NO. 24-774

In the Supreme Court of the United States

REGINALD KEITH CLARK,

Petitioner,

v.

COLORADO,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Colorado

BRIEF OF *AMICI CURIAE* COLORADO OFFICE OF THE ALTERNATE DEFENSE COUNSEL AND COLORADO CRIMINAL DEFENSE BAR IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE* [1]

The OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC) is an agency created by the Colorado legislature to provide legal services to indigent defendants when the Colorado Office of the State Public Defender has a conflict of interest.

The COLORADO CRIMINAL DEFENSE BAR (CCDB) is dedicated to protecting the rights of the accused and promoting fairness and individual rights in criminal proceedings throughout Colorado. Since its founding in 1979, the CCDB has provided training, services, and support to the criminal defense community to promote zealous advocacy for criminal defendants at every stage of representation.

Amici curiae are dedicated to advancing the fair and efficient administration of justice. Both regularly file *amicus curiae* briefs in the Colorado Supreme Court and other federal and state courts, seeking to provide *amicus* assistance in cases presenting issues important to criminal defendants, criminal defense lawyers, and the criminal justice system.

Amici have a vested interest in this Court's jurisprudence remediating racial injustices in the criminal justice system. The Colorado Supreme Court's opinion below presents ongoing concerns affecting the practice criminal defense.

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[1] Counsel of record for all parties received notice of the intention to file this *amicus* brief at least 10 days in advance. No counsel for any party authored any part of this brief and no person or entity other than *amici* and their counsel made any monetary contribution to the preparation or submission of this brief.

INTRODUCTION

The words "equal justice under law" etched on the edifice of this Court's home capture a central constitutional principle: judges must act as vigilant guardians against discrimination in the administration of justice. This judicial obligation is especially pivotal in jury selection. Courts are vested with a constitutional obligation to protect the integrity of criminal proceedings from the corruption wrought by racism. This responsibility is not optional.

The trial judge's refusal to excise racial bias openly voiced during jury selection for petitioner Reginald Clark's trial, and the Colorado Supreme Court's opinion sanctioning that refusal, undermine the Constitution's core function of safeguarding individual liberty and the Sixth Amendment right to an impartial jury. Implicit judicial approval of racial bias expressed in *voir dire* undermines the fundamental fairness of a criminal trial. But it also compromises the defendant's perception of a fair result and the public's confidence that the judiciary will uphold the most basic of constitutional protections. By treating a prospective juror's admitted racial bias as a political opinion worthy of deference rather than disqualification, the trial court below renounced its essential role in preventing racial bias from permeating the jury selection process.

The Colorado Supreme Court's opinion declining to remedy the trial court's obvious error legitimizes racial bias in the criminal legal system, yet again. Eight years ago, this Court had to correct this same court's tolerance of racial bias in *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017). Unfortunately, this Court is now called do so again.

SUMMARY OF THE ARGUMENT

When courts validate explicit racial bias by passing it off as political opinion, they signal to the community that overt prejudice finds sanctuary in the halls of justice. This institutional legitimization of bias reverberates beyond the courtroom and threatens to erode progress against discrimination throughout society. The decision below thus presents not only a procedural error, but a fundamental challenge to the principle that our courts stand as bulwarks against racial discrimination in the administration of justice.

Permitting racial bias in jury selection to persist inflicts cascading harms on the legitimacy and function of our system of justice. When a court refuses to strike an openly biased juror, it damages public confidence that the judiciary will safeguard constitutional rights, erodes the community members' willingness to participate in the legal process, and risks creating a vicious cycle where bias becomes increasingly tolerated. These institutional injuries run deeper than in typical *Batson* cases because here the bias was explicitly volunteered, not merely inferred. The failure to find cause to exclude such a juror also threatens to create an unacceptable two-tiered system where minority defendants must expend their limited peremptory challenges to achieve what the Constitution already guarantees, while judges become increasingly reluctant to conduct rigorous *voir dire* if tolerating bias carries no meaningful consequence.

The trial court's treatment of explicit racial hostility also sets a dangerous precedent for rationalizing discrimination throughout civic life. If courts excuse bias in jury selection, then employers, educators, and other institutions may feel emboldened to adopt

similar logic when confronted with discriminatory conduct. This case thus presents another watershed moment, like *Pena-Rodriguez* before it, where this Court must intervene to preserve both the fact and perception of courts as steadfast guardians against racial discrimination.

The societal costs of acquiescing to explicit racial bias in jury selection are profound. Few errors merit recognition as structural error. This is a rare exception where reversal is the only fair and just remedy.

ARGUMENT

I. The Fourteenth Amendment's core command is to protect individuals from state-sponsored racial discrimination.

"[T]he central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States." *Pena-Rodriguez*, 580 U.S. at 209 (quoting *McLaughlin v. Florida,* 379 U.S. 184, 192 (1964). The promise of the Fourteenth Amendment holds special importance in the criminal legal system. Discrimination on the basis of race, "odious in all aspects, is especially pernicious in the administration of justice." *Rose v. Mitchell,* 443 U.S. 545, 555 (1979).

The impetus for this Amendment came from the Reconstruction Congress's recognition that newly freed Black citizens could not rely on local courts to protect their most basic rights. Shortly after the Fourteenth Amendment's ratification, this Court recognized in *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879), that permitting racial discrimination in jury selection effectively brands African Americans "with a badge of inferiority" and denies them the

guarantee of equal justice. The Court's consistent refrain, from *Strauder* onward, is that permitting jurors who harbor racial bias to remain on the jury "offends the dignity of persons and the integrity of the courts." *Powers v. Ohio*, 499 U.S. 400, 402 (1991). Indeed, this Court has "long recognized that judicial sanction of racial discrimination poisons public confidence in the judicial process." *Davis v. Ayala*, 576 U.S. 257, 285 (2015) (cleaned up).

This Court has declined to qualify these principles, which did not arise in a vacuum. The Reconstruction Congress was undoubtedly aware that Southern courts' tolerance of discrimination threatened newly freed Black citizens' access to justice. The Fourteenth Amendment, along with federal jurisdiction expanded by the same Reconstruction Congress, targeted systemic discrimination in venues where local courts refused to safeguard Black defendants or Black citizens called for jury service. This Court has since underscored that tolerating jurors who openly harbor racial bias "destroys the appearance of justice and thereby casts doubt on the integrity of the judicial process." *Rose*, 443 U.S. at 555–56. This is no less true today that it was during the Reconstruction era.

This Court has also grounded its decisions in the bedrock principle that the jury is "a vital check against the wrongful exercise of power by the State and its prosecutors," and that any infiltration of bigotry directly threatens that check. *Powers*, 499 U.S. at 411–12. Jury trials, as this Court has recently noted, go back to the very founding of this country and act as a unique backstop to government tyranny and overreach. *Erlinger v. United States*, 602 U.S. 821, 829–32 (2024).

This case revives the same threats the Founders and the Reconstruction Congress sought to eliminate. By assenting to racial bias into the jury selection process, the Colorado Supreme Court's opinion risks backsliding this Court's jurisprudence into the Reconstruction era. But it could also usher in a judicial system where oppressive and tyrannical government can more easily pursue "vigorous enforcement" of "unpopular laws" by empaneling jurors who are more likely to secure the verdicts they desire. *Id.* at 829. History reveals no shortage of governments which have done exactly that. And the present risk is not just theoretical, considering this Court's recent recognition of oppressive and unpopular laws that have been promulgated upon not just African Americans, but Native American communities too. *See Washington State Dep't of Licensing v. Cougar Den, Inc.,* 586 U.S. 347 (2019); *McGirt v. Oklahoma*, 591 U.S. 894 (2020).

To ensure that trial by jury remains "the heart and lungs" of liberty, *Erlinger*, 602 U.S. at 829, racial bias must be vigorously and quickly rooted out when it rears its head in the jury selection process. To fall short of this goal is to fall short of the Constitutional principles which founded this country.

II. Failing to strike a racially biased juror for cause abdicates a crucial judicial function.

The responsibility of ensuring a fair trial that's free from racial bias falls squarely on the shoulders of the trial judge. "America's trial judges operate at the front lines of American justice. In criminal trials, trial judges possess the primary responsibility to . . . prevent racial discrimination from seeping into the jury selection process." *Flowers v. Mississippi*, 588 U.S.

284, 302 (2019); *see also Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981) ("the obligation to impanel an impartial jury lies in the first instance with the trial judge").

In following with that responsibility, many of this Court's decisions revolve around a trial court's responsibility to identify concealed racial bias as manifested through patterns of strikes or facially neutral explanations of racially motivated strikes. *See Flowers*, 588 U.S. 284; *Snyder v. Louisiana,* 552 U.S. 472 (2008); *Miller-El v. Dretke*, 545 U.S. 231 (2005); *Batson v. Kentucky*, 476 U.S. 79 (1986). Collectively, these cases demonstrate that a trial judge's duty to confront racial bias in jury selection advances multiple constitutional values: ensuring defendants receive fair trials, protecting excluded jurors' rights, and maintaining public confidence in the integrity of the justice system.

Against this historical backdrop, the trial court's treatment of Juror K's stated racial bias as legitimate political expression represents an unprecedented abdication of judicial responsibility. Juror K volunteered his racial bias, which circumvented the inferential hurdle trial courts must typically surpass to identify discrimination in action. Instead of having to plod through the complex and often laborious process of a *Batson* challenge, the role of racial bias here did not have to be presumed. This time it was spoken aloud.

Yet rather than acting swiftly to remove Juror K for cause, the trial court effectively licensed the juror's expression of prejudice by reframing it as "political opinion" and requiring Clark to use a peremptory strike to keep Juror K off his jury. The Colorado Supreme Court then refused to find structural error, reasoning that the juror did not sit in judgment and there was

no record evidence that the jury heard the reason he was not excused. Two dissenting justices would have found structural error, recognizing the impossibility of knowing if or how the jury was affected by Juror K's racially biased opinion and the court's failure to remove him from the panel.

The dissent was correct. This type of error defies harmless-error analysis because it is so poisonous that any attempt to wade into the weeds of the record seeking symptoms of the infection would be an impossible task. *See Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017); *Vasquez v. Hillery*, 474 U.S. 254, 264 (1986) ("Once having found discrimination in the selection of a grand jury, we simply cannot know that the need to indict would have been assessed in the same way by a grand jury properly constituted. The overriding imperative to eliminate this systemic flaw in the charging process, as well as the difficulty of assessing its effect on any given defendant, requires our continued adherence to a rule of mandatory reversal.").

Yet wade into the weeds is exactly what the Colorado Supreme Court majority did by searching for proof that the racial animus could not have possibly infected the venire. Contrary to this approach, reversal due to structural error is warranted because "the effects" of this type of racial bias in jury selection "are simply too hard to measure." *See Weaver*, 582 U.S. at 295. Because the "influence of the *voir dire* process may persist through the whole course of the trial proceedings," structural-error reversal provides the only meaningful remedy and the only effective deterrent. *Powers*, 499 U.S. at 412. Absent reversal, tolerance of racial bias is likely to persist. As one scholar has opined, "if erroneous rulings on challenges

for cause required automatic reversal, it seems likely that both attorneys and judges would treat the matter with far greater care than they do now." Thomas Ward Frampton, *For Cause: Rethinking Racial Exclusion and the American Jury*, 118 Mich. L. Rev. 785, 820 (2020).

More importantly, upholding the conviction in this case risks inflicting broad societal and institutional harm extending far beyond this single error. The record harbors official tolerance of explicit bias, and the Colorado Supreme Court's decision effectively sanctions that tolerance by upholding Mr. Clark's conviction. This risks completely discrediting the assurance that trial judges stand ready to safeguard constitutional protections. Indeed, if the trial judge is not held to task with keeping the "lungs" of our civil liberties clean, then "the body must die; the watch must run down; the government must become arbitrary." *Erlinger*, 602 U.S. at 829. This Court must again intervene to ensure those "lungs" are kept clean and clear, not rotted with racial prejudice to the detriment of the "body."

Race discrimination during jury selection reaches beyond any individual case to "touch the entire community" and "undermine public confidence in the fairness of our justice system." *Batson*, 476 U.S. at 87. This Court must reinforce the critical judicial function of removing jurors who put obvious racial bias on display. The trial judge below abandoned that duty, and the Colorado Supreme Court upheld that decision. The direct message this sends to society is that judges need not exclude jurors with patent racial biases, and convictions will stand when they don't.

III. Institutional legitimization of direct bias inflicts unique and profound harm.

When the cancer of racial bias is permitted to exist in the "heart and lungs" of the jury, the infection reverberates beyond an individual case and imperils the legitimacy of the entire system. When a prospective juror volunteers bigotry, courts have the clearest possible impetus to intervene. A failure to do so uniquely injures the public perception of the judicial system. It also harms the many institutions and actors from within that system, and outside of it, that depend on unequivocal condemnation of racism to function effectively. There are thus multiple, interwoven, society-wide consequences that arise when trial courts fail to exercise their responsibility to remove an openly biased juror. And because the bias here was freely volunteered rather than presumed or inferred as in *Batson* cases, the societal harms are likely to run deeper.

A. Permitting racial bias in jury selection damages public confidence in the judiciary and undermines its legitimacy as the guardian of constitutional rights.

Official indifference to racial discrimination is precisely the kind of harm this Court has unfailingly condemned. As this Court explained in *Pena-Rodriguez*, racial bias is "a familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice." 580 U.S. at 224.

It is one thing when a court fails to detect subtle bias, for example, through a flawed *Batson* challenge procedure. It is another entirely when the bias is blatant yet remains unaddressed by anyone but the

advocate of the defendant. In that scenario, the public sees not an unfortunate oversight but a conscious choice to tolerate a juror's open racial bias.

Judicial legitimacy rests on trust that courts will uphold fundamental rights, including the right to be free from race discrimination in jury selection. The result reached by the Colorado Supreme Court cannot be squared with that foundational premise.

Failing to excise racial discrimination "injures not just the defendant, but 'the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts.'" *Buck v. Davis*, 580 U.S. 100, 124 (2017) (quoting *Rose*, 443 U.S. at 556 (internal quotations omitted)). That is precisely the kind of injury inflicted here.

Such impressions erode the willingness of community members to follow the law, assist law enforcement, cooperate as witnesses, or even to trust that verdicts flow from a fair process. Empirical research has reinforced the long-assumed legal theory that perceptions of fairness shape cooperation and collective action. *See, e.g.,* Donald Braman, *Punishment and Accountability: Understanding and Reforming Criminal Sanctions in America,* 53 UCLA L. Rev. 1143, 1165 & n. 80–81 (2006). Simply put, "[w]hen citizens perceive the state to be furthering injustice, . . . they are less likely to obey the law, assist law enforcement, or enforce the law themselves." *Id.*

This is especially harmful in an era when public faith in our courts cannot be taken for granted. In a 2019 survey, 87% of Black adults expressed their opinion that Black people are treated less fairly than white people by the criminal legal system, and 61% of white people agreed. John Gramlich, *From Police to*

Parole, Black and White Americans Differ Widely in Their Views of Criminal Justice System, Pew Research Center (May 21, 2019). In a more recent 2024 survey, 70% of Black adults say the courts and judicial process are designed to hold Black people back a great deal or a fair amount. Kiana Cox, *Most Black Americans Believe U.S. Institutions Were Designed To Hold Black People Back*, Pew Research Center (June 15, 2024).

Social science research suggests that people are more willing to accept the legitimacy of an authority and defer to the decisions made by authorities when they perceive the decision-making procedures as fair. Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 Int'l J. Psychol. 117, 119–20 (2000). Conversely, decisions seen as the result of an unfair—biased, dishonest, or inconsistent—process are more likely to be rejected. *Id*. And since Courts rely on voluntary compliance with rulings and broad-based respect to function effectively, the failure to condemn racial animus leads to real world consequences when those members of society lose respect for the court as an institution. People from minority communities, in particular, may distrust the orders and outcomes of trial courts or otherwise feel disheartened in relying upon them.

Here, the trial court's rationale "invites cynicism respecting the jury's neutrality," *Powers*, 499 U.S. at 412, because it reframed explicit prejudice as an ostensibly valid opinion for impaneled jurors to have. If a judge believes that open racism does not necessarily compromise a decisionmaker's fairness, then the impetus to root out bias from the bench is lost and the willingness to accept the authority of the justice system diminished. Once a court condones expressions of racial bias (or treats it as effectively inconsequential),

the next prospective juror may too feel emboldened. As this Court has held, when the jury selection process "is tainted with racial bias, that 'overt wrong . . . casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial . . . .'" *Miller-El v. Dretke*, 545 U.S. 231, 238 (2005) (quoting *Powers*, 499 U.S. at 412).

Moreover, when judges see that an appellate court has deemed the error harmless, they may lose incentive to invest scrutiny in future expressions of bias. Over time, this risks a vicious cycle: public skepticism grows as more prospective jurors are permitted to voice prejudice, jurors feel increasingly emboldened, judges lack incentives to remove them, and so defendants are forced to expend their peremptory challenges to do what courts should have done in the first place.

B. Permitting racial bias in jury selection creates a two-tiered system of justice where minority defendants are left to vindicate their own constitutional rights.

A ruling or official reasoning that endorses the view that a juror who confesses racial bias can be left to sit on a Black man's jury without consequence broadcasts an obvious message: racism, even when explicit, is not an automatic bar to jury service. If trial judges believe their failure to remove racially biased venire members is likely to be deemed harmless, they may have no qualms about shifting that responsibility to defense attorneys. *But see* Barbara O'Brien & Catherine M. Grosso, *Judges, Lawyers, and Willing Jurors: A Tale of Two Jury Selections*, 98 Chi.-Kent L. Rev. 111, 113 & n.7 (2024) ("Ample evidence suggests

. . . that lawyers are not good at assessing jurors' competence or biases."). Those attorneys, in turn, will adjust by reallocating peremptory challenges to remove the worst offenders rather than using those strikes more strategically to address more nuanced or case-specific concerns. This ultimately diminishes the fairness of the process and punishes defendants who, through no fault of their own, encounter racial hostility in the venire that threatens their access to a fair trial by an impartial jury.

This reallocation of responsibility would ultimately create a two-tiered criminal justice system. White defendants, unlikely to face jurors harboring prejudice against them, will remain free to use their peremptory strikes to advance their strategic aims—say, striking a juror who appears angry or impatient, or whose life experience clashes with the accusations at hand. In contrast, minority defendants like Mr. Clark will have to closely guard their peremptories for fear that the trial judge may not protect them from overtly racist jurors.

Meanwhile, judges will feel less inclined to conduct a rigorous *voir dire*. In a system that can withstand an overtly racially biased juror without reversal, there is little impetus to conduct a searching inquiry that might unearth subtler biases. The result would be a superficial screening process indifferent to various forms of prejudice. And this too would damage the perception that our justice system zealously guards against that possibility.

Justice demands vigilance. When one racially biased juror is accommodated without consequence, the next judge may be more willing to allow a similarly biased individual onto the panel. Over time, open racism

regains a foothold, with courts failing to confront it. Sure, a rare defendant may fortuitously have a trial record that reveals some concrete effect of the court's decision to preserve the seat of a juror with obvious bias on the venire. But even then, whatever record evidence appears may be deemed too attenuated to withstand an outcome-determinative test for reversal. Moreover, by the time that analysis occurs the damage to the public's faith in equal protection is already done.

Each instance of tolerated bigotry can set a precedent—whether formal or informal—for further erosion of our constitutional commitment to "equal justice under law." Leaving the Colorado Supreme Court's decision unchecked risks "systemic injury to the administration of justice." *Peña-Rodriguez*, 580 U.S. at 208. Trial courts must be given a forceful reminder that they bear the responsibility to take action to eliminate racial bias from the jury pool, without qualification or hesitation. Dilution of this message risks nothing less than the dilution of the jury trial system itself.

C. Permitting racial bias in jury selection undermines efforts to combat discrimination throughout civic life.

The need to strenuously fight to remove racism from jury selection is not confined to a single trial in the judicial system. The presence of explicit racial bias in the jury venire, followed by judicial inaction, undermines efforts to reduce discrimination in every sphere of civic and social life.

Progress in combating discrimination rests on clear condemnation from institutions of authority.

When a court refuses to strike a juror who openly disdains racial diversity, it calls into question whether the system truly takes constitutional and civic rights seriously. Decades of progress are built on the premise that racially discriminatory conduct is never acceptable in official processes. If explicit racism can stand in a criminal courtroom without meaningful condemnation, members of society can infer that anti-discrimination laws and precedents are more about symbolic condemnation than actual enforcement.

From a societal vantage, a judge's refusal to strike an openly biased juror implies that prejudice is not truly disqualifying. This invites dangerous parallels in other domains. If a judge excuses explicit racism on the basis of "political opinion," employers, educators, or landlords might assert similar rationales when confronted with discriminatory conduct. "If it is tolerable in the courts," cynics may argue, "why should it be out of bounds here?" When the law recasts explicit racial hostility as protected speech, it becomes a template for arguing that all manner of discrimination is merely political preference.

The entire architecture of equal protection rests on the premise that the government will not tolerate discrimination in fundamental aspects of civic life. What consequences and harm to other institutions may flow if racism in the jury selection process can be sanctioned without consequences in trial courts? It is not difficult to imagine. Open racism that trial courts allow to go unrebuked fosters polarization. One segment of the population may interpret the court's inaction as an invitation to express hateful views more openly. Another segment may see it as confirmation that the judiciary, or the government in general, is not a reliable ally in the struggle against racism. The

resulting divisions hamper efforts to foster genuine trust and cohesion around the justice system and in the larger community it serves.

IV. The Colorado Supreme Court's opinion demands this Court's intervention to preserve the integrity of the judicial system and guard against these societal harms.

A decade ago, the Colorado Supreme Court issued its opinion affirming a conviction despite evidence that a juror had expressed anti-Hispanic bias during deliberations. Applying the state's "no-impeachment rule," the court determined that allowing inquiry into juror bias was unwarranted because there was no "dividing line" between racial bias and other "types of juror bias or misconduct." *See Pena-Rodriguez*, 580 U.S. at 212–14 (citing *Pena-Rodriguez v. People*, 350 P.3d 287 (Colo. 2015)). In essence, the Colorado Supreme Court prioritized procedural regularity over confronting racial bias that had infected the deliberative process.

Recognizing its role in leading efforts to "enforce the Constitution's guarantee against state-sponsored racial discrimination in the jury system," this Court unequivocally stated that racial bias must be treated with special precaution. In reversing the Colorado Supreme Court, this Court emphasized that racial discrimination in the jury system raises unique historical, constitutional, and institutional concerns that differentiate it from other forms of bias or misconduct. *Id*. at 222–24.

This Court's holding reflected an understanding that public confidence in the fairness and integrity of the justice system depends on courts' willingness to

confront racial bias: "The jury is to be a criminal defendant's fundamental protection of life and liberty against race or color prejudice. Permitting racial prejudice in the jury system damages both the fact and the perception of the jury's role as a vital check against the wrongful exercise of power by the State." *Id*. at 223 (cleaned up). This Court has since affirmed that principle repeatedly. *See Flowers*, 588 U.S. at 301 ("Equal justice under law requires a criminal trial free of racial discrimination in the jury selection process."); *Ramos v. Louisiana*, 590 U.S. 83, 88 (2020) (discussing racial discrimination as the motivation behind the promulgation of nonunanimous jury verdict rules).

This insight has exceptional force in cases like Mr. Clark's, where racial bias manifested not in the relative privacy of the jury room, but openly in the courtroom. When a prospective juror volunteers his racial prejudice against a defendant, and the trial judge nevertheless deems that juror qualified to serve, it sends an unmistakable message that contradicts this Court's persistent efforts to condemn such bias in our system of justice. The harm to public confidence is arguably even greater than in cases involving *Batson* challenges or post-verdict revelations of bias, because here the court's failure to confront blatant racial animus occurred in full view of the other prospective jurors, the parties, and the public.

Once again, the Court is called upon to protect "both the fact and the perception" of the jury's role as "a vital check against the wrongful exercise of power by the State." *Powers*, 499 U.S. at 411. This Court must recognize the profound societal harm that would flow from yet another court sanctioning judicial tolerance of explicit bias. Affirming the duty of trial judges to proactively ferret out and exclude racially

biased jurors would serve to uphold public confidence in the courts as institutions that enforce the constitutional commitment to eliminating racism from juries. Such enforcement is illusory when a trial court's flagrant refusal to strike a racially biased juror does not result in reversal due to structural error.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Colorado Supreme Court.

Respectfully submitted,

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