

Supreme Court ends nonunanimous jury verdicts

A quirk of Oregon law

By **CONRAD WILSON**
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The U.S. Supreme Court ruled 6-3 on Monday that the Constitution requires unanimous jury verdicts to convict defendants in state criminal courts.

The ruling in *Ramos v. Louisiana* not only overturns a previous Supreme Court decision, but also ends Oregon's history of using nonunanimous juries to find people guilty of crimes other than murder.

The U.S. Supreme Court ruled the 14th Amendment incorporates a person's Sixth Amendment right to jury unanimity.

Oregon was the last state in the country that utilized a nonunanimous jury law, allowing convictions in many types of cases with an 11-1 or 10-2 decision.

In 1972, the justices ruled in *Apodaca v. Oregon* that nonunanimous juries in state criminal courts are permitted under the Constitution.

Writing for the majority, Justice Neil Gorsuch said the court got it wrong.

"Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory," Gorsuch wrote. "But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right."

The case was decided outside the traditional liberal-conservative fault lines. Gorsuch was joined by Justices Stephen Breyer and Ruth Bader Ginsburg. Justices Clarence Thomas, Brett Kavanaugh and Sonia Sotomayor concurred, at least in part, in separate opinions.

Justice Samuel Alito dissented, largely over concerns about the court overturning itself. He argued the court was "lowering the bar for overruling our precedents." Alito was joined by Chief Justice John Roberts and Justice Elena Kagan.

Monday's Supreme Court case was out of Louisiana, though that state had previously ended the practice of nonunanimous juries through a measure approved by voters.

The case stemmed from a 2014 crime, when a New Orleans city code enforcement officer found the body of Trinece Fedison stuffed in a trash can in a wooded area behind a blighted property. After a two-day trial in 2016, a jury convicted Evangelisto Ramos of second-degree murder by a verdict of 10-2, meaning two jurors thought Ramos was not guilty. Ramos remains in prison but is expected to receive a new trial as a result of the ruling.

The ruling will affect hundreds of others in Louisiana who have been convicted by



Patrick Semansky/AP Photo

The U.S. Supreme Court, shown here last year, held that nonunanimous jury verdicts in state criminal trials are unconstitutional.

nonunanimous juries.

"There's some 1,700 people we've identified in custody who are on nonunanimous convictions," said Ben Cohen, with the Promise of Justice Initiative in New Orleans and Ramos's attorney. "It will be an open question whether those people get new trials or not."

In Oregon, several hundred cases that are on appeal, as well as any pretrial defendants, will likely be affected.

"It changes 85 years of history in how we convict people of crimes," said Aliza Kaplan, a professor at Lewis & Clark Law School in Portland, who has worked to change Oregon's jury system. "Any case that started today where a jury has not ruled, and any case that is on appeal currently that does not have a final ruling will be directly affected by this ruling."

The Oregon District Attorneys Association said it was still looking into what the ruling would mean for cases in the state, but noted they have supported changing the state's jury system since 2018. The group also acknowledged the ruling could make it more difficult for prosecutors to win convictions.

"However, it is a hallmark of our justice system that it should be difficult to take someone's liberty," the association said in a statement. "This is evidenced by the fact that in criminal cases a defendant is presumed innocent and the state prosecutor must prove guilt beyond a reasonable doubt. Adding the requirement of unanimity is another important safeguard."

Clatsop County District Attorney Ron Brown said, "Our office is always ready and willing to abide by all changes in laws or court rulings and look forward to moving ahead with unanimous verdicts."

Judge Dawn McIntosh, the presiding judge of the Clatsop County Circuit Court, said the court's decision was not unexpected.

She is waiting for the exact numbers on how many cases the county will have coming back, but she does not anticipate it will be overwhelming.

She said the decision clearly applies to cases pending trial or on direct appeal.

"Defense attorneys in Oregon have been arguing that nonunanimous verdicts were unconstitutional for many years," McIntosh said in an email. "What to do about those cases where a defendant's trials and appeals were all completed prior to the U.S. Supreme Court clearly saying, with this opinion, that they were correct will be the next big question."

Nonunanimous juries have been part of Oregon's Constitution since 1934, when voters adopted the practice. Legal scholars argue nonunanimous juries are rooted in discrimination, and that Oregon's law was originally intended to silence the voices of Catholic and Jewish immigrants in the state.

In Louisiana, the law was directly tied to Jim Crow-era laws and aimed to make it easier to convict black defendants so white landowners could maintain a cheap post-slavery labor force. In November 2018, Louisiana voters scrubbed nonunanimous juries from their state's Constitution. But that didn't prevent the Supreme Court from agreeing to hear

a case that directly dealt with the issue of nonunanimous juries.

"Today, Louisiana's and Oregon's laws are fully — and rightly — relegated to the dustbin of history. And so, too, is *Apodaca*," Sotomayor wrote. "While overruling precedent must be rare, this court should not shy away from correcting its errors where the right to avoid imprisonment pursuant to unconstitutional procedures hangs in the balance."

In recent years in Oregon, there's been a growing recognition about the state's racist and discriminatory past, as well as an understanding among many state lawmakers and elected officials that there should be no doubt among jurors when convicting a defendant of a crime.

In Oregon, the question now turns to how the ruling will be applied and what it means for criminal defendants.

"It'll be up to the Oregon courts to address how this ruling affects people who have final convictions based on nonunanimous juries," Kaplan said.

The justices did not address whether the ruling is retroactive. The ruling also only affects convictions. It does not say anything about nonunanimous acquittals, which are also permitted under Oregon's Constitution.

Oregon Attorney General Ellen Rosenblum had urged the Supreme Court not to overturn the 1972 ruling, warning that the state's courts could be overwhelmed. She favored a ballot initiative to address the issue.

Rosenblum said in a statement that it was "an embarrassment to our otherwise progressive state that we are the only state in the country with a law in our constitution that allows criminal convictions without juror unanimity."

"Oregon, through its legislative referral process, was in the process of changing our law when the Supreme Court announced last year that it would take up the Louisiana case it decided today. The timing was such that our Legislature dropped its plan to refer the question of jury unanimity to Oregon voters. Instead, the Supreme Court has put Oregon in the spotlight for a law we never should have been adopted in the first place, but which has been followed here for 85 years."

"While I had urged the Legislature — through the referral process — to take this matter into our own hands before the Supreme Court did it for us, we can now move forward to remove the law from our state constitution (that does not occur automatically) and address the many cases that require review as a result of today's decision."

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