

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

**REPLY 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 Reply in support of their Motion to Unseal Juror Names and Other Juror Materials.

Only the State has opposed the Media Coalition’s motion—the Defendant has not filed any response at all—and the State’s opposition comes nowhere close to showing either “strong reasons” (the state law standard) or a compelling government interest (the Constitutional

standard) for continued secrecy surrounding the identities of the jurors who convicted Kimberly Potter of first- and second-degree manslaughter for fatally shooting Daunte Wright.

The State's opposition does *not* point to any risk to Ms. Potter's fair trial rights, nor could it, when the verdict is in and the sentence has been handed down. It does *not* point to any concrete, nonspeculative risk to juror safety, nor could it, when, more than two months after jurors concluded their service, the verdict is "old news" and did not cause unrest even when first announced. And it does *not* explain why the State believes sealing, much less *continued* sealing, is justified in *this* case when it previously argued that sealing could not be justified even in the extremely high-profile trial of Derek Chauvin for the killing of George Floyd. *See* Mem. In Supp. of Mot. to Unseal at 4, 8 (Jan. 21, 2022) (quoting State's remarks opposing anonymous jury in Mr. Chauvin's case).

Instead, the State's three-page opposition does little more than point to the public's understandable interest in this trial as well as other recent and pending trials of former police officers, while referencing a "potential" for juror harassment. State's Resp. to Mot. to Unseal ("Opp.") at 3 (Jan. 28, 2022). As explained in the Media Coalition's opening brief, such vague, hypothetical concerns do not meet the standard for secrecy under court rules, the common law, or the First Amendment. Meanwhile, the public's intense interest in and scrutiny of this case is reason for *more* transparency, not less. *See, e.g., ABC, Inc. v. Stewart*, 360 F.3d 90, 102 (2d Cir. 2004) ("To hold otherwise would render the First Amendment right of access meaningless; the very demand for openness would paradoxically defeat its availability."). This is true especially now that the trial is over and the "charged atmosphere" in the community, Opp. at 2, cannot possibly jeopardize Ms. Potter's right to a fair trial.

In implicit recognition of its burden—it acknowledges that it must name an “identifiable threat” to juror safety, Opp. at 2, but then fails to do so—the State resorts to arguing that unsealing the jurors’ names in this case “could” threaten juror impartiality and/or individuals’ willingness to serve as jurors in future trials. Opp. at 3.¹ But this argument was already rejected in the *Chauvin* case by The Honorable Judge Peter Cahill, and for good reason. As Judge Cahill pointed out, the parties in the *Chauvin* case—the “apogee of high-visibility criminal trials”—were able to impanel a fair and impartial jury in fewer than twelve full days of *voir dire*, despite the recent release of the names of the jurors in the trial of Mohamed Noor, another high-profile, police-officer-defendant case. See Order and Mem. Op. on Media Coalition Mot. to Unseal Juror Names and Associated Juror Information (“Chauvin Unsealing Order”) at 26-27, *State v. Chauvin*, No. 27-CR-20-12646 (Henn. Cty. Dist. Ct. Oct. 25, 2021), available at https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/27CR2012646_Order_10-25-2021.pdf.² And indeed, just as release of the *Noor* jurors’ names did not hinder the process of impaneling a jury in the *Chauvin* case, it does not appear that release of the *Chauvin* jurors’ names on November 1, 2021 hindered the process of impaneling a jury in *this* case a month later. Nor did it hinder the process of impaneling a jury in the federal civil rights trial of Mr. Chauvin’s co-defendants in January 2022—in fact, jury selection in that case took just *one day*. See Court Minutes, *United States v. Thao et al.*, No. 21-CR-108 (D.

¹ It is worth noting that attorney Earl Gray did not bother to make this argument, even though he is perhaps in the best position to do so given his representation of both the Defendant here and also Thomas Kiernan Lane, whose federal trial for the killing of Mr. Floyd just concluded and whose state trial is scheduled for this summer.

² All of the trials the State lists in its opposition here as reason to keep the jurors’ names under seal were also on the horizon when Judge Cahill issued this order. Indeed, an additional trial was also imminent at that time: the trial in *this* case.

Minn. Jan. 20, 2022), Dkt. 214. Thus, as Judge Cahill concluded, “there simply is no reasonable and objective basis upon which this Court can conclude that making public the . . . juror names now will cause any insurmountable difficulties for this Court, or the United States District Court for the District of Minnesota.” *See* Chauvin Unsealing Order at 27.

Moreover, the State pretends as if the summer trial of Mr. Chauvin’s co-defendants will bring to a close this troubled period in the history of Twin Cities policing and the prosecutions arising from it. But unfortunately, it won’t. Minneapolis police officer Brian Cummings is facing two felony charges after his squad car hit another car, killing Leneal Frazier, who just happens to be the uncle of a major witness to Mr. Floyd’s murder. *See* Chao Xiong, *Minneapolis police officer makes first appearance in court for fatal crash*, StarTribune.com (Nov. 9, 2021), <https://www.startribune.com/minneapolis-police-officer-makes-first-appearance-in-court-for-fatal-crash/600114493/>. And according to media reports, prosecutors continue to weigh whether to charge Minneapolis police officer Mark Hanneman in the killing of Amir Locke during service of a no-knock warrant. *See* Holly Bailey, *What to know about the police shooting of Amir Locke, the Minneapolis man killed during a ‘no-knock’ raid*, WashingtonPost.com (Feb. 15, 2022), <https://www.washingtonpost.com/nation/2022/02/15/amir-locke-police-shooting-explainer/>. Simply put, if the prospect of future, emotionally charged trials were sufficient, standing alone, to keep jurors’ names under seal indefinitely, then jurors’ names would *never* be released.

Finally, the State is wrong that the Court’s order sealing juror names is narrowly tailored and restricts access to juror names and other juror information “only for a limited period of time.” Opp. at 3. It is in fact entirely open-ended and unrestricted. It purports to seal juror names *indefinitely*. But the trial is now over and Ms. Potter has been sentenced. There is no legitimate

reason to believe secrecy is required to ensure juror safety. Thus, for all the reasons stated herein and in the Media Coalition's opening brief, the jurors' names and all other juror materials should be immediately unsealed.

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