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COMBINED COURT, COLORADO

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<p>DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO</p> <p>Court Address: 7325 S. Potomac St. Centennial, CO 80112</p> <hr/> <p>Plaintiff: PEOPLE OF THE STATE OF COLORADO</p> <p>vs.</p> <p>Defendant: JAMES E. HOLMES</p> <p>and,</p> <p>Non-Party Movants: The Associated Press; The Colorado Broadcasters Association; The Colorado Freedom of Information Coalition; The Colorado Press Association; <i>The Denver Post</i>; The E.W. Scripps Company; <i>The Fort Collins Coloradoan</i>; Gannett; KMGH-TV, Channel 7; and KUSA-TV, Channel 9</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Movants: Steven D. Zansberg, #26634 Thomas B. Kelley, #1971 Christopher P. Beall, #28536 LEVINE SULLIVAN KOCH & SCHULZ, LLP 1888 Sherman Street, Suite 370 Denver, Colorado 80203 Phone: (303) 376-2400 FAX: (303) 376-2401 szansberg@lskslaw.com</p>	<p>Case No. 12-CR-1522</p> <p>Division: 22</p>
<p align="center">MOTION BY MEDIA PETITIONERS TO UNSUPPRESS THE JURY QUESTIONNAIRE</p>	

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, hereby respectfully move this Honorable Court to unsuppress the jury questionnaire form that was used as part of the voir dire in this case.

As grounds for this Motion, the Movants show the Court:

1. This Court has previously recognized the rights of Media Petitioners (as members of the public) to be heard in opposition to continued sealing (suppression) of court records on file in this criminal case.

2. The jury questionnaire (as approved by the Court on January 9, 2015, Order re: D--269) was distributed to all jurors who appeared in response to summonses in this case, and was subsequently completed by them as part of voir dire.

3. Now that the voir dire has progressed into its second phase -- individualized questioning of jurors who were not excused from the initial jury pool -- the attorneys questioning those jurors have referred to the jurors' responses to questions on the jury questionnaire in open court.

4. There is no longer any valid reason (much less a "compelling state interest" nor "interest of the highest order") to continue the suppression of the jury questionnaire in this case. As the Nevada Supreme Court has held,

Juror questionnaires [. . . are] a part of the overall voir dire process, subject to public access and the same qualified limitations as applied to oral voir dire. . . . Accordingly, we conclude that the First Amendment's qualified right of access extends to juror questionnaires prepared in anticipation of oral voir dire.

Stephens Media, LLC v. Eighth Judicial Dist. Court of State ex rel. County of Clark, 221 P.3d 1240 (Nev. 2009).

5. On Monday, February 9, 2015, the Court *sua sponte* raised the prospect of unsealing the jury questionnaire. In response, counsel for both the People and the Defendant expressed concerns about the possibility that a jury of twelve impartial jurors (and twelve alternates) would not be found at the end of the current voir dire and that release of the jury questionnaire to the public at this time could interfere with a possible second round of voir dire should a second set of summonses need to be issued. Such sheer speculation and conjecture is an insufficient basis to justify the continued suppression of the jury questionnaire:

[T]he district court's concern that potential jurors would preview the questionnaires and formulate their answers to better position themselves on the jury is based on unsupported conjecture. . . . [A]lthough the court expressed concerns that if the questionnaire was accessible, potential jurors would craft their answers to better place themselves on the jury panel, we conclude that removing a suspicious juror for cause is a reasonable and practical alternative to complete closure.

See id. at 1251, 1253 (citations omitted). If such a "conjectur[al]" concern in the midst of a then-ongoing questionnaire completion process was held to be an insufficient basis to justify

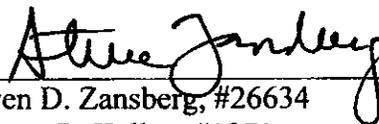
continued sealing, *a fortiori* such concerns are constitutionally inadequate in this case, where hundreds of potential jurors have *completed* their responses to the jury questionnaire.

6. The public's right to inspect judicial records, protected by the First Amendment, is a right of *contemporaneous* access. See *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 126 (2d Cir. 2006) ("Our public access cases and those in other circuits emphasize the importance of *immediate* access where a right to access is found." (emphasis added)). Accordingly, any unnecessary delay in providing public access to court proceedings or to judicial records on file in this court constitutes an independent infringement on the public's (and these Media Petitioners thereof) rights under the First Amendment to the Constitution of the United States. See, e.g., *Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1147 (9th Cir. 1983) (holding that a 48-hour delay in access to court records in a criminal case constituted "a total restraint on the public's first amendment right of access even though the restraint is limited in time"); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) ("even a one to two day delay impermissibly burdens the First Amendment"); see also *In re Application of NBC, Inc. (United States v. Myers)*, 635 F.2d 945, 952 (2d Cir. 1980) (videotapes used at trial must be provided to the media *on same day* they are discussed in open court: "there is a significant public interest in affording that opportunity contemporaneously with the introduction of the tapes into evidence in the courtroom, when public attention is alerted to the ongoing trial.").

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

Respectfully submitted this 6th day of March,
2015, by:

LEVINE SULLIVAN KOCH & SCHULZ,
LLP



Steven D. Zansberg, #26634
Thomas B. Kelley, #1971
Christopher P. Beall, #28536

Attorneys for Media Petitioners

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of March, 2015, a true and correct copy of this **MOTION BY MEDIA PETITIONERS 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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