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STATE OF MINNESOTA	DISTRICT COURT
HENNEPIN COUNTY	FOURTH JUDICIAL DISTRICT
State of Minnesota Plaintiff, vs.	The Honorable Peter A. Cahill
Derek Michael Chauvin Defendant	Dist. Ct. File 27-CR-20-12646

REPLY MEMORANDUM IN SUPPORT OF MEDIA COALITION'S MOTION TO UNSEAL JUROR IDENTITIES AND OTHER JUROR MATERIALS

> *We do not agree with having an anonymous jury. And I think what the Court is proposing is an anonymous jury in fact . . . And I don't think we have met the standard. . . . And I don't think there has been any showing sufficient under that rule to have an anonymous jury.*
>
> —State of Minnesota, at a September 2020 pretrial hearing in the prosecution of Derek Chauvin

INTRODUCTION

The Media Coalition was, in a word, surprised to receive the State's Opposition to its Motion to Unseal Juror Identities and other Juror Materials.

It was surprised because, nearly a year ago, at a September 2020 hearing, the State took the exact *opposite* position, strongly objecting to the Court's proposal to withhold jurors' names from the press and public during the pendency of Derek Chauvin's trial for the murder of George Floyd. Sept. 11, 2020 Hr'g Tr. at 66:7-75:5 ("Tr.") (attached as Ex. A). Joined by counsel for Mr. Chauvin's codefendant Alexander Keung, who also objected to sealing jurors' names, *see id.* at 76:4-79, the State argued zealously that anonymous juries are "disfavored," *id.* at 67:2-3, that

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the standard for sealing jurors' names is "quite high," *id.*, that the standard had *not* been met, *id.* at 66:16-17, and that sealing the jurors' names could constitute "plain error," *id.* at 73:21.

In hearing these arguments, the Court made clear that its primary concern was not jurors' safety but their impartiality, stating, "I don't think it's threats here, . . . but I think it's more just the input to try and sway their impartiality on an *ex parte* basis . . . ." *Id.* at 74:17-20. The Court went on to explain that, once trial ended and jurors' impartiality was no longer critical, it would release their names. "Let me be very candid," the Court began:

> [M]y intent would be—if we have an anonymous jury . . . to release their names after the trial is done . . . . *With the only exception* if there's civil unrest, I'm not going to release juror names in the middle of civil unrest. I hope there is no civil unrest. I hope people attend the trial, watch the trial, see that everyone is getting a fair shake and civil unrest doesn't break out, but I'm not naïve either. But my intent would be to issue in an appropriate timeframe *shortly* after trial the list of names to the public.

Id. at 78:7-23 (emphasis added). Ultimately, the Court overruled the objections of the State and Mr. Keung (whose trial was later severed from Mr. Chauvin's and continued until March 2022) and ordered that the jurors' names and other Juror Materials be sealed through trial.

It's now been four months since trial concluded, and the Court's hopes came true: Journalists attended the trial and covered it gavel to gavel, thousands of people across the country watched the trial via livestream (more than 18 million watched the verdict, according to *The New York Times*[1]), and the trial's outcome prompted community relief rather than unrest. And yet the jurors' names remain secret and the State now takes a position that completely contradicts what it argued a year ago.

[1] John Koblin, *More than 18 million tuned in for the Chauvin verdict*, NYTimes.com (Apr. 21, 2021), https://www.nytimes.com/2021/04/21/business/media/chauvin-verdict-viewers.html.

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In doing so, the State does not even acknowledge its abrupt change in position, much less attempt to explain how, in its view, juror anonymity was *not* justified in September 2020—just a few months after Mr. Floyd's death, when Minneapolis still smoldered and the ability to give Mr. Chauvin a fair trial was in question—but *is* justified today when the trial is over, concerns over attempts to sway jurors are moot, and the unrest arising from Mr. Floyd's murder is behind us. Nor does the State attempt to cite any new or current facts that might theoretically justify continued sealing, relying instead on months-old anecdotes discussed at the September hearing and in the Court's November 4 Order while ignoring the passage of time and the palpable ratcheting down of emotions in the Twin Cities since Mr. Chauvin's conviction.

Rather than grapple with these issues, the State flips the relevant legal standards on their heads and argues that the press and public have an affirmative duty to justify their interest in the Juror Materials, State's Mem. Opposing Mot. to Unseal ("Opp.") at 16, and to demonstrate "reason to believe" that jurors would be spared the "harassment" other trial participants have received, *id.* at 19. In fact, the press and public shoulder no such burdens; the law is clear that there is a *presumptive* right of access to jurors' names, and that it is the burden of the Court and the State, as the sole party opposing release, to show that continued anonymity of the jurors is justifiable under Minnesota's "strong reason" test and the First Amendment's "compelling interest" test.[2]

This is a burden that cannot be carried, and the State's attempts to do so are misguided, focused not on articulating a current, non-speculative safety risk to jurors but on its desire to "assure prospective jurors in the March 2022 trial involving Mr. Chauvin's three co-defendants that their identities will be protected." Opp. at 2; *see also id.* at 15. In other words, even as it

[2] The State does not dispute and therefore concedes that the First Amendment applies.

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argues that the Court's November 4 Order was narrowly tailored because it sealed the jurors' names for only 180 days, *see, e.g.*, *id.* at 13, 15 (noting Court's orders limited "in time and scope"), it is clearly angling for an even *longer* period of secrecy, including through and perhaps long after the trial in March. The State cannot have it both ways. Regardless, the argument ignores the plain language of Minn. R. Crim P. 26.02 subd. 2(2), which states that juror names can be withheld only where "strong reason exists to believe that the jury needs protection from external threats to its members' *safety* or *impartiality*" (emphasis added). The rule in no way supports the notion that a desire to give assurances of privacy to jurors in future cases justifies withholding the names of jurors in a completed case.

As the Media Coalition made clear in its opening memorandum, its members are cognizant of all that has been asked of the jurors in this case. But Court rules, the common law and First Amendment are clear that the press and the public have a presumptive right of access to juror names. Quite simply, more than four months after the jury rendered its verdict, there are no "extreme circumstances," Tr. at 68:1, sufficient to overcome this presumption. The Coalition therefore respectfully requests that the Court release the jurors' names and other Juror Materials without further delay.

Argument

I. Neither the "strong reason" nor the "compelling interest" tests are satisfied.

The State begins its Opposition by suggesting that the common law and the First Amendment allow the Court to withhold jurors' names "to protect jurors from the *substantial probability of harassment*." Opp. at 4 (emphasis added). But the State is incorrect as a matter of law; that is not the standard. Rather, under the rule codifying the decision in *State v. Bowles*, 530 N.W.2d 521 (Minn. 1995), the only question at this stage of the proceedings—when juror

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impartiality is no longer an issue—is whether "a *strong reason* exists to believe that the jury needs protection from external threats to its members' *safety*." Minn. R. Crim. P. 26.02 subd. 2(2) (emphasis added). Under the First Amendment, it is whether withholding jurors' names is "necessitated by a compelling government interest." *Press Enter. v. Super. Ct.* ("*Press-Enterprise I*"), 464 U.S. 501, 510 (1984). Notably, the State posits that the "strong reason" standard from *Bowles* and Rule 26.02 is even *more* stringent than that imposed by the First Amendment, Opp. at 8, and last year it acknowledged that "the standard is quite high," and can be satisfied only in "extreme circumstances." Tr. at 67:3; 68:1. The State didn't think the standards were met a year ago, and even the Court was concerned at that juncture primarily about juror impartiality, rather than safety. Suffice to state, neither standard is met today.[3]

No doubt, the State was able to find cases—many from other jurisdictions—where courts restricted access to juror information. Opp. at 6-12. But the Media Coalition has never disputed the unremarkable proposition that, in very rare circumstances, juror names can be at least temporarily withheld. Cases from other jurisdictions with different fact patterns are of little instructional, and of no precedential, value to this Court's inquiry.[4] Rather, the Court must

[3] Although a strict reading of the doctrine of judicial estoppel may not technically bar the State from taking a position diametrically opposed to what it said a year ago, the Court should bear that doctrine in mind in considering the State's arguments and discount most of them accordingly. *See Bauer v. Blackduck Ambulance Ass'n*, 614 N.W.2d 747, 749 (Minn. Ct. App. 2000) ("Judicial estoppel prevents a party that has taken one position in litigating a particular set of facts from later reversing its position when it is to its advantage to do so. It is intended to protect the courts from being manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories.").

[4] For example, the State repeatedly cites to *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). However, in stark contrast to Rule 26.02, Arizona's "statutes and rules generally *require a trial court to keep juror records and biographical information private*." *Neff. v. Dickerson*, 2021 Ariz. App. LEXIS 139, at *6 (Ariz. Ct. App. Div. Two July 20, 2021) (emphasis added).

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consider whether proponents of secrecy have met their burden to overcome the presumptive right of access by articulating concrete, current facts that support their "belief" that jurors' safety is at risk.

On this front, the State begins by conflating the desire to keep jurors "safe," the word from Rule 26.02, with a desire to prevent all "harassment." Opp. at 5.[5] To be clear, the Media Coalition agrees with the State that "Minnesota has an interest in protecting all of its citizens from harassment." *Id*. But the State never says what it means by "harassment," a term defined in Minnesota's criminal code, *see* Minn. Stat. § 609.749, and the Media Coalition cautions against any assumption, implicit in the State's Opposition, that "harassment" includes respectful inquiry and scrutiny of jurors so that the public can better understand their verdict and the workings of the criminal justice system.

In any event, regardless whether "harassment" is subsumed within the meaning of "safety" found in Rule 26.02, the State has not met its burden. Unlike the Media Coalition, it was in a position during *voir dire* to ask jurors about release of their identities.[6] Also unlike the

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Meanwhile, the State grossly mischaracterizes the holding in *Press-Enterprise I*, in suggesting that it approves of keeping jurors anonymous well after the close of trial. Opp. at 6. In fact that case stands only for the proposition that upon an "affirmative request" from a juror, the trial judge can redact from *voir dire* transcripts "deeply personal matters that [the] person has legitimate reasons for keeping out of the public domain." *Press-Enterprise I*, 464 U.S. at 511-12.

[5] The State also confuses the holding in *Bowles* when it states that it "indicates that courts can order anonymity to prevent jurors from being subject to 'harassment from the public.'" Opp. at 17; *see also id*. at 8. What *Bowles* actually held is that anonymity may be justified *during trial* if the jury is inclined to believe that an acquittal will subject them or their families "to harassment from the public." *Bowles*, 530 N.W.2d at 531. That consideration—which goes to ensuring jurors' impartiality—is simply not in play once the jurors' service is complete as it is here.

[6] During *voir dire*, the Court explicitly instructed the parties that it would release the jurors' questionnaires and identifying information after the trial "when I deem it safe to do so," and the Court instructed the parties that they were free to "voir dire on that issue." KARE 11, *WATCH*

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Media Coalition, the State knows who the jurors are, and could have spoken to them in recent days about their post-trial experiences. But the State either did not pursue these avenues of inquiry or, if it did, it did not turn up any facts helpful to its Opposition. And so instead, it merely speculates that "jurors in this case"—like jurors in almost *every* case—"*could be* subject to harassment or intimidation." Opp. at 13 (emphasis added). And it concedes that it "is not aware of any information suggesting that the anonymous jurors in this case have been harassed," *id.* at 15, even though two jurors and one alternate came forward weeks ago.

The only "facts" the State does cite are the interactions, many now months in the past, that the parties and their counsel, the Court, and certain other public officials had with members of the public who wanted to make known their opinions about Mr. Chauvin's culpability. But these facts are largely irrelevant for two key reasons. First, almost all of them were known and discussed at the September hearing. *See, e.g.*, Tr. at 75:15-25; 79:13-18; 81:1-5; 82:9-18 (counsel for defendants discussing various harassing and threatening communications from members of the public). That is, these are not incidents that occurred *after* the jury rendered its verdict that might suggest a new, or continued, threat to jurors, who are unlikely to be targeted by public ire in the way other trial participants (most notably Mr. Chauvin and his attorney) were. Second, and even more crucially, the State argued at the September hearing that the harassment of trial participants was insufficient as a matter of law to justify an anonymous jury, noting:

> [T]he public outcry is directed at the defendants. And, unfortunately, this Court as a public servant is accessible and people are sharing their opinions as well. But we don't know right now that jurors have been threatened, are going to be threatened. Because the public wants the trial to proceed. And it's different than those organized crime cases where there are attempts made to put a stop to the trial for the defendants, and that's not our case. This case the public wants a trial.

LIVE: Decisions loom in Chauvin trial, jury selection continues, YouTube (Mar. 18, 2021) https://www.youtube.com/watch?v=cpHdICNiD2Y.

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Id. at 70:23-71:8. As the State went on to argue: "we are not in the position of having the Court able to make detailed findings that this is the kind of case where threats are being made that could intimidate jurors." *Id*. at 75:1-5. If the State believed that the *Bowles* standard had not been met last September, when there were recent threats to, and harassment of, trial participants, the standard certainly has not been met today. Its generalized musings of what *might* happen are not persuasive and do not overcome the presumption of access recognized by Minnesota law and the First Amendment.

II. The State's assessment of the news value in the jurors' names is both misguided and irrelevant.

A not-so-subtle undercurrent in the State's Opposition is that Media Coalition should stop complaining—that it should be happy with the "copious" amount of information it already has, Opp. at 13—and that knowing the identities of men and women who decided a case "without parallel in Minnesota or American history," *id*. at 13, is of only "marginal" value, *id.* at 2, 16. The Court should disregard these arguments for two separate reasons.

First, the Coalition bears no responsibility under the law to justify its interest in jurors' identities and other Juror Materials. As discussed elsewhere, there is a *presumption* of access and the burden is on the proponent of secrecy, not the press or public, to overcome that presumption. Moreover, neither the State nor the Court should second guess the Media Coalition's news judgment. *See, e.g.*, *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials . . . constitute the exercise of editorial control and judgment," and "[i]t has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.").

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Second, the State is just plain wrong when it says there is only marginal value in knowing jurors' identities. As the Media Coalition explained in its opening memorandum, "Whether members of the jury choose to grant or decline press interviews regarding their service, the identities of the jury members may still be important to inform the public about the jury selection process, the conduct of the trial, or the criminal justice system in general." *See, e.g.*, *United States v. Shkreli*, 264 F. Supp. 3d 417, 420 (E.D.N.Y. 2017). The value of knowing names is exemplified both in cases where names are withheld—and juror misconduct goes undiscovered—and in cases where names are disclosed and journalists prove more adept than attorneys at uncovering pertinent background facts. For example, five years after voting to acquit mob boss John Gotti in a racketeering case, a juror in that case was convicted for having sold his vote.[7] The jury in the racketeering case had been anonymous, preventing the media from fully researching the juror's background and connections and perhaps preventing the miscarriage of justice. By contrast, and more recently, during the trial of former Illinois Governor George Ryan, the *Chicago Tribune* reported that a juror had failed to disclose a felony DUI conviction during jury selection, prompting the judge to launch an investigation.[8] The *Tribune*'s investigation and reporting would not have been possible had it not known the juror's names (which it did not publish).

Indeed, even in this case, Mr. Chauvin requested a *Schwartz* hearing, in part because, after juror Brandon Mitchell voluntarily came forward, "investigation by the media" indicated

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[7] Arnold H. Lubasch, *Juror Is Convicted of Selling Vote to Gotti*, NYTimes.com (Nov. 7, 1992), https://www.nytimes.com/1992/11/07/nyregion/juror-is-convicted-of-selling-vote-to-gotti.html.

[8] Ray Gibson, Matt O'Connor and David Heinzmann, *Ryan Juror Investigated*, ChicagoTribune.com (Mar. 24, 2006), https://www.chicagotribune.com/news/ct-xpm-2006-03-24-0603240141-story.html.

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that—in Mr. Chauvin's view—Mr. Mitchell "severely lacked candor" during the jury selection process. *See* Mem. in Support of Def.'s Post-Verdict Motions at 49 (June 2, 2021). The Court rejected that request out of hand, *see* June 24, 2021, Order, but Mr. Chauvin's argument makes clear that journalists' skills in plumbing jurors' backgrounds for relevant information are sometimes superior to those of the parties' counsel. And in small subset of cases—the Ryan and Gotti cases, for example—the ability to conduct that investigation by having access to jurors' identities matters.[9]

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[9] As Professor Jane Kirtley recounts in a forthcoming article in the American Bar Association's *Litigation* journal:

> One of the earliest and best illustrations of the importance of press and public access to [jurors' identities] comes from the 1735 trial of immigrant printer John Peter Zenger, charged with seditious libel for publishing anonymous—but truthful—attacks on … the corrupt Royal Governor of the Province of New York. Unable to post the exorbitant bail set by presiding New York Supreme Court Chief Justice James De Lancey, Zenger languished in jail for many months. One of his lawyers, James Alexander, also the author of some of the articles, was disbarred for challenging De Lancey's impartiality in the case. His appointed replacement, the young attorney John Chambers, was regarded as a "Governor's man" and might have been expected to pack the jury. To his credit, Chambers recognized that most of the jury panel, who were publicly identified by name and occupation, were indebted to the Governor in some way. Among them were the Governor's baker, candlemaker, and tailor. In the face of counsel's objection … even De Lancey knew that he must dismiss the initial pool. He ordered a new panel drawn from the Freeholder's Book, and eventually that jury, in an early instance of jury nullification of the seditious libel law, found Zenger not guilty. Julius J. Marke, *Peter Zenger's Trial*, 6 LITG. 41 (1980).
>
> The outcome of Zenger's trial, so instrumental in establishing the principle of freedom of the press as a means of holding government and its institutions accountable, would probably have been very different had De Lancey been able to shield the jurors' identities or question them privately, without the eyes of Zenger's friends and supporters upon both him and the jurors.

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The State knows this, of course, and last September argued that withholding jurors' names might tread on the public trial right, Tr. at 71:20; 72:2-7, a right the State acknowledged belongs as much to the press and public as the defendant, *id.* at 73:4-5 ("The public trial right doesn't belong to the defendants, really it belongs to the public."). According to the State a year ago, the fact that the press and public would have access to *voir dire* and the trial didn't diminish its right to also have access to jurors' names. It doesn't now, either.

III. The State fails to explain how conditions for release will materially change in the foreseeable future and implicitly argues for indefinite/perpetual sealing.

The State argues repeatedly that the Court's order sealing juror names for 180 days post-verdict is narrowly tailored and thus permissible. *See, e.g.*, Opp. at 13, 15. However, it fails to respond to the Media Coalition's argument that an October 20 release date is actually entirely arbitrary, that there is no reason to believe conditions for releasing juror names are going to materially change between now and October 20, and that, as a result, the order is *not* narrowly tailored but rather withholds presumptively public information far longer than necessary and violates the press and public's right to *contemporaneous* access.

The failure to rebut these points likely stems from the State's recognition that tying itself too closely to an October 20 release date will undermine its obvious (if unstated) goal: to keep juror names secret *long past* October 20. Nowhere in its Opposition does the State agree to stipulate to release on October 20, and absent such agreement the Media Coalition suspects that, as that date rolls around, the State will seek to extend the seal on Juror Materials on the theory that things are "heating up" in the prosecutions against Kimberly Potter and Mr. Chauvin's codefendants. Assuming that is the State's plan, arguing that an October 20 release date renders the seal "narrowly tailored" is disingenuous, at best. Opp. at 14.

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One thing the State and the Media Coalition do agree on: we are in a lull between high-profile trials right now and the interest in speaking to Chauvin jurors will likely increase as other police trials draw close. *See* Opp. at 14. For that reason, the Media Coalition believes that it is in the interest of not just the press and public but also the jurors themselves to have their names disclosed sooner rather than later. So too for safeguarding the legitimate interest of ensuring upcoming trials are fair: if there is to be a spike in publicity surrounding the Chauvin jurors, better to have it now rather than when the parties in a future case are trying to empanel and assure an impartial jury.

The State does not—really cannot—disagree. It fails to explain how releasing the names two months from now is better than releasing them now. Instead, it argues for indefinite, perhaps perpetual secrecy—or at least through the March trial—glossing over the problems this poses under the First Amendment's narrow tailoring requirement and ignoring the inevitability that there will always be another trial on the horizon. Ultimately, the State's noncommittal position reveals the motivation for its unexpected Opposition: the State's desire to maintain the seal on the Chauvin jurors' identities is driven not so much by concern for their safety but by concern for its ability to empanel a jury come March. As the State says at the beginning of its Opposition, it wants to assure the jurors in the March trial that "that their identities will be protected," too. Opp. at 2.

However, the State provides no controlling authority for the notion that the names of Chauvin jurors should be withheld for months on end simply so jurors in future cases will feel confident in the belief that the Court will similarly guard their identities. Rather, as discussed above, the only relevant standard under Minnesota law—which the State says is more stringent than even the First Amendment!—is whether there is "strong reason . . . to believe that the jury

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needs protection from external threats to its members' safety," Minn. R. Crim. P. 26.02 subd. 2(2). Again, for reasons discussed elsewhere, there is not.

Moreover, the State's apparent belief that the jury for the March trial will be anonymous and its argument that granting this Motion will "hamper efforts" to assure those jurors of protection, Opp. at 2, is both presumptuous and offensive.

The argument is presumptuous because, as the State has acknowledged, juror names can be sealed, even during trial, only in "extreme circumstances." Tr. at 68:1. It is not at all clear that such circumstances will exist come March, and the empaneling of an anonymous jury for Mr. Chauvin's trial in no way requires or guarantees an anonymous jury at the upcoming trial. By March, the November 4 Order will be 16 months old and the facts upon which it relies even more dated. Moreover, that Order was entered when the codefendants were set to be tried alongside Mr. Chauvin—who, among the four, has undoubtedly provoked the most community outrage. Since then, the trials were severed and the codefendants' trial repeatedly continued, such that it will now commence almost two years after George Floyd's murder and almost a year after Mr. Chauvin's conviction. The passage of time, the separate trials, Mr. Chauvin's conviction and sentencing, and other intervening events all require the Court to revisit its November 4 decision closer to the start of the March trial and ensure that—under the standards the Media Coalition has articulated in connection with this motion and in light of facts then available to the Court—an anonymous jury can still be justified. Only time will tell what March in the Twin Cities will look like, but it bears noting that the court in the Kimberly Potter case, also high-profile and controversial, is anticipating a much different atmosphere than Mr. Chauvin's trial precipitated. *See* Order Denying Audio and Video Coverage of Trial at 3, *State v. Potter*, No. 27-CR-21-7460 (Henn. Cty. Dist. Ct. Aug. 5, 2021) (stating that the Court does not anticipate any closure of

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Hennepin County Government Center, nor barricades around the building, nor a military presence).

Before empaneling another anonymous jury, the Court will also have to consider that Thomas Plunkett, counsel for Mr. Keung, is already on record objecting to an anonymous jury, arguing that withholding the names of jurors, even with public *voir dire* and providing the names of jurors to the parties was "a depravation of the right to a fair and open trial." Tr. at 77:6-7. As he said, the Sixth Amendment "reflects the general rule that judges, lawyers, witnesses and jurors will perform their respective functions more responsibly in an open court than in a secret proceeding. And I'm specifically objecting to the secret jury, confidential jury, whatever term you choose to assign to it." *Id*. at 76:17-23. There is no reason to believe Mr. Keung will change his position, and the State has acknowledged on the record that empaneling an anonymous jury over his objection will raise serious Sixth Amendment issues and might constitute plain error. *Id.* at 73:15-74:5.; *see also id*. at 76:12:16 (Mr. Plunkett stating, "I'm looking at *Waller v.* Georgia, 467 U.S. 39. I'm looking at *Estes v. Texas*, 381 U.S. 531, and *State v. Lindsey*, 632 N.W.2d 652, and the Sixth Amendment's bedrock right to a public trial is for the benefit of the accused.").

The State's argument is also offensive in that it suggests the Court has been somehow cavalier in its treatment of jurors—or will be if it grants this motion. What prospective jurors—i.e., the citizens of this State—have observed is that this Court has been incredibly sensitive to and thoughtful about jurors' impartiality, safety, and preferences for privacy and has gone so far as to keep their identities secret for *months* after their service ended, all while being clear that they should have no expectation of perpetual secrecy. Prospective jurors watching the treatment of the men and women who decided this case should already feel *highly* confident that the Court is looking out for their best interests. The notion that the Court would be "*reneging* on a promise

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to secure jurors' privacy" if it grants this Motion, Opp. at 15 (emphasis added), is just plain wrong, and the State knows it.

Thus, the State's related concerns that release of the Chauvin jurors' names will hinder their efforts to empanel a jury come March are overwrought. Indeed, the prevailing presumption before the Chauvin trial was that it would be exceedingly difficult to pick a jury, and yet selection finished early. Regardless, concerns about seating an impartial jury are handled by calling a larger pool, asking searching questions, providing honest explanation of all that jury duty entails, and asking prospective jurors if they are up for to the tasks. They are *not* handled by concealing the names of jurors in a separate criminal trial and the State cites no authority that they are. *See, e.g.*, *United States v. Criden*, 648 F.2d 814, 827 (3d Cir. 1981) ("the appropriate course to follow when the specter of prejudicial publicity is raised is not automatically to deny access but to rely primarily on the curative device of voir dire examination"). Should the State wish to ensure that future jurors are not swayed by the release of the Chauvin jurors' names, all it needs to do is ask those future prospective jurors about it.

At base, the State has it exactly backward: that the trial of Chauvin's codefendants is looming is not a reason to keep the names of the Chauvin jurors sealed, but rather is reason to immediately release them. Only then can the press and public best understand how the jurors reached their decision and whether it was just, building confidence in the judicial system before another trial threatens to tear at the fabric of the Twin Cities. *See, e.g.*, *Austin Daily Herald v. Mork*, 507 N.W.2d 854, 857 (Minn. Ct. App. 1993) ("By permitting some reporting while prohibiting other reporting the trial court in effect parcels out news to the press and the public. Permitting the media to report only half the news risks distorting the truth and ruining the public's ability to understand the case or the work of the courts in administering justice.").

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Conclusion

If this trial demonstrated anything, it demonstrated that if given the opportunity to observe criminal proceedings, the public will engage. The ability of the public to monitor this trial and to decide for itself whether justice was meted out was a crucial step in maintaining and bolstering the belief that the criminal justice system can fairly adjudicate claims of police misconduct and brutality. Yet taken to its logical conclusion, the State's Opposition would allow courts to seal in perpetuity the names and related information for jurors in all future cases. Such a conclusion simply ignores the long line of cases making clear that access to jurors' identities is an irreplaceable piece in the puzzle of public access to criminal proceedings, and such a result cannot stand.

For the foregoing reasons, the Coalition respectfully requests that the Court release without further delay the jurors' identities and related materials.

Dated: August 27, 2021

BALLARD SPAHR LLP

s/ Leita Walker

Leita Walker (MN #387095)
2000 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2119
612-371-6222
walkerl@ballardspahr.com

Emmy Parsons, *pro hac vice*
1909 K Street, NW
12th Floor
Washington, DC 20006-1157
202-661-7603
parsonse@ballardspahr.com

Attorneys for Media Coalition