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September 17, 2021

The Honorable Peter A. Cahill
Judge of District Court
Hennepin County Courthouse
300 South Sixth Street
C731
Minneapolis, MN 55487

RE: States v. J. Alexander Kueng
Court File Numbers: 27-CR-20-12953

Dear Judge Cahill;

On June 8, 2021 this Court issued a scheduling order (see Index 460) establishing September 17, 2021 as a deadline for the parties to submit alterations to the jury questionnaire used in *State v. Chauvin*. Through this letter Counsel reasserts past objections to the questionnaire and respectfully asks this court to consider the modifications and additions outlined below.

The United States and the Minnesota Constitution guarantee a criminal defendant the right to an impartial jury. U.S. Const. amends. VI, XIV; Minn. Const. art. 1, § 6; This right includes the ability to conduct “an adequate *voir dire* to identify unqualified jurors.” *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001). (Internal Citations Omitted) “[D]ue process alone has long demanded that, if a jury is to be provided the defendant, regardless of whether the Sixth Amendment requires it, the jury must stand impartial and indifferent to the extent commanded by the Sixth Amendment.” *Morgan v. Illinois*, 504 U.S. 719, 727, 112 S.Ct. 2222, 2229, 119 L.Ed.2d 492 (1992). The Minnesota Supreme Court has long recognized the importance of an

impartial jury and has recently unequivocally reaffirmed that an impartial jury goes to the very heart of a fair trial. *State v. Fraga*, 864 N.W.2d 615 (Minn. 2015) (“The bias of a single juror violates the defendant’s right to a fair trial,” because the “impartiality of the adjudicator goes to the very integrity of the legal system.” (citing *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007). … “Our jury system rests on the premise that jurors must be unbiased. A conviction must be reversed if any juror actually biased sits in judgment.”). Permitting a biased juror to serve is structural error requiring automatic reversal. *State v. Logan*, 535 N.W.2d 320, 324 (Minn. 1995).

A jury questionnaire is an extension of traditional *voir dire*. The same concerns and legal principles surrounding a fair and complete *voir dire* apply to a jury questionnaire. If a jury questionnaire or individual questions in a questionnaire fail to meaningfully detect bias, cover up bias or in fact promote the concealment of bias, it is objectionable and the Defendant is deprived of due process. Mr. Kueng argues that the existing questionnaire fails in these ways, and its implementation is a deprivation of his right to trial.

Counsel asks that his Court consider removing or modifying two questions from the Chauvin questionnaire. The first question of concern is Part I Question 10. Question 10 asks:

No matter what you have heard or seen about this case, and no matter what opinions you might have formed, can you put all of that aside and decide the case on only on the evidence you receive in court, follow the law, and decide the case in a fair and impartial manner. (emphasis in original)

Counsel objects to the wording and emphasis given this question by using bold type to highlight the question. Counsel respectfully asks that this question be stricken from the questionnaire. This question indoctrinates a potential juror against sharing or acknowledging their bias. The language of the question is sweeping and blurs the issue of bias. The question tells the juror to set aside biases that will impact their deliberations. The question does not seek

information about their biases. Further, the question fails to identify what biases will be put aside or how a potential juror would put aside bias. The effect of this question is to shame a juror into agreeing they will put bias aside without making an honest examination of the bias and the process for doing so.

Mr. Kueng asks this Court to also remove question 7 from Part V. Opinions Regarding Justice System from the questionnaire. The question asks:

Under our system of justice, the jury must decide the case solely on the evidence produced in court and the law that the judge instructs, and not because of bias, passion prejudice or sympathy. Would you have difficulty following this principle of law?

In support of this request Mr. Kueng proffers the same arguments made above.

Additional Questions:

Mr. Kueng asks the Court to add inquiries that examine the impact of Mr. Chauvin's trial and the extraordinary media coverage before during and after that proceeding to the questionnaire. Mr. Kueng seeks to add the following questions:

1. By what means did you take in information about the trial of Derek Chauvin?
2. What portions of the Derek Chauvin trial did you observe?
3. Which witnesses or pieces of evidence from the Derek Chauvin trial do you recall?
4. What are your thoughts or concerns about defunding the Minneapolis Police Department?

Mr. Kueng asks that question 12 Part III. Police contacts be amended to read as follows:

Other than what you have already described, have you or anyone close to you participated in protests, rallies or community meetings about civil rights. This includes marches commemorating events or person involved in the civil rights movement. If yes, what shirts, signs, banners, or chants did you wear or participate in.

Mr. Kueng thanks the Court in advance to their consideration of these points and proposals.

Yours truly,

/s/ Thomas C. Plunkett
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Attorney at Law

TCP/cw