

COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, CO 80203	DATE FILED July 30, 2025 7:24 PM FILING ID: FC5E043332115 CASE NUMBER: 2025CA26 ▲ COURT USE ONLY ▲
Appeal from the District Court of Boulder County, Hon. Robert R. Gunning Case No. 2024CV30320	
Plaintiff-Appellees: SMB Advertising, Inc. d/b/a Yellow Scene Magazine; and Angelica Jeannette Orozco v. Defendant-Appellant: City of Boulder, Colorado	
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BRIEF OF <i>AMICI CURIAE</i> COLORADO FREEDOM OF INFORMATION COALITION AND THE ACLU OF COLORADO IN SUPPORT OF PLAINTIFF-APPELLEE	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28, C.A.R. 29, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the brief contains **4,363** words. I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

s/ Madison S. Lips

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STATEMENT OF INTEREST OF AMICI CURIAE

The Colorado Freedom of Information Coalition (CFOIC) is a nonpartisan alliance of groups, news organizations and individuals dedicated to ensuring the transparency of state and local governments in Colorado. CFOIC advocates for freedom of the press, open courts, and open access to government records and meetings. CFOIC also works to help Coloradans understand and use various methods for obtaining records, including the Enhance Law Enforcement Integrity Act (“ELEIA”).

CFOIC member organizations include groups like the American Civil Liberties Union of Colorado, Associated Press, BillTrack 50, Chalkbeat Colorado, Colorado Association of Libraries Intellectual Freedom Committee, Colorado Bar Association, Colorado Broadcasters Association, Colorado Common Cause, The Colorado News Collaborative, Colorado Newslane, Colorado Press Association, Colorado Press Women, Colorado Public Radio, Colorado Springs Press Association, Delta County Citizen Report, 5280 Magazine, Independence Institute, League of Women Voters of Colorado, Professional Private Investigators Association of Colorado, Rocky Mountain PBS and Colorado Society of Professional Journalists. Members also include news organizations affiliated with the Colorado Press Association and broadcast stations affiliated with the Colorado Broadcasters Association.

The ACLU is a nationwide, non-partisan, non-profit organization with almost two million members, dedicated to safeguarding the principles of civil liberties enshrined in the federal and state constitutions for all Americans. The ACLU of Colorado, with over 45,000 members and supporters, is a state affiliate of the ACLU. The ACLU of Colorado is dedicated to the constitutional rights and civil liberties of all Coloradans and vigorously supports the public's right to transparency in government, which is fundamental to our democracy. The organization has a uniquely strong institutional interest in compliance with the ELEIA and ensuring the ability to hold the government accountable through litigation.

By protecting the freedom of the press, the First Amendment and the Colorado Constitution guarantee the right of the public to be kept apprised of government operations and public affairs. *See Cox Broad Corp. v. Cohn*, 420 U.S. 469, 492 (1975) (“[T]he function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice.”); *see also* U.S. CONST. amend. I (protecting the freedom “of the press”), Colo. Const. Art. II, section 10. In the wake of the deaths of George Floyd, Eric Gardner, and Elijah McClain at the hands of police, the Colorado legislature empowered the media and private citizens to access information about the conduct of public servants authorized to use deadly force,

with the passage of the ELEIA. *See* C.R.S. § 24-31-902(2)(a) (mandating that law enforcement agencies “shall release” unedited video and audio recordings upon request to the public when there is a citizen complaint of police misconduct); *see also Archuleta v. Roane*, 560 P.3d 399, 402 (Colo. 2024) (“When it comes to public records, Colorado law favors transparency.”). This enshrined constitutional and statutory protection loses its meaning if onerous monetary barriers prevent the press and the public from accessing this information in a timely manner, as required by law. Amici have an interest in ensuring the press and the public have real, functional access to public records of alleged police misconduct, as the Colorado legislature intended when it passed the ELEIA.

INTRODUCTION

The ELEIA was passed in 2020 for the purpose of enhancing law enforcement integrity. The bill includes several components, including explicitly eliminating qualified immunity as a defense in lawsuits against law enforcement agencies for state constitutional violations, and requiring officers to wear and activate body-worn cameras when responding to calls for service and investigating possible law violations. §§ 13-21-131, 24-31-902, C.R.S. The ELEIA also requires that all audio and video recordings of a challenged interaction between law enforcement and one or more members of the public be

released to the public within 21 days after a local law enforcement agency, or Colorado State Patrol, receives a request for a copy of such recordings. § 24-31-902(2)(a), C.R.S. This provision plays a fundamental role in ensuring transparency between state law enforcement officers and the public that they serve. When there are allegations of misconduct, the truth can come to light through release of the body worn camera (“BWC”) footage from the incident in question. The principal thrust of this provision of the ELEIA, like all public records laws, is that the People have the right to independently monitor the records reflecting the discharge of official functions by their public servants; the public is not relegated to taking the government’s word for it when it says “our officers acted properly.”

Some law enforcement agencies have, without statutory authorization, begun demanding fees for BWC recordings requested under the ELEIA. Because these fees are often prohibitively high, this practice has substantially hindered the ELEIA’s goal of increasing government transparency in the context of allegations of police misconduct.

Unimpeded access to these records is enshrined in the bill itself, which does not authorize the charging of fees as a condition for members of the public to obtain BWC recordings. This is an intentional legislative act that contrasts with the language in the Colorado Open Records Act (“CORA”) and the

Colorado Criminal Justice Records Act (“CCJRA”), both of which explicitly outline the fees that may be assessed for records retrieval.

In an era of shrinking budgets for news organizations and limited resources for non-profits interested in police accountability, municipalities demanding fees for records of alleged police misconduct significantly hinders the ability of the press, and the public, to hold their local law enforcement agencies accountable, and fundamentally contravenes the purpose of the ELEIA.

The ELEIA explicitly mandates unrestricted access to body-worn camera footage for survivors and the families of victims, many of whom come from lower-income backgrounds and cannot afford even minimal fees, let alone the substantial financial burden that local law enforcement agencies, such as Boulder, are trying to impose on them.

ARGUMENT

I. IMPOSING FEES FOR RECORDS REQUESTED UNDER THE ELEIA DEFEATS THE STATUTE’S LEGISLATIVE PURPOSE BY OBSTRUCTING PUBLIC AND PRESS ACCESS TO INFORMATION CONCERNING POLICE MISCONDUCT.

The ELEIA was passed for the express purpose of increasing law enforcement accountability and transparency. The bill was a direct reaction to the death of George Floyd and the national outcry over the disproportionate levels of violence committed against people of color at the hands of law enforcement

officers.¹

Leslie Herod, one of the bill’s drafters and prime sponsors, expressly stated in June 2020 that the bill sought to “hold law enforcement accountable, and ensure that police officers truly serve and protect us all.”² She directly addressed the issue of whether local governments could charge for producing video footage, stating clearly that they could not:

“....In [ELEIA] we said body cam footage must be released, released unedited, if there is an issue of officer misconduct, to the public. You can't charge for that people. You can't charge the families, 3, 4, \$5,000 for the unedited, unredacted body cam footage...There's no charge. It's unedited, release the footage.”³

Representative Herod’s statements, which constitute expressions of legislative intent, perfectly align with what the District Court has already found in this case: “the imposition of significant fees as a predicate for public release thwarts the twin objectives” of “accountability and public transparency” under the ELEIA. CF 110. This Court can properly rely on this express legislative pronouncement. *See, e.g., Lobato v. People*, 218 P.3d 358, 363-364 (2009) (courts

¹ *See* Press Release, Colorado House Democrats, “Sponsors Introduce Bill to Hold Law Enforcement Accountable” (June 3, 2020), <https://www.cohousedems.com/news/sponsors-introduce-bill-to-hold-law-enforcement-accountable>.

² *Id.*

³ Statement of Rep. Herod at <https://colorado.open.media/sessions/291922?embedInPoint=1&embedOutPoint=35391&shareMethod=link> (video excerpt from 1:04:35-1:05:12).

“may appropriately rely on the legislature’s own pronouncements concerning the meaning of” statutes).

In addition, given the current realities of news organization and non-profit budgets, to say nothing of the finances of individual citizens looking for police accountability, imposing fees causes a substantial financial burden on struggling people and organizations that would translate directly into fewer requests and less accountability. This too defeats the intent of the bill.

The interest of the ELEIA in enabling government accountability and transparency in the context of alleged police misconduct necessarily implicates the freedom of the press and public interest organizations such as the ACLU to serve their government watchdog function. That function has long been recognized and protected under the First Amendment to the U.S. Constitution and Article II, section 10 of the Colorado Constitution. *See New York Times Co. v. United States*, 403 U.S. 713, 826 (1971) (Black, J. concurring) (“The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.”); *see also People v. Ford*, 773 P.2d 1059, 1066 (Colo. 1989) (“The object of article II, section 10 is to ‘guard the press against the trammels of political power, and secure to the whole people a full and free discussion of public affairs’” (quoting *Cooper v. People*, 13 Colo. 337, 362, 22 P. 790, 798 (1889))).

The ELEIA also ensures individual citizens’ ability to hold their public officials accountable, which has been a time-honored tradition in this country as enshrined in other federal and state public records laws. *See, e.g., NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”).

These principles are also central to the purpose of the ELEIA, as articulated in June 2020 by then-Colorado Senate President Leroy Garcia:

Police officers are in a position of public trust and should be held to the highest standard of conduct and accountability. But countless officers have escaped justice – eroding people’s confidence in those responsible for protecting the community. We need to root out those causing this erosion and reform our police transparency and repercussion standards.⁴

Demanding fees for records requests under the ELEIA undermines this fundamental purpose of the law.

A. Charging fees for public records requests hinders news reporters’ and the public’s ability to expose police misconduct.

When law enforcement agencies try to charge fees for records requests, they create a financial hurdle that discourages journalists, advocacy organizations,

⁴ Press Release, Colorado House Democrats, “Sponsors Introduce Bill to Hold Law Enforcement Accountable” (June 3, 2020), <https://www.cohousedems.com/news/sponsors-introduce-bill-to-hold-law-enforcement-accountable>.

survivors and families of victims from accessing these records. This in turn allows law enforcement agencies and officers to evade scrutiny. As Steven Zansberg wrote in his 2016 article titled *Why We Shouldn't Hide What Police Body Cameras Show*, “Policies that deny public access to body-worn camera recordings are fundamentally counter-productive. They defeat the very purpose for deploying the cameras in the first place.”⁵

Reporters’ experiences reflect this reality, as described to CFOIC Executive Director Jeffrey Roberts.⁶ Under the ELEIA, reporters should be able to freely obtain the raw, unedited footage after a complaint of police misconduct has been made. However, Denver Post Managing Editor Matt Sebastian explained that most reporters at the Denver Post are forced to rely on the BWC footage that is voluntarily released by agencies after police shootings because of the current high costs that some agencies are demanding under the ELEIA and other open records statutes.⁷

Jeremy Jojola, investigative reporter at 9NEWS, echoed these same

⁵ Steven D. Zansberg, “Why We Shouldn’t Hide What Police Body Cameras Show,” GOV’G (Aug. 25, 2016), <https://www.governing.com/gov-institute/voices/col-police-body-camera-recordings-transparency.html>.

⁶ Jeffrey A. Roberts, “The legislature made it easier to obtain police bodycam footage in Colorado, but barriers to access remain,” *Colorado Freedom of Information Coalition*, (July 23, 2025), <https://coloradofoic.org/the-legislature-made-it-easier-to-obtain-police-bodycam-footage-in-colorado-but-barriers-to-access-remain/>

⁷ *Id.*

frustrations:

The arbitrary application of body cam costs has a tremendous impact on our ability to see crucial video in how police respond to situations. Putting a high cost on these videos makes it difficult to see how police interact with citizens, especially if there are multiple body cameras. I've had estimates given to me in body cam requests that were very expensive because there is more than one body camera on scene, and I could only afford to pay for one officer's (point of view).⁸

This comment came after 9NEWS was quoted \$4,479.57 for the BWC footage related to a 2024 incident in which the Thornton Police killed 26-year-old Brandon Martinez.⁹

Limiting access to just one officer's body-worn camera (BWC) footage due to financial constraints severely undermines the press's ability to accurately report on incidents of police misconduct. These interactions often involve multiple officers positioned at different vantage points, and each BWC captures a unique perspective. Footage from other officers on the scene may reveal critical details that either contradict or contextualize what is seen in the footage from the officer accused of misconduct. When journalists and members of the public are forced to narrow their records requests to fit within limited budgets, the result is an incomplete—and potentially misleading—picture of events. This compromises the integrity of reporting and deprives the public of the full truth.

⁸ *Id.*

⁹ *Id.*

Joe Vaccarelli, an investigative producer from Denver7, described what would happen if law enforcement were able to charge for releasing video footage, explaining that “our organization would be extremely hampered by high costs to obtain body-worn camera,” and that during his five-year tenure at Denver7, “we have struggled to pay anything more than a few hundred dollars for open records requests, including for body-worn camera (video).”¹⁰ He stated that “having to pay thousands or even hundreds of thousands of dollars would essentially eliminate our ability to obtain these public records.”

Mr. Vaccarelli also described the benefit to his reporting when he *is* able to receive BWC footage in a timely manner. In one instance, his team was reporting on a Colorado Bureau of Investigation (“CBI”) Agent who was being investigated internally after he had mistakenly turned on his body-worn camera during a stakeout and used a racial slur.¹¹ Denver7 made a broad request to CBI asking for the BWC footage of the agent that was subject to a review of any kind from January 1st to June 30th of 2024, and was quoted \$123.47 to obtain the footage.¹² The agency’s reporting led to an investigation and calls for the director to step down.¹³ This situation perfectly illustrates why releasing BWC matters: to

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Tony Kovaleski, Joe Vaccarelli, “CBI insiders allege agent received leniency after racial slur captured on body-worn camera,” *Denver7* (last updated Nov. 27,

increase transparency and ensure that the officers representing the public are doing so in a way that aligns with public values. Providing records of police misconduct at no charge, as is intended by the ELEIA, is crucial to enabling the press to perform this watchdog function.

B. The decline in transparency caused by fees imposed under the ELEIA is exacerbated by the decline of news media budgets.

The imposition of fees on the already financially burdened news media industry will increasingly prevent the local press from accurately and comprehensively reporting on incidents of misconduct that would otherwise be exposed by BWC footage.

News organizations across the country are currently facing serious budget crises. Funding for public media outlets, such as NPR and PBS, has been declining for years – but under the current presidential administration, Congress has entirely eliminated federal funding for these important sources of local and national news for the next two years.¹⁴ In addition, the rise of digital news consumption over print news consumption has caused serious financial challenges for news organizations in the last decade.¹⁵ In this digital world, both

2024), <https://www.denver7.com/news/investigations/cbi-insiders-allege-agent-received-lenieny-after-racial-slur-captured-on-body-worn-camera>.

¹⁴ See David Folkenflik, “How bipartisan support for public media unraveled in the Trump era,” *NPR*, July 18, 2025, <https://www.npr.org/2025/07/18/nx-s1-5469920/pbs-npr-funding-rescission>.

¹⁵ Clara Hendrickson, *Local Journalism in Crisis: Why America Must Revive Its*

public willingness to pay for digital news subscriptions and advertisers' willingness to pay for readers' attention have declined sharply due to competition from new advertising platforms including on Facebook and Google.¹⁶ Those two companies account for 58% of digital advertising revenue nationally, and 77% of digital advertising revenue in local markets, essentially squeezing out local news publishers.¹⁷ Between 2008 and 2013, U.S. newspaper advertising revenue fell by 42%.¹⁸ Over the next five years, the industry experienced an additional 44% decline, resulting in a total 68% decrease in its primary source of revenue over just 10 years.¹⁹ The decline in newspaper advertising revenue has continued steadily since then.²⁰

The lack of government and advertiser funding for the press has severely impacted the ability of news and media sources to disseminate information to the public, particularly at the local level. This in turn has reduced local communities'

Local Newsrooms, Brookings Institution, Nov. 12, 2019, <https://www.brookings.edu/wp-content/uploads/2019/11/Local-Journalism-in-Crisis.pdf>.

¹⁶ *Id.* at 11.

¹⁷ *Id.*

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ Michael Lipka and Elisa Shearer, "Audiences are declining for traditional news media in the U.S. – with some exceptions," *Pew Research Center*, (Nov. 28, 2023), <https://www.pewresearch.org/short-reads/2023/11/28/audiences-are-declining-for-traditional-news-media-in-the-us-with-some-exceptions/>.

capacity to hold their local public officials accountable.²¹ Charging fees for records of police misconduct under the ELEIA will only decrease local news organizations' ability to report on the issues in this time of budgetary crisis, further contributing to the decline in accountability for local law enforcement officials.

C. As technology tools become increasingly advanced, law enforcement agencies' justifications for imposing fees based on costs become less compelling.

As Appellants have done in this case, law enforcement agencies frame their justification for the imposition of fees as necessary given the alleged expenses of time and labor required to sort through video footage and redact sensitive information. This argument is becoming less and less compelling as advanced technology and AI-assisted processing become increasingly sophisticated. Furthermore, many law enforcement agencies of all sizes across the state *have* issued blurred BWC footage in response to requests under the ELEIA without charging fees.²² The fact that these agencies have been able to

²¹ *Id.*

²² These recordings were published by the law enforcement agencies directly to their public websites, which in several cases were republished by news media. *See, e.g.,* “Bodycam Footage Released in Colorado Springs Police Shooting of a Minor,” *Gazette* (Jan. 5, 2024), https://gazette.com/news/public-safety/police/bodycam-footage-released-in-colorado-springs-police-shooting-of-a-minor/article_26903e38-ac40-11ee-acbf-07a457e7bfcf.html (Colorado Springs Police Department releases BWC footage with 16-year-old’s face blurred); “Central High School Incident Update,” *WesternSlopeNow* (May 2, 2024),

use current technology to redact BWC footage without complaint and in compliance with the statutory mandate, demonstrates that agencies like the Boulder Police Department can do the same without disastrous budgetary consequences. And if Boulder or other municipalities want to seek funding from the legislature to review video footage before release, they are free to engage in the democratic process to do so.

Significantly though, there are currently numerous existing programs that automatically blur faces on video footage and are targeted towards law enforcement agencies, including SecureRedact, Axon Redaction Assistant, Caseguard Redaction Studio, and Reduct. Like many law enforcement agencies

<https://www.westernslopenow.com/video/central-high-school-incident-update/9658783/> (Mesa County Sheriff's Office released BWC footage with minors' faces blurred after Central High School Incident); "Body cam: Loveland Police officers sued after arrest of teen, tasing of father," *9NEWS, YouTube*, (June 15, 2022), <https://www.youtube.com/watch?v=liUfEpyeAwE>; "House party floor collapse in Colorado: Body cam video," *FOX31 Denver, YouTube* (Mar. 3, 2022), <https://www.youtube.com/watch?v=iYiJ3hB5uhU> (Arapahoe County releases BWC footage of floor collapse incident with faces blurred); "Colorado State Patrol body camera footage of removal of student from state House of Representatives," *The Denver Post, YouTube* (Apr. 6, 2023), https://www.youtube.com/watch?v=FKC_PTzZ3-o (Colorado State Patrol releases BWC footage with faces blurred); "Bodycam: Colorado Deputies Tase 16-Year-Old Girl After She Allegedly Tried to Bite Cops," *Law&Crime Network, YouTube* (Jan. 23, 2024), <https://www.youtube.com/watch?v=GVXPmkAuCIA> (Custer County releases BWC footage with 16-year-old's face blurred); "Body-Camera Footage - Officer-Involved Shooting on June 1, 2023," *Aurora Police, YouTube* (June 9, 2023), <https://www.youtube.com/watch?v=eK1FQGqCeO8> (Aurora Police Department releases BWC footage with blurred faces).

in Colorado, the Boulder Police Department uses Axon. In a “Plans and Pricing” brochure for Axon from 2018, it advertises its “Automated Video Redaction Tools” that will “save time and money when it comes to responding to FOIA requests-an important performance metric for a task that is likely to become more common as body-worn video proliferates.”²³ This service was offered under their pro-plan at a mere \$39 user/month. A South Carolina State Government Procurement document showed that the state spent \$4,680/year for 10 PRO User Licenses with Axon Software.²⁴ The PRO User Licenses encompass full system management in addition to redactions. Increasingly, redaction software is being bundled into the general offerings for law enforcement evidence management tools.

There are also many generally used digital platforms that offer similar blurring services. YouCam Video, CapCut, InShot, PowerDirector, AVCLabs Video Blur AI, Filmora, Movavi video Editor, VSDC Free Video Editor, Runway ML, Veed.io, and Flixier are all readily accessible and offer some form of blurring service for images and videos. In this age of powerful emerging

²³ Axon Enterprise, *Axon Plans & Pricing*, Dep’t of Corr. & Rehab., State of Hawai‘i Feb. 2019, <https://dcr.hawaii.gov/wp-content/uploads/2019/02/AXON-PLANS-PRICING.pdf>

²⁴ South Carolina Division of Procurement Services, Lot 1: Axon Pricing (May 2019), <https://procurement.sc.gov/files/attach/Lot%201%20Axon%20Pricing.pdf>.

technologies directly addressing video review, the redaction of videos has never been more simple or financially accessible.

Despite the stated justification of costs to law enforcement agencies, research shows that some government agencies also charge fees for open records requests as a tool to address budget shortfalls, protect corporate and state interests, and hide politically sensitive information.²⁵ Public officials know they are dealing with an inversely proportional equation: as the cost of requests rises, the rate of requests decreases. Thus, public officials can use fees for records requests to price people out of their own right to public accountability and transparency. This is supported by a study published by the journal *Information Polity* that looked into the price tags associated with access to public information.²⁶ The study confirmed that respondents are less likely to put in a request for public records as the cost of doing so increases, that people are less satisfied with a process that imposes more costs, and that people consider that process to be less fair.²⁷

Ignoring the ELEIA's lack of authorization for fees, some local law enforcement agencies have taken the liberty of demanding shockingly exorbitant

²⁵ Adam Ingrams, Willem Kaufmann & David Jacobs, *Citizen Requests and the Price of Public Information: An Experimental Test*, 28 Info. Pol'y 239 (2023), <https://doi.org/10.3233/IP-220054>.

²⁶ *Id.*

²⁷ *Id.*

fees, without providing any legitimate justification. For example, a civil rights attorney with the law firm Newman-McNulty was quoted a total estimate range of \$6,825-\$13,650 by the Douglas County Sheriff's Office for BWC footage related to an incident of police misconduct.²⁸ Deputies in Douglas County are paid a starting salary of \$82,148 yearly, or \$6,846 monthly.²⁹ It is hard to imagine that a request for BWC footage associated with one incident of police misconduct costs the agency the equivalent of one to two months of full-time deputy work.

Whether this pricing strategy is intended to decrease police accountability or not, demanding fees under the ELEIA defeats and contradicts the legislative purpose. The financial interests of the government, which are only becoming less compelling in this era of AI-assisted processing, therefore do not outweigh the risks of the perverse incentive to avoid law enforcement transparency.

II. THE GENERAL ASSEMBLY'S 1991 LEGISLATIVE ENACTMENT OF C.R.S. § 29-1-304.5 CANNOT RESTRICT THE ABILITY OF THE 2020 GENERAL ASSEMBLY TO ENACT A LAW INTENDED TO PROMOTE TRANSPARENCY, INTEGRITY, AND ACCOUNTABILITY IN STATEWIDE LAW ENFORCEMENT.

²⁸ Jeffrey A. Roberts, "The legislature made it easier to obtain police bodycam footage in Colorado, but barriers to access remain," *Colorado Freedom of Information Coalition*, (July 23, 2025), <https://coloradofoic.org/the-legislature-made-it-easier-to-obtain-police-bodycam-footage-in-colorado-but-barriers-to-access-remain/>

²⁹ See "Salary Information," Douglas County Sheriff, accessed July 16, 2025, <https://joindcso.com/salary-and-benefits/>.

Amici agree with Yellow Scene that the ELEIA does not create an unfunded mandate and that Boulder provided no evidence whatsoever of the amount of its alleged underfunding or any steps it took to seek to obtain state funding for the review of BWC footage in cases involving allegations of police misconduct. Even if the ELEIA did require a municipality to potentially use some resources to review video footage at certain times, the 30-year-old statute often referred to as the unfunded mandate statute, C.R.S. § 29-1-304.5, cannot overcome the mandatory, clear intent of the subsequently-enacted ELEIA. The legislature is constitutionally permitted to require police departments to release video footage without charging substantial fees to members of the public. Nothing that the legislature enacted in 1991 can prevent the legislature today from enacting sound public policy that has some incidental or even material burdens on local governments.

The City of Boulder's (along with its amici's) interpretation of the unfunded mandate statute conflicts with established case law and seeks to prevent all future legislatures from enacting necessary laws, contrary to basic democratic principles and our constitutional structure. *See Goebel v. Colorado Dep't of Institutions*, 764 P.2d 785, 802 (Colo. 1988) (holding that language in statute that general assembly "shall appropriate" funds was necessarily precatory because "one legislature cannot bind future legislatures with respect to

appropriations”). Notably, Boulder does not identify any case since the passage of the unfunded mandate statute in 1991 that has restricted the legislature’s ability to enact legislation that requires action by or imposes costs on local governments.

The members of the General Assembly that the citizens elect today are permitted to make decisions about the current needs of the people of Colorado. Those decisions cannot be supplanted by local government officials who may decide that state appropriations are insufficient to meet the jurisdiction’s financial needs. If Boulder wants to seek funds from the legislature to assist with various government functions, it can certainly do so. And while its amici raise the specter of the constitutional prohibitions of TABOR (Brief of *Amicus Curiae* CCI, p. 19-20), if Boulder wants to prohibit the State from imposing requirements on local governments that may involve some costs or expenditure of resources, it must seek a constitutional prohibition on the General Assembly’s power. *See, e.g.*, (addressing Michigan constitutional amendment).

This Court should reject Boulder’s attempt to apply the unfunded mandate statute to avoid adhering to the clear statutory intent of the ELEIA. Local jurisdictions do not have what would amount to a veto power over state legislation requiring them to act in the public interest, even when doing so might impose certain costs.

CONCLUSION

For these reasons, along with those identified by Appellee, this Court should uphold the decision of the District Court and find that imposing fees for records requests under the ELEIA is not authorized by the statute.

Dated: July 30, 2025

Respectfully submitted,

s/ Madison Lips

Attorney for CFOIC

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2025, a true and correct copy of the foregoing **BRIEF OF *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE** was electronically filed and served via Colorado Courts E-Filing on the following counsel of record:

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