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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed MAR 16 2015 CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO
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 201
RESPONSE TO MOTION BY MEDIA PETITIONERS TO UNSUPPRESS THE JURY QUESTIONNAIRE [C-188]	

Mr. Holmes, through counsel, submits the following in response to the media petitioners' Motion to Unsuppress the Jury Questionnaire [C-188]:

1. The media is requesting that the Court unsuppress the juror questionnaire in this case prior to the conclusion of individual voir dire. The defense objects.

2. The media submits that it has a First Amendment right of access to the questionnaire. In support of this argument, it relies on non-binding authority from the Nevada Supreme Court. *See Stephens Media, LLC v. Eighth Judicial Dist. Court*, 221 P.3d 1240, 1249 (Nev. 2009). However, neither the Colorado appellate courts nor the United States Supreme Court has ever held that juror questionnaires are encompassed by the media's First Amendment right of access.

3. Mr. Holmes contends that the juror questionnaire in this case is a judicial record to which the public has only a limited right of access governed by common law and the Colorado Criminal Justice Records Act. *See Nixon v. Warner Communications*, 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."); *United States v. Hickey*, 767 F.2d 705, 708 (10th Cir. 1985) (noting that U.S. Supreme Court has never held that constitutional right of access to court proceedings also applies to court files and documents, and analyzing defendant's request for access to sealed court documents under common law right of access); C.R.S. §§ 24-72-301—08 (defining and establishing parameters for public access to criminal justice records).

4. Regardless of which standard applies, however, there is a compelling reason to justify delaying the release of the juror questionnaire until after the jury has been selected in this case. Delaying public access to the release of the juror questionnaire will protect prospective jurors' privacy in this extremely high-profile case. If the media is allowed access to the juror questionnaire during individual voir dire, it will be able to determine which prospective jurors have provided affirmative or substantive responses to questions soliciting extremely personal information. There have 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. The Court's practice of referring to the question number, and not the substance of the question itself, has obviously enhanced prospective jurors' ability to maintain their privacy about sensitive matters. Allowing the media access to the blank juror questionnaire during individual voir dire would undermine this sense of privacy. If the media is made aware of the substance of these questions, the fact that prospective jurors answered these questions in the affirmative would reveal something personal and private about the juror that he or she may not wish the media to know.

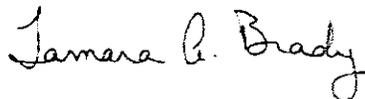
5. Nor is there any real need for the media to have contemporaneous access to this information. The media has had full access to voir dire over the parties' objection. It has reported extensively about the voir dire process. By sitting in open court and observing voir dire, the media is able to glean a significant amount of detailed information about prospective jurors' qualifications and views. Allowing the media contemporaneous access to the juror questionnaire during voir dire would do very little to enhance the media's ability to provide comprehensive reporting and coverage of voir dire. At the same time, it would inappropriately place prospective jurors' privacy at risk.

6. The defense does not object to the Court releasing a blank copy of the juror questionnaire *after* the jury has been selected in this case, but objects to the release of the questionnaire at any time prior.

Mr. Holmes files this response, 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: March 16, 2015

I hereby certify that on March 16, 2015, I

mailed, via the United States Mail, *to Steven Zansberg*
 faxed, or
 hand-delivered *to DA*

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

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I also certify that a true and correct copy of the above and foregoing document was emailed to:

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