**No. 2023-1298**

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**IN THE SUPREME COURT OF FLORIDA**

MICHAEL JACKSON,
*Appellant*

*v.*

STATE OF FLORIDA,
*Appellee*

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# BRIEF OF *AMICI CURIAE* REPRESENTATIVES YVONNE HINSON, BRACY DAVIS, MICHELE RAYNER, DIANNE HART, SENATOR DWIGHT BULLARD, NAACP FLORIDA STATE CONFERENCE, AND EQUAL GROUND EDUCATION FUND IN SUPPORT OF APPELLANT

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## STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Individual amici curiae include the NAACP Florida State Conference, Equal Ground Education Fund, Inc., and current and former Florida lawmakers. As Black-led organizations and Black lawmakers, each is committed to ensuring that Florida's justice system operates fairly and protects the rights of all Floridians, and particularly Black Floridians, both as participating citizens and defendants. In addition, each has spent years advocating for unanimous juries as a necessary reform of the criminal justice system.

*Amici* bring years of experience in advocating for criminal justice policies and reforms to protect Black voices. It is *Amici*'s collective belief that Florida has erred in allowing for non-unanimous capital sentences in Ch. 2023-23, § 1, Laws of Fla.[1] (hereinafter referred to as the "2023 Non-Unanimous Amendment"). In so doing, Florida has abandoned the well-accepted unanimity requirement for jury

[1] Senate Bill 450, approved by Governor DeSantis on April 20, 2023, became effective on April 30, 2023 as Ch. 2023-23. The bill amended the statutory language by, among other things, requiring a determination of only eight jurors, rather than jury unanimity, for a sentencing recommendation of death to the court. *Id.*

decisions in capital sentencing, and effectively disenfranchised Black jurors and their voices as civic participants in the capital sentencing process. *Amici* believe that non-unanimous sentences will have significant racial impacts and effects, and result in the exclusion of participating voices, which in turn will endanger the legitimacy and public trust in the judicial process. *Amici* believe that this Court must act to ensure that the right to participate in the judicial process is protected for all Floridians.

*Amici* share deep concerns regarding the capital sentencing scheme in Florida. Florida currently stands alone, as an outlier among the rest of the United States in allowing a non-unanimous, eight to four, capital sentence. *Amici* hope to assist this Court by providing insights from their varied and extensive experience, to demonstrate why unanimity among jurors is imperative in capital sentencing proceedings—for the defendant, the process, and the civic exercise and continued confidence in it. Unanimity protects the constitutional rights of all Floridians, particularly Black citizens who have been historically shut out of the democratic process, to serve and participate fully on juries. Nothing less than the legitimacy of the entire judicial process is at stake here.

## SUMMARY OF ARGUMENT

The 2023 Non-Unanimous Amendment was enacted with the express purpose of silencing "activist" jurors. By design, the bill nullifies the votes of four out of 12 jurors, permitting a defendant to be sentenced to death with the votes of merely eight of 12 jurors. In other words, the law operates to prevent up to a third of jurors from having their voices heard. A law that denies jurors the equal right to have their voices heard is patently unconstitutional, and undermines confidence and legitimacy in the judicial process.

The U.S. Supreme Court has long recognized the importance of the citizenry's participation in jury service, particularly in ensuring that Black citizens are entitled to meaningfully participate on juries. *Flowers v. Mississippi*, 588 U.S. 284, 293 (2019). In line with its longstanding precedent holding that the exclusion of jurors on racial grounds impermissibly violates the equal protection rights of excluded jurors, *see, e.g.*, *Strauder v. State of West Virginia*, 100 U.S. 303, 308 (1879); *Batson v. Kentucky*, 476 U.S. 79, 87 (1986), the U.S. Supreme Court recently struck down non-unanimous criminal convictions, *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397 (2020). Like systemic state systems of exclusion and racially-tainted peremptory

strikes, non-unanimous juries operate to exclude the voices of Black jurors, thereby depriving jurors of the equal protection of the laws guaranteed by the Fourteenth Amendment. *Ramos*, 140 S. Ct. at 1418 (Kavanaugh, J., concurring). Non-unanimity has the same deleterious effects for capital sentencing that it has for criminal convictions.

The Florida legislature enacted the 2023 Non-Unanimous Amendment with the explicit purpose of silencing Black and other minority viewpoints. After a perceived "wrong" result in the capital sentencing of Nikolas Cruz, legislators sought to preclude "activist jurors" from "derail[ing] the full administration of justice" by not recommending death sentences in the future. R. 3907.[2] To achieve this end, the 2023 Non-Unanimous Amendment permits a jury to ignore and exclude the votes and voices of a *third of the empaneled jury* in capital sentencing. The legislature enacted the law with full knowledge that it was inconsistent with the U.S. Supreme Court's decision in *Ramos v. Louisiana* and without grappling with non-unanimity's racist history or racial impacts.

[2] Citations to "R." refer to the Record on Appeal submitted in three volumes.

The impact of the 2023 Non-Unanimous Amendment on Black votes is not merely theoretical. Black jurors are already less likely to be empaneled than their white counterparts, and empirical data shows that a difference in viewpoints concerning the death penalty skews along racial lines.[3] Thus, while the 2023 Non-Unanimous Amendment may not on its face exclude jurors of color, it will have the effect of silencing Black viewpoints in the jury box. Coupled with existing shortcomings of Florida's capital system, the silencing effect of the 2023 Non-Unanimous Amendment will only increase the rate of unrepresentative juries, harming the rights of Black citizens and the legitimacy of the process.

Because the 2023 Non-Unanimous Amendment violates the Fourteenth Amendment rights of empaneled jurors, it should be struck.

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[3] *See, e.g.*, William J. Bowers, Benjamin D. Steiner & Maria Sandys, Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors' Race and Jury Racial Composition, 3 U. PA. J. CONST. L. 171, 174 (2001).

## ARGUMENT

### I. Non-Unanimous Jury Voting Violates the Equal Protection Rights of Jurors and Silences Black Voices.

The 2023 Non-Unanimous Amendment disproportionately excludes Black jurors' votes in capital sentencing in violation of the Equal Protection Clause of the Fourteenth Amendment. Non-unanimous voting silences Black jurors by permitting a majority of jurors to ignore their views, thereby depriving Black jurors of the equal protection of the laws. Because of the structural racism inherent in a non-unanimous voting system, the U.S. Supreme Court recently struck down non-unanimity for criminal convictions. *Ramos*, 140 S. Ct. at 1397. Non-unanimity has the same negative effects in capital sentencing that it has for criminal convictions—and indeed the stakes are obviously the highest possible ones for capital sentencing.

Ordinary citizens' opportunity to participate in the administration of justice has "long been recognized as one of the principal justifications for retaining the jury system." *Powers v. Ohio*, 499 U.S. 400, 406 (1991). Jury service "affords ordinary citizens" the opportunity to participate "in a process of government" and fosters

"the willingness of the general public to accept criminal judgments as just." *Duncan v. State of Louisiana*, 391 U.S. 145, 187 (1968) (Harlan, J., dissenting). Beyond voting, jury service is "the most substantial opportunity that most citizens have to participate in the democratic process," *Flowers*, 588 U.S. at 284, 293, and it gives the American public security that "they, as jurors actual or possible, being part of the judicial system of the country can prevent its arbitrary use or abuse," *Powers*, 499 U.S. at 406.

But in order for the American jury system to function properly, the jury must be "'truly representative of the community', and not the organ of any special group or class." *Glasser v. United States*, 315 U.S. 60, 85–86 (1942) (citation omitted). The exclusion of jurors on the basis of race impedes the proper functioning of the jury. Not only is exclusion of "racial groups from jury service" contrary to "basic concepts of a democratic society and a representative government," *Taylor v. Louisiana*, 419 U.S. 522, 527 (1975) (quoting *Smith v. Texas*, 311 U.S. 128, 130 (1940)), but it is precisely "the evil the Fourteenth Amendment was designed to cure," *Batson*, 476 U.S. at 87. As the U.S. Supreme Court long ago recognized, exclusion

from jury service on the basis of race is odious to the purpose of the Fourteenth Amendment:

> The very fact that colored people are singled out and expressly denied . . . all right to participate in the administration of the law, as jurors, because of their color . . . is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others.

*Strauder*, 100 U.S. at 308; *see also Batson*, 476 U.S. at 87 (recognizing that a "person's race simply 'is unrelated to his fitness as a juror'").

Thus, the U.S. Supreme Court has long held that racial discrimination in jury selection violates the Equal Protection rights of *excluded jurors*, in addition to the constitutional rights of criminal defendants. *See, e.g.*, *Batson*, 476 U.S. at 87 ("[B]y denying a person participation in jury service on account of his race, the State unconstitutionally discriminated against the excluded juror."); *Flowers*, 588 U.S. at 294–95 (collecting cases "reiterat[ing] that States may not discriminate on the basis of race in jury selection"). Both state jury systems that systematically exclude Black jurors and racially-tainted peremptory strikes violate the constitutional rights of

excluded jurors. *Taylor*, 419 U.S. at 527; *Batson*, 476 U.S. at 87. This is a harm that "touch[es] the entire community" and "undermine[s] public confidence in the fairness of our justice system." *Batson*, 476 U.S. at 87.[4] The exclusion of Black voices in the jury room "remove[s] from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable," and "deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented." *Peters v. Kiff*, 407 U.S. 493, 503–04 (1972). "[E]ven a single instance of race discrimination against a prospective juror is impermissible." *Flowers*, 588 U.S. at 300.

[4] While the focus of this brief is on the impacts to Black jurors, *Amici* note that harms relating to "fencing" out minority viewpoints emerge and are a concern regardless of the race of the juror or defendant and regardless of whether race is at issue in a particular case. *See Johnson v. Louisiana*, 406 U.S. 399, 402 (1972) (Marshall, J., dissenting) (recognizing that "fenc[ing] out a dissenting juror," "fences out a voice from the community, and undermines the principle on which our whole notion of the jury now rests" and noting that the "fencing-out problem goes beyond the problem of identifiable minority groups"). *Amici* focus herein on the impact the 2023 Non-Unanimous Amendment has on fencing out Black voices but do not discount the unacceptable impacts that this law will have on fencing out other important minority viewpoints from jury boxes.

And in *Ramos v. Louisiana*, the U.S. Supreme Court recognized another invidious form of discrimination against jurors' rights: non-unanimous voting systems. 140 S. Ct. at 1397. While non-unanimous juries may appear to have the outward appearance of compliance with constitutional prerequisites of jury selection because Black voters may be selected to serve on juries, in effect, non-unanimous voting operates in the same way as structural or peremptory exclusions: it silences the votes of Black jurors by allowing a majority of jurors to "simply ignore the views of their fellow panel members of a different race or class." *Ramos*, 140 S. Ct. at 1418 (Kavanaugh, J., concurring); *id.* at 1401; *see also Pena-Rodriguez v. Colorado*, 580 U.S. 206, 225 (2017) (discussing how racial bias in the jury room negatively impacts juror participation and "may make it difficult for a juror to report inappropriate statements"). Non-unanimous voting "allows backdoor and unreviewable peremptory strikes" against Black jurors. *Id.* at 1418 (Kavanaugh, J., concurring). In recognition that such a system perpetuates racism in the jury room, the U.S. Supreme Court struck down Louisiana and Oregon's non-unanimous voting rules for criminal convictions. 140 S. Ct. at 1397.

Despite this recent decision in *Ramos*, and as discussed further in Section III, *infra*, Florida passed the Non-Unanimous Amendment to allow the use of non-unanimous juries in capital sentencing. Instead of promoting "open-minded" and "thorough deliberations," Florida's non-unanimous jury rule "silence[s] the voices and negate[s] the votes of [B]lack jurors" and allows a majority of jurors to outright ignore a Black juror who disagrees with their conclusion. *Ramos*, 140 S. Ct. at 1401; *id.* at 1418 (Kavanaugh, J., concurring). Legislators were aware that the bill was "inconsistent with Ramos" and that non-unanimous juries operate to "make the votes of minorities on juries meaningless." R.3926, R.3972. In fact, some representatives objected on the specific basis that the bill was "plainly unconstitutional." R.3928, R.4003. But through majority rule—and the effective silencing of dissenters, many of whom were Black legislators—the Florida legislature enacted majority rule in capital sentencing.

While an individual juror "does not have a right to sit on any particular [] jury," they "do[] possess the right not to be excluded from one on account of race," including—as *Ramos* recognized—through the silencing of their votes. *Powers*, 499 U.S. at 400. Because non-

unanimous voting denies Black jurors "the privilege of participating equally . . . in the administration of justice," the non-unanimous capital sentencing scheme in the 2023 Non-Unanimous Amendment violates the Fourteenth Amendment. *Strauder*, 100 U.S. at 308.

Courts have not only the power but also the duty to remedy racial indignities in the judicial system. *Pena-Rodriguez*, 580 U.S. at 222 ("The duty to confront racial animus in the justice system is not the legislature's alone. Time and again, this Court has been called upon to enforce the Constitution's guarantee against state-sponsored racial discrimination in the jury system."). The Court should respectfully exercise its power (and duty) here.

## II. The Structural Exclusion of Black Jurors through the Practice of Non-unanimous Sentencing Imperils the Legitimacy of the Capital Sentencing Process.

A sentencing process that silences Black voices on juries is an exclusionary structural device that materially undermines the legitimacy of capital proceedings. As a result, it must be eliminated. The exclusion of Black community members from jury boxes has long worked in tandem with precluding Black voters from the ballot box. *Ramos*, 140 S. Ct. at 1401, 1405 (discussing the racist origins of non-unanimous jury laws and acknowledging the purpose of non-

unanimity law to "establish the supremacy of the white race").[5] This is not merely a theoretical or academic concern. The practical discriminatory impacts of non-unanimous jury laws like the 2023 Non-Unanimous Amendment are well-documented.[6] And even beyond representation in the jury box, empirical data shows that diverse juries that are representative cross-sections of their communities and include Black voices are better at reaching more just and considered results.

Studies have consistently shown that race continues to play a significant role in jury decision-making in capital cases.[7] The Florida Supreme Court's Racial and Ethnic Bias Commission found that "the

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[5] The U.S. 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) (quoting *Pena Rodriguez*, 580 U.S. at 221). Any such racial bias "mars the integrity of the judicial system and prevents the idea of democratic government from becoming a reality." *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 628, 631 (1991); *see also* Richa Bijlani, More Than Just a Factfinder: The Right to Unanimous Jury Sentencing in Capital Cases, 120 Mich. L. Rev. 1499, 1522 (2022); Thomas Ward Frampton, The Jim Crow Jury, 71 VAND. L. REV. 1593, 1620 (2018).

[6] Mustafa El-Farra, Race and the Jury: Racial Influences on Jury Decision-Making in Death Penalty Cases, 4 HASTINGS RACE & POVERTY L. J. 219, 229 (2006).

[7] *Id.*

application of the death penalty in Florida 'is not colorblind.'"[8] Death penalty sentences vary significantly based on the race of the defendant, victim, and jury.[9] Given the varied opinions on the imposition of the death penalty—which are impacted by race among other factors—having a representative jury is imperative for the legitimate functioning of the system. *Ring v. Arizona*, 536 U.S. 584, 616–17 (2002) (Breyer, J., concurring).

In particular, Black potential jurors are less likely than their white counterparts to be empaneled and serve on a jury in capital sentencing cases generally.[10] Data shows that this is due, at least in part, to a difference in the prevalence of viewpoints regarding the death penalty among Black prospective jurors as against white potential jurors. This difference results in the potential for exacerbated racial inequalities and the silencing of Black voices

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[8] American Bar Association, EVALUATING FAIRNESS AND ACCURACY IN STATE DEATH PENALTY SYSTEMS (2006).

[9] *Id.*

[10] Jacinta M. Gau, RACIALIZED IMPACTS OF DEATH DISQUALIFICATION IN DUVAL COUNTY, FLORIDA (2021), https://www.aclu.org/legal-document/study-dr-jacinta-gau (finding in a study of 12 capital cases since 2010 in Duval County involving more than 800 jurors that Black jurors were twice as likely as white jurors to be removed from capital juries through a combination of death disqualification and prosecutorial peremptory strikes).

before a jury is even empaneled. Thus, it is even more important to ensure that the voices of Black jurors who do sit on juries be heard and meaningfully counted in capital sentencing.[11]

A jury of diverse voices is important both to ensure a fair process and to produce better considered outcomes. Where unanimity is required, data shows that juries are more deliberative, considered, and more likely to avoid imposing a death sentence on an innocent person.[12] Empirical findings have shown that where unanimity in capital sentencing was required, juries engaged in

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[11] U.S. Supreme Court justices have long acknowledged the importance of juries engaging in careful deliberation and debating diverse viewpoints in the capital sentencing phase. Justice Breyer, in his concurrence in *Ring v. Arizona*, wrote that juries are necessary as a reflection of "the community's moral sensibility," because they "reflect . . . the composition and experiences of the community as a whole" and therefore "express the conscience on the community on the ultimate question of life or death." 536 U.S. at 613–19 (Breyer, J., concurring); *Ramos*, 140 S. Ct. at 1401 (Justice Gorsuch writing, "[w]ho can say whether any particular hung jury is a waste, rather than an example of a jury doing exactly what the plurality said it should—deliberating carefully and safeguarding against overzealous prosecutions?").

[12] *See* Richa Bijlani, More Than Just A Factfinder: The Right to Unanimous Jury Sentencing in Capital Cases, 120 MICH. L. REV. 1499, 1522 (2022).

longer and more meaningful deliberations.[13] Such deliberations and exchanges of viewpoints help to ensure that every juror's voice and, critically, every Black voice is heard by their fellow jurors, rather than being discounted as a "junk" vote that can be ignored by the majority.

The data also demonstrate that the more thorough deliberation undertaken by unanimous juries, the less likely juries are proven to be incorrect. The Death Penalty Information Center analyzed exoneration data and found that where non-unanimous capital sentences were permitted, one or more jurors had voted for a life sentence in more than 90 percent of death row exonerations.[14] When a jury is tasked with deciding between a person's life or death, the

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[13] William J. Bowers, Wanda D. Foglia, Jean E. Giles, and Michael E. Antonio, The Decision Maker Matters: An Empirical Examination of the Way the Role of the Judge and the Jury Influence Death Penalty Decision-Making, 63 WASH. & LEE L. REV. 931 (2006), https://scholarlycommons.law.wlu.edu/wlulr/vol63/iss3/3.

[14] DPIC ANALYSIS: EXONERATION DATA SUGGESTS NON-UNANIMOUS DEATH-SENTENCING STATUTES HEIGHTEN RISK OF WRONGFUL CONVICTION (Mar. 13, 2020), https://deathpenaltyinfo.org/news/dpic-analysis-exoneration-data-suggests-non-unanimous-death-sentencingstatutes-heighten-risk-of-wrongful-convictions.

importance of including diverse viewpoints and improving the accuracy of these decisions cannot be overstated.[15]

## III. The Legislative History of the Amendment Evidences a Clear Intent to Silence Jurors with Minority Viewpoints.

The legislative history of the 2023 Non-Unanimous Amendment confirms its intended purpose: legislators sought to preclude a "single activist juror [from] disrupt[ing] the justice system." R.3830. With full awareness of *Ramos v. Louisiana* and the U.S. Supreme Court's condemnation of the non-unanimous jury system's unconstitutional effects, the Florida legislature passed the 2023 Non-Unanimous Amendment. In fact, legislators did not hide their intent to drown out the voices of minority jurors. The law—which permits a third of the jury to be ignored—was passed as a result of some legislators' personal disagreement with the result reached in a particular case. But the silencing of any juror—particularly in light

[15] Concerns regarding the accuracy of capital sentences is all the more important in Florida, the state with more death row exonerations than any other. According to the Death Penalty Information Center, Florida has had 30 death row exonerations. Florida Death Penalty Information, (accessed on May 16, 2024). Most of these exonerated individuals were sentenced to death by non-unanimous jury votes. *Id.*

of the evidence that the silencing will disproportionately impact Black voters, as discussed in Section II, *supra*—is unconstitutional.

Florida legislators were fully aware of the law's inconsistency with Supreme Court precedent during the debate on the underlying proposed bills Senate Bill 450 ("SB 450") and House Bill 555 ("HB 555"). During debate in the House, Representative Rayner noted the law's clear conflict with recent U.S. Supreme Court precedent, and expressed concern that the law was not only directly contrary to *Ramos* but was even more pernicious because a conviction is a lesser penalty than a death sentence. R.3808–09; R.3983. Leader Driskell likewise raised the U.S. Supreme Court's acknowledgement in *Ramos* that non-unanimous juries "make the votes of minorities on juries meaningless." R.3972. In the Senate, the committee chair for the Florida Association of Criminal Defense Lawyers similarly counseled against adopting the bill because doing so would be "ignoring the US Supreme Court precedent," including *Ramos*. R.3859.

In the face of these legislators' concerns, proponents of the law conceded that it would not pass constitutional muster. During the debates, Representative Gottlieb pointedly asked Representative Jacques whether the bill would be consistent with recent Supreme

Court cases and specifically whether it was consistent with *Ramos*. In response, Jacques recognized that the bill was "not exactly in line with *Ramos*." R.3904. Senator Ingoglia, who sponsored SB 450, was likewise aware of concerns that the Florida Supreme Court's prior decision in *State v. Poole*[16]—which held, prior to *Ramos*, that capital sentencing did not require unanimity—was "wrong" in light of *Ramos*. R.3776–77.

Nevertheless, Florida legislators pushed forward with the 2023 Non-Unanimous Amendment and HB 555 for the express purpose of dealing with "activist jurors." Senator Ingoglia repeatedly described an alleged problem with the current system that "[gives] all of the power to one activist juror, a protest juror" who can "impose her or his will and ideology upon the whole system." R.3898–99; *see, e.g.*, R.3741 ("What we're trying to do here, we were trying sort of take on the activist jurors and quite frankly activist judges."); R.3879–80 ("[The amendment] acknowledges that we have a problem with the current system where we have activist jurors."). Representative Jacques similarly decried "activist jurors" and the possibility that "a

[16] 297 So.3d 487 (Fla. Sup. Ct. 2020).

small handful of jurors [could] derail the full administration of justice." R.3907. When asked to define the term "activist juror," Representative Jacques described them as "a juror that decides to act outside the law and then places their own personal beliefs above what is required in the law." R.3952.

Of course this ignores the constitutional importance of unanimity and each voice in the jury room. The alleged "activist juror" is thus another in a line of pretextual rhetoric designed to take power away from Black jurors. Jurors in Florida are instructed that "[r]egardless of the results of each juror's individual weighing process . . . *the law neither compels nor requires you to recommend that the defendant should be sentenced to death*." Fla. Crim. Jury Instr. 7.11 Final Instructions in Penalty Proceedings — Capital Cases, at 6 (emphasis added). It cannot be a surprise that some jurors may vote to recommend a life sentence when they are specifically instructed to weigh aggravating and mitigating circumstances and come to their own determination individually. Nor is this a "problem" to be corrected through unconstitutional means.

At bottom, the "problem" the Florida legislators described was nothing more than their personal disagreement with the capital

sentencing result reached by jurors in a particular case: the capital sentencing of Nikolas Cruz. R.3743 (describing three "activist juror[s]" "hold[ing] up the system" and preventing a capital sentence for Cruz). One of the three jurors condemned by the legislature as having reached the incorrect result in that case was a Black woman: Dr. Melody Vanoy. Legislators sought to prevent this result in the future by passing a bill that would prevent not one but four jurors—*a third of the jury*—from asserting their voices in the jury room during capital sentencing. *See* R.3952–53 (asserting that it is a problem for "a small number of jurors" who "can have their own motivations" and "who see[] the law and the facts" and "do not recommend the death penalty based on a personal opinion"). Simply put, in the name of preventing "activist" jurors from holding up the justice system, the Florida legislature has chosen to outright silence a third of capital sentencing jurors. As evidenced by historical precedent and data, discussed in Sections I and II, *supra*, creating a silenceable minority will effectively silence Black jurors. Indeed, had the law been in effect during the Cruz sentencing, Dr. Vanoy's vote would have been silenced.

What Florida legislators decry as "activist" and "protest" jurors are, in fact, jurors asserting their constitutional right to equal protection of the laws and an equal voice on the jury. *See Taylor*, 419 U.S. at 530 (holding a jury must have a fair cross-section in order to "guard against the exercise of arbitrary power" and "make available the commonsense judgment of the community"). The Fourteenth Amendment guarantees all jurors an equal voice.

Even more damning is the Florida legislature's total failure to grapple with the racist history or current racial impacts of the law. Legislators were aware that non-unanimity has historically been rooted in racism and was designed to make "the votes of minorities on juries meaningless." *See* R.3972. Legislators were also aware that the silencing of Black jurors disproportionately impacts defendants of color. *See* R.3848, R.3990. But the legislature refused to grapple with these core constitutional issues. As a result, the 2023 Non-Unanimous Amendment will have the very same unconstitutional impact on Black jurors that the U.S. Supreme Court condemned in *Ramos*.

## CONCLUSION

Jury non-unanimity has historically been, and continues to function as, a method to disenfranchise Black jurors and to erase their votes in derogation of their constitutional rights. This racial bias violates the Equal Protection rights of Black jurors and imperils the legitimacy of the entire judicial process. These discriminatory processes need to be "relegated to the dustbin of history." *Ramos* , 140 S. Ct. at 1409 (Sotomayor, J., concurring). The Court should not countenance the Legislature's attempt to disenfranchise Black jurors via the 2023 Non-Unanimous Amendment. If left in place, the 2023 Non-Unanimous Amendment will result in the racial disenfranchisement of Black (and other minority) jurors and will erode public confidence in the judicial process.

Dated: May 28, 2024

Respectfully submitted,
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## CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2024, a true and correct copy of the foregoing Brief of Amici Curiae was filed electronically with the Court via the Florida E-Filing Portal, which provides notice to all parties.

/s/ *Christopher D. Belelieu*
Christopher D. Belelieu

## CERTIFICATE OF COMPLIANCE

I hereby certify that this amicus brief complies with the font requirements by utilizing Bookman Old Style 14-point font as outlined in Rule 9.045(b) of the Florida Rules of Appellate Procedure and is within the word count as required by Rule 9.370(b) of the Florida Rules of Appellate Procedure. This amicus brief contains 4,526 words.

/s/ *Christopher D. Belelieu*
Christopher D. Belelieu