

No. 16-1125

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IN THE  
**Supreme Court of the United States**

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ROGERS LACAZE,

*Petitioner,*

v.

STATE OF LOUISIANA,

*Respondent.*

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

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**MOTION FOR LEAVE TO FILE BRIEF AND BRIEF  
OF *AMICI CURIAE* LOUISIANA ASSOCIATION OF  
CRIMINAL DEFENSE LAWYERS AND OTHER  
ASSOCIATIONS OF CRIMINAL DEFENSE  
LAWYERS IN SUPPORT OF PETITIONER**

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**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI*  
*CURIAE* IN SUPPORT OF PETITIONER**

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The Louisiana Association of Criminal Defense Lawyers (LACDL) respectfully moves under Supreme Court Rule 37.2(b) for leave to file a brief as *amici curiae* in support of Petitioner.

All parties were timely notified of LACDL's intent to file an *amicus* brief. Petitioner has consented to the brief. Respondent State of Louisiana refused to consider LACDL's request for consent unless provided with a draft of the brief prior to filing. Because that is not, of course, required—or even accepted—practice, proposed *amici* declined to accede to that demand and must now file this motion instead.

LACDL, the Arizona Attorneys for Criminal Justice, Colorado Criminal Defense Bar, Connecticut Criminal Defense Lawyers' Association, Delaware

Association of Criminal Defense Lawyers, District of Columbia Association of Criminal Defense Lawyers, Florida Association of Criminal Defense Lawyers, Idaho Association of Criminal Defense Lawyers, Iowa Association of Criminal Defense Lawyers, Kansas Association of Criminal Defense Lawyers, Maine Association of Criminal Defense Lawyers, Maryland Criminal Defense Attorneys' Association, Criminal Defense Attorneys of Michigan, Minnesota Association of Criminal Defense Lawyers, Missouri Association of Criminal Defense Attorneys, Montana Association of Criminal Defense Lawyers, New Hampshire Association of Criminal Defense Lawyers, Association of Criminal Defense Lawyers of New Jersey, New Mexico Criminal Defense Lawyers Association, North Carolina Advocates for Justice, North Dakota Association of Criminal Defense Lawyers, Ohio Association of Criminal Defense Attorneys, Oregon Criminal Defense Lawyers Association, Rhode Island Association of Criminal Defense Lawyers, South Carolina Association of Criminal Defense Lawyers, Tennessee Association of Criminal Defense Lawyers, Texas Criminal Defense Lawyers Association, and Wisconsin Association of Criminal Defense Lawyers, are associations that represent the interests of their respective states' criminal defense bars and strive to protect the constitutional rights of people charged with crimes. As explained in the attached brief, *amici* are concerned that the Louisiana Supreme Court's decision below improperly deprived Petitioner of his right to an impartial jury under the Sixth Amendment and the Louisiana Constitution. Their brief explains how federal and state courts have applied *McDonough Power Equip., Inc. v. Greenwood* in criminal cases

without guidance from this Court as to the proper interpretation of *McDonough* in a criminal context. 464 U.S. 548 (1984). The brief further underscores the circuit split the petition presents, illustrating how criminal defendants across the country will continue to receive disparate levels of protection against biased jurors absent guidance from this Court. *See* Sup. Ct. R. 10(b).

For the foregoing reasons, the motion should be granted.

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**BRIEF OF *AMICI CURIAE* LOUISIANA  
ASSOCIATION OF CRIMINAL DEFENSE  
LAWYERS AND 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) respectfully submit this brief as *amici curiae*.<sup>1</sup>

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<sup>1</sup> 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 contribution intended to fund the preparation or submission of this brief. All parties were notified of *amici curiae*'s intent to submit this brief at least 10 days before it was due, but Respondent State of Louisiana refused to consider LACDL's request for consent unless provided with a draft of the brief

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.

The Arizona Attorneys for Criminal Justice, Colorado Criminal Defense Bar, Connecticut Criminal Defense Lawyers' Association, Delaware Association of Criminal Defense Lawyers, District of Columbia Association of Criminal Defense Lawyers, Florida Association of Criminal Defense Lawyers, Idaho Association of Criminal Defense Lawyers, Iowa Association of Criminal Defense Lawyers, Kansas Association of Criminal Defense Lawyers, Maine Association of Criminal Defense Lawyers, Maryland Criminal Defense Attorneys' Association, Criminal Defense Attorneys of Michigan, Minnesota Association of Criminal Defense Lawyers, Missouri Association of Criminal Defense Attorneys, Montana Association of Criminal Defense Lawyers, New Hampshire Association of Criminal Defense Lawyers, Association of Criminal Defense Lawyers of New Jersey, New Mexico Criminal Defense Lawyers Association,

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prior to filing. Proposed *amici* declined to accede to that demand, necessitating the motion accompanying this submission.

North Carolina Advocates for Justice, North Dakota Association of Criminal Defense Lawyers, Ohio Association of Criminal Defense Attorneys, Oregon Criminal Defense Lawyers Association, Rhode Island Association of Criminal Defense Lawyers, South Carolina Association of Criminal Defense Lawyers, Tennessee Association of Criminal Defense Lawyers, Texas Criminal Defense Lawyers Association, and Wisconsin Association of Criminal Defense Lawyers are, similarly, 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.

#### **SUMMARY OF ARGUMENT**

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.

This Court has never applied *McDonough* to a criminal case—meaning that 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, which 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 and the Louisiana Constitution.

## 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* TO ENSURE CRIMINAL DEFENDANTS RECEIVE STRONG AND UNIFORM PROTECTIONS AGAINST JUROR BIAS.**

#### **A. This Court Has Never Applied *McDonough* In The Criminal Context.**

Since this Court issued *McDonough*, courts have struggled to apply the fractured opinion's two-prong test for ascertaining juror bias. *See* Pet. 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"); *id.* 25-26 (examining courts' conflict over whether the first prong of the *McDonough* test applies to misleading nondisclosure). This confusion was evident even with the opinion in *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 alternatively 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”).

Even apart from courts’ divergent interpretations of *McDonough*, there is a further, more fundamental complication: this Court has never addressed whether the two-prong test even *applies* to allegations of juror bias in a criminal case. 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.<sup>2</sup> 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.

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

Most courts, including the Louisiana Supreme Court here, have applied *McDonough* to criminal cases without even acknowledging whether the

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<sup>2</sup>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).

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”).<sup>3</sup> For these reasons, criminal defendants’ Sixth Amendment right to an

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<sup>3</sup> 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).

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 (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) (“[l]ife 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. 20-25, 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).

Petitioner also identifies three circuits that have held that a juror only is biased if there is a showing of improper *motive*—an even more rigorous standard, and one that often leads to absurd results. *See* Pet. 23-35. In *Conner*, for example, the Fourth Circuit held that a capital defendant's right to an impartial jury was not violated 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 correctly 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. 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 remarkably 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—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. 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 information 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. 12a. 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. 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. 12a. 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 meritorious 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.

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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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