In *Apodaca v. Oregon* [2] (1972) and *Johnson v. Louisiana* [3] (1972), five Justices agreed that the Sixth Amendment requires unanimous jury verdicts in federal criminal cases. Five Justices also agreed that jury verdicts in state criminal cases don’t have to be unanimous. In *Ramos v. Louisiana* [4] the Supreme Court will consider overruling the latter holding in *Apodaca* and *Johnson*. Only Oregon and Louisiana allow non-unanimous jury verdicts in criminal cases.

Evangelisto Ramos was convicted 10-2 of second-degree murder based solely on circumstantial evidence and was sentenced to life in prison without the possibility of parole.

Ramos argues that the Fourteenth Amendment fully the Sixth Amendment guarantee of a unanimous verdict against 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* four Justices, in an opinion written by Justice White, looked at the “function served by the jury in a contemporary society” and rejected incorporation. Justice Powell, writing alone, adopted what Ramos describes as a “never-used-before-never-used-since theory of partial incorporation of the Sixth Amendment. Justice Powell believed that the Sixth Amendment required unanimity at the Founding, and in federal cases, but opined that the protections guaranteed by the Fourteenth Amendment were less than those offered by the Sixth Amendment.”

Ramos argues [5] that there has been “a sea change in constitutional exegesis” with regard to the application of the Bill of Rights to the states. According to Ramos, since *Apodaca* the Court has focused on a constitutional right’s “historic origins” rather than its “functional purpose.” “The historical record is clear that unanimity was an essential component of what was conceived of when the Constitution referred to juries.” Ramos also argues that since *Apodaca* the Supreme Court has “rejected the notion of partial incorporation or watered down versions of the Bill of Rights.”

In its brief opposing certiorari Louisiana argues [6] that Ramos has failed to show any “new or compelling justification” for overruling *Apodaca*. “No recent developments in this Court’s Sixth Amendment jurisprudence justify upsetting longstanding precedent in the manner Ramos proposes. To the contrary, this Court has not questioned *Apodaca* and has cited it positively a number of times.”

Incorporation is on the Justices’ minds. In February, in a unanimous decision in *Timbs v. Indiana* [7] the Supreme Court held that the Eighth Amendment’s Excessive Fines Clause is “incorporated” or applicable to the states and local governments.