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ARAPAHOE COUNTY
COMBINED COURT, COLORADO

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DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO

Court Address: 7325 S. Potomac St.
Centennial, CO 80112

Plaintiff: PEOPLE OF THE STATE OF COLORADO

vs.

Defendant: JAMES E. HOLMES

and,

Non-Party Movants: The Associated Press; The Colorado Broadcasters Association; The Colorado Freedom of Information Coalition; The Colorado Press Association; *The Denver Post*; The E.W. Scripps Company; *The Fort Collins Coloradoan*; Gannett; KMGH-TV, Channel 7; and KUSA-TV, Channel 9

▲ COURT USE ONLY ▲

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Case No. 12-CR-1522

Division: 22

**MEDIA PETITIONERS' REPLY IN SUPPORT OF
THEIR MOTION TO UNSUPPRESS THE JURY QUESTIONNAIRE**

Movants, The Associated Press, The Colorado Broadcasters Association, The Colorado Freedom of Information Coalition, The Colorado Press Association, *The Denver Post*, *The Fort Collins Coloradoan*, The E.W. Scripps Company, Gannett, KMGH-TV, and KUSA-TV (collectively, the "Media Petitioners"), by and through their undersigned counsel at Levine Sullivan Koch & Schulz, LLP, pursuant to the Court's order setting a briefing schedule, dated

March 6, 2015, hereby respectfully file this Reply in support of their Motion to Unsuppress the Jury Questionnaire.

1. Both the People and the Defendant have filed oppositions to the Media Petitioners' Motion to Unsuppress the Jury Questionnaire. Both parties assert that the holding in *Stevens Media, LLC v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 221 P.3d 1240 (Nev. 2009), is not binding precedent on this Court. While that is indisputable, this Court relied upon the *Stevens Media, LLC* decision, and quoted from it extensively, in its Order Regarding Defendant's Motion to Close Jury Selection (D-154-a) (June 11, 2014). Neither party has offered any rejoinder to the basic rationale of *Stevens Media, LLC* -- that because juror questionnaires are an integral part of the *voir dire* process, serving as a *substitute* for oral questioning in open court, they are therefore subject to the same First Amendment presumption of public access as the *voir dire* conducted in open court.

2. In its response, the People ask the Court to maintain the suppression of the jury questionnaire until the jury is empaneled. The People point out that the Defendant has renewed his motion seeking a change of venue and if such motion were to be granted, the jury questionnaire would then need to be completed by potential jurors in the new trial venue. As noted in the Motion, ¶ 5, such highly conjectural and speculative concerns fail, as a matter of law, to satisfy the stringent First Amendment standard necessary to warrant continued suppression of the questionnaire.

3. In his response, Mr. Holmes similarly urges the Court to maintain the suppression of the entire jury questionnaire until the jury is empaneled. Mr. Holmes argues that providing the public with the *questions* that all potential jurors were asked would compromise the potential jurors' "sense of privacy" because, Mr. Holmes argues, "there have [sic] been a number of times when the Court has referred a prospective juror to an answer in his or her questionnaire -- for example, questions 21, 22, 23, and 44 -- and has asked the prospective juror whether there is anything about his or her answer that will affect his or her ability to be fair and impartial." Presenting this question to a juror, however, and soliciting a response in open court, does not reveal the answers that the juror provided in response to those questions; it merely lets the public know what *topic* is being asked about when the juror responds, simply, "yes" or "no."

4. In its previous rulings unsealing records on file in this matter, the Court has repeatedly recognized the public's presumptive right, under the First Amendment, to inspect all judicial records. Thus, the Court has appropriately required the proponent of continued sealing to demonstrate that a compelling state interest or an "interest of the highest order" necessitates such sealing, that sealing would be an effective means to advance that interest, and that there are no less restrictive means reasonably available to further that compelling state interest. *See, e.g.*, Order Regarding Media Petitioners' Motion to Unseal Affidavits of Probable Cause in Support of Arrest and Search Warrants and Requests for Order of Production of Documents (C-24) (Apr. 4, 2013) at 7; *id.* at 12 ("the Court holds that the defendant has failed to advance an overriding and compelling state interest to abridge the First Amendment rights of Media Petitioners and the public.")

5. Among the “less restrictive means” the Court must consider and find ineffectual is the public release of a redacted version of the judicial record. *See, e.g., United States v. Aref*, 533 F.3d 72 (2d Cir. 2008) (“[I]t is the responsibility of the district court to ensure that sealing documents to which the public has a First Amendment right is no broader than necessary”); *see also In re N.Y. Times Co.*, 834 F.2d 1152, 1154 (2d Cir. 1987) (approving of requirement “to minimize redaction in view of First Amendment considerations”); *cf. In re Freedom Colo. Info., Inc. v. El Paso Cnty. Sheriff’s Dep’t*, 196 P.3d 892, 900 n.3 (Colo. 2008) (exhorting criminal justice records custodians to “redact sparingly” in order “to provide the public with as much information as possible”).

6. The vast bulk of a juror questionnaire is comprised of mundane, routine questions soliciting facts about a potential juror’s personal background. *See, e.g.*, various jury questionnaire forms provided by the Federal Judicial Center at [http://www.fjc.gov/public/pdf.nsf/lookup/dpen0023.pdf/\\$file/dpen0023.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/dpen0023.pdf/$file/dpen0023.pdf) [http://www.fjc.gov/public/pdf.nsf/lookup/dpen0022.pdf/\\$file/dpen0022.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/dpen0022.pdf/$file/dpen0022.pdf) [http://www.fjc.gov/public/pdf.nsf/lookup/dpen0024.pdf/\\$file/dpen0024.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/dpen0024.pdf/$file/dpen0024.pdf); *see also* the Eighth Circuit’s Standard Juror Questionnaire to qualify a jury for a capital case, available at http://juryinstructions.ca8.uscourts.gov/quest_juror.pdf.

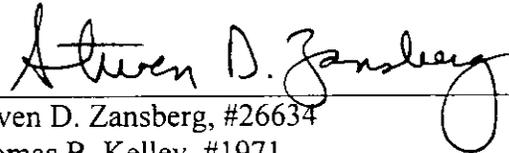
7. Indeed, in a recent child sexual assault case in Cortez, Colorado, (*People v. Andrew Allmon*), Chief District Judge Doug Walker released the blank juror questionnaire prior to the start of individual *voir dire*. *See* “Standard Jury Questionnaire” (attached hereto as Exhibit 1) released to the public March 3, 2015. Similarly, the Massachusetts court presiding over the murder trial of NFL football player Aaron Hernandez released the juror questionnaire as soon as the final set of jurors had begun completing the form. *See* <http://www.myfoxboston.com/clip/11030633/juror-questionnaire-released-in-hernandez-murder-case> and <http://www.bostonglobe.com/metro/2015/01/13/document-aaron-hernandez-juror-questionnaire/g4sj5tpfOmzvJt2xfwKGVO/story.html> (copy of the Hernandez juror questionnaire).

8. Neither party has made the requisite showing to support the continued suppression of *any portion* of the jury questionnaire herein; certainly no showing has been made to warrant the continued suppression of *the entirety* of the jury questionnaire.

WHEREFORE, the Media Petitioners respectfully ask that the Court grant their motion and enter an order unsuppressing the jury questionnaire forthwith.

Respectfully submitted this 20th day of March,
2015, by:

LEVINE SULLIVAN KOCH & SCHULZ,
LLP



Steven D. Zansberg, #26634
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Attorneys for Media Petitioners

CERTIFICATE OF MAILING

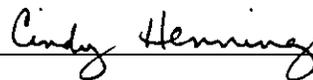
I hereby certify that on this 20th day of March, 2015, a true and correct copy of this **REPLY IN SUPPORT OF MEDIA PETITIONERS' MOTION TO UNSUPPRESS THE JURY QUESTIONNAIRE** was delivered via FACSIMILE to the attorneys below and was deposited in the U.S. Mail, postage prepaid, correctly addressed to the following:

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STANDARD JURY QUESTIONNAIRE

To the Juror:

You have been selected for potential service on a jury. The case for which you have been called involves allegations of a sexual nature. To select a fair and impartial jury, we must collect information from each potential juror. In this case that may include information that might be embarrassing to you if you were asked these questions in open court. Your answers to this questionnaire will not be made public. The judge will review your answers with the attorneys for the parties. At the conclusion of jury selection all of the questionnaires will be sealed in the court file. Jury service is a privilege and an obligation of citizenship which should not be taken lightly. Trial by jury is central to our system of justice, and its successful operation requires the intelligent and unbiased judgment of qualified jurors.

THIS QUESTIONNAIRE CONSISTS OF ___ QUESTIONS ON 3 PAGES. Please make sure you answer all of the questions and sign the questionnaire on Page 3.

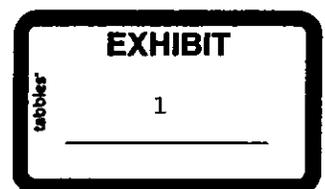
1. Please print your name: _____ Juror number: _____
2. How long have you lived in Montezuma County? _____ In Colorado? _____
3. If anyone other than a spouse is living in your home, please tell us their relationship to you, their age and their occupation. _____
4. Do you or does a close friend or relative have any military, law enforcement or law related experience? If yes, please explain: _____

5. Are you in any way compensated by a law enforcement agency? _____
6. Have you or a close friend or relative been the victim of a crime or exposed to any type of violence? If yes, please explain who, what, when and where: _____

7. Have you or a close friend or relative been accused of a crime other than a minor traffic offense? If yes, please explain who, what, when and where: _____

8. Have you ever been a witness in court? If yes, when, what type of case? _____

9. Do you belong to any clubs or professional, social, civic or religious organizations? If yes, please explain? _____



10. Do you hold any religious or moral objection to sitting in judgment of another person? _____
If so can you put those beliefs aside and serve as a juror? _____

11. What are your favorite leisure time activities, television shows, reading materials or types of music:

12. Do you believe media reports of events are usually presented in an unbiased way? _____

13. Have you heard or read anything about this case, in the media, other people or from any other source? _____

14. If so what have you heard or read? _____

15. In this case, the State has accused the Defendant of Sexual Assault on a Child. Is there anything about this accusation which would prevent you from being a fair juror to either side? _____

16. Have you, a relative or close friend ever been the victim of a sexual assault or witnessed a sexual assault? If yes, please explain. How old were you or they? _____

17. Was the assault reported to the police? Was there any formal court action? _____

18. How long ago was it? _____

19. Have you, a relative or close friend ever been accused of sexual assault? If yes, please explain.

20. If your answer to 18 is yes, what was the result of this accusation _____

21. Have you ever worked or volunteered for a child advocacy group or a group dealing with child safety, child abuse or mistreatment or children's rights? If yes, please explain. _____

22. Have you worked with children in any capacity, as a teacher, as a babysitter, as a parent?

23. Have you had any training, education, employment or volunteer positions in education, medicine, psychology, psychiatry, social work, sociology or counseling? If yes, please describe. _____

24. Do you have an opinion as to the guilt or innocence of the Defendant? _____ If so, what is your opinion and what is that opinion based upon? _____

25. Other than anything mentioned above, do you have any personal experiences that would make it difficult for you to serve as a fair and impartial juror in a sexual assault case? _____

26. Is there anything else you believe the Court and attorneys should be aware of?

27. Is there any reason that you could not be a fair and impartial juror in this case? _____

I DECLARE THAT THE INFORMATION GIVEN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND I ACKNOWLEDGE THAT WILLFUL MISREPRESENTATION OF MATERIAL FACT IS A CLASS 3 MISDEMEANOR PUNISHABLE AS PROVIDED IN SECTIONS 18-8-613 AND 18-1.3-501, COLORADO REVISED STATUTES.

Signature _____ Juror Number _____