

# Proposed law could vacate criminal convictions

BY ALEX WITTWER  
EO Media Group

SALEM — Legislators are pushing through a broad reform bill that would retroactively allow criminals to appeal their case if the verdict wasn't reached unanimously. That could mean regional district attorneys would be open to dozens if not thousands of formerly closed cases that could stretch back decades.

Senate Bill 1511, which would allow those previously convicted of crimes with a less than unanimous jury to appeal their decision, is based on the recent Ramos vs Louisiana Supreme Court ruling that found that nonunanimous juries were unconstitutional.

Oregon, along with Louisiana, were the only two states in the nation to allow nonunanimous juries. The Oregon law was put into effect in 1934, and had racist and xenophobic origins according to numerous testimonies for SB1511.

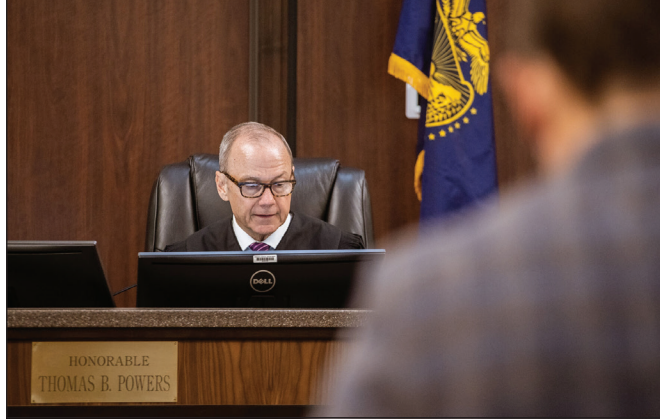
The Supreme Court of the United States denied the retroactivity clause by a 6-3 ruling on May 17, 2021 in the case of Edwards vs. Warden Vannoy, with Justice Brett Kavanaugh writing the majority opinion. However, Kavanaugh also wrote that the states could make their own retroactivity laws, which is what Oregon aims to do with SB 1511.

Baker County District Attorney Greg Baxter said the law for nonunanimous juries was followed at the time of those previous convictions, and it's hard to say whether or not those nonunanimous juries would have pushed for a unanimous verdict if the laws had been different.

"No one can say what the juries would have done if they had been required to be unanimous," Baxter stated in an email. "No one knows if the jury would have worked just a little harder and longer to obtain a unanimous verdict. It is likely that once the required unanimity was obtained, they stopped."

The broadness of the bill is beset by its relative succinctness — only about a single page of amendments to existing law would take the bill far beyond the Supreme Court's ruling. And it's happening during Oregon's legislative session that only will last for 35 days.

"I feel it's been rushed. We're in the short session. This is supposed to be certain matters, fiscal aspects, things like that," said Justin Nelson, district attorney for Morrow County, "and this is a very complicated and, possibly, very costly bill that goes far beyond what the Supreme Court said needed to be done. Is that something we need to be doing for the short



Alex Wittwer/EO Media Group, File  
**Union County Circuit Judge Thomas B. Powers presides over arraignments in the county courthouse on Tuesday, July 20, 2021.**

session? Is this something we push through in 35 days?"

The Oregon District Attorney Association (ODAA) raised numerous issues with the bill, including what would happen for verdicts that included multiple charges.

"Let's say you have a 10 count case," Nelson said. "And the person's found guilty of all counts. Maybe count one is rape in the first degree, and then count 10 is false information to a police officer — a misdemeanor of some sort and ends up being a nonunanimous verdict. The concern I have is that it actually overturns the entire judgment, not just that count."

Other issues the ODAA raised include how the court would determine whether a

jury was unanimous or not, given that jury polling and records of jury polls were not well tracked, and beyond any trial record, according to the ODAA's testimony.

The testimony also considers the possibility that the new law could be used in conjunction with the 6th Amendment to dismiss a conviction due to an untimely trial.

Foremost, the ODAA raised an issue with the cost of the legislation, which provides no resources for victim assistance programs for resulting trauma from having a decided case returned to trial.

"Oregon's victims of some of the most serious crimes we see are going to be facing new trauma as thousands of cases are returned and potentially

re-litigated," testified Rosemary W. Brewer, executive director of Oregon Crime Victims Law Center (OCVLC). "Yet as drafted, SB 1511 has no provisions for increased victim services. There is going to be an enormous need for trauma-informed services, and we must ensure that victims have easy access to these services as they learn that a part of their lives they considered to be closed is reopened."

The OCVLC testimony also noted the bill does not provide any notification for victims of crimes, or allow for their participation in the justice system.

"It is unfortunately all too common that victims' voices are left out of the criminal justice process. Without specific provisions for victim notification and participation," the testimony continued. "SB 1511 unwinds the progress that has been made in acknowledging the critical role victims play and in Oregon's commitment to ensuring victims are treated with the dignity and respect that the Constitution demands."

Aliza Kaplan, professor and director of the Criminal Justice Reform Clinic at Portland's Lewis and Clark Law School, testified in support of SB1511, and cited statistics that show that the nonunanimous jury law had a disproportionate impact on communities of color.

The Lewis & Clark Law School testimony also showed that of the 244 cases that raised Ramos concerns, only six originate from Eastern Oregon — all of which are in Umatilla County. However, these are simply the number of cases with issues raised about the constitutionality of a nonunanimous jury — cases would likely exist where the issue of nonunanimous juries never was raised at court, and there is no way of knowing how many such cases would be brought to court once again.

"Due to the spread of underlying convictions across Oregon counties, mostly clustered in Oregon's most populous counties with the largest district attorney offices, we do not believe district attorneys would be severely overwhelmed by the proposed reforms," Kaplan testified.

The Oregon 2022 short legislative session runs from Feb. 1 to March 8.

"The new parts are one page on this bill. The amount of change that it will do to our judicial system is staggering. The cost that it could be is staggering," Nelson said. "Rushing this through a special session — something like this that is one page — could have a dire effect on victims and I'm not sure that's what we want to go forward with."

# Biden nominates Ketanji Brown Jackson to Supreme Court

BY COLLEEN LONG, MICHAEL BALSAMO AND ZEKE MILLER  
Associated Press

WASHINGTON — President Joe Biden on Friday, Feb. 25, planned to nominate federal appeals court Judge Ketanji Brown Jackson to the Supreme Court, the White House said, making her the first Black woman selected to serve on a court that once declared her race unworthy of citizenship and endorsed segregation.



Brown Jackson

In Jackson, Biden deliv-

ers on a campaign promise to make the historic appointment and to further diversify a court that was made up entirely of white men for almost two centuries. He has chosen an attorney who would be the high court's first former public defender, though she also possesses the elite legal background of other justices.

Jackson would be the current court's second Black justice — Justice Clarence Thomas, a conservative, is the other — and just the third in history.

Biden planned to introduce Jackson in remarks at

the White House Friday afternoon, where Jackson was also expected to speak, the White House said.

She would also be only the sixth woman to serve on the court, and her confirmation would mean that for the first time four women would sit together on the nine-member court.

The current court includes three women, one of whom is the court's first Latina, Justice Sonia Sotomayor.

Jackson would join the liberal minority of a conservative-dominated court that is weighing cutbacks to abortion rights and will be considering

ending affirmative action in college admissions and restricting voting rights efforts to increase minority representation.

Biden is filling the seat that will be vacated by Justice Stephen Breyer, 83, who is retiring at the end of the term this summer.

Jackson, 51, once worked as one of Breyer's law clerks early in her legal career. She attended Harvard as an undergraduate and for law school, and served on the U.S. Sentencing Commission, the agency that develops federal sentencing policy, before becoming a federal judge in 2013. Her nomination is subject

to confirmation by the Senate, where Democrats hold the majority by a razor-thin 50-50 margin with Vice President Kamala Harris as the tie-breaker. Party leaders have promised swift but deliberate consideration of the president's nominee.

The next justice will replace one of the more liberal justices, so she would not tip the balance of the court, which now leans 6-3 in favor of conservatives.

The news comes two years to the day after Biden, then struggling to capture the Democratic presidential nomination, first pledged in a South Carolina debate to nominate a Black

woman to the high court if presented with a vacancy.

"Everyone should be represented," Biden said. "We talked about the Supreme Court — I'm looking forward to making sure there's a black woman on the Supreme Court to make sure we in fact get everyone represented"

Senate Judiciary Committee Chairman Dick Durbin has said that he wants the Senate to move quickly on the nomination. Senators have set a tentative goal of confirmation by April 8, when they leave for a two-week spring recess. Hearings could start as soon as mid-March.

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