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STATE OF MINNESOTA
HENNEPIN COUNTY

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

The Honorable Regina M. Chu

vs.

Kimberly Ann Potter

Defendant

Dist. Ct. File 27-CR-21-7460

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

American Public Media Group (which owns Minnesota Public Radio); Association of Minnesota Public Educational Radio Stations; The Associated Press; Cable News Network, Inc.; CBS Broadcasting Inc. (on behalf of WCCO-TV and CBS News); Court TV Media LLC; Fox/UTV Holdings, LLC (which owns KMSP-TV); Gannett Satellite Information Network, LLC (which publishes *USA Today*); Hubbard Broadcasting, Inc. (on behalf of its broadcast stations, KSTP-TV, WDIO-DT, KAAL, KOB, WNYT, WHEC-TV, and WTOP-FM); Minnesota Coalition on Government Information; Minnesota Spokesman-Recorder; NBCUniversal Media, LLC; Sahan Journal; Saint Paul Pioneer Press; The Silha Center for the Study of Media Ethics and Law; Star Tribune Media Company LLC; TEGNA Inc. (which owns KARE-TV); and WP Company LLC (which publishes *The Washington Post*) (collectively, the "Media Coalition") by and through undersigned counsel, hereby submit this Motion to Unseal Juror Names and Other Juror Materials.

INTRODUCTION

On August 10, 2021, this Court entered an Order for Juror Anonymity and Sequestration (hereafter, the "August 10 Order") in the above-referenced case, stating that "jurors' names, addresses, and other identifying information shall be kept confidential by the Court and all

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parties throughout the trial and deliberation." August 10 Order, ¶ 4. The Order set no deadline for post-trial release of the information, instead stating that "jurors' names and some contact information shall be made public only by the Court and on a date designated by the Court in a subsequent written order" and that "[a]nything not expressly made public shall remain confidential." *Id.* The Order was entered after a status conference, without affording the press and the public notice or an opportunity to be heard, and it is supported *only* by a stipulation of the parties. It contains no findings of fact regarding threats to the jurors' safety or impartiality or any other supposed rationale for keeping their identities secret.

The August 10 Order reflected the third time in as many years that a Hennepin County court empaneled an anonymous jury in a high-profile, important case, despite presumptions found in court rules, the common law, and the U.S. Constitution that all criminal court records—including those that contain juror information—are public. The first was the Honorable Judge Kathryn Quaintance's order in the prosecution of Mohamed Noor, *see* Order for Confidential Jury, *State v. Noor*, No. 27-CR-18-6859 (Henn. Cnty. Apr. 1, 2019), and the second was the Honorable Judge Peter Cahill's order in the prosecution of Derek Chauvin, *see* Order for Juror Anonymity and Sequestration, *State v. Chauvin*, No. 27-CR-20-12646 (Henn. Cnty. Nov. 4, 2020). These cases also reflected the third time in as many years that a Hennepin County court empaneled an anonymous jury in a case involving a former police officer charged with the on-duty killing of an unarmed civilian.[1]

[1] *See* Tami Abdollah, *Minnesota judges hide jurors' names when police go on trial in killings*, USAToday.com (Sept. 1, 2021), https://www.usatoday.com/story/news/nation/2021/09/01/police-officers-charged-killings-get-anonymous-juries-minnesota/8246691002/?gnt-cfr=1 (attached as Walker Aff. Ex. A).

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That trend is troubling for an obvious reason: There is no basis in the law for treating a certain type of defendant categorically different (and with more secrecy) than all other defendants—certainly not when the category is comprised of former police officers whose prosecutions are of utmost public interest and concern. Yet the series of recent decisions from this district court threaten to do just that—to turn the long-established presumption of openness on its head, and to normalize the automatic sealing of juror names and other juror information in cases involving former police officers.

To be clear: There is nothing "normal" about empaneling an anonymous jury in the State of Minnesota (or, for that matter, in the whole of the United States). *See State v. Wren*, 738 N.W.2d 378, 387 (Minn. 2007) (cautioning that "a jury should only be empaneled anonymously under rare and exceptional circumstances"). Under Rule 26.02 of the Minnesota Rules of Criminal Procedure—which the August 10 Order relies upon—jurors may remain anonymous only if "a *strong reason* exists to believe that the jury needs protection from external threats to its members' safety or impartiality," and the Court must "make *detailed findings of fact* supporting its decision to restrict access to juror information." Minn. R. Crim. P. 26.02 (emphasis added). Nothing in Rule 26.02 allows the parties to a prosecution to simply stipulate away the press and public's right of access. Nothing in the rule allows the Court to seal juror names without first making any findings of fact as to why sealing is necessary.

Even before trial, the Media Coalition questioned whether anyone, if actually held to their burden, could show "strong reason" to empanel an anonymous jury. Indeed, although the language in the August 10 Order largely tracks that in the *Chauvin* sealing order, the Court here had found just five days before issuing the August 10 Order that the prosecution of Kimberly Potter did "not present the same extraordinary circumstances" as were present in *Chauvin*, that

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the Court did "not anticipate that there will be any barricades around the government center or any military presence," and that the case had "generated a notable, but not overwhelming, interest." Order Denying Audio & Video Coverage of Trial (hereafter, the "Aug. 5 Order"), at 3-4 & n.4 (Aug. 5, 2021). And even in *Chauvin*, the State did "not agree with having an anonymous jury." Sept. 11, 2020 Hr'g Tr. (hereafter, the "Chauvin Tr.") at 66:8-9, *State v. Chauvin* (Sept. 11, 2020) (attached to Affidavit of Leita Walker as Ex. B). At a hearing on the issue, the prosecutor explained that—*even in a case as high-profile and emotional as* Chauvin—"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." *Id*. at 66:16-23. If the standard was not met in *Chauvin*, then surely it was not met in this case and the State's stipulation to secrecy back in August should be viewed for what it was: not the result of a reasoned legal analysis but a willingness to prioritize prosecutorial efficiency over the rule of law and the public's interest in transparency.

Nonetheless—in an abundance of caution and despite grave concerns about yet another anonymous jury in an important, officer-involved case—the Media Coalition has waited to bring this Motion until after the conclusion of trial. At this point, there certainly is no "strong reason" to believe that the jurors need protection to ensure their safety or impartiality, and thus the sealing of their identities cannot be justified. Accordingly, the Media Coalition respectfully moves for release of all information about prospective and selected jurors, including their names and the prospective juror list, juror profiles, juror questionnaires, and the unredacted verdict forms.

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ARGUMENT

I. The Media Coalition has standing to assert its interest in a non-anonymous jury.

As the Media Coalition previously argued in this matter, on a motion objecting to the closure of trial, *see* Mem. in Support of Media Coalition's Mot. Objecting to Closure of Trial to the Press and Pub. (Oct. 29, 2021),[2] and as this Court implicitly recognized in granting that motion, *see* Order Granting A/V Coverage of Trial (Nov. 9, 2021), the media may intervene to object to restrictions on access to criminal proceedings and related documents filed with the Court. *See, e.g.*, *Nw. Pub'ns, Inc. v. Anderson*, 259 N.W.2d 254, 256 (Minn. 1977).

Moreover, Minn. Gen. R. Prac. 814(a) contemplates the Media Coalition's intervention here in stating that, subject to certain exceptions addressed *infra*, the "names of the qualified prospective jurors drawn and the contents of juror qualification questionnaires . . . *must* be made available to the public upon specific request to the court, supported by affidavit setting forth the reasons for the request" (emphasis added).[3]

Accordingly, there is no doubt that the Media Coalition's objections regarding restrictions on access to the jurors' identities are properly before the Court.

II. Court rules and the common law require release of juror identities and other juror materials.

As the *Chauvin* court made clear when it ultimately released juror names in that case:

> [T]he law in Minnesota . . . creates a presumption that the names of the jurors and their completed juror questionnaires should be made available to requesting members of the public and the press absent an identifiable strong reason to believe the jurors . . . need protection from external threats to their safety or

[2] The Media Coalition hereby incorporates by reference the complete argument regarding its standing in this matter as set forth in October 29 memorandum.

[3] Consistent with requirements of Rule 814(a), the Media Coalition is filing with this motion an affidavit from Susan "Suki" Dardarian, managing editor of *The Star Tribune*, who speaks on behalf of the entire Coalition.

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> unless the Court can fairly and objectively assess that there is a substantial likelihood that making publicly available the names and completed questionnaires of the . . . prospective jurors . . . will interfere with the fair and impartial administration of justice.

Order & Mem. Op. on Media Coalition Mot. to Unseal Juror Names & Associated Juror Info. (hereafter, the "Oct. 25 Chauvin Order") at 23-24, *State v. Chauvin* (Oct. 25, 2021). The reason for the presumption is simple: transparency "promotes fairness, accuracy, and public confidence." *Minneapolis Star & Tribune Co. v. Kammeyer*, 341 N.W.2d 550, 556 (Minn. 1983).

This presumption, grounded in public policy, is codified not only in Minn. R. Crim. P. 26.02 and Minn. R. Gen. Prac. 814, but also in the Rules of Public Access to Records of the Judicial Branch, which define "records" as "any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of physical form or method of storage." Rule 3, subd. 5. Under this definition, the identities of jurors and prospective jurors, along with their profiles, questionnaires, and verdict forms are undoubtedly court records, and they are therefore presumptively public under the Rules and the common law: "Records of all court and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the custodian of the records." *Id.* Rule 2; *see also Nixon v. Warner Commc'ns*, 435 U.S. 589, 597-99 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."); *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 202-03 (Minn. 1986) (stating that even in civil context, the common law right to inspect and copy court records is "undisputed"); *Star*

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Tribune v. Minn. Twins P'ship, 659 N.W.2d 287, 296 (Minn. App. 2003) (recognizing presumption of access).[4]

Case law and court rules use essentially the same standard in assessing whether the presumption has been overcome—the proponent of secrecy must show either "*strong countervailing reasons* why access should be restricted," *see Schumacher*, 392 N.W.2d at 205-06 (emphasis added), or "a *strong reason* . . . 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 also* Minn. Gen. R. Prac. 814(a) (allowing withholding of the names of prospective jurors and the contents of juror qualifications questionnaires *only* where the "strong reason" standard of Rule 26.02, subd. 2(2) is satisfied or where the "interest of justice" requires confidentiality).

Applying those high standards of proof here, the common law presumption of access clearly prevails for the simple reasons that (1) trial is over such that juror impartiality is no longer a relevant issue and (2) the public has accepted the verdict, there was no unrest even in its immediate aftermath, and there is thus no reason to fear for jurors' safety at this time. Indeed, the circumstances of this case, at this date, are a far cry from those in *State v. Bowles*, 530 N.W.2d 521 (Minn. 1995), the case establishing the "strong reason" standard now found in Rule 26.02.

Bowles involved an alleged member of a street gang accused of (and ultimately convicted for) the retaliatory killing of a police officer. In the run-up to trial, another gang member was killed—presumably because he was believed to be a police informant—and certain witnesses in the case against the defendant were relocated with their families for their protection, at the State's expense. The court thus kept jurors' identities secret from not only the public but also

[4] Other cases recognizing the common law right include *In re CBS*, 828 F.2d 958, 959 (2d Cir. 1987); *Valley Broad. Co. v. U.S. Dist. Ct.*, 798 F.2d 1289, 1293-97 (9th Cir. 1986); *United States v. Guzzino*, 766 F.2d 302, 303-04 (7th Cir. 1985).

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from the parties on grounds that releasing their identities might cause them to fear for themselves and their families and that this fear could impact their verdict. In affirming this decision[5] the court made clear that anonymous juries are the exception, not the rule, and they are typically empaneled only in prosecutions of organized crime figures. *Id*. at 530-31; *see also* Chauvin Tr. at 67:2-3, 22 (argument by prosecutor that empaneling an anonymous jury is "an extreme measure" that is "disfavored," and the "standard" to justify such anonymity "is quite high").

Here, even before trial, there was no reason to believe that Ms. Potter, her family, or her friends would attempt to intimidate jurors. And while there may have been some fear at the time of the August 10 Order that, due to emotions and impassioned opinions on both sides of the spectrum, random members of the public would attempt to contact jurors and influence their verdict, that fear has always been speculative. Such fears cannot be grounds for sealing juror identities because—so long as we remain in the current cultural moment—they will always be vaguely present. And if allowed to sway rational thinking and to trump objective evidence (or the lack thereof) such fears will create a situation in which cases involving police-officer defendants are always subject to "special treatment' in the form of an anonymous jury.

Case law—in particular *Wren*, 738 N.W.2d 378—makes clear that this categorical approach is not permissible. There the Supreme Court criticized the trial court's decision to follow *Bowles* and empanel an anonymous jury, despite the trial court's citation to extensive pretrial publicity, strife within a witness's family, the retaliatory nature of the alleged crime, and "potential gang affiliation evidence." 738 N.W.2d at 386. "[N]ot every retaliatory murder involving gang activity merits the extreme measure of empaneling an anonymous jury," the

[5] It bears noting that the challenge to the anonymous jury in *Bowles* came from the criminal defendant, not the press.

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Supreme Court held, further stating that the evidence relied upon by the trial court was "not similar to that present in the cases where we have sustained the use of anonymous juries." *Id*. In other words, not even gang-member defendants whose cohorts are known to threaten witnesses and possibly jurors are entitled to a *categorical* exception to the rule that juror names are public. Certainly, police officer defendants aren't entitled to such an exception either, and case-by-case analysis is required in this case and all that follow.

Regardless, concerns about juror tampering and impartiality can have no bearing on the question of access today—the jury's job is done and their impartiality is no longer necessary. Oct. 25 Chauvin Order at 21 ("Because the trial concluded six months ago, any concerns about juror impartiality, potential jury tampering, or possible attempts to intimidate, harass or other efforts seeking to unduly influence jurors prior to or during trial … are no longer germane in this case."). Nor is there any reason to believe jurors' safety is at risk, weeks after they handed down their verdict. As the *Chauvin* court recognized when the media moved, post-sentencing, to unseal the jury names in that case:

> On the present record, this Court cannot assay any strong reason to believe the jurors continue to need protection from any external threats to their safety at this point, four months after this Court's sentencing of Chauvin, or that there is a substantial likelihood that making the prospective and impaneled jurors' names public information will interfere with the fair and impartial administration of justice.

Id. at 24.

Granted, more time passed in *Chauvin* before unsealing than has passed in this case. But as the Court itself has recognized, this case is less of a lightning rod than *Chauvin* was, such that a quicker release of names should be expected. Moreover, two jurors and an alternate in *Chauvin* came forward voluntarily within days or weeks of the verdict, without incident. *Id.* at 24 ("None of those jurors has communicated to this Court that they have been harassed or have endured any

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threats to their personal safety" and "[t]he State also has not offered any evidentiary showing that any of those three have been unduly harassed or threatened."). Nor have there been any reports of harassment or threats to the safety of *Chauvin* jurors since all of their names were "officially" released more than two months ago. And there have not been any reports of harassment or threats to the safety of *Noor* jurors since their names were "officially" released 18 months ago (and despite that case being back in the news in recent weeks due to the re-sentencing of Mr. Noor after his third-degree murder conviction was reversed). Simply stated, this case is over, the verdict did not lead to unrest, and the public has accepted the verdict. Just as the court found in *Chauvin*: on the present record, there is no strong reason to believe the jurors continue to need protection and thus there is no basis under court rules or the common law to continue to withhold their names.

III. The First Amendment likewise requires release of juror identities and other juror materials.

The Court may grant the Media Coalition's motion for access to juror identities and other juror information based on Court rules and the common law alone—it need not analyze the First Amendment right to such information. If, however, the Court finds that some "strong reason" overrides the common law right to the Juror Materials, it must consider the constitutional right to this information, and the law is clear: Just as there is a common law presumption of access to criminal court records, there is a First Amendment right, as well, and it has not been overcome. *See Minn. Twins P'ship*, 659 N.W.2d at 296 ("Similar to the common-law standard, a presumption of access to judicial records exists under the First Amendment."); *see also* Mem. Op. on Order Granting Mot. of Media Coalition to Obtain Copies of Publicly-Filed, Body-Worn

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Camera Video Evidence, *State v. Chauvin* (Aug. 11, 2020) at 8 (recognizing the press and public's First Amendment right of access in criminal cases).[6]

A. The First Amendment right of access applies.

The starting point for the First Amendment analysis is *Press-Enterprise v. Superior Court* ("*Press-Enterprise I*"), 464 U.S. 501 (1984), which concerned access to *in camera* jury *voir dire* transcripts from a criminal trial for the rape and murder of a teenage girl. On the theory that *voir dire* might probe prospective jurors' sensitive, personal experiences (such as whether they or anyone close to them had been raped), the trial court ordered that all but three days of the six-week *voir dire* be closed to the public. *Id*. at 503. After the jury was empaneled, and again after the jury rendered its verdict, the press moved the court to release a complete transcript of the *voir dire*. *Id*. The trial court, the California Court of Appeals, and the California Supreme Court all refused. *Id*. at 504-05.

The U.S. Supreme Court reversed, explaining that the press and public can be barred from a criminal trial (including *voir dire*) only when necessary to protect a "compelling governmental interest" and only if the restriction on access is "narrowly tailored to serve that

[6] *See also In re Providence Journal Co.*, 293 F.3d 1, 10 (1st Cir. 2002) (right applies to "documents and kindred materials submitted in connection with the prosecution and defense of criminal proceedings"); *United States v. Haller*, 837 F.2d 84, 87 (2d Cir. 1988) (records of plea hearing); *United States v. Smith*, 123 F.3d 140, 146 (3d Cir. 1997) (records of a criminal proceeding); *In re Associated Press*, 172 F. App'x 1, 4 (4th Cir. 2006) (records filed "in connection with criminal proceedings"); *United States v. Edwards*, 823 F.2d 111, 112-13 (5th Cir. 1987) (transcript of midtrial questioning of jurors); *In re Storer Commc'ns, Inc.*, 828 F.2d 330, 336 (6th Cir. 1987) (records pertaining to recusal of judge); *United States v. Peters*, 754 F.2d 753, 763 (7th Cir. 1985) (trial exhibits); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 573 (8th Cir. 1988) (documents filed in support of search warrant applications); *CBS v. U.S. Dist. Ct.*, 765 F.2d 823, 825-26 (9th Cir. 1985) (documents filed in pretrial proceedings and post-trial sentencing records); *United States v. Ignasiak*, 667 F.3d 1217, 1237-39 (11th Cir. 2012) (post-trial pleading revealing impeachment information); *Wash. Post v. Robinson*, 935 F.2d 282, 287-88 (D.C. Cir. 1991) (plea agreement).

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interest." *Id.* at 510. It then concluded that the trial court's concerns over jurors' privacy interests were "unsupported by findings showing that an open proceeding in fact threatened those interests" and that the trial court "failed to consider whether alternatives were available to protect the interests of the prospective jurors." *Id.* at 510-11.

Since it issued, many courts have pointed to *Press-Enterprise I* as implicitly holding that there exists not only a First Amendment right of access to *voir dire* but also to juror identities. *See*, *e.g.*, *United States v. Wecht*, 537 F.3d 222, 239 (3d Cir. 2008) (finding a First Amendment right to juror names at the time of swearing in and empanelment of the jury); *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 781 N.E.2d 180, 195-96 (Ohio 2002) (First Amendment and state constitution both guarantee the public and press a qualified right of access to juror names and addresses as well as to juror questionnaires); *Commonwealth v. Long*, 922 A.2d 892, 904 (Pa. 2007) (finding a First Amendment right of access to jurors' identities). Likewise, courts have found a First Amendment right to information related to jurors such as the juror profiles questionnaires under seal here. *See Lesher Commc'ns v. Super. Ct.*, 274 Cal. Rptr. 154, 156 (Ct. App. 1990) (recognizing First Amendment right to jury questionnaires on grounds that the questionnaire is part of the *voir dire* itself and *Press-Enterprise I* thus compels disclosure); *Bond*, 781 N.E.2d at 188 (same).

Courts applying the First Amendment to press requests for juror information have often conducted an "experience and logic" analysis, finding first that jurors' information has historically been open to and known by the public. As the Court set out in *Press-Enterprise I*, "[t]he roots of open trials reach back to the days before the Norman Conquest," 464 U.S. at 505, and the public selection of jurors appears to have begun as early as the 16th century, *id.* at 506. Indeed, public jury selection was common when the Constitution was adopted. *See id.* at 508 &

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n.7 (noting that several accounts recite the public jury selection of two of the British soldiers charged for the Boston Massacre in 1770). As just one example, Chief Justice John Marshall printed the names of the jurors in the court's reported decision in the treason trial of Aaron Burr. *United States v. Burr*, 25 F. Cas. 55, 87 (D. Va. Cir. Ct. 1807). Indeed,

> When the jury system grew up with juries of the vicinage, everybody knew everybody on the jury and we may take judicial notice that this is yet so in many rural communities throughout the country. . . . We think it no more than an application of what has always been the law to require a district court, upon the seating of the panel of a jury and alternates, if any, which will hear a case, to release the names and addresses of those jurors who are sitting, as well as those veniremen and women who have attended court but have not been seated for one reason or another.

In re Balt. Sun Co., 841 F.2d 74, 75 (4th Cir. 1988). It is beyond dispute that there exists a tradition, dating to the nation's founding and indeed long before, of access to juror names.

As for the "logic" prong, the question is whether public access to the jury information "plays a significant positive role in the functioning of the particular process in question"—here, the judicial process. *Press-Enterprise Co. v. Super. Ct.* ("*Press-Enterprise II*"), 478 U.S. 1, 8 (1986). Indeed, this Court recognized just that when it acknowledged in its August 5 Order that the "general public's First Amendment right of access to public trials" runs in "[p]arallel to the defendant's right to a public trial." Aug. 5 Order at 1. Likewise, as the Supreme Court held in *Press-Enterprise I*, complete access to *voir dire* "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; *see also Richmond Newspapers v. Virginia*, 448 U.S. 555, 571-72 (1980). And with regard to juror identities specifically, courts have held that disclosure "allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness and public confidence in that system." *In re Globe Newspaper Co.*, 920 F.2d 88, 94 (1st Cir. 1990).

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In sum, Minnesota courts have already held that a First Amendment right of access applies to criminal court records, and both experience and logic show that right extends to those court records that include the Juror Materials at issue here. Thus, the only question is whether the First Amendment right of access has been overcome. As discussed below, it has not.

B. The August 10 Order is not narrowly tailored to protect a compelling interest.

As *Press-Enterprise I* makes clear, any restrictions on the public's First Amendment right of access must be only as broad as is necessary to protect a "compelling" or overriding interest. 464 U.S. at 510. The August 5 Order's sealing of all information regarding prospective and selected jurors is not narrowly tailored, nor is it "necessitated by a compelling governmental interest." *Id*.

First, the August 10 Order falls short even under the common law, and it certainly does not satisfy the "compelling interest" test of the First Amendment. Indeed, the order does not identify any interest in secrecy whatsoever, much less cite facts suggesting the interest was in jeopardy. Presumably, the Court was concerned about juror impartiality and the Defendants' fair trial rights—concerns that, as explained above, are no longer germane. The Court may also have been concerned about juror privacy or safety. But even if it had articulated that concern, "generalized privacy concerns of jurors" are not a "sufficient reason to conceal their identities in every high-profile case." *See, e.g.*, *Wecht*, 537 F.3d at 240; *see also United States v. Shkreli*, 264 F. Supp. 3d 417, 419 (E.D.N.Y. 2017) ("Despite the long and challenging service of the jury members and the court's profound gratitude for their service and attention throughout the trial, the privacy interests and preferences of the jury alone are generally insufficient to preclude disclosure of their names."). Likewise, concerns about safety must be more than vague and speculative. Thus, for example, even in a case with demonstrated connections to the terrorist

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group ISIS, the court determined that jurors' names and hometowns could be made available to the public and the press shortly after the jury rendered its verdict. *United States v. Wright*, No. 15-10153-WGY, 2017 U.S. Dist. LEXIS 222476, at *2-4 (D. Mass. Oct. 20, 2017). Moreover, the fact the public was intensely interested in this case such that the jurors and their verdict may be subjected to heightened scrutiny is not sufficient to justify closure. "To hold otherwise would render the First Amendment right of access meaningless; the very demand for openness would paradoxically defeat its availability." *ABC v. Stewart*, 360 F.3d 90, 102 (2d Cir. 2004). Here, given the Court's determination that this prosecution does not raise anywhere near the same security concerns as existed in *Chauvin*, and given the total lack of *any* factual findings to support an anonymous jury, there simply is no compelling government interest sufficient to maintain the seal on the jurors' names and other juror materials.

Second, even if a compelling interest were at stake, the Aug. 10 Order is not narrowly tailored, primarily because it purports to seal juror names *indefinitely*. Assuming, *arguendo*, that there was reason to pause briefly after the verdict to gauge how the public would respond to it, the trial is now "reced[ing] into history," Oct. 25 Chauvin Order at 24, and there is no reason to believe that the conditions for releasing juror names will materially change over the coming months. In addition, there are alternative, narrower ways to protect juror privacy and security without further treading on the presumptive right of access. These alternatives include notifying jurors in advance of releasing their names so they are not surprised by inquiries from the press or public and can plan how they want to respond (or decide if they want to respond at all) and providing them with a number at the Court to call if they feel they are being harassed. *See In re Bay City Times*, 143 F. Supp. 2d 979, 982 (E.D. Mich. 2001) ("If a juror believes an inquiry rises to the level of harassment, the juror may resort to this Court for relief.").

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C. The right of access to court records is a *contemporaneous* right, and delay in releasing Juror Materials amounts to denial of that right.

Finally, the right of access to court records, including the Juror Materials at issue here, is a contemporaneous right, and where delay is not otherwise justified by strong or compelling reasons, it cannot be excused by promises of "eventual" release. As the Supreme Court has explained, "[t]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Stewart*, 360 F.3d at 99 ("The ability to see and to hear a proceeding *as it unfolds* is a vital component of the First Amendment right of access—not . . . an incremental benefit" (emphasis added)); *Grove Fresh Distribs. v. Everfresh Juice Co*., 24 F.3d 893, 897 (7th Cir. 1994) (access to court documents "should be immediate and contemporaneous"); *Republic of the Philippines v. Westinghouse Elec. Corp*., 949 F.2d 653, 664 (3d Cir. 1991) ("the public interest encompasses the public's ability to make a contemporaneous review of the basis of an important decision of the district court"); *In re Continental Ill. Secs. Litig.*, 732 F.2d 1302, 1310 (7th Cir. 1984) ("The presumption of access [to court records] normally involves a right of *contemporaneous* access.").

Contemporaneous access is guaranteed in part because "[d]elays imposed by governmental authority" are inconsistent with the press' "traditional function of bringing news to the public promptly," *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 560-61 (1976), and can "destroy the contemporary news value of the information the press seeks to disseminate," *id.* at 609 (Brennan, J., concurring); *see also Valley Broad. Co.*, 798 F.2d at 1292 (noting that because the media "seeks to obtain the tapes for contemporaneous broadcast when presumably they will pack the greatest punch, delay will prejudice its application in a way not correctable on appeal" (internal marks omitted)).

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Prompt reporting is imperative because it helps ensure accountability, *see, e.g.*, *Richmond Newspapers*, 448 U.S. at 592 (Brennan, J., concurring) ("[C]ontemporaneous review in the forum of public opinion is an effective restraint on the possible abuse of judicial power," (quoting *In re Oliver*, 333 U.S. 257, 270 (1948))), and nowhere is accountability more important than in our criminal justice system. *See, e.g.*, *Robinson*, 935 F.2d at 287 (recognizing "the critical importance of contemporaneous access . . . to the public's role as overseer of the criminal justice process"); *In re Application of NBC (Myers)*, 635 F.2d 945, 952 (2d Cir. 1980) ("there is a significant public interest in affording [opportunity to scrutinize evidence] contemporaneously . . . when the public attention is alerted to the ongoing trial"). Therefore, it is of little relevance to the First Amendment that at some ambiguous point down the road, "some contact information shall be made public" by the Court. Aug. 10 Order at 2, ¶ 4.

CONCLUSION

For the foregoing reasons, the Media Coalition respectfully requests that this Court provide immediate access to prospective and selected jurors' names and all other juror materials, including the prospective juror list, juror profiles, juror questionnaires, and the unredacted verdict forms.

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