Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **21st day of October, 2022** are as follows:

BY Crichton, J.:

2021-KP-01893 STATE OF LOUISIANA VS. REGINALD REDDICK (Parish of Plaquemines)

REVERSED. SEE OPINION.

Weimer, C.J., additionally concurs and assigns reasons.
Genovese, J., concurs in part and dissents in part and assigns reasons.
McCallum, J., additionally concurs and assigns reasons.
Griffin, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2021-KP-01893

STATE OF LOUISIANA

VS.

REGINALD REDDICK

ON SUPERVISORY WRIT TO THE 25TH JUDICIAL DISTRICT COURT, PARISH OF PLAQUEMINES

CRICHTON, J.

We granted the writ application in this case to resolve a circuit split[1] as to whether the new rule announced by the Supreme Court in *Ramos v. Louisiana*, 590 U.S. ---, 140 S.Ct. 1390 (2020), applies retroactively to cases on state collateral review. Applying the framework of *Teague v. Lane*, 489 U.S. 288 (1989), but using the authority expressly reserved to the states by the Supreme Court to determine which new rules of criminal procedure will be applied retroactively on state collateral review, we find that the *Ramos* jury unanimity rule does not apply retroactively in Louisiana.

In making this decision, we are mindful of the strong reliance interests at stake and the high administrative burden that many retrials of final convictions would impose on our system of justice. We further note that in voting to amend the state Constitution to require unanimity in jury verdicts, the citizens of this state chose to

[1] Since *Edwards v. Vannoy*, 593 U.S. ---, 141 S.Ct. 1547 (2021), described further below, Louisiana's First, Third, and Fifth Circuit Courts of Appeal have each held that *Ramos* does not apply retroactively to cases on collateral review or denied writ applications from defendants seeking to apply *Ramos* retroactively. *See State v. Ross*, 21-1602, (La. App. 1 Cir. 3/28/22) (unpub'd), 2022 WL 899428; *State v. Nelson*, 21-461 (La. App. 3 Cir. 11/10/21), 330 So. 3d 336; *State v. Mollette*, 22-13 (La. App. 5 Cir. 1/25/22) (unpub'd), 2022 WL 219903. Before *Edwards* was decided, the Second Circuit found *Ramos* applies only to matters on direct review. *State v. Sewell*, 53,571, (La. App. 2 Cir. 11/18/20), 307 So.3d 362, *writ denied*, 20-1457 (La. 4/12/22). The Second Circuit has not issued any decisions addressing the retroactive application of *Ramos* since *Edwards* was decided. The Fourth Circuit has held *Ramos* does apply retroactively, even after *Edwards* was decided. *See State v. Waldron*, 21-0512 (La. App. 4 Cir. 1/24/22), 334 So. 3d 844.

do so with prospective effect only. Acts 2018, No. 722, § 1, approved Nov. 6, 2018, eff. Dec. 12, 2018. This solemn decision of the people should not be disturbed by the judiciary, whose role as a co-equal branch of government is to interpret the laws, not to announce policy more rightfully reserved to the legislature. La. Const. art. II, §§ 1-2.

PROCEDURAL HISTORY

By a vote of ten to two, a jury convicted Reginald Reddick ("respondent") of second-degree murder for the killing of Al Moliere in 1993.[2] He was sentenced to life imprisonment, without the possibility of parole. His conviction became final in 1998. *State v. Reddick*, 97-1155 (La. App. 4 Cir. 2/11/98), 707 So. 2d 521, *writ denied*, 98-0664 (La. 9/18/98), 724 So. 2d 755. At the time of respondent's trial, the Louisiana Constitution required only ten out of 12 jurors to concur to render a verdict. La. Const. art. I, § 17 (1974). This rule had been upheld as constitutional in *Apodaca v. Oregon*, 406 U.S. 404 (1972) and *Johnson v. Louisiana*, 406 U.S. 356 (1972), and was the law in Louisiana until the Constitution was amended in 2018 to require unanimous verdicts in prospective cases, *i.e.*, those in which the offense was committed on or after January 1, 2019. Acts 2018, No. 722, § 1, approved Nov. 6, 2018, eff. Dec. 12, 2018.

In *Ramos v. Louisiana*, 590 U.S. ---, 140 S.Ct. 1390 (2020), the United States Supreme Court overturned *Apodaca* and held that the Sixth Amendment right to a jury trial,[3] as incorporated against the states by the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense and this requirement

[2] A witness at trial testified that he saw respondent shoot the victim after respondent demanded money from him. Respondent's first conviction by a unanimous jury was overturned on appeal. *State v. Reddick*, 94-2230 (La. App. 4 Cir. 2/29/96), 670 So. 2d 551, *writ denied*, 96-0799 (La. 9/13/96), 679 So. 2d 103.

[3] The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." U.S. Const. amend. VI.

applies equally to state and federal criminal trials. 140 S. Ct. at 1395-96. This Court thereafter applied *Ramos* to cases on direct review, pursuant to *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). *See*, *e.g.*, *State v. Cole*, 19-1733 (La. 10/6/20), 302 So. 3d 524 ("[Cole's] convictions were not final when *Ramos* was decided, and therefore the holding of *Ramos* applies to any non-unanimous verdicts in these proceedings.") (citation omitted).

Because his conviction and sentence were final[4] when the Supreme Court decided *Ramos*, respondent filed an application for post-conviction relief on March 30, 2021, requesting retroactive application of the *Ramos* rule to his conviction. While respondent's application was pending before the district court, in *Edwards v. Vannoy*, 593 U.S. ---, 141 S.Ct. 1547 (2021), the Supreme Court declined to apply the new rule announced in *Ramos* retroactively to final convictions on federal habeas review. Nevertheless, the district court held *Ramos* applied retroactively and granted relief. The appellate court declined to review the decision. *State v. Reddick*, 21-0589 (La. App. 4 Cir. 11/18/21) (unpub'd). We granted the state's writ application. *State v. Reddick*, 21-1893 (La. 2/15/22), 332 So. 3d 1173.

LEGAL BACKGROUND

This case was preceded by decades of development of two separate strains of constitutional jurisprudence: the interpretation of the Sixth Amendment right to an impartial jury and the retroactive application of new criminal rules. In *Ramos* and *Edwards*, these two strains came together and ultimately led to respondent's application.

[4] No party here argues that respondent's conviction and sentence are not "final" for purposes of collateral review analysis.

1. Retroactivity of New Criminal Rules

Retroactivity jurisprudence is concerned "not with the question whether a constitutional violation occurred, but with the availability or nonavailability of remedies." *Danforth v. Minnesota*, 552 U.S. 264, 290-91 (2008). In other words, a determination of retroactivity is not a determination of whether a "violation occurred." In *Ramos,* the Supreme Court announced that all nonunanimous guilty verdicts violated the Sixth Amendment. The question in a retroactivity analysis is whether that violation will be remedied in cases where the conviction was final when the case announcing the newly-recognized right was decided.

In *Teague v. Lane*, 489 U.S. 288 (1989), the Supreme Court set forth a new framework for retroactivity analysis in cases on federal habeas review and reflected that Court's concerns for federalism, comity, and finality. *See also Withrow v. Williams*, 507 U.S. 680, 699 (1993) (O'Connor, J., concurring in part and dissenting in part) (discussing the "prudential concerns" of "equity and federalism" articulated in *Teague*). The inquiry announced in *Teague* is multi-step and begins by distinguishing between old and new rules.[5] With respect to new constitutional criminal rules in the federal habeas context, the *Teague* Court explained: "Unless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced." *Teague*, 489 U.S. at 310. The Supreme Court then articulated two exceptions to this prohibition: (i) substantive rules that "prohibit[] a certain category of punishment for a class of defendants because of their status or offense," and (ii) "'watershed rules of criminal procedure' implicating the

[5] The first step of the *Teague* inquiry requires the federal court to determine the date on which a conviction became final, because new criminal rules apply to all cases on direct review, *i.e.*, not those that are not "final." *Griffith*, 479 U.S. at 328. *See also Teague*, 489 U.S. at 304. Next, the court must consider whether a state court considering a claim when it became final would be compelled by then-existing precedent to conclude the rule sought was required by the Constitution. If not, then the rule is considered new, in which case the court must determine whether the rule falls within one of the two exceptions allowing retroactive application. *Teague*, 489 U.S. at 311.

fundamental fairness and accuracy of the criminal proceeding." *Saffle v. Parks*, 494 U.S. 484, 494-95 (1990) (citation omitted) (explaining *Teague* analysis). Relevant to this case is *Teague*'s second exception, which the Court later explained is "extremely narrow" and applies only when, among other factors, the new rule alters "our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton v. Bockting*, 549 U.S. 406, 417 (2007) (citation and quotation omitted).

In 1992, Louisiana adopted *Teague*'s multi-step framework to determine whether new rules of constitutional criminal law will be applied retroactively to cases on collateral review in Louisiana. *State ex rel. Taylor v. Whitley*, 606 So. 2d 1292, 1297 (La. 1992) (noting that the considerations of finality recognized in *Teague* are "equally applicable in state proceedings as well as federal proceedings").

In *Danforth v. Minnesota*, 552 U.S. 264 (2008), the Court clarified that states could give greater retroactive effect to new rules in the state post-conviction context than what the Supreme Court affords in the federal habeas context. *Id.* at 282 ("[T]he *Teague* decision limits the kinds of constitutional violations that will entitle an individual to relief on federal habeas, but does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed 'nonretroactive' under *Teague*."). This makes sense, as the concerns of comity and federalism that informed *Teague* are not present when a state court is reviewing a case on state collateral review. The Supreme Court itself recognized this tension in *Danforth*, explaining that the federal interest in uniformity

> does not outweigh the general principle that States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees. The fundamental interest in federalism that allows individual States to define crimes, punishments, rules of evidence, and rules of criminal and civil procedure in a variety of different ways—so long as they do not violate the Federal Constitution—is not otherwise limited by any general, undefined federal interest in uniformity.

552 U.S. at 280. The Supreme Court also pointed out: "If anything, considerations of comity militate in favor of allowing state courts to grant habeas relief to a broader class of individuals than is required by *Teague*." *Id.* at 279-80.

In this sense, *Danforth* made clear that *Teague* provides a floor for when a new rule of criminal law must be applied retroactively, with a state nonetheless free to adopt its own broader test for requiring the retroactive application of a new federal or state constitutional rule. *See id*. at 289-291 ("A decision by this Court that a new rule does not apply retroactively under *Teague* does not imply that there was no right and thus no violation of that right at the time of trial—only that no remedy will be provided ***in federal habeas courts***.") (emphasis added). Eight years after *Danforth*, in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Supreme Court confirmed that state courts, like federal courts "must give retroactive effect to new substantive rules of constitutional law." *Id.* at 198.

Particularly pertinent to this case, in *Edwards*, 141 S.Ct. 1547, the Supreme Court held that *Ramos* does not apply retroactively to cases on federal habeas review, as it was not a watershed rule of criminal procedure falling within *Teague*'s second exception. 141 S.Ct. at 1559. The Court reasoned that the rule announced in *Ramos* was similar to rules announced in earlier cases, which were likewise "momentous and consequential" and "fundamentally reshaped criminal procedure throughout the United States," but were not found to be retroactive. *Id.* The Supreme Court pointed to decisions in which it declined to retroactively apply "momentous" rules, including *Duncan v. Louisiana*, 391 U.S. 145 (1968) (finding a constitutional right to a jury trial in a state criminal case); *Batson v. Kentucky*, 476 U.S. 79 (1986) (remedying intentional discrimination in the jury selection process); and *Crawford v. Washington*, 541 U.S. 36 (2004) (restricting use of hearsay evidence against criminal defendants pursuant to the Sixth Amendment).

The Supreme Court, however, did not end its analysis there. The Court noted that because it had never found a new rule to fit within *Teague*'s watershed exception, the exception was "moribund" and "retain[ed] no vitality." *Edwards*, 141 S.Ct. at 1560. It then held: "New procedural rules do not apply retroactively on federal collateral review." *Id.* at 1560. Nevertheless, the Court made clear: "The *Ramos* rule does not apply retroactively on ***federal*** collateral review. States remain free, if they choose, to retroactively apply the jury-unanimity rule as a matter of state law in state post-conviction proceedings." *Id.* at 1559 n.6 (emphasis in original) (citing *Danforth*, 552 U.S. at 282).

In short, Supreme Court jurisprudence now provides that this Court must apply ***all*** new rules to cases on direct review (pursuant to *Griffith*) and must apply ***all*** new substantive rules to cases on collateral review (pursuant to *Teague* and *Montgomery*). The only choice remaining for states is whether and how to apply new rules of criminal procedure to cases on state collateral review.

2. Sixth Amendment Right to Conviction by a Unanimous Jury

An understanding of the historical and jurisprudential development of the Sixth Amendment right to a jury trial is also relevant to our decision in this case. Louisiana's constitutional provision permitting nonunanimous verdicts arose in the late 1800s. After ratification of the Fourteenth Amendment and passage of the Civil Rights Act of 1875, the Supreme Court held that states could no longer entirely bar black jurors from jury service. *Strauder v. West Virginia*, 100 U.S. 303 (1879). Before that time, and throughout the 1800s, Louisiana required a unanimous jury verdict for a felony conviction. In the wake of *Strauder* and other post-Reconstruction developments, Louisiana convened a Constitutional Convention in 1898, the purpose of which was, in the words of a delegate, to "establish the supremacy of the white race." *See generally Ramos*, 140 S.Ct. at 1393-1394. *See also* Official Journal of Proceedings of the Constitutional Convention of the State of

Louisiana p. 374 (H.J. Hearsey ed. 1898). As further explained in *Ramos*, specific to the issue of nonunanimous jury verdicts:

> Just a week before the convention, the U.S. Senate passed a resolution calling for an investigation into whether Louisiana was systemically excluding African-Americans from juries. Seeking to avoid unwanted national attention, and aware that this Court would strike down any policy of overt discrimination against African-American jurors as a violation of the Fourteenth Amendment, the delegates sought to undermine African-American participation on juries in another way. With a careful eye on racial demographics, the convention delegates sculpted a "facially race-neutral" rule permitting 10-to-2 [sic][6] verdicts in order "to ensure that African-American juror service would be meaningless."

Ramos, 140 S.Ct. at 1394 (citations omitted). Thus, it was in this document that Louisiana first implemented a system of nonunanimous verdicts for serious crimes, which required only a 9-to-3 vote to determine guilt, through Article 116 (later Article I, § 17) of the state constitution.

In 1972, the United States Supreme Court decided two companion cases, *Apodaca v. Oregon*, 406 U.S. 404 (1972) and *Johnson v. Louisiana*, 406 U.S. 356 (1972) (together "*Apodaca*"). In these plurality opinions, despite a majority of justices recognizing that the Sixth Amendment required unanimity, the Supreme Court continued permitting nonunanimous verdicts in state trials, and, as a result, Louisiana retained its nonunanimous verdict system. In fact, the delegates to Louisiana's 1973 Constitutional Convention re-adopted the nonunanimous verdict provision, though now in a narrower form—increasing the requirement to at least ten votes to obtain a verdict, up from the nine required by the 1898 Constitution, and referenced *Apodaca* as a rationale for retaining the system. *See generally* Records of La. Const. Convention of 1973: Convention Transcripts vol. VII pp. 1184-85, 1188 (Sep. 8, 1973). ("This proposal of having less than a majority to reach a verdict in the case has been approved by the United States Supreme Court; this issue of

[6] The Supreme Court appears to have made a factual error at this point in *Ramos*. The 1898 Constitution permitted 9-to-3, 10-to-2, or 11-to-1 verdicts. The re-adoption of the nonunanimous jury provision in the 1974 Constitution permitted 10-to-2 or 11-to-1 verdicts.

whether you need a unanimous verdict in all cases has been reviewed by the Supreme Court, and you may have less than a unanimous verdict.").

The delegates' proffered purpose for this approach was judicial efficiency. *Id.* at 1188 ("[W]e felt, after putting all of our heads together, that ten was a reasonable amount on this. It leads to a situation where you'll get a definitive action in more cases rather than have a hung jury. Because if it required twelve out of twelve to render a verdict, that means if you had anything less than twelve out of twelve, either for innocence or for guilt, you would have what's called a hung jury, and that means that you would have to go back and do it all over again."). *See also* Jeremy Alford, The Last Constitution: Louisiana's Greatest Political Generation and the Document That Defined Them All (2d ed. 2021), pp. 214-16 (explaining the presence of black delegates and noting that the 1973 convention "strived to create a 'racially neutral' document").[7] The nonunanimous verdict system thus continued as the prevailing rule in Louisiana until the state Constitution was amended in 2018.

In overruling *Apodaca*, the *Ramos* Court explained the history of the Sixth Amendment guarantee of unanimity, and noted that it applies equally to the states and federal system, promotes the fundamental notion of a fair and reliable verdict, and is "fundamental to the American scheme of justice." 140 S.Ct. at 1395-1397 (quoting *Duncan*, 391 U.S. at 148-150). *See also id.* at 1396 ("The law not only presumes every man innocent, until he is proved guilty, but unanimity in the verdict of the jury is indispensable.") (quoting 2 J. Story, Commentaries on the Constitution of the United States § 777, p. 248 (1833)). Accordingly, any defendant convicted and sentenced based on a nonunanimous verdict has suffered a violation of a fundamental constitutional right. *Ramos*, 140 S.Ct. at 1408.

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[7] In addition to recognizing the *Apodaca* decision, delegates to the 1973 Convention made significant reforms to advance the rights of all persons, providing that "every person shall be free from discrimination based on race." La. Const. art. I, § 12. *See also id.* § 3 ("No law shall discriminate against a person because of race . . .").

DISCUSSION

In granting respondent's application for post-conviction relief, the district court relied on *Taylor*, in which this Court adopted the multi-part *Teague* retroactivity analysis. *Taylor*, 606 So. 2d at 1300. The district court recognized that the Supreme Court in *Edwards* found the *Ramos* rule was not "watershed," and further noted that *Edwards* concluded new procedural rules would never apply retroactively on federal habeas review. However, the district court then opined that "*Teague* is still the standard to determining the retroactivity of a new rule of criminal procedure in Louisiana" and applied the *Teague* test in this case—but reached the opposite conclusion from the Supreme Court. The district court found that, despite the Supreme Court's ruling to the contrary, the new rule announced in *Ramos* was "watershed" and applied retroactively to cases on state collateral review in Louisiana.

The state argues this Court should not apply *Ramos* retroactively to cases on collateral review under two theories. The state first urges us to follow the Supreme Court's decision in *Edwards*, find the new rule in *Ramos* is not watershed, and then draw a bright-line rule that new rules of criminal procedure do not apply retroactively on state collateral review. In the alternative, the state asserts that even if this Court maintains *Teague*'s watershed exception, the rule announced in *Ramos* does not meet that high standard. The state claims that if *Ramos* is applied retroactively, it would be overwhelmed by the burden of retrying cases where final convictions rested on nonunanimous verdicts.

Respondent, in contrast, presents two theories under which he argues the rule of *Ramos* must be applied retroactively to cases on collateral review. First, he asserts that *Ramos* announced a watershed rule of criminal procedure requiring retroactive application under the *Teague* framework, adopted by this Court in *Taylor*. Respondent essentially urges this Court to adopt a broader interpretation of the

watershed exception than was applied by the Supreme Court in *Edwards*. Second, he argues for a modification of the *Teague* approach, which would apply new procedural rules retroactively in state collateral proceedings under the traditional *Taylor-Teague* framework, "***or*** where the new rule impacts the guilt or innocence phase of a proceeding ***and*** has emerged from a Jim Crow law."

As an initial matter, we disagree with respondent that the rule announced in *Ramos* qualifies as watershed. The Supreme Court, which developed, articulated, and defined the scope of the watershed exception, found that the ruling did not apply retroactively. In *Edwards*, the Court noted that many other cases significant to criminal defendants, which were "momentous and consequential" just like the rule in *Ramos*, were not found to be retroactive. Though decided before *Teague*, the Court first pointed to *Duncan v. Louisiana*, 391 U.S. 145 (1968), in which the Court found a constitutional right to a jury trial in a state criminal case—a "broader jury right" than that in *Ramos.* Yet the *Duncan* right was found not to be retroactive in *DeStefano v. Woods*, 392 U.S. 631 (1968), and the Court found no "principled basis for retroactively applying the subsidiary *Ramos* jury-unanimity right" when it declined to find the broader right retroactive. *Edwards*, 141 S.Ct. at 1558. Likewise, respondent cannot rely upon the original meaning of the Sixth Amendment to assert retroactivity, because in *Whorton v. Bockting*, 549 U.S. 406 (2007), the Court found the new rule announced in *Crawford v. Washington*, 541 U.S. 36 (2004) was not retroactive, and that decision relied on the Sixth Amendment to restrict the use of hearsay evidence against criminal defendants. Finally, the Court addressed respondent's argument that the *Ramos* rule prevents racial discrimination, which distinguishes it from other cases and favors watershed status. But in *Allen v. Hardy*, 478 U.S. 255 (1986), the Supreme Court found the rule announced in *Batson v. Kentucky*, 476 U.S. 79 (1986) was not retroactive, and *Batson* "revolutionized day-to-day jury selection by holding that state prosecutors may not discriminate on the

basis of race when exercising individual peremptory challenges." *Edwards*, 141 S.Ct. at 1559.

The Supreme Court explained:

> The Court's decisions in *Duncan*, *Crawford*, and *Batson* were momentous and consequential. All three decisions fundamentally reshaped criminal procedure throughout the United States and significantly expanded the constitutional rights of criminal defendants. One involved the jury-trial right, one involved the original meaning of the Sixth Amendment's Confrontation Clause, and one involved racial discrimination in jury selection. Yet the Court did not apply any of those decisions retroactively on federal collateral review. *Ramos* is likewise momentous and consequential. But we see no good rationale for treating *Ramos* differently from *Duncan*, *Crawford*, and *Batson*. Consistent with the Court's long line of retroactivity precedents, we hold that the *Ramos* jury-unanimity rule does not apply retroactively on federal collateral review.

Edwards, 141 S.Ct. at 1559. We agree with the Supreme Court here—if *Duncan*, *Crawford*, and *Batson* were not deemed to be retroactive, neither should *Ramos*. The district court erred in finding otherwise.

Similarly, though respondent urges us to find that Louisiana has a distinct or broader interpretation of watershed under *Teague* than that of the Supreme Court, we decline to do so. This state has never departed from *Teague* by finding a rule of criminal procedure applies retroactively in state collateral proceedings where the Supreme Court found it was not retroactive in federal habeas proceedings. In other words, every time the Supreme Court has examined whether a rule of criminal procedure is retroactive*,* it found it was not; this state's courts have mirrored those holdings, and we are not persuaded that a departure is warranted here.

Though we disagree with the respondent's watershed analysis, we also decline to adopt in full the state's proposal that we declare no rule of criminal procedure can ever be retroactive in Louisiana. Instead, as noted above, we exercise our authority under *Danforth* to retain the entirety of the *Teague* approach, as adopted in *Taylor*, with one exception: replacing the "moribund" watershed exception for new rules of criminal procedure with a consideration of factors that more comprehensively take

into account the totality of concerns that inform retroactivity. These criteria include (i) the purpose to be served by the newly-announced rule, (ii) the extent of reliance on the previous rule, and (iii) the effect on the administration of justice of a retroactive application of the new rule.[8] Using these factors ***only*** for retroactivity analysis of new rules of criminal procedure, while retaining the structure of *Teague* as adopted in *Taylor*, provides courts with the flexibility to develop state law solutions to state-specific problems, in the state collateral context.

* * *

Turning back to respondent's case, because his conviction is final and this case is not on direct review, we go through the *Teague* structure to determine retroactivity. We must first determine whether *Ramos* announced a "new rule" of criminal law. The Supreme Court already answered that question—the rule announced in *Ramos* is a "new rule" requiring jury unanimity. *Edwards*, 141 S.Ct. at 1556. We must next determine whether the new rule is substantive, such that retroactivity is required pursuant to *Montgomery*. Again, no party contends that the rule in this case is a substantive one. *See Edwards*, 141 S.Ct. at 1551. It therefore requires that we determine the retroactivity of the rule.

We now apply the analysis set forth above to determine whether the new rule announced in *Ramos* applies retroactively in this case. The first factor is the purpose to be served by the newly-announced rule or, in other words, the nature of the right at stake. Here, as explained more thoroughly above, *Ramos* detailed the enormity of the right at stake, deeming jury unanimity to be "fundamental to the American scheme of justice." 140 S.Ct. at 1395-97 ("There can be no question that the Sixth

[8] These factors are borrowed from the Supreme Court's decision in *Linkletter v. Walker*, 381 U.S. 618 (1965), as explained further in *Stovall v. Denno*, 388 U.S. 293 (1967). Though we are cognizant that the *Linkletter* criteria fell out of favor with the Supreme Court in the decades before *Teague*, the confusion was resolved by the Supreme Court's subsequent decisions in *Griffith*, *Teague*, and later, *Montgomery*. These factors are matters to be considered in guiding a retroactivity analysis, not rules which must be rigidly imposed.

Amendment's unanimity requirement applies to state and federal criminal trials equally.").[9]

The second factor we consider is the extent of reliance on the previous rule. This factor implicates both the reasonableness of reliance upon the old rule of criminal procedure and the duration of such reliance.[10] In the decades that followed its holding, *Apodaca* elicited "enormous" reliance by the judicial system of this state, which tried thousands of cases under rules that permitted nonunanimous verdicts. *See Ramos*, 140 S.Ct. at 1425 (Alito, J., dissenting). That reliance was perpetuated by the United States Supreme Court itself. *See*, *e.g.*, *Timbs v. Indiana*, 139 S.Ct. 682, 687 n.1 (2019) (*Apodaca* "conclude[d] that jury unanimity is not constitutionally required"); *McDonald v. Chicago*, 561 U.S. 742, 766, n. 14 (2010) (Sixth Amendment "does not require a unanimous jury verdict in state criminal trials"); *United States v. Gaudin*, 515 U.S. 506, 511, n. 2 (1995) (*Apodaca* "conclude[d] that jury unanimity is not constitutionally required"); *Brown v. Louisiana*, 447 U.S. 323, 330-31 (1980) ("[T]he constitutional guarantee of trial by jury" does not prescribe "the exact proportion of the jury that must concur in the verdict"); *Burch v. Louisiana*, 441 U.S. 130, 136 (1979) (*Apodaca* "conclude[d] that a jury's verdict need not be unanimous to satisfy constitutional requirements"); *Ludwig v. Massachusetts*, 427 U.S. 618, 625 (1976) (*Apodaca* held that "the jury's verdict need not be unanimous"). Indeed, as explained above, delegates to the 1973 Constitutional Convention relied upon *Apodaca* in incorporating the nonunanimity provision into

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[9] Again, we find it notable that unlike other new constitutional criminal rules announced by the Supreme Court, Louisiana voters and the state legislature had already remedied the wrong before the Supreme Court ruled in *Ramos* in April 2020. They did so, however, only prospectively. Acts 2018, No. 722, § 1, approved Nov. 6, 2018, eff. Dec. 12, 2018.

[10] The Florida Supreme Court, which always retained some form of the balancing approach for retroactivity of new rules of criminal procedure, has explained that this factor refers to both reasonableness of reliance and the time period that authorities relied on the old rule. *See Asay v. State*, 210 So. 3d 1, 19-20 (Fl. 2016) ("This prong does not only focus on whether this Court's reliance on the old rule was in good faith, but also requires us to consider the breadth of our prior reliance.").

the 1974 Constitution. *See* Records of the La. Const. Convention of 1973: Convention Transcripts vol. VII at 1184-89 (Sep. 8, 1973). Thus, despite the criticisms of the *Apodaca* decision as recited in *Ramos*, it remained the law on which Louisiana relied until the Supreme Court overruled it in *Ramos*. We find that the many thousands of cases tried during the nearly 50 years of the state's reasonable reliance on Supreme Court precedent upholding this procedure weighs heavily against retroactive application of the *Ramos* rule.

The third factor is the effect on the administration of justice of a retroactive application of the new rule. This factor takes into account the burden on the judiciary and the justice system that retroactive application of the rule would impose. In the case of the retroactive application of the new rule announced in *Ramos*, the effect on the administration of justice is substantial. Though the number of individuals who are incarcerated in this state and assert that their convictions were based on nonunanimous verdicts is uncertain,[11] it is surely in the hundreds, if not more. Applying *Ramos* retroactively to these cases would necessarily force the state to re-try defendants many years after the crimes occurred, which would pose practical problems that could impede—rather than promote—the search for justice. These problems include "lost evidence, faulty memory, and missing witnesses." *Edwards*, 141 S.Ct. at 1554 (quoting *Allen*, 478 U.S. at 260). *See also United States v. Mechanik*, 475 U.S. 66, 72 (1986) ("The reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already

[11] In the face of this significant concern, neither the state nor respondent has provided this Court with certainty as to the numbers of individuals potentially affected by a decision to retroactively apply the new rule announced in *Ramos.* The most widely accepted number comes from Promise of Justice Initiative's (the office representing respondent here) amicus brief to the Supreme Court in *Edwards*, wherein the office explained that it identified 1,601 post-conviction cases where prisoners claimed their convictions were based on a nonunanimous verdict. *See* Amici Curiae The Promise of Justice Initiative *et al*, in *Edwards v. Vannoy*, No. 19–5807 (U.S. Sup. Ct., July 21, 2020), p. 11.

once taken place. . . ."); *Edwards*, 141 S.Ct. at 1554 ("When previously convicted perpetrators of violent crimes go free merely because the evidence needed to conduct a retrial has become stale or is no longer available, the public suffers, as do the victims."). Further, "[e]ven when the evidence can be reassembled, conducting retrials years later inflicts substantial pain on crime victims who must testify again and endure new trials." *Edwards* at 1554–55. *See also Mechanik*, 475 U.S. at 72 ("[V]ictims may be asked to relive their disturbing experiences."). As our constitution affords special rights to crime victims, we are also cognizant of any impact that retroactive application of the nonunanimous jury rule could have on victims. *See* La. Const. art. I, § 25 ("Any person who is a victim of crime shall be treated with fairness, dignity, and respect, and shall be informed of the rights accorded under this Section."). The problem with retrying decades-old cases is evident in this specific case, where respondent was convicted of second degree murder nearly thirty years ago. These enormous administration of justice concerns weigh strongly against retroactivity.

In conclusion, we find that, though the Sixth Amendment violation at issue is a serious one, finality and reliance interests, combined with the burden placed upon the administration of justice, informed by the actions of the citizens of this state and the legislature, outweigh retroactive application of the *Ramos* rule. Therefore, the new rule of criminal procedure announced in *Ramos* which provides for unanimity in jury verdicts is not retroactive in Louisiana.

CONCLUSION

While we recognize the vitality and importance of the Sixth Amendment right at stake, the nature of the right is not the only issue before us. For the reasons set forth above, we hold that the new rule of criminal procedure announced in *Ramos* that requires unanimity in jury verdicts is not retroactive on state collateral review in Louisiana. We decline to act as a super-legislature by issuing a broader

retroactivity approach than that approved by the voters of Louisiana, who amended the Constitution with prospective effect only. We expressly note that the Legislature may determine that a broader subset of individuals are eligible for post-conviction relief. Likewise, the Governor has the power in individual cases to grant clemency under our state Constitution.[12]

REVERSED

[12] Finally, we note, without commenting on its validity, that the Legislature has granted district attorneys—with judicial approval—authority to agree to individualized relief. La. C.Cr.P. art. 930.10.

SUPREME COURT OF LOUISIANA

No. 2021-KP-01893

STATE OF LOUISIANA

VS.

REGINALD REDDICK

On Supervisory Writ to the 25th Judicial District Court
Parish of Plaquemines

WEIMER, C.J., additionally concurring.

With the issue now before this court for consideration, I agree with the majority that the new **Ramos** rule requiring unanimity in jury verdicts should not be applied retroactively in cases on state collateral review in Louisiana.[1]

As the opinion explains, the rule announced in **Ramos** does not fall within the **Teague** "watershed rule" exception.[2] Although much attention has been given to this case considering the undeniable discriminatory origins of Louisiana's nonunanimous jury law, the Supreme Court's ruling in **Ramos** was not predicated on that history. Rather, the Supreme Court's holding was strictly grounded on Sixth Amendment rights. Even if the **Ramos** rule indirectly acts to prevent racial discrimination, this fact does not elevate this matter to a watershed rule within the meaning of **Teague** requiring retroactive application. In evaluating retroactivity, the **Ramos** rule is comparable to the rule announced in **Batson**,[3] which was designed to prevent

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[1] Since the United States Supreme Court issued its opinion in **Ramos v. Louisiana**, __U.S.__, 140 S.Ct. 1390, 1394 (2020), I have consistently voted to grant and docket writ applications that presented the issue of retroactivity. These votes did not reflect certainty of the answer, but did reflect that for the sake of judicial efficiency our system of justice would be best served by this court resolving the issue in an expeditious manner.

[2] **Teague v. Lane**, 489 U.S. 288 (1989).

[3] **Batson v. Kentucky**, 476 U.S. 79, 96 (1986).

purposeful discrimination in jury selection by changing the standard for proving unconstitutional abuse of peremptory challenges. Notably, the Supreme Court held the **Batson** rule was not retroactive. **Allen v. Hardy**, 478 U.S. 255 (1986). See also **Edwards v. Vannoy**, 141 S.Ct. 1547, 1558 (2021).

Although I am not convinced there will ever be a new rule of criminal procedure that can meet the high bar set for retroactive application, I agree that this court should not yet relinquish its power and authority under **Danforth**[4] by adopting **Edwards** in full. Despite the admitted obsolescence of **Teague**'s watershed exception, by setting forth factors for consideration when determining retroactivity, this court retains the authority to address state-based concerns in the future. Consideration of these factors also allows this court to properly address concerns of finality. When this court adopted the **Teague** standards in **State ex rel. Taylor v. Whitley**, 606 So.2d 1292 (La. 1992), the court discussed the importance of finality:

> A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. While [individuals] languish in jail, not uncommonly for over a year, awaiting a first trial on their guilt or innocence, it is not easy to justify expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal convictions that were perfectly free from error when made final. This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Taylor, 606 So.2d at 1297 (internal citations removed). The state's finality interests are of significant concern in this case. I find that retroactive application of the

[4] **Danforth v. Minnesota**, 552 U.S. 264 (2008).

Ramos rule is outweighed by finality and reliance interests, as well as the burden that retroactive application would impose on innocent victims, witnesses, and the entire system of justice. There are significant societal costs if violent criminals, such as rapists and murderers, are released despite cases being resolved within then existing constitutional standards. Thus, a finding that the **Ramos** rule cannot be retroactively applied is necessary.

In declining to apply the rule retroactively, I take concerns of racial discrimination seriously, and I fully acknowledge and repudiate the racist origins expressed regarding Louisiana's original 9 to 3 nonunanimous jury law enacted in 1898. However, any suggestion that, as a result of the racial underpinnings of the original 1898 law, all nonunanimous jury verdicts were tainted fails to take into account the subsequent development of this state's nonunanimous jury law. During the 1974 Constitutional Convention, delegates adopted a 10 to 2 nonunanimous jury law with the purpose of judicial efficiency.[5] The 1974 delegates also expressly relied on the Supreme Court's decision in **Apodaca v. Oregon**, 406 U.S. 404 (1972), which tacitly upheld the constitutionality of nonunanimous verdicts. See Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts 1184-89 (La. Constitutional Convention Records Comm'n 1977). There is nothing to suggest the delegates to the 1974 Constitutional Convention, which included people of color, were motivated by the same invidious discrimination displayed in 1898. Rather, the 10 to 2 nonunanimous rule was motivated by race-neutral legitimate concerns.

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[5] As Justice Kavanaugh observed, "[O]ne could advocate for and justify a non-unanimous jury rule by resort to neutral and legitimate principals." **Ramos**, 140 S.Ct. at 1418 (Kavanaugh, J., concurring); see also ***Id***. at 1427 (Alito, J., dissenting, finding it "undeniably false" that "there were no legitimate reasons" to adopt a nonunanimity rule).

Additionally, we must respect the majesty of our jury system and not underestimate the dedication of jurors who are ultimately chosen and serve. I believe jurors, after taking an oath and becoming representative members of the community, take their role seriously and, far more often than not, perform their role responsibly and admirably. Based on their solemn oath, jurors usually put aside personal prejudices and decide cases based on the law and facts. Jurors are stalwarts of our justice system and juries have been referred to as a bulwark of liberty:

> Jury service preserves the democratic element of the law, as it guards the rights of the parties and ensures continued acceptance of the laws by all of the people. It affords ordinary citizens a valuable opportunity to participate in a process of government, an experience fostering, one hopes, a respect for law. Indeed, with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process.

Powers v. Ohio, 499 U.S. 400, 407 (1991) (internal quotations and citations removed). The existence of a nonunanimous verdict does not mean the verdict was motivated by discrimination, and discriminatory intent should not be presumptively assigned to jurors simply because a racially motivated provision was enacted in 1898.

We must, and do, repudiate the avowed racist purpose of the 1898 Constitutional Convention, and those provisions adopted that were written to achieve a discriminatory purpose, as abhorrent. However, the demand to repair this past wrong by indiscriminately opening the jailhouse doors and conducting retrials of these defendants regardless of the evidence of guilt is not a solution. Society must continue to work together to end unfounded bias and prejudice moving forward, and be realistic and practical about how to rectify that which occurred in the past.

As this court's opinion recognizes, allowing retroactive application of **Ramos** would tremendously burden our judicial system and further victimize innocent victims who have had closure for potentially decades. Innocent witnesses to crimes

would be certainly inconvenienced and potentially traumatized. To require courts to determine whether discrimination penetrated a particular jury and played a role in the nonunanimous verdict would consume copious amounts of time, effort and energy, and push our judicial system beyond its limits. Such a determination would require interrogation of jury members and engaging in inquisitions decades after they served. This process would violate the sanctity of the jury's deliberative process by prying into the intent of those citizens who were summoned to court to perform their civic duty as a juror and were afforded privacy and protection from such intrusion as they deliberated in private.

Moreover, granting post-conviction relief to everyone convicted by a nonunanimous jury fails to address the heart of the inquiry at trial–whether they committed the crime. Jury verdicts, even unanimous ones, are not unassailable and the judicial system already provides a number of checks aimed at identifying and correcting potential errors. Notably there are numerous opportunities for relief for factually innocent defendants who are nonetheless wrongfully convicted of a crime they did not commit.[6] These safeguards are in place to ensure only the guilty serve a sentence. Simply stated, retroactively applying the rule of **Ramos** would randomly vacate the convictions of too many whose guilt is undeniable and would not serve the interests of justice. A nonunanimous jury verdict should not serve as an escape from punishment for the guilty.

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[6] Convicted defendants are afforded a right to appeal and a right to seek review from this court. After state remedies are exhausted, convicted defendants are entitled to seek relief in the federal system and return to the state courts for post-conviction relief. See La.C.Cr.P. arts. 926.1, 926.2, 930.3(7) & (8). Additionally, district attorneys and the Governor also have access to extra- judicial remedies, if justified by the circumstances.

SUPREME COURT OF LOUISIANA

No. 2021-KP-01893

STATE OF LOUISIANA

VS.

REGINALD REDDICK

On Supervisory Writ to the 25th Judicial District Court, Parish of Plaquemines

Genovese, J., concurs in part, dissents in part, and assigns reasons.

The state of Louisiana wallowed in non-unanimous jury verdicts in criminal matters for well over a century prior to the landmark United States Supreme Court holding in *Ramos*. *Ramos*, decided in 2020, held that non-unanimous jury verdicts in criminal matters violated the Sixth Amendment and were, therefore, unconstitutional. Whether *Ramos* would apply retroactively was not addressed at that time. However, *Edwards*, a subsequent ruling, limited *Ramos* to a prospective application only, at least on the federal level. The Supreme Court left it to the states to determine whether *Ramos* applied retroactively on the state level during the collateral review process.

Hence, I write to collectively consider and address the effect of *Ramos*, *Edwards*, and their progeny as it relates to defendants seeking relief on collateral review on the state court level following convictions reached by non-unanimous jury verdicts.

I find that *Ramos* was not a watershed rule of criminal procedure and generally agree with the majority that the *Ramos* jury unanimity rule does not apply retroactively to cases on collateral review on the state court level. However, while I do not deem *Ramos* broadly retroactive, I do find that defendants convicted by a non-unanimous jury verdict tainted by racial animus are certainly entitled to relief, regardless of the date of their conviction. I find the majority opinion to be an

excellent review of the history of non-unanimous verdicts on both the federal and state level, with particular emphasis on the state of Louisiana. Hence, there is no need to repeat same here. In light of that history, I find that a new trial should be ordered in cases wherein an African American defendant can prove, by a preponderance of the evidence, that an African American juror dissented from the majority voting to convict defendant of the charged crime.

In my view, and with due consideration of *Ramos*, I find, from a constitutional standpoint, only those defendants who were convicted by non-unanimous verdicts due to racial animus are entitled to relief on collateral review. Only upon proof by a defendant by a preponderance of the evidence of racial animus in the jury verdict should there be relief on collateral review via post-conviction relief.

In other words, a non-unanimous jury verdict without racial animus would not qualify for relief on collateral review. To rule otherwise is to defeat the jurisprudential rationale requiring a unanimous verdict. The common thread governing the retrospective application of *Ramos* is the presence of racial animus poisoning the jury verdict. In my view, racial animus is present when the jury vote of an African American is disenfranchised and discounted, which occurs when a jury can reach a verdict without said African American vote under the prior non-unanimous verdict rule of law.

Thus, I would reverse the lower courts and limit relief on collateral review, regardless of the date of conviction, to those instances where there is proof on collateral review via application for post-conviction relief by a defendant by a preponderance of the evidence of racial animus resulting in said non-unanimous verdict. Because defendant herein failed to establish same in his application for post-conviction relief, the lower courts must be reversed.

SUPREME COURT OF LOUISIANA

No. 2021-KP-01893

STATE OF LOUISIANA

VS.

REGINALD REDDICK

On Supervisory Writ to the 25th Judicial District Court, Parish of Plaquemines

J., MCCALLUM, additionally concurs and assigns reasons.

This Court has been asked to do what the highest court in the land has said is unnecessary and what the citizens of this state have determined is inappropriate.[1] In concord with the collective wisdom of the Supreme Court of the United States, and the people of Louisiana, I join the majority in finding that *Ramos* is not retroactive on collateral review. I concur to offer additional analysis.

Half a century ago in *Apodaca v. Oregon*, 92 S.Ct. 1628 (1972), the Supreme Court of the United States held that the Sixth Amendment permits non-unanimous jury verdicts in state criminal trials. In the years after *Apodaca*, the Court never reversed or reconsidered its holding until 2020, in *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020). Indeed, prior to *Ramos*, and from time to time thereafter, the Court reiterated what *Apodaca* had established. *See Timbs v. Indiana*, 139 S.Ct. 682, 687 n.1 (2019)(explaining that *Apodaca* held "that the Sixth Amendment requires jury unanimity in federal, but not state, criminal proceedings."); *McDonald v. Chicago*, 130 S.Ct. 3020, 3035 n.14 (2010)(explaining the Sixth Amendment "does not require a unanimous jury verdict in state criminal trials."). In fact, in his dissent to

[1] In 2018, the citizens voted to adopt an amendment mandating unanimous jury verdicts, but did so with prospective effect only. Acts. 2018, No. 722, § 1. Thereafter, legislative attempts to make unanimous verdicts retroactive for collateral review cases have similarly failed to be passed by the Legislature. *See* 2022 LA H.B. 271 (NS)(3/14/2022); 2022 LA H.B. 1077 (NS)(5/10/2022). (The legislature being the representative body of the people).

the *Ramos* decision, Justice Alito further noted the significant precedential nature of *Apodaca*: "[W]henever defendants convicted by non-unanimous verdicts sought review in this Court and asked that *Apodaca* be overruled, the Court denied those requests – without a single registered dissent. Even the legal Academy, never shy about puncturing misconceptions, was taken in. Everybody thought *Apodaca* was a precedent." *Ramos*, 140 S.Ct. at 1428-29 (Alito, J., dissenting). Justifiably relying on the fact that *Apodaca* was good law, our state courts, and those of Oregon as well, conducted thousands of trials under rules that permitted such verdicts.

However, in *Ramos*, the Supreme Court of the United States did away with *Apodaca* solely on Sixth Amendment grounds as imposed on the states by the Fourteenth Amendment. Ironically, the Sixth Amendment is completely silent as to unanimity of jury verdicts and, for that matter, the number of people required to constitute a jury.[2] In finding a constitutional right to a unanimous jury verdict when it had never found one before, the Court imposed a potentially crippling burden on the courts and the criminal justice systems of Louisiana and Oregon.

Undoubtedly realizing the enormity of the injurious consequences that would surely follow a retroactive application of *Ramos*, in *Edwards v. Vannoy*, 141 S.Ct. 1547 (2021), the Court explicitly rejected the proposition that thousands of legally convicted defendants must be retried. A majority of the Court determined that their recent revelation that unanimous jury verdicts are now required under the Fourteenth Amendment did not mandate ex post facto application.

The majority opinion of this Court explains that in considering retroactivity of criminal procedural rules, this Court utilizes the *Teague v. Lane*, 109 S.Ct. 1060 (1989) analysis, adopted by the Supreme Court of the United States, and thereafter,

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[2] *See Ramos*, 140 S.Ct. at 1433-34 (Alito, J., dissenting, stating "Did [the Sixth Amendment] constitutionalize the requirement that there be 12 jurors even though nobody can say why 12 is the magic number? And did it incorporate features that we now find highly objectionable, such as the exclusion of women from jury service? At the time of the adoption of the Sixth Amendment (and for many years thereafter), women were not regarded as fit to serve as a defendant's peers.").

adopted by this Court. *See State ex rel. Taylor v. Whitley*, 606 So. 2d 1292 (La. 1992). As is further explained by the majority, this Court adopted *Teague*, as it found the prior *Linkletter v. Walker*, 85 S.Ct. 1731 (1965) analysis unworkable because it could lead to inconsistent results. In doing so, both the *Teague* and *State ex rel. Taylor* courts, in large part, adopted the reasoning of John Marshall Harlan, II, as he wrote in his separate opinion in *Williams v. United States*, *Elkanich v. United states*, *Mackey v. United States*, 91 S.Ct. 1171 (1971)(separate opinion of Harlan, J.).

Justice Harlan recognized the difficulties that arise from the fact that our criminal justice system is ever evolving and "continuously subject to change." A determination that a provision of federal law applies to the states through the Fourteenth Amendment does not necessarily imply that previous procedures were inherently unfair, but may only indicate that a preferable, alternative approach has been confected by a new incarnation of the Court.[3] As Justice Harlan stated:

> And it has been the law, presumably for at least as long as anyone currently in jail has been incarcerated, that procedures utilized to convict them must have been fundamentally fair, that is, in accordance with the command of the Fourteenth Amendment that '(n)o State shall deprive any person of life, liberty, or property, without due process of law.*' Twining v. New Jersey*, 211 U.S. 78, 29 S.Ct. 14, 53 L.Ed. 97 (1908). Moreover, it is too easy to suggest that constitutional updating is necessary in order to assure that the system arrives only at 'correct' results. By hypothesis, a final conviction, state or federal, has been adjudicated by a court cognizant of the Federal Constitution and duty bound to apply it. To argue that a conclusion reached by one of these 'inferior' courts is somehow forever erroneous because years later this Court took a different view of the relevant constitutional command carries more emotional than analytic force. No one has put this point

[3] *See Ramos*, 140 S.Ct. at 1435 (Alito, J., dissenting, stating, "Even now, our cases do not hold that every provision of the Bill of Rights applies in the same way to the Federal Government and the States. A notable exception is the Grand Jury Clause of the Fifth Amendment, a provision that, like the Sixth Amendment jury-trial right, reflects the importance that the founding generation attached to juries as safeguards against oppression. In *Hurtado v. California*, 110 U.S. 516, 538, 4 S.Ct. 292, 28 L.Ed. 232 (1884), the Court held that the Grand Jury Clause does not bind the States and that they may substitute preliminary hearings at which the decision to allow a prosecution to go forward is made by a judge rather than a defendant's peers. That decision was based on reasoning that is not easy to distinguish from Justice Powell's in *Apodaca*. *Hurtado* remains good law and is critically important to the 28 States that allow a defendant to be prosecuted for a felony without a grand jury indictment. If we took the same approach to the *Hurtado* question that the majority takes in this case, the holding in that case could be called into question.").

> better than Mr. Justice Jackson, in his concurring opinion in *Brown v. Allen*, 344 U.S., at 540, 73 S.Ct., at 427:
>
> > '(R)eversal by a higher court is not proof that justice is thereby better done. There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of state courts would also be reversed. We are not final because we are infallible, but we are infallible only because we are final.'

Mackey, 91 S.Ct. at 1178-79 (separate opinion of Harlan, J.).

Finality of judgments is recognized as important in civil matters,[4] and even more so in criminal cases.[5] At some point, cases must reach a terminus. There are substantial, compelling policies that are operative in this determination. Again, Justice Harlan offers guidance:

> It is, I believe, a matter of fundamental import that there be a visible end to the litigable aspect of the criminal process. Finality in the criminal law is an end which must always be kept in plain view.

Mackey, 91 S.Ct. at 1179 (separate opinion of Harlan, J., citations omitted).

The interests served by our criminal justice system are varied. All involved are justified in expecting an ultimate conclusion to litigation, including criminal prosecutions. Society, in addition to the individual defendant, bears the impact that most assuredly accompanies indecision and vacillation.

> Both the individual criminal defendant and society have an interest in insuring that there will at some point be the certainty that comes with an end to litigation, and that attention will ultimately be focused not on whether a conviction was free from error but rather on whether the prisoner can be restored to a useful place in the community.

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[4] *See Moragne v. States Marine Lines, Inc.*, 90 S.Ct. 1772 (1970).

[5] *See Mackey*, 91 S.Ct. at 1175 (separate opinion of Harlan, J., explaining that "[t]he interest in leaving concluded litigation in a state of repose, that is, reducing the controversy to a final judgment not subject to further judicial revision, may quite legitimately be found by those responsible for defining the scope of the writ to outweigh in some, many, or most instances the competing interest in readjudicating convictions according to all legal standards in effect when a habeas petition is filed. Indeed, this interest in finality might well lead to a decision to exclude completely certain legal issues, whether or not properly determined under the law prevailing at the time of trial, from the cognizance of courts administering this collateral remedy. This has always been the case with collateral attacks on final civil judgments."). *See also Id.*, 91 S.Ct. at 1175 n.2 (separate opinion of Harlan, J.).

Mackey, 91 S.Ct. at 1179 (separate opinion of Harlan, J., quoting *Sanders v. United States*, 83 S.Ct. 1068, 1082 (1963)(Harlan, J., dissenting).

No system of justice can survive for long if it is subject to second guessing in perpetuity. Certainty as a philosophical construct may prove illusory, but its presupposition is a cornerstone of functioning systems of justice in a civilized society.

> At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved.

Mackey, 91 S.Ct. at 1179 (separate opinion of Harlan, J.).

Society owes no less an obligation to criminal defendants who have not yet been convicted and await trial as it does to those who have already had their day in court and stand convicted. Those defendants whose guilt or innocence still hangs in the balance, awaiting trial, are owed our full attention and resources. The backlog of an already crowded criminal docket was exacerbated by the recent Covid pandemic. We would do well to seek to protect the rights of defendants whose cases involve the freshest of minds, witnesses, and evidence rather than a class of defendants whose cases involve the stalest of facts and potentially unavailable witnesses. Any retrial of these half-century old cases would most assuredly have a deleterious effect upon the efficacy of the trials that lie before us.

> A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. While men languish in jail, not uncommonly for over a year, awaiting a first trial on their guilt or innocence, it is not easy to justify

> expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal convictions that were perfectly free from error when made final. This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Mackey, 91 S.Ct. at 1179 (separate opinion of Harlan, J., citations omitted).

To rule as the majority does is not tantamount to leaving those who have been convicted with no recourse. That has never been the case. Our criminal justice system provides many post-conviction remedies for a variety of constitutional violations, particularly those which include racial bias or prejudice. The majority opinion correctly points out some of the remedies available to convicted defendants who assert that they were the victims of unconstitutional bias. In many circumstances, the bar to relief is even lower than might be anticipated. Indeed, the Supreme Court of the United States has recently further empowered the convicted by throwing open the doors to the jury deliberation room. Pursuant to its decision in *Peña-Rodriguez v. Colorado*, 137 S.Ct. 855 (2017), the Court now permits inquiry into the once sacrosanct area of the jury deliberation process. Therefore, if a defendant has proof of racial animus he is not limited to attacking a non-unanimous verdict, but he may even assail a unanimous jury verdict. In essence, the remedies sought by the retroactive application of *Ramos* are already available to defendants who feel they have been victimized by racial animus on direct appeal as well as post-conviction relief.

As to the allegations of racial animus underpinning the adoption of non-unanimous jury verdicts in Louisiana, I believe further inquiry is necessary. To begin, the racially motivated origins of Louisiana's 1898 law allowing non-unanimous jury verdicts are repugnant and well documented. I repudiate and abhor

those motivations and sentiments. However, the inquiry does not end there. The 10-2 jury verdict provision with which *Ramos* was concerned was the work product of a different, diverse group of men and women in the Louisiana Constitutional Convention of 1973. To say that all the delegates to the 1973 Convention were racists, intent on carrying out their invidious motives, as averred in oral arguments, paints with too broad a brush and ignores certain historical facts.

First, there are racially neutral, legitimate, and rational arguments justifying a non-unanimous jury rule. *See Ramos*, 140 S.Ct. at 1418 (Kavanaugh, J., concurring); *see also*, *Id.*, 140 S.Ct. at 1426-27 (Alito, J., dissenting). Additionally, as Justice Alito explains, some years ago the British Parliament enacted a law allowing non-unanimous verdicts, and the constitution of Puerto Rico permits non-unanimous verdicts. *See Id.*, 140 S.Ct. at 1427 (Alito, J., dissenting). Non-unanimous jury verdicts were once advocated by the American Law Institute and the American Bar Association. *Id.*

Second, the Louisiana Constitutional Convention of 1973 adopted the 10–2 jury verdict rule with the stated purpose of "judicial efficiency" and "no mention was made of race." *State v. Hankton*, 2012-0375, p. 19 (La. App. 4 Cir. 8/2/13), 122 So.3d 1028, 1038; 7 Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts 1184-1189 (Louisiana Constitutional Convention Records Commission 1977); *Ramos*, 140 S.Ct. at 1426 (Alito, J. dissenting). In addition to judicial efficiency, the Convention transcripts verify that the debate also focused on the proper number of concurring jurors to constitute proof beyond a reasonable doubt. Subsequently, the people of Louisiana ratified the new Constitution.

Next, the 1973 Louisiana Constitutional Convention was convened at the urging and under the direction of then governor Edwin W. Edwards. Whatever else may have ever been said of the late Governor Edwards, this writer does not remember him ever being accused of racial animus towards minorities. To the

contrary, he was noted for working to advance civil rights and social justice. Additionally, the vote by which the delegates to the Constitutional Convention adopted the 10-2 non-unanimous jury verdict provision was overwhelming; it passed by a vote of 104 yeas and only three nays. Official Journal of the Proceedings of the Constitutional Convention of 1973 of the State of Louisiana 455 (Louisiana Constitutional Convention 1974). Out of a total of 107 votes cast, surely not all, if any, of the 104 delegates voting for this provision did so with motivations of racial animus.[6] Their memorialized debate and deliberations certainly do not reveal any nefarious intent.

In conclusion, although I join in the majority opinion, I also write to remind this Court of the significant concerns outlined by Justice Harlan above. Borrowing significantly from Justice Harlan, as cited *supra*, if we are to maintain law that is worth having and enforcing, we must then continue to ensure the law of this state can provide definitive answers to the questions which litigants present. Finality in the criminal law is an end which must always be kept in plain view.

[6] Among the delegates who voted yea were individuals who had already distinguished themselves as warriors in the civil rights movement, and others who would go on to advocate for civil rights at both the state and federal levels of government, some of whom served in the legislative and judicial branches.

SUPREME COURT OF LOUISIANA

No. 2021-KP-01893

STATE OF LOUISIANA

VS.

REGINALD REDDICK

On Supervisory Writ to the 25th Judicial District Court,
Parish of Plaquemines

GRIFFIN J., dissents and assigns reasons.

Injustices from Louisiana's past call for a remedy from this Court. I must therefore dissent from the majority's adoption of a *Teague*/*Linkletter* hybrid test and its denial of retroactive relief to those convicted by non-unanimous jury verdicts. I would instead use a holistic approach to the *Teague* watershed test and find *Ramos* applies retroactively.[1]

In *Edwards v. Vannoy*, 593 U.S. ---, 141 S.Ct. 1547, 1559 (2021), the Supreme Court held that its decision in *Ramos v. Louisiana*, 590 U.S. ---, 140 S.Ct. 1390 (2020), did not rise to the level of a watershed rule under *Teague v. Lane*, 489 U.S. 288 (1989). The Supreme Court examined individual aspects of *Ramos* to determine if those aspects – considered separate and apart from each other – made the decision watershed. *Edwards*, 141 S.Ct. at 1558-59. Specifically, the Supreme Court determined that the importance of the unanimity right did not make *Ramos* watershed because it had previously held that the right to a jury trial itself was not watershed. *Id*. at 1558 (citing *Duncan v. Louisiana*, 391 U.S. 145 (1968) and

[1] Even were I to accept the majority's test, I would weigh its factors differently; and, for reasons similar to those set forth below, find *Ramos* retroactive. The administrative burdens on the lower courts will not be as severe as the majority claims – mere allegations by a defendant that they were convicted by a non-unanimous verdict are insufficient to warrant relief. *See Cade v. State*, 21-0660 (La. 10/19/21), 326 So.3d 229 (Griffin, J., additionally concurring). More still are incarcerated with coextensive unanimous convictions and others are allowed to take plea deals on post-conviction.

DeStefano v. Woods, 392 U.S. 631 (1968) (per curiam)). The Supreme Court also determined that even though *Ramos* restored the original intent of the Sixth Amendment, it was not watershed because it had previously held reviving the original intent of the Framers did not make such a rule watershed. *Edwards*, 141 S.Ct. at 1559 (citing *Crawford v. Washington*, 541 U.S. 36 (2004) and *Whorton v. Bockting*, 549 U.S. 406 (2007)). The Supreme Court finally determined that the racially discriminatory history of non-unanimous verdicts did not make *Ramos* watershed because it had previously held that a similar rule against using race in jury selection was not retroactive. *Edwards*, 141 S.Ct. at 1559 (citing *Batson v. Kentucky*, 476 U.S. 79 (1986) and *Allen v. Hardy*, 478 U.S. 255 (1986) (per curiam)). Justice Kagan critiqued this "conquer by dividing" analysis because it failed to recognize the unique nature of *Ramos* in touching on all of those aspects. *Edwards*, 141 S.Ct. at 1579-80 (Kagan, J., dissenting).

Prior to *Edwards*, the issue of whether a new constitutional criminal procedural rule was watershed was determined holistically. *See Whorton*, 549 U.S. at 421 ("a new rule must *itself* constitute a previously unrecognized bedrock procedural element") (emphasis added). Not once has this Court required that some or every aspect of a new rule be watershed – it has examined the new rule as a whole with all of its aspects considered together.[2] *See State ex rel. Taylor v. Whitley*, 606 So.2d 1292, 1299 (1992); *Stewart v. State*, 95-2385 (La. 7/2/96), 676 So. 2d 87, 89; *State v. Tate*, 12-2763 (La. 11/5/13), 130 So.3d 829, 840, *abrogated on other grounds by Montgomery v. Louisiana*, 577 U.S. at 212 (finding retroactivity applies

[2] A holistic approach to determining watershed status is supported by the fact that courts are required to look at a case holistically to determine whether it is substantive or procedural for purposes of beginning the retroactivity analysis – a single component being substantive or procedural is not dispositive. *See Montgomery v. Louisiana*, 577 U.S. 190, 209-10 (noting that while "*Miller* has a procedural component," the case and its rule as a whole are ultimately substantive); *see also* Brandon Buskey, Daniel Korobkin, *Elevating Substance Over Procedure: The Retroactivity of Miller v. Alabama under Teague v. Lane*, 18 CUNY L. REV. 21, 43-44 (2014).

because the rule at issue was substantive thus not overruling this Court's watershed analysis); *see also State v. Gipson*, 19-1815 (La. 6/3/20), 296 So.3d 1051 (Johnson, C.J., would grant and docket). A holistic approach is consistent with this Court's treatment of *Gideon v. Wainright*, 372 U.S. 335 (1963), as being the type of case that presents a watershed rule. *See Taylor*, 606 So. 2d at 1299; *see also Whorton*, 549 U.S. at 42. If watershed status is determined by examining whether individual aspects of a case are watershed, then even *Gideon* would fail such a test.

A case, being judged holistically in relation to jurisprudence and society generally, will come within the watershed exception and be applied retroactively if these four interrelated elements are met: (1) it prevents an actual or generally understood[3] impermissibly large risk of erroneous convictions;[4] (2) it can be said to be in the same category as *Gideon* in having effected a profound and sweeping change in the law; (3) it is not narrowly applicable to only a small subset of defendants; and (4) it can be said to touch on fundamental aspects of our understanding of the basic procedural elements of essential fundamental fairness. *See Tate*, 12-2763, pp. 15-16, 130 So.3d at 840-41. *Ramos* meets these requisite elements for a number of interdependent reasons.

[3] This Court's opinions have not focused on social science data that shows how juries incorrectly sentence defendants (largely because such does not appear to have existed). However, it has used its reasoned judgment and societal knowledge to determine whether a new rule prevents such a risk. *See Tate*, 12-2763, p. 14, 130 So.3d at 840 (*Miller* did not pertain to trial procedures, so it does not relate to this risk of inaccurate convictions); *Taylor*, 606 So.2d at 1299 (assuming the new rule was not the type that prevents inaccurate convictions in context of adopting *Teague*); *Stewart*, 676 So.2d at 89 (assuming that denial of retroactive effect of the right to counsel at a line-up "is neither so likely [as *Gideon*] to result in prejudice, nor so damaging if it does").

[4]One may debate as to whether this prong should be "erroneous convictions" or "erroneous verdicts." The former cares only about whether the innocent are convicted. The latter cares about both the innocent being convicted and the guilty being set free. This Court foreclosed that discussion and specifically said this first prong applies to erroneous convictions. *Tate*, 12-2763, p. 14, 130 So.3d at 840. This reflects the principle that it is better that the guilty be free than the innocent be incarcerated. To the extent the State argues that unanimous juries may free more guilty people than non-unanimous juries, that notion is irrelevant to the retroactivity discussion.

Unanimous juries prevent erroneous convictions.[5] They are more thorough in their consideration of evidence. *See* Kim Taylor-Thompson, *Empty Votes in Jury Deliberations*, 113 HARV. L. REV. 1261, 1272 (2000). They are more respectful to dissenting views. *Id*. at 1273-74. Further, unanimous juries are seen as more legitimate or to "get it right" more often than non-unanimous juries. *Id*. at 1273. There is also a strong public perception that a unanimous jury is more correct in its results than a non-unanimous jury. *See United States v. Lopez*, 581 F.2d 1338, 1341 (9th Cir. 1978) ("A rule which insists on unanimity furthers the deliberative process by requiring the minority view to be examined and, if possible, accepted or rejected by the entire jury."); *Ramos*, 140 S.Ct. at 1401; *see also* Robert J. MacCoun & Tom R. Tyler, *The Basis of Citizens' Perceptions of the Criminal Jury: Procedural Fairness, Accuracy, and Efficiency*, 12 LAW & HUM. BEHAV. 333, 337 (1988).

Ramos is sufficiently broad in its application because it applied the jury unanimity right in all felony cases to the states. It therefore covers the same universe of defendants as *Gideon* and is unlike *Miller* where the new constitutional criminal procedural rule applied only to a small subset of cases.

Ramos is a profound sweeping change in the law which touches on basic fundamental fairness. Not only did it restore the original intent of the Framers in regard to the Sixth Amendment, it also cured a rule that was indisputably adopted for the racially discriminatory purpose of diluting the power of black jurors. *See*

[5] A plethora of social science studies further support this contention. James H. Davis et al., *The Decision Processes of 6- and 12-Person Mock Juries Assigned Unanimous and Two-Thirds Majority Rules*, 32 J. PERSONALITY & SOC. PSYCOL. 1 (1975), Dennis J. Devine et al., *Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups*, 7 PSYCOL. PUB. POL'Y & L. 622 (2001), *Dennis J. Devine et al., Deliberation Quality: A Preliminary Examination in Criminal Juries*, 4 J. EMPIRICAL LEGAL STUD. 273 (2007), Shari Seidman Diamond et al., *Revisiting the Unanimity Requirement: The Behavior of the Nonunanimous Civil Jury*, 100 NW. U. L. REV. 201 (2006), Thomas Ward Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593 (2018). Valerie P. Hans, *The Power of Twelve: The Impact of Jury Size and Unanimity on Civil Jury Decision Making*, 4 DEL. L. REV. 1 (2001), Valerie P. Hans, *Deliberation and Dissent: 12 Angry Men Versus the Empirical Reality of Juries*, 82 CHI.-KENT L. REV. 579 (2007), Reid Hastie et al., Inside the Jury (1983), Robert J. MacCoun & Tom R. Tyler, *The Basis of Citizens' Perceptions of the Criminal Jury: Procedural Fairness, Accuracy, and Efficiency*, 12 LAW & HUM. BEHAV. 333 (1988).

Ramos, 140 S.Ct. at 1394; Thomas Aiello, *Jim Crow's Last Stand: Nonunanimous Criminal Jury Verdicts in Louisiana* (2015). That the Louisiana Constitution of 1974 somehow cleansed the non-unanimous jury system of its racial animus and impact is an untenable position.[6] [7] *See Espinoza v. Montana Dep't of Revenue*, --- U.S. ---, 140 S.Ct. 2246, 2268 (2020) (Alito, J., concurring) (conceding that "[i]f the original motivation for the laws mattered [in *Ramos*], it certainly matters here"). In 1898, the delegates averred their primary motivation was judicial efficiency, with their secondary motivation being the disparate impact the law would have on African Americans. In 1973, judicial efficiency was again advanced as a primary motivation despite the continued disparate impact on African Americans being a byproduct of the law. *See* Angela Allen-Bell, *How The Narrative About Louisiana's Non-Unanimous Criminal Jury System Became a Person of Interest In the Case Against Justice in the Deep South*, 67 MERCER L. REV. 585, 605 (2016). Further, in defending non-unanimous juries on judicial efficiency grounds, one delegate at the 1973 Convention recognized that the system discriminated against minority groups he referenced as being "ugly, poor, [and] illiterate," but that juries "don't convict nice-looking, intelligent, well-meaning, decent people." Transcript of the Louisiana Constitutional Convention of 1973 v. VII at 1184. Not only is this language reminiscent of the 1898 Convention, it also shows that the delegates at the 1973 Convention knew of the racially discriminatory purpose behind the non-unanimous

[6] The majority observes the framers of the Louisiana Constitution of 1974 were justified in relying on *Apodaca v. Oregon*, 406 U.S. 404 (1972). However, by 1973 it was known that the full Bill of Rights would one day be fully incorporated against the states to the same extent as the federal government. Further, the "binding" rule from *Apodaca* comes from only one Justice's view. That view was rejected by everything that had come before *Apodaca* and everything that had come after. The idea that a concurrence can control the holding of a case is based on the often (and rightfully) criticized "Marks rule." *Marks v. U.S.* 430 U.S. 188 (1977), Richard M. Re, *Beyond the Marks Rule*, 132 HARV. L. REV. 1942 (2019).

[7] I disagree with the implication that a subsequent, allegedly neutral reenactment of a discriminatory law shields it from being an Equal Protection violation despite the U.S. Court of Appeals for the Fifth Circuit recently holding such. See *Harness v. Watson*, 47 F.4th 296 (5th Cir. 2022). If equal protection of the law means anything, it means that these non-unanimous convictions cannot stand, even if those harmed are racial majorities.

jury verdict system, knew that it would continue to have a disparate impact, and yet continued the system despite such knowledge.

Ramos, as *Gideon*, set aside a system that disproportionately discriminated against poor individuals and racial minorities. *Ramos* is even greater than *Gideon* on this point because *Ramos* addressed a system that was explicitly racist in origin. Further, the right to a unanimous jury verdict enhances the protections under *Batson* which prohibits racially motivated juror strikes. *See* Allen-Bell, 67 MERCER L. REV. 585, 609 (a "nonunanimous-jury system readily facilitates effective *Batson* violations" as a prosecutor "need only strike enough black jurors to make sure that ten white jurors remain"). The jury verdict is the capstone of the trial. If the jury returns an erroneous verdict due to racial prejudice or because it failed to listen to the reasonable doubt within a dissenting juror, then the *Gideon* right is virtually worthless. *Ramos* therefore assists and protects *Gideon* in preserving fundamental fairness and the legitimacy of a trial and the criminal justice system as a whole.

The requirement for unanimous verdicts was adopted into the Louisiana Constitution prospectively for all cases relating to crimes committed on or after January 1, 2019. La. Const. art I § 17 (A). The majority argues that because the people adopted a constitutional provision that only applies *Ramos* prospectively, we should not apply it retroactively. I disagree. When it comes to the power of a state, what is not prohibited is allowed. *See* U.S. Const. amend X. The people of Louisiana knew full well of this Court's power to make rules such as *Ramos* retroactive but did not remove that power in our Constitution. Unanimous jury verdicts are so fundamental to due process and fairness that the people of Louisiana amended their Declaration of Rights. If the right is necessary for procedural fairness for future cases, it is also necessary for past cases.

Duncan did not overturn a system that was specifically designed for racially discriminatory purposes. *Batson* did not restore the original meaning of a

fundamental precept of our Constitution; and did not undo a century's long intentionally racist system. *Crawford* only restored the original meaning of the Constitution relevant to minor hearsay evidence, it did not bear on the public legitimacy of jury trails and did not undo an intentionally racist system. None of these cases was the subject of sweeping constitutional change in this state. *Ramos* possesses all of these qualities and is therefore, under the foregoing analysis, a watershed rule.

Intentional racism has no place in our criminal justice system. The Supreme Court "has emphasized time and again the imperative to purge racial prejudice from the administration of justice generally and from the jury system in particular." *Ramos*, 140 S.Ct. at 1418 (Kavanaugh, J., concurring in part) (citing *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 137 S.Ct. 855, 867-68 (collecting cases)). The racially discriminatory nature of convictions secured by non-unanimous verdicts does not change over time. Such convictions were racially discriminatory in 1898. They were racially discriminatory in 1975. They remain racially discriminatory today.

The imperative to correct past injustices manifest in the deprivation of a constitutionally guaranteed right should not cede to reliance interests and administrative concerns. Rather, "it is a cost we must bear if we mean to show that we guarantee all Louisianans equal justice." *Gipson*, 19-1815, p. 9, 296 So.3d at 1056 (Johnson, C.J., would grant and docket). We must not perpetuate something we all know to be wrong only because we fear the consequences – and costs – of being right. *See Ramos*, 140 S.Ct. at 1408. Accordingly, I would apply *Ramos* retroactively to all defendants convicted by non-unanimous jury verdicts. The integrity of our criminal justice system and legitimacy of the rule of law demands no less.