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Certiorari to the Colorado Court of Appeals Case No. 25CA26 Opinion by Dunn, J. Roman, C.J., and Welling, J., concurring Boulder County District Court The Honorable Robert R. Gunning Case No. 2024CV30320	▲ COURT USE ONLY ▲
Petitioner: CITY OF BOULDER, COLORADO, v. Respondent: SMB ADVERTISING, INC. d/b/a YELLOW SCENE MAGAZINE.	Case Number: 2026SC279
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YELLOW SCENE MAGAZINE’S OPPOSITION TO CITY OF BOULDER’S PETITION FOR WRIT OF CERTIORARI	

Certificate of Compliance

I hereby certify that this opposition brief complies with all applicable requirements of C.A.R. 28, C.A.R. 32, and C.A.R. 53, including all formatting requirements set forth in these rules. This brief complies with the applicable word limit set forth in C.A.R. 53(f)(1) because it contains 3,727 words.

s/ Matthew A. Simonsen

Matthew A. Simonsen

Table of Contents

Introduction and Issues Presented.....	1
Statement of the Case.....	2
Reasons for Denying the Petition	5
1. This Court should not entertain Boulder’s invitation to disregard unambiguous statutory language.	5
1.1 As the unanimous division and trial court both held, the CCJRA’s self-limiting fee provision is plainly inapplicable to the Integrity Act.....	5
1.2 Interpretive aids confirm the legislature meant what it said.	8
1.3 Boulder and its amici’s policy arguments fail.....	10
2. The division correctly held that the 1991 unfunded mandate statute cannot usurp the 2020 legislature’s unmistakably mandatory intent.	14
2.1 The division’s holding is narrower than claimed.....	14
2.2 The unfunded mandate statute cannot supersede the 2020 legislature’s clearly mandatory intent.	15
2.3 This case is ill-suited for certiorari review.....	17
Conclusion	18

Table of Authorities

Cases

<i>Adair v. Michigan</i> , 860 N.W.2d 93 (Mich. 2014)	17
<i>City & Cnty. of Denver v. Blue</i> , 500 P.2d 970 (Colo. 1972).....	15
<i>City of Colo. Springs v. State</i> , 626 P.2d 1122 (Colo. 1980).....	16
<i>City of Grand Junction v. Nicola</i> , 2026 CO 55	7
<i>Gessler v. Doty</i> , 2012 COA 4	14
<i>Hessick v. Moynihan</i> , 262 P. 907 (Colo. 1927).....	16
<i>Ion Media Networks, Inc. v. West</i> , 2025 COA 66	12
<i>Jenkins v. Panama Canal Ry. Co.</i> , 208 P.3d 238 (Colo. 2009).....	15
<i>Mook v. Bd. of Cnty. Comm’rs</i> , 2020 CO 12	7
<i>Nat’l Lawyers Guild v. City of Hayward</i> , 464 P.3d 594 (Cal. 2020).....	9
<i>People v. Bell</i> , 2026 CO 28	7
<i>People v. Holland</i> , 708 P.2d 119 (Colo. 1985).....	9

<i>People v. McNichols</i> , 91 Colo. 141 (1932).....	16
<i>People v. Sprinkle</i> , 2021 CO 60.....	5, 9
<i>People v. Trujillo</i> , 114 P.3d 27 (Colo. App. 2004).....	7
<i>SMB Advert. v. City of Boulder</i> , 2026 COA 25M	4-5, 7-8, 10, 14-18

Statutes and Rules

§ 24-31-902, C.R.S. (2025).....	1-3, 6, 10-12, 15
§ 24-72-306, C.R.S. (2025).....	1, 5-7
§ 29-1-304.5, C.R.S. (2025).....	14, 16-17
C.R.C.P. 34	7
Crim. P. 16	7-8, 16

Other Authority

Ch. 110, 2020 Colo. Sess. Laws. 455	2
Ch. 337, 2026 Colo. Sess. Laws 2047	10-11
Hearing on H.B. 24-1460 before H. Judiciary Comm., 74th Gen. Assemb., 2d Sess. (Apr. 23, 2024)	10
<i>Construction and Application of State Prohibitions of Unfunded Mandates</i> , 76 A.L.R.6th 543 (2012)	16

Introduction and Issues Presented

Under the Enhance Law Enforcement Integrity Act (“Integrity Act”) enacted in 2020, law enforcement agencies “shall release, upon request, all unedited video and audio recordings . . . to the public within twenty-one days” for “all incidents in which there is a complaint of peace officer misconduct.” § 24-31-902(2)(a), C.R.S. (2025). After its police officers fatally shot a fleeing 51-year-old woman carrying a toy gun, Petitioner City of Boulder (“Boulder”) refused to release its recordings of the incident to the public, demanding payment of up to \$8,500 from individuals and news organizations, such as Respondent SMB Advertising, Inc. d/b/a Yellow Scene Magazine (“Yellow Scene”).

In a unanimous, published opinion, the court of appeals affirmed the trial court’s declaration that Boulder cannot condition compliance with the Integrity Act on payment of a fee or fulfillment of any other non-statutory requirement. Boulder now seeks certiorari review of two issues:

1. Whether agencies can condition compliance with the Integrity Act’s requirement for expedited public release of certain BWC footage on CCJRA fees authorized by section 24-72-306(1), C.R.S. (2025).
2. Whether the 1991 unfunded mandate statute reflects that the 2020 legislature intended the Integrity Act’s requirements to be optional.

Statement of the Case

The legislature passed the Integrity Act in June 2020, answering widespread calls for policing reform that gained unprecedented momentum as the nation watched recent footage of police officers' murder of George Floyd. Among other reforms, the Integrity Act instituted a statewide mandate for law enforcement agencies to adopt and use body-worn cameras ("BWCs"), created new penalties and other consequences for officers' failure to activate their BWCs, and—central to this case—mandated the prompt public release of all unedited BWC footage and other recordings of any incident following any complaint of police misconduct. *See* S.B. 20-217, ch. 110, sec. 2, § 24-31-902, 2020 Colo. Sess. Laws. 455, 456-59.

In 2024, Boulder received a police misconduct complaint after its officers shot and killed 51-year-old Jeanette Alatorre, an unhoused woman carrying a plastic gun, in broad daylight in a residential area. CF 102, 143-45. Boulder then received a request (from Boulder resident and attorney Daniel D. Williams, who reported police misconduct and now represents Yellow Scene in this case) for all recordings of the incident "pursuant to [section] 24-31-902(2)" of the Integrity Act. CF 67, 102, 143-53. Boulder responded that the cost for these recordings would be \$8,484.00. CF 67, 102, 150-51. Boulder advised that a thirteen-minute request

would cost \$1,425.00 and “footage will only be released if payment is received.” CF 68, 102, 147-50.

Yellow Scene, a local news organization, later submitted a similar request for all recordings of the incident “pursuant to [section] 24-31-902(2).” CF 59-64. This time, Boulder responded that its fee for these recordings would be \$2,857.50 and advised that “we are unable to release anything without payment.” *Id.*

Yellow Scene then filed the underlying action, seeking, among other relief, a declaration that Boulder cannot charge fees for its compliance with the Integrity Act. Alatorre’s daughter later joined the lawsuit, alleging that Boulder likewise insisted upon payment for the footage of her mother’s death, albeit, without ever naming an exact price. CF 28, 102-03 n.2, 175.

After a stipulated expedited procedure, CF 20; *see* CF 33-64, 75-83 (briefing); TR 07/11/24 (argument), the trial court awarded declaratory relief in favor of Yellow Scene, App. 84-97; *accord* CF 101-114. In a detailed 14-page order, Judge Gunning thoughtfully examined the relevant provisions of the Integrity Act and the Colorado Criminal Justice Records Act (“CCJRA”), concluding that “the plain language of the statutes does not authorize Boulder to impose a fee when BWC footage is properly requested under the Integrity Act,” App. 90, and “even if the statutes were deemed ambiguous, application of

interpretive aids fully supports the plain reading,” App. 93. The court addressed and rejected Boulder’s unfunded mandate argument as “unavailing for two reasons”: (1) “the mandate is not unfunded” and (2) “render[ing] Boulder’s obligation to provide BWC footage upon request optional is contrary to the plain and manifest intent of the legislature to make compliance with the Integrity Act mandatory.” App. 96-97. Accordingly, the court declared that “Boulder may not condition its compliance with a qualifying request for BWC footage pursuant to the Integrity Act on the requester’s payment of a fee or fulfillment of any other non-statutory requirement.” App. 97.

In a unanimous, published opinion, a division of the court of appeals affirmed. The division agreed, based on “the plain language of the Integrity Act and the CCJRA,” that the legislature did not intend “to allow a law enforcement agency to condition its compliance with the Integrity Act’s disclosure requirement on the payment of fees.” *SMB Advert. v. City of Boulder*, 2026 COA 25M, ¶ 27. And the division similarly held that this unambiguous interpretation was unaffected by the unfunded mandate statute, concluding that “it’s unclear whether the mandate to release recordings under the Integrity Act is unfunded” and, regardless, “the Integrity Act prevails as the more specific and recent statute.” *SMB*, ¶¶ 42, 48. This petition followed.

Reasons for Denying the Petition

1. This Court should not entertain Boulder’s invitation to disregard unambiguous statutory language.

1.1 As the unanimous division and trial court both held, the CCJRA’s self-limiting fee provision is plainly inapplicable to the Integrity Act.

The proper analysis starts—and ends—with the operative text of both statutes, *SMB*, ¶¶ 6, 27; App. 90-92, which is conspicuously omitted by Boulder, *see* Pet. 1-17. To discern and effectuate the legislature’s intent, courts “look first to the plain language of the statute” and, if clear, “apply it as written.” *People v. Sprinkle*, 2021 CO 60, ¶ 22.

The CCJRA, codified in part 3 of article 72 of Title 24, is a comprehensive open records scheme that explicitly authorizes a custodian to charge fees for criminal justice records “requested pursuant to” the CCJRA:

Criminal justice agencies *may assess reasonable fees*, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and redaction of criminal justice records *requested pursuant to this part 3* and may waive fees at their discretion.

§ 24-72-306(1) (emphasis added).

By its own plain language, section 24-72-306 is inapplicable to the mandatory BWC release provisions in the Integrity Act, which the legislature

codified in article 31—not part 3 of article 72—of Title 24. Unlike the CCJRA, the Integrity Act does not authorize “fees” at all.

Instead, the Integrity Act mandates—with very limited exceptions and no caveat for receiving payment—that “[f]or all incidents in which there is a complaint of peace officer misconduct,” a law enforcement agency “*shall* release, *upon request*, all unedited video and audio recordings of the incident . . . within twenty-one days *after . . . receiv[ing] the request* for release of the video or audio recordings.” § 24-31-902(2)(a) (emphasis added). In the same section, the Integrity Act lists painstakingly narrow exceptions to this requirement, § 24-31-902(2)(b), and imposes its own requirements for the collection and retention of BWC footage, § 24-31-902(1)(a)(I)-(II), (b). Notably absent, however, is any language even suggesting that payment of any fees is a prerequisite to releasing BWC footage.

If the legislature had meant to authorize agencies to condition their public release of BWC footage on the collection of fees, there were several ways it could have done so. It could have codified the Integrity Act’s mandatory BWC release provisions within the CCJRA (part 3 of article 72), cross-referenced the CCJRA’s fee-authorizing provision (section 24-71-306), or added comparable fee-authorizing language to the Integrity Act itself. *See* AB (COA) 11 n.3. At the very least, it could have mentioned “fees” or the “CCJRA” in the Integrity Act. But it

did not. “And just as important as what the statute says is what the statute does not say.” *Mook v. Bd. of Cnty. Comm’rs*, 2020 CO 12, ¶ 35 (cleaned up); see *City of Grand Junction v. Nicola*, 2026 CO 55, ¶¶ 27, 46 (construing silence “not as an oversight, but as a deliberate omission reflecting legislative intent,” and declining to harmonize two provisions “appear[ing] in different articles in [the same] title”).

Unable to spin the operative statutory text, the petition centrally argues that the plain reading “render[s] meaningless [section] 24-72-306(3),” an inapplicable¹ CCJRA-fee exception for Crim. P. 16 discovery materials. Pet. 5. But as the division cogently explained, “[t]hough the exclusion of criminal discovery was implicit in the ‘pursuant to this part 3’ limitation” added in 2008, “subsection (3) was included to explicitly address concerns raised by the state public defender about [*People v.* Trujillo], 114 P.3d 27 (Colo. App. 2004)],” *SMB*, ¶ 33, as “confirmed by testimony before the Senate Committee on Judiciary,” *SMB*, ¶ 34 n.3; see *SMB*, ¶¶ 31-36; AB (COA) 12-14. And it is well-settled that CCJRA fees cannot be assessed for criminal justice records in contexts other than the one specifically carved out by subsection (3). See, e.g., C.R.C.P. 34 (civil discovery); *People v. Bell*, 2026 CO 28, ¶¶ 5, 13, 26-30, 36-39 (appointed defense counsel not

¹ Nor do any other inoperative provisions change the plain meaning of the operative text. See App. 90-92; AB (COA) 14-19; *contra* Br. of CSOC 5-11; Br. of CML 9.

required to submit CCJRA request or pay CCJRA fees for non-Crim. P. 16 discovery).

Thus, as every judge to consider this issue has unanimously determined, the statutory text is unambiguous: the CCJRA’s fee-authorizing provision does not apply to the Integrity Act, which plainly compels—without any regard to fees—the prompt release of unedited BWC footage and other recordings for every incident of alleged police misconduct. *See SMB*, ¶¶ 6, 27; App. 90-92, 97.

1.2 Interpretive aids confirm the legislature meant what it said.

Because the statutory text leaves no room for debate, the division stopped there. *SMB*, ¶¶ 16, 37-38. Though the trial court agreed, it also determined that “even if the statutes were deemed ambiguous, application of interpretive aids fully supports the plain reading.” App. 93. As the trial court reasoned (and Boulder ignores), each interpretive aid reinforces that the only reasonable interpretation is the correct one, *i.e.*, that Boulder and other agencies must release qualifying BWC footage irrespective of any payment:

- The Integrity Act’s overriding purpose was to drastically “enhance integrity, transparency, and accountability in policing.” App. 93; *see* AB (COA) 22-23.

- The Integrity Act was passed in response to widespread bipartisan calls for policing reform in the wake of the deaths of George Floyd and Elijah McClain at the hands of police. *See* App. 93 (“Boulder does not dispute that . . . the circumstances surrounding its enactment . . . support the conclusion that the legislature did not intend to allow agencies to charge fees for compliance with the Act.”); AB (COA) 23-24.
- Legislative history amply confirms that Integrity Act fees were not intended, including (1) the absence of any “conceivable payor of fees” before the Integrity Act was amended in 2021, App. 94; (2) fiscal notes to SB 20-217 that contemplated no fee revenue to offset projected compliance costs, *see, e.g., Nat’l Lawyers Guild v. City of Hayward*, 464 P.3d 594, 606 (Cal. 2020) (similarly relying on contemporaneous “bill analysis suggest[ing] the bill as amended would not cover redaction costs”); and (3) an Integrity Act co-drafter and -sponsor’s uncontradicted floor statements in 2024 confirming that Integrity Act fees were never intended, *People v. Holland*, 708 P.2d 119, 120-21 (Colo. 1985) (“[S]ubsequent legislative declarations concerning the intent of an earlier statute are . . . entitled to significant weight.”); *Sprinkle*, ¶ 22 (statement

by “a bill’s sponsor” is “powerful evidence of legislative intent”); *see* AB (COA) 24-28.²

- While “the public release of BWC footage promptly after a police misconduct claim” enhances the Integrity Act’s goals of “accountability and public transparency,” “the imposition of significant fees as a predicate for public release thwarts these twin objectives.” App. 93; *see* AB (COA) 28-30.

1.3 Boulder and its amici’s policy arguments fail.

The division properly declined to weigh policy concerns best left to the legislature, not the courts. *SMB*, ¶ 38. Tellingly, the legislature declined to abrogate the division’s ruling or authorize fees when it recently amended the exact provision at issue here—section 24-31-902(2) of the Integrity Act—more than a month after the division’s published opinion was announced on April 9, 2026. *Cf.* S.B. 26-190,

² Hearing on H.B. 24-1460 before H. Judiciary Comm., 74th Gen. Assemb., 2d Sess. (Apr. 23, 2024) (statement of Rep. Herod), <https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20240423/-1/15979?mediaStartTime=20240423160438&mediaEndTime=20240423160520&viewMode=3&globalStreamId=4> (audio from 4:04:38 to 4:05:20 p.m.); *see also* App. 94-95, 95 n.6 (citing CF 37 nn.2-3).

ch. 337, sec. 3, § 24-31-902, 2026 Colo. Sess. Laws 2047, 2048-49 (introduced May 4, 2026; enacted June 3, 2026).³

Even if this Court could reweigh the legislature’s policy judgments, Boulder and its amici overstate the costs of compliance. Contrary to Boulder’s suggestion, blurring is not required (or even allowed) *whenever* privacy concerns may be implicated; it is appropriate only to address “substantial privacy concerns for criminal defendants, victims, witnesses, juveniles, or informants” in the limited circumstances specifically enumerated by the Integrity Act. *Compare* § 24-31-902(2)(b)(II)(A), *with* Pet. 7 (selective quote). Indeed, though not at issue on appeal, Yellow Scene specifically challenged Boulder’s indiscriminate use of blurring well beyond what the Act authorizes. *See* CF 117, 119-21 (first footage provided by Boulder blurred and muted *all* video and audio for six minutes surrounding Alatorre’s death).

³ This new legislation is the latest of several iterative changes to the Integrity Act considered or adopted since 2020. It breaks section 24-31-902(2)(a) into multiple subsections, alters timelines for releasing footage depicting death, and makes other adjustments not meaningfully affecting this case. For clarity, this brief refers to the same, albeit now outdated, version of the statute considered by the division and trial court. *Accord* Pet. 1-17. But the fact that this statutory text is no longer current—and may very well continue to evolve—further militates against certiorari review.

Blurring is also far less resource-intensive than suggested. The legislature reasonably presumed that agencies carefully review footage of alleged misconduct irrespective of any request to release that footage. Despite complaining that compliance will be expensive, Boulder has never pointed to any specific expense or articulated how much it costs. *See infra* § 2.3. And Boulder and its amici elide that most human-hours purportedly spent on blurring can be outsourced to artificial intelligence at a nominal cost. *See, e.g.,* Br. of CFOIC & ACLU (COA) 15-17 (BWC software used by Boulder and vast majority of Colorado agencies offers AI-powered blurring for \$39 monthly (\$468 yearly) per license).

Amici’s warnings of “unintended consequences” likewise ring hollow, as the “[Integrity Act]-shaped hole” in preexisting general statutes is no wider than plainly intended. Br. of CSOC 6, 10-11. In enacting the Integrity Act’s transparency- and accountability-enhancing reforms, the legislature unmistakably changed the status quo and struck its own balance when addressing privacy rights already subject to general protections, including those specifically raised by amici. *Compare id.* at 10-11 (highlighting “Children’s Code” and statutes governing “mental health services, including civil commitments”), *with Ion Media Networks, Inc. v. West*, 2025 COA 66, ¶¶ 20-24 (rejecting Children’s Code argument), *and* § 24-31-902(2)(b)(II) (requiring blurring or, if insufficient, limited release only to

certain persons (absent a privacy waiver) of “any video that raises substantial privacy concerns for . . . juveniles or [other specified individuals], including video depicting . . . a mental health crisis . . . [or] a minor”).

Finally, Boulder and amici ignore the countervailing policy reasons for not conditioning the release of Integrity Act footage on payment. The unencumbered public release of BWC footage has played a vital role in securing accountability for police misconduct in Colorado. AB (COA) 28-30. And “[a]s this case demonstrates, the imposition of significant fees as a predicate for public release thwarts the[] twin objectives” of the Integrity Act. App. 93. If someone must pay substantial fees before BWC footage is released, the public will rarely see “all unedited video and audio recordings” of alleged police misconduct incidents. Indeed, in their brief below, Boulder’s amici boasted that fees are a highly effective tool in thwarting valid Integrity Act requests, touting “[o]ne large front range city” that successfully avoided 87% of the hours needed to comply with these requests “based on some requesters deciding not to continue their request[s] due to the fees.” Br. of CML et al. (COA) 10. Had the legislature intended such a massive exception to the rule, it would have said so.

For these reasons, certiorari review of Boulder’s first issue should be denied.

2. The division correctly held that the 1991 unfunded mandate statute cannot usurp the 2020 legislature’s unmistakably mandatory intent.

2.1 The division’s holding is narrower than claimed.

Boulder claims that “under [the division’s] analysis, there is no scenario in which [section] 29-1-304.5(1)[, C.R.S. (2025)] would apply.” Pet. 6. But Boulder omits that this statute undisputedly applies with full force to unfunded mandates established “by rule or regulation” of “any state agency.” § 29-1-304.5(1), (3)(d).

The division also did not create any split of authority. *Contra* Br. of CML 11-12 (citing *Gessler v. Doty*, 2012 COA 4). In fact, in 35 years on the books, the unfunded mandate statute has been addressed only twice—and rejected both times for near-identical reasons. *Compare Gessler*, ¶ 14 (“[W]e conclude that section 1-5-505(1) of the [Election] Code and . . . the unfunded mandate statute are in irreconcilable conflict; section 1-5-505(1) is the more specific of the two; and, although section 29-1-304.5 was the later adoption, there is no manifest intent that it should prevail.”), *with SMB*, ¶ 48 (“[L]ike the *Gessler* division, we see no way to harmonize the statutes in a way to give effect to both. Thus, the Integrity Act prevails as the more specific and recent statute.”) (citation omitted).

2.2 The unfunded mandate statute cannot supersede the 2020 legislature’s clearly mandatory intent.

The division correctly held that, “even if we assume . . . the General Assembly didn’t fund the mandate,” *SMB*, ¶ 45, the two statutes are “in irreconcilable conflict” because “the Integrity Act plainly requires disclosure of requested recordings, while the unfunded mandate statute says that compliance is optional,” *SMB*, ¶ 46. Though Boulder claims this conflict can be reconciled, its proposed solution is to make section 24-31-902(2)(a) optional, contrary to the 2020 legislature’s unequivocally mandatory use of “shall.” Thus, under settled precedent, “the Integrity Act—the more recent and specific of the two statutes—prevails over the older and more general unfunded mandate statute.” *Id.* (citing, *inter alia*, *Jenkins v. Pan. Canal Ry. Co.*, 208 P.3d 238, 241 (Colo. 2009)).

To wriggle free from that clear outcome, Boulder tries to constitutionalize the unfunded mandate statute. Below, Boulder claimed the statute was intended to implement the Taxpayer Bill of Rights, *see* OB (COA) 32, but that argument was temporally flawed: TABOR did not exist when this statute was enacted in 1991. Now, Boulder’s petition claims the statute was meant to “avoid constitutional problems” with “home rule jurisdictions.” Pet. 20 (quoting dictum in *City & Cnty. of Denver v. Blue*, 500 P.2d 970, 972 (Colo. 1972)). But this argument fares no better: the unfunded mandate statute does not mention—let alone restrict its

application to—home rule municipalities, *cf.* § 29-1-304.5(3)(b), and this Court has long held that state government “may impose upon municipalities a liability for state or general purposes,” *People v. McNichols*, 91 Colo. 141, 147 (1932) (rejecting home rule challenge to law obligating municipalities to pay for services of state-appointed registrar of vital statistics); *accord City of Colo. Springs v. State*, 626 P.2d 1122, 1127, 1129 (Colo. 1980) (rejecting home rule challenge to statute requiring municipalities to bear “the prospective annual current service costs” of providing “statutorily-mandated benefits” for local firefighters, notwithstanding “significant consequences . . . for the moneys which can be budgeted for purely local and municipal purposes”); *see, e.g.*, Crim. P. 16 (V)(c)(1) (“The prosecution shall not charge for discovery.”).

Boulder’s desire to constitutionalize this statute is also telling. Effective unfunded mandate prohibitions are constitutional, not statutory. *Construction and Application of State Prohibitions of Unfunded Mandates*, 76 A.L.R.6th 543 (2012) (“Most such prohibitions are amendments to state constitutions”); AB (COA) 36 (examples). That is because, as the division recognized, an ordinary statute passed by “one legislature cannot bind the hands of its successors.” *SMB*, ¶ 49 (quoting *Hessick v. Moynihan*, 262 P. 907, 915 (Colo. 1927)) (cleaned up).

2.3 This case is ill-suited for certiorari review.

Even if the “effect (or lack thereof)” of the unfunded mandate statute “presents an important question this Court should decide,” Pet. 14, this case is the wrong vehicle. The trial court did not meaningfully reach this issue, finding that the Integrity Act’s relevant mandate “may arguably be *underfunded*” but “is not *unfunded* so as to trigger [section] 29-1-304.5(1).” App. 97. The division echoed that sentiment—observing that “it’s unclear whether the mandate . . . is unfunded” because “the record is undeveloped on this point”—and simply addressed this issue *arguendo*. *SMB*, ¶¶ 42-45 (“[E]ven if we assume that the grant program doesn’t apply and that the General Assembly didn’t fund the mandate”). Indeed, while an unfunded mandate defense requires the government to “allege and prove the specific amount of the shortfall” in state funding, *e.g.*, *Adair v. Michigan*, 860 N.W.2d 93, 109, 111 (Mich. 2014); *see* AB (COA) 32 n.7, Boulder stipulated there were no material factual disputes, CF 18, did not endorse unfunded mandate as a defense, *cf.* CF 65-72, and offered no proof even after Yellow Scene argued it was required, *e.g.*, TR 07/11/24, 18:19-21 (“We can’t really evaluate . . . because we really don’t know how much this costs.”); *see id.* at 15:22-18:25.

For these reasons, certiorari should be denied as to Boulder’s second issue.

Conclusion

Although this case implicates weighty policy considerations, it is well-settled statutory interpretation principles that yield a consistent, straightforward answer to the issues presented: “the Integrity Act does not allow a law enforcement agency to condition its mandatory obligation to produce requested recordings on the payment of fees” *SMB*, ¶ 6; *accord* App. 97. Because Boulder’s contrary arguments were emphatically rejected by the trial court and a unanimous division of the court of appeals in well-reasoned decisions faithfully applying this Court’s precedents, Boulder’s petition should be denied.

Respectfully submitted,

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Certificate of Service

I hereby certify that on July 2, 2026, a true and correct copy of the foregoing was filed and served electronically via Colorado Courts E-Filing on all counsel of record.

s/ Matthew A. Simonsen

Matthew A. Simonsen