RECENT ORDER

CRIMINAL PROCEDURE — JURY SELECTION — ARIZONA SUPREME COURT ABOLISHES PEREMPTORY STRIKES IN JURY SELECTION. — Order Amending Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure, No. R-21-0020 (Ariz. 2021).

In *Batson v. Kentucky*,[1] the U.S. Supreme Court established a three-part test for rooting out the racially discriminatory use of peremptory strikes.[2] While Justice Marshall welcomed *Batson* as an improvement over the prior standard, he presciently warned that *Batson* would "not end the racial discrimination that peremptories inject into the jury-selection process."[3] Only the abolition of peremptory strikes could do that.[4] As Justice Marshall predicted, *Batson* failed to end the racist use of peremptories.[5] But despite widespread recognition of *Batson*'s failure,[6] significant reform has taken decades to materialize.[7] Recently, Arizona embraced Justice Marshall's call and became the first state to abolish peremptory strikes.[8] After an extensive process resembling notice-and-comment rulemaking,[9] the Arizona Supreme Court amended the state's rules of civil and criminal procedure to eliminate litigants' ability to remove prospective jurors without cause.[10] The court's bold move promises to definitively eliminate the discrimination that *Batson* failed to end. But without peremptories, Arizona defendants are left with only challenges for cause. While the court's decision to abolish

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[1] 476 U.S. 79 (1986).

[2] *Id.* at 96.

[3] *Id.* at 102–03 (Marshall, J., concurring).

[4] *Id*. at 103.

[5] *See* Miller-El v. Dretke, 545 U.S. 231, 267 (2005) (Breyer, J., concurring) ("Today's case reinforces Justice Marshall's concerns."); *see also* David C. Baldus et al., *The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis*, 3 U. PA. J. CONST. L. 3, 73 & n.197 (2001) (finding that *Batson* barely decreased the racially discriminatory use of peremptory strikes in capital trials in Philadelphia).

[6] *See, e.g.*, Catherine M. Grosso & Barbara O'Brien, *A Call to Criminal Courts: Record Rules for* Batson, 105 KY. L.J. 651, 652 (2017) ("No one paying attention needs to be told the verdict on *Batson v. Kentucky*. . . . *Batson* failed."); Nancy S. Marder, Batson *Revisited*, 97 IOWA L. REV. 1585, 1586 (2012).

[7] *See* Annie Sloan, Note, *"What to Do About* Batson*?": Using a Court Rule to Address Implicit Bias in Jury Selection*, 108 CALIF. L. REV. 233, 236 (2020) (noting that Washington became the first state to meaningfully alter the *Batson* framework in 2018).

[8] *See* Order Amending Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure, No. R-21-0020 (Ariz. 2021) [hereinafter Order Abolishing Peremptory Strikes]; *see also* Hassan Kanu, Commentary, *Arizona Breaks New Ground in Nixing Peremptory Challenges*, REUTERS (Sept. 1, 2022, 2:52 PM), https://www.reuters.com/legal/legalindustry/arizona-breaks-new-ground-nixing-peremptory-challenges-2021-09-01 [https://perma.cc/8Q9N-LMRX].

[9] *Compare* ARIZ. SUP. CT. R. 28, *with* 5 U.S.C. § 553.

[10] Order Abolishing Peremptory Strikes, *supra* note 8, at 3–6.

peremptories is laudable, the court should have paired it with a robust expansion of voir dire requirements to better protect defendants against biased jurors.[11]

For centuries, lawyers could use peremptory strikes to remove potential jurors without giving any reason at all.[12] This enabled serious abuse, with prosecutors using "peremptory strikes to prevent Black people from serving on juries."[13] In its landmark 1986 *Batson* decision, the U.S. Supreme Court held that a party who uses a peremptory strike must give a race-neutral reason if the party challenging the strike makes a prima facie showing that the strike was based on race.[14] The trial judge must then decide whether the challenging party has carried their burden of proving "purposeful discrimination."[15] Despite frequent critiques of *Batson*, no state substantially altered its framework until Washington adopted General Rule 37 in 2018.[16] Under that rule, the party challenging a strike need not show purposeful discrimination; if an "objective observer could view race or ethnicity as a factor in [its] use," the court must deny the strike.[17]

On January 8, 2021, an Arizona Bar Association committee known as the *Batson* Working Group embraced Washington's reform. Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona,[18] the Working Group petitioned that court to adopt a modified version of General Rule 37.[19] But for Judges Swann and McMurdie of the Arizona Court of Appeals, the Working Group's proposal did not go far enough. Three days later, the two judges petitioned the Arizona Supreme Court

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[11] *See* Brent J. Gurney, Note, *The Case for Abolishing Peremptory Challenges in Criminal Trials*, 21 HARV. C.R.-C.L. L. REV. 227, 257 (1986).

[12] *See* Swain v. Alabama, 380 U.S. 202, 220 (1965) ("[T]he peremptory challenge is . . . exercised without a reason stated, without inquiry and [beyond] the court's control.").

[13] EQUAL JUST. INITIATIVE, RACE AND THE JURY: ILLEGAL DISCRIMINATION IN JURY SELECTION 6 (2021), https://eji.org/wp-content/uploads/2005/11/race-and-the-jury-digital.pdf [https://perma.cc/FT2T-MLTS].

[14] Batson v. Kentucky, 476 U.S. 79, 96–98 (1986). The Court has held that striking jurors on the basis of gender or ethnicity is also unconstitutional. *See, e.g.*, J.E.B. v. Alabama *ex rel.* T.B., 511 U.S. 127, 129 (1994); Hernandez v. New York, 500 U.S. 352, 355 (1991).

[15] Miller-El v. Dretke, 545 U.S. 231, 239 (2005) (quoting *Batson*, 476 U.S. at 98).

[16] Sloan, *supra* note 7, at 236.

[17] WASH. GEN. R. 37(e). In 2020, California enacted similar legislation. Emmanuel Felton, *Many Juries in America Remain Mostly White, Prompting States to Take Action to Eliminate Racial Discrimination in Their Selection*, WASH. POST (Dec. 23, 2021, 3:00 PM), https://www.washingtonpost.com/national/racial-discrimination-jury-selection/2021/12/18/2b6ec690-5382-11ec-8ad5-b5c50c1fb4d9_story.html [https://perma.cc/8MET-HTJW].

[18] Rule 28 allows any person to petition the court to "adopt, amend, or abrogate" the state's rules of procedure, and the court may grant the petition after allowing public comment. ARIZ. SUP. CT. R. 28(a), (c), (e), (g).

[19] Petition to Amend the Rules of the Supreme Court of Arizona to Adopt Rule 24 — Jury Selection at 12, 19–20, No. R-21-0008 (Ariz. Jan. 8, 2021).

to eliminate peremptory strikes.[20] Their petition claimed that abolition would "end definitively one of the most obvious sources of racial injustice in the courts."[21]

Judges Swann and McMurdie's "argument for abolition" proceeded in three parts.[22] First, they noted that peremptory strikes are not constitutionally required.[23] In fact, they argued, peremptories interfere with the constitutional goal of empaneling juries drawn from a representative cross section of the community.[24] Judges Swann and McMurdie then listed studies showing "that peremptories are exercised in a discriminatory fashion."[25] And they suggested that the racist use of peremptories explained why Black jurors were underrepresented by sixteen percent, Native American jurors by fifty-one percent, and Hispanic jurors by twenty-one percent on Arizona criminal juries.[26] Finally, Judges Swann and McMurdie argued that abolition would improve public confidence that juries are not the product of discrimination.[27]

On January 21, 2021, Justice Gould of the Arizona Supreme Court opened both the Swann and McMurdie petition and the Working Group petition to public comments.[28] Several trial court judges voiced support for Judges Swann and McMurdie's proposal.[29] But among practitioners, opposition was nearly unanimous.[30] Many worried about "jurors who state that they can be fair and impartial even when they . . . reveal prior experiences that indicate otherwise."[31] When a prospective juror reveals a bias, judges usually "ask whether the juror can 'set it aside'" and "'follow the law.'"[32] "[A]s long as the juror ultimately says that they can be fair and impartial," judges "are often reluctant to strike" them.[33]

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[20] Petition to Amend Rules 18.4 and 18.5 of the Arizona Rules of Criminal Procedure and Rule 47(e) of the Arizona Rules of Civil Procedure at 2, No. R-21-0020 (Ariz. Jan. 11, 2021) [hereinafter Swann & McMurdie Petition].

[21] *Id.*

[22] *Id.* at 7.

[23] *Id.*; *see also* Ross v. Oklahoma, 487 U.S. 81, 88 (1988) ("We have long recognized that peremptory challenges are not of constitutional dimension.").

[24] Swann & McMurdie Petition, *supra* note 20, at 8.

[25] *Id.* at 9.

[26] *Id.* at 12.

[27] *Id.* at 13–15.

[28] Order Opening Rules for Public Comment, Nos. R-20-0040 et seq. (Ariz. 2021).

[29] *See, e.g.*, Comment of the Committee on Superior Court at 5, No. R-21-0020 (Ariz. Apr. 12, 2021).

[30] This dynamic is unsurprising. While many scholars and jurists have argued for abolition, "[t]he opposite view seems to be the consensus among practicing lawyers." Dru Stevenson, *Jury Selection and the Coase Theorem*, 97 IOWA L. REV. 1645, 1648 (2012).

[31] Comment of the State Bar of Arizona at 3, No. R-21-0020 (Ariz. Apr. 30, 2021); *see also* Comment of the Central Arizona National Lawyers Guild Opposing the Abolition of Peremptory Strikes at 6–7, No. R-21-0020 (Ariz. Apr. 30, 2021).

[32] Comment of the State Bar of Arizona, *supra* note 31, at 5.

[33] Maricopa County Attorney's Comment in Opposition at 3, No. R-21-0020 (Ariz. May 3, 2021); *see also* Comment of the Arizona Prosecuting Attorneys' Advisory Council at 2–3, No. R-21-0020 (Ariz. Apr. 30, 2021).

Without peremptory strikes, litigants "would have no recourse . . . if a judge failed to grant an appropriate challenge for cause."[34] Opponents like the Arizona Attorney General complained that the petition contained no provision easing requirements for challenges for cause, like the one Canada included when it abolished peremptory strikes in 2019.[35] And the Arizona State Bar Association argued that if the court eliminated peremptory strikes, it would have to provide for more extensive voir dire.[36]

Many opponents of the Swann and McMurdie petition urged the Arizona Supreme Court to adopt the Working Group's proposal modeled on Washington's rule instead.[37] A civil rights group, for example, argued that abolition was "too extreme an act aimed at avoiding squarely addressing discrimination in jury selection," while the Working Group's proposal sought to tackle the problem head-on.[38] Several lawyers from Washington State urged the court to grant the Working Group's petition, with Seattle University's Korematsu Center for Law and Equality arguing that General Rule 37 is "working well," that suspect "peremptories are being attempted far less often," and that appellate courts are increasingly willing to invalidate peremptory strikes.[39]

On August 30, 2021, the Arizona Supreme Court granted the Swann and McMurdie petition.[40] In a simple order that contained no reasoning, the court struck all language from the state's rules of civil and criminal procedure allowing for or referring to peremptory strikes.[41] The court also added language permitting the parties to stipulate to the removal of a juror.[42] Under the new rules, litigants retain the ability to challenge prospective jurors "for cause," but they bear "the burden [of] establish[ing] by a preponderance of the evidence that the juror cannot render a fair and impartial verdict."[43] Effective January 1, 2022, litigants in Arizona state court may no longer strike prospective jurors without providing reasons and establishing cause.[44]

When it announced its decision to abolish peremptories, the court directed its Task Force on Jury Data Collection, Practices, and

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[34] Maricopa County Attorney's Comment in Opposition, *supra* note 33, at 2.

[35] Comment of the Arizona Attorney General's Office at 4–5, No. R-21-0020 (Ariz. May 3, 2021).

[36] *See* Comment of the State Bar of Arizona, *supra* note 31, at 6–8.

[37] *See, e.g.*, *id.* at 15–16.

[38] Comment of the Central Arizona National Lawyers Guild Opposing the Abolition of Peremptory Strikes, *supra* note 31, at 10.

[39] Letter from Robert S. Chang, Exec. Dir., Korematsu Ctr. for L. & Equal., & Taki V. Flevaris, Fac. Affiliate, Korematsu Ctr. for L. & Equal., to the Hon. Justices of the Arizona Sup. Ct. (Apr. 29, 2021) (on file with the Harvard Law School Library).

[40] *See* Order Abolishing Peremptory Strikes, *supra* note 8, at 1.

[41] *Id.* at 3–6.

[42] *Id.* at 4.

[43] *Id.*

[44] *See id.* at 1.

Procedures to consider changes to Arizona's for-cause removal rules.[45] On November 1, 2021, the Task Force recommended minor amendments to "[*e*]*ncourage* case-specific written juror questionnaires when feasible," "[*d*]*iscourage* attempts by the trial judge to rehabilitate prospective jurors through leading, conclusory questioning," and "[*p*]*ermit* extended oral voir dire," among other suggestions.[46] These recommendations do not impose requirements on trial judges, who "maintain judicial discretion and flexibility" over jury selection.[47] On December 8, 2021, the court adopted the recommendations on an "emergency basis" and opened the adopted recommendations to public comment until June 2022, with a decision expected in August.[48]

Arizona's bold move correctly recognizes that *Batson* has failed to redress race-based peremptory strikes. And it embraces a position advocated by many scholars: that the abolition of peremptory strikes is the "only fix."[49] While abolition is a laudable move, it also deprives criminal defendants of one of the few tools available for securing their Sixth Amendment right to an impartial jury.[50] Without peremptories, Arizona defendants are left to seek an impartial jury through challenges for cause and voir dire. But mounting a successful challenge for cause is difficult.[51] And trial judges, eager to save time, often use their broad discretion to severely limit voir dire, leaving defendants with no real opportunity to develop their case against jurors they believe to be biased.[52] The Arizona Supreme Court acknowledged this concern by

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[45] Order Adopting on an Emergency Basis Amendments to Rules 16.3, 18.3, 18.4, and 18.5, Rules of Criminal Procedure; Rules 16 and 47, Rules of Civil Procedure; Rule 134, Justice Court Rules of Civil Procedure; and Rule 12, Rules of Procedure for Eviction Actions at 1, 8–9, 13, No. R-21-0045 (Ariz. 2021) [hereinafter Emergency Order]. In the order, the court erroneously refers to the task force as the "Task Force on Jury Data Collection, Practices, and Policies." *Id.* at 1.

[46] STATEWIDE JURY SELECTION WORKGROUP, TASK FORCE ON JURY DATA COLLECTION, PRACS., AND PROCS., REPORT AND RECOMMENDATIONS 3 (2021) [hereinafter TASK FORCE REPORT] (emphases added), https://www.azcourts.gov/Portals/74/Jury%20TF/SJS%20Workgroup/SJSW_Final%20Report%20and%20Recommendations_11_01_21.pdf [https://perma.cc/4PRA-XQ7C].

[47] *Id.* at 6.

[48] Emergency Order, *supra* note 45, at 2.

[49] Grosso & O'Brien, *supra* note 6, at 653; *see also* Morris B. Hoffman, *Peremptory Challenges Should Be Abolished: A Trial Judge's Perspective*, 64 U. CHI. L. REV. 809, 811–12 (1997); Marder, *supra* note 6, at 1586.

[50] While the U.S. Supreme Court has said that states can abolish peremptories, *see* Ross v. Oklahoma, 487 U.S. 81, 89 (1988), it has also acknowledged that peremptories are a "means to the constitutional end of an impartial jury and a fair trial," Georgia v. McCollum, 505 U.S. 42, 57 (1992). Moreover, the Court had previously long described peremptories as "one of the most important rights secured to the accused." *Ross*, 487 U.S. at 89 (quoting Swain v. Alabama, 380 U.S. 202, 219 (1965)).

[51] The bar "is so high" that "very few potential jurors will meet the requirements of a 'for cause' dismissal." Stevenson, *supra* note 30, at 1663–64.

[52] *See* Gurney, *supra* note 11, at 269 ("Trial judges frequently use their discretion to restrict questioning for the sake of efficiency, potentially terminating promising lines of inquiry before a juror reveals his bias.").

adopting the Task Force's recommendation to, inter alia, "[p]ermit extended . . . voir dire."[53] But its decision to make expanded voir dire a nonbinding suggestion on trial judges risks doing little to protect defendants from biased jurors. The court should have instead paired abolition with a robust expansion of voir dire requirements — not merely the nonmandatory changes recommended by the Task Force.

Batson has failed to end the racist use of peremptory strikes. As Justice Marshall predicted, prosecutors routinely conjure up race-neutral reasons for striking potential jurors — reasons that courts rarely "second-guess."[54] Courts have accepted as satisfactory explanations under *Batson* the fact that stricken Black jurors had "unkempt hair" and a beard;[55] rented rather than owned their home;[56] lived in a neighborhood where exposure to drug traffickers was likely;[57] nodded at the defendant's brother outside the courtroom;[58] and "wore a beret one day and a sequined cap the next."[59] An Illinois judge joked that "new prosecutors are given a manual, probably entitled, 'Handy Race-Neutral Explanations.'"[60] And in North Carolina, prosecutors actually received a cheat sheet called "Batson Justifications: Articulating Juror Negatives."[61] Unsurprisingly, then, studies routinely find that *Batson* has failed to meaningfully reduce the racist use of peremptory strikes.[62] Arizona's bold move, by contrast, promises to definitively "end the racial discrimination that peremptories" have long "inject[ed] into the jury-selection process" — at least in the Grand Canyon State.[63]

While laudable, abolition also stands to reduce the little protection that defendants have against biased jurors. Notably, the U.S. Supreme Court has read the Constitution to require little in the context of jury selection that would help defendants secure impartial juries. As a matter of federal constitutional law, jurors are presumed impartial, and they need not be "ignorant of the facts and issues involved" in a case.[64] Even a prospective

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53 TASK FORCE REPORT, *supra* note 46, at 3; Emergency Order, *supra* note 45, at 8.

54 Batson v. Kentucky, 476 U.S. 79, 106 (1986) (Marshall, J., concurring).

55 Purkett v. Elem, 514 U.S. 765, 769 (1995) (per curiam).

56 United States v. Gibson, 105 F.3d 1229, 1231–32, 1232 n.2 (8th Cir. 1997); People v. Mack, 538 N.E.2d 1107, 1113 (Ill. 1989).

57 United States v. Uwaezhoke, 995 F.2d 388, 393 (3d Cir. 1993).

58 United States v. Jones, 195 F.3d 379, 381 (8th Cir. 1999).

59 Smulls v. Roper, 535 F.3d 853, 856, 862 (8th Cir. 2008).

60 People v. Randall, 671 N.E.2d 60, 65 (Ill. App. Ct. 1996).

61 Gilad Edelman, *Why Is It So Easy for Prosecutors to Strike Black Jurors?*, NEW YORKER (June 5, 2015), https://www.newyorker.com/news/news-desk/why-is-it-so-easy-for-prosecutors-to-strike-black-jurors [https://perma.cc/A7CZ-LSSL].

62 *See, e.g.*, Baldus et al., *supra* note 5, at 73 & n.197; Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-*Batson *North Carolina Capital Trials*, 97 IOWA L. REV. 1531, 1533 (2012).

63 Batson v. Kentucky, 476 U.S. 79, 102–03 (1986) (Marshall, J., concurring).

64 Irvin v. Dowd, 366 U.S. 717, 722 (1961); *see id.* at 723.

juror's "preconceived notion as to the guilt or innocence of [the] accused" is not "sufficient to rebut the presumption" of impartiality.[65] And it is often enough for a judge to find that a prospective juror can set "aside his impression or opinion and render a verdict based on the evidence."[66]

Voir dire is supposed to help weed out those too biased to base their verdict solely on the evidence. But the Constitution does not guarantee voir dire sufficient to achieve this aim because it leaves excessive discretion to trial judges.[67] As a general matter, the Constitution does not require judges to ask prospective jurors about specific biases feared by the defendant.[68] Instead, trial judges retain broad discretion over what to ask and how many questions to pose. Vague, limited inquiries into a juror's ability to be impartial often suffice.[69] The Supreme Court's 2010 decision in *Skilling v. United States*[70] shows that voir dire need not be extensive and that strong challenges for cause are often denied. In that case, Jeffrey Skilling, the former chief executive of Enron, was on trial for fraud and insider trading in Houston, the city where thousands had lost their jobs, homes, and retirements because of Enron's stunning collapse.[71] Yet the trial judge conducted only five hours of in-person voir dire.[72] The Supreme Court said that this voir dire was not only adequate but also reflected the trial judge's "aware[ness] of the greater-than-normal need . . . to ensure against jury bias."[73] However, jurors seated over Skilling's objections included a woman "angry" over losing her 401(k) because of Enron's collapse and a man who openly blamed the collapse on legally dubious behavior motivated by greed.[74]

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[65] *Id.* at 723.

[66] *Id.*

[67] *See* Sophia R. Friedman, Note, *Sixth Amendment — The Right to an Impartial Jury: How Extensive Must Voir Dire Questioning Be?*, 82 J. CRIM. L. & CRIMINOLOGY 920, 935–36, 939 & n.140 (1992).

[68] Ristaino v. Ross, 424 U.S. 589, 594–95 (1976) ("[T]he State's obligation to the defendant to impanel an impartial jury generally can be satisfied by less than an inquiry into a specific prejudice feared by the defendant." *Id.* at 595.). In a limited set of circumstances, the Fourteenth Amendment's Due Process Clause requires the trial judge to inquire into the racial prejudices of potential jurors. *See id.* at 595–97. But even then, trial judges retain broad discretion over the number, content, and format of the questions. *See* Turner v. Murray, 476 U.S. 28, 36–37 (1986).

[69] For example, in *Mu'Min v. Virginia*, 500 U.S. 415 (1991), the trial judge asked groups of jurors whether they could remain impartial and instructed those who thought they could to remain silent. *Id.* at 420; *id.* at 452 (Kennedy, J., dissenting).

[70] 561 U.S. 358 (2010). Notably, Skilling was prosecuted in federal court, which meant that the U.S. Supreme Court had "more latitude" to require extensive voir dire than it would for a prosecution in a state court. *See id.* at 446 n.9 (Sotomayor, J., concurring in part and dissenting in part) (quoting *Mu'Min*, 500 U.S. at 424).

[71] *Id.* at 375–76 (majority opinion).

[72] *Id.* at 437 (Sotomayor, J., concurring in part and dissenting in part).

[73] *Id.* at 389 (majority opinion). The Court also credited the district court's use of written questionnaires. *Id.* at 388.

[74] *Id.* at 396–97.

Arizona's jury selection rules do not meaningfully augment federal constitutional requirements because they too leave significant discretion to trial judges. Arizona law formally requires judges to conduct a "thorough oral examination of . . . prospective jurors" and mandates that parties receive "sufficient time, with other reasonable limitations, to conduct . . . further oral examination."[75] But Arizona trial judges retain ultimate control over voir dire and wide latitude to limit questioning.[76] Defendants must climb a steep hill to secure an appellate reversal of a trial judge's voir dire decisions, which are reviewed for abuse of discretion.[77] They must "demonstrate not only that the voir dire examination was inadequate[] but also that . . . the jury selected was not fair, unbiased, and impartial."[78] And an Arizona trial judge's denial of a challenge for cause is also deferentially reviewed for abuse of discretion.[79]

To ensure that defendants are not left in the lurch by the abolition of peremptory strikes, the Arizona Supreme Court should have paired abolition with expanded voir dire requirements — not optional changes that leave the defendant's right to an impartial jury to the discretion of the trial judge. Expanded voir dire has real benefits: "[E]mpirical evidence indicates that" it "enhance[s] the efficacy of cause challenges."[80] More effective challenges for cause in turn ensure that those with serious biases do not sit in judgment of defendants.[81] And extensive voir dire also impresses upon potential jurors the solemnity and importance of jury duty.[82] The Arizona Supreme Court implicitly recognized these benefits by adopting changes to encourage more robust voir dire.[83] But history already shows us that trial judges are inclined to limit voir dire to save time and that appellate courts are reluctant to second-guess those limits.[84] By failing to make expanded voir dire mandatory, the Arizona Supreme Court missed an opportunity to protect defendants' impartial jury right while securing the important benefits of peremptory strike abolition.

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75 ARIZ. R. CRIM. P. 18.5(f).

76 *See* State v. Acuna Valenzuela, 426 P.3d 1176, 1187 (Ariz. 2018).

77 *Id.*

78 *Id.* (omission in original) (quoting State v. Moody, 94 P.3d 1119, 1146 (Ariz. 2004)).

79 *Id.* at 1188.

80 Gurney, *supra* note 11, at 270; *see also id.* at 270–73 (collecting studies showing that expanded voir dire leads to more successful challenges for cause).

81 *Id.* at 271.

82 *See* Nancy S. Marder, *Juror Bias, Voir Dire, and the Judge-Jury Relationship*, 90 CHI.-KENT L. REV. 927, 940 (2015).

83 Emergency Order, *supra* note 45, at 7–8.

84 Gurney, *supra* note 11, at 268–69.