

COLORADO SUPREME COURT

2 East 14th Avenue

Denver, CO 80203

Certiorari to the Colorado Court of Appeals,

Case No. 2025CA26

Opinion by Dunn, J., Roman, C.J. and Welling,
J., concur

Boulder County District Court

Case No. 2024CV30320

Gunning and Kotlarczyk, JJ.

Petitioner:

CITY OF BOULDER

v.

Respondent:

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

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▲ COURT USE ONLY ▲

Case No: **2026SC279**

CITY OF BOULDER'S PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition for Writ of Certiorari complies with all requirements of C.A.R. 28 and 32, including all formatting requirements set forth in these rules. I further certify that this Petition complies with C.A.R. 53(f)(1) because it does not exceed 3,800 words. This Petition contains 3,491 words.

I acknowledge that this Petition may be stricken if it fails to comply with any of the requirements of C.A.R. 32 and 53.

By: /s/Luis A. Toro
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TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
OPINION BELOW AND BASIS FOR JURISDICTION.....	1
STATEMENT REGARDING RELATED CASES	2
STATEMENT OF THE CASE.....	2
I. Introduction and Summary of Questions Presented	2
II. Statement of Facts and Proceedings Below.....	3
REASONS WHY THE WRIT SHOULD BE GRANTED	7
I. The Court of Appeals’ Statutory Misinterpretation Imposes Enormous Ongoing Costs on Criminal Justice Agencies Statewide.....	7
II. The Court of Appeals Nullified C.R.S. § 29-1-304.5, Contrary to the Intent of the General Assembly.....	14
CONCLUSION	16

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Longmont Toyota, Inc.</i> , 102 P.3d 323 (Colo. 2004)	14
<i>Benefield v. Colo. Republican Party</i> , 2014 CO 57.....	11
<i>City and Cty. of Denver v. Blue</i> , 500 P.2d 970 (Colo. 1972)	15
<i>City of Colorado Springs v. State</i> , 626 P.2d 1122 (Colo. 1980)	15
<i>Crowe v. Tull</i> , 126 P.3d 196 (Colo. 2006)	13
<i>Hobbs v. City of Salida</i> , 2025 COA 50.....	13
<i>Joe B. Neuhoﬀ Fam. P'ship, Ltd. v. Bd. of Assessment Appeals</i> , 2020 WL 1259934 (Colo. No. 19SC54, Mar. 16, 2020).....	9
<i>Normandin v. People</i> , 91 P.3d 383 (Colo. 2004)	13
<i>People v. A.S.M.</i> , 2022 CO 47.....	8
<i>People v. Bell</i> , 2026 CO 28.....	9, 14
<i>People v. Trujillo</i> , 114 P.3d 27 (Colo. App. 2004)	8, 9, 10
<i>Ralph L. Wadsworth Const. Co. v. Reg'l Rail Partners</i> , 2026 CO 19.....	5
<i>SMB Advertising, Inc. v. City of Boulder</i> , 2026 COA 25.....	1, 5, 6, 10, 11, 12, 15, 16

Statutes

C.R.S. § 13-2-127	1
C.R.S. § 13-4-108(3).....	1
C.R.S. § 2-4-205	13

C.R.S. § 24-31-902(1).....	15
C.R.S. § 24-31-902(2).....	1, 2, 4, 6, 7, 8, 13, 15, 16
C.R.S. § 24-42-302(4).....	14
C.R.S. § 24-42-306(1).....	4
C.R.S. § 24-72-302(4).....	2, 8, 13
C.R.S. § 24-72-305(7).....	6
C.R.S. § 24-72-306	9, 10, 14
C.R.S. § 24-72-306(1).....	1, 3, 5, 8, 10
C.R.S. § 24-72-306(3).....	5, 8, 10, 11, 14
C.R.S. § 24-72-309	12
C.R.S. § 29-1-304.5(1).....	1, 3, 6, 15, 16

Other Authorities

2008 Colo. Sess. Laws 428	11
HB 08-1076, 2008 Colo. Sess. Laws 428	10
Journal of the House of Representatives State of Colorado: Sixty-Sixth General Assembly Second Regular Session	10, 11

Rules

Colo. R. Crim. P. 16.....	8, 9
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Constitutional Provisions

Colo. Const., art. VI, § 2	1
Colo. Const., art. XX, § 6	15

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether C.R.S. § 24-31-902(2), a provision of the Law Enforcement Integrity Act (“LEIA”), prohibits criminal justice agencies from charging fees for mandatory blurring of criminal justice records in video format notwithstanding the express authorization for the charging of such fees found in the Colorado Criminal Justice Records Act (“CCJRA”), C.R.S. § 24-72-306(1).

2. In the alternative, whether C.R.S. § 29-1-304.5(1), which provides that a “mandate or increased level of service for an existing state mandate shall be optional on the part of the local government” when the General Assembly does not appropriate “moneys to reimburse such local government for the costs of such new state mandate,” is without effect in all potential applications.

OPINION BELOW AND BASIS FOR JURISDICTION

The April 9, 2026 published opinion of the Court of Appeals in *SMB Advertising, Inc. v. City of Boulder*, 2026 COA 25, the May 14, 2026 modified published opinion of the Court of Appeals, 2026 COA 25M, and the Boulder County District Court’s August 12, 2024 Order Re: Plaintiffs’ Motion for Judgment on Second Claim for Relief are contained in the attached Appendix.

This Court has jurisdiction under Colo. Const., art. VI, § 2 and C.R.S. § 13-2-127 and § 13-4-108(3). On May 5, 2026, this Court granted Petitioner City of

Boulder (“Boulder”) an extension of time to file its petition for certiorari, to and including June 18, 2026.

STATEMENT REGARDING RELATED CASES

Boulder is unaware of any pending cases in which the Court has granted certiorari review on the same legal issues on which review is sought.

STATEMENT OF THE CASE

I. Introduction and Summary of Questions Presented

This case presents important questions regarding whether a local government operating a criminal justice agency must absorb the entire cost of blurring video recordings for release under the LEIA and whether the General Assembly intended to require local governments to spend their own tax dollars to accomplish a state objective.

Boulder seeks review of the Court of Appeals’ judgment affirming a declaratory judgment issued by the Boulder County District Court in favor of Respondent SMB Advertising, Inc. d/b/a Yellow Scene Magazine (“SMB”). The Court of Appeals ruled, first, that C.R.S. § 24-31-902(2) prohibits custodians of criminal justice records from imposing fees for time spent blurring videos subject to disclosure under that statute, notwithstanding that such videos are “criminal justice records” as defined in C.R.S. § 24-72-302(4) and the General Assembly did

not carve out C.R.S. § 24-31-902(2) requests from the scope of C.R.S. § 24-72-306(1).

Next, the Court of Appeals interpreted C.R.S. § 29-1-304.5(1), which directs courts to interpret mandatory language as “optional on the part of the local government” when the General Assembly appears to require a local government to spend its own tax funds to accomplish a state goal, as inapplicable because it held C.R.S. § 24-31-902(2) irreconcilably conflicted with C.R.S. § 29-1-304.5(1) and must prevail as the more specific and recent applicable statute. This rationale would render C.R.S. § 29-1-304.5(1) ineffective in all potential applications.

II. Statement of Facts and Proceedings Below.

Jeannette Alatorre was shot and killed in a confrontation with Boulder police officers on December 17, 2023. On February 1, 2024, SMB’s attorney submitted a complaint through the website of Boulder’s Independent Police Monitor, alleging that Boulder police officers shot Ms. Alatorre in the back while she was fleeing and requesting that video and audio recordings of the incident be released to the public pursuant to the LEIA. CF, p. 144.¹

¹ The Twentieth Judicial District Attorney’s investigation of the shooting established that none of SMB’s counsel’s allegations had any basis in fact. CF, pp. 126-142.

On March 12, 2024, SMB sent a records request to the Boulder Police Department (“BPD”) through its criminal justice records request portal for “all videos relating to the Ms. Alatorre incident on 12/17/2023, including bodycam and dash cam,” and referencing its counsel’s complaint. CF, pp. 62-64.

The LEIA required Boulder to perform extensive blurring of the requested video recordings to protect privacy interests before releasing them. C.R.S. § 24-31-902(2)(b)(II)(A). BPD advised SMB that it would charge \$2,857.50 for search, retrieval, and redaction of the requested videos at the rate of \$30 per hour of staff time, as authorized by C.R.S. § 24-42-306(1). SMB declined to pay, citing its counsel’s complaint of officer misconduct and the LEIA. CF, pp. 59-64.

SMB filed this suit in Boulder County District Court on April 10, 2024, asserting claims for mandamus (to require Boulder to produce blurred videos of the December 17, 2023 officer-involved shooting free of charge) and declaratory judgment (that the CCJRA does not authorize Boulder to charge SMB for staff time spent blurring videos subject to release under the LEIA). CF, pp. 1-8.

On August 12, 2024, the district court ruled in favor of SMB on its declaratory judgment claim. CF, pp. 101-14. On November 21, 2024, the district court entered final judgment after the parties stipulated to dismissal of the mandamus claim. CF, pp. 202-03. Boulder timely appealed. CF, pp. 206-29.

On April 9, 2026, the Court of Appeals issued its opinion affirming the district court. It held that the LEIA’s silence on the question of fees, coupled with statutory language that criminal justice agencies “shall” provide blurred videos upon request, evidenced the General Assembly’s intent to prohibit criminal justice agencies from charging fees for blurring of videos for release. *SMB*, 2026 COA 25M, ¶¶ 28-29. Next, it held that the language of C.R.S. § 24-72-306(1), that agencies may assess fees for processing records “requested pursuant to this part 3,” meant that criminal justice agencies are powerless to assess fees whenever a law other than the CCJRA applies to a request for criminal justice records. *SMB*, 2025 COA 25M, ¶ 30.

The Court of Appeals rejected Boulder’s argument that this interpretation rendered meaningless C.R.S. § 24-72-306(3), a carve-out from the fee provision for discovery in criminal cases. It held Subsection (3) merely reflected a “belt and suspenders approach” to the presumed actual goal of carving out from the fee provision *all* criminal justice records requests to which an additional statute applied. *SMB*, 2026 COA 25M, ¶ 34.

Boulder contended that in interpreting an ambiguous statutory scheme, a court should consider “the consequences of a given construction,” *see, e.g., Ralph L. Wadsworth Const. Co. v. Reg’l Rail Partners*, 2026 CO 19, ¶ 20, and that

interpreting the LEIA as a system for release of certain criminal justice records independent of the CCJRA would have the unintended consequence of depriving requesters access to the procedures and remedies in C.R.S. § 24-72-305(7). The Court of Appeals interpreted this argument as “advocat[ing] for importing the CCJRA’s enforcement provisions — which allow appeals of a custodian’s discretionary denial of access to records — into the [LEIA],” then dismissed it as a policy argument that could only be made to the General Assembly. *SMB*, 2026 COA 25M, ¶ 38.

Turning to Boulder’s argument that C.R.S. § 29-1-304.5(1) required the district court to interpret the purported mandate of the LEIA to blur video for release free of charge as “optional on the part of the local government,” the Court of Appeals held that because the General Assembly used the word “shall” to describe the criminal justice agency’s purported obligation under the LEIA, the unfunded mandate irreconcilably conflicted with C.R.S. § 24-31-902(2), and the LEIA must prevail as the newer and more specific statute. *SMB*, 2026 COA 25M, ¶ 46. Under this analysis, there is no scenario in which C.R.S. § 29-1-304.5(1) would apply.

REASONS WHY THE WRIT SHOULD BE GRANTED

I. **The Court of Appeals’ Statutory Misinterpretation Imposes Enormous Ongoing Costs on Criminal Justice Agencies Statewide.**

The LEIA provides that when any peace officer, civilian, or nonprofit organization makes a complaint of peace officer misconduct, “the local law enforcement agency . . . shall release, upon request, all unedited video and audio recordings of the incident.” C.R.S. § 24-31-902(2)(a). It goes on to provide:

Notwithstanding any other provision of this section, any video that raises substantial privacy concerns . . . shall be blurred to protect the substantial privacy interest while still allowing public release. **Unblurred footage shall not be released** without the written authorization of the victim or, if the victim is deceased or incapacitated, the written authorization of the victim's next of kin. A person seventeen years of age and under is considered incapacitated, unless legally emancipated. **This subsection (2)(b)(II)(A) does not permit the removal of any portion of the video.**

C.R.S. § 24-31-902(2)(b)(II)(A) (emphasis added). Thus, even if a requester is interested in only a few minutes of a lengthy body-worn camera video including multiple unrelated encounters between an officer and civilians, the criminal justice agency must blur and release the entire video. In this case, at least two body-worn camera videos subject to SMB’s request were six hours in length, CF, pp. 162, 167, while the fatal encounter between Boulder Police and Ms. Alatorre lasted less than half an hour. CF, pp. 129-132. Boulder estimated that the review process would take three hours for each hour of video. CF, p. 169.

There is no dispute that body-worn and dash cam video recordings are “criminal justice records” as defined in the CCJRA. C.R.S. § 24-72-302(4). The CCJRA authorizes the custodian to charge requesters for time spent retrieving, reviewing, and redacting criminal justice records for release. C.R.S. § 24-72-306(1). The LEIA did not amend the CCJRA’s definition of a criminal justice record, nor carved requests subject to C.R.S. § 24-31-902(2) out of the scope of the CCJRA’s fee authorizing provision. In contrast, C.R.S. § 24-72-306(3) expressly carves criminal discovery out of the scope of Subsection (1)’s fee authorization. The General Assembly would not have enacted that carve-out if it thought it had already restricted agencies’ ability to charge fees across the board when it added the words “pursuant to this part 3” to C.R.S. § 24-72-306(1).

The Court of Appeals interpreted C.R.S. § 24-72-306(3) as meaningless, contrary to repeated holdings of this Court. *See, e.g., People v. A.S.M.*, 2022 CO 47, ¶ 22 (“It is now beyond question that courts “strive to avoid interpretations that would render statutory language meaningless”) (quotation omitted). Subsection (3) carves discovery under Colo. R. Crim. P. 16 out of the scope of Subsection (1) in response to the Court of Appeals’ decision in *People v. Trujillo*, 114 P.3d 27 (Colo. App. 2004), *cert. denied* (Colo. 2005). In *Trujillo*, the Court of Appeals held that a criminal justice agency could charge fees under C.R.S. § 24-72-306(1) for

search, retrieval, and copying of records discoverable under the then-existing version of Colo. R. Crim. P. 16. *Trujillo*, 114 P.3d at 31.

The Court of Appeals' judgment in this case conflicts with *Trujillo* on the question whether the CCJRA should be interpreted *in pari materia* with other applicable legal authority. 114 P.3d at 31. While *Trujillo*'s result was superseded by the 2008 amendments to the CCJRA, its holding that the CCJRA should be read in harmony with other laws governing release of criminal justice records remains good law and the decision in this case conflicts with *Trujillo* on that point.

Moreover, subsequent to the Court of Appeals' ruling in this case, this Court addressed the meaning of C.R.S. § 24-72-306 in *People v. Bell*, 2026 CO 28. This Court said "criminal justice agencies may assess reasonable fees for the search, retrieval, and redaction of criminal justice records requested, except that any fee provisions shall not apply to discovery materials that a criminal justice agency is required to provide in a criminal case pursuant to Colo. R. Crim. P. 16." *People v. Bell*, 2026 CO 28, ¶ 37 (cleaned up). In other words, Subsection (3) means what it says. The Court should grant Boulder's petition and reverse after full briefing, or vacate the judgment below and remand for reconsideration in light of *Bell*, as it has done in other cases such as *Joe B. Neuhoﬀ Fam. P'ship, Ltd. v. Bd. of Assessment Appeals*, 2020 WL 1259934 (Colo. No. 19SC54, Mar. 16, 2020) (unpublished).

The Court of Appeals claimed its interpretation was supported by the legislative history of the 2008 amendments to CCJRA. *SMB*, 2025 COA 25M, ¶¶ 30-34. To the contrary, legislative history proves the General Assembly intended only to carve out criminal discovery from the CCJRA’s fee provision in response to the result of *Trujillo*.

In 2008, the General Assembly added both the “pursuant to this part 3” language to C.R.S. § 24-72-306(1) and C.R.S. § 24-72-306(3)’s carve-out of criminal discovery from the scope of the fee provision. HB 08-1076, 2008 Colo. Sess. Laws 428.

Originally intended to cap photocopying charges criminal justice agencies could charge requesters, HB 08-1076 was amended in the House State, Veterans, and Military Affairs Committee to authorize criminal justice agencies to charge for time spent redacting criminal justice records in addition to search and retrieval. Journal of the House of Representatives State of Colorado: Sixty-Sixth General Assembly Second Regular Session, p. 118 (January 23, 2008). The “pursuant to this part 3” language was added via amendment on the House floor and was sent to the Senate with that language included. *Id.*, p. 395 (Feb. 14, 2008).

The Senate Judiciary Committee approved an amendment to add Subsection (3) to C.R.S. § 24-72-306. Journal of the Senate State of Colorado: Sixty-Sixth

General Assembly Second Regular Session, p. 529 (March 11, 2008). The audio recording of the Senate Judiciary Committee hearing establishes its sole concern was ensuring that criminal defendants would not have to bear charges for search, retrieval, and redaction of criminal justice records. With the amendment adding Subsection (3), the bill passed the Senate on second reading on March 20, 2008, *id.*, p. 627, and third reading on March 24, 2008. *Id.*, pp. 640-41. The House concurred with the Senate amendments, House of Representatives State of Colorado: Sixty-Sixth General Assembly Second Regular Session, pp. 1029-30 (March 28, 2008), and the Governor signed the bill into law on April 14, 2008. 2008 Colo. Sess. Laws 428.

The Court of Appeals concluded that the purpose of the 2008 amendment was to limit the custodian's authority to charge fees whenever a different statute also applied to a request for criminal justice records, and that the addition of subsection (3) reflected a "belt and suspenders" approach to that goal. 2026 COA 25M at ¶¶ 33-34. Certainly, legislatures sometimes enact statutory language that may appear redundant in order to reinforce a point. *Benefield v. Colo. Republican Party*, 2014 CO 57, ¶ 17. But C.R.S. § 24-72-306(3) says discovery under the Rules of Criminal Procedure would no longer be subject to fee charges under the

CCJRA. It cannot be read as clarifying an intent to limit the scope of the CCJRA fee provision more broadly.

The Court of Appeals’ decision also presents a dilemma to criminal justice agencies receiving records requests. From the perspective of the responding agency, determining whether a request was made “pursuant to the CCJRA” may not be as straightforward as the Court of Appeals suggested. *See SMB*, 2026 COA 25M, ¶ 36 n.4 (“an agency receiving a request for a recording will always have to make a threshold determination as to whether the request is under the [LEIA] or the CCJRA to determine, among other things, the applicable deadline for fulfilling the request and what, if any, redactions can be made.”) This case illustrates the problem. SMB submitted its records request through the BPD’s records request portal, and its request included a certification required by the CCJRA that the requested records would not be used for solicitation of business for pecuniary gain in violation of C.R.S. § 24-72-309. CF, p. 64. Before the district court, SMB maintained that City staff advised the request had to be submitted through the BPD’s online portal which generated the mandatory CCJRA certification. TR (July 11, 2024), 39:18-21. Perhaps so; the point is litigation may frequently ensue over the threshold question whether a criminal justice records request was made “pursuant to” the CCJRA or some other statute.

Moreover, the Court of Appeals interpretation effectively rewrote the CCJRA's definition of "criminal justice record," C.R.S. § 24-72-302(4), by carving out records subject to C.R.S. § 24-31-902(2) from that definition. "Because we must respect the legislature's choice of language, we don't add words to or subtract words from a statute, and we avoid interpretations that would render words or phrases superfluous." *Hobbs v. City of Salida*, 2025 COA 50, ¶ 11.

Footnote 4 reveals another fundamental error in the Court of Appeals' analysis. If the LEIA and the CCJRA are in irreconcilable conflict on the point of timelines to respond to a records request or on what may be redacted, the LEIA may supersede the CCJRA, but "**only to the extent there is a manifest inconsistency** between two statutes attempting to regulate the same conduct because statutory repeals by implication are disfavored." *Crowe v. Tull*, 126 P.3d 196, 206 (Colo. 2006) (quotation omitted and emphasis added); *see also Normandin v. People*, 91 P.3d 383, 387 (Colo. 2004) ("In all cases, we will favor a construction that avoids potential conflict between the relevant provisions") (quotation omitted); C.R.S. § 2-4-205 ("If a general provision conflicts with a special or local provision, it shall be construed, if possible, so that effect is given to both.")

The General Assembly is presumed to know that the CCJRA’s definition of “criminal justice records,” C.R.S. § 24-42-302(4), encompasses video recordings of episodes of alleged peace officer misconduct. *Anderson v. Longmont Toyota, Inc.*, 102 P.3d 323, 330 (Colo. 2004). Yet it did not amend that definition or C.R.S. § 24-72-306, either when it initially enacted the LEIA in 2020 or when it amended it in 2021.

Video recordings of an incident of police misconduct requested referencing the LEIA remain “criminal justice records,” and because they do not fall into the carve-out for criminal discovery in C.R.S. § 24-72-306(3), the custodian may charge for time spent performing mandatory redactions before releasing those records. *See Bell*, 2026 CO 28, ¶ 37. The Court should grant Boulder’s petition and interpret the pertinent statutes in a way that gives meaning and effect to every provision of each of them.

II. The Court of Appeals Nullified C.R.S. § 29-1-304.5, Contrary to the Intent of the General Assembly.

The effect (or lack thereof) of C.R.S. § 29-1-304.5 also presents an important question this Court should decide if it does not reverse based on the Court of Appeals’ erroneous interpretation of the relevant statutes. That statute provides that when statutory language appears to require a local government to spend money to fulfill a state requirement, but without any corresponding

appropriation, the statutory mandate “shall be optional on the part of the local government.” *Id.*

C.R.S. § 29-1-304.5(1) appears calculated to avoid constitutional problems that would arise if the State attempted to commandeer the budget of a home rule city such as Boulder to fund state priorities. “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); *see also City of Colorado Springs v. State*, 626 P.2d 1122, 1127 (Colo. 1980). If the Court of Appeals’ decision stands, litigation by home rule jurisdictions challenging the constitutionality of the LEIA’s purported mandate as applied to them seems inevitable.

The threshold question whether the mandate was unfunded is much simpler than Court of Appeals’ opinion portrayed it. *See SMB*, 2025 COA 25M, ¶ 44. The General Assembly provided funding only for the requirement in C.R.S. § 24-31-902(1)(a)(I) that all local law enforcement agencies in Colorado equip each peace officer with a body-worn camera by July 1, 2023. There is no comparable provision in C.R.S. § 24-31-902(2). Moreover, there have been no appropriations to the body-worn camera fund since 2023. No record is needed to resolve this pure question of statutory interpretation.

The Court of Appeals decided as a matter of law the two statutes were irreconcilably in conflict. *SMB*, 2025 COA 25M, ¶ 46. It said the LEIA must prevail as the more specific and more recent statute. *Id.* The problem is this would be true in all instances, rendering C.R.S. § 29-1-304.5 a dead letter.

There is no conflict between the LEIA and the unfunded mandate statute. Because the General Assembly provided no funding for the purported mandate to provide blurred video to requesters free of charge, C.R.S. § 29-1-304.5(1) directs courts to interpret that language as optional. The unfunded mandate statute does not create an irreconcilable conflict with the LEIA any more than any other statute prescribing rules of statutory construction. If C.R.S. § 24-31-902(2) is read to impose an unfunded mandate on local governments, that mandate “shall be optional on the part of the local government.” C.R.S. § 29-1-304.5(1).

CONCLUSION

The questions presented are of statewide importance, and the Court of Appeals’ judgment is in error. The Court should grant the Petition.

Respectfully submitted this 18th day of June 2026.

OFFICE OF THE CITY ATTORNEY

By: /s/ Luis A. Toro

Luis A. Toro

Senior Counsel

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Boulder*

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2026, a true and correct copy of the foregoing **CITY OF BOULDER’S PETITION FOR WRIT OF CERTIORARI** was filed and served via the Colorado Courts E-Filing System to counsel of record appearing herein.

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