STATE OF NEW JERSEY, v. WILDEMAR A. DANGCIL, Defendant-Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: AM-0053-20 Criminal Action On Motion for Leave to Appeal from Superior Court, Bergen County, Docket No. 19-08-1020-I

BRIEF OF PROPOSED *AMICUS CURIAE*
NEW JERSEY STATE BAR ASSOCIATION

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INTEREST OF *AMICUS CURIAE*

Amicus New Jersey State Bar Association (*Amicus* or NJSBA) is a voluntary association of over 18,000 members of New Jersey's legal profession whose practices, whether private or public, involve every area of the law, including criminal matters. The NJSBA was founded in 1899 in order to "maintain the honor and dignity of the profession of the law; to cultivate social relations among its members; to suggest and urge reforms in the law; and to aid in the administration of justice." It serves as the voice of the State's private bar with other organizations, governmental entities and the public on the wide range of issues relating to the law, the legal profession and legal system. The NJSBA seeks, among other goals, to promote access to the justice system, fairness in its administration, and the independence and integrity of the judicial branch of government. As part of its work, the NJSBA has appeared as *amicus curiae* in numerous cases before this Court and the New Jersey Supreme Court, sometimes at the invitation of the Court, with respect to issues that affect the legal profession or the system of justice. *See, e.g.*, *State v. Andrews*, --- N.J. --- (2020); *S.C. v. N.J. Dep't of Children & Families*, 242 N.J. 201 (2020); *Nieves v. Office of Pub. Defender*, 241 N.J. 567 (2020); *Balducci v. Cige*, 240 N.J. 574 (2020); *Meisels v. Fox Rothschild LLP*, 240 N.J. 286 (2020); *N.J. Dep't of Children & Families v. L.O.*, 460 N.J. Super. 1 (App. Div. 2019); *Estate of Van Riper v. Dir., Div. of Taxation*, 456 N.J. Super. 314 (App.

Div. 2018), *aff'd*, 241 N.J. 115 (2020); *Moreland v. Parks*, 456 N.J. Super. 71 (App. Div. 2018).

As relevant to this case, the NJSBA has undertaken numerous efforts to address the myriad issues of law and judicial administration that have arisen in light of the COVID-19 pandemic. For example, the NJSBA is represented on the Judiciary Stakeholder Coordinating Committee, which is chaired by the Acting Director of the Administrative Office of the Courts, Judge Glenn A. Grant, and develops and oversees plans for court operations during and after the COVID-19 pandemic. Furthermore, in recognition of the long-lasting effects that COVID-19 will have on the practice of law, the NJSBA established a Pandemic Task Force, which includes several committees, including, most relevant to this case, a Committee on the Resumption of Jury Trials. The Committee is constituted of retired judges as well as experienced trial attorneys in a number of different civil and criminal practice areas, and it has issued two reports, one on July 2, 2020 and one on September 2, 2020. Those reports have been provided to Chief Justice Stuart Rabner and the Administrative Office of the Courts for their consideration in developing a plan for the resumption of jury trials both that will not only be safe for jurors, attorneys, litigants, judges, court staff, and other participants, but also that retains the fundamental fairness and justice embodied in the right to a trial by a jury of one's peers.

PRELIMINARY STATEMENT

For months, the NJSBA has advocated for effective, safe, and fair procedures for the resumption of jury trials during the COVID-19 pandemic. Critical to that endeavor is a jury selection process that allows parties, and their attorneys, to select an impartial jury from a representative pool of fellow New Jerseyans. Of course, trials can be won or lost in the jury selection process -- particularly criminal trials, for which the defendant need sway only a single juror to avoid a finding of guilt.

Many steps taken by the state Judiciary to adapt the jury selection process to the circumstances surrounding the pandemic have been appropriate, constructive, and even admirable. But *Amicus* NJSBA respectfully submits this brief in order to express its serious concerns about one aspect of the jury selection process that has arisen in this particular case: the Bergen County Jury Management Office's unfettered and unrecorded discretion in granting or denying juror requests to excuse them from jury selection or defer the time of their service. Under the process used in this trial, the Jury Management Office had the sole authority for adjudicating these requests, without any articulated standards, and outside the presence of the parties and their attorneys. Defendant and defense counsel were therefore unable to evaluate for themselves the sincerity and reasonableness of any juror's request and to object to the juror's excusal from service -- or, on the other side of the coin, to advocate for an excusal where the Jury Management Office may not have provided one.

In addition to the lack of counsel's participation in the process, the Jury Management Office's conduct was also problematic for its lack of recordkeeping regarding the dismissal of jurors. Thus, the Jury Management Office did not explain why it granted excuses or deferrals to some jurors and denied them as to others. Additionally, the Jury Management Office failed to collect demographic data on jurors' race, ethnicity, or gender, which could have revealed whether the jurors who were excused consisted disproportionately of certain classes, and thus unfairly skewed the available jury pool towards an unrepresentative sample of the public.

The process used in this trial is thus contrary to this State's "open court" jury selection process, during which *voir dire* is conducted on the record and in the presence of counsel and the defendant. The absence of that type of transparency undercuts the public confidence that is critical to a fair and just system of jury trials. Furthermore, the Jury Management Office's opaque exercise of authority raises constitutional concerns regarding whether the jury pool was in fact drawn from a fair cross-section of the community and whether dismissal of jurors was based on impermissible factors such as race and gender. *Amicus* NJSBA therefore respectfully asks this Court to grant Defendant's Motion for Leave to Appeal and remand this case for a new trial with a jury selection process that permits defendants and their counsel to participate in the process for excusing jurors due to scheduling conflicts.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This case involves challenges to the jury selection process, as altered by the COVID-19 pandemic, for Defendant's pending criminal trial. Prior to the pandemic, a juror could request one deferment of jury service, without cause, due to scheduling conflicts on the date for which the juror was summoned. *See Frequently Asked Questions About Juror Service in New Jersey* 7, https://www.njcourts.gov/jurors/assets/juryfaq.pdf. The juror would be required to request a specific later date for service. *Ibid.* According to the Administrative Office of the Courts, however, during the pandemic, "the self-deferral option has been temporarily disabled so that jurors seeking to be rescheduled must communicate with jury management to process that request[.]" Certification of Brian McLaughlin ¶ 7, Docket No. BER-19-000639, Transaction ID CRM2020781341 (filed Sept. 25, 2020). This is a change in judiciary practice: prior to the pandemic, "requests for rescheduling of service" were not addressed by the Jury Management Office. *Id.* ¶ 15. Instead, unless jurors elected to avail themselves of their single self-deferrals, scheduling issues were addressed by the trial judge during *voir dire*, as part of the phase of selection in which jurors were excused for cause. *See* New Jersey Courts, *Bench Manual on Jury Selection* § 4.11 (Dec. 4, 2014) (explaining that inquiry of jurors to be excused for cause includes consideration of "hardship problems (child care issues, absence

from work without pay, etc.)")[1]; *see also* Administrative Directive 04-07 (May 16, 2007), https://njcourts.gov/attorneys/assets/directives/dir_04_07.pdf (model voir dire questions include, "[i]s there anything about the length or scheduling of the trial that would interfere with your ability to serve?").

In this case, the Jury Management Office summoned 800 people for the jury pool. *See* Certification of Lourdes Figueroa ¶ 5, Docket No. BER-19-000639, Transaction ID CRM2020781341 (filed Sept. 25, 2020). Of those, 70 summonses were returned as "undeliverable," *id.* ¶ 12; 197 did not respond to the summons, *id.* ¶ 13; 178 were deemed unqualified for service, *id.* ¶ 8; and 90 were excused on statutory grounds, *id.* ¶ 9. That left 265 jurors who were otherwise qualified to serve. But the Jury Management Office then unilaterally, without any involvement of counsel, and without creating a record of its decision-making process, granted 58 jurors a requested deferral of service "due to calendaring conflicts." *Id.* ¶ 11. In other words, 22% of the qualified jurors were dismissed from service based solely on the decision of the Jury Management Office, without any input from counsel. And because the Jury Management Office "does not request or collect juror demographic data, including as to race, ethnicity, or gender," McLaughlin Cert. ¶ 9, there is apparently no way to determine

[1] *Available at* https://www.njcourts.gov/pressrel/2014/Bench%20Manual%20on%20Jury%20Selection%20-%20promulgated%20Dec%204%202014.pdf.

whether the persons granted deferment for scheduling conflicts disproportionately affected the composition of the final jury pool.

Defendant sought an Order to Show Cause challenging the jury array on a variety of grounds, including that the Jury Management Office dismissed jurors based on scheduling conflicts off the record and outside the presence of counsel and the trial judge. The trial court rejected Defendant's challenge on all grounds. On September 30, 2020, this Court granted Defendant's emergent application seeking permission to file a motion for leave to appeal, stayed the trial, and invited *amici* to file briefs by October 7, 2020 at 3:00 p.m.

ARGUMENT

I. THE JURY MANAGEMENT OFFICE'S UNFETTERED AND UNRECORDED AUTHORITY TO DISMISS JURORS WHO CLAIM SCHEDULING CONFLICTS INTERFERES WITH A DEFENDANT'S RIGHT TO PARTICIPATE IN JURY SELECTION AND RAISES OTHER CONSTITUTIONAL CONCERNS.

The right to a criminal trial by jury is protected by both the Federal and State Constitutions. *U.S. Const.* Amend. VI; *N.J. Const.* art. I, ¶¶ 9-10. As the United States Supreme Court has recently reaffirmed, the drafters of the Federal Constitution "considered the right to trial by jury 'the heart and lungs, the mainspring and the center wheel' of our liberties," in that "the right to a jury trial [seeks] to preserve the people's authority over [the government's] judicial functions." *United States v. Haymond*, 139 S. Ct. 2369, 2375 (2019) (plurality opinion). Indeed, as this Court has stated, "[j]ury selection is 'an integral part

of the process to which every criminal defendant is entitled.'" *State v. Tinnes*, 379 N.J. Super. 179, 183 (App. Div. 2005) (quoting *State v. Singletary*, 80 N.J. 55, 62 (1979)).

Thus, a criminal defense lawyer (and indeed, any trial attorney) knows that, in the words of Clarence Darrow, "[s]electing a jury is of the utmost importance." Clarence Darrow, *Attorney for the Defense*, Esquire, May 1936, at 36, *available at* http://moses.law.umn.edu/darrow/documents/Esquire How to pick jury 1936 ocr.pdf. An attorney's participation in all aspects of the jury selection process is therefore vitally important to the outcome of a trial. As Darrow put it, "lawyers always do their utmost to get [people] on the jury who are apt to decide in favor of their clients." *Id.* at 37. The converse is, of course, true as well: lawyers "may request that potential jurors be excused for cause" if they are, in the lawyer's view, likely to rule against their clients. *State v. McCombs*, 81 N.J. 373, 379 (1979) (Pashman, J., concurring). And it has always followed that "[a]n attorney can and should play a significant role in the selection of jurors." *Ibid.*; *see also* 6 Wayne R. LaFave, *et al.*, *Criminal Procedure* § 22.3(a) (4th ed., Dec. 2019 update) ("[*V*]*oir dire* . . . is commonly perceived by attorneys to be critical to success at trial.").

The law thus provides several protections designed to guarantee a criminal defendant's right "to trial by an impartial jury without discrimination on the basis of religious principles, race, color, ancestry, national origin, or sex." *State v. Gilmore*,

103 N.J. 508, 524 (1986). First, as a constitutional matter, jurors must be "drawn from pools that represent a 'fair cross-section' of the community[.]" *State v. Ramseur*, 106 N.J. 123, 215 (1987) (quoting *Duren v. Missouri*, 439 U.S. 357, 368 n.26 (1979)). In particular, jurors may not be excluded from a jury pool on the basis of race, *see Strauder v. West Virginia*, 100 U.S. 303, 308 (1879), or gender, *see Taylor v. Louisiana*, 419 U.S. 522, 537 (1975). Second, once summoned for service, jurors may be exempted from service only if not statutorily qualified, *see* N.J.S.A. 2B:20-1, or for particular statutory reasons, such as extreme hardship, *see* N.J.S.A. 2B:20-10. Third, jurors within the jury pool are randomly selected to be seated on the jury and subjected to *voir dire*, *Tinnes*, 379 N.J. Super. at 184 (citing N.J.S.A. 2B:23-2); absent "compelling reasons," *voir dire* must be publicly accessible and, with the exception of sidebar conferences, in open court. *See R.* 1:8-3(g). The defendant is also permitted to participate at every stage of the jury selection process, including during individual *voir dire* of jurors at sidebars (although trial courts may fashion appropriate methods for the defendant's participation to accommodate security concerns). *See State v. W.A.*, 184 N.J. 45, 59-61 (2004). Once selected and questioned, jurors can be removed only by challenge for cause, on the basis that the juror is not "qualified, impartial and without interest in the result of the action," N.J.S.A. 2B:23-10, or through the exercise of a peremptory challenge, N.J.S.A. 2B:23-13. And, of course, those peremptory challenges are subject to constitutional limits as well, and cannot

be used to unconstitutionally discriminate against jurors on the basis of race, *see Batson v. Kentucky*, 476 U.S. 79, 96-97 (1986); *Gilmore*, 103 N.J. at 517, gender, *see J.E.B. v. Alabama*, 511 U.S. 127, 143 (1994), or religious belief, *see State v. Fuller*, 182 N.J. 174, 201 (2004).

The constitutional right to counsel attaches throughout the jury selection process, including during *voir dire*. *See McCombs*, 81 N.J. at 377 ("[I]n allowing the jury selection phase of the trial to proceed while defendant was unrepresented, the trial court committed reversible error."). This Court has thus held that "conducting sidebar questioning of a juror [during *voir dire*] -- while the defense attorney remains at counsel table, unable to hear and unable to gauge the juror's reactions -- constitutes a denial of defendant's right to the effective assistance of counsel." *State v. Lomax*, 311 N.J. Super. 48, 57 (App. Div. 1998). As Justice Pashman wrote over 40 years ago:

> [An attorney's] skillful assertion of his client's rights is essential to empaneling an impartial jury. Thus, experienced counsel can provide invaluable aid during jury selection. The total deprivation of that assistance cannot be sanctioned.
>
> [*McCombs*, 81 N.J. at 379 (Pashman, J., concurring).]

Against this backdrop, the Jury Management Office's unilateral exercise of authority to excuse jurors, without input from counsel, interferes with Defendant's right to counsel during the jury selection process. Indeed, in an ordinary trial, the concerns of an eligible juror who has not been deferred or exempted

from service on statutory grounds are discussed in open court, with counsel present. *See, e.g.*, *Tinnes*, 379 N.J. Super. at 187-190 (describing several on-the-record discussions regarding juror excuses for hardship based on trial scheduling); Administrative Directive 04-07, *supra*. But the Jury Management Office, in this case, left the attorneys (to say nothing of the trial judge[2] and the defendant) entirely out of the process by dismissing jurors from the pool based on scheduling conflicts, without creating a record of its decision-making process. *See* Figueroa Cert. ¶ 11. Counsel -- and the defendant -- were thus denied any opportunity not only to participate in this aspect of *voir dire* but also, critically, to evaluate the jurors' demeanor and assess the sincerity of their claims for excuse from service, as they would have been able to do in a trial conducted prior to the COVID-19 pandemic. *See* McLaughlin Cert. ¶ 15 (explaining that prior to the pandemic, "requests for rescheduling of service" were not addressed by the Jury Management Office). And even if defense counsel wanted to contest the dismissal of any jurors by the Jury Management Office on a cold record -- which itself would be an extremely difficult task -- the Jury Management Office did not create a record of its dismissals that could be used for such a challenge. This is in violation of the Rule of Court governing the *voir dire*, of which this process is a part. *See R.* 1:8-3(g)

[2] *See Tinnes*, 379 N.J. Super. at 184 (noting that "[t]he trial judge plays a critical 'gatekeeping' role" in the jury selection process (quoting *State v. Tyler*, 176 N.J. 171, 181 (2003))).

(requiring that juror *voir dire* be held either in open court, "on the record at sidebar, or in writing"); *cf. United States v. Paradies*, 98 F.3d 1266, 1280 (11th Cir. 1996) (reviewing record of jury questionnaires in rejecting defendants' federal statutory challenge to excusal of jurors for hardship). And precluding counsel's involvement in this stage of the case, at least in this criminal case, constituted a denial of the constitutional right to counsel. *See McCombs*, 81 N.J. at 375 (denial of counsel in jury selection process does not require showing of "actual prejudice" in light of "the importance we have attached to the role of counsel, particularly in the process of choosing jurors"); *Lomax*, 311 N.J. Super. at 55-56 (citing *McCombs* and finding *per se* prejudice as a result of counsel's exclusion from *voir dire*).

The Jury Management Office's exclusion of counsel from the stage of *voir dire* during which prospective jurors seek to be excused from jury duty also interferes with attorneys' ability to effectively carry out their other roles in the jury selection process, including the exercise of both for cause and peremptory challenges. That is because *voir dire* in open court affords the parties "the opportunity to assess the venireperson's demeanor" and ultimately "provid[es] court and counsel alike with sufficient information with which to challenge potential jurors intelligently -- whether for cause or peremptorily" (or, if an attorney views the juror as favorable to his client's position, to advocate against the trial judge's dismissal of the juror). *State v. Biegenwald*, 126 N.J. 1, 39 (1991). Indeed, the ability to

participate in this process is profoundly affected by what occurs at the "excuse" stage: consideration of a juror's request for excuse based on hardship will certainly affect trial attorneys' use of peremptory challenges in shaping a jury that is acceptable to their clients. *See Tinnes*, 379 N.J. Super. at 191-92, 205 (finding that trial judge's failure to question jurors about scheduling prior to use of peremptory challenges was a "highly critical" error that failed to "insure, to the greatest extent that the applicable statutes and rules permit, the production of a fair and impartial jury"); *see also Swain v. Alabama*, 380 U.S. 202, 221 (1965) (noting that factors affecting an attorney's use of peremptory challenges "are widely explored during the *voir dire*, by both prosecutor and accused"); *People v. Reese*, 670 P.2d 11, 13 (Colo. Ct. App. 1983) (describing prosecutor's use of peremptory challenge after juror claimed financial hardship during *voir dire*).

But beyond these significant procedural deficiencies in the process, the Jury Management Office's practices in this case raise additional constitutional concerns about the creation of the jury pool and the exclusion of persons from prospective jury service. Thus, while it is clear that people cannot be excluded from a jury pool based on race, gender, or another "constitutionally cognizable group," *Ramseur*, 106 N.J. at 215, the Jury Management Office did not even collect records of summoned jurors' "demographic data, including as to race, ethnicity, or gender," prior to excusing them from service. McLaughlin Cert. ¶ 9. It is

thus not possible to even tell if there was "systematic exclusion" of jurors of a particular protected class from the pool. *Ramseur*, 106 N.J. at 216 (citing *Duren*, 439 U.S. at 364).

Indeed, the Jury Management Office's active involvement in excusing jurors for scheduling conflicts raises the risk of the "court allow[ing] jurors to be excluded because of group bias" and thus becoming "[a] willing participant in a scheme that could only undermine the very foundation of our system of justice -- our citizens' confidence in it." *Georgia v. McCollum*, 505 U.S. 42, 49-50 (1992) (quoting *State v. Alvarado*, 221 N.J. Super. 324, 328 (Law Div. 1987)). Thus, rather than applying clear, objective, and known criteria that would permit the public to understand why jurors were excluded from service, the Jury Management Office does not explain how it exercises its authority to excuse jurors at their request, due (for example) to scheduling conflicts. This lack of a public explanation as to how the jury pool was culled thus fails to provide "the legitimacy of the judicial process in the eyes of the public" that is required by precedent. *Gilmore*, 103 N.J. at 525; *see also McCollum*, 505 U.S. at 49 ("One of the goals of our jury system is to impress upon . . . the community as a whole that a verdict of conviction or acquittal is given in accordance with the law by persons who are fair." (internal quotation marks omitted)).

As noted, in an ordinary case, although jurors with scheduling conflicts are permitted to invoke a one-time deferral of service to a new date, the Judiciary staff does not have any role in

evaluating that choice. *See* McLaughlin Cert. ¶ 15. But in this case, the Jury Management Office had discretion -- apparently unguided by any objective principles -- to consider, evaluate, and accept or reject a juror's request for deferral of service. In the absence of a policy governing those deferral requests; a record of which deferral requests were accepted and rejected, and why; and the input of counsel and the defendant in that process, there can be no assurance that deferral requests were considered equally and consistently, without inappropriately differential treatment, based upon race, ethnicity, gender, or some other improper reason.

In fact, any such differential treatment may well have a disparate impact on certain groups in the particular circumstances of the COVID-19 pandemic. Thus, for example, if the Jury Management Office permits deferrals for parents of children who require help at home with remote schooling, such requests are likely to disproportionately -- and unconstitutionally -- exclude women from juries. *See, e.g.*, Amanda Taub, *Pandemic Will 'Take Our Women 10 Years Back' in the Workplace*, N.Y. Times, Sept. 26, 2020, https://nyti.ms/3nkAxkN (reporting that women have disproportionately taken on extra responsibility for child care during the pandemic); *see also Taylor*, 419 U.S. at 535 n.17 (rejecting "the suggestion that all women should be exempt from jury service based solely on their sex and the presumed role in the home"). Similarly, if the Jury Management Office lets "essential workers" defer their service at higher rates than other summoned jurors with work-related conflicts, then those deferrals

likely go disproportionately to those who are poor, Black, and Latinx -- which would also be constitutionally problematic. *See, e.g.*, Hannah Van Drie & Richard V. Reeves, *Many essential workers are in "low-prestige" jobs*, The Brookings Inst., May 28, 2020, https://www.brookings.edu/blog/up-front/2020/05/28/many-essential-workers-are-in-low-prestige-jobs-time-to-change-our-attitudes-and-policies/ (reporting that essential workers "are typically lower paid" and "are disproportionately Black or Hispanic"); *see also Norris v. Alabama*, 294 U.S. 587 (1935) (holding that exclusion of persons from jury rolls on the basis of race is unconstitutional); *Thiel v. S. Pac. Co.*, 328 U.S. 217, 223-25 (1946) (rejecting jury selection process that excluded all "daily wage earners" from the jury pool as "discriminat[ion] against persons of low economic and social status"). And, as discussed above, the Jury Management Office's failure to collect or retain any records regarding jurors whose service was deferred for scheduling conflicts -- including not only the reason for the deferral, but also the demographic data of those potential jurors -- makes it fundamentally impossible to understand the full scope of the discretion exercised in granting scheduling deferrals or to review the exercise of that discretion, as would otherwise be possible, and critical to a fully functioning system of justice, with plenary appellate rights. *See State v. Williams*, 171 N.J. 151, 167 (2002) (finding no error in dismissal of juror for financial hardship based on "[e]xamination of the record developed here"); *Singletary*, 80 N.J. at 62 (holding that trial judge did

not err in excluding juror only after "carefully consider[ing] the record of the proceedings below"); *see also Paradies*, 98 F.3d at 1279 (finding no violation in dismissal of jurors only after "carefully review[ing] all of the questionnaires challenged by the defendants").

Finally, to the extent that the State and the Jury Management Office argued, and the trial court concluded, that any claims regarding the exclusion of certain groups of jurors are merely speculative, that is only because defense attorneys and their clients have been unconstitutionally excluded from the very process that would have provided the necessary information and assurance that jurors were not excused based on discriminatory or other inappropriate grounds. The Judiciary has, of course, stated its commitment to "ensuring inclusive jury panels" during the pandemic. *See* Notice to the Bar, *COVID-19 -- Criminal and Civil Jury Trials to Resume Incrementally* 3, July 22, 2020, https://njcourts.gov/notices/2020/n200722a.pdf. But that goal can only be achieved through a transparent process that recognizes the constitutional rights of criminal defendants, and their attorneys, to fully participate in the jury selection process and effect the necessary transparency so that speculation is not required. As is described above, the Jury Management Office's unilateral dismissal of jurors, as was done in this case, does not satisfy those constitutional mandates or allow for that transparency.

In sum, then, the Jury Management Office should not be permitted to adjudicate jury deferral requests in its sole,

unfettered, unguided, and unrecorded discretion, without counsel or the defendant present. That process, utilized in this trial, stifled Defendant's right to fully participate, both personally and through counsel, in the jury selection process. It also fails to sufficiently protect against the risk of unconstitutionally discriminatory jury selection. This Court should therefore hold that the jury selection process can be lawful only if juror scheduling conflicts are adjudicated on the record, with counsel present.

CONCLUSION

The NJSBA understands the importance of resuming jury trials after months of their suspension during COVID-19. But the pandemic does not excuse the requirement that a jury be constituted through a process that is thorough, fair and equitable, and that gives assurance to the defendant and the public that trials are adjudicated by juries drawn from pools that are sufficiently representative of the community. For the reasons described above, the selection process used for Defendant's trial, which allowed the Jury Management Office to exercise unilateral discretion to excuse jurors for scheduling conflicts, fails to accomplish, and even undermines, these goals. *Amicus* NJSBA therefore requests that this Court invalidate the process utilized here and allow the defendant a trial at which requests for excuses, as part of the *voir dire* process, occur on the record and in the presence of counsel.

Respectfully submitted,

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