Essay

Twins at *Bat*(*son*), Strikes Are Out: Minnesota's Opportunity to Restore *Batson v. Kentucky* by Eliminating Peremptory Strikes

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INTRODUCTION

While the Supreme Court's decision in *Batson v. Kentucky*[1] is widely hailed by scholars and jurists alike as a triumph of American egalitarianism,[2] time and trial have unmasked its protections as a paper tiger. Despite its purported protections against racially and sexually discriminatory peremptory juror strikes,[3] the Court's abysmal standard for nondiscriminatory strike justifications ensures only the egregious discrimination by uncreative lawyers is screened out.[4] Moreover, the procedure's subjective inquiry does nothing to cure for when a lawyer's peremptory strike is motivated by implicit bias.[5]

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

2. *See*, *e.g.*, Robin L. Wilson, *Opportunity Knocks Twice*, 39 QUINNIPIAC L. REV. 485, 495 (explaining the significance of the *Batson* decision for equal protection); Flowers v. Mississippi, 139 S. Ct. 2228, 2243 (2019) ("By taking steps to eradicate racial discrimination from the jury selection process, *Batson* sought to protect the rights of defendants and jurors, and to enhance public confidence in the fairness of the criminal justice system.").

3. *See infra* Part I.A.

4. *See infra* Part I.B.1.

5. *See infra* Part I.B.2.

In reaction to these shortcomings, many states have adopted their own procedural methods to prevent discrimination in jury selection. Some states have chosen to raise the bar for what race-neutral reasons may justify a strike above the Supreme Court's embarrassing floor.[6] Others have shifted their *Batson* test from a subjective to an objective inquiry in an attempt to account for implicit bias.[7] Arizona has taken the most drastic route and abolished peremptory strikes altogether.[8]

Minnesota, on the other hand, recognizes many of *Batson*'s failures but has done nothing to cure for them. Its courts still use peremptory strikes and apply the Supreme Court's procedure and standards when one is challenged as discriminatory.[9] Yet, the elimination of racial and gender bias, both implicit and explicit, in its jury selection process remains a state goal.[10] With these priorities, Minnesota ought to abolish peremptory strikes to ensure that unconscious prejudice does not manipulate any of the decisionmakers involved in *voir dire*.[11]

This piece argues that ending the practice of peremptory strikes is the most efficacious and feasible way for Minnesota to restore *Batson*'s protections in a manner that aligns with and advances its state-specific judiciary goals. First, the piece introduces the *Batson* case and its initial expansion.[12] Next, the piece discusses two critiques of the *Batson* doctrine before surveying state solutions to these problems.[13] Finally, the piece situates *Batson* in Minnesotan state court jurisprudence and argues the state's express interest in eliminating implicit bias would be best served by eliminating peremptory strikes.[14]

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6. *See infra* Part I.C.3.
7. *See infra* Part I.C.2.
8. *See infra* Part I.C.1.
9. *See infra* Part II.A.
10. *Id.*
11. *See infra* Part II.B.
12. *See infra* Part I.A.
13. *See infra* Part I.B–C.
14. *See infra* Part II.

I. BACKGROUND

A. *BATSON V. KENTUCKY* AND ITS EXPANSION

The right to trial by jury is enshrined in the United States Constitution.[15] The power of attorneys to exercise peremptory strikes, in which a party may exclude a potential juror at their discretion and without explanation,[16] is almost as old, with federal law guaranteeing defendants peremptory strikes for certain felonies as far back as 1790.[17] However, after the Supreme Court affirmed that the Civil Rights Act of 1875 forbid states from categorically excluding nonwhite citizens from jury service[18] and people of color began to sit on juries, lawyers began a practice of using their peremptory strikes to remove them from the box.[19]

In *Swain v. Alabama*, the Supreme Court recognized this problem and held that the systemic use of peremptory strikes to bar Black Americans from jury service violated the Equal Protection Clause.[20] Yet its impact was limited, as *Swain* only provided for relief when the defendant could prove a jurisdictional practice of discriminatory strikes.[21] To the *Swain* Court, discriminatory strikes "in a particular case" did not constitute an Equal Protection violation.[22] Furthermore, the Court established a demanding evidentiary standard to prove such systemic discrimination.[23]

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15. U.S. CONST. amend. VI (guaranteeing the right to a jury trial in "all criminal proceedings"); U.S. CONST. amend. VII (preserving the right to a jury trial in civil suits "where the value in controversy shall exceed twenty dollars").

16. *Peremptory Challenge*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/peremptory_challenge [https://perma.cc/8J9R-HV5R].

17. C.J. Williams, *On the Origins of Numbers: Where Did the Number of Peremptory Strikes Come From and Why Is Origin Important?*, 39 AM. J. TRIAL ADVOC. 481, 496 (2016) (explaining that while the Framers considered a guaranteeing peremptory strikes in the Sixth Amendment, the First Congress provided certain criminal defendants with peremptory strikes in the Act of 1790).

18. Strauder v. West Virigina., 100 U.S. 303, 311–12 (1879) (explaining the application of the Act to state criminal procedure).

19. Swain v. Alabama, 380 U.S. 202, 203–04 (1965) (recognizing the existence of this practice across multiple jurisdictions).

20. *Id.* at 204 (holding that "a State's purposeful or deliberate denial" of jury participation to Black people violates the Equal Protection Clause).

21. *Id.* at 223–24 (explaining that a "State's systematic striking" of Black jurors gives rise to an Equal Protection claim).

22. *Id.* at 221.

23. *Id.* at 225–26.

The Court revisited this issue in *Batson v. Kentucky*,[24] inaugurating the modern era of jurisprudence on discriminatory peremptory strikes. *Batson* reaffirmed *Swain*'s holding that a racially discriminatory peremptory strike violated the Equal Protection Clause but recognized that requiring defendants to demonstrate a practice of striking of Black jurors to prove discrimination was a "crippling burden."[25] Instead of lowering the evidentiary standard, the Court went beyond *Swain* and held that a racially discriminatory strike of a juror in an individual case violates the Equal Protection Clause, regardless of any "consistent pattern of official racial discrimination."[26]

Accordingly, the Court established a three-step procedure for defendants to challenge a prosecutor's peremptory strike as racially discriminatory. First, the defendant must establish a "prima facia case" for discrimination by showing that they belong to a racial minority and then asserting facts that "raise an inference" that the prosecutor's peremptory strike of a juror sharing their race was discriminatory.[27] Second, if the judge

24. 476 U.S. 79 (1986).

25. *Id.* at 92.

26. *Id.* at 95.

27. *Id.* at 96. *Batson* also entitles defendants trying to establish their prima facia case to the presumption that peremptory strikes allow "those to discriminate who are of a mind to discriminate." *Id.* (quoting Avery v. Georgia, 345 U.S. 559, 562 (1953)). The Supreme Court has since clarified that demonstrating "an inference" of discrimination does not require the challenging party to show that discrimination is "more likely than not." Johnson v. California, 545 U.S. 162, 170 (2005); s*ee also* Price v. Cain, 560 F.3d 284, 287 (5th Cir. 2009) (interpreting *Johnson* as clarifying that *Batson* requires meeting only a "light burden" to raise a prima facia case). Furthermore, the Supreme Court has identified multiple nonexclusive factors that may evince a discriminatory strike, including if the proffered reason for striking a minority juror would apply to an unstruck white juror, the striking party questioned minority jurors harsher than white jurors during *voir dire*, and how frequently the party used peremptory strikes against minority jurors among others. Miller-El v. Dretke, 545 U.S. 231, 240–41, 255 (2005).

For cases of defendants attempting to satisfy *Batson*'s first step, see, for example, State v. Henderson, 764 P.2d 602, 603–04 (Or. Ct. App. 1988) (prima facia *Batson* case established by showing defendant and struck juror were Black and the facts that the prosecutor struck the only Black juror in a case with a white victim after an inoffensive *voir dire* raised inference of discrimination), Linsey v. Commonwealth, 435 S.E.2d 153, 154–55 (Va. Ct. App. 1993) (prima facia *Batson* case established by showing defendant and struck juror were Black and facts that the prosecutor stuck the only Black juror after they said nothing during *voir dire* despite keeping five white jurors who also said nothing raised inference of discrimination), and United States v. Moore, 895 F.2d 484, 486–87

determines the defendant established their prima facia case, the burden shifts to the prosecutor to provide a "neutral explanation" for their strike.[28] Third, the judge takes all of these facts into account to determine if the defendant "established purposeful discrimination."[29] The Court did not proscribe a remedy for what must happen on the trial-court level if the challenger proves their claim[30]—most courts will require for the venireperson in question to be seated or to redo jury selection in full.[31] However, a trial court's failure to follow this procedure or clear error in its determination is subject to appellate reversal.[32]

Immediately following *Batson*, the Court handed down multiple rulings that meaningfully expanded its scope. Quickly, the Court dropped its requirements that the defendant must belong to a racial minority group, and to the same minority group as the struck juror.[33] The Court also extended *Batson* to permit challenging a criminal defendant's prejudicial peremptory strikes instead of just those of the prosecution.[34] Around the same time,

(8th Cir. 1990) (affirming defendant failed to establish prima facia *Batson* case by relying only on facts that prosecutor struck four of seven Black jurors and three of the struck jurors offered no responses during *voir dire*).

28. *Batson*, 476 U.S. at 97. For further discussion of what suffices as a "neutral explanation," see *infra* Part I.B.1.

29. *Batson*, 476 U.S. at 98. The Supreme Court has clarified that *Batson*'s step three is a credibility determination; the judge must determine if they believe the challenged party's neutral explanation offered in step two or if they find it to be a pretext for discrimination. Hernandez v. New York, 500 U.S. 352, 365 (1991) (quoting *Batson*, 476 U.S. at 98 n.21). Furthermore, the Court has guided that the "best evidence" of such credibility "often will be the demeanor" of the attorney during their explanation. *Hernandez*, 500 U.S. at 365.

30. *Batson*, 476 U.S at 99 n.24 ("[W]e express no view on whether it is more appropriate . . . for the trial court to discharge the venire and select a new jury from a panel not previously associated with the case . . . or to disallow the discriminatory challenges and resume selection with the improperly challenged jurors reinstated on the venire.").

31. *See id.* (mentioning these remedies); *e.g.*, Degar v State, 482 S.W.3d 588, 591 (Tx. Ct. App. 2015) (explaining the trial court did not err by following the typical practice of reinstating the struck juror after a successful *Batson* challenge).

32. *Batson*, 476 U.S. at 100 (reversing Batson's conviction and remanding the case).

33. Powers v. Ohio, 499 U.S. 400, 416 (1991) (explaining that racial parody between the struck juror and the defendant may be relevant in proving discrimination but is not required to raise a *Batson* challenge).

34. Georgia v. McCollum, 505 U.S. 42, 59 (1992) ("We hold that the Constitution prohibits a criminal defendant from engaging in purposeful discrimination on the ground of race in the exercise of peremptory challenges.").

the Court extended *Batson* to permit challenging discriminatory peremptory strikes in civil cases.[35] Finally, the Court would apply *Batson* to prohibit sex discrimination on juries in addition to racial discrimination.[36]

Amidst this honing of the *Batson* doctrine, the decision would be hailed as a historic achievement for equal protection.[37] However, several cases lurking just beyond the horizon and internal problems with *Batson*'s mechanics would soon cut the legs out from under this landmark case.[38]

B. SHRINKAGE AND CRITICISM OF *BATSON*

Following *Batson*'s initial expansion, the Court would reign in the case by setting an extremely permissible standard for what may constitute a racially neutral reason to strike a juror and defeat a *Batson* challenge.[39] Additionally, advances in psychology renewed and elevated criticisms of *Batson*'s focus on purposeful discrimination as incapable of dealing with implicit biases in *voir dire*.[40]

1. Low Bar for Race-Neutral Reasons

The *Batson* procedure enables an attorney to defeat a challenge against their peremptory strike if, during step two, the attorney can offer a legitimate explanation for their strike that rises beyond a racial pretext.[41] However, the Supreme Court quickly established an incredibly permissive standard for what suffices as a legitimate reason that would prevent *Batson* from barring all but the most blatant of discrimination.[42]

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35. Edmonson v. Leesville Concrete Co., 500 U.S. 614, 618 (1991) (extending *Batson* to civil cases).

36. J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 146 (1994) ("[T]he Equal Protection Clause prohibits discrimination in jury selection on the basis of gender.").

37. *E.g.*, *Powers*, 499 U.S. at 406 ("*Batson* recognized that a prosecutor's discriminatory use of peremptory challenges harms the excluded jurors and the community at large."); *Edmonson*, 500 U.S. at 618 (citing *Batson* as belong to "over a century of jurisprudence dedicated to the elimination of race prejudice within the jury selection process").

38. *See infra* Part I.B.

39. *See infra* Part I.B.1.

40. *See infra* Part I.B.2.

41. Batson v. Kentucky, 476 U.S. 79, 97–98 (1986).

42. Purkett v. Elm, 514 U.S. 765, 768–69 (1995) (explaining that a "legitimate reason" under *Batson* may be nonsensical as long as it does not run afoul

The first significant blow to *Batson*'s "neutral explanation" standard came in *Hernandez v. New York*.[43] The case came before the Supreme Court after the defendant, a Latino man, raised a *Batson* challenge against the prosecutor's peremptory strikes against four Latino veniremen.[44] While two of the four had been convicted of crimes, the prosecutor's only reason for striking the remaining pair was that he felt they would not "accept the interpreter as the final arbiter of what was said" by Spanish-speaking witnesses.[45] Hernandez argued on appeal that striking these jurors for speaking Spanish alone was too closely correlated to ethnicity to survive a *Batson* challenge.[46] The Court rejected this argument, specifying that the relevant inquiry is not if the striking party's reason may have a disproportionate impact on a racial group but of the subjective intent of the striking party.[47] On this logic, the Court determined that the prosecution offered a sufficiently non-pretextual, race-neutral explanation and affirmed the trial courts' rejection of Hernandez's *Batson* challenge.[48] However, critics argued that this decision enabled reasons that are effectively discriminatory to satisfy *Batson*'s standard for justifying peremptory strikes.[49]

Batson's "neutral explanation" standard sank even lower with *Purkett v. Elem*.[50] *Purkett* arose when a trial judge rejected a *Batson* challenge against a prosecutor who struck two Black jurors and explained he struck them for wearing "mustaches and . . . beards [that] look suspicious to me," and one having "long

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of the Equal Protection Clause); Jeffery Bellin & Junichi P. Semitsu, *Widening Batson's Net to Ensnare More Than the Unapologetically Bigoted or Painfully Unimaginative Attorney*, 96 CORNELL L. REV. 1075, 1092–93 (2011) (concluding, based on a survey of 269 federal decisions from 2000 to 2009, that a *Batson* challenge can be defeated with "tepid, almost laughable 'race-neutral' reasons, as well as purportedly 'race-neutral' reasons that strongly correlate with race").

43. 500 U.S. 352 (1991).

44. *Id.* at 356.

45. *Id.*

46. *Id.* at 360.

47. *Id.* at 359–60.

48. *Id.* at 371–72.

49. *Id.* at 379 (Blackmun, J., dissenting) ("An explanation that 'race neutral' on its face is nonetheless unacceptable if it is merely a proxy for a discriminatory practice."); Wilson, *supra* note 2, at 505 (arguing that *Hernandez* "sets a low threshold for demonstrating a race-neutral explanation [and] a dangerous precedent for the sweeping exclusion of Latinos from juries based on language competency").

50. 514 U.S. 765 (1995).

curly hair."[51] The Eighth Circuit reversed the trial court, finding these reasons absurd and thus a pretextual reason to strike the jurors based on race.[52] However, the Supreme Court reversed the Eighth Circuit for focusing on the "reasonableness" of the prosecution's explanation rather than the trial court's determination that his explanation was genuine.[53] Citing to *Hernandez*, the Court clarified that a challenged party meets their step two burden by offering any "legitimate reason" that does not deny equal protection—even if that reason makes no sense.[54] It is then the trial judge's responsibility in step three to make a credibility determination as to if that justification, including "implausible or fantastic justifications," rises above a pretextual explanation.[55] As the Court found nothing in the record to suggest that the state court's determination was not genuine, it reversed the Eighth Circuit and sustained the judge's original decision.[56]

Purkett opened the floodgates for irrelevant and ridiculous reasons to beat step two of a *Batson* challenge.[57] And if that reason sufficed to convince the trial judge at step three, appellate courts' hands were tied to affirming their decision absent egregious error.[58] Appellate courts have since affirmed *Batson* challenge denials on ground such as the juror avoided eye contact, wore earrings, wore a different hat between two days of *voir dire*, watched science fiction TV shows, held a Theater Arts degree, or said the word "government" twice.[59] Attorneys have also successfully defended their peremptory strikes by suggesting they had a "gut feeling" or "hunch" about the juror, absent further

51. *Id.* at 766 (citation omitted).

52. *Id.*

53. *Id.* at 769.

54. *Id.* at 769–70 ("What it means by a 'legitimate reason' is not a reason that makes sense, but a reason that does not deny equal protection." (citing Hernandez v. New York, 500 U.S. 352, 359 (1991)).

55. *Purkett*, 514 U.S. at 768.

56. *Id.* at 769–70.

57. Wilson, *supra* note 2, at 516 ("Any facially race-neutral reason, no matter how implausible, fantastical, silly or superstitious, is sufficient to rebut a prima facie case of discrimination."); Bellin, *supra* note 42, at 1093 ("[T]he last decade of federal court opinions reflect that prosecutors regularly respond to a defendant's prima facie case of racially motivated jury selection with tepid, almost laughable 'race-neutral' reasons[.]").

58. Bellin, *supra* note 42, at 1092.

59. *Id.* at 1095–96 (surveying reasons that satisfied appellate review of *Batson* challenges).

explanation.[60] Associatively, a survey of 269 federal appellate decisions reviewing a *Batson* challenge granted a new trial only 6.69% of the time,[61] quantifying appellate courts' deference in this context.

Post-*Purkett*, the *Batson* process has become, in the words of one judge, a "charade."[62] Certain prosecutor's offices would distribute training materials explicitly instructing new prosecutors to strike people of color and women from juries and offer paltry reasons like the ones above to escape *Batson*.[63] Under the *Purkett* standard, any attorney with a shred of creativity can defeat *Batson* challenge, undermining its essential protections for jurors and defendants.[64]

2. Implicit Bias Critique of the *Batson* Process

Aside from how *Batson* has withered over time, the decision has received criticism for failing to address implicit bias in peremptory strikes.[65] This criticism is as old as *Batson* itself, with Justice Marshall writing in a concurring opinion to *Batson* that the Court's focus on the subjective mindset of the challenged party will fail to address the "unconscious racism" that motivates so many peremptory strikes.[66]

Justice Marshall's concurrence proved prescient, as psychological research over the remainder of the twentieth century matured researchers' understanding of implicit biases.[67] Decades of study have led psychologists to the consensus that group stereotypes constantly affect individual decision-making, regardless of the intention of the decision-maker.[68] These effects are most

60. Wilson, *supra* note 2, at 518.

61. Bellin, *supra* note 42, at 1092.

62. People v. Randall, 283. Ill. App. 3d 1019, 1025 (Ill. Ct. App. 1996).

63. Bellin, *supra* note 42, at 1081 n.22 (discussing such incidents in the Philadelphia District Attorney's Office, District of Columbia District Attorney's Office, and Dallas County District Attorney's Office).

64. *Id.* at 1075.

65. Batson v. Kentucky, 476 U.S. 79, 106 (1986) (Marshall, J., concurring); Anthony Page, *Batson's Blind Spot*, 85 B.U. L. REV. 155, 160 (2005).

66. *Batson*, 476 U.S. at 106 (Marshall, J., concurring) ("A prosecutor's own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is 'sullen,' or 'distant,' a characterization that would not have come to his mind if a white juror had acted identically.").

67. Page, *supra* note 65, 208–10 (surveying research on implicit racial and gender stereotypes).

68. *Id.* at 209–10.

prominent in ambiguous situations where people draw the most on their instincts or gut.[69] To many researchers, the jury selection process is exactly the type of scenario where such biases run wild, as attorneys must exercise their virtually boundless discretion to issue peremptory strikes based on limited information about jurors, demanding they fall back on their "instincts" about people.[70]

Frankly, these researchers are correct—it is an open secret among litigators that stereotypical thinking is foundational to *voir dire*.[71] Commentators have long observed that falling back upon group stereotypes to compensate for a lack of particularized information about a juror is the uncomfortable standard procedure of jury selection.[72] Furthermore, embarrassing examples from high-profile attorneys demonstrate how trial lawyers have traditionally embraced *voir dire* stereotyping as a grotesque art form.[73] It may be no exaggeration that leaning into implicit biases is the very essence of executing peremptory strikes.

Therefore, *Batson*'s requirement to prove the discriminatory *intent* of the striking party does nothing to account for

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69. *Id.* at 210.

70. *Id.*

71. Bridget Mary McCormack & Len Niehoff, *When Stereotypes Attack*, 41 LITIG. 28, 30–32 (2015) (discussing the prevalence of stereotyping in jury selection).

72. *E.g.*, *id.*; Richard Gabriel, *Understanding Bias: Preserving Peremptory Challenges, Preventing their Discriminatory Use, and Providing Fairer and More Impartial Juries*, CIV. JURY PROJECT (2024), https://civiljuryproject.law.nyu.edu/understanding-bias-preserving-peremptory-challenges-preventing-their-discriminatory-use-and-providing-fairer-and-more-impartial-juries [https://perma.cc/NYX7-E3J7] ("Without quality of information about a prospective juror's attitudes and experiences, attorneys are left with little or scant information about jurors. They then resort to stereotypes and biases, implicit or explicit, when making their peremptory strikes[.]"); Collin P. Wedel, Note, *Twelve Angry (and Stereotyped) Jurors: How Courts Can Use Scientific Jury Selection to End Discriminatory Peremptory Challenges*, 7 STAN. J.C.R. & C.L. 293, 327–28 (2011) (discussing lawyers' reliance on stereotypes during *voir dire*).

73. *See*, *e.g.*, Clarence Darrow, *Attorney for the Defense*, ESQUIRE, May 1, 1936, at 37–39 (cataloging his learned opinions of how Irishmen, Englishmen, Germans, Catholics, Presbyterians, Methodists, Baptists, Jews, and women behave on juries). The Author, a Lutheran Swede who was once struck without cause from a criminal jury, is particularly tickled by Mr. Darrow's warning to "[b]eware of the Lutherans, especially the Scandinavians; they are almost always sure to convict." *Id.* at 38.

unintentional discrimination in jury selection.[74] Yet, the harms *Batson* describes—a denial of the jury of the defendant's peers and denying minoritized groups participation in a valuable civic opportunity[75]—are based in the effect of discriminatory strikes and occur regardless of the striking party's intent. Thus, *Batson*'s scienter requirement is not only unnecessary but serves to block its enforcement against what may be the most common form of discrimination in jury selection.[76]

Overall, *Batson* has fallen far short of its laudable ambitions. Its focus on intentional discrimination prevents its protections from addressing how discrimination is arguably most likely to manifest in the *voir dire* process,[77] and what protections it does offer have been limited by extremely permissive standards for race-neutral explanations of peremptory strikes.[78] Outside of explicit discrimination on behalf of unimaginative lawyers, *Batson* does little to protect jurors or defendants.

C. STATE SOLUTIONS

The Supreme Court does not recognize either of these problems with *Batson*, describing its jurisprudence as having "vigorously enforced and reinforced the decision, and guarded against any backsliding."[79] Thus, the decisions of if and how to fix these issues have been left to the states. Their solutions range from minor tweaks of *Batson*'s standards[80] to doing away with peremptory strikes altogether.[81] However, each approach comes with its own set of costs upon the state's judiciary.

1. Arizona: Abandoning Peremptory Challenge

In response to the report of a working group analyzing *Batson*'s effectiveness, the Arizona Supreme Court took the leap to become the first state to end its practice of peremptory challenges.[82] Through amending its rules of criminal procedure,

74. Page, *supra* note 65, at 160.

75. Batson v. Kentucky, 476 U.S. 79, 87–88 (1986).

76. Page, *supra* note 65, at 159–60.

77. *See supra* Part I.B.2.

78. *See supra* Part I.B.1.

79. Flowers v. Mississippi, 139 S. Ct. 2228, 2243 (2019).

80. *See infra* Part I.C.3.

81. *See infra* Part I.C.1.

82. 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).

attorneys in Arizona state courts were limited to striking jurors for cause.[83] These changes took effect with the beginning of 2022.[84]

Supporters of the move argue that ridding peremptory challenges from criminal procedure is the only way to eliminate prejudicial strikes from *voir dire*.[85] Especially for critics who are particularly concerned with implicit bias, advocates argue that peremptory strikes must end to prevent lawyers from using their discretion to discriminate.[86] Additionally, this change is posited as a feasible solution, as the lack of a constitutional requirement for peremptory strikes means that states can change their procedures just as easily as Arizona did.[87] Absent peremptory strikes, for-cause challenges are promised to suffice in preventing unfit venirepersons from sitting on juries.[88] While the Department of Justice is funding a research project analyzing any resulting changes in jury demographics and case outcomes in Arizona, observers will likely have little more than anecdotal data on this change's impact until the project concludes in November 2024.[89]

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83. *Id.*

84. *Id.*

85. Batson v. Kentucky, 476 U.S. 79, 103 (1986) (Marshall, J., concurring) ("That goal can be accomplished only by eliminating peremptory challenges entirely."); Page, supra note 65, at 246–47 (ultimately advocating for the elimination of peremptory strikes).

86. Page, *supra* note 65, at 246–47 (arguing that the phenomenon of implicit bias requires peremptory strikes to be eliminated).

87. *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 "Harvard Law Review Arizona Commentary"], HARV. L. REV. (June 2022), https://harvardlawreview.org/print/vol-135/order-amending-rules-18-4-and-18-5-of-the-rules-of-criminal-procedure-and-rule-47e-of-the-rules-of-civil-procedure-no-r-21-0020-ariz-2021/#footnote-ref-1 [https://perma.cc/T7XT-BCYL]. *But see* Timothy J. Conklin, Note, *The End of Purposeful Discrimination: The Shift to an Objective* Batson *Standard*, 63 B.C. L. REV. 1037, 1081 (2022) (explaining that certain states guarantee peremptory strikes in their state constitutions and thus would require an amendment to end their use).

88. Page, *supra* note 65, at 262 ("If the reasons for a peremptory ever become strong and objective then the peremptory challenge itself becomes a challenge for cause.").

89. *A Quantitative and Qualitative Evaluation of the Impact of Arizona's Ban on Peremptory Challenges: A Focus on Racial Bias in Jury Selection and Case Outcome*, NAT'L. INST. JUST. (Aug. 24, 2022), https://nij.ojp.gov/funding/awards/15pnij-21-gg-04710-nijb [https://perma.cc/L5QA-AW6W].

To its critics, Arizona has thrown the baby out with the bathwater. Defenders of peremptory strikes contend that they are a time-tested tool that safeguards the right to a jury.[90] They argue eliminating peremptory strikes will increase the prejudice exhibited towards defendants, as strikes can no longer be used to remove jurors whom an attorney discerns as biased but cannot get struck for cause.[91] Taking this tool away from attorneys leaves it to judges with broad discretion and little guidance to protect this essential right.[92] Even still, while practically achievable through procedural rule changes, such an abrupt shift may leave blindsided lawyers scrambling to adjust to the change.[93]

2. Washington & California: An Objective *Batson* Test

Other states have responded to *Batson* by shifting its procedure for challenging peremptory strikes from a subjective to an objective inquiry.[94] In 2018, the state of Washington amended its rules of criminal procedure, instructing judges to sustain challenges to peremptory strikes if "the court determines that an objective observer could view race or ethnicity as a factor in the use

90. Hassan Kanu, *"How We've Done Things for Ages": Pushback from Arizona Peremptory-Strike Change*, REUTERS (Feb. 4, 2022), https://www.reuters.com/legal/government/how-weve-done-things-ages-pushback-arizona-peremptory-strike-change-2022-02-04 [https://perma.cc/BX7F-QMXD].

91. *ASTC Position Paper on the Elimination of Peremptory Challenges: And Then There Were None…*, AM. SOC'Y. TRIAL CONSULTANTS 5 (2022), https://www.astcweb.org/_files/ugd/76dcb5_c69aa5a7b942432cb7e7512a12580bec.pdf [https://perma.cc/G5T3-EFUX]; Gabriel, *supra* note 72 ("Better procedures can be implemented that allow both judges and attorneys to a have fuller understanding of a juror's potential biases so they can make more informed choices about cause and peremptory challenges."); *see also* JOEL D. LIEBERMAN & BRUCE D. SALES, SCIENTIFIC JURY SELECTION 21 (2007) (observing that "judges do not often grant [for-cause] challenges when bias is alleged").

92. Harvard Law Review Arizona Commentary, *supra* note 87 ("Arizona's jury selection rules do not meaningfully augment federal constitutional requirements because they too leave significant discretion to trial judges.").

93. Kanu, *supra* note 90 (reporting that the Maricopa County Attorney's Office described the change as "a complete surprise" and "very abrupt"). *But see* Kanu, *supra* note 90 (explaining that the Arizona Supreme Court accepted six months of public comment on eliminating peremptory strikes before making the shift).

94. Conklin, *supra* note 87, at 1066 (outlining Washington and California's *Batson* reforms).

of the peremptory challenge."[95] In 2020, California followed Washington's lead, with its changes taking effect in 2022.[96]

Proponents of the objective standard argue that shifting from a subjective inquiry into the intent of the striking party to how an "objective observer" could view the strike permits courts to screen out implicit bias.[97] Advocates also believe that the rule's low bar for successful challenges will block the sort of nonsensical explanations permitted under the *Purkett* standard.[98] Each state even has a specific rule establishing certain reasons to strike jurors as presumptively invalid based on their use under *Purkett*.[99] The rule lets attorneys have their cake and eat it too by preserving the use of intuitive peremptory strikes that are not determined to be prejudicial.[100] While scholars believe it too early to draw any conclusions about the objective inquiry approach, supporters point to anecdotal evidence from Washington that lawyers are using fewer peremptory strikes as proof that their Goldilocks approach is working.[101]

Predictably, the objective inquiry is criticized by both those who believe it goes too far and those who believe it does not go far enough. Its conservative critics argue that premising the standard for invalidation on what an objective observer "could view" (rather than what one "would view") as based on race or gender hypothetically allows any reason to be deemed prejudicial.[102] These critics also contend that enumerating a list of presumptively invalid reasons will likely bar their use in cases where they would prove legitimate.[103] On the other side of the

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95. WASH. REV. CODE ANN., Gen. R. 37(e) (West 2024).

96. CAL. CIV. PRO. CODE § 231.7(d)(1) (2024).

97. Conklin, *supra* note 87, at 1068.

98. *See id.* at 1068–69.

99. WASH. REV. CODE ANN., Gen. R. 37(h)(i)–(vii) (West 2024) (establishing reasons such as "expressing a distrust of law enforcement," "having a close relationship with people who have been . . . convicted of a crime," and "living in a high-crime neighborhood" as presumptively invalid for a peremptory strike); CAL. CIV. PRO. CODE § 231.7(e)(1)–(13) (2024) (establishing reasons such as "having a negative experience with law enforcement," "[a] prospective juror's neighborhood" and "[d]ress, attire, or personal appearance" as presumptively invalid reasons for a peremptory strike).

100. Conklin, *supra* note 87, at 1080.

101. *Id.* at 1084.

102. *Id.* at 1068.

103. *See Report of the Jury Selection Task Force to Chief Justice Richard A. Robinson* [hereinafter "Connecticut Task Force"], CONN. JUD. BRANCH 21 (Dec.

aisle, progressive critics argue that leaving it to judges to determine what an "objective observer" could view as prejudicial still allows judges' stereotypical reasoning to creep into the *Batson* process and thus does nothing to cure for the implicit bias phenomenon.[104]

3. New Federalism Approach: Raising the *Purkett* Standard

Finally, some jurisdictions have taken a New Federalism approach to this problem.[105] Multiple state high courts have ruled that their state constitutions require evaluating the reasoning behind a peremptory challenge above the floor set in *Purkett*.[106] Upon such precedent, their lower courts have been seen to reject as pretextual race-neutral reasons that would have sufficed under the *Purkett* standard.[107]

This approach to fixing *Batson* has a unique set of procedural merits. Being derived from a state constitutional source and borne out over time through caselaw, the New Federalism fix enjoys a measure of legitimacy that cannot come from

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31, 2020), https://jud.ct.gov/Committees/jury_taskforce/ReportJurySelection TaskForce.pdf [https://perma.cc/QM7S-Z8TQ].

104. Conklin, *supra* note 87, at 1091 (ultimately rejecting the objective inquiry method in favor of abolishing peremptory strikes altogether); *see also* Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection*, 4 HARV. L. & POL'Y REV. 149, 149–50 (2010) (delivering a personal narrative as to how Judge Bennett's confrontation of his own implicit biases catalyzed a reckoning with *Batson* challenges).

105. The term "New Federalism" refers to the practice of state high courts drawing from their state's constitution and other laws when deciding questions of individual rights to set standards higher than the federal floor. Shirley S. Abrahamson & Diane S. Gutmann, *The New Federalism: State Constitutions*, 71 JUDICATURE 88, 89 (1987) (defining "New Federalism").

106. *E.g.*, State v. Gill, 460 S.E. 2d 412 n.3 (S.C. Ct. App. 1995) (suggesting that the Equal Protection clause of the South Carolina Constitution requires a higher standard than *Purkett*); Haile v. State, 672 So. 2d 555, 557 (Fla. Dist. Ct. App. 1996) (noting that Florida Supreme Court precedent requires evaluating *Batson*'s step two at a higher standard than *Purkett*); *Ex parte* Bruner, 681 So. 2d 173, 176 (Ala. 1996) (rejecting *Purkett* as a matter of Alabama state law); United States v. Tulloch, 47 M.J. 283, 288 (C.A.A.F. 1997) (explaining that military courts cannot accept *Purkett*, even though "unreasonable or implausible explanations may suffice in civilian society").

107. *E.g.*, *Haile*, 672 So. 2d at 556 (sustaining a *Batson* challenge against a prosecutor who purportedly struck the sole Black juror for habitually reading the Bible); Stroud v. State, 656 So. 2d 195, 196–97 (Fla. Dist. Ct. App. 1995) (sustaining a *Batson* challenge against a prosecutor who purportedly struck a Black juror for her negative opinion of the criminal legal system).

legislative or bureaucratic rule changes.[108] Furthermore, this sort of incremental change is much less likely to disrupt the practices of criminal attorneys compared to eliminating peremptory strikes or shifting to an objective *Batson* inquiry.[109] Finally, the New Federalism approach takes the least amount of power away from judges in evaluating a *Batson* challenge, which its proponents posit as a virtue on the basis that judges are the actors best equipped to monitor courtroom procedures.[110]

However, by adjusting *Batson*'s standards without shifting its underlying framework as a subjective inquiry, the New Federalism approach does nothing to solve for implicit bias in peremptory strikes.[111] The approach is also limited in applicatory scope to states whose constitutions have a "hook" that would permit raising their standard above *Purkett*.[112] And while the slow pace of this fix means it may be the most comfortable for attorneys, it will also take the longest to provide relief to jurors and defendants.[113]

II. *BATSON* FIXES IN MINNESOTA

Batson, as federally defined, remains the law of the land in Minnesota.[114] Yet, its judiciary has realized the procedure's shortcomings may be obstructing its goal of eliminating bias in the jury selection process.[115] Given the state's particular concern over the effects of implicit bias within its judicial proceedings,

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108. *Cf.* Connecticut Task Force, *supra* note 103, at 30–31 (explaining that the Connecticut Bar and public are unlikely to accept the unilateral removal of peremptory challenges, given their traditional role in judicial proceedings).

109. *See* Kanu, *supra* note 90 (discussing the disruption Arizona's abolition of peremptory strikes caused in prosecutor's offices); Conklin, *supra* note 87, at 1073–74 (explaining the disruption California's rule change caused in prosecutor's offices).

110. Wilson, *supra* note 2, at 550.

111. *See* Page, *supra* note 65, at 246–47 (arguing that implicit bias in *voir dire* can only be cured through eliminating peremptory strikes).

112. *Cf. Haile*, 672 So. 2d at 557 (explaining how the state's standard is derived from its constitution); *Ex parte* Bruner, 681 So. 2d 173, 176 (Ala. 1996) (same).

113. *Cf.* Kanu, *supra* note 90 (discussing the pace of Arizona's changes); Conklin, *supra* note 87, at 1073–74 (discussing the pace of California's changes).

114. *See infra* Part II.A.

115. *Id.*

Minnesota should follow Arizona's lead and abolish peremptory strikes altogether.[116]

A. BIAS AND *BATSON* IN MINNESOTA

Minnesota has made it a priority to eliminate bias in its judiciary.[117] In 1993, the state officially recognized that racial prejudice was perverting its courts and established the Implementation Committee on Multicultural Diversity and Racial Fairness in the Courts to create and effectuate solutions.[118] In 2010, the state expanded this mission beyond racial bias by replacing the Committee with the Committee for Equality and Justice, which sought to eliminate prejudice in all its forms.[119] Much of the Committee's early work focused on *Batson*; by 1999, the Committee achieved its goal of designing and implementing a training program on *Batson* challenges in all ten of Minnesota's judicial districts.[120]

Yet, aside from this excited endorsement of the doctrine, Minnesota has not touched peremptory strikes or *Batson*. Peremptory challenges remain a staple of Minnesotan criminal trials.[121] Moreover, Minnesota's *Batson* procedure is identical to the federal framework, in both its three-step process and subjective inquiry into a party's "purposefully discriminatory manner."[122] Nor has Minnesota deviated from the federal *Purkett*

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116. *See infra* Part II.B.

117. Richelle M. Wahi, *Minnesota Judicial Branch Action Following the 1993 Minnesota Supreme Court Task Force on Racial Bias in the Judicial System and Recommendations for Minnesota Judicial Branch Action in FY20-21* 4 (2019), https://www.mncourts.gov/mncourtsgov/media/scao_library/CEJ/Racial%20Fairness%20Committee/2019-Progress-Report-ON-1993-RACE-BIAS-TASK-FORCE-AND-RECOMMENDATIONS-UPDATED-4-29-19-WITH-APPENDICES.pdf [https://perma.cc/N7GL-A6KB] (outlining the history of the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System).

118. *Id.*

119. *Id.*

120. *Id.* at 15–16 (Appendix A of the 2019 report, which includes findings from the Committee for Equality and Justice's Race Bias Task Force Report).

121. MINN. R. CRIM. P. 26.02, subd. 6 (2024) (enumerating the number of peremptory challenges prosecutors and defendants in Minnesotan criminal trials may exercise).

122. *Compare* MINN. R. CRIM. P. 26.02, subd. 7(1) (2024) ("No party may *purposefully* discriminate on the basis of race or gender in the exercise of peremptory challenges.") (emphasis added), *with* Batson v. Kentucky, 476 U.S. 79, 98 (1986) ("The trial court then will have the duty to determine if the defendant has established *purposeful* discrimination.") (emphasis added).

standard for permissible race-neutral explanations.[123] When the Minnesota Supreme Court does review a *Batson* challenge, its focus is usually on ensuring the trial court correctly followed its three-step procedure rather than the merit of the challenge itself.[124]

After crossing into the new decade, *Batson* re-entered the purview of Minnesotan court watchers with an eye on discrimination. In 2021, the Minnesota Supreme Court seemingly recognized *Batson*'s, and by extension its own, failure to account for unconscious bias in a shoehorned footnote quoting Justice Marshall's *Batson* concurrence.[125] The court then directed its Advisory Committee on the Rules of Criminal Procedure to review the state's *Batson* procedure in response to trial court clumsiness and the "growing body of research" on implicit bias.[126] As of the time of writing, this Committee project is either ongoing, unpublished, or abandoned.[127]

B. THE CASE FOR ABOLISHING PEREMPTORY STRIKES IN MINNESOTA

This movement within Minnesota and across the country makes it undeniable: the land of 10,000 lakes is overdue for a reckoning with its *Batson* doctrine. The states that have already gone unto the breach offer three solutions that are just as

123. *E.g.*, State v. Diggins, 836 N.W.2d 349, 355 (Minn. 2013) (quoting *Purkett* for the proposition that an "explanation need not be persuasive, or even plausible" (internal quotations omitted)); State v. Onyelobi, 879 N.W.2d 334, 345 (Minn. 2016) (quoting *Diggins* quoting *Purkett*); *see also*, *e.g.*, State v. Wilson, 900 N.W.2d 373, 378 (Minn. 2017) (quoting *Onyelobi* quoting *Diggins* but without quoting the language to *Purkett*).

124. *E.g.*, State v. Buggs, 581 N.W.2d 329, 338–39 (Minn. 1998); State v. Pendleton, 725 N.W.2d 717, 725 (Minn. 2007); *Onyelobi*, 879 N.W.2d at 347 n.11.

125. State v. Lufkins, 963 N.W.2d 205, 211 n.2 (Minn. 2021) (quoting Justice Marshall's criticism of *Batson* discussed in Part I.B.2).

126. *Id.* at 214 n.6.

127. E-mail from the Minnesota State Law Library Reference Desk to Samuel Buisman (Dec. 1, 2023, 12:54 CST) (on file with author); E-mail from David Schmidtke, Reference Librarian, Minnesota Legislative Reference Library, to Samuel Buisman (Dec. 1, 2023, 08:51 CST) (on file with author); E-mail from Scott Dewey, Faculty Research Librarian, University of Minnesota Law Library, to Samuel Buisman (Feb. 29, 2024, 15:33 CST) (on file with author); *see also* FED. R. EVID. 803(10) (allowing the failure of a "diligent search" to find a public record to give rise to the presumption that the record does not exist).

intriguing as they are frightfully under-researched.[128] Yet, as the Minnesota Supreme Court's priority in revisiting *Batson* seems to be addressing implicit bias,[129] Minnesota ought to follow the advice of Justice Marshall and abolish peremptory strikes.[130]

Abandoning peremptory strikes is the only *Batson* solution that satisfactorily addresses the problem of implicit bias in *voir dire*. Simply raising the *Purkett* standard does nothing to shift away from a subjective *Batson* inquiry that places unconscious prejudice outside of its scope.[131] While adopting an objective *Batson* inquiry may mitigate the problem, this approach does nothing to cure for the implicit biases of the judges responsible for applying this supposedly objective standard.[132] Frankly, as long as the *voir dire* process asks attorneys to rely on "hunches," "gut feelings," and "instinct," to make decisions about people, it will always engender implicit bias.[133] The only way to prevent the unconscious abuse of this discretion is to remove the opportunity to wield it in the first place.

Critics of this approach express a valid counterargument that peremptory strikes themselves block biases by empowering lawyers to strike jurors they believe to be prejudiced but cannot get struck for cause.[134] However, Minnesota could account for this through investing resources into its judiciary in ways that would encourage judges to be more aggressive in for-cause strikes. To start, research suggests that judges themselves have a poor awareness of the extent and pervasiveness of juror biases.[135] This may be especially true in Minnesota, as its Judicial Branch is still finalizing an implicit bias education programs for

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128. *See supra* Part I.C.

129. *See supra* notes 117–18 and accompanying text.

130. Batson v. Kentucky, 476 U.S. 79, 103 (1986) (Marshall, J., concurring) ("That goal can be accomplished only by eliminating peremptory challenges entirely.").

131. *See supra* note 105–07 and accompanying text.

132. *See supra* note 97–101 and accompanying text.

133. Page, *supra* note 65, at 210.

134. *See supra* notes 90–91 and accompanying text.

135. Jacqueline M. Kirshenbaum & Monica K. Miller, *Judges' Experiences With Mitigating Jurors' Implicit Biases*, 28 PSYCHIATRY, PSYCH. & L., 683, 689 (2021) (discussing how a survey of judges demonstrated that many judges were unfamiliar with the concept of implicit bias and how it may affect juror behavior).

its judges.[136] If Minnesota funded a state-wide judiciary training campaign on juror bias, its judges may be able to better recognize it during *voir dire* and grow more aggressive in granting strikes for cause.[137] The state could also consider providing prosecutors' and public defenders' offices with funding earmarked for jury consulting, which may lead to more investigative juror examinations that better expose any reasons to strike them for cause.[138] These and other initiatives would likely result in a jury selection process better equipped to expose and recognize impermissible bias.

In addition, the judiciary itself could adopt norms and rule changes that encourage for-cause challenges. As Minnesotan judges have incredible discretion in determining when a juror may be struck for cause,[139] its judges could begin promoting a culture of leniency, rather than resistance, to for-cause strikes.[140] During *voir dire*, judges should ensure that both parties have sufficient time to conduct their examinations and leeway in their questioning to bolster its effectiveness.[141] Furthermore, they should not assume that an admonition or jury

136. *See Committee for Equality and Justice FY22-23 Strategic Plan*, MINN. JUD. BRANCH 2 (2021), https://www.mncourts.gov/mncourtsgov/media/scao_library/CEJ/CEJ-FY22-23-Strategic-Plan.pdf [https://perma.cc/HQV8-RET9] (establishing making recommendations for "implicit bias education programs and courses for judicial officers and Judicial Branch employees" as a goal for FY22–23).

137. *Cf.* Gabriel, *supra* note 72 (conceding that improved procedures may improve judges' performance in evaluating strikes for-cause); LIEBERMAN & SALES, *supra* note 91, at 21 (explaining that one of the reasons judges are unlikely to grant for-cause strikes is they may downplay the extent of the juror's bias).

138. *Cf.* Wedel, *supra* note 72, at 310 (discussing the potential and expense of scientific jury selection consultants). *But see infra* note 144 and accompanying text.

139. In Minnesota, the party moving for a for-case strike on the basis of bias "must show that the juror exhibited strong and deep impressions" precluding them from deciding the case on the facts. State v. Fraga, 864 N.W.2d 615, 623 (Minn. 2015). Yet, the trial judge has almost unbridled discretion in determining if the party has met this standard, and their decision is entitled to "special deference" from appellate courts. State v. Logan, 535 N.W.2d 320, 323 (Minn. 1995).

140. *See* LIEBERMAN & SALES, *supra* note 91, at 21 (explaining that judges are generally unlikely to grant for-cause strikes).

141. *Cf.* Gabriel, *supra* note 72 (proposing that judges provide attorneys with the opportunity to conduct a quality *voir dire* to improve the use of for-cause strikes).

instruction will rehabilitate a juror suspected to be biased;[142] psychological research suggests they should assume the opposite.[143] Such a disposition would further shore-up for-cause challenges' ability to ferret out bias—if attorneys are truly as effective as they, or their jury consultants, say they are in doing so.[144]

Finally, this is a feasible fix. Unlike other states, the Minnesota State Constitution does not include anything on peremptory strikes.[145] As Minnesotan courts instead draw from the state rules of criminal procedure to guarantee peremptory strikes,[146] nixing peremptory strikes would be just as simple for the Minnesota Supreme Court as it was for the Arizona Supreme Court.[147] Any consternation the criminal bar may have over an unmooring of their practice could be assuaged by a clearly telegraphed transition period[148] and state-organized continuing legal education programs that unpack the rule change and develop participants' *voir dire* examination skills.[149] Despite how drastic

142. *See* LIEBERMAN & SALES, *supra* note 91, at 21–22 (explaining that one of the reasons judges are unlikely to grant for-cause strikes is judges take the word of jurors identified as potentially biased when the juror insists they can set them aside).

143. *See* J. Alexander Tanford, *The Law and Psychology of Jury Instructions*, 69 NEB. L. REV. 71, 79 (1990) (surveying the previous thirty years of psychological research into jury instructions and concluding that jurors struggle to learn from them).

144. LIEBERMAN & SALES, *supra* note 91, at 143–44 (explaining that the literature on the effectiveness of scientific jury selection consultants is inconclusive and often contradictory).

145. *See* MINN. CONST. art. I, § 4 (guaranteeing the "right of trial by jury" but nothing related to peremptory strikes).

146. MINN. R. CRIM. P. 26.02, subd. 6 (2024).

147. *See supra* note 82–83 and accompanying text.

148. *See* Kanu, *supra* note 90 (discussing Arizona's six-month advanced notice of the potential elimination of peremptory challenges)*; cf.* Christopher Serkin & Michael P. Vandenbergh, *Prospective Grandfathering: Anticipating the Energy Transition Problem,* 102 MINN. L. REV. 1019, 1065 (2018) (discussing how, in the regulatory context, agencies often pair a newly promulgated rule with a "sunrise provision" establishing a future date at which it shall begin enforcing said rule to help regulated parties anticipate and adapt to it).

149. Much like it did in the wake of *Batson* itself, Minnesota could martial resources into a statewide program of training to help lawyers adjust to the rule change. *Cf.* Wahi, *supra* note 120, at 6–7. The state likely has the applicable skills-training materials at hand, considering the Minnesota State Board of Continuing Legal Education has approved 293 courses in *voir dire* since March 1993. Search for Approved CLE Courses on "Voir Dire", MINN. STATE BD. OF CONTINUING LEGAL EDUC. (2024). https://portal.cle.mn.gov/OASIS/aspx_MainPublic/CLE_Course_Search.aspx?SO=1#Focus_Upon_Return_Results

this change may seem, it is a real possibility for Minnesota's judiciary.

Overall, eliminating peremptory strikes is a practical way for Minnesota to exorcise bias in all its forms from its criminal proceedings. The decision would certainly stir up more than its fair share of complaints, but so does every choice that demonstrates leadership. Minnesota must live up to its namesake as the North Star State and set a righteous path for the rest of the nation to follow.

CONCLUSION

While *Batson v. Kentucky* emerged as a promising tool for the elimination of racial and gender prejudice in *voir dire*,[150] the Supreme Court quickly defanged its protections for jurors and parties.[151] Simultaneously, advancements in psychology renewed criticisms of the subjective *Batson* framework for overlooking unintentional prejudice.[152] State judiciaries have since tried to cure for *Batson*'s failures by ending their practice of peremptory strikes,[153] switching to an objective framework,[154] or rising above the federal standard for satisfactory race-neutral explanations.[155] Minnesota has made a concerted effort to eliminate bias from its courts but still adheres to the demonstrably flawed federal *Batson* doctrine.[156] To meet its commendable goal of rooting out implicit bias, Minnesota ought to take after its former governor and knock out peremptory strikes.[157]

[https://perma.cc/88HE-R7H5] (enter "voir dire" into the "Course Title" field and leave the date range empty).

150. *See supra* Part I.A.

151. *See supra* Part I.B.1.

152. *See supra* Part I.B.2.

153. *See supra* Part I.C.1.

154. *See supra* Part I.C.2.

155. *See supra* Part I.C.3.

156. *See supra* Part II.A.

157. *See supra* Part II.B; *see generally Jesse Ventura: Bio*, WORLD WRESTLING ENTERTAINMENT (2023), https://www.wwe.com/superstars/jesseventura [https://perma.cc/T2YY-DX38**]** (discussing the incomparable career of Jesse "the Body" Ventura).