U.S. Supreme Court – Unanimous Jury Verdicts Required

In a fractured 6-3 opinion in *Ramos v. Louisiana* the U.S. Supreme Court held that for convictions of serious crimes state court jury verdicts must be unanimous.

In 48 states and federal court, a single juror's vote to acquit prevents a conviction. Louisiana and Oregon allow convictions for serious crimes based on 10-to-2 verdicts.

The Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public *trial, by an impartial jury*."

As early as 1898, the Supreme Court stated that the Sixth Amendment requires unanimous juries. According to Justice Gorsuch's majority opinion, "[i]n all, this Court has commented on the Sixth Amendment's unanimity requirement no fewer than 13 times over more than 120 years."

According to the Court, this "simple story took a strange turn in 1972" when the Supreme Court was asked to decide whether the right to a unanimous jury applied so the states. When the Bill of Rights was ratified in 1791 it only applied to the federal government. Following the adoption of the Fourteenth Amendment the Supreme Court has held that its Due Process Clause incorporates most of the Bill of Rights, making them applicable to the states and local governments.

In *Apodaca v. Oregon*, "[f]our dissenting Justices would not have hesitated to strike down the States' laws, recognizing that the Sixth Amendment requires

unanimity and that this guarantee is fully applicable against the States under the Fourteenth Amendment." For four other Justices "unanimity's costs outweigh its benefits in the modern era, so the Sixth Amendment should not stand in the way of Louisiana or Oregon." Justice Powell rejected incorporation of Sixth Amendment's unanimity requirement against the states stating he was "unwillin[g]" to follow the Court's precedents, which "rejected the notion that the Fourteenth Amendment applies to the States only a 'watered-down, subjective version of the individual guarantees of the Bill of Rights.'"

In this case Louisiana asked the Court to hold that nonunanimous juries are permissible in state and federal courts alike. The Court refused and overturned *Apodaca*.

Louisiana admitted "common law required unanimity" but argued that "the drafting history of the Sixth Amendment reveals an intent by the framers to leave this particular feature behind." Specifically, James Madison's proposal for the Sixth Amendment originally explicitly included "unanimity for conviction," but the Senate took this language out. According to Justice Gorsuch an "intent to abandon the common law's traditional unanimity requirement" can't be inferred simply because Madison's proposal was changed. "Maybe the Senate deleted the language about unanimity . . . because all this was so plainly included in the promise of a 'trial by an impartial jury' that Senators considered the language surplusage."

The Court overturned *Apodaca* because "the [*Apodaca*] plurality subjected the ancient guarantee of a unanimous jury verdict to its own functionalist assessment in the first place. And Louisiana asks us to repeat the error today, just replacing *Apodaca*'s functionalist assessment with our own updated version. All this

overlooks the fact that, at the time of the Sixth Amendment's adoption, the right to trial by jury *included* a right to a unanimous verdict."

The three dissenting Justices in this case Alito, Chief Justice Roberts, and Kagan make an unusual line up. Relying on *stare decisis* (let the decision stand) they would not overturn *Apodaca* given that "the state courts in Louisiana and Oregon have tried thousands of cases under rules that permit such verdicts." The dissenters also note that "Louisiana has now abolished non-unanimous verdicts, and Oregon seemed on the verge of doing the same until the Court intervened."

Case recap provided by Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)