

COLORADO COURT OF APPEALS

2 East 14th Avenue  
Denver, CO 80203

---

Appeal from Boulder County District Court  
Honorable Robert R. Gunning and Honorable  
Michael T. Kotlarczyk  
Case No. 2024CV30320

---

Plaintiff-Appellee:

**SMB ADVERTISING, INC. dba YELLOW  
SCENE MAGAZINE**

v.

Defendant-Appellant:

**CITY OF BOULDER, COLORADO**

---

Attorneys for Defendant-Appellant:

Office of the City Attorney  
Teresa Taylor Tate, No. 38594  
Luis A. Toro, No. 22093  
Veronique Van Gheem, No. 42626  
P.O. Box 791  
Boulder, CO 80306  
Phone Number: 303-441-3020  
Fax: 303-441-3859  
E-mail: [tatet@bouldercolorado.gov](mailto:tatet@bouldercolorado.gov)  
[torol@bouldercolorado.gov](mailto:torol@bouldercolorado.gov)  
[vangheemv@bouldercolorado.gov](mailto:vangheemv@bouldercolorado.gov)

DATE FILED  
August 20, 2025 5:21 PM

---

**▲ COURT USE ONLY ▲**

---

Case No: **2025CA26**

**REPLY BRIEF**

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in C.A.R. 28(g).**

It contains 5656 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

**I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.**

OFFICE OF THE CITY ATTORNEY

By: /s/ Luis A. Toro

Luis A. Toro, Reg. No. 22093

Senior Counsel

*Attorney for Defendant-Appellant*

## TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITES .....	iii
ARGUMENT .....	1
I. The CCJRA’s fee provision applies to records requests subject to the LEIA. ..	1
A. Yellow Scene fails to provide an interpretation that would give meaning and effect to C.R.S. § 24-72-306(3).....	1
B. Legislative history supports the City’s interpretation.....	4
C. The LEIA’s silence on fees does not nullify the application of C.R.S. § 24-72-306(3).....	5
D. The structure and purpose of the two statutes supports the City’s interpretation. ....	13
II. If C.R.S. § 24-31-902(2) forbids a criminal justice agency from charging fees to redact video, the purported mandate must be interpreted as optional in accordance with C.R.S. § 29-1-304.5(1).....	17
A. The General Assembly did not appropriate funds for redaction of audio and video records. ....	17
B. C.R.S. § 29-1-304.5(1) applies to the purported mandate to provide video recordings free of charge forever. ....	18
CONCLUSION.....	23

## TABLE OF AUTHORITES

### Cases

<i>Archuleta v. Roane</i> , 2024 CO 74.....	7
<i>Bartholomew v. Avalon Capital Group, Inc.</i> , 278 F.R.D. 441 (D. Minn. 2011) .....	3
<i>Benton v. Adams</i> , 56 P.3d 81 (Colo. 2002) .....	3
<i>Bunnett v. Smallwood</i> , 793 P.2d 157 (Colo. 1990) .....	3
<i>City and Cty. of Denver v. Blue</i> , 500 P.2d 970 (Colo. 1972) .....	20
<i>Colo. Stormwater Council v. Water Quality Control Div.</i> , 2023 COA 11.....	14
<i>Crowe v. Tull</i> , 126 P.3d 196 (Colo. 2006) .....	1, 6, 7, 13, 14, 16
<i>Denver Post Corp. v. Ritter</i> , 230 P.3d 1238 (Colo. App. 2009) .....	7, 8
<i>Gessler v. Doty</i> , 2012 COA 4, ¶ 26 .....	20, 21, 22, 23
<i>Hall v. United States</i> , 167 Fed. Cl. 226 (Fed. Cl. 2023).....	3
<i>Ion Media Networks, Inc. v. West</i> , 2025 COA 66.....	10
<i>Land Owners United, LLC v. Waters</i> , 293 P.3d 86 (Colo. App. 2011) .....	8
<i>Martin v. People</i> , 27 P.3d 846 (Colo. 2001) .....	15
<i>Martinelli v. Dist. Court</i> , 612 P.2d 1083 (Colo. 1980) .....	2
<i>Mook v. Bd. of Cty. Comm’rs</i> , 2020 CO 12.....	6
<i>Mountain-Plains Inv. Corp. v. Parker-Jordan Metro. Dist.</i> , 2013 COA 123 .....	8

<i>Nieto v. Clark’s Mkt., Inc.</i> , 2021 CO 48.....	4
<i>Nowak v. Suthers</i> , 2014 CO 14.....	22
<i>People v. Steen</i> , 2014 CO 9.....	1, 6
<i>People v. Trujillo</i> , 114 P.3d 27 (Colo. App. 2004) .....	4, 5
<i>Showpiece Homes Corp. v. Assurance Co. of Am.</i> , 38 P.3d 47 (Colo. 2001) .....	13
<i>Solid Waste Agency v. U.S. Army Corps of Engineers</i> , 531 U.S. 159 (2001) .....	15
<i>The Gazette v. Bourgerie</i> , 2024 CO 78.....	9, 10
<i>Waugh v. Veith</i> , 2025 COA 41.....	10
<b>Statutes</b>	
C.R.S. § 13-21-131(3).....	10
C.R.S. § 1-5-505(1).....	21
C.R.S. § 1-8-113(1)(a) .....	21
C.R.S. § 19-1-304 .....	10
C.R.S. §§ 2-4-101 - 2-4-402 .....	19
C.R.S. § 24-31-315 .....	22
C.R.S. § 24-31-321(3)(a) .....	23
C.R.S. § 24-31-902(1)(a)(I) .....	17
C.R.S. § 24-31-902(2).....	14, 17
C.R.S. § 24-31-902(2)(b)(II).....	2, 12
C.R.S. § 24-31-903(2).....	22
C.R.S. § 24-33.5-519 .....	18
C.R.S. § 24-72-204(1)(c) .....	7
C.R.S. § 24-72-302(4).....	6, 8, 9, 14
C.R.S. § 24-72-305(7).....	14

C.R.S. § 24-72-306 .....	4, 6, 9
C.R.S. § 24-72-306(1).....	1, 2, 3, 4, 8, 21
C.R.S. § 24-72-306(3).....	1, 2, 4, 5
C.R.S. § 29-1-304.5(1).....	17, 19, 20, 21, 22, 23
C.R.S. § 29-5-112(4).....	23
C.R.S. § 38-12-101 .....	19
C.R.S. § 7-61-128 .....	20
<b>Other Authorities</b>	
HB 08-1076.....	4
HB 24-1460.....	15
<b>Rules</b>	
C.R.C.P. 106 .....	13
C.R.C.P. 26(c).....	3
C.R.C.P. 34 .....	2, 3
Colo. R. Crim. P. 16.....	2, 5
F.R.C.P. 34.....	3
<b>Constitutional Provisions</b>	
Colo. Const., art. XX, § 6 .....	20

## ARGUMENT

### **I. The CCJRA’s fee provision applies to records requests subject to the LEIA.**

Appellee SMB Advertising, Inc. dba Yellow Scene Magazine’s (“Yellow Scene”) Answer Brief cannot answer the central question presented by this case: Can a statute that is silent on the topic of fees implicitly repeal a statute that expressly authorizes the charging of fees? Of course not. Nothing in the Answer Brief challenges the conclusion the trial court erred by failing to read the Colorado Criminal Justice Records Act (“CCJRA”) and the Law Enforcement Integrity Act (“LEIA”) in a way that gives meaning and effect to both to the extent possible. *See People v. Steen*, 2014 CO 9, ¶ 9 ; *Crowe v. Tull*, 126 P.3d 196, 206 (Colo. 2006). Properly construed, C.R.S. § 24-72-306(1) authorizes the City to charge requesters reasonable fees for performing redactions required by C.R.S. § 24-31-902(2).

#### **A. Yellow Scene fails to provide an interpretation that would give meaning and effect to C.R.S. § 24-72-306(3).**

Yellow Scene offers no interpretation of the relevant statutes that would give any meaning or effect to C.R.S. § 24-72-306(3). It insists that the language of C.R.S. § 24-72-306(1) that “[c]riminal justice agencies may assess reasonable fees . . . for the search, retrieval, and redaction of criminal justice records requested pursuant to this part 3” is broad enough to exclude from the CCJRA’s ambit any

document request that implicates another statute requiring disclosure of criminal justice records. It presents no opposition to the City's argument that its interpretation would nullify subsection (3), a specific carve-out preventing criminal justice agencies from charging fees for time spent redacting criminal justice records subject to discovery under Colo. R. Crim. P. 16.

Instead of offering an interpretation that would give meaning and effect to C.R.S. § 24-72-306(3), Yellow Scene attempts to justify interpreting that subsection as meaningless. It argues that because document requests in civil litigation under C.R.C.P. 34 are purportedly also not subject to C.R.S. § 24-72-306(1)'s authorization of charges for time spent redacting criminal justice records, the Court is free to adopt a statutory interpretation that renders C.R.S. § 24-72-306(3) meaningless. Yellow Scene provides no authority or reasoning to support its contention that a statutory carve-out may be interpreted as meaningless because there allegedly exist other, uncodified carve-outs.

Moreover, C.R.C.P. 34 and C.R.S. § 24-72-306(1) do not conflict. Exemptions from disclosure under state open records laws do not authorize the withholding of documents in response to discovery requests in civil litigation. *Martinelli v. Dist. Court*, 612 P.2d 1083, 1093-94 (Colo. 1980). Thus, there would be no occasion for a criminal justice agency to redact recordings to comply with C.R.S. § 24-31-902(2)(b)(II) in response to a request for production of documents

in a civil case. Moreover, C.R.C.P. 34 does not authorize responding parties to redact responsive documents; redaction is proper only in accordance with a protective order entered under C.R.C.P. 26(c). *See Hall v. United States*, 167 Fed. Cl. 226, 232 (Fed. Cl. 2023) (“Plaintiffs have put the proverbial cart before the horse in producing redacted documents and only afterwards seeking a protective order”); *Bartholomew v. Avalon Capital Group, Inc.*, 278 F.R.D. 441, 452 (D. Minn. 2011) (F.R.C.P. 34 “does not explicitly include the option of producing redacted documents” and responding party should seek leave to produce redacted documents by filing a motion for protective order); *see also Benton v. Adams*, 56 P.3d 81, 86 (Colo. 2002) (Colorado courts look to federal cases interpreting similarly worded Federal Rules of Civil Procedure for guidance).

Therefore, in response to a C.R.C.P. 34 request, criminal justice agencies would not be permitted to blur responsive video recordings unless the court entered a protective order. That order, in turn, would govern the “allocation of expenses” incurred in responding to the request. C.R.C.P. 26(c)(2); *see generally Bunnett v. Smallwood*, 793 P.2d 157, 160 (Colo. 1990) (Colorado adheres to the “American rule,” which provides that parties to civil lawsuits must bear their own litigation expenses absent specific authority for an award of attorneys’ fees or costs). The Court should reject Yellow Scene’s argument that responses to C.R.C.P. 34 document requests represent a second, uncodified exception to C.R.S. § 24-72-

306(1)'s grant of authority to custodians to charge reasonable fees for redaction of criminal justice records, the existence of which could, for unexplained reasons, justify reading C.R.S. § 24-72-306(3) out of the statute.

Only the City offers an interpretation of C.R.S. § 24-72-306 that gives meaning and effect to all the words of the statute. The Court should, therefore, rule that C.R.S. § 24-72-306(1) unambiguously applies to all requests for criminal justice records and authorizes the City to charge reasonable fees for time spent performing redactions required by the LEIA. *See Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 13.

**B. Legislative history supports the City's interpretation.**

If the Court determines the statute is ambiguous, nothing in the Answer Brief alters the conclusion the legislative history and circumstances surrounding the 2008 amendments to C.R.S. § 24-72-306 support the City's interpretation. The parties agree C.R.S. § 24-72-306(3) was enacted to override the result in *People v. Trujillo*, 114 P.3d 27, 31 (Colo. App. 2004), *cert. denied* (Colo. 2005). Answer Brief at pp. 12-14. Yellow Scene argues the "pursuant to this part 3" language was added at the same time subsection (3) was enacted to curb "future efforts" to "extend" the CCJRA's fee authorization, but nothing in the legislative history supports that contention. To the contrary, the Senate added subsection (3) to HB 08-1076 *after* the House had added the "pursuant to this part 3" language to the

statute as an amendment on the floor, and the House concurred in that amendment. *See* the Opening Brief at pp. 23-24 & n.6.

This sequence of events shows the General Assembly did not intend the “pursuant to part 3” language to restrict criminal justice agencies from charging fees when responding to requests for records subject to production under any provision of law outside the CCJRA. Rather, it believed it was necessary to enact subsection (3) to accomplish the goal of superseding *Trujillo* by exempting Colo. R. Crim P. 16 discovery responses from fees for redaction time. Nothing in the legislative history suggests the General Assembly intended to do more than overturn the specific result of *Trujillo*. To give effect to subsection (3), the Court should rule that requests that seek criminal justice records outside of Colo. R. Crim. P. 16 remain subject to charges of reasonable fees for redaction time. The district court should be reversed.

**C. The LEIA’s silence on fees does not nullify the application of C.R.S. § 24-72-306(3).**

Yellow Scene argues even though the LEIA does not speak to the question who should pay for time spent redacting audio and video files, the statute should be interpreted as silently prohibiting criminal justice agencies from charging fees for redaction time under the CCJRA. This argument runs afoul of the rules that statutes must be construed in harmony whenever possible, *Steen*, 2014 CO 9, ¶ 9, and that repeals by implication are disfavored. *Crowe*, 126 P.3d at 206.

The Answer Brief (pp. 10-11) contains a laundry list of changes Yellow Scene contends could have been made to expressly link the CCJRA's fee provision to the LEIA. By the same token, however, the General Assembly could have included language in the LEIA prohibiting criminal justice agencies from charging fees for time spent processing audio and video recordings or amending C.R.S. § 24-72-306 to add a carve-out for requests for recordings subject to the LEIA. It could have amended the CCJRA's definition of "criminal justice records," which indisputably includes the videos requested by Yellow Scene, to exclude audio and video recordings of incidents of alleged police misconduct. C.R.S. § 24-72-302(4). If the maxim "[j]ust as important as what a statute says is what it doesn't say," *Mook v. Bd. of Cty. Comm'rs*, 2020 CO 12, ¶ 35, has any application to this case, it favors the City.

Yellow Scene contends that in the absence of any statutory cross-reference or specific incorporation by reference, a court has no obligation to attempt to construe statutes in harmony. This is not the law. For example, *Crowe* dealt with the interplay between the Colorado Consumer Protection Act ("CCPA") and the Rules of Professional Conduct. Even in the absence of any cross-reference or incorporation between the CCPA and the Rules of Professional Conduct, the Supreme Court held that the two had to be construed harmoniously because they attempted to regulate the same conduct (attorney marketing efforts) and because

statutory repeals by implication are disfavored. 126 P.3d at 206. Similarly, here both the LEIA and the CCJRA apply to Yellow Scene's request for BWC video.

Other authorities cited by Yellow Scene are either inapposite or support the City's interpretation. In one case, the Supreme Court held a party to civil litigation against a public entity may seek relevant documents from that entity through CORA requests. *Archuleta v. Roane*, 2024 CO 74, ¶ 14. *Archuleta* presented a relatively simple question of statutory interpretation: CORA authorizes any person to inspect public records "unless 'such inspection is prohibited by rules promulgated by the supreme court,'" and nothing in the Rules of Civil Procedure prohibits a litigant from submitting a CORA request to a government entity that is an adverse party in a lawsuit. *Id.* at ¶¶ 10-14 (quoting C.R.S. § 24-72-204(1)(c)) (internal brackets omitted). *Archuleta* supports the City's position because nothing in the LEIA prohibits a criminal justice agency from charging CCJRA fees for time spent redacting recordings. There is no conflict between the two statutes for the Court to resolve.

Next, Yellow Scene cites this Court's decision in *Denver Post Corp. v. Ritter*, 230 P.3d 1238, 1240 (Colo. App. 2009), *aff'd*, 255 P.3d 1083 (Colo. 2011), for the unremarkable proposition that documents not subject to disclosure under CORA may be obtained through "other legal mechanisms," such as the CCJRA. *Id.*; see also *Mountain-Plains Inv. Corp. v. Parker-Jordan Metro. Dist.*, 2013 COA

123, ¶ 35 (same). True, but beside the point because here the requested BWC video is indisputably a “criminal justice record” as defined in C.R.S. § 24-72-302(4), and therefore, subject to production under the CCJRA. *See* CF, p. 107. These authorities shed no light on how the Court should approach a case in which more than one statute governs disclosure of a given record.

The Court in *Land Owners United, LLC v. Waters*, 293 P.3d 86, 90 (Colo. App. 2011), also relied upon by Yellow Scene, read the Board of Real Estate Appraisers’ authorizing statute in harmony with CORA to rule that CORA governed disclosure of Board records. *Id.* In contrast, the district court here refused to harmonize the LEIA and the CCJRA and did not articulate how a criminal justice agency is to determine when a request for audio and video recordings of an incident of alleged police misconduct is made “solely under the CCJRA” so that the agency may charge fees pursuant to C.R.S. § 24-72-306(1). CF, p. 109.

Yellow Scene disavows the district court’s reasoning that a government entity would be prohibited from charging fees for redaction time if a requester invoked the LEIA but would be permitted to charge fees to process a request for those same records made “solely under the CCJRA.” CF, p. 109; *see* Answer Brief, pp. 19-21. Rightly so, because the district court’s test would prohibit a criminal justice agency from charging fees for redacting criminal justice records whenever a requester invokes a statute other than the CCJRA, including in the relatively

common situation where a requester invokes CORA, but the CCJRA applies because the request seeks criminal justice records. *See, e.g., The Gazette v. Bourgerie*, 2024 CO 78. A CORA request, under the district court’s reasoning, would not be a request “pursuant to this part 3” even if it sought criminal justice records, and therefore, the criminal justice agency could not charge fees for redaction time.

To replace the district court’s unworkable test, Yellow Scene proposes a two-step analysis under which the LEIA would apply if: (1) a requester asks for recordings; (2) of an incident of alleged police misconduct. Yellow Scene’s proposed test is unhelpful because it presupposes that records subject to the LEIA are not also “criminal justice records” subject to production under the CCJRA. *But see* C.R.S. § 24-72-302(4). That test might be appropriate if the General Assembly had carved out recordings subject to the LEIA from the definition of criminal justice records (*see id.*) or added a new subsection (4) to C.R.S. § 24-72-306 to carve out LEIA requests from the scope of the CCJRA fee provision. It did neither.

The district court was clear-eyed that because the video recordings at issue are “criminal justice records” as defined in the CCJRA, its test would require criminal justice agencies to parse the language of records requests to determine whether a requester was relying “solely” on the CCJRA. CF, p. 109. That result is unworkable and flies in the face of well-established case law that a request for

criminal justice records is subject to the CCJRA even if the requester invokes a different statute such as CORA. *E.g.*, *The Gazette*, 2024 CO 78, ¶¶ 11-12, 24. In addition, Yellow Scene offers no response to the City’s observation that Colorado law does not require a requester to specify legal authority for a records request at all. Opening Brief at p. 21.

Next, Yellow Scene cites two 2025 decisions of this Court that it characterizes as rejecting requests to “water down” the LEIA. The Court did not characterize its rulings in that manner. Rather, it applied the same rules of statutory construction the City asks it to apply here. Indeed, in one case, the Court rejected the district court’s statutory interpretation because it would have rendered an entire subsection superfluous – exactly the result the City advocates here. *Waugh v. Veith*, 2025 COA 41, ¶¶ 15-16 (*citing* C.R.S. § 13-21-131(3)). In the other, the Court ruled that Lakewood was wrong to contend BWC footage depicting an event involving a juvenile was a “juvenile record” falling within the prohibition of disclosure found in C.R.S. § 19-1-304. *Ion Media Networks, Inc. v. West*, 2025 COA 66, ¶ 22. It also held the juvenile statute would not prevent disclosure even if the video were considered a juvenile record. *Id.*, ¶ 23. In neither of these cases did the Court rule as it did because it did not want to “water down” the LEIA, instead, it read the LEIA in harmony with other applicable statutes. Similarly, the City is not asking the Court to “water down” the LEIA. It is merely asking the Court to

apply well-established rules of statutory construction to harmonize the LEIA and the CCJRA.

This case is not about whether the requested videos are subject to release under the LEIA. They are, and the City has never opposed release of videos of the event. Indeed, the record reflects that a law firm and members of the media submitted targeted requests to the City for highly relevant videos of the shooting and paid less than \$50 each to obtain those recordings. CF, p. 165. A ruling in favor of the City might discourage blunderbuss requests for all recordings related to an incident, but requesters willing to put in a little time to identify the most significant videos would not be affected.

In connection with this argument, Yellow Scene inaccurately suggests the City attempted to charge a requester \$1,425.00 to process 13 minutes of video footage of the event. Answer Brief at p. 4. In truth, the City advised that it would cost \$1,425.00 to review and redact all videos that included any portion of the incident from three minutes before the shooting until 10 minutes after -- a total of 48.5 hours of video, not 13 minutes. CF, pp. 148-49. This was the result of LEIA's requirement that the responding agency blur all portions of a video that raise substantial privacy concerns but also not remove any portion of the video. C.R.S. § 24-31-902(2)(b)(II). Thus, even if the requester is interested only in a few minutes depicting an event of alleged police misconduct, LEIA requires the criminal justice

agency to review and blur the entirety of a body-worn camera (or in-car camera) recording containing those few minutes, even if an officer leaves their body-worn or in-car camera on continuously for several hours through numerous other interactions with the public. *See* CF, p. 148 (body-worn camera videos depicting the requested 13 minutes ran as long as 10 hours).

Yellow Scene did not rebut the City's point that CORA requires expedited release of responsive documents while simultaneously authorizing government entities to charge fees for research and retrieval time, yet no case suggests these two provisions are in conflict. Opening Brief at p. 21. It did not explain why a fee authorization would impermissibly frustrate LEIA's goal of speedy release of records while at the same time, CORA's goal of even speedier release (three to 10 days) is not thwarted by the custodian's ability to charge fees. There is no more contradiction between the LEIA and the CCJRA with respect to fees than there is between the two CORA provisions requiring speedy release of documents and allowing custodians to charge for research and retrieval.

The district court erred when it ruled that because the LEIA requires responsive recordings to be released to the public, while the CCJRA grants criminal justice agencies discretion to withhold records in the public interest, the two statutes should be read as entirely separate from each other. CF, p. 108. It should have interpreted the LEIA as preempting the CCJRA only to the extent the

two statutes are irreconcilably in conflict. *See Crowe*, 126 P.3d at 206 (*citing Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47, 53 (Colo. 2001)). A statute that is silent on the question of fees cannot be read as silently repealing a different applicable statute that expressly authorizes such fees. The district court’s judgment should be reversed.

**D. The structure and purpose of the two statutes supports the City’s interpretation.**

Yellow Scene asserts the General Assembly intended to create a statutory scheme mandating speedy release of video and audio recordings of an incident of alleged police misconduct, while relegating requesters aggrieved by a failure to produce to generally applicable remedies such as declaratory judgment or C.R.C.P. 106 review, denying them access to speedy judicial review pursuant to the CCJRA. Answer Brief at 26. Yellow Scene asks the Court to attribute an implausible naïveté to the General Assembly when it contends “the legislature had no track record of specific enforcement issues likely to arise under this groundbreaking new law that would require any more particularized enforcement mechanism similar to what is found in the CCJRA.” Answer Brief, p. 17. Surely the General Assembly could foresee criminal justice agencies might deny access to responsive videos, just as they might improperly deny access to any other criminal justice record. There is no reason to believe the General Assembly intended the expedited process for review of denials of requests available under the CCJRA, *see* C.R.S. § 24-72-

305(7), would not apply to requests for recordings of incidents of alleged police misconduct. The better interpretation is that the General Assembly intended the CCJRA to govern except to the extent it was manifestly inconsistent with the LEIA. *See Crowe*, 126 P.3d at 206.

The General Assembly was presumptively aware that video and audio recordings of incidents of alleged police misconduct are “criminal justice records” as defined in C.R.S. § 24-72-302(4). *See Colo. Stormwater Council v. Water Quality Control Div.*, 2023 COA 11, ¶ 34. Yet it decided not to amend that definition to exclude recordings requested under C.R.S. § 24-31-902(2). A ruling that the CCJRA applies to documents requested under C.R.S. § 24-31-902(2) would better promote the purposes of the LEIA. The CCJRA requires hearings on applications to be held “at the earliest practical time” and authorizes awards of attorneys’ fees against agencies that arbitrarily or capriciously withhold records. C.R.S. § 24-72-305(7). The LEIA contains no enforcement mechanism.

Yellow Scene points to a fiscal note from the 2020 bill estimating that some criminal justice agencies would spend as much as \$3,000,000 per year to comply with the LEIA, including the requirement to obtain body-worn cameras and manage BWC videos, but without breaking out that estimated cost into its components. Answer Brief at p. 25. If anything, that fiscal note supports the City’s position: If the General Assembly intended agencies to absorb the entire cost of

processing recordings for production it would have said so explicitly, not leave courts to interpret its silence as supplanting the CCJRA’s fee authorizing provision. Moreover, a fiscal note to the failed 2024 bill that would have prohibited agencies from charging fees for time spent processing recordings for release under the LEIA said “[t]o the extent local law enforcement agencies are charging requestors for recordings, the bill will decrease revenue to those agencies. On a statewide basis, lost local revenue is estimated to be in the tens of thousands of dollars.” Revised Fiscal Note, HB 24-1460, [2024a\\_hb1460\\_r3.pdf](#) (accessed August 15, 2025).<sup>1</sup>

Interpreting the LEIA and the CCJRA so that both apply to the extent they are not manifestly in conflict not only comports with controlling principles of

---

<sup>1</sup> The district court erred by considering the statements of a single legislator, Representative Leslie Herod, that the 2024 bill was meant to clarify that the General Assembly never intended to allow criminal justice agencies to charge fees for processing recordings. CF, pp. 111-12. Only *contemporaneous* statements by legislators may be considered. *See, e.g., Martin v. People*, 27 P.3d 846, 853 (Colo. 2001); *see also Solid Waste Agency v. U.S. Army Corps of Engineers*, 531 U.S. 159, 170 (2001) (“subsequent history is less illuminating than the contemporaneous evidence”) (quotation omitted). The district court erred again by claiming to discern legislative intent about the meaning of the 2021 amendment through statements made in committee hearings on the 2024 bill that died in the House and never went before the Senate. *See id.* (“[a] bill can be proposed for any number of reasons, and it can be rejected for just as many others”). *Amici Colorado Freedom of Information Coalition and American Civil Liberties Union* imply Rep. Herod said in 2020 that the LEIA was intended to bar local governments from charging for processing video footage, but the link provided in their brief (at p. 6 n.3) goes to her statements made on May 2, 2024.

statutory interpretation, *see Crowe*, 126 P.3d at 206, it would more effectively promote the purposes of the LEIA by recognizing CCJRA remedies are available to requesters aggrieved by an alleged failure to produce requested recordings. And, because the LEIA's silence on fees is not manifestly inconsistent with the CCJRA's authorization of fees for redaction time, both should apply to requests such as the one made by Yellow Scene in this case even if the two statutes irreconcilably conflict on the separate point of the custodian's discretion to withhold criminal justice records. *See id.* (one statute preempts another "only to the extent there is a manifest inconsistency" between them) (quotation omitted).

In sum, the district court erred by interpreting the LEIA and the CCJRA as establishing siloed systems for obtaining audio and video recordings of alleged incidents of police misconduct, denying requesters access to the speedy CCJRA remedies available whenever a criminal justice agency improperly denies a request for criminal justice records. Because the LEIA's silence on the topic of fees cannot be read as implicitly repealing the CCJRA's grant of authority to criminal justice agencies to charge reasonable fees for time spent performing mandatory redactions of criminal justice records, and because the requested video recordings indisputably are "criminal justice records" as defined in the CCJRA, the Court should enter judgment reversing the district court.

**II. If C.R.S. § 24-31-902(2) forbids a criminal justice agency from charging fees to redact video, the purported mandate must be interpreted as optional in accordance with C.R.S. § 29-1-304.5(1).**

Yellow Scene raises a parade of horrors it says could occur if the Court were to delve into whether funding for a particular statutory mandate imposed on a local government is adequate. Answer Brief at 33. This case presents a simpler question: what is the effect of C.R.S. § 29-1-304.5(1) on a statute purportedly imposing a mandate on local governments when the General Assembly provides no funding at all? The clear answer is that under ordinary principles of statutory construction, the language purporting to impose a mandate on a local government must be construed as optional.

**A. The General Assembly did not appropriate funds for redaction of audio and video records.**

Yellow Scene's argument that the body-worn camera grant funding identified in C.R.S. § 24-31-902(1)(a)(I) was intended to cover the costs of the purported mandate to provide blurred and muted video free of charge forever ignores the plain language of that provision. It says: "By July 1, 2023, all local law enforcement agencies in the state and the Colorado state patrol *shall provide body-worn cameras* for each peace officer of the law enforcement agency who interacts with members of the public. Law enforcement agencies may seek funding pursuant to section 24-33.5-519." [Emphasis added.] Because C.R.S. § 24-31-902(1)(a)(I) refers only to the purchase of body worn-cameras, the "data retention and

management costs” referred to in C.R.S. § 24-33.5-519(1)(a) are only those “associated” with the “purchase [of] body-worn cameras.” The LEIA’s plain language establishes that the General Assembly provided no funding for the ongoing costs of complying with the purported LEIA mandate to provide redacted recordings free of charge.

Yellow Scene next argues that the record does not indicate the City applied for funding under the body-worn camera grant program and suggests this proves the City has sinister ulterior motives for its position in this case. Answer Brief at p. 31. If funding were available it would not matter whether the City applied for it. Moreover, the City did not apply for funding from the body-worn camera fund because it had already equipped its police officers with body-worn cameras at its own expense years prior to the enactment of the LEIA. See “[Boulder cops to roll out body cameras](#),” *Boulder Daily Camera*, August 15, 2015 (accessed August 19, 2025). The Court should not penalize the City for being ahead of the curve on equipping police officers with body-worn cameras.

The language of the relevant statutes unambiguously establishes that the General Assembly provided zero funding for the costs to local governments of blurring video.

**B. C.R.S. § 29-1-304.5(1) applies to the purported mandate to provide video recordings free of charge forever.**

C.R.S. § 29-1-304.5(1) provides that “unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate or such increased level of service,” a law purporting to mandate a local government provide a new service or increased level of service “shall be optional on the part of the local government.” Thus, when a statute says a local government “shall” do something that costs money, but the General Assembly makes no corresponding appropriation, the unfunded mandate statute tells courts to construe that mandatory language as “optional on the part of the local government.”

Yellow Scene candidly admits that under its interpretation of C.R.S. § 29-1-304.5(1), “no new or increased state mandate adopted by a later general assembly is likely to be made optional due to a lack of funding for local governments.” Answer Brief at p. 36. It defends its position that the statute is effectively meaningless because “the 58<sup>th</sup> General Assembly could not prohibit future legislation or override the mandatory intent of later general assemblies.” *Id.*

But C.R.S. § 29-1-304.5(1) does not prohibit future legislation or tie the hands of future General Assemblies any more than do C.R.S. §§ 2-4-101 through 2-4-402 or the many other statutes that tell courts how to interpret legislative language. *See, e.g.*, C.R.S. § 38-12-101 (“This part 1 shall be liberally construed to implement the intent of the general assembly to ensure the proper administration of security deposits and late fees and protect the interests of tenants, mobile home

owners, and landlords”); C.R.S. § 7-61-128 (setting forth three rules of interpretation for the Uniform Limited Partnership Law of 1931). In all of these cases, the General Assembly is doing no more or less than advising courts what it intends when it enacts certain language, and it retains the ability to amend or repeal statutes governing interpretation of other statutes or provide that they shall not apply to a particular statute.

C.R.S. § 29-1-304.5(1) does not conflict with a statute that includes language purporting to mandate an act by local governments without providing funding, rather, it tells the court to interpret that mandatory language as optional. Without question, any future General Assembly could repeal C.R.S. § 29-1-304.5(1) or expressly provide that costs of a particular service be borne by the local government.<sup>2</sup> It did neither in this case.

In *Gessler v. Doty*, 2012 COA 4, ¶ 26, the Court held the existence of an express provision in the Election Code requiring county governments to bear the costs of conducting elections conflicted with and prevailed over C.R.S. § 29-1-304.5(1): “We reach this conclusion on the ground that the Code’s funding provision, section 1-5-505(1), prevails over the unfunded mandate statute, section

---

<sup>2</sup> This is not to say the General Assembly is free to commandeer the budgets of home rule cities such as the City by imposing ongoing unfunded mandates. “The budgeting of its anticipated revenue for the operation of the city government is strictly a matter of local and municipal concern.” *City and Cty. of Denver v. Blue*, 500 P.2d 970, 972 (Colo. 1972) (citing Colo. Const., art. XX, § 6).

29-1-304.5(1), rendering the latter inapplicable to section 1-8-113(1)(a).” It is true *Gessler* presented a scenario in which the mandate to pay for election costs predated the enactment of C.R.S. § 29-1-304.5(1), but that only meant the question for the Court was how to resolve the conflict between an older but more specific statute and a later but more general one. *Gessler*, 2012 COA 4, ¶ 22. This wrinkle does not alter the conclusion *Gessler* makes clear that a statute specifically addressing funding will expressly conflict with, and generally prevail over, C.R.S. § 29-1-304.5(1). But the General Assembly that passed the LEIA in 2020 and amended it in 2021 did not enact any provision expressly assigning to local governments the cost of processing videos for public release.

Most likely, this happened because the General Assembly intended C.R.S. § 24-72-306(1) to govern the allocation of expenses for blurring videos for release. But if the Court believes the General Assembly did not so intend, it must interpret that unfunded mandate in the light of C.R.S. § 29-1-304.5(1). Yellow Scene urges, and the district court held, that any time the General Assembly says a local government “shall” do something, it is expressing its intent that C.R.S. § 29-1-304.5(1) should not apply. But that interpretation would nullify C.R.S. § 29-1-304.5(1), which instructs courts to interpret mandatory language as optional when the General Assembly purports to impose an unfunded mandate on a local government.

After *Gessler*, the General Assembly knew a court would likely declare an unfunded mandate enforceable if, and only if, there existed specific language assigning responsibility to bear the expense of compliance to the local government. *See Nowak v. Suthers*, 2014 CO 14, ¶ 34 (General Assembly presumed aware of prior decisional law). Yet it enacted and amended the LEIA without expressly stating who would bear the cost of blurring videos for release. The Court should hold that when a statute purports to require local governments to provide a service but provides zero funding and does not expressly assign the expense of performing the mandatory activity to the local government, C.R.S. § 29-1-304.5(1) requires courts to interpret the mandate as “optional on the part of the local government.”

Yellow Scene labels C.R.S. § 29-1-304.5(1) as “arcane” and points to the lack of published case law applying it as proof that it has no meaning or effect. The lack of case law results from the General Assembly avoiding the imposition of unfunded mandates on local governments. One *amicus* scoured the Colorado Revised Statutes for examples of unfunded mandates involving policing and could only come up with (1) the mandatory reporting requirements of C.R.S. § 24-31-903(2); (2) the annual in-service training requirements of C.R.S. § 24-31-315; (3) the requirement to report information regarding police officer misconduct to the Police Officer Training and Standards Board in C.R.S. § 24-31-321(3)(a); and (4) training and reporting requirements regarding police encounters with dogs pursuant

to C.R.S. § 29-5-112(4). Brief of *amicus curiae* Jonathon J. Booth at p. 13. These are all reporting requirements with *de minimis* fiscal impact or regulations of the content of police officer training that departments would provide in any event. They disprove Yellow Scene’s implicit assertion that the General Assembly routinely imposes unfunded mandates on local governments without challenge.

The Court should hold the City has the option to produce blurred video on request, and in turn, that means the City may lawfully condition release of requested video upon payment of reasonable fees. Such a holding would not say future General Assemblies are bound never to impose an unfunded mandate, it would merely say that if the General Assembly wishes to impose an unfunded mandate, it either has to amend or repeal C.R.S. § 29-1-304.5(1) or include a provision expressly assigning the expense of compliance with the unfunded mandate to the local government. *See Gessler*, 2012 COA 4, ¶¶ 12-14, 26. The General Assembly did neither in this case, therefore, the unfunded purported mandate “shall” be construed as “optional on the part of the local government.” C.R.S. § 29-1-304.5(1).

### **CONCLUSION**

For the reasons set forth herein and in the Opening Brief, the Court should enter judgment reversing the district court.

Respectfully submitted this 20th day of August 2025.

OFFICE OF THE CITY ATTORNEY

By: */s/ Luis A. Toro*

---

Luis A. Toro  
Senior Counsel

*Attorney for Appellant, City of  
Boulder*

## CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August 2025, a true and correct copy of the foregoing **REPLY BRIEF** was filed and served via the Colorado Courts E-Filing System to counsel of record appearing herein.

Daniel D. Williams  
Matthew A. Simonsen  
Grata Law and Policy LLC  
[dan@gratalegal.com](mailto:dan@gratalegal.com)  
[matt@gratalegal.com](mailto:matt@gratalegal.com)

Ashlyn L. Hare  
Hutchinson Black and Cook, LLC  
[ashlyn.hare@hbcboulder.com](mailto:ashlyn.hare@hbcboulder.com)

*/s/ Lisa R. Thompson* \_\_\_\_\_  
Lisa R. Thompson