COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, CO 80203	DATE FILED July 30, 2025 11:57 PM FILING ID: B9BDA8CABF5E3 CASE NUMBER: 2025CA26
Appeal from Boulder County District Court The Honorable Robert R. Gunning Case No. 2024CV30320	
Plaintiff-Appellee: SMB ADVERTISING, INC. d/b/a YELLOW SCENE MAGAZINE, v. **Defendant-Appellant:** CITY OF BOULDER, COLORADO.	▲COURT USE ONLY▲
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ANSWER BRIEF

Certificate of Compliance

I hereby certify that this answer 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:

This brief complies with the applicable word limits set forth in C.A.R. 28(g). It contains 8489 words.

This brief complies with all other requirements of C.A.R. 28 and C.A.R. 32. It contains, under a separate heading before discussing each issue, a concise statement of (1) the applicable standard of review with citations to authority; and (2) whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

s/ Matthew A. Simonsen
Matthew A. Simonsen

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Introduction and Statement of Issues

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. 2024. After its police officers fatally shot a fleeing 51-year-old woman carrying a toy gun, Appellant City of Boulder ("Boulder") refused to release its recordings of the incident to the public, demanding payment of as much as $8,500 from individuals and news organizations who requested Boulder's compliance with the new law. Appellee SMB Advertising, Inc. d/b/a Yellow Scene Magazine ("Yellow Scene") then sued Boulder, ultimately obtaining a declaration that Boulder cannot condition its compliance with the Integrity Act on "payment of a fee or fulfillment of any other non-statutory requirement." CF 114, 202.

Boulder appeals the declaratory judgment, raising two issues:

1. Whether law enforcement 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).
2. Whether the 1991 unfunded mandate statute reflects that the 2020 legislature intended the Integrity Act's requirements to be optional.

Statement of Case and Facts

1. The Integrity Act

The legislature passed the Integrity Act in June 2020, answering the 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 all local and state law enforcement agencies to adopt and use body-worn cameras ("BWCs"), created new penalties and other consequences for police 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.

As amended in 2021, subsection 902(2)(a) of the Integrity Act provides:

> (2)(a) For *all incidents in which there is a complaint* of peace officer misconduct by another peace officer, a civilian, or nonprofit organization, through notice to the law enforcement agency involved in the alleged misconduct, the local law enforcement agency or the Colorado state patrol *shall release*, upon request, *all unedited video and audio recordings of the incident*, including those from body-worn cameras, dash cameras, or otherwise collected through investigation, *to the public within twenty-one days* after the local law enforcement agency or the Colorado state patrol received the request for release of the video or audio recordings.

§ 24-31-902(2)(a) (emphasis added).[1] Additional requirements and exceptions to subsection 902(2)(a)'s general requirement to release "all unedited video and audio recordings of the incident . . . to the public within twenty-one days" are then listed in subsection 902(2)(b), *see* CF 104-05 (quoting same in full), such as earlier deadlines for law enforcement to notify or release footage to affected individuals in certain contexts, *e.g.*, § 24-31-902(2)(b)(I) (family of deceased victim). This list includes two exceptions to address "substantial privacy concerns" of individuals other than police, either with limited "blurring" of video "still allowing public release," § 24-31-902(2)(b)(II)(A), or "[i]f blurring is insufficient," with advance release to the victim or their family and notice to the "person whose privacy interest is implicated . . . of his or her right to waive the privacy interest," § 24-31-902(2)(b)(II)(B); *see also* § 24-31-902(2)(b)(II)(C) (agencies cannot "withhold release to protect [any] privacy interest" waived in writing). The third and final

[1] In 2021, the legislature amended subsections 902(2)(a) and (b) of the Integrity Act to (1) change the triggering condition for the public release of BWC footage from a "complaint of misconduct" to a "request for release of the video or audio recordings"; (2) delete the option to "redact," leaving only the possibility of "blurring," footage that "raises substantial privacy concerns" for specified individuals (not including law enforcement) who decline to consent to the release of unblurred footage; and (3) clarify that "[t]his subsection (2)(b)(II)(A) does not permit the removal of any portion of the video." H.B. 21-1250, ch. 458, sec. 2, § 24-31-902(2), 2021 Colo. Sess. Laws 3054, 3056-57; *accord* CF 103 n.3.

exception allows video "that would substantially interfere with or jeopardize an active or ongoing investigation" to "be withheld," provided "that the video shall be released no later than *forty-five days* from the date of the allegation of misconduct" (or, in traffic cases, as directed by "rule 8") along with the prosecuting attorney's "written explanation" to the public "of the interference or jeopardy that justifies the delayed release." § 24-31-902(2)(b)(III) (emphasis added).

2. This Case

Boulder received a police misconduct complaint after its police officers shot and killed Jeanette Alatorre in broad daylight in a residential area of Boulder. CF 102, 143-45; *see* OB 2 (citing CF 128-32). 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 26, 67, 102; *see* CF 143-53. Boulder officials responded that the cost for these recordings would be $8,484.00. CF 27, 67, 102, 150-51. Boulder advised that a narrower request (limited to thirteen minutes of footage) would cost $1,425.00 and that "footage will only be released if payment is received." CF 27, 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 24, 59-

64, 102. 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." CF 27, 59, 62, 102.

Yellow Scene then filed the underlying action for mandamus and declaratory relief, seeking, among other things, a declaration that Boulder cannot charge fees for its compliance with the Integrity Act. CF 1-8, 102. 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. While Alatorre's daughter sought only mandamus, declaratory relief was undisputedly needed to fully resolve Yellow Scene's broader controversy with Boulder, as it was unrefuted that Yellow Scene "seeks access to BWC video and related video evidence of police encounters as part of its newsgathering efforts," CF 31, "anticipates . . . seek[ing] video pursuant to Section 902(2)(a) of the Integrity Act in the future when other complaints of misconduct are filed," *id.*, and cannot afford "to pay thousands of dollars . . . each time a potentially newsworthy incident of alleged police misconduct occurs," CF 28; *see also* CF 68, 70, 102 n.1, 103.

The parties jointly requested, and the district court granted, an expedited hearing on Yellow Scene's declaratory judgment claim. CF 20. After briefing and

oral argument, CF 33-64, 75-83; TR 07/11/24, the district court issued a detailed written order entering declaratory relief in favor of Yellow Scene, CF 101-14. In so doing, the Court thoroughly examined the relevant provisions of the Integrity Act and the Colorado Criminal Justice Records Act, §§ 24-72-301 to -309, C.R.S. 2024 ("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," CF 107, and further reasoning that "even if the statutes were deemed ambiguous, application of interpretive aids fully supports the plain reading," CF 110. The Court addressed and rejected Boulder's unfunded mandate argument as "unavailing for two reasons": (1) "the mandate is not unfunded" and (2) "interpreting the statutory provisions to render 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." CF 113-14. 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." CF 114.

After Yellow Scene and Alatorre's daughter moved for summary judgment on the remaining mandamus claim, CF 115-84,[2] Boulder provided substantially all the requested footage without charge, and the parties agreed to dismiss the claim for mandamus relief, CF 199-200. Accordingly, the Court dismissed that claim and entered final judgment on the declaratory claim "as set forth" in the Court's previous order. CF 202-03. This appeal followed.

Summary of Argument

First, the plain statutory language, as the district court concluded, makes clear that agencies lack authority "to impose a fee when BWC footage is properly requested under the Integrity Act." CF 197. In arguing otherwise, Boulder relies on tangential provisions and contrived statutory conflicts, sidestepping the court's true reasoning and the statutory provision central to the underlying declaratory judgment. Indeed, the text of subsection 902(2)(a) of the Integrity Act appears nowhere in Boulder's opening brief. Moreover, several interpretive aids dispel any doubt as to the statute's plain meaning, including the Integrity Act's purpose, circumstances surrounding its enactment, legislative history, and consequences of each party's construction.

[2] Although Boulder claims "[i]t is also undisputed" that it was "required to redact video footage," OB 8, this motion also challenged Boulder's excessive blurring of the limited footage that had been released at the time. *See* CF 117, 119-21.

Second, the unmistakable intent of the legislature here is undisturbed by Boulder's attempt to breathe life into section 29-1-304.5, C.R.S. 2024, an arcane statute that has never been applied in any reported decision in decades since its enactment. The Integrity Act's BWC mandates are not "unfunded," and even if they were, the more specific intent of a subsequent legislature is controlling.

Argument

1. CCJRA fees for "criminal justice records requested pursuant to this part 3" do not apply to the Integrity Act, which independently requires the expedited public release of footage of alleged police misconduct.

1.0 Boulder's preserved arguments are reviewed de novo.

Yellow Scene agrees that this issue is preserved and reviewed de novo.

1.1 By its plain language, section 24-72-306(1) does not apply.

1.1.1 The Integrity Act is codified elsewhere and, without mentioning the CCJRA or making its limited fee provision applicable, mandates public release of certain footage subject to very limited exceptions.

In interpreting statutes, courts "seek to ascertain and give effect to the legislature's intent" and, to do so, "look first to the plain language of the statute." *People v. Sprinkle*, 2021 CO 60, ¶ 22. "If the language is clear, [courts] apply it as written." *Id.*

Based on the plain language alone, the district court properly rejected Boulder's argument that the CCJRA authorizes it to charge fees and, absent such payment, to withhold the public release of all unedited recordings otherwise required by the Integrity Act. The CCJRA, codified in part 3 of article 72 of Title 24, is a comprehensive open records scheme that authorizes civilian requests for criminal justice records, establishes recordkeeping requirements and retention schedules for custodians, and delineates various contexts where custodians must, may, or cannot grant requests for "inspection" of criminal justice records. Section 24-72-306 of the CCJRA, which is titled "Copies, printouts, or photographs of criminal justice records—fees authorized," explicitly authorizes a custodian to charge fees for criminal justice records "requested pursuant to" the CCJRA. In relevant part, that section provides:

> 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. Further, in stark contrast to 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 . . . *to the public* within twenty-one days *after* . . . *receiv[ing] the request* for release of the video or audio recordings." § 24-31-902(2)(a) (emphasis added). Notably absent is any language even suggesting that payment of any fees is a prerequisite to releasing BWC footage—*e.g.*, "shall release, upon request [*and payment of appropriate costs*], all unedited video . . . ." In the same statutory section, the Integrity Act also imposes its own requirements for the collection and retention of BWC footage. *See* § 24-31-902(1)(a)(I)-(II) (specifying when BWC footage must be collected); § 24-31-902(1)(b) (each agency "shall establish and follow a retention schedule for body-worn camera recordings in compliance with Colorado state archives rules and direction").

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. For instance, 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.[3] At the very least, it could have mentioned "fees" or the "CCJRA" somewhere in the Integrity Act. But it did not. "And '[j]ust 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 (alteration in original) (citation omitted).

Accordingly, as the district court concluded, 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.

[3] While the 72nd General Assembly was well aware of the CCJRA, *see* OB 33, it chose to codify section 24-31-902(2)(a) in article 31 of Title 24 instead, at the same time that it codified several other Integrity Act provisions elsewhere in existing statutory schemes, *e.g.*, ch. 110, sec. 3, § 13-21-131, 2020 Colo. Sess. Laws 445, 452-53, and not long after it had added CCJRA provisions expanding public access to internal investigation files, *see* ch. 96, sec. 1, § 24-72-303(4)-(5), 2019 Colo. Sess. Laws 352, 352. And in 2021, the legislature clearly had not forgotten the CCJRA when it adopted numerous "housekeeping" amendments, simultaneously amending the Integrity Act (including section 24-31-902(2)) and other statutes related to law enforcement accountability, including the new CCJRA provision addressing internal investigation files, *see* ch. 458, sec. 20, § 24-72-303(4)(a), 2021 Colo. Sess. Laws 3054, 3069 (eliminating requirement that internal investigation related to "a specific, identifiable" incident of alleged misconduct). But the legislature did not move section 24-31-902(2) to the CCJRA, add any explicit cross-reference to it, or modify section 24-72-306(1)'s unambiguous limitation of fees to records "requested pursuant to this part 3."

1.1.2 The criminal discovery exception was enacted in response to the division's opinion in *People v. Trujillo*.

In its opening brief, Boulder trumpets the exception for criminal discovery in subsection (3) of CCJRA's fee statute as evidence that CCJRA fees may be charged for all other criminal justice records, without exception, under subsection (1). Not so.

As Boulder ultimately acknowledges after pages of exposition, this lone enumerated exception was enacted to abrogate *People v. Trujillo*, 114 P.3d 27 (Colo. App. 2004), *see* OB 24-25, which previously held that section 24-72-306(1)'s authorization of CCJRA fees "can be read in harmony with the requirement of Crim. P. 16(V)(c)," and "[t]hus, an agency is limited to reasonable fees for discoverable materials," 114 P.3d at 31; *cf.* § 24-72-306(3) (clarifying that "this section shall not apply to discovery materials that a criminal justice agency is required to provide in a criminal case pursuant to [Crim. P.] 16"). In the same breath, the legislature clarified that subsection (1)'s authorization of fees was limited to criminal justice records "requested pursuant to this part 3," evidently seeking to curb similar future efforts—like Boulder's here—to extend the CCJRA's fee authorization beyond its intended scope. Ch. 134, sec. 1, § 24-72-306, 2008 Colo. Sess. Laws 428, 428; *see Trujillo*, 114 P.3d at 30-31 (rejecting that section 24-72-306(1) superseded limitations of Crim. P. 16 and, thus, enabled

police department to require "the public defender to deposit $2,145.76 as a prerequisite to [its] production of properly subpoenaed internal affairs records for in camera review").

Consequently, this legislative override is no indication that section 24-72-306(1)'s unambiguous limitation— "requested pursuant to this part 3"—may be rewritten or ignored. In light of the prior decisional law that it abrogated, subsection (3) cannot be fairly read as an exhaustive one-item list, nor is it rendered meaningless merely by applying section 24-72-306(1) as required by its plain terms. Indeed, notwithstanding the lack of express exception for *civil* discovery materials in section 24-72-306, agencies routinely must comply with requests pursuant to C.R.C.P. 34 without obtaining prepayment from their opponents. Accordingly, the 2008 amendments further align with the established understanding that each statutory scheme or rule authorizing a request for a particular record, absent expressly contrary language, operates independently and is governed by its own terms. *See, e.g.*, *Archuleta v. Roane*, 2024 CO 74, ¶ 14 (holding CORA operates independently from C.R.C.P. 34 because "[n]othing in CORA's plain language limits inspection simply because the public entity is being sued by the requester"); *Denver Post Corp. v. Ritter*, 230 P.3d 1238, 1240 (Colo. App. 2009) ("[B]ecause the balancing of competing public and private interests is

resolved differently in other contexts, documents not subject to disclosure under CORA may still be discoverable under other legal mechanisms.") (citing, *inter alia*, CCJRA and C.R.C.P. 34), *aff'd*, 255 P.3d 1083 (Colo. 2011); *Mountain-Plains Inv. Corp. v. Parker Jordan Metro. Dist.*, 2013 COA 123, ¶ 35 (same); *cf. Land Owners United, LLC v. Waters*, 293 P.3d 86, 90 (Colo. App. 2011) (rejecting that state real estate board's "authorizing statute governs this case and mandates disclosures of these files" because "any implied disclosure requirement is expressly subject under [the authorizing statute] to the disclosure provisions of CORA").[4]

1.1.3 Boulder's other efforts to inject nonliteral meaning into "requested pursuant to this part 3" fare no better.

In the proceedings below and this appeal, Boulder argues that the CCJRA and the Integrity Act should be read *in pari materia*. As the district court aptly explained, this doctrine does not support Boulder's interpretation "for two reasons":

> First, although the statutes both govern requests for certain criminal justice records, the statutory language manifests differing intent and

[4] For the same reasons, "requested pursuant to this part 3" is not, as Boulder suggests, merely a substitute for "not requested pursuant to part 2 [CORA]." *See* OB 12-14 (arguing contrived conflict between subsections (1) and (3) of section 24-72-306 should be resolved "by examining the interlocking provisions of CORA and the CCJRA"). Indeed, the CCJRA and CORA are not the exclusive means of obtaining public records. *E.g.*, *Denver Post Corp. v. Ritter*, 230 P.3d at 1240.

> aims. The statutes operate independently of each other. The Integrity Act, enacted in 2020, is set forth in Article 31, part 9 and includes no textual linkage to the CCJRA. This Act is broader in scope than the CCJRA, addressing law enforcement issues beyond public access to criminal justice records. . . .
>
> Second, as Yellow Scene argues in Reply, Boulder's interpretation does not result in a harmonious reading of the two statutes. The absence of a fee provision and the manifest intent of the Integrity Act is to mandate prompt disclosure of BWC footage upon request when a police misconduct claim is filed. Requiring payment of significant fees as a condition of release—in this case thousands of dollars—thwarts this purpose through the application of CCJRA [section 24-72-]306, which by its plain language, is confined to criminal justice records requested "pursuant to this part 3."

CF 108-09.

Objecting to this rationale, Boulder insists that the court improperly "seized on one truly irreconcilable conflict between the [Integrity Act] and the CCJRA" without attempting to harmonize their other provisions. OB 24. However, sections 24-31-902 and 24-72-306 alone unambiguously dispose of the issue in this case—whereas fees may be charged only for "criminal justice records requested pursuant to this part 3," section 24-31-902(2)(a) is codified elsewhere and, without mentioned the CCJRA or fees, expressly requires the expedited public release of BWC footage upon request. Further, even if other CCJRA provisions do not irreconcilably conflict with the Integrity Act, they reveal divergent purposes underscoring why the legislature intentionally kept the Integrity Act's BWC provisions separate. *See, e.g.*, CF 108 (reasoning that CCJRA requests, by

"contrast," are largely "at the discretion of the official custodian"); *Land Owners United*, 293 at 92-93 (tracing origin of CCJRA's discretionary disclosure standard to original CORA provision exempting "investigatory files" from public disclosure).

Indeed, "[w]hen conducting statutory interpretation, [courts] must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination." *People v. Jones*, 2020 CO 45, ¶ 60 (quoting *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 174 (2009)). Although there is little published precedent addressing the Integrity Act to date, divisions of this Court have notably rejected at least two other similar efforts to water down its potent reforms. *See Waugh v. Veith*, 2025 COA 41M, ¶ 21 (rejecting that prevailing defendants may recover costs under general cost-shifting provisions, § 13-16-105, C.R.S. 2024, and C.R.C.P. 54(d), where section 13-21-131(3), C.R.S. 2024, permits discretionary cost award only where plaintiff's claims are determined to be "frivolous"); *Ion Media Networks, Inc. v. West*, 2025 COA 66, ¶¶ 21-22 (rejecting City's argument that Juvenile Code's "prohibition on disclosing certain records involving juveniles trumps section 24-31-902's broad requirements that BWC footage be released").

The individual provisions cited by Boulder are likewise unhelpful in broadening the CCJRA's scope here. Although the CCJRA contains its own

detailed enforcement provision, *see* OB 24, this provision was modeled after CORA's, *see Harris v. Denver Post Corp.*, 123 P.3d 1166, 1174 (Colo. 2005), and the CCJRA notably governs a broader swath—and much higher volume—of records requests. In contrast, the Integrity Act charted new territory with no existing model for several of its transparency- and accountability-enhancing police reforms, including the BWC provisions in section 24-31-902. While Colorado law has ample enforcement mechanisms to obtain compliance with mandatory government duties, *e.g.*, C.R.C.P. 57, 106, the legislature had no track record of specific enforcement issues likely to arise under this particular aspect of its groundbreaking new law that would require any more particularized enforcement mechanism similar to what is found in the CCJRA. Thus, the lack of dedicated enforcement mechanism specifically devoted to subsection 902(2)(a) does not reflect that the Integrity Act's mandatory public release of BWC footage was intended to be read as part of the CCJRA, let alone subject to fees for records "requested pursuant to this part 3."

Section 24-72-305.5 is similarly inapposite here, for three reasons. First, this CCJRA section lacks the explicit limitation found in section 24-72-306(1), so no matter whether *it* applies to BWC footage that must be released to the public under the Integrity Act, the fee-authorizing provision still does not. Second,

notwithstanding the lack of express limitation, section 24-72-305.5 cannot reasonably be read as applying to *all* criminal justice records even if not requested pursuant to the CCJRA, as criminal justice records are routinely produced in criminal and civil discovery without the statements required by section 24-72-305.5(1). Third, the apparent focuses of this section are "booking photograph" websites, § 24-72-305.5(2), and direct mail advertising, § 24-72-305.5(1); *see Lanphere & Urbaniak v. Colo.*, 21 F.3d 1508, 1514-16 (10th Cir. 1994), neither of which are squarely implicated by the Integrity Act's public release of BWC footage. Indeed, the Integrity Act strikes its own privacy balance, such that recordings released to the public cannot be similarly exploited for prohibited solicitation purposes.[5] *Compare* § 24-31-902(2)(b)(II) (requiring "blurring" of

[5] Though raised by Boulder and its amici, *e.g.*, OB 25, it is unnecessary to decide whether, and to what extent, Integrity Act footage can be lawfully used for solicitation purposes here, *see* CF 64, 109. Notably, to the extent footage reveals actionable police misconduct, attorney solicitation (that complies with other restrictions, *e.g.*, Colo. RPC 7.3; § 13-93-111, C.R.S. 2024) helps effectuate the Integrity Act's aims and other provisions, which sought to deter misconduct and enhance accountability by, among other reforms, creating a private right of action with a mandatory fee-shift for prevailing plaintiffs and a contrastingly minimal right of recovery for prevailing defendants. *See, e.g.*, § 13-21-131(3) (creating private right of action with right to recover plaintiff's attorney fees); *Waugh*, ¶ 18. Given the apparently limited utility of this footage for attorney solicitation, Boulder and its amici fail to persuasively explain how "the potential for abuse is clear," OB 25—that is, how attorneys are financially incentivized to spend dozens of unpaid hours obtaining and reviewing free footage of police encounters. Indeed,

most "personal information . . . , including a government-issued identification number, date of birth, address, or financial information"), *with Lanphere*, 21 F.3d at 1514 (emphasizing, in defending constitutionality of prohibition of direct mail solicitation, State's "need to protect the privacy of those charged with misdemeanor traffic offenses and DUI" and bill sponsor's stated concern with public records used to "provide a client base").

1.1.4 The district court's interpretation does not require magic words or turn on the authority explicitly invoked by the requester.

A request to release BWC footage to the public following a complaint of police misconduct is sufficient to trigger the Integrity Act, regardless of the specific words used or authority cited, if any. The Integrity Act simply mandates the release of qualifying BWC footage to the public "upon request" and, by its terms, requires nothing more of the requester. Conversely, no "magic words" can successfully invoke the Integrity Act to obtain anything other than "video and audio recordings," and even those cannot be obtained without a complaint of police misconduct relating to the same incident. *Cf. The Gazette v. Bourgerie*, 2024 CO

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any such incentive would arise only where there is a clear likelihood of revealing police misconduct resulting in significant injury—precisely what the Integrity Act sought not only to expose to the public, *see* § 24-31-902(2)(a), but also to remedy and deter with monetary liability under section 13-21-131(3).

78, ¶ 2 (affirming conclusion that "the CCJRA, not CORA, governed petitioners' records requests" expressly invoking CORA).

The fact that BWC footage can also be requested by other means, including but not limited to the CCJRA, does not alter this conclusion. The Integrity Act and CCJRA are codified in different articles, serve distinct purposes, do not reference each other, and are each sufficiently comprehensive to operate independently without the other. *See, e.g.*, *Archuleta*, ¶¶ 10-14.

The onus is on law enforcement agencies to understand and faithfully adhere to the laws with which they must comply, including the CCJRA and the Integrity Act. Fortunately, the Integrity Act's applicability turns only on two straightforward inquiries: (1) Have video or audio recordings been requested? (2) Is the corresponding incident the subject of a police misconduct complaint?[6] Both

[6] Boulder's interactive online request form illustrates the ease of both inquiries. As of the answer brief's filing, on the initial landing page, Boulder asks, "What type of records would you like to request?," followed by a checkbox for "Body/Vehicle Camera Footage"; then, on page "3 of 5," Boulder asks, "Are you aware of a complaint filed against a police officer of the Boulder Police Department that is related to the incident you are requesting records/data for?" *Boulder Police Department Data and Report Request*, City of Boulder, https://bouldercolorado.gov/boulder-police-department-data-and-report-request (last visited July 30, 2025); *accord* CF 63-64; *see also Shook v. Pitkin Cnty. Bd. of Cnty. Comm'rs*, 2015 COA 84, ¶ 12 n.4 (taking judicial notice of county's website for first time on appeal); *Bennett v. Colo. Dep't of Rev.*, 2024 COA 97, ¶ 29 (taking judicial notice of government website on appeal); CRE 201.

inquiries were clearly satisfied here, where Yellow Scene's request for BWC footage referenced the police misconduct complaint and was made expressly for public release to a media organization pursuant to the Integrity Act. CF 63-64, 109.

1.2 Several interpretive aids confirm the district court's interpretation.

Where, as here, the plain language is unambiguous, no further analysis is needed, and the statute must be applied as written. *Nieto v. Clark's Market, Inc.*, 2021 CO 48, ¶ 12. But where a statute is "reasonably susceptible to more than one interpretation," courts are instructed to "turn to other interpretive aids to discern the legislature's intent." *Id.* at ¶ 13. Those interpretive aids can include the purpose or object sought to be attained by the legislature, circumstances under which the statute was enacted, legislative history, and consequences of a particular construction. *See id.*; § 2-4-203(1), C.R.S. 2024.

The district court concluded, and Boulder does not meaningfully challenge, *cf.* OB 15-18, that each interpretive aid further demonstrates that the only plain reading of the Integrity Act is the correct one—that Boulder and other agencies must publicly release qualifying BWC footage irrespective of any payment. CF 110-12. Though unacknowledged by Boulder, each aid is addressed in turn below.

1.2.1 The purpose of the Integrity Act is promoting transparency and accountability in law enforcement.

The undisputed purpose of the Integrity Act was to drastically "enhance integrity, transparency, and accountability in policing." CF 110. Among several other sweeping reforms designed to accomplish these objectives, the Integrity Act mandates the statewide implementation and usage of body-worn cameras by all public-facing law enforcement officers, along with the prompt public release of "all unedited" footage following a complaint of police misconduct. The legislature's primary motive had nothing to do with raising governmental revenue or balancing law enforcement budgets. Thus, as the district court acknowledged, the Integrity Act's purpose suggests that the legislature did not intend to "condition compliance . . . on payment of a fee not mentioned in the Act." CF 110.

To the extent Boulder relies on the countervailing purposes of the CCJRA and related amendments, the stark contrast further demonstrates why the Integrity Act was *not* intended to engraft the CCJRA. Despite some overlap in subject matter, the statutes serve fundamentally different purposes, as the CCJRA plainly seeks to provide *less* guaranteed access to criminal justice records than the presumptively open access to public records afforded under the Colorado Open Records Act. *E.g.*, *Harris*, 123 P.3d at 1174. And while the Integrity Act's central aim of enhancing transparency and accountability plainly outweighed any

legislative concern for the fiscal impact on local enforcement, *see, e.g.*, § 13-21-131(3), the 2008 CCJRA amendment cited by Boulder principally focused on "criminal justice agencies' budgets," OB 18; *see* H.B. 08-1076, *An Act Concerning Fees for Copies of Criminal Justice Records*, ch. 134, 2008 Colo. Sess. Laws 428; *Land Owners United*, 293 P.3d at 93-94 (citing cases supporting consideration of the "title of a bill . . . in determining legislative intent").

1.2.2 The Integrity Act was enacted in June 2020 following the extrajudicial killings of George Floyd and Elijah McLain.

The circumstances surrounding the enactment of the Integrity Act further reflect that the legislature intended to dramatically enhance transparency and deter police misconduct, no matter the cost. The Integrity Act was passed in June 2020, only a month after the nation first watched the infamous bystander video of Minneapolis police killing George Floyd, and less than a year after Elijah McClain was killed in Aurora, Colorado. Widespread bipartisan calls for policing reform were ringing out across the nation, fueled in part by BWC footage of Elijah McClain's death that Aurora released to the public months earlier. *See Body Worn Camera Regarding the In-Custody Death of Elijah McClain*, YouTube (Nov. 22, 2019), https://www.youtube.com/watch?v=q5NcyePEOJ8; Audra D.S. Burch & Kelly Manley, *Paramedic Sentenced to Five Years in Death of Elijah McClain*, N.Y. Times (Mar. 1, 2024), https://www.nytimes.com/2024/03/01/us/paramedic-

sentenced-elijah-mcclain.html (observing that "the 2019 death of Elijah McClain . . . helped drive the national police reform movement"); CF 110 (noting same). In fact, as the Integrity Act was introduced on the floor of the House on June 3, 2020, protestors could be heard in the state capitol and marched throughout the streets of Denver to demand better accountability for police. *See* CF 110 ("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.").

1.2.3 Legislative history reflects that fees were not intended.

As the district court explained, *see* CF 111-12, the legislative history further demonstrates that the legislature never intended to authorize an agency's collection of fees for its public release of BWC footage. As originally enacted in 2020, there wasn't even a conceivable payor of such fees under the Integrity Act, given that it originally mandated automatic release "to the public" without any request—simply "within twenty-one days after the [agency] received the complaint of misconduct." Ch. 110, sec. 2, § 24-31-902(2)(a), 2020 Colo. Sess. Laws. 445, 448. When the Integrity Act "was amended in 2021 to require a triggering request for information, and thus a potential source of fees, the legislature did not add a fee provision or cross-reference the CCJRA fee-shifting provision." CF 111.

Additionally, in committee hearings and floor debate on S.B. 20-217, the General Assembly heard significant opposition to—and extensively debated how to address—the Integrity Act's increased fiscal burdens on municipalities and the state. The legislature chose to adopt measures to mitigate some, but not all, of these burdens. *See* § 24-33.5-519(1)(a), C.R.S. 2024; ch. 110, sec. 2, § 24-31-902(1)(a)(I), 2020 Colo. Sess. Laws. 445, 446; ch. 458, sec. 18, § 24-33.5-519(2)(c)(I), 2021 Colo. Sess. Laws 3054, 3069. While considering this issue, the legislature declined to include any fee-authorizing provision or other express measure to require payment from the public for the costs of processing BWC footage for public release, despite being well aware of those recurring costs:

> The [Integrity Act] increases workload and costs in several areas for cities, counties, and other local governments that employ law enforcement officers in local law enforcement agencies, as well as for district attorney's offices. These cost drivers include: . . . staff and software to manage video collection, *processing, and public distribution* . . . . Additional staff would be required to manage the camera program, *process and release videos*, and provide technical support and training to law enforcement officers. For an agency requiring 1,000 or more cameras, costs may exceed $3.0 million *per year* on an ongoing basis.

Revised Fiscal Note on S.B. 20-217, at 9-10, 72d Gen. Assemb., 2d Sess. (June 12, 2020), https://leg.colorado.gov/sites/default/files/documents/2020A/bills/fn/2020a_sb217_r4.pdf (paragraph breaks omitted) (emphasis added). Indeed, a similar fiscal note led the California Supreme Court to conclude that its state legislature,

like ours, never intended to "allow agencies to charge for redaction costs" of police BWC footage:

> [A]t least one bill analysis suggests the bill as amended would not cover redaction costs. That analysis noted the amended bill's "fiscal effect" would include "[p]otential costs . . . for workload in redacting nondisclosable electronic records from disclosable electronic records," without mentioning the possibility that public agencies might recover some of those costs by charging requesters for time spent redacting exempt material.

Nat'l Lawyers Guild v. City of Hayward, 464 P.3d 594, 606 (Cal. 2020) (last two alterations in original) (citation omitted).

Finally, as the district court reasoned, one of the Integrity Act's drafters and prime sponsors, Representative Leslie Herod, clarified—with the introduction of H.B. 24-1460 days after Yellow Scene's lawsuit was filed—that the Integrity Act was never intended to authorize agencies to charge fees for releasing BWC footage to the public. CF 111-12. While primarily aimed at broadening whistleblower protections for individual officers, this bill also sought to make explicit under section 24-31-902(2)(a) that a "law enforcement agency shall not charge a fee to the requestor related to releasing the unedited video and audio recordings of an incident." H.B. 24-1460, 74th Gen. Assemb., 2d Sess. § 4 (Colo. 2024), https://leg.colorado.gov/sites/default/files/documents/2024A/bills/2024a_1460_01.pdf. When introducing the bill, Representative Herod explained this was "clean-up

language" and, to her knowledge, only one agency in the entire state—presumably referring to Boulder—was charging fees for BWC recordings based on its "misunderstanding" of the existing law. CF 111 n.3 (citing 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 excerpt from 4:04:38 to 4:05:20 p.m.)). The district court found, and Boulder does not dispute, *see generally* OB 1-37, that "[a]lthough H.B. 24-1460 was not enacted over concern about the broadened whistleblower protections, the legislative history provided to the Court reveals support for the clarifying language and no substantive opposition to this portion of the bill." CF 111-12 (footnotes omitted); CF 112 n.6 (citing CF 37 nn. 2-3).

Accordingly, Representative Herod's uncontroverted statements about this particular "clean-up language" lend further support to the conclusion that the legislature never intended the Integrity Act's public-release requirement to be conditioned on any payment of fees by the public. While "the testimony of a bill's sponsor" is not conclusive, it remains "powerful evidence of legislative intent." *Sprinkle*, ¶ 22 (citation omitted); *see, e.g.*, *id.* at ¶¶ 33-42 (analyzing legislative

history of 2019 amendment to CCJRA and concluding its "legislative history reflects the General Assembly's intent to provide broad access . . . regarding specific types of incidents of alleged officer misconduct"); *Mesa Cnty. Land Conservancy, Inc. v. Allen*, 2012 COA 95, ¶¶ 17-18 (relying on bill sponsors' uncontradicted testimony that bill was intended to clarify, rather than change, existing law); *People v. Holland*, 708 P.2d 119, 120-21 (Colo. 1985) ("While subsequent legislative declarations concerning the intent of an earlier statute are not controlling, they are entitled to significant weight.").

1.2.4 Allowing police to hide unflattering footage behind an insurmountable paywall eviscerates the legislature's clear intent.

As the district court recognized, "the public release of BWC footage promptly after a police misconduct claim enhances accountability and public transparency, two key goals of the Integrity Act." CF 110. In fact, the unencumbered public release of BWC footage has played a vital role in securing accountability for police misconduct in Colorado. Public pressure following the Aurora Police Department's release of BWC footage of Elijah McClain's death not only helped drive the national police reform movement, but also has led to important policy changes in Colorado, *e.g.*, H.B. 21-1251, *Appropriate Use Of Chemical Restraints On A Person*, ch. 450, 2021 Colo. Sess. Laws 2957, and

convictions of three individuals responsible for his death, *e.g.*, Kelley Manley, *Colorado Police Officer Sentenced to Jail in Elijah McClain Death*, N.Y. Times (Jan. 5, 2024), https://www.nytimes.com/2024/01/05/us/elijah-mcclain-randy-roedema-sentencing.html. Since 2020, the public release of BWC footage has proven vital in exposing numerous abuses by Colorado police. *E.g.*, *Body-Camera Footage - Officer-Involved Shooting on June 1, 2023*, YouTube (June 9, 2023), https://www.youtube.com/watch?v=G0uE3llQjMc (fatal shooting of 14-year-old Jordell Richardson by Aurora Police on June 1, 2023); *CSPD releases body camera footage in officer involved shooting*, 11 News (updated Jan. 5, 2024), https://www.kktv.com/video/2024/01/06/cspd-releases-body-camera-footage-officer-involved-shooting/ (shooting of 16-year-old carjacking suspect by Colorado Springs Police in December 2023); *Body cam: Loveland Police officers sued after arrest of teen, tasing of father*, YouTube (June 15, 2022), https://youtu.be/liUfEpyeAwE?si=Xn1RYLrJn77IOM0C&t=688 (arrest of 14-year-old girl and tasing of father by Loveland Police on June 15, 2020); *see* CF 45, 102 n.2, 110.

Conversely, "[a]s this case demonstrates, the imposition of significant fees as a predicate for public release thwarts the twin objectives" of the Integrity Act. CF 110. If someone must pay hefty fees before BWC footage is released to the

public, then the public will rarely see "all unedited video and audio recordings" of alleged police misconduct incidents. Indeed, Boulder's own amici boast that fees are an effective tool in thwarting valid requests pursuant to the Integrity Act, citing an example of "[o]ne large front range city" that successfully avoided 87% of the hours needed to comply with Integrity Act requests "based on some requesters deciding not to continue their request[s] due to the fees." Br. of Amici Curiae Colo. Municipal League et al. 10. Surely, if the legislature had intended to create such a gaping exception to the rule, it would have said so.

2. The 1991 unfunded mandate statute does not alter the 2020 legislature's unambiguously mandatory intent.

2.0 Boulder's preserved arguments are reviewed de novo.

Yellow Scene agrees this issue is preserved and reviewed de novo.

2.1 The Integrity Act is not unfunded.

Boulder contends that the Integrity Act is rendered optional by section 29-1-304.5, which is "commonly referred to as the unfunded mandate statute." *Gessler v. Doty*, 2012 COA 4, ¶ 3. The unfunded mandate statute does not apply, for three reasons.

First, as the district court concluded, the Integrity Act "is not unfunded." CF 113. The legislature appropriated two million dollars for a grant program to aid local governments in complying with the Integrity Act's new BWC requirements.

Id. (citing applicable session laws). Although the program was created to "award grants to law enforcement agencies to purchase [BWCs]," this funding was also expressly available "for associated data retention and management costs," § 24-33.5-519(1)(a). This plain reading is unaltered by the fact that the grant program is mentioned only once in section 24-31-902. *Contra.* OB 28. Similarly, it is inapposite that this appropriation does not mention "staff time for muting audio," OB 29, as the Integrity Act unambiguously allows only "blurring" of "video" and otherwise requires the release of "all unedited . . . audio recordings" without exception, *compare* § 24-31-902(2)(a), (b)(I) (requirements to provide "video and audio recordings"), *with* § 24-31-902(2)(b)(II)(A)-(C), (III) (exceptions applicable to "video"), *and* ch. 458, sec. 2, § 24-31-902(2)(b)(II), 2021 Colo. Sess. Laws 3054, 3057 (eliminating option to "redact" (rather than "blur") video that raises enumerated and substantial privacy concern and specifying that "[t]his subsection (2)(b)(II)(A) does not permit the removal of any portion of the video").

Second, the division should decline to consider Boulder's argument that the Integrity Act is underfunded. Except for unsubstantiated assertions by Boulder's counsel, *e.g.*, OB 30, nothing in the record supports that this appropriation was insufficient to cover the incremental increase in staffing costs that Boulder needed to comply with the Integrity Act's BWC provisions. *See generally* CF 1-236; TR

07/11/24.[7] Nor does the record indicate that Boulder even bothered to apply for grant funding, further belying that the cost of compliance is Boulder's true motivation for resisting compliance with the Integrity Act. And though Boulder's amici purport to offer "quantitative and qualitative data regarding disclosure of BWC footage" and the associated costs, these uncited factual assertions cannot be meaningfully examined or verified, as they are exclusively derived from amici's own unpublished internal "survey of local governments across the state." Br. of Amici Curiae Colo. Municipal League et al. 6 n.1 ("The examples and data in this brief come from those 54 survey responses.").

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[7] Even assuming section 29-1-304.5 provides a potential affirmative defense to compliance with the Integrity Act's mandate, *but see infra* § 2.2, Boulder was required to "allege and prove the specific amount of the shortfall" resulting from the allegedly unfunded mandate, *Adair v. Michigan*, 860 N.W.2d 93, 109, 111 (Mich. 2014) (affirming rejection of unfunded mandate claim under MICH. CONST. art. 9, § 29, due to failure to "produce evidence of specific dollar-amount increases in the costs incurred in order to comply with the [challenged] requirements"); *accord Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 826, 834 (Mo. 2013) ("Evidence that is merely speculative cannot support a finding of an 'unfunded mandate' in violation of [MO. CONST. art. X, § 21.1]."); *cf. Lobato v. State*, 218 P.3d 358, 362-63 (Colo. 2009) (holding local school district plaintiffs "must be provided the opportunity to prove their allegations" of underfunding in violation of "the education clause of the Colorado Constitution"). Proving an unfunded mandate "requires more than simply showing a statute mandates a 'new' or 'increased' activity. There also must be proof that the mandate is indeed 'unfunded.'" *Breitenfeld*, 399 S.W.3d at 833-34 (concluding "record is not sufficient to support" unfunded mandate finding because local government "intervenor failed to prove that these mandates . . . impos[e] increased costs on [intervenor's] taxpayers").

Third, even if Boulder had properly pleaded or introduced evidence that the Integrity Act is underfunded, section 29-1-304.5 applies only to unfunded mandates. *Accord* CF 113. The plain statutory language requires only that the state provide "additional moneys" when imposing a "new state mandate or an increase in the level of service" on local governments and lacks any explicit requirement that such funding is "sufficient" or "adequate." § 29-1-304.5(1); *contra* OB 31. Understandably so, as a sufficiency requirement would allow mandatory state laws to be ignored by local government officials who, in their sole discretion, decide that state funding is inadequate. Indeed, even where the state appropriates sufficient funds to fully defray local governments' costs at the time a new mandate is added, that funding may very well become insufficient years later due to rising or unforeseeable local government costs. Worse, a sufficiency requirement would allow gamesmanship by local governments, which could intentionally incur excessive costs to evade compliance with undesirable state laws. The legislature presumably did not intend such a destabilizing and impracticable result. *See Educhildren, LLC v. Cnty. of Douglas Bd. of Educ.*, 2023 CO 29, ¶ 27 (courts "avoid constructions that would yield illogical or absurd results").

2.2 The unfunded mandate statute does not supersede the clear intent of a subsequent legislature.

Even if the unfunded mandate statute is implicated, it cannot trump the unequivocally mandatory intent of the Integrity Act passed in 2020. Where statutes irreconcilably conflict, "the specific provision prevails over the general provision," and otherwise "the more recent statute prevails even if the General Assembly did not clearly intend it to supplant an existing statute." *Jenkins v. Panama Canal Ry. Co.*, 208 P.3d 238, 241-42 (Colo. 2009).

Here, the two statutes are irreconcilably in conflict. If it applies, the unfunded mandate statute would render the Integrity Act optional, yet section 24-31-902(2)(a) unequivocally requires that agencies "shall release" BWC footage and is accompanied by several other clues this provision was intended to be mandatory. *See, e.g.*, *A.S. v. People*, 2013 CO 63, ¶ 21 ("'shall' is most commonly mandatory in effect") (citation omitted); § 24-31-902(2)(b)(III). This conflict cannot be reconciled without ignoring or changing unambiguous statutory language, which cannot be done. *E.g.*, *Gessler*, ¶ 18 ("They cannot be harmonized."); *A.S.*, ¶ 12 (courts endeavor to reconcile conflicts "[w]hen possible").

Further, the Integrity Act is equally, if not more, specific. The Integrity Act specifically addresses law enforcement agencies' mandatory obligation to release

BWC footage to the public, whereas section 29-1-304.5 generally declares that any new or increased state mandate, regardless of topic, "shall be optional" for local governments unless "additional moneys" are provided. Regardless, to the extent these statutes cannot be "adequately compare[d]" and "are defined by different terms," then "specificity cannot be determined," and the more recent Integrity Act controls. *Jenkins*, 208 P.3d at 242-43; *see, e.g.*, *Ion Media Network*, ¶ 24 (concluding that "the more specific and recent provisions of section 24-31-902 control" in any conflict with Juvenile Code); *Waugh*, ¶ 20 (concluding Integrity Act provision referencing defense costs controls over general costs statute "[b]ecause [it] is part of a more specific and recent statute").

In support of its inexplicable assertion that the unfunded mandate statute's "plain language" somehow enables Boulder to "lawfully condition release of the requested BWC video on the payment of fees," OB 34, Boulder erroneously construes this analysis in three respects. First, though Boulder relies heavily on the legislature's presumed awareness of the unfunded mandate statute when passing the Integrity Act, OB 33-34, such awareness is the very reason "the more *recent* statute prevails" in an irreconcilable conflict not resolved by specificity: "It is because we assume the General Assembly is aware of its enactments, and thus we conclude that by passing an irreconcilable statute at a later date the legislature

intended to alter a prior statute." *Jenkins*, 208 P.3d at 242 (emphasis added). Second, Boulder's recitation of *Gessler* ignores that it involved an *older* election funding statute, raising the specter of a specificity exception inapplicable here, where "the general provision is the later adoption and the manifest intent is that the general provision prevail." *Gessler*, ¶ 13 (quoting § 2-4-205, C.R.S. 2024). And third, Boulder ignores that statutes simply cannot be harmonized where, as here, "the effect of harmonization would be to nullify one of them." *Id.* at ¶ 18 (citation omitted). Indeed, rendering section 24-31-902(2)(a) optional would belie its plain language and deprive it of any practical effect.

To be sure, under the correct analysis, 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. *But see* § 29-1-304.5(1) (also prohibiting unfunded mandates "by . . . any state agency"). No matter how clearly it desired to do so in 1991, the 58th General Assembly could not prohibit future legislation or override the mandatory intent of later general assemblies, at least not without voters' approval to amend the Colorado Constitution. *Cf., e.g.*, FLA. CONST. art. VII, § 18; OR. CONST. art. XI, § 15; N.J. CONST. art. VIII, § II, para. 5; ME. CONST. art. IX, § 21; *Construction and Application of State Prohibitions of Unfunded Mandates*, 76 A.L.R.6th 543 (2012) ("Most such prohibitions are amendments to state

constitutions . . . ."). The unfunded mandated statute necessarily invites irreconcilable statutory conflict, insofar that a "mandate . . . by the general assembly" is characteristically mandatory but, under section 29-1-304.5(1), "shall be optional." These conflicts cannot be harmonized. *E.g.*, *Gessler*, ¶ 18; *contra* OB 30. Binding supreme court precedent rightly requires any such conflict to be resolved in favor of the newer statute, which, as to the specific context that it regulates, will inevitably offer superior evidence of the legislature's true intent. *See Jenkins*, 208 P.3d at 241-43. Tellingly, not one statute has been held "optional" under the unfunded mandate statute in its more-than-30 years on the books. *Cf. Gessler*, ¶¶ 11, 26 (rejecting application of, in only published decision addressing, unfunded mandate statute under *Jenkins*, while expressly declining to reach meritorious alternative argument for same result and "other issues raised by the parties").

Thus, regardless of whether the unfunded mandate statute is implicated, the release of BWC footage under the Integrity Act remains mandatory. Absent explicit statutory authorization, law enforcement agencies cannot name a price for their compliance.

Conclusion

The judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2025, a true and correct copy of the foregoing **ANSWER BRIEF** was filed and served electronically via Colorado Courts E-Filing on all counsel of record.

s/ Matthew A. Simonsen
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