

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 96–1584

TERRY CAMPBELL, PETITIONER v. LOUISIANA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
LOUISIANA, THIRD CIRCUIT

[April 21, 1998]

JUSTICE KENNEDY delivered the opinion of the Court.

We must decide whether a white criminal defendant has standing to object to discrimination against black persons in the selection of grand jurors. Finding he has the requisite standing to raise equal protection and due process claims, we reverse and remand.

I

A grand jury in Evangeline Parish, Louisiana, indicted petitioner Terry Campbell on one count of second-degree murder. Campbell, who is white, filed a timely pretrial motion to quash the indictment on the grounds the grand jury was constituted in violation of his equal protection and due process rights under the Fourteenth Amendment and in violation of the Sixth Amendment's fair-cross-section requirement. Campbell alleged a longstanding practice of racial discrimination in the selection of grand jury forepersons in the Parish. His sole piece of evidence is that, between January 1976 and August 1993, no black person served as a grand jury foreperson in the Parish, even though more than 20 percent of the registered voters were black persons. See Brief for Petitioner 16. The State

Opinion of the Court

does not dispute this evidence. The trial judge refused to quash the indictment because “Campbell, being a white man accused of killing another white man,” lacked standing to complain “where all of the forepersons were white.” App. to Pet. for Cert. G–33.

After Campbell’s first trial resulted in a mistrial, he was retried, convicted of second-degree murder, and sentenced to life in prison without possibility of parole. Campbell renewed his challenge to the grand jury foreperson selection procedures in a motion for new trial, which was denied. See *id.*, at I–2. The Louisiana Court of Appeal reversed, because, under our decision in *Powers v. Ohio*, 499 U. S. 400 (1991), Campbell had standing to object to the alleged discrimination even though he is white. 651 So. 2d 412 (1995). The Court of Appeal remanded the case for an evidentiary hearing because it found Campbell’s evidence of discrimination inadequate. *Id.*, at 413.

The Louisiana Supreme Court reversed. It distinguished *Powers* as turning on the “considerable and substantial impact” that a prosecutor’s discriminatory use of peremptory challenges has on a defendant’s trial as well as on the integrity of the judicial system. See 661 So. 2d 1321, 1324 (1995). The court declined to extend *Powers* to a claim of discrimination in the selection of a grand jury foreperson. It also found *Hobby v. United States*, 468 U. S. 339 (1984), did not afford Campbell standing to raise a due process objection. In *Hobby*, this Court held no relief could be granted to a white defendant even if his due process rights were violated by discrimination in the selection of a federal grand jury foreperson. Noting that *Hobby* turned on the ministerial nature of the federal grand jury foreperson’s duties, the Louisiana Supreme Court held “[t]he role of the grand jury foreman in Louisiana appears to be similarly ministerial” such that any discrimination “has little, if any, effect on the defendant’s due process right of fundamental fairness.” 661 So. 2d, at 1324. Because the

Opinion of the Court

Court of Appeal had not addressed Campbell's other asserted points of error, the Louisiana Supreme Court remanded the case. After the Court of Appeal rejected Campbell's remaining claims, the Louisiana Supreme Court refused to reconsider its ruling on the grand jury issue. See 685 So. 2d 140 (1997). We granted certiorari to address the narrow question of Campbell's standing to raise equal protection, due process, and fair-cross-section claims. 521 U. S. __ (1997).

II

As an initial matter, we note Campbell complains about more than discrimination in the selection of his grand jury foreperson; he alleges that discrimination shaped the composition of the grand jury itself. In the federal system and in most States which use grand juries, the foreperson is selected from the ranks of the already seated grand jurors. See 1 S. Beale, W. Bryson, J. Felman & M. Elston, *Grand Jury Law and Practice* §4:6, p. 4–20 to 4–21 (2d ed. 1997) (either the judge selects the foreperson or fellow grand jurors elect him or her). Under those systems, the title “foreperson” is bestowed on one of the existing grand jurors without any change in the grand jury's composition. In Louisiana, by contrast, the judge selects the foreperson from the grand jury venire before the remaining members of the grand jury have been chosen by lot. La. Code Crim. Proc. Ann., Art. 413(B) (West Supp. 1997); see also Beale, *supra*, at 4–22, n. 11 (Ohio, Oklahoma, Tennessee, and Virginia use procedures similar to Louisiana's). In addition to his other duties, the foreperson of the Louisiana grand jury has the same full voting powers as other grand jury members. As a result, when the Louisiana judge selected the foreperson, he also selected one member of the grand jury outside of the drawing system used to compose the balance of that body. These considerations require us to treat the case as one alleging discriminatory selection of

Opinion of the Court

grand jurors.

III

Standing to litigate often turns on imprecise distinctions and requires difficult line drawing. On occasion, however, we can ascertain standing with relative ease by applying rules established in prior cases. See *Allen v. Wright*, 468 U. S. 737, 751 (1984). Campbell's equal protection claim is such an instance.

In *Powers v. Ohio*, *supra*, we found a white defendant had standing to challenge racial discrimination against black persons in the use of peremptory challenges. We determined the defendant himself could raise the equal protection rights of the excluded jurors. Recognizing our general reluctance to permit a litigant to assert the rights of a third party, we found three preconditions had been satisfied: (1) the defendant suffered an "injury in fact"; (2) he had a "close relationship" to the excluded jurors; and (3) there was some hindrance to the excluded jurors asserting their own rights. *Powers, supra*, at 411 (citing *Singleton v. Wulff*, 428 U. S. 106 (1976)). We concluded a white defendant suffers a serious injury in fact because discrimination at the *voir dire* stage "casts doubt on the integrity of the judicial process" . . . and places the fairness of a criminal proceeding in doubt." 499 U. S., at 411. This cloud of doubt deprives the defendant of the certainty that a verdict in his case "is given in accordance with the law by persons who are fair." *Id.*, at 413. Second, the excluded juror and criminal defendant have a close relationship: They share a common interest in eliminating discrimination, and the criminal defendant has an incentive to serve as an effective advocate because a victory may result in overturning his conviction. *Id.*, at 413–414. Third, given the economic burdens of litigation and the small financial reward available, "a juror dismissed because of race probably will leave the courtroom possessing little incentive to set in motion the arduous process needed to vindi-

Opinion of the Court

cate his own rights.” *Id.*, at 415. Upon consideration of these factors, we concluded a white defendant had standing to bring an equal protection challenge to racial discrimination against black persons in the petit jury selection process.

Although Campbell challenges discriminatory selection of grand jurors, rather than petit jurors, *Powers*’ reasoning applies to this case on the question of standing. Our prior cases have not decided whether a white defendant’s own equal protection rights are violated when the composition of his grand jury is tainted by discrimination against black persons. We do not need to address this issue because Campbell seeks to assert the well-established equal protection rights of black persons not to be excluded from grand jury service on the basis of their race. See Tr. 9 (Dec. 2, 1993); see also *Carter v. Jury Comm’n of Greene Cty.*, 396 U. S. 320, 329–330 (1970) (racial exclusion of prospective grand and petit jurors violates their constitutional rights). Campbell satisfies the three preconditions for third-party standing outlined in *Powers*.

Regardless of his or her skin color, the accused suffers a significant injury in fact when the composition of the grand jury is tainted by racial discrimination. “[D]iscrimination on the basis of race in the selection of members of a grand jury . . . strikes at the fundamental values of our judicial system” because the grand jury is a central component of the criminal justice process. *Rose v. Mitchell*, 443 U. S. 545, 556 (1979). The Fifth Amendment requires the Federal Government to use a grand jury to initiate a prosecution, and 22 States adopt a similar rule as a matter of state law. See 1 Beale, *supra*, §1:2, p. 1–3; see also *Hurtado v. California*, 110 U. S. 516 (1884) (Fifth Amendment’s grand jury requirement is not binding on the States). The grand jury, like the petit jury, “acts as a vital check against the wrongful exercise of power by the State and its prosecutors.” *Powers, supra*, at 411. It con-

Opinion of the Court

trols not only the initial decision to indict, but also significant decisions such as how many counts to charge and whether to charge a greater or lesser offense, including the important decision to charge a capital crime. See *Vasquez v. Hillery*, 474 U. S. 254, 263 (1986). The integrity of these decisions depends on the integrity of the process used to select the grand jurors. If that process is infected with racial discrimination, doubt is cast over the fairness of all subsequent decisions. See *Rose, supra*, at 555–556 (“Selection of members of a grand jury because they are of one race and not another destroys the appearance of justice and thereby casts doubt on the integrity of the judicial process”).

Powers emphasized the harm inflicted when a prosecutor discriminates by striking racial minorities in open court and in front of the entire jury pool. The Court expressed concern that this tactic might encourage the jury to be lawless in its own actions. See 499 U. S., at 412–413. The State suggests this sort of harm is not inflicted when a single grand juror is selected based on racial prejudice because the discrimination is invisible to the grand jurors on that panel; it only becomes apparent when a pattern emerges over the course of years. See Brief for Respondent 16. This argument, however, underestimates the seriousness of the allegations. In *Powers*, even if the prosecutor had been motivated by racial prejudice, those responsible for the defendant’s fate, the judge and the jury, had shown no actual bias. If, by contrast, the allegations here are true, the impartiality and discretion of the judge himself would be called into question.

The remaining two preconditions to establish third-party standing are satisfied with little trouble. We find no reason why a white defendant would be any less effective as an advocate for excluded grand jurors than for excluded petit jurors. See *Powers, supra*, at 413–414. The defendant and the excluded grand juror share a common inter-

Opinion of the Court

est in eradicating discrimination from the grand jury selection process, and the defendant has a vital interest in asserting the excluded juror's rights because his conviction may be overturned as a result. See *Vasquez, supra*, at 264; *Rose, supra*, at 551; *Cassell v. Texas*, 339 U. S. 282 (1950). The State contends Campbell's connection to "the excluded class of . . . jurors . . . who were not called to serve . . . for the prior 16 1/2 years is tenuous, at best." Brief for Respondent 22. This argument confuses Campbell's underlying claim with the evidence needed to prove it. To assert the rights of those venirepersons who were excluded from serving on the grand jury in his case, Campbell must prove their exclusion was on account of intentional discrimination. He seeks to do so based on past treatment of similarly situated venirepersons in other cases, see *Castaneda v. Partida*, 430 U. S. 482, 494 (1977), but this does not mean he seeks to assert those venirepersons' rights. As a final matter, excluded grand jurors have the same economic disincentives to assert their own rights as do excluded petit jurors. See *Powers, supra*, at 415. We find Campbell, like any other white defendant, has standing to raise an equal protection challenge to discrimination against black persons in the selection of his grand jury.

IV

It is axiomatic that one has standing to litigate his or her own due process rights. We need not explore the nature and extent of a defendant's due process rights when he alleges discriminatory selection of grand jurors, and confine our holding to his standing to raise the issue. Our decision in *Peters v. Kiff* addressed the due process question, although a majority of Justices could not agree on a comprehensive statement of the rule or an appropriate remedy for any violation. See 407 U. S. 493, 504 (1972) (opinion of Marshall, J.) ("[W]hatever his race, a criminal defendant has standing to challenge the system used to

Opinion of the Court

select his grand . . . jury on the ground that it arbitrarily excludes . . . members of any race, and thereby denies him due process of law”); *id.*, at 507 (White, J., joined by Brennan and Powell, JJ., concurring in judgment) (“[T]he strong statutory policy of [18 U. S. C.] §243, which reflects the central concern of the Fourteenth Amendment” permits a white defendant to challenge discrimination in grand jury selection). Our more recent decision in *Hobby v. United States* proceeded on the implied assumption that a white defendant had standing to raise a due process objection to discriminatory appointment of a federal grand jury foreperson and skipped ahead to the question whether a remedy was available. 468 U. S., at 350. It is unnecessary here to discuss the nature and full extent of due process protection in the context of grand jury selection. That issue, to the extent it is still open based upon our earlier precedents, should be determined on the merits, assuming a court finds it necessary to reach the point in light of the concomitant equal protection claim. The relevant assumption of *Hobby*, and our holding here, is that a defendant has standing to litigate whether his conviction was procured by means or procedures which contravene due process.

The Louisiana Supreme Court erred in reading *Hobby* to foreclose Campbell’s standing to bring a due process challenge. 661 So. 2d 1321, 1324 (1995). In *Hobby*, we held discrimination in the selection of a federal grand jury foreperson did not infringe principles of fundamental fairness because the foreperson’s duties were “ministerial.” See *Hobby, supra*, at 345–346. In this case, the Louisiana Supreme Court decided a Louisiana grand jury foreperson’s duties were ministerial too, but then couched its decision in terms of Campbell’s lack of standing to litigate a due process claim. 661 So. 2d, at 1324.

The Louisiana Supreme Court was wrong on both counts. Its interpretation of *Hobby* is inconsistent with

Opinion of the Court

the implicit assumption of standing we have just noted and with our explicit reasoning in that case. In *Hobby*, a federal grand jury foreperson was selected from the existing grand jurors, so the decision to pick one grand juror over another, at least arguably, affected the defendant only if the foreperson was given some significant duties that he would not have had as a regular grand juror. See *supra*, at __. Against this background, the Court rejected the defendant's claim because the ministerial role of a federal grand jury foreperson "is not such a vital one that discrimination in the appointment of an individual to that post significantly invades" due process. *Hobby, supra*, at 346. Campbell's challenge is different in kind and degree because it implicates the impermissible appointment of a member of the grand jury. See *supra*, at __. What concerns Campbell is not the foreperson's performance of its duty to preside, but performance as a grand juror, namely voting to charge Campbell with second-degree murder.

The significance of this distinction was acknowledged by *Hobby's* discussion of a previous case, *Rose v. Mitchell*, 443 U. S. 545 (1979). In *Rose*, we assumed relief could be granted for a constitutional challenge to discrimination in the appointment of a state grand jury foreperson. See *id.*, at 556. *Hobby* distinguished *Rose* in part because it involved Tennessee's grand jury system. Under the Tennessee law then in effect, 12 members of the grand jury were selected at random, and then the judge appointed a 13th member who also served as foreperson. See *Hobby*, 468 U. S., at 347. As a result, *Hobby* pointed out discrimination in selection of the foreperson in Tennessee was much more serious than in the federal system because the former can affect the composition of the grand jury whereas the latter cannot: "So long as the grand jury itself is properly constituted, there is no risk that the appointment of one of its members as foreman will distort the overall composition of the array or otherwise taint the operation

Opinion of the Court

of the judicial process.” *Id.*, at 348. By its own terms, then, *Hobby* does not address a claim like Campbell’s.

V

One of the questions raised on certiorari is whether Campbell also has standing to raise a fair cross-section claim. It appears neither the Louisiana Supreme Court nor the Louisiana Court of Appeal discussed this contention. “With ‘very rare exceptions,’ . . . we will not consider a petitioner’s federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.” *Adams v. Robertson*, 520 U. S. __, __ (1997) (*per curiam*) (slip op., at 2). Campbell has made no effort to meet his burden of showing this issue was properly presented to the Louisiana appellate courts, even after the State pointed out this omission before this Court. See Brief for Respondent 29–30. In fact, Campbell devotes no more than one page of text in his brief to his fair-cross-section claim. See Brief for Petitioner 31–32. We decline to address the issue.

The judgment of the Louisiana Supreme Court is reversed. The case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.