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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<p style="text-align: center;">Filed JUN - 3 2013</p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	Case No. 12CR1522 Division 26
MOTION TO PERMIT QUALIFICATION OF NON-ENGLISH SPEAKING JURORS [D-066]	

CERTIFICATE OF CONFERRAL

The District Attorney states that they object to the motion, and that they will file a response.

James Holmes, through counsel, moves this Court to enter an order permitting qualification of jurors, even though they cannot read, speak, or understand the English language. In support of this motion he states the following:

1. Part of the Colorado Uniform Jury Selection and Service Act, §13-71-105(2)(b), C.R.S., provides that a person is disqualified from service as a juror if he or she is unable to read, speak, and understand the English language.

2. However, another section of the Act, §13-71-104, prohibits exclusion of a citizen from jury service on the basis of race, color, national origin, or economic status. That section also mandates that “[p]hysically impaired persons shall serve, except where the court finds that such service is not feasible.”

3. Section 13-71-104(4), C.R.S., declares that the court shall strictly enforce the Act’s “prohibition of discrimination.”

4. There is an extremely high correlation between citizens who do not read, speak, and understand English, and citizens who are of minority race or color, citizens of non-American

national origin, and citizens of lower economic status.

5. Automatic exclusion of citizens who do not read, speak, and understand the English language, is, in fact, discrimination against those citizens because of their race, color, national origin, or economic status. *See Georgia v. McCollum*, 505 U.S. 42 (1992).

6. The physical inability to read, speak, and understand the English language is a “physical impairment” under the Act, and may not be taken as grounds for disqualification under a strict enforcement of §13-71-104, because service by such a juror is quite “feasible.”

7. Section 13-71-137, C.R.S., of the Act authorizes the court to provide translators for hearing-impaired prospective and seated jurors, and permits them to be present at all stages of the proceedings. In light of the constitutional implications, non-English speaking jurors should be afforded the same opportunity to participate in the jury system.

8. There is no rational basis for not permitting persons who cannot read, speak, and understand the English language to serve as jurors. American courts routinely have trials with defendants and witnesses who do not read, speak, and understand the English language, and the court is therefore accustomed to providing the requisite interpreters.

9. The automatic exclusion of jurors who cannot read, speak, or understand the English language would violate Mr. Holmes’ federal and state constitutional rights to a jury composed of a fair cross-section of the community.

10. Equal protection of the laws and due process of law as guaranteed by the statutes and constitutions of the United States and Colorado, prohibit disqualification of jurors on the sole basis that they are unable to read, speak, or understand the English language. *See generally, Batson v. Kentucky*, 476 U.S. 79 (1986). The rights of the prospective jurors are violated by their discriminatory and unjustifiable exclusion from participation in the jury system.

11. Based on the denial of both Mr. Holmes’ and the prospective jurors’ federal and state constitutional rights, and their statutory rights, Mr. Holmes moves this court to disregard the Act’s automatic exclusion of jurors who do not read, speak, or understand the English language, and to find that portion of the statute unconstitutional on its face and as applied.

12. Additionally, Mr. Holmes moves the Court for an order to have interpreters available when jury selection begins to be able to assist all prospective jurors who are in need of interpretive services.

13. These requests are made to ensure that Mr. Holmes’ constitutional rights to a fair trial, an impartial jury, and to due process are protected. U.S. Const. amends. V, VI, VIII, XIV; Colo. Const. art. II, secs. 16, 18, 20, 23, 25; *see also People v. Botham*, 629 P.2d 589 (Colo. 1981); *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Estes v. Texas*, 381 U.S. 532 (1965).

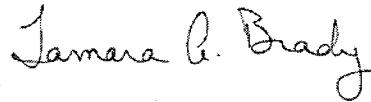
Request for a Hearing

14. Mr. Holmes moves for a hearing on this motion.

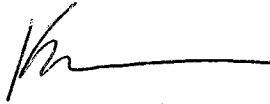
Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



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Dated: June 3, 2013

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ORDER RE: MOTION TO PERMIT QUALIFICATION OF NON-ENGLISH SPEAKING JURORS [D-066]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

JUDGE

Dated

I hereby certify that on June 3, 2013, I

mailed, via the United States Mail,
 faxed, or
 hand-delivered

a true and correct copy of the above and foregoing document to:

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Jacob Edson
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AKG