Six Oregon Organizations File Amicus Curiae Briefs to Oregon Supreme Court Regarding Convictions Based on Nonunanimous Jury Instructions

Criminal Justice Reform Clinic at the Law School of Lewis & Clark
June 30, 2020

Salem, Oregon, June 30, 2020. NAACP Oregon, Coalition of Communities of Color, Don't Shoot Portland, Latino Network, Street Roots, and the Criminal Justice Reform Clinic at Lewis & Clark Law School in five different amicus curiae briefs ask the Oregon Supreme Court to hold that all convictions obtained in a trial that included the nonunanimous jury instruction must be reversed and remanded for a new trial because the instruction was created for the purpose of suppressing minority voices and has had that effect in actuality.

The Oregon Supreme Court is currently reviewing five cases about the impact of Ramos v. Louisiana, US__, 140 S Ct 1390, __L Ed 2d__ (2020), on felony jury-trial cases in which the court instructed the jury that its verdict need not be unanimous and in which the jury was not polled or voted 12-0 to convict. Ramos held that, in a felony jury trial, the jury must return a unanimous verdict. But "the Ramos opinion did not address the large group of defendants who were convicted by a jury that had been unconstitutionally told that they did not all need to agree on guilt, and then voted 12-0 to convict. No matter how the jury ultimately voted, the jury’s deliberations were tainted from the beginning, and those convictions must all be reversed," said Nora Coon, counsel for one of the defendants.
The *amici* filed individual briefs addressing the legal, historical, societal and scientific issues surrounding Oregon's application of the nonunanimous jury rule. NAACP Oregon argued that the use of the nonunanimous jury rule was tantamount to excluding Black, Indigenous, and People of Color (“BIPOC”) from juries altogether. The Coalition of Communities of Color and Latino Network focused on the ways in which present-day inequality and racism in the justice system erode BIPOC faith in the fairness of the courts. Don’t Shoot Portland argued that a clear line could be drawn from the anti-Black racism in Oregon’s founding, to modern-day state-sponsored violence against Black people, upheld by the nonunanimous jury rule. And the Criminal Justice Reform Clinic argued that social science indicates that a nonunanimous jury instruction makes it likely that jurors will focus less on evidence and more on obtaining the necessary vote for a verdict, creating circumstances where minority opinion jurors, who are often BIPOC, will not voice their opinion or will do so but then conform to the majority making their voices not considered or heard.

All *amici* from their different vantage points asked the Oregon Supreme Court to acknowledge its troubling history, the effects the application of the nonunanimous jury rule has had on Oregon’s BIPOC and immigrant communities, along with the related social science, and use these cases to correct the harm done by years of using the nonunanimous jury instruction. They urged the Court to restore faith in the integrity of the courts and the judicial process.

“This legal challenge is but one piece of a larger mosaic that is being designed to redress the deep and abiding history of institutional racism and disenfranchisement for Black people, and other communities of color, in Oregon.” Marcus Mundy, Executive Director, Coalition of Communities of Color.

“Institutional racism is embedded in Oregon statewide. We need reconstruction and it starts with accountability and apology.” Teressa Raiford, Founder and Executive Director, Don’t Shoot Portland.

“The discriminatory nonunanimous jury law has harmed too many lives. We bear witness at Street Roots to how criminal records create barriers to housing and employment – driving people into homelessness. People convicted by this racist law deserve new trials.” Kaia Sand, Executive Director, Street Roots.

“Oregon’s nonunanimous jury rule was created to discriminate and applied in a discriminatory manner until the U.S. Supreme Court finally struck it down this past April. Every single person affected by this unconstitutional and awful law deserves a new trial.” Professor Aliza Kaplan, Director, Criminal Justice Reform Clinic at Lewis & Clark Law School.

The organizations were assisted in these briefs by law firms Larkins Vacura Kayser LLP, Tonkon Torp LLP, Schwabe, Williamson & Wyatt P.C., Albies & Stark and Thomas, Coon, Newton & Frost.

If you would like more information, please contact Professor Aliza Kaplan, Lewis & Clark Law School, 503-768-6721.