No. 17-1566

IN THE

Supreme Court of the United States

ROGERS LACAZE,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For A Writ Of Certiorari To
The Supreme Court of Louisiana

BRIEF OF *AMICI CURIAE* LOUISIANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND 32 OTHER ASSOCIATIONS OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

The Louisiana Association of Criminal Defense Lawyers (LACDL), the National Association of Criminal Defense Lawyers (NACDL), and 32 other state associations of criminal defense lawyers listed in the Appendix respectfully submit this brief as *amici curiae*.[1]

[1] No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amici curiae*, their members, or counsel made any monetary

LACDL is a voluntary professional organization of private and public defense attorneys practicing in the state of Louisiana. LACDL counts among its members the vast majority of the criminal defense bar in Louisiana.

LACDL's mission includes the protection of individual rights guaranteed by the Louisiana and United States Constitutions. LACDL acts as *amicus curiae* in cases where the rights of defendants are implicated. LACDL has filed *amicus* briefs concerning the role of counsel in capital cases as well as Louisiana's sordid history of race-based strikes. Additionally, LACDL filed an *amicus* brief supporting Petitioner's initial petition for a writ of certiorari. *See* Br. for La. Ass'n of Criminal Def. Lawyers, et al. as *Amici Curiae* in Supp. of Pet'r, *Lacaze v. Louisiana*, 138 S. Ct. 60 (2017) (No. 16-1125).

The National Association of Criminal Defense Lawyers is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense

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contribution intended to fund the preparation or submission of this brief. Counsel for Petitioner Rogers Lacaze and Respondent State of Louisiana received timely notice of intent to file this brief and provided written consent to its filing.

lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

Amici also include associations that represent the interests of their respective states' criminal defense bars and strive to protect the constitutional rights of people charged with crimes. *Amici* have a strong and direct institutional interest in this litigation because of the implications of this case for the rights of accused citizens in their respective jurisdictions. A full listing of *amici* appears in the Appendix.

SUMMARY OF ARGUMENT

The LACDL, NACDL, and 32 additional state criminal defender associations request that this Court grant certiorari to resolve lower courts' longstanding, deeply conflicting interpretations of the appropriate test for determining whether a criminal defendant has been denied his right to an impartial jury.[2] The State of Louisiana previously conceded that such a

[2] This issue remains unresolved by this Court's grant of certiorari to Petitioner in October 2017, when this Court vacated the decision of the Supreme Court of Louisiana and remanded for further consideration in light of *Rippo v. Baker*, 580 U.S. __, 137 S. Ct. 905 (2017). *See* 138 S. Ct. 60. *Rippo* only applies to Mr. Lacaze's claim of judicial bias—not his claim of jury bias—and the Supreme Court of Louisiana declined to reconsider the jury bias issue raised by Mr. Lacaze on remand. *See generally State v. LaCaze*, No. 2016-KP-0234, 2018 WL 1281112 (La. Mar. 13, 2018).

circuit split exists, *see* Br. in Opp'n at 25-30, *Lacaze*, 138 S. Ct. 60 (hereinafter, "Prior BIO"), yet maintained that this Court's intervention was unnecessary. Because this issue is of critical importance to criminal defendants across the country, *amici* respectfully disagree.

The Sixth Amendment guarantees criminal defendants the right to "an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI; *see also* La. Const. art. I, § 16 ("Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred"). This protection extends to individual states through the Fourteenth Amendment. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

The Sixth Amendment does not apply to civil cases. But for over thirty years, federal and state courts alike have looked to this Court's decision in *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548 (1984), a plurality ruling in a civil case, to assess alleged violations of criminal defendants' Sixth Amendment right to an impartial jury. The plurality opinion in *McDonough* established a two-prong test to determine a party's right to a new trial based on juror bias in a civil case: "[A] party must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause." *Id.* at 556.

For decades, federal and state courts have applied *McDonough* in criminal cases without any guidance from this Court as to the case's proper interpretation

in the criminal context, with predictably uneven results. This is particularly problematic given criminal defendants' unique protections under the Sixth Amendment, and criminal juries' unique power to deprive an individual of liberty—or even life. Absent this Court's guidance, criminal defendants across the country will continue to receive disparate levels of protection against biased jurors, all depending on where they are charged and tried.

This Court should grant certiorari to resolve the split in interpretations of *McDonough* that Mr. Lacaze identifies. *See* Pet. at 14; Prior BIO at 25, ("[t]he circuit courts have formulated three separate tests to determine whether a new trial is warranted under *McDonough*"). Granting certiorari also would serve the important purpose of clarifying the appropriate standard to apply to criminal cases. The Court should reverse the Louisiana Supreme Court's strict interpretation of *McDonough* that improperly deprived Mr. Lacaze of his right to an impartial jury under the Sixth Amendment.

ARGUMENT

For more than three decades, federal and state courts across the country have imported the *McDonough* plurality's standard into the criminal context. But because courts lack guidance as to how to evaluate a criminal defendant's right to an impartial jury under *McDonough*, criminal defendants receive varied levels of protection from court to court and jurisdiction to jurisdiction, leading to widely disparate results.

I. THIS COURT SHOULD RESOLVE THE INCONSISTENT APPLICATION OF *MCDONOUGH* RESULTING FROM A WELL-ESTABLISHED CIRCUIT SPLIT TO ENSURE CRIMINAL DEFENDANTS RECEIVE STRONG AND UNIFORM PROTECTIONS AGAINST JUROR BIAS.

A. This Court Has Never Clarified *McDonough's* Application In Criminal Cases.

Since this Court issued *McDonough*, courts have struggled to apply the fractured opinion's two-prong test for ascertaining juror bias. *See* Pet. at 30-32; Prior Pet. at 20-25 (discussing the three-way split on the second prong, regarding what it means to show "a valid basis for a challenge for cause"); Pet. at 32-33; Prior Pet. at 25-26 (examining courts' conflict over whether the first prong of the *McDonough* test applies to misleading nondisclosure). This confusion was evident even within *McDonough* itself, which featured two concurrences that only added complexity—and uncertainty—to the plurality's analysis. *See McDonough*, 464 U.S. at 557 (Brennan, J., concurring in judgment) (noting "difficulty understanding the import of the legal standard adopted by the Court").

Justice Brennan was right: Over the decades since *McDonough* was decided, courts have repeatedly sought "clarification of the applicable legal standard," in order to "cope with th[e] recurrent problem" of juror bias. *Sampson v. United States*, 724 F.3d 150, 160 (1st Cir. 2013). The First Circuit characterized the *McDonough* framework as "not well-defined," *id.*, while the Second Circuit observed that it is "unclear" whether *McDonough* requires a showing of actual bias or if "jury partiality may alterna-

tively be proven by implied or inferred bias." *United States v. Greer*, 285 F.3d 158, 172 (2d Cir. 2002); *see also Conner v. Polk*, 407 F.3d 198, 206 n.4 (4th Cir. 2005) (questioning whether implied bias "remains a viable doctrine"). Other courts have questioned whether *McDonough* applies at all in the criminal context. The Ninth Circuit, for example, has found that a post-conviction petitioner's reliance on *McDonough* was "misplaced" because "it was a civil case that did not purport to interpret or set forth any constitutional basis." *Frank v. Lizarraga*, No. 16-16267, 2018 WL 2041410, at *1 (9th Cir. May 2, 2018) (concluding that *McDonough* did not amount to "clearly established law" under 28 U.S.C. § 2254(d)(1)).

The divergent interpretations of *McDonough* alone warrant this Court's intervention to resolve the disparate constitutional protections afforded to criminal defendants across jurisdictions. But this case is particularly well-suited to resolve the circuit split because it is a criminal case, and this Court has yet to have the opportunity to address whether the two-prong test even *applies* to allegations of juror bias in a case such as this. The American justice system has a deep-rooted history of distinguishing between civil and criminal defendants, often providing criminal defendants with more robust protections in recognition that criminal defendants' liberty is uniquely at stake. *See, e.g.*, *In re Winship*, 397 U.S. 358, 363 (1970) (requiring the highest burden of proof in criminal trials because criminal defendants have an "interest of immense importance"—their liberty). The Court in *McDonough* did not, and could not, opine on whether this distinction mandated a

modified test for defendants in criminal cases; that issue was not before it.

The standard this Court announced in *McDonough* could not have been decided under more divergent circumstances from Petitioner's case. *McDonough* was a products liability case—a claim for injury from a lawn mower accident. 464 U.S. at 549. This was a capital case. The jury held Petitioner's very life in its hands. Yet the same test for determining juror bias applied.

Despite the significant differences in procedure, rights, and consequences in civil and criminal cases, this Court has never decided that *McDonough* should apply in the criminal context—much less to what degree. The Court's analyses of *McDonough* instead have been limited to civil cases or discussions of the harmless-error standard.[3]

Lower courts have attempted to fill the void, but as we next explain, they generally have applied *McDonough* to criminal cases with little consideration as to how the test might differ in the criminal context.

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[3] *See Warger v. Shauers*, 135 S. Ct. 521, 528 (2014) (examining juror testimony regarding juror bias in a civil case in light of *McDonough*); *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (citing *McDonough*'s discussion of the civil harmless-error rule); *O'Neal v. McAninch*, 513 U.S. 432, 441 (1995) (citing *McDonough*'s history of the federal harmless-error statute); *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 312 (1986) (citing *McDonough*'s discussion of the civil harmless-error rule); *United States v. Powell*, 469 U.S. 57, 67 (1984) (citing *McDonough* as an exception to the finality of jury verdicts).

B. Courts Applying The *McDonough* Test For Juror Bias In The Criminal Context Have Largely Ignored The Constitutional Divide Between Criminal And Civil Defendants.

Because this Court has not specifically addressed the application of *McDonough* to criminal cases, most courts, including the Louisiana Supreme Court here, have simply applied *McDonough* to criminal cases without even acknowledging whether the important distinctions between civil disputes and criminal prosecutions require a modified test for juror bias. Some have limited their analysis to a single sentence. *See, e.g.*, *United States v. McMahan*, 744 F.2d 647, 652 (8th Cir. 1984) ("Although *McDonough* was a civil case, we believe the same principle would apply to a criminal trial."). Others have said nothing at all. *See, e.g.*, *United States v. Perkins*, 748 F.2d 1519, 1531 (11th Cir. 1984) (noting that *McDonough* provides the standard for examining juror bias, but failing to acknowledge any differences between criminal and civil cases).

Civil litigants and criminal defendants, however, are not created equal. Criminal defendants' liberty interest is one of "transcending value," worthy of additional substantive and procedural protections. *Speiser v. Randall*, 357 U.S. 513, 525 (1958). Indeed, "[m]uch of the Bill of Rights is designed to redress the advantage that inheres in a government prosecution," including the state's "awesome power" and "virtually limitless resources." *Wardius v. Oregon*, 412 U.S. 470, 480 (1973) (Douglas, J., concurring); *see also Duncan*, 391 U.S. at 155-56 (noting that criminal juries "prevent oppression by the Government" and act as a defense "against the corrupt or

overzealous prosecutor and against the compliant, biased, or eccentric judge").[4] For these reasons, criminal defendants' Sixth Amendment right to an impartial jury has been described as "the great bulwark of their civil and political liberties." *Neder v. United States*, 527 U.S. 1, 19 (1999). The jurors empaneled in a criminal case generally act as the last safeguard against an erroneous conviction. *See, e.g.*, *Winship*, 397 U.S. at 372 (Harlan, J., concurring) (opining it is "far worse to convict an innocent man than to let a guilty man go free," in comparison to the lesser consequences of an erroneous judgment in a suit for money damages). That is a solemn responsibility indeed, one that rests on "that group's determination of guilt or innocence." *Williams v. Florida*, 399 U.S. 78, 100 (1970).

Yet the lower courts have largely ignored the possibility that something more is required from the *McDonough* test for juror bias in the criminal context. The American criminal justice system, however, is replete with examples of stronger constitutional procedures for criminal defendants. The requisite burden of proof, of course, is significantly more stringent in a criminal case. Criminal defendants may only be convicted upon a showing of guilt beyond a reasonable doubt; civil defendants face liability upon a showing of preponderance of the evidence, under certain conditions increased to clear and convincing evidence. *Winship*, 397 U.S. at 361

[4] Although Mr. Lacaze does not allege prosecutorial misconduct in his petition, the widespread abuses of the Orleans Parish District Attorney's Office at the time of Mr. Lacaze's trial are well documented. *See Connick v. Thompson*, 563 U.S. 51 (2011).

(comparing criminal and civil standards of proof). The government may not comment on, nor may the jury draw an adverse inference from, a criminal defendant's failure to testify; the Fifth Amendment permits such inferences from civil defendants' silence. *Baxter v. Palmigiano*, 425 U.S. 308, 318-19 (1976). Criminal defendants also enjoy the right to confront their accusers, *Crawford v. Washington*, 541 U.S. 36, 42 (2004), the right to assistance of counsel in most criminal cases, *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963), the right to access any evidence favorable to the defendant, *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and the right to be free from double jeopardy. *Smalis v. Pennsylvania*, 476 U.S. 140, 145 (1986). Civil defendants generally enjoy none of these protections.

Rules of evidence and criminal procedure similarly grant more substantial protections to criminal defendants. Criminal defendants, for example, may offer evidence of personal traits that would be prohibited in a civil case, Fed. R. Evid. 404(a)(2) (providing exceptions to the general inadmissibility of character traits), and are protected from psychiatric expert testimony about the defendant's *mens rea* that is otherwise permissible in civil cases. Fed. R. Evid. 704(b) (providing that, in criminal cases only, an expert witness must not state an opinion about a defendant's mental state or condition that constitutes an element of a crime or defense).

Any assessment of a criminal jury's potential partiality under *McDonough* should be approached with the same rigor. Criminal juries have unmatched powers and responsibilities, and a single juror's bias could infect a trial's ultimate outcome. *See, e.g.*, *Schick v. United States*, 195 U.S. 65, 89 (1904)

(Harlan, J., dissenting) ("Life and liberty are too sacred to be placed at the disposal of any one man, and always will be, so long as man is fallible."). The *voir dire* process "plays a critical function in assuring the criminal defendant that his [constitutional] right to an impartial jury will be honored," *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (plurality opinion), by "exposing" individual jurors' "possible biases, both known and unknown." *McDonough*, 464 U.S. at 554; *see also State v. Hall*, 616 So. 2d 664, 668 (La. 1993) (acknowledging *voir dire*'s role in "testing [jurors'] competency and impartiality"); *State v. Monroe*, 329 So. 2d 193, 195 (La. 1975) (highlighting *voir dire*'s ability to "uncover predisposition or attitudes of prospective jurors").

Post-conviction challenges to an impartial jury are an extension of the protections afforded to criminal defendants during the *voir dire* process, mandating a robust inquiry to root out individual juror's improper subversion of criminal defendant's rights under the Sixth Amendment. *See Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 868 (2017) (recognizing that *voir dire* may be insufficient to root out, or may even compound, biases). But courts applying *McDonough* in criminal cases have ignored the greater protections provided to criminal defendants in other Sixth Amendment contexts.

McDonough itself illustrates the peril of importing the civil juror bias standard without considering the criminal context. The Court decided *McDonough* in the context of the civil harmless-error rule (Fed. R. Civ. P. 61), which places the burden of persuasion on the party raising the issue. 464 U.S. at 556; *see Howard v. Gonzales*, 658 F.2d 352, 357 (5th Cir. Unit A Oct. 1981). Integrating Rule 61 into its analysis,

the *McDonough* Court required the party alleging juror bias both to show that the bias existed and that the bias would affect the party's substantial rights. 464 U.S. at 556. The corresponding Rule of Criminal Procedure, Fed. R. Crim. P. 52(a), however, places the burden of persuasion on the *Government*—not the defendant. *See United States v. Olano*, 507 U.S. 725, 741 (1993). And yet courts apply *McDonough* to criminal cases without considering who should bear the burden of persuasion as to bias. *See, e.g.*, *United States v. Tucker*, 137 F.3d 1016, 1026 (8th Cir. 1998) (assuming without explanation that the *McDonough* test requires a criminal defendant "to prove three things about the voir dire").

C. Courts' Application of *McDonough* Ignores These Nuances, Resulting In Disparate And Inadequate Protections For Criminal Defendants.

Criminal defendants have suffered significant consequences as a result of federal and state courts' struggle to uniformly evaluate juror bias in criminal cases. That continued confusion is leading to inconsistent results for criminal defendants across the country—particularly as it relates to courts' interpretation of *McDonough* in the context of actual bias, improper motives, and misleading nondisclosures.

As described in detail by Petitioner, Pet. at 30-32; Prior Pet. at 20-25, and agreed to by Respondent, Prior BIO at 25-27, some circuits constrain *McDonough*'s second prong (whether correct information at *voir dire* "would have provided a valid basis for a challenge for cause," 464 U.S. at 556) to the rigid categories of actual or implied bias, leading to widely disparate results for criminal defendants. The Eighth Circuit's decision in *Sanders v. Norris*

illustrates how. 529 F.3d 787 (8th Cir. 2008). The court held there that a juror was not biased even though he was the county coroner who arranged for the victims' autopsies and conducted the funeral of a victim distantly related by marriage. *Id.* at 790, 794. The panel acknowledged that the juror "failed to be completely candid in answering questions during voir dire," but concluded that he was not (sufficiently) biased because he did not match any of the exceptional circumstances listed by Justice O'Connor's concurring opinion in *Smith v. Phillips*, 455 U.S. 209, 221-24 (1982) (O'Connor, J., concurring). 529 F.3d at 789.

If, however, the *Sanders* defendant had instead been tried in a "reasonable judge" jurisdiction (where *McDonough*'s second prong looks to whether hypothetical reasonable judge would strike the juror for cause) he likely would have received a new trial. The Second Circuit, for example, has held that a reasonable judge could conclude that a juror was biased *without* showing actual or implied bias, where the juror had engaged in activity similar to defendant's alleged crime. *See United States v. Torres*, 128 F.3d 38, 41-48 (2d Cir. 1997).

Two circuits have imposed a third prong under *McDonough*, requiring that a petitioner show that a juror's motives for concealing information affected the fairness of the trial. *See* Pet. at 32; Prior Pet. at 23-25; *see also* Prior BIO at 26-27 (acknowledging these circuits' interpretation of a third prong). This third prong—effectively requiring a showing of improper *motive*—is an even more rigorous standard that often leads to absurd results. In *Conner*, for example, the Fourth Circuit held that a capital defendant's right to an impartial jury was not violat-

ed despite his showing that one of the jurors in a subsequent sentencing proceeding, "a local newspaper reporter who had extensively covered" the defendant's original trial, had at *voir dire* denied having direct or firsthand knowledge of the facts of the case. 407 F.3d at 200. Although the newspaper reporter had significant, non-public information about the crime, the Fourth Circuit concluded that she lacked any improper motive, and therefore was not biased, because she "had no improper outside contacts, either pressuring her to vote in a certain manner or to trust particular witnesses." *Id.* at 207. As a result, the defendant's two death sentences remained intact. *See also Conaway v. Polk*, 453 F.3d 567, 588 (4th Cir. 2006) (holding that even where both *McDonough* prongs are satisfied, a criminal defendant still must establish the juror's motive for concealing information); *United States v. Ruiz*, 446 F.3d 762, 770 (8th Cir. 2006) (denying a criminal defendant a new trial where "the facts show no motive for partiality by the juror").

Yet if the *Conner* defendant had faced prosecution in one of the nine circuits that do *not* evaluate a juror's motive, he may well have received the relief he sought. The Sixth Circuit, for example, has held that a defendant's Sixth Amendment rights were violated after he was convicted of second degree escape from prison by a jury that included individuals with outside knowledge of the underlying crime—knowledge they obtained while sitting on a jury that convicted the defendant's co-escapees. *Quintero v. Bell*, 256 F.3d 409, 410-12 (6th Cir. 2001), *vacated*, *Bell v. Quintero*, 535 U.S. 1109 (2002), *reinstated*, *Quintero v. Bell*, 368 F.3d 892 (6th Cir. 2004). Despite each juror's assurances that he or she could

be fair and impartial, the court concluded that their prior knowledge of the case and determination of the defendant's co-escapees' guilt created an unacceptable risk of juror bias, regardless of their attestation of impartiality. *Id.* at 413; *see also United States v. Gillis*, 942 F.2d 707, 710 (10th Cir. 1991) (criminal defendant's Sixth Amendment rights violated when members of the jury were present for *voir dire* for the defendant's case on other charges). It is particularly difficult to square the holding in *Quintero* with that of *Conner*—a case where a *single* juror possessed significant external knowledge about the crime not presented at trial, yet the court concluded that the juror was not biased.

Petitioner also observes that lower courts are confused as to whether a juror's "misleading nondisclosure" is sufficient to show a "fail[ure] to answer honestly a material question on *voir dire*." Pet. at 32-34; Prior Pet. at 25-26; *McDonough*, 464 U.S. at 556. Conflicting tests in turn lead to situations where a defendant's right to an unbiased jury rises or falls on her ability to prove jurors' underlying intent. In *United States v. Kerr*, for example, the Eleventh Circuit rejected a criminal defendant's claim that his right to an unbiased jury was violated after a juror remained silent when asked whether she had any immediate family members "affiliated with any law enforcement agency," despite the fact that she was married to a *former* law enforcement officer. 778 F.2d 690, 692-94 (11th Cir. 1985). The Eleventh Circuit held that the defendant's right to an impartial jury was not violated because the juror technically responded truthfully, *id.* at 694, in stark contrast to the Fourth Circuit's disapproval of a juror's "literally accurate" response under remarka-

bly similar circumstances. *See Williams v. True*, 39 F. App'x 830, 833 (4th Cir. 2002) (granting new trial after juror, whose former spouse was the Deputy Sheriff and lead investigator, remained silent when asked if she was related to that same Sheriff); *see also Williams v. Taylor*, 529 U.S. 420, 442-43 (2000) (remanding the same case for an evidentiary hearing on juror's alleged bias in the same trial).

The stakes in criminal cases are simply too high to permit these multi-faceted circuit splits and their attendant divergent outcomes to continue. This Court should grant certiorari to unify courts' interpretation of criminal defendants' allegations of juror bias.

II. THE LOUISIANA SUPREME COURT WRONGLY DEPRIVED MR. LACAZE OF HIS SIXTH AMENDMENT RIGHT TO AN IMPARTIAL JURY.

The Louisiana Supreme Court's interpretation of *McDonough* not only ignored the important differences between criminal and civil defendants; it also significantly diminished Mr. Lacaze's Sixth Amendment right to an impartial jury. Consider, for instance, the startling circumstances of Juror Settle, who failed to disclose a critical fact—his own decades-long employment as a law enforcement officer, and then current employment by the Louisiana State Police—despite specific questions in *voir dire* designed to draw out any family or other close relationships the prospective jurors had with law enforcement personnel. Pet. at 8 ("The court then asked the second row of Mr. Settle's panel if anyone was 'involved or know anybody in law enforcement? – any close friends or anything like that . . . ? Anywhere in the world?"). The critical relevance of this infor-

mation should be obvious in a case where a police officer was the victim, and another police officer a co-defendant.

The Louisiana Supreme Court, however, denied relief after imposing additional burdens on Mr. Lacaze that were both improper under *McDonough* and inconsistent with the different procedural protections provided to criminal defendants throughout the American judicial system. First, the court implied that only an instance of "outright dishonesty" would satisfy the requirement that a "juror failed to honestly answer a material question." Pet.App. 38a. This interpretation of *McDonough*'s first prong not only is incorrect, but also makes it nearly impossible for criminal defendants to root out jurors' underlying bias—particularly those related to criminal justice—by excusing jurors' unilateral decision to parse and selectively answer *voir dire* questions. *See* Prior BIO at 27 (excusing "Settle's non-disclosure of his affiliation with law enforcement" because the only question posed directly to his row was "if he was '*related* to anyone in law enforcement'"). And by imposing that nearly impossible standard, the Louisiana Supreme Court's test permits courts to avoid the entire purpose of the inquiry: whether the juror is biased.

Second, the court adopted a restrictive interpretation of whether a juror "would have been subject to a meritorious challenge for cause" under *McDonough*'s second prong by requiring a showing of "an express admission of bias" or "any specific facts" from which bias could be inferred. Pet.App. 38a. The Louisiana Supreme Court therefore not only adopted a more stringent standard than required by *McDonough*, but also wrongly concluded that Mr. Lacaze did not show that Juror Settle would have been subject to a meri-

torious challenge for cause. It strains reality to conclude that an individual who was currently employed by a local law enforcement agency would not be subject to a meritorious challenge where the prosecution alleged Mr. Lacaze conspired with a police officer to kill another police officer.

***

This Court should grant certiorari to resolve the important question of how to apply both prongs of the *McDonough* juror-bias standard, thereby resolving decades of disagreement and its attendant impact on criminal defendants' right to an impartial jury. Against the backdrop of criminal juries' remarkable power and unique responsibilities, *McDonough* requires that a new trial be granted when (1) a juror fails, intentionally or unintentionally, to answer honestly a material question on *voir dire*; and (2) the truthful answer provides a basis upon which a reasonable judge would have struck the juror for cause. In a system where criminal defendants face the most extreme penalties available under the law, allegations of jurors' bias must be thoroughly scrutinized to ensure they are impartially carrying out their grave responsibility: to fairly and accurately assess an accused's guilt or innocence.

CONCLUSION

For the foregoing reasons, and those in the petition, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

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