perma.cc/5C52-57BA>. The commission’s report identified “649 cases or petitions” and calculated “\$2,532,358 in costs related to the [post-conviction relief] cases under *Watkins* or *Ramos*.” *Id.* Notably, these estimates did not account for prosecution or judicial expenditures, and did not capture the expenditures for retrials, which the defense commission treated as “newly filed cases.” *Id.*

The Oregon Legislature also ordered a similar report from the Oregon Department of Justice. *See* Or. Leg. Fiscal Off., 2025 Joint Comm. on Ways and Means, Analysis, Dep’t of Justice, *Nonunanimous Jury Conviction Caseloads*, <https://perma.cc/75RC-MH2T>. The department reported that as of February 2025, more than 700 direct appeals raised claims related to *Ramos*, and almost 500 cases were reversed at least in part. *Id.* at 3. Further, the issue was raised in approximately 850 post-conviction petitions. *Id.*

Unlike *Ramos*, which involved convictions from just two states, here the Court faces a far larger number of convictions that could be unsettled if it overturns *Williams*. Retrial may not be possible in every case, especially if the holding is made

retroactive by either this Court or a state supreme court. Key witnesses may no longer be available, evidence may not have been retained once a conviction was deemed final, or a victim may refuse to testify to avoid retraumatization. *See Summerville v. Warden*, 641 A.2d 1356, 1371 (Conn. 1994) (recognizing “the fact that in many cases an order for a new trial may in reality reward the accused with complete freedom from prosecution because of the debilitating effect of the passage of time on the state’s evidence”). These are not trivial concerns. *Cf.* Ariz. Const. art. II, § 2.1 (providing that victims have a right to “prompt and final conclusion of the case after the conviction and sentence”); Conn. Const. art. I, § 8(b)(2) (providing that victims have a “right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged”); Utah Code Ann. § 77-37-3(1)(h) (“Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process.”).

IV. States Should Determine Procedures for Criminal Jury Trials, Including the Size of Juries.

Williams’s holding also comports with the settled proposition that states should be given flexibility to administer their criminal justice systems. *See Oregon v. Ice*, 555 U.S. 160, 170 (2009) (“Beyond question, the authority of States over the administration of their criminal justice systems lies at the core of their sovereign status.”); *Ludwig*, 427 U.S. at 630 (“The modes of exercising federal constitutional rights have traditionally been left, within limits, to state specification.”).

The Sixth Amendment did not reduce the right to a jury trial to an enumerated list of procedures to follow. The states must, of course, adhere to the core right of a jury trial, but states should not be bound by procedures simply because they may have been commonplace when the Sixth Amendment was adopted. *Williams*, 399 U.S. at 100–03 (“To read the Sixth Amendment as forever codifying a feature so incidental to the real purpose of the Amendment is to ascribe a blind formalism to the Framers which would require considerably more evidence than we have been able to discover in the history and language of the Constitution or in the reasoning of our past decisions.”).

If this Court were to hold that the Sixth Amendment requires 12-member juries then what other common law procedures must states follow? *See Ramos*, 590 U.S. at 153–54 (Alito, J., dissenting) (“Unless one is willing to freeze in place late 18th-century practice, it is necessary to find a principle to distinguish between the features that were incorporated and those that were not.”). Surely states are not required to mimic all procedures from a jury trial at the founding.

For example, the number of peremptory challenges “was settled by the common law at thirty-five.” *United States v. Wood*, 299 U.S. 123, 145 (1936) (internal quotation marks omitted). But states have developed different procedures and rules governing peremptory challenges. In fact, Arizona has become the first state to abolish peremptory challenges. Ariz. Sup. Ct. Order R-21-0020 (Aug. 30, 2021). This Court has previously recognized “it is for the State to determine the number of peremptory challenges

allowed and to define their purpose and the matter of their exercise.” *Ross v. Oklahoma*, 487 U.S. 81, 89 (1988). If *Williams* is overturned, does this start to call into question this other precedent?

And what about the common law practice of juries *de medietate linguae*—meaning “in civil and criminal trials involving minorities, of juries consisting half of natives and half of foreigners.” See Deborah A. Ramirez, *The Mixed Jury and the Ancient Custom of Trial by Jury De Medietate Linguae: A History and a Proposal for Change*, 74 B.U. L. Rev. 777, 781–82, 789–94 (Nov. 1994). This “ancient rule” “no longer obtains.” *Wood*, 299 U.S. at 145. But must it be revived because it was a feature of a jury trial at common law?

At common law, parties were disqualified from testifying in their own cases. See Joel N. Bodansky, *The Abolition of the Party-Witness Disqualification: An Historical Survey*, 70 Ky. L. J. 91, 91–93 (1981–82). This rule was abolished between the late 1840s and 1890s, see Kenneth S. Abraham, *The Common Law Prohibition on Party Testimony and the Development of Tort Liability*, 95 Va. L. Rev. 489, 495–96 (2009); was that unconstitutional?

Common law jury trials included denying jurors “meat, drink, fire, [and] candle” until the jury unanimously returned a verdict. 3 William Blackstone, *Commentaries* *375. And trial judges summarized the evidence and told “jurors which witnesses they found most credible, and why.” David A. Sklansky, *Evidentiary Instructions and the Jury as Other*, 65 Stan. L. Rev. 407, 413 (2013). Kian does not offer a limiting principle for why the states must follow certain features of common law jury trial but not others. See

Ramos, 590 U.S. at 153–54 & n.26 (Alito, J., dissenting) (stating the *Ramos* majority did not “identify any principle” for determining which common law jury trial features were incorporated by the Sixth Amendment).

Affirming *Williams*, thus, also reiterates that states retain control over the procedures of their criminal trials. As this Court has oft repeated, “the Constitution ‘has never been thought [to] establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure.’” *Smith v. Robbins*, 528 U.S. 259, 274 (2000) (quoting *Spencer v. Texas*, 385 U.S. 554, 564 (1967)).

CONCLUSION

This Court should affirm.

October 5, 2026	Respectfully submitted,
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