

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 22-CR-00115
v.)	
)	Honorable John Robert Blakey
MICHAEL J. MADIGAN and)	
MICHAEL F. McCLAIN,)	Magistrate Judge Jeffrey Cole
)	
Defendants.)	

MOTION FOR PRETRIAL PUBLICITY RELATED RELIEF

For the reasons set forth below, and to ensure a fair trial, Defendant Michael J. Madigan respectfully moves this Court to grant defendant's requests relating to jury selection and *voir dire* based on the heightened risk of undue prejudice as the result of pretrial publicity, including investigation of potential jurors' public social media posts, specific written questions that address a potential juror's exposure to Madigan and this case on the juror questionnaire, and allowing robust follow-up *voir dire* on this issue.

Introduction

Michael J. Madigan has faced unprecedented negative publicity, both pre- and post- indictment. Madigan took political punches for decades, choosing not to respond to the personal attacks but instead focusing on constituent services, supporting individual candidates, and leading the work of the Democratic caucus in the Illinois House of Representatives. From 2014 through 2018, those political hits changed from "just politics" to deeply personal and unfair attacks. Former Governor Bruce Rauner

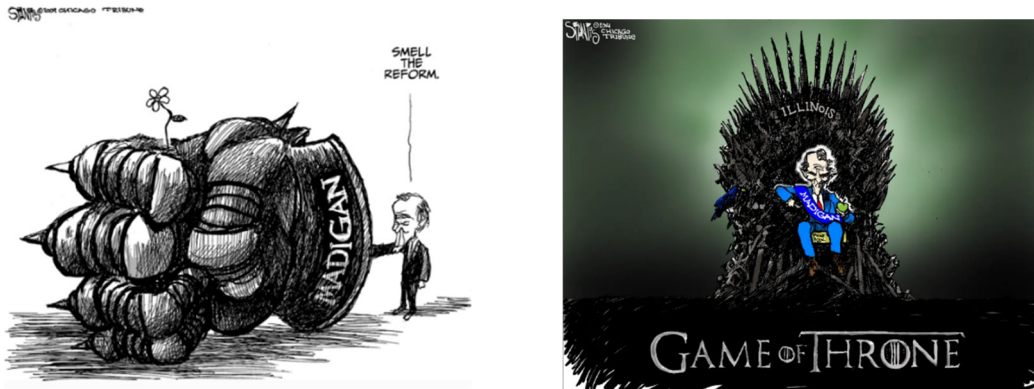
made numerous public statements and spent millions of dollars to fund campaign ads stating that Madigan was corrupt and should be prosecuted—with at least \$80 million spent primarily to disparage him. Then, in 2019, a government investigation involving former Alderman Danny Solis leaked, marking the beginning of a continuous, ongoing press frenzy involving Madigan that has often read strikingly similar to the political attack ads. In the past month, the publicity has only intensified with no sign of slowing down until this trial ends. Within the last week, the Chicago Tribune announced a new series of articles it calls “Culture of Corruption.” The Chicago Tribune, [Our Culture of Corruption Series](#). The conservative Tribune, a longtime critic of Madigan as the leader of Illinois Democrats, stated: “In the coming weeks and months, the Tribune will explore and attempt to explain why corruption continues to poison virtually every level of government in our state, draining off tax dollars and robbing public service of its meaning.” *Id.* Not coincidentally, this series leads straight into, and likely through, the start of trial in this case.

The pretrial publicity has presented unsupported, negative spin on the exact information at issue in this case and spread speculation and misinformation that will likely not be admissible at trial. Most concerning, this publicity has offered conclusions assuming Madigan’s guilt and incredibly prejudicial comments about Madigan (including calling him a mafia boss). This publicity will make it impossible for Madigan to receive a fair trial without additional safeguards, including investigation of potential jurors’ public social media posts, specific written questions

that address a potential juror's exposure to Madigan and this case on the juror questionnaire, and allowing significant follow-up *voir dire* on this issue.

Background

For at least the past two decades, the press coverage of Madigan has bordered on obsession. This has included a myriad of articles, multiple podcasts and even numerous cartoons mocking Madigan.¹ See, e.g.,



Throughout this time, Madigan has also been the subject of significant negative campaign ads. For example, in the 2010 election, the Illinois Republican Party and related political organizations sent direct mail pieces in numerous campaigns that attacked Madigan as the “political machine,” a “political godfather,” and a “Chicago Ward Boss.”² See Exhibit A, Campaign Mail Pieces. Similar email attacks stated that Madigan had a “death grip” on Springfield. See Exhibit B, Email sent by Illinois Republican Party. These types of attacks caused people to respond in a poll that they supported a candidate “to take power from Mike Madigan” and

¹ Better Government Association, [The Madigan Rule](#), October 2021. John Shaw and Ray Long, Simoncast, [The triumphs and travails of Michael Madigan](#), May 25, 2022; Alyssa Dyksterhouse and John Zinn, Oh, Malort!, [Mike Madigan Parts One – Three](#), July 2024; Scott Stantis, [Michael Madigan through the eyes of editorial cartoonist Scott Stantis](#).

² Madigan has filed a motion *in limine* seeking to limit the use of such terms at his upcoming trial. See Dkt. 174 at p. 7-10.

because they were “opposed to the power that Mike Madigan has over the policies...”
See Exhibit C, October 2010 IL RD 59 Poll Responses.

Then, from 2014 through 2019, former Governor Bruce Rauner spent at least \$80 million on political ads, the majority of which disparaged Madigan. See, Illinois State Board of Elections, [Expenditures, Citizens for Rauner](#), Purpose: Media Buy, Placed Media, Media Placement, Online Advertising, Media Consulting. This spending included millions on attack ads that said Madigan “and his cronies” rejected reform and would “let Illinois crumble.” Rick Pearson, [Rauner hits Madigan with TV attack ads ahead of special session](#), The Chicago Tribune, June 16, 2017. During his re-election campaign, in July 2018, Rauner again spent millions on a political ad claiming Madigan was “the most corrupt politician in all America.”³

A few months later, Rauner also funded a \$1 million media buy for a Republican Illinois Attorney General candidate to run an ad that attempted to link her opponent to Madigan while claiming that “politicians have turned corruption into an art form.”⁴ During this time, Rauner also made numerous public comments that definitively stated Madigan should be prosecuted: “Clearly [Madigan’s] been doing unethical things. I hope he’s been doing something illegal and I hope he gets prosecuted.”⁵ On top of Rauner’s public comments and campaign ads, other politicians

³ Citizens for Rauner, [Works for Madigan](#).

⁴ Rick Pearson, [Rauner doesn’t say what crimes he wants Madigan ‘prosecuted’ for: ‘I hope he’s been doing something illegal’](#), The Chicago Tribune, Aug. 13, 2018.

⁵ WAND, [Rauner calls Dems ‘mafia protection racket’](#), Mar. 22, 2018, (Rauner said “Madigan is part of a ‘Mafia protection racket’ by getting rich off of legal work reducing property tax assessments.”); Amanda Vinicky, [Gov. Rauner Ratchets Up Anti-Madigan Rhetoric](#), Aug. 13, 2018; Tina Sfondeles, [Rauner wish list: Hopes Madigan ‘doing something illegal’ and ‘gets prosecuted’](#), The Chicago Sun-Times, Aug. 13, 2018.

(including those advised by the government’s witness Dick Simpson) have regularly used Madigan himself as the subject of political attacks, often portraying him as “corrupt.”⁶

In 2019, the government’s investigation involving former Alderman Danny Solis was reported in the Chicago Sun-Times, referencing interactions with Madigan.⁷ The following year ComEd entered into a Deferred Prosecution Agreement, ComEd employee Fidel Marquez pled guilty, and four ComEd related individuals were indicted. Throughout this time, the press continuously published stories that made reckless assumptions and reached conclusions about a significant portion of the information that is now at issue in this case. Through all of this, the media also focused repeatedly on Madigan and presumed his guilt.⁸

Last year, the ComEd related individuals—dubbed by the press the “ComEd Four”—were convicted at trial (although those convictions may not stand based on the Supreme Court’s recent decision in *Snyder v. United States*). At the time of the jury’s verdict, numerous articles were published that recounted information that may or may not also be presented in this case and offered conclusions about that information.

⁶ Brendan Moore, [Rauner again calls Pritzker, Madigan corrupt](#), The State Journal-Register, Aug. 12, 2018 (“Rauner’s re-election campaign has been running ads labeling Madigan as ‘the most corrupt career politician in America...’”); Mark Brown, [Abortion vs. Mike Madigan? Democrats and Republicans play hole cards in high-stakes battle for control of state Supreme Court](#), Chicago Sun-Times, Oct. 24, 2022; Fran Spielman, [Lightfoot ad attacks Garcia, questions his ties to Madigan, cryptocurrency mogul](#), Chicago Sun-Times, Jan. 4, 2023.

⁷ Mark Brown and Tim Novak, [Feds’ wiretap shows Madigan, Solis eyed development of state land in Chinatown](#), The Chicago Sun-Times, Mar. 1, 2019.

⁸ Tony Arnold and Dave McKinny, WBEZ Chicago, [ComEd Charged With Bribery For Steering Jobs, Other Benefits For Speaker Michael Madigan. Speaker Denies The Feds’ Claims](#), July 17, 2020; Amanda Vinicky, WTTW, [ComEd Charged with Bribery; Madigan Implicated But Denies Wrongdoing](#); Craig Wall, ABC 7, [Former ComEd lobbyist pleads guilty in corruption investigation implicating House Speaker Mike Madigan](#), September 20, 2020.

Michelle Gallardo, [What 'ComEd Four' trial guilty verdicts mean for Mike Madigan bribery, racketeering trial](#), ABC7 Eyewitness News, May 3, 2023. (“The evidence was so robust and the case was so detailed.”) These articles also showed that the jurors in the ComEd Four trial held strong beliefs about Madigan’s guilt or innocence (even though they of course heard no defense of Madigan because of how the government chose to charge the case), with some even saying they plan to attend this trial as a group.⁹ Through the press, these views were shared widely throughout the Northern District of Illinois.¹⁰

Since indictment, this case has been the subject of over 800 articles (as well as numerous news broadcasts). *See* Exhibit D, Summary of Related Press Coverage. For example, an article summarizing the indictment carried a strong undercurrent that led readers to assume that Madigan was guilty of the charges, before any evidence has been presented in court. *See* Grace Perry, [The Madigan Indictment](#), Chicago Magazine, April 11, 2022 (“Because it’s about more than one man’s misdeeds, this may be bigger than the Rod Blagojevich scandal—minus the mop hairdo and the

⁹ NBC 5 Chicago, [‘This is Not Lobbying:’ Juror From ‘ComEd 4’ Bribery Trial Provides Insight Into Guilty Verdict](#), May 3, 2023 (“He [Madigan] was, however, a key part of the evidence presented throughout the trial.” “We tried not to discuss him as far as outside of this case. But his involvement with this case, of course, was key. And you know, our perception was that he really did cause this all to happen.”); David Struett, Tina Sfondeles and Matthew Hendrickson, [ComEd jurors say they didn’t believe the jobs and money that went to Madigan allies were just legal lobbying](#), The Chicago Sun-Times, May 2, 2023 (Madigan “had heavy influence, and he allowed the people around him to use his power to influence the way companies were behaving and pay money to others to spread his extended reach of influence. I do think he had a heavy hand in how this corruption and coercion took place.”).

¹⁰ CBS Chicago Team, [Guilty verdict in ‘ComEd 4’ trial is likely to be bad news for Mike Madigan](#), May 2, 2023; Tara Molina, [All defendants guilty across the board in ‘ComEd 4’ federal bribery trial](#), WIFR, May 2, 2023; Patrick Andriesen, [“ComEd 4” Found Guilty on all Counts in Scheme to Bribe Michael Madigan](#), Illinois Policy, May 2, 2023.

‘fucking golden.’” This article also featured a derogatory cartoon of Madigan surrounded by “The Madigan Enterprise Allegations.”). Even articles that do not include assumptions about Madigan’s guilt or innocence include spin on the evidence that may be presented in this case and discuss information that may be deemed inadmissible. *See, e.g.*, Jason Meisner and Ray Long, [Michael Madigan case a study of how Illinois’ cozy politics morphs into alleged crime](#), The Chicago Tribune, March 3, 2022 (“Bank records obtained by the Tribune showed they started cutting the checks to Quinn in September 2018, the same month Madigan wrote an op-ed in the Tribune vowing that he had ‘made it a personal mission to take this issue head-on and correct past mistakes.’”). And, just days ago, the Tribune reported on a recording involving McClain and Madigan, incorrectly describing the conversation in the same manner as the government. This was a recording that Judge Leinenweber barred, and with good reason. No matter to the Tribune, who published it anyway.¹¹

Statements from the government about information that will not be presented in this case have also been the source of pretrial publicity. During closing arguments in a perjury case against Madigan’s former Chief of Staff, Tim Mapes, the government argued that “Mapes could have been one of the best possible witnesses in the government’s investigation.” *See, e.g.*, Matt Masterson, [‘Protect the Boss, Protect the Boss’: Closing Arguments Underway in Perjury Trial of Ex-Madigan Chief of Staff Tim Mapes](#), WTTW Chicago, Aug. 23, 2023. This statement from the government—that was *argument* not tied to any fact—commented on this case, falsely suggesting

¹¹ Jason Meisner, [Potential testimony in Madigan case is previewed as attorneys start wrangling over what a jury might hear](#), The Chicago Tribune, Aug. 29, 2024.

that there is missing evidence in this case. The same sentiment was expressed again at Mapes' sentencing, effectively allowing the government to comment multiple times on evidence in this case.

An FBI Special Agent in the Mapes trial also made an inflammatory, highly prejudicial statement that Madigan "ran his organization, as close as I can compare it to, almost the head of a mafia family." Ray Long and Jason Meisner, [Don Madigan? Ex-FBI agent likens former House speaker to mafia boss in perjury trial of former Madigan aide](#), The Chicago Tribune, Aug. 15, 2023. The ridiculously prejudicial headline "Don Madigan?" was picked up by newspapers throughout the Northern District. Related to Marquez, a key witness for the government, the press reported a comment on the potential evidence in this case when he was admonished that his actions (lying when attempting to buy a firearm) were "a gift to Madigan's defense." Jon Seidel, [A gift to Madigan's defense': Judge has harsh words for key witness who gave false answer on gun form](#), April 4, 2024. The press has also spread inflammatory language that Professor Dick Simpson, who has been offered as an expert by the government, shared during interviews. Professor Simpson opined, without support, that "machine politics" is connected to bribing public officials and that that Madigan "actually [got] money through the law firm." Mary Ann Ahearn, [Former Alderman Dick Simpson Discuss How Ed Burke Trial Marks The End of an Era in Chicago Politics](#), NBC 5, Nov. 7, 2023. This commentary has no support but spreads conclusions on the issues presented in this case.

One of the most concerning articles was an editorial in the Tribune earlier this

year that conclusively told readers that Madigan was guilty: “We certainly want to see justice done in the case of Madigan, whose Springfield political machine was a cancer on Illinois’ body politic.” The Editorial Board, [US Supreme Court should keep our sorry state in mind as it considers public corruption case](#), The Chicago Tribune, Jan. 7, 2024. This same editorial made broad, unsupported conclusions about the exact evidence that will be presented at trial: “There was no need for foolish ‘if you do that, then I will do this’ statements in the hours of wiretaps that otherwise amply demonstrated the individuals involved knew precisely why they were doing back flips to please Madigan. The absence of such cluelessness didn’t change the truth of what was happening, which was blatant.” *Id.*

Media attention has been intense and grossly unfair. Articles have been published almost immediately after documents are filed in this case. For example, within 40 minutes of the government filing its 213-page *Santiago* proffer, the Tribune and Sun-Times published extensive articles (over 2,200 words for the Tribune and over 1,200 words for the Sun-Times) detailing the government’s arguments.¹² That truly unbelievably quick work (downloading, reading, and then writing about the filing), at the very least, demonstrates that the level of attention to this case is unprecedented. The press also interpreted a motion by defendant McClain—labeled a “Madigan crony”—to “not only reinforce[] the Madigan image as a politician who always plays to win” but also as a “recognition” that the defense’s “best shot would be

¹² Jason Meisner, Ray Long, and Megan Crepeau, [Feds say they will call ex-Ald. Daniel Solis to testify against Madigan](#), The Chicago Tribune, March 18, 2024; Jon Seidel, [Former Ald. Danny Solis set to testify as feds outline Michael Madigan's corruption trial](#), The Chicago Sun-Times, March 18, 2024.

to paint McClain as a rouge actor who was operating without the speaker's knowledge." Jason Meisner, Ray Long and Megan Crepeau, [Madigan confidant asks for severance from upcoming corruption trial, claiming ex-speaker's legal team could 'ambush' him](#), The Chicago Tribune, July 22, 2024. The title of this article was later changed from "Madigan crony" to "Madigan confidant," perhaps after the press recognized the prejudice that flows from spewing such charged language into the public arena. This highlights the extreme prejudice that results from the press portraying assumptions and bias as facts and evidence.

Recently, the Tribune announced its "Culture of Corruption" series, which already includes three articles and an editorial.¹³ Notably, the "Dishonor Roll: Meet the public officials who helped build Illinois' culture of corruption" includes Madigan even though his trial has not even begun.¹⁴ The article also includes a link to another article on "Michael Madigan, ComEd and corruption: Timeline of how the investigation unfolded" which specifically discusses evidence that likely will be presented in this case and extensive information that may be excluded as it lacks

¹³ Rick Pearson and Ray Long, [Dishonest politicians at all levels of Illinois government make a mockery of public service](#), The Chicago Tribune, Aug. 25, 2024; Rick Kogan, [Boodlers, bandits and notorious politicians](#), The Chicago Tribune, Aug. 24, 2024; Kori Rumore, Ray Long, and John Chase, [The Dishonor Roll, Meet the public officials who helped build Illinois' culture of corruption](#), The Chicago Tribune, The Editorial Board, [Editorial: Time to move past rueful chuckles about Chicago and Illinois' corrupt and damaging ways](#), The Chicago Tribune, Aug. 26, 2024.

¹⁴ The first article in the series refers to Madigan as one of the "most successful acolytes of the Democratic machine run by long time Chicago Mayor Richard J. Daley," thus demonstrating "how deeply serious corruption allegations are embedded in the State's power structure." See [Dishonest politicians at all levels of Illinois government make a mockery of public service](#). The second article cites a report published by the University of Illinois at Chicago's political science department which claims, "Chicago was the country's most corrupt city for the fourth year in a row," and alleges Madigan is the one of the most recent examples of infamy "in this city's long history." See [Boodlers, bandits and notorious politicians](#).

relevance but carries significant undue prejudice. The article also includes phrases such as “federal authorities were closing in on Madigan” which assume Madigan’s guilt in portions of the article that are not even related to him. Finally, the trial in *United States v. La Schiazza*, which includes many of the same factual allegations present in Count Twenty-Three of this case, begins on September 10, 2024. It is likely that a verdict will be rendered in that case immediately before or during jury selection in this case begins. The publicity of this case continues every day¹⁵ and it will only continue to increase in frequency until and through the end of the trial.

Legal Standard

The trial court has broad discretion to conduct *voir dire* and set forth provisions to mitigate potential undue prejudice that results from jurors that have been exposed to substantial negative pretrial publicity. *Skilling v. United States*, 561 U.S. 358, 386 (2010); *U.S. v. Jones*, 696 F.2d 479 (7th Cir.1982) (holding the trial judge has discretion as to whether to dismiss any jurors); *see also Rosales-Lopez v. U.S.*, 451 U.S. 182 (1981) (“Because the obligation to impanel an impartial jury lies in the first instance with the trial judge, and because he must rely largely on his immediate perceptions, federal judges have been accorded ample discretion in determining how best to conduct the *voir dire*.”)

“[W]hen pretrial publicity is great, the trial judge must exercise correspondingly great care in all aspects of the case relating to publicity which might

¹⁵ Jason Meisner and Megan Crepeau, [Madigan attorneys lay out plan to scrub potential jurors’ social media; feds say jury ‘not a fantasy team’](#), The Chicago Tribune, July 19, 2024; Kade Heather, [Michael McClain’s lawyers want him tried separately from ex-House Speaker Madigan](#), The Chicago Sun-Times, July 19, 2024.

tend to defeat or impair the rights of an accused.” *United States v. Dellinger*, 472 F.2d 340, 374–75 (7th Cir. 1972); *see also U.S. v. Tsarnaev*, 595 U.S. 302, 312–15 (2022) (finding the jury selection process dispelled any prejudice concerns based on the lengthy questionnaire and direct *voir dire* questions related to whether media sources had caused a prospective juror to form an opinion about the defendant’s guilt or innocence). “The Seventh Circuit has recognized that pre-trial publicity results in a heightened risk of jury bias, and as a result has mandated a thorough examination of the jurors in such a situation.” *U.S. v. Newland*, No. 2:19 CR 23 PPS, 2020 WL 6364656, at *1 (N.D. Ind. Oct. 28, 2020) *citing Fietzer v. Ford Motor Co.*, 622 F.2d 281, 284 (7th Cir. 1980).

Argument

The pretrial publicity in this case will make it impossible for Madigan to receive a fair trial unless there are additional precautions taken during the jury selection process to identify jurors’ conscious anti-Madigan views or unconscious anti-Madigan feelings resulting from the barrage of negative publicity over the last decade. To ensure potential jurors have not prejudged Madigan’s guilt or innocence, the parties should be allowed to review potential jurors’ public social media posts, and present a variety of questions on prior exposure to Madigan and this case, as well as extensive follow-up *voir dire*, as necessary. *Tsarnaev*, 780 .3d at 17 (“[C]oncerns about jurors who have fixed opinions or emotional connections to events, or who are vulnerable to improper influence from media coverage, are legitimate concerns.”); *United States v. Garcia*, 2022 WL 2904352, *6 (D.D.C. July 22, 2022) *citing United*

States v. Haldeman, 559 F.2d 31, 69 (D.C. Cir. 1976) (“the safeguard against a biased jury has always been the same: an ‘extensive *voir dire*’ with a ‘detailed inquiry into the sources and intensity of the [] exposure to [pretrial] publicity’”).

In *Skilling*, the Enron defendants were able to empanel a jury from the Houston area, utilizing a detailed jury questionnaire and attorney led *voir dire* that “confirmed that, whatever community prejudice existed [] generally” the chosen “jurors were not under its sway.” *Skilling*, 561 U.S. at 391. In particular, the jurors were asked about their exposure to, and knowledge of, the defendant and/or Enron on the written questionnaire. *Id.* The district court judge then “made ‘thorough’ credibility determinations that ‘requir[ed] more than just the [venire members] statements that [they] could be fair.’” *Id.* at 395. The *Skilling* court concluded that the “extensive screening questionnaire and follow-up *voir dire* were well suited” to the task of identifying and inspecting the possible effects of pretrial publicity influences. *Skilling*, 561 U.S. at 384–85.

The first step in determining if a potential juror may have biases that cannot be set aside is reviewing their public facing social media information. Potential jurors who publicly share their negative feelings of Madigan are less likely to be able to put their biases aside and judge Madigan fairly and impartially. Such individuals need to be identified and questioned about their opinions of Madigan during the individualized questioning. The next step is to ask several detailed questions in the written questionnaire regarding potential jurors’ exposure to Madigan and this case. These questions need to be asked in a variety of ways to determine if the potential

jurors have any strong feelings or preconceptions resulting from the negative media coverage of Madigan and all of the related criminal cases covered by the news media. If the potential juror has been exposed to this negative information, detailed questioning through *voir dire* is necessary to evaluate the credibility of each potential juror and assess their ability to evaluate the evidence presented at trial.

The concern about an unfair trial and picking a jury is particularly acute if the Court allows the testimony of Dick Simpson. Professor Simpson, an Alderman in the 1970's and an academic who criticized the Daley Administrations and Madigan extensively in the 1980s and 1990s, recently testified at a *Daubert* hearing that patronage armies still exist and that politicians have shifted to incentivizing precinct workers by securing jobs with private employers instead of (or in addition to) government jobs. Does Simpson have any experience with the allegation about patronage with private employers? No. Has Simpson performed any research on the topic? No. Has Simpson written about any studies, peer-reviewed or not, about patronage with private employers? No. Has Simpson read the work of other political scientists about patronage with private employers? Once again, no. No matter, Professor Simpson is prepared to support the government's theory that the charges in this case are simply an extension of a century-old political machine.

Whether the government commits not to use the word "machine" or similar words misses the point and certainly does not reduce the danger of unfair prejudice. The defendant will be forced to defend decades of behavior of other politicians and, through cross examination, will need to explore the deficiencies of Professor

Simpson's work. Whatever words Professor Simpson and the government try to avoid, the fact remains that the defense will need to cross examine Simpson on the *concepts* that he espouses. As a result, the defense will need to question potential jurors on their experience with, or attitudes towards, allegations of "machine," or patronage, politics. The prospect of Professor Simpson's testimony unfairly complicates the already daunting challenge of identifying fair jurors who will consider the evidence in the case rather than the media blizzard of cynical attacks against Madigan and public officials in general.

CONCLUSION

For the reasons set forth above, Madigan respectfully requests that this Court grant defendant's requests relating to jury selection and *voir dire* based on the heightened risk of undue prejudice as the result of pretrial publicity, including investigation of potential jurors' public social media posts, specific written questions that address a potential juror's exposure to Madigan and this case on the juror questionnaire, and allowing robust follow-up *voir dire* on this issue.

Dated: September 3, 2024

Respectfully submitted,

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