Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Derek Michael Chauvin,

Defendant.

Court File No.: 27-CR-20-12646

STATE'S MEMORANDUM OF LAW OPPOSING MOTION TO UNSEAL JUROR IDENTITIES

TO: The Honorable Peter Cahill, Judge of District Court; counsel for Defendant, Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431; and counsel for Media Coalition, Leita Walker, 2000 IDS Center, 80 South 8th Street, Minneapolis, MN 55402-2119.

INTRODUCTION

In the midst of intense scrutiny, and in the face of a public health crisis, this Court oversaw the most open trial in American history. Millions watched these public proceedings gavel to gavel, vindicating "the concerns of the victims and the community in knowing that" Defendant Derek Chauvin was tried "by jurors fairly and openly selected." *Press-Enter. Co. v. Superior Ct. of Cal.*, 464 U.S. 501, 509 (1984) (*Press-Enterprise I*).

Against this highly public backdrop, and in light of well-documented findings, the Court crafted an extremely narrow Order to protect jurors' identities—and ameliorate any need for more intrusive alternatives, such as full sequestration. The Court's efforts ensured that Defendant Chauvin received a fair trial, despite the intense passions surrounding this unique case. After the verdict, the Court extended the jurors' anonymity for at least 180 days to protect jurors from harassment. *See* Order Sealing Certain Juror Information 3 (Apr. 23, 2021) ("Sealing Order").

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

The State opposes the Media Coalition's motion to release the jurors' identities, nearly three months before the Court's 180-day deadline for revisiting the issue. *See* Mem. in Support of Media Coalition's Mot. to Unseal Juror Identities and Other Juror Materials (Aug. 4, 2021) ("Mot. to Unseal"). The Court should not revisit its Order—mere months before the criminal trial for Mr. Chauvin's three co-defendants, and in advance of potential federal proceedings—when the likelihood of harassment will increase in the coming months and the marginal value of disclosure is low. Once this Court releases jury information, it cannot turn back—even if that disclosure proves premature. Moreover, releasing juror materials now would hamper efforts to assure prospective jurors in the March 2022 trial involving Mr. Chauvin's three co-defendants that their identities will be protected. Minnesota's procedural rules, the common law, and the First Amendment all permit the Court to protect jurors from harassment in these extraordinary circumstances. The proper course is to maintain the jurors' anonymity for the time being. Accordingly, the Media Coalition's motion to disclose the identities of the jurors should be denied.

BACKGROUND

On November 4, 2020, this Court issued an Order preventing the dissemination of jurors' identities to anyone other than trial participants. *See* Order for Juror Anonymity and Sequestration 5 (Nov. 4, 2020) ("Anonymity Order"). The Court found based on its own experience and reports from defense counsel that "[s]trong reasons exist to believe that threats to jurors' safety and impartiality exist." *Id*. at 4. At a prior hearing, the Court explained, "protestors [had] physically and verbally harassed the Defendants and their attorneys." *Id*. at 2. "One protestor [had] damaged one Defense Counsel's truck by ramming it with a bicycle." *Id*. Others had "picketed the homes of at least one Defendant, the head of the police union and the Hennepin County Attorney. The County Attorney's home was also vandalized during the period of civil unrest following the death

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

of George Floyd." *Id*. at 3 (footnote omitted). By November, the Court had "received many *ex parte* voice mails, e-mails, notes and letters from the general public, suggesting or demanding that the Court decide the case in a certain way, most often against the Defendants." *Id*. "[M]ore than one message ha[d] been hostile and threatening." *Id*. Defendant Chauvin's counsel similarly "reported having received over one thousand negative or threatening emails." *Id*.

Based on these findings, the Court's November 4 Order sealed jurors' identifying information. The Court also ordered that, post-verdict, the "information shall be made public only by the Court and on a date designated by the Court in a subsequent written Order." *Id*. at 5. But the Court declined to fully sequester jurors, unless "the partial sequestration plan proves ineffective in keeping jurors free from outside influence." *Id*. at 7.

The same day, the Court also authorized gavel-to-gavel television coverage of jury selection and trial. *See* Order Allowing Audio and Video Coverage of Trial (Nov. 4, 2020) ("Audio Visual Order"). The Court prohibited video of any "juror or potential juror" "at any time." *Id*. at 3. But the Court permitted "[a]udio of potential jurors during jury selection," with the exception of "any *in camera* examination of a juror." *Id*. at 3 (emphasis in original). As a result, the entirety of juror *voir dire* was televised. The criminal trial was the first in the State's history to be televised from start to finish.

On April 23, 2021, three days after the jury reached its verdict, the Court found that "levels of media and public interest in this case" had "increased" since its prior Order. Sealing Order 2. "Media coverage of this trial was ubiquitous and omnipresent." *Id*. "Two representatives of the media were allowed in the trial courtroom on a daily basis." *Id*. The media center provided space for "at least forty media representatives" to watch "monitors of the livestream trial coverage throughout *voir dire* and the trial." *Id*. The Court again found that "lawyers ha[d] reported

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

receiving unprecedented levels of emails regarding this case," frequently of an "incendiary, inflammatory, and threatening nature." *Id.* The Court also noted that it had "received unprecedented levels of emails and telephone calls about this case." *Id*. at 3. And the Court found that "[a]rticles have been published locally and nationally containing many details, albeit not names or addresses, about the jurors gleaned during *voir dire*." *Id*.

"In light of all these considerations," the Court found that "continuing restrictions on public disclosure of the jurors' identities remain necessary to protect those jurors desiring to remain anonymous from unwanted publicity or harassment." *Id.* The Court therefore sealed the "prospective juror list, juror profiles, juror questionnaires, and the original verdict forms containing the signature of the jury foreperson" "until further order of the Court." *Id*. The Court determined that it would "revisit the issue of juror confidentiality at an appropriate time, but not sooner than 180 days." *Id*.

The Court also noted that it had "informed the sworn jurors and alternates that they may, if they choose, identify themselves publicly and speak with whomever they wish about this case." *Id*. To date, only two jurors and one alternate have identified themselves and conducted interviews. The remaining ten jurors and one alternate have chosen to remain anonymous.

ARUGMENT

I. THE RULES OF PROCEDURE, THE COMMON LAW, AND THE FIRST AMENDMENT ALL PERMIT THIS COURT TO MAINTAIN JUROR ANONYMITY TO PREVENT THE HARASSMENT OF JURORS.

The Minnesota rules of procedure, the common law, and the First Amendment all confirm that this Court may preserve juror anonymity to protect jurors from the substantial probability of harassment. The applicable rules and case law all apply the same basic legal standard: A court can enact measures that restrict public access to judicial records, including information regarding

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

the identities of jurors, so long as the court makes case-specific findings on the need for such restrictions and carefully crafts the restrictions to address the harms the court identifies.

A. Minnesota's Procedural Rules Permit Courts To Seal Juror Materials.

Multiple procedural rules confirm that this Court may restrict access to juror materials. Minnesota General Rule of Practice 814 supplies the general framework. It requires a court to disclose jurors' names and questionaries "to the public upon specific requests to the court," "unless the court determines" that either of two exceptions applies. Minn. Gen. R. Prac. 814(a). First, the Court may restrict access in accordance with Minnesota Rule of Criminal Procedure 26.02, which permits the Court to prevent disclosure—to the parties and the public—of "prospective and selected jurors' names, addresses, and other identifying information if a strong reason exists to believe that the jury needs protection from external threats to its members' safety or impartiality." Minn. R. Crim. P. 26.02, subd. 2(2); *see* Minn. Gen. R. Prac. 814(a)(1). Second, the Court may generally restrict juror materials if "in the interest of justice this information should be kept confidential or its use limited in whole or in part." Minn. Gen. R. Prac. 814(a)(2).

Both of those standards permit a court to protect jurors from harassment. Jurors' "safety" includes not just security from physical harm but also security from other threats, including harassment. Minn. R. Crim. P. 26.02 subd. 2(2). Meanwhile, Minnesota has an interest in protecting all of its citizens from harassment, and the courts have an especially strong interest in ensuring that citizens can perform their civic duty without undue repercussions.

Other court rules also allow courts to restrict juror information when necessary. For instance, the Rules of Public Access provide that a court may restrict "access to case records" "as provided in the applicable court rules." Minn. R. Pub. Access Records Judicial Branch 4, subd. 2. Rule of Criminal Procedure 25.03 permits a court to restrict public access to any "public records

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

relating to a criminal proceeding" to ensure "the fair and impartial administration of justice." Minn. R. Crim. P. 25.03, subds. 1, 4. And Rule of Criminal Procedure 25.01 empowers courts to "redact or substitute names in the record" of a closed proceeding "to protect innocent persons." Minn. R. Crim. P. 25.01, subd. 6. All of these rules give the Court additional authority to maintain juror anonymity in order to protect jurors from harassment.

B. Precedent Confirms That The First Amendment And Common Law Allow Courts To Restrict Access To Juror Information To Prevent Harassment.

The First Amendment and the common law likewise authorize this Court to adopt narrow measures to prevent juror harassment. Precedent confirms that a court has greater leeway to adopt temporary measures—as this Court has—that delay the dissemination of sensitive information but do not categorically foreclose the information's release.

1. The United States Supreme Court has strongly suggested that preserving juror anonymity in these circumstances passes constitutional muster.

In *Press-Enterprise I*, the Supreme Court explained that public access is important but not absolute. Public access "enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." 464 U.S. at 508. But a court may close *voir dire* "based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id*. at 510. In *Press-Enterprise I*, the Supreme Court disapproved of the trial court's blanket closure for "an incredible *six weeks* of *voir dire* without considering alternatives," and the trial court's subsequent refusal "to release a transcript of the *voir dire* even while stating that 'most of the information' in the transcript was 'dull and boring.' " *Id*. at 513 (emphasis in original). But, as particularly relevant here, *Press-Enterprise I* specifically endorsed a narrower alternative: "seal[ing] only such parts of the transcript as necessary *to preserve the anonymity of the individuals sought to be protected*." *Id*. (emphasis added); *see United States v.*

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

Edwards, 823 F.2d 111, 120 (5th Cir. 1987) ("The *Press I* Court instructed that redaction of juror names or portions of the transcript may constitute a reasonable alternative to safeguard jurors from unwarranted embarrassment and yet preserve the competing interests served by disclosure.").

In *Press-Enterprise II*, the United States Supreme Court then established a two-step inquiry for determining whether a public access restriction comports with the First Amendment. *See Press-Enter. Co. v. Superior Ct. of Cal. for Riverside Cnty.*, 478 U.S. 1, 7 (1986) (*Press-Enterprise II*). *First*, because the First Amendment does not require public access to all proceedings, a court must initially determine whether a proceeding or record has "historically been open" and "whether public access plays a significant positive role in the functioning of the particular process in question." *Id*. at 8. *Second*, if "a qualified First Amendment right of public access attaches," "it is not absolute." *Id*. at 9. A court may therefore restrict public access if the court makes "specific findings" that there is a "substantial probability" that a countervailing interest will be harmed, and "reasonable alternatives to closure cannot adequately protect" that interest. *Id*. at 14. By way of example, the Supreme Court highlighted the need to preserve an accused's right to a fair trial and the "protection of victims of sex crimes from the trauma and embarrassment of public scrutiny" as two possible interests that could support complete closure of a courtroom. *Id*. at 9 & n.2. This standard plainly permits a court to adopt narrow measures that protect jurors from harassment and take into account the specific circumstances of each case.

2. Minnesota appellate courts have likewise recognized numerous situations in which a court may limit public access to judicial records, including juror identities.

In a line of analogous cases, the Minnesota Supreme Court has held that district courts may completely withhold jurors' names, including from the parties to a proceeding, as permitted by Rule 26.02. To impose total anonymity even from the parties to the proceeding, the district court

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

must first determine that there "is strong reason to believe that the jury needs protection from external threats to its members' safety or impartiality," and the court must then take "reasonable precautions to minimize any possible prejudicial effect the jurors' anonymity might have on the defendant." *State v. Bowles*, 530 N.W.2d 521, 530-531 (Minn. 1995); *see also, e.g.*, *State v. Ford*, 539 N.W.2d 214, 223 (Minn. 1995); *State v. McKenzie*, 532 N.W.2d 210, 220 (Minn. 1995); *State v. Ferguson*, 729 N.W.2d 604, 611 (Minn. App. 2007).

If anything, the standard applied in *Bowles* and its progeny is more stringent than the standard applicable to First Amendment public-access cases, such as this one, in which the parties know the jurors' identities but the broader public does not. That is because courts imposing total anonymity must balance the additional concern that such anonymity, which is predicated on the possibility that the defendant or others associated with the defendant may threaten the safety of the jurors or their family members, "may lead jurors to infer that the accused is guilty of the crime charged and thereby burden his presumption of innocence."[1] *Bowles*, 530 N.W.2d at 530. That concern is not present where the defendant poses no threat to the jurors and the parties are aware of the jurors' identities, as is the case here. That said, even where total anonymity is at issue, *Bowles* confirms that courts may restrict access to jurors' identities to lessen jurors' concerns that a verdict would inflame passions and result in "harassment from the public." *Id*. at 531.

That result is consistent with the approach courts in Minnesota have taken in other public-access cases. The Minnesota Supreme Court has concluded that the First Amendment may permit

[1] In this case, anonymity posed no threat to Defendant's right to a fair trial. Indeed, Defendant requested the even more drastic measure of total sequestration. *See, e.g.*, April 12 Tr. Trans. 32; *see also* Notice of Mot. and Mot. to Sequester Jurors, *State v. Thao*, No. 27-CR-20-12949 (Aug. 28, 2020). Nor could the Court's Anonymity Order have led jurors to conclude that Defendant was dangerous and "thereby burden[ed] his presumption of innocence." *Bowles*, 530 N.W.2d at 530. In any event, the Media Coalition can only assert its First Amendment public-access rights, not a defendant's right to a fair trial. *See Press-Enterprise II*, 478 U.S. at 7.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

a district court to close a pretrial criminal proceeding and restrict "access to portions of the record issued." *Minneapolis Star & Trib. Co. v. Kammeyer*, 341 N.W.2d 550, 559 (Minn. 1983). The Minnesota Supreme Court has also made clear that the "analogous common law right of access to court records is not absolute," and each "case involves a weighing of the policies in favor of openness against the interests of . . . sealing the record." *In re Rahr Malting Co.*, 632 N.W.2d 572, 576 (Minn. 2001). That weighing of interests plainly permits a court to delay disclosure in appropriate circumstances to protect trial participants from harassment.

For example, in *Minneapolis Star and Tribune Company v. Schumacher*, 392 N.W.2d 197 (Minn. 1986), the Minnesota Supreme Court held that the First Amendment and the common law permitted a court to refuse to release "transcripts" of "settlement hearings," *id*. at 205. In affirming the district court's restrictions, the Court concluded that the "significant public interest in the" airplane crash at issue and "the litigation surrounding it [made] future intrusion into the litigants' lives more than mere speculation." *Id*. at 206. In other cases, Minnesota courts have likewise held that judges may "issue protective orders for the purpose of protecting an individual or organization's association right," *In re GlaxoSmithKline plc*, 732 N.W.2d 257, 269 (Minn. 2007); "to protect trade secrets or other proprietary information," *In re Rahr Malting Co.*, 632 N.W.2d at 577; and to prevent "inflammatory" allegations in a custody dispute from becoming public, *Anderson v. Anderson*, No. A12-0018, 2012 WL 3641293, at *3 (Minn. App. Aug. 27, 2012).

3. Federal and state courts across the country have likewise permitted trial courts to seal juror information. Notably, even those appellate decisions that have required disclosure of jurors' identities in a particular case have nonetheless recognized that the trial court may seal information relating to the jurors' identities to protect them from harassment.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

For instance, in *United States v. Brown*, 250 F.3d 907 (5th Cir. 2001), the Fifth Circuit upheld a federal "district court's refusal to grant the News Media's motion for post-verdict access to juror information," *id*. at 910. In that case, much as here, the district "court went to extraordinary lengths to preserve the integrity of the jury system and conduct a fair trial in the face of relentless publicity." *Id*. at 912. *Brown* expressly held that "[e]nsuring that jurors are entitled to privacy and protection against harassment, even after their jury duty has ended, qualifies as" a "strong governmental interest[]" which can override the qualified right of public access to judicial records. *Id*. at 918. "The judge's power to prevent harassment and protect juror privacy does not cease when the case ends." *Id*. at 918-919. There, the district court's order had been

> narrowly tailored to prevent real threats to the administration of justice, not just in this case but in the subsequent related prosecutions. If jurors voluntarily waive their anonymity and consent to interviews on matters other than jury deliberations, so be it. They need not become unwilling pawns in the frenzied media battle over these cases.

Id. at 921.

Similarly, just last month, the Arizona Court of Appeals held that courts may *always* withhold jurors' identities. According to that court, "[i]f potential jurors know that they and their families may be subject to danger, harassment, or unwanted media attention as a result of their service, they will be deterred from serving. . . . The courts should not be bound to create an incentive for others to seek out private information about jurors who have done their civic duty, thereby exposing them to [the] risk of public embarrassment, harassment, or danger." *Morgan v. Dickerson*, Nos. 2 CA-SA 2021-0007 & 2 CA-SA 2021-0019, 2021 WL 3046844, at *5 (Ariz. Ct. App. July 20, 2021).

Nor are these cases unusual. Courts across the country routinely limit public access to information about jurors for case-specific reasons, including to protect jurors from harassment.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

See, e.g., *United States v. King*, 140 F.3d 76, 80 (2d Cir. 1998) (upholding order to limit public access to *voir dire* and to redact information from transcripts to ensure jurors' candor in racially charged trial); *In re S.C. Press Ass'n*, 946 F.2d 1037, 1044 (4th Cir. 1991) ("[U]nder the very unusual circumstances of these cases, no reasonable alternatives to closure [of *voir dire*] will adequately protect the fair trial rights of the accused."); *Newsday, Inc. v. Goodman*, 552 N.Y.S.2d 965, 968 (N.Y. App. Div. 1990) (upholding limited redactions of juror questionaries "based on a specific finding which clearly showed that the petit jurors' ability to serve, without fear of intimidation or harassment, was in jeopardy").[2]

Moreover, even where federal appellate courts have prohibited overbroad sealings of juror information, those courts nonetheless recognize that trial judges possess the authority to protect jurors from harassment. For instance, in *ABC, Inc. v. Stewart*, 360 F.3d 90 (2d Cir. 2004), the Second Circuit held that the trial court had improperly closed *voir dire* in the trial of Martha Stewart, *id*. at 93. But the Second Circuit also noted that "concealing the identities of the prospective jurors"—including after the verdict—provided a permissible and less intrusive alternative to closing the courtroom. *Id*. at 104. The First Circuit has similarly recognized that courts may withhold "juror identities" "upon a finding of exceptional circumstances peculiar to the case." *In re Globe Newspaper Co.*, 920 F.2d 88, 97 (1st Cir. 1990). As that court noted, "it is not easy to draw a precise line as to when the federal constitution requires juror names and addresses to be revealed and when not. At different times the public interest will balance out in different directions." *Id*. In *United States v. Blagojevich*, 612 F.3d 558 (7th Cir. 2010), the Seventh

[2] Indeed, some courts have gone so far as to find that no qualified First Amendment right of access attaches to jurors' names. *See, e.g.*, *Gannett Co. v. State*, 571 A.2d 735, 751 (Del. 1989); *Newsday, Inc. v. Sise*, 518 N.E.2d 930, 933 n.4 (N.Y. 1987); *Morgan*, 2021 WL 3046844, at *3.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

Circuit likewise noted that an "*unusual* risk" to the jurors may "justify keeping jurors' names confidential." *Id.* at 565 (emphasis in original).

State courts across the country have also reached similar conclusions. The Pennsylvania Supreme Court has held, for example, that "particularized findings of fact may support" withholding jurors' names "in an appropriate case, including concerns when the jurors have been or are likely to be harassed by the public, press, or defendant's family or friends." *Commonwealth v. Long*, 922 A.2d 892, 905-906 (Pa. 2007). More recently, Pennsylvania's intermediate appellate court held that there are "no significant concerns in the temporary delay of the release of the jurors' names," and that such temporary delays are reviewed only for reasonableness. *See Commonwealth v. Held*, 235 A.3d 339, 347 (Pa. Super. Ct. 2020). The Michigan Court of Appeals has likewise held that courts may "formulate restrictions on the time and manner of disclosure of jurors' names or, in some cases, perhaps, deny disclosure." *In re Disclosure of Juror Names & Addresses*, 592 N.W.2d 798, 808 (Mich. Ct. App. 1999). That court noted that trial courts will rarely "have concrete evidence of a potential risk of harm to a juror," and that "jurors' own expressions of safety concerns are entitled to serious consideration." *Id*. at 809. It also explained that jurors' mere privacy concerns alone can "justify a lesser restriction" on the disclosure of information, "such as a brief waiting period" before releasing sensitive material. *Id*.[3]

* * *

[3] *See also, e.g.*, *In re Jury Questionnaires*, 37 A.3d 879, 889-890 (D.C. 2012) (requiring disclosure of questionaries but permitting "redactions" to "protect both the public's right of access and any special privacy interests of the jurors"); *F. Commc'ns Co. v. Paulson*, 752 N.W.2d 177, 185 (N.D. 2008) (holding that "articulated findings to protect juror privacy or safety" can override the public right of access, but that the court had not made findings of "impending threats of juror harassment or safety threats after the verdict"); *cf. State ex rel. Beacon J. Publ'g Co. v. Bond*, 781 N.E.2d 180, 194 (Ohio 2002) (recognizing that courts may need to protect jurors from harassment, such as by forbidding the press from making repeated requests for interviews).

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

In short, the Minnesota rules of procedure, U.S. Supreme Court precedent, Minnesota case law, and persuasive authority from other jurisdictions all point to the same commonsense conclusion: This Court may restrict access to jurors' identities to protect jurors from harassment.

II. THIS COURT SHOULD CONTINUE TO SEAL THE *CHAUVIN* JURORS' IDENTITIES TO PROTECT THEM FROM HARASSMENT.

This Court should deny the Media Coalition's motion and maintain the jurors' anonymity for the time being. Under the Minnesota rules of procedure, the common law, and the First Amendment, this Court's April 23 Order properly balances the need to protect jurors from harassment, the need to assuage future jurors' potential concerns for their safety, and the values of public access. Indeed, this Court oversaw the most open trial in American history. Millions watched *voir dire*, opening and closing statements, witness testimony, the verdict, and sentencing. The public has particularly copious information about individual jurors—far more copious than in the typical case, where the public (except for the few people in the courtroom) cannot observe *voir dire*. The Court's April 23 Order is limited in time and scope, making it the kind of narrow measure that the law permits under these extraordinary circumstances.

1. In its November 2020 and April 2021 Orders, this Court made detailed and "specific findings" that, if jurors' names became public, jurors in this case could be subject to harassment or intimidation. *Press-Enterprise II*, 478 U.S. at 14; *see* Anonymity Order 1-4; Sealing Order 2-3. The Court's factual findings were correct at the time and remain correct now.

This case is without parallel in Minnesota or American history. As this Court has explained before, these proceedings have received attention "on an international scale." Audio Visual Order 8. "Virtually every filing by the parties" was "reported in the media, both locally and nationally." *Id*. Protests "demanding justice for George Floyd" were "held frequently in downtown Minneapolis"—and similar demonstrations occurred around the world. Anonymity Order 2.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

During the trial itself, the "coverage . . . was ubiquitous and omnipresent," with broadcast coverage occurring "daily in local, regional, and national network stations and their affiliates as well as on various cable television stations" and online. Sealing Order 2.

In Minneapolis itself, protestors had "physically and verbally harassed the Defendants and their attorneys" and "picketed" and "vandalized" residential homes. Anonymity Order 2-3. The parties received "unprecedented levels of emails regarding this case, frequently of [an] incendiary, inflammatory, and threatening nature." Sealing Order 2. And the media published numerous articles "containing many details" "about the jurors gleaned during *voir dire*." *Id*. at 3.

"Threats of intimidation and harassment do not necessarily end with the conclusion of trial. In these prosecutions, several post-verdict motions have assailed jurors' conduct; without continuing anonymity, jurors would remain vulnerable to abuse." *Brown*, 250 F.3d at 921-922. Because of this case's international profile, the potential sources of harassment are diffuse and span the globe. Once this Court releases juror material, that material will quickly appear in every corner of the internet, including on social media and darker corners of the web. Nefarious actors may exploit that information, harassing jurors in person or online.

As the Media Coalition admits, public scrutiny and the potential for harassment will "only increase in the coming months." Mot. to Unseal 4 n.5. Defendant Chauvin's possible appeal, his co-defendants' trial, ongoing federal proceedings, and the upcoming trial in *State v. Potter* will refocus attention on the individuals who decided this case. But once this Court releases jurors' names and questionaries, the Court cannot unring the bell. In light of the reality that the Court cannot reseal that information, this Court should maintain the jurors' anonymity for the time being. Meanwhile, eleven out of the fourteen individuals who sat in the jury box have chosen to preserve their anonymity. In an interview, one juror suggested that most "of the jurors had safety

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

concerns."[4] This Court should afford "serious consideration" to those jurors' preference that the Court protect their "safety." *In re Disclosure*, 592 N.W.2d at 809.

To be clear, the State is not aware of any information suggesting that the anonymous jurors in this case have been harassed. But that is precisely because this Court's existing measures to protect the identities of jurors have proven effective. Jettisoning the Court's juror anonymity Order now would be akin to "throwing away your umbrella in a rainstorm because you are not getting wet." *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

In addition to protecting the *Chauvin* jurors from harassment, the Court and the State also have an independent interest in ensuring that the Court can select a jury in the trial of Mr. Chauvin's three co-defendants. Releasing the *Chauvin* jurors' identities—nearly three months before the Court's initial 180-day deadline for revisiting whether to release that information—would mean publicly reneging on a promise to secure jurors' privacy. That will make it more difficult for the Court to assure future jurors, especially those in the upcoming trial of Mr. Chauvin's co-defendants, that the Court's measures will protect them. *See Press-Enterprise I*, 464 U.S. at 515 (Blackmun, J., concurring). Thus, in this context, the public's qualified right of access "must yield" to the Court's compelling interest in imposing measures designed to help ensure that Mr. Chauvin's co-defendants receive a "fair trial." *In re S.C. Press Ass'n*, 946 F.2d at 1043.

At the same time, the Court has adopted an extremely narrow remedy that is limited in time and scope. The Court has not permanently sealed the juror materials. Instead, the Court has established a timeline to revisit its prior determination. The "temporary delay of the release of the jurors' names" in this case therefore poses "no significant concerns." *Held*, 235 A.3d at 347. The

[4] Deena Winter, *The Rural, Biracial Juror on the Chauvin Trial: "It Was Absolutely Traumatic,"* Minn. Reformer (June 25, 2021, 6:00 AM), https://tinyurl.com/23zxcsdt.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

Court's Order is also limited to those confidential materials that prevent identifying jurors and protect the jurors from harassment. The Court permitted *voir dire* to be televised and updated the media and public about the jury's demographic composition. Meanwhile, pool reporters in the courtroom ensured that the public knew about any "[e]motions, gestures, [and] facial expressions" of the jurors off camera. *ABC, Inc.*, 360 F.3d at 100 (internal quotation marks omitted).

Because the Court facilitated such unprecedented public access to these proceedings, the Court has mitigated any concerns about limiting access to juror materials. "Oral *voir dire* in the instant criminal action was never closed to the public as it was in *Press-Enterprise* [*I*]." *Goodman*, 552 N.Y.S.2d at 968. In fact, unlike most criminal cases, the public could easily observe the entire trial—including *voir dire*—from the comfort of their own homes. And the Court took additional "steps to ensure" ease of public access, "such as posting public filings on the judicial branch website." *State v. Noor*, 955 N.W.2d 644, 662 (Minn. App. 2021). Put simply, the public knows the "standards of fairness" were "observed" in this case because they saw that fairness with their own eyes. *Press-Enterprise I*, 464 U.S. at 508; *see also Gannett*, 571 A.2d at 750 ("All aspects of the trial were entirely open to the public.").

Against that backdrop, the marginal value of releasing jurors' names is "highly questionable." *Brown*, 250 F.3d at 918 n.17 (quoting *Edwards*, 823 F.2d at 120). "The prospective jurors were subjected to" rigorous "screening procedures," "which in this case were more intense than usual." *Gannett*, 571 A.2d at 749. And the public was able to observe those screening procedures during the televised broadcast of *voir dire*. Given the amount of information disclosed in *voir dire* and in the numerous interviews given by individuals who sat in the jury box, even "if a reporter or other member of the public were able to procure additional information about a juror,"

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

that information would be unlikely "to play a significant positive role in the proceeding." *Morgan*, 2021 WL 3046844, at *5 (international quotation marks omitted).

2. In arguing for immediate release, the Media Coalition misstates the legal standard and downplays the extraordinary facts of this case.

Start with the law. The motion initially suggests that, because *Bowles* involved a gang trial, this Court may only seal juror information when a defendant is "an organized crime figure." Mot. to Unseal 9. But *Bowles* suggests that the threat of gang violence is sufficient reason to anonymize the jury, not a necessary requirement. *Bowles* also indicates that courts can order anonymity to prevent jurors from being subject to "harassment from the public." 530 N.W.2d at 531. And *Bowles* focused on the defendant's dangerousness because the defendant had posed a risk to the jurors, and the court there had withheld the jurors' identities from *him* as well as the public. *Id*. at 532. Here, the fact that the risk of harassment comes from a diffuse collection of external actors unaffiliated with Defendant Chauvin does not prevent this Court from acting to protect the jurors, and nothing in *Bowles* suggests otherwise.

The motion's extensive reliance on the First Circuit's decision in *In re Globe Newspaper* is also misplaced. *See* Mot. to Unseal 9-13, 17, 21. *In re Globe Newspaper* stands for the unremarkable proposition that courts should not "routinely" seal jurors' identities in mine-run cases. 920 F.2d at 98. There, the federal district court had withheld jurors names based on little more than "the personal preferences of the jurors and the judge's distaste for exposing them to press interviews." *Id*. at 91. Taken to its logical conclusion, the district court's decision would have permitted a court to seal the identities of jurors in every case. In reversing the district court's decision to seal, the First Circuit noted that "jurors summoned from the community to serve as participants in our democratic system of justice are entitled to safety, privacy and protection

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

against harassment." *Id*. at 95. The First Circuit also stressed that "it is not easy to draw a precise line," and at "different times the public interest will balance out in different directions." *Id*. at 97. And the court confirmed that "anonymity is acceptable in the exceptional case where there is a particular need for it." *Id*. at 97-98. This is plainly an "exceptional case" with "a particular need."

Other cases cited by the Media Coalition similarly support this Court's decision to maintain juror anonymity for the time being. In *ABC*, for example, the Second Circuit held the closure of *voir dire* unconstitutional because "concealing the identities of the prospective jurors" would "have been sufficient to ensure juror candor." 360 F.3d at 104; *see* Mot. to Unseal 15 (quoting *ABC*). In *Long*, the Pennsylvania Supreme Court confirmed that "the court may find that disclosing the jurors' names in a particular circumstance raise concerns for juror safety, jury tampering, or juror harassment." 922 A.2d at 905; *see* Mot. to Unseal 15 (citing *Long*). And in *United States v. Wecht*, 537 F.3d 222 (3d Cir. 2008), the Third Circuit acknowledged that judges may adopt measures to prevent "excessive media harassment." *Id*. at 239; *see* Mot. to Unseal 15 (citing *Wecht*). These cases bolster, rather than undermine, the Court's decision to protect the *Chauvin* jurors from the substantial risk of harassment.[5]

The Media Coalition also downplays the risks to jurors by ignoring the realities of this extraordinary case. According to the Media Coalition, the jurors merely face the "potential for

[5] The Media Coalition also repeatedly implies that protecting jurors' privacy, as opposed to preventing harassment, cannot constitute a compelling interest worthy of protection. *See* Mot. to Unseal 9, 17-18. But the case law actually suggests the opposite. For instance, *Press-Enterprise I* noted that "parts of" a *voir dire* "transcript reasonably entitled to privacy" can be "sealed." 464 U.S. at 513. In *Brown*, the Fifth Circuit similarly rejected the news media's argument that "minor discomfort of jurors does not warrant the level of solicitude afforded the jurors in *Press I*." 250 F.3d at 918 n.17 (quoting *Edwards*, 823 F.2d at 120). In any event, because the threat of harassment is plainly a strong enough interest to justify juror anonymity here, this Court need not reach the question whether protecting jurors' privacy alone is a sufficiently compelling interest.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

inquiries," "criticism from the press and public," and "feedback." Mot. to Unseal 9, 10. But this Court's April 23 Order found that—based on the Court's experience overseeing the proceedings in this case—jurors would face a concrete risk of "harassment." Sealing Order 3. Nor does the Media Coalition offer any reason to believe that the jurors would be spared the "rate" and "tenor" of harassment that other participants have faced. Mot. to Unseal 10. In fact, precisely because the jurors are neither "elected officials" nor "private attorneys who voluntarily took on representation of high-profile clients," the jurors possess fewer resources and less experience combating harassment. *Id*. The jurors are more vulnerable, not less. *Id*.

Likewise, the Media Coalition highlights the fact that two jurors and one alternate have publicly identified themselves. *See* Mot. to Unseal 11-12. But the Media Coalition does not represent that these individuals have been spared from harassment; instead, it merely acknowledges that it is not "not aware" of what these individuals have experienced after coming forward. *Id*. at 11. Moreover, even assuming that those individuals have not yet been subject to harassment, that does not mean that a substantial risk does not exist. The fact that those three individuals chose to brave a potential risk—even for noble reasons—does not mean that the other ten jurors and the remaining alternate should similarly be exposed.

The Media Coalition also emphasizes its impression that "much has changed in the months since the jury rendered that verdict." *Id*. at 12. But the *Chauvin* case and George Floyd's death continue to receive significant attention in the media. The Media Coalition also recognizes that future events—including the upcoming trial in *State v. Potter* and the trial for Mr. Chauvin's three co-defendants—are likely to increase interest in the *Chauvin* jurors. *See id*. at 4 n.5. Meanwhile, the Media Coalition ignores the fact that the release of the jurors' names itself could spark

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

significant media coverage, and potentially spur malicious actors who might have otherwise remained dormant. This is not simply a matter of asking "jurors to have thick skin." *Id*. at 11.[6]

The Media Coalition's proposed alternative remedy fares no better. The Coalition suggests that the Court could provide jurors "a number to call if they believe they are being harassed by the press or public." *Id*. at 18. But giving jurors a number to call after they are harassed will not protect jurors from experiencing harassment in the first place. In light of the predictable risk of harassment, it was entirely appropriate for the Court to impose measures that can prevent such harassment from occurring, rather than waiting for harassment to occur and hoping that law enforcement will be able to mitigate the damage on the back end. Nor is it clear that the Court could stop harassment once it begins. Because of the unique nature of this case, jurors may experience threats from individuals outside of Minnesota, outside the United States, or otherwise beyond the reach of the Court and local and State law enforcement officials.

---

[6] Additionally, the State notes that the Media Coalition misstates what happened in *United States v. Wright*, No. 1:15-cr-10153-DPW (D. Mass). *See* Mot. to Unseal 18 (citing *Wright*). There, the federal district court actually recognized the need to protect jurors and directed "news organizations" to "propose a protective order that will secure the jurors' personal identifiers from unnecessary dissemination on the internet." Order, *United States v. Wright*, No. 15-10153-WGY, 2017 U.S. Dist. LEXIS 222476, at *3 (D. Mass. Oct. 20, 2017).

The court subsequently furnished one outlet "a list of the names and cities and towns wherein the deliberating jurors reside." Electronic Order, *United States v. Wright*, No. 15-10153-WGY, (D. Mass. Nov. 3, 2017), Dkt. 394. This information was furnished upon the outlet's "express understanding to use it only for newsgathering purposes." *Id*. According to that court's order: "The list itself shall not be published or shared with others. Absent a juror['s] express agreement, no additional personal identifiers about that juror shall be published. We simply must come to understand that in this internet age, personal data remains accessible long after the news cycle in which it figures is forgotten." *Id*.

The State notes that *Wright*'s approach poses potential First Amendment concerns because the court's order may have constituted a prior restraint on speech. The better course, which this Court has adopted, is to withhold jurors' names until the appropriate time.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

The lone case the Media Coalition cites in support of its proposed alternative remedy reveals the futility of its proposal. In that case, the federal government had tried the "former superintendent of the Bay City Wastewater Treatment Plant" for four "criminal violations of the Clean Water Act." *In re Bay City Times*, 143 F. Supp. 2d 979, 979 (E.D. Mich. 2001). The limited local attention was neither "sensational" nor "pervasive," and fell far short of the controversy that has surrounded Mr. Floyd's death. *Id*. at 982. Giving jurors a phone number to call might well protect jurors from harassment in a routine trial. That solution is wholly inadequate in this case.

The Media Coalition also suggests that the Court's restrictions on public access are no more likely to survive constitutional scrutiny just because the Court has committed to revisiting its ruling as circumstances change. *See* Mot. to Unseal 19-20. But unlike other First Amendment rights, the right of public access is qualified, not absolute. *See Press-Enterprise II*, 478 U.S. at 9. In cases like this one, a delay in the release of juror information ensures that the "value served by the [F]irst [A]mendment right of access" will still be vindicated, albeit at a later date. *Edwards*, 823 F.2d at 119; *see Held*, 235 A.3d at 347. That is because information about the case that is later released will still "receive significant exposure in the media." *Edwards*, 823 F.2d at 119.

Finally, the Media Coalition claims harm because the Court sealed records "without notice or opportunity to be heard." *See* Mot. to Unseal 17. But the Court held a hearing before it issued its November Order on juror anonymity. *See* Anonymity Order 1. That initial Order stated that juror materials would "be made public only by the Court and on a date designated by the Court in a subsequent written Order." *Id*. at 5. Until then, anything "not expressly made public shall remain confidential." *Id*. The Court's April Order therefore merely maintained the status quo and noted that the Court would revisit the issue of juror anonymity at a future date. In any event, the fact

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

that the Media Coalition has filed—and the Court is entertaining—the current motion is proof positive that the Media Coalition has had ample opportunity to be heard.

* * *

The jurors in this case admirably fulfilled their civic duty in a trying case. They deserve gratitude—and protection from harassment. The Court's April 23 Order has offered them just that. Because the Court's measures are limited in time and scope, and are based on specific findings related to this case, the Court is well within its authority to seal juror materials.

Filed in District Court
State of Minnesota
8/16/2021 3:28 PM

CONCLUSION

The State respectfully requests that the Court deny the Media Coalition's motion.

Dated: August 16, 2021

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Matthew Frank
MATTHEW FRANK
Assistant Attorney General
Atty. Reg. No. 021940X

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1448 (Voice)
(651) 297-4348 (Fax)
matthew.frank@ag.state.mn.us

NEAL KUMAR KATYAL (*pro hac vice*)
SUNDEEP IYER (*pro hac vice*)
NATHANIEL AVI GIDEON ZELINSKY (*pro hac vice*)
Special Attorneys for the State of Minnesota
Hogan Lovells U.S. LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600 (Voice)
neal.katyal@hoganlovells.com

ATTORNEYS FOR PLAINTIFF