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**IN THE ARIZONA SUPREME COURT**

In the Matter of:

**PETITION TO AMEND THE RULES  
OF THE SUPREME COURT OF  
ARIZONA TO ADOPT RULE 24 –  
JURY SELECTION**

Supreme Court No. R-21-0008

**COMMENT OF LOS ABOGADOS  
HISPANIC BAR ASSOCIATION**

The “*Batson* Working Group” has proposed the adoption of a new Arizona Supreme Court Rule 24, concerning the exercise or waiver of peremptory jury strikes that result in removing certain specified classes of prospective jurors from civil or criminal juries.

Los Abogados Hispanic Bar Association (“Los Abogados”) supports the adoption of proposed Supreme Court Rule 24 as outlined in Petition No. R-21-0008.

RESPECTFULLY SUBMITTED this 30th day of April, 2021.

/s/ Casey Arellano  
Casey Arellano  
President, Los Abogados Hispanic Bar  
Association

## **Los Abogados Supports the Petition as Drafted.**

Los Abogados’s mission is to develop, empower, and support the Latinx community through the advancement of the legal profession. This mission includes amending our state’s rules to better ensure our system of justice treats all people equally. The adoption by the Arizona Supreme Court of the *Batson* Working Group’s (“Working Group”) proposed Supreme Court Rule 24 will do just that—improve our system of laws and justice to include all Arizonans equally in the jury selection process and further protect those who are more at risk of being excluded. As such, Los Abogados wholeheartedly supports the adoption of Working Group’s proposed Supreme Court Rule 24 in its entirety.

Los Abogados recognizes that *Batson v. Kentucky*, 476 U.S. 79 (1986) has failed to bring equality to jury service, and that preemptory challenges are still often motivated by bias, namely attorneys’ purported predictions of how jurors of a particular status group, whether race, gender, or religion, will decide a case. As the data outlined in the Working Group’s Petition clearly shows, preemptory challenges are used not only to disproportionately remove Black jurors from juries, but to also remove Latinx jurors. In a state like Arizona, where the Latinx population is an important part of our history and culture and continues to grow as a percentage of our population, it is key to the legitimacy of our legal system that Latinx be able to serve as jurors for their peers.

There is a sound empirical case that Latinx are subject to exclusion from Arizona juries. Arizona’s Administrative Office of the Courts compiled data for the entire year 2019 for Maricopa County, the largest county in our state, which Judges Swann and McMurdie of the Arizona Court of Appeals discussed in their Petition to abolish

peremptory challenges altogether. *See* Petition R-21-0020, at 12 (citing Administrative Office of the Courts data). Those data showed for all criminal case juries in 2019 in Maricopa County, Latinx persons were **20% fewer of the jurors than their general share of Maricopa County’s population would have predicted**, while White persons were represented. *See id.* Judges Swann and McMurdie referenced those data in their Petition to abolish peremptory challenges. These data are consistent with the broader American experience of the exclusion of people of color from American juries, already studied and addressed in the *Batson* Working Group petition. The Committee on Superior Courts credited all these data. Comment of the Committee on Superior Court, by the Hon. Charles Gurtler, Chair, on Petition R-21-0020 (April 12, 2021), at 2-3 (“***Petition R-21-0020 and competing Petition 21-R-0008 present strong evidence of how peremptory strikes have been misused and have resulted in juries that are not representative.***”) (emphasis added). This Court should too.

We urge the Court to not only fortify, but also expand the existing *Batson* framework to protect against the use of preemptory challenges based not only on race, ethnicity, and gender, but also on sexual orientation, disability, national origin, and age, statuses already protected by our country and state’s laws. Los Abogados agrees with the *Batson* Working Group that race deserves special priority in any effort to bring equity to jury selection. Notwithstanding, the Working Group’s findings makes clear that all of these additional status groups—sexual orientation, disability, national origin, and age—could and should benefit from protection against discrimination and bias in the jury selection process that the proposed new rule would afford to them.

The Petition changes the burden for the use of a peremptory challenge, and it does so with respect to “race, ethnicity, or national origin.” By capturing all of those areas of potential discrimination, the Superior Court will be alerted to the different avenues through which Latinx can be barred—they may be dark-skinned (race) or not; they may have a surname that suggests Latinx ethnicity even if by appearance they are white (ethnicity); they may have an accent or a use of language that tends to suggest they are from a country that would define them as Latinx (national origin). By flipping the burden from *Batson*’s difficult showing of conscious and intentional discrimination, and instead making peremptory strikes invalid if a reasonable person might think they arise from race, ethnicity, or national origin, the *Batson* Working Group proposal preserves the good of peremptory challenges while protecting Latinx persons from improper strikes on the basis of their identities as Latinx.

For the foregoing reasons, Los Abogados Hispanic Bar Association respectfully requests that this Court adopt proposed Supreme Court Rule 24 as outlined in Petition No. R-21-0008 in its entirety.

/s/ Casey Arellano  
Casey Arellano  
President, Los Abogados Hispanic Bar  
Association

Electronic copy filed with the  
Clerk of the Supreme Court of Arizona  
this 30th day of April 2021.

by: Araceli Rodriguez