DATE FILED: December 28, 2023 2:40 PM
FILING ID: A67A3A7F2D153
CASE NUMBER: 2023SC70

**COLORADO SUPREME COURT**
2 East 14th Avenue
Denver, CO 80203

Certiorari to the Court of Appeals,
Case Number 2022CA204
Judges Lipinsky, Fox, and Freyre presiding

Archuleta County District Court,
Case Number 2021CV30003
Honorable Jeffrey R. Wilson presiding.

**Petitioner:**

KRISTY ARCHULETA, in her official capacity as the Clerk and Recorder of Archuleta County;

v.

**Respondent:**

MATT ROANE.

Pro Se Respondent:

Matt Roane (Atty. Reg. No. 41018)
MATT ROANE LAW
P.O. Box 957
Pagosa Springs, CO 81147
Tel: (970) 507-7117
E-Mail: mhroane@gmail.com

Case Number: 2023SC70

# ANSWER BRIEF

## I. 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, I certify that:

- The answer brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g). The answer brief contains 4574 words excluding the caption, table of contents, table of authorities, certificate of compliance, proof of service, and signature block.
- The answer brief complies with C.A.R. 28 (a)(1) – (3).

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

Matt Roane
Respondent

## II. TABLE OF CONTENTS

## III. TABLE OF AUTHORITIES

**Colorado Statutes:** **Page(s)**

## IV. ISSUE ANNOUNCED FOR REVIEW

Did the lower courts commit reversible error by allowing a party, who is litigating a civil action against a public entity, to use an open records request to obtain documents relevant to the pending litigation, instead of complying with the rules of discovery as set forth in the Colorado Rules of Civil Procedure?

## V. STATEMENT OF THE CASE

Roane is resident of Archuleta County. (CF, p 2.) On October 20, 2020, he filed suit against the Archuleta County Board of County Commissioners (the Board). In his complaint, Roane sought a declaratory judgment determining that the Board violated Colorado's Open Meetings Law by failing to take minutes of a public meeting (the declaratory judgment case). (CF, pp 51-55.)

Kristy Archuleta serves as the Clerk and Recorder of Archuleta County. (CF, pp 2, 20.) In her official role, Archuleta serves as the custodian of the Board's recordings. (CF, pp 2, 20.)

On December 28, 2020, Roane submitted an open records request to Archuleta seeking the recording of a different Board meeting than the one at issue in the declaratory judgment case (the Recording). (CF, p 4.) Roane made no

secret of the fact though that he wanted the Recording for possible use as evidence in the declaratory judgment case. (CF, pp 8, 9, 56-58.)

In response to Roane's request, Archuleta refused to produce the Recording. She stated that because Roane wanted to use the Recording as evidence in the declaratory judgment case, his only access to the Recording was by means of the discovery process available in that case. She stated access to the Recording under Colorado's Open Records Act (CORA) was prohibited by the Supreme Court's rules of civil procedure as well as the Supreme Court's opinion in Martinelli v. District Court in and for City and County of Denver. (CF, pp 5-6.)

On January 12, 2021, Roane filed suit against Archuleta in the present case seeking access to the Recording under CORA (the CORA case).[1] (CF, pp 1-13.) In the proceeding, Roane moved the district court to require Archuleta to show cause why she should not produce the Recording for Roane's inspection. (CF, pp 26-28.) The district court granted the motion and the parties thereafter submitted written briefs presenting their respective positions on the matter. (CF, pp 29, 38.)

On January 16, 2022, the district court ruled on Archuleta's show of cause (the Order). (CF, pp 117-119.) Therein, the district court rejected Archuleta's

[1] The CORA case was filed separately from the declaratory judgment case to ensure subject matter jurisdiction in the former case. See People in Interest of A.A.T., 759 P.2d 853, 855 (Colo. App. 1988).

interpretation of the law. The district court held, "[t]here is nothing in the record showing that any statute, rule, or court order prohibited [Roane] from making the request made in this case" despite his status as a former litigant against the Board. (CF, p 118.)[2] Accordingly, the district court ordered Archuleta to produce the Recording to Roane within 14 days. (CF, p 119.)

Rather than comply with the Order, Archuleta appealed. (CF, pp 120-224.) As she did in the district court, Archuleta again argued that Roane's status as a litigant against the Board rendered his inspection of the Recording violative of both the Supreme Court's rules and the Supreme Court's opinion in Martinelli. And like the district court, the Court of Appeals rejected Archuleta's position in its entirety. After a comprehensive analysis of Colorado statutes, Colorado caselaw, United States Supreme Court caselaw, federal statutes, foreign states' caselaw, and an opinion issued by the Colorado Attorney General, the Court of Appeals unanimously held that no rule and no court order prohibited Roane from inspecting the Recording despite his status as a former litigant against the Board (the Court of Appeals' opinion is referred to hereafter simply as the "Opinion"). Accordingly, the Court of Appeals affirmed the district court's order directing Archuleta to produce the Recording to Roane. (Opinion, p 29.)

[2] The declaratory judgment case ended on March 30, 2021. (CF, pp 117 fn 1.)

Upon receipt of the Opinion, Archuleta filed a petition for certiorari with this Court seeking review of the Court of Appeal's decision. On October 16, 2023, this Court granted Archuleta's petition and announced the issue for review as follows:

> Whether the lower courts committed reversible error by allowing a party, who was litigating a civil action against a public entity, to use an open records request to obtain documents relevant to the pending litigation, instead of complying with the rules of discovery as set forth in the Colorado rules of Civil Procedure.

Archuleta did not file any associated motion to stay the Opinion.

The declaratory judgment case that prompted the withholding of the Recording has been over for almost three years, and there has never been any dispute in the interim that the Recording is a public record. Nonetheless, Archuleta continues to withhold the Recording from Roane because of his status as a litigant in 2020. To this day, Roane remains the only person in the county who cannot walk into the clerk's office and get the Recording upon request.

## VI. SUMMARY OF ARGUMENT

CORA regulates the inspection and copying of public records by any person, without limitation as to the reasons for which the inspection is undertaken. Martinelli v. District Court In and For the City and County of Denver, 612 P.2d

1083 (Colo. 1980). Such public inspections must be allowed unless the inspection would be contrary to, among other grounds, a Supreme Court rule or court order. See C.R.S. § 24-72-204(1)(c).

In adopting CORA, the General Assembly has expressed its intent that a litigant can use an open records request to obtain evidence from an opposing public entity. The litigant is not limited to the discovery process set forth in Colorado's rules of civil procedure. The General Assembly's expression of intent to this effect is clearly set forth in C.R.S. § 24-72-204(5)(b).

Archuleta argues that the Supreme Court's rules of civil procedure trump the General Assembly's intent and prohibit a litigant from obtaining evidence from a public entity by means of a public records request. Yet, she identifies no rule that says as much. At best, she argues why there should be such a rule, but the *need* for a new rule is not at issue in this case. The parties were tasked with discussing whether there *is* such a rule already in existence. And there is not.

Archuleta next argues that the Supreme Court's decision in Martinelli constitutes an order prohibiting a litigant from obtaining potential evidence by means of a public record request rather than through the discovery process. Unfortunately for all involved, Archuleta has misinterpreted the holding in Martinelli for three years now, grounding her primary defense upon a single quote

conveniently pulled out of context. Simply put, the Supreme Court stated no such prohibition in its decision. The irrelevance of the opinion on the issue presented in this case is laid bare by a thorough reading of the complete opinion.

As stated at the outset, public records are generally available to any person, for any reason, under CORA. Those persons and those reasons include litigants wanting records from public entities for use as evidence in cases between the parties. *Archuleta strives to create the first exemption from disclosure under CORA based upon a person's intended use of the record rather than upon the content of the record.* The Court should not entertain such a drastic change to the fundamental character of CORA and the principle of open government.

## VII. LEGAL ARGUMENT

In its grant of certiorari, this Court asked whether the lower courts committed reversible error by allowing Roane to use an open records request to obtain the Recording from the Board instead of requiring him to comply with the discovery process set forth in Colorado's rules of civil procedure. The answer to that question is "no" for all the reason discussed hereafter. Whether there *should be* a rule prohibiting a litigant's use of a public record request to obtain evidence

from an opposing public entity presents an entirely different question and one the Court has not charged the parties with answering in this forum.

### A. Preservation for Appeal and Standard of Review

Roane agrees with Archuleta's statement concerning preservation of the issues for appeal. (See Opening Brief, p 7.)

Roane disagrees with Archuleta's statement concerning the applicable standard of review. (See Opening Brief, p 7.) Appellate courts review de novo questions of law concerning the construction and application of CORA. Appellate courts review factual findings for clear error and an ultimate conclusion that a CORA exception does, or does not, apply for abuse of discretion. Shook v. Pitkin County Board of County Comm'rs, 411 P.3d 158, 160 (Colo. App. 2015). Neither the district court nor the Court of Appeals committed clear error in determining that the Recording is a public record. Furthermore, neither court abused its discretion in ruling that the Recording was subject to disclosure under CORA.

### B. Colorado's Open Record Act

CORA provides that "the custodian of any public records shall allow any person the right of inspection of such records, or any portion thereof, except on

one or more of the following grounds … such inspection is prohibited by rules promulgated by the supreme court or by the order of any court." C.R.S. § 24-72-204(1)(c).[3] To answer the question whether this statute permits a litigant to use an opens records request to obtain documents from a public entity, the Court's duty is "to effectuate the General Assembly 's intent, giving all the words of the statute[ ] their intended meaning, harmonizing potentially conflicting provisions, and resolving conflicts and ambiguities in a way that implements the legislature's purpose. Harris v. Denver Post Corp., 123 P.3d 1166, 1170 (Colo. 2005).

### C. The Recording is a Public Record

All CORA analyses begin with determining if the records in dispute are "public records" within the scope of CORA's mandatory disclosure provisions. Denver Pub. Co., v. Board of County Comm'rs of the County of Arapahoe, 121 P.3d 190, 195 (Colo. 2005). To that end, the General Assembly has defined public records to "mean[ ] and include[ ] all writings made, maintained, or kept by … political subdivision of the state... for use in the exercise of functions required

[3] CORA also instructs a custodian to deny inspection of public records if inspection would be contrary to subsections (2) or (3) of the statute, state statute, federal statute or regulation, or congressional rule concerning lobbying practices. See e.g., C.R.S. §§ 24-72-204(1), (1)(a), (1)(b), and (1)(d). Archuleta never relied upon these other grounds to justify her withholding of the Recording.

or authorized by law or administrative rule or involving the receipt or expenditure of public funds." C.R.S. § 24-72-202(6)(a)(I).

Roane and Archuleta have never disputed that the Recording constitutes a public record. (CF, pp 3, 21.) The Recording is an audio recording. (CF, pp 2, 20-21.) See C.R.S. § 24-72-202(7) ("writings" include tapes and recordings). Archuleta County is a political subdivision of the state of Colorado. See C.R.S. § 24-72-202(5). The Board admittedly made the Recording to memorialize formal action and policy-making functions it undertook during the Meeting. (CF, pp 2, 20, 21.) Archuleta has since kept the Recording in furtherance of her statutory duty as the Board's official custodian. (CF, pp 2, 21.) See C.R.S. § 30-10-405(1). Clearly, neither the district court nor the Court of Appeals erred in determining that the Recording is a public record that is subject to the disclosure provisions of CORA. (CF, pp 117-119; Opinion, p 3.)

### D. The General Assembly Intends for Litigants to Use Open Record Requests

The General Assembly clearly intends to allow litigants to use an open records request to obtain evidence from public entities they are litigating against. Of course, the right to use an open records request in pending litigation is subject to a specific Supreme Court rule or court order providing otherwise. But absent

such a specific prohibition, the General Assembly intends for the default position to be one guaranteeing a litigant's access to CORA and its record disclosing process despite the availability of the same records via the discovery process under Colorado's rules of civil procedure.

We know the General Assembly's intent on the matter because it has expressly stated it. In C.R.S. § 24-72-204(5)(b), the General Assembly discusses the mandatory award of attorney fees and costs that typically accrue to a citizen that prevails in a CORA dispute. In the subsection, the General Assembly specifically envisions a citizen being involved in a pending lawsuit with a public entity and then filing a separate suit against that entity to force disclosure of records under CORA for use in the pending litigation. The General Assembly describes the scenario as such: "a person who has filed a lawsuit against a state public body or local public body **and** who applies for an order pursuant to subsection (5)(a) of this section for access to the records of the state public body or local public body being sued …." C.R.S. § 24-72-204(5)(b) (emphasis supplied). It is the exact same scenario Roane and Archuleta find themselves in.

Continuing on in subsection (5)(b), the General Assembly expressly presumes the citizen wins the CORA dispute and obtains the disputed public records even though the same records were available to the citizen via the

discovery process in the associated lawsuit: "[N]o court costs and attorney fees shall be awarded … **if the court finds that the records being sought are related to the pending litigation and are discoverable pursuant to chapter four of the Colorado rules of Civil Procedure**." C.R.S. § 24-72-204(5)(b) (emphasis supplied). In such circumstances, the General Assembly only prohibits the award of attorney fees and costs that would otherwise accrue to a person prevailing in a CORA dispute.

Without overstating the obvious, the entirety of C.R.S. § 24-72-204(5)(b) is premised upon the General Assembly intending for litigants to use public records requests to obtain records from public entities even though the same records are available to the litigant via the discovery process. To conclude otherwise would result in the absurd outcome where litigants could not use public records request to obtain relevant evidence but could prevail in CORA disputes to obtain access to the same public records. Interpretations of statutes that result in absurd outcomes must be avoided. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150, 1153 (Colo. App. 1998). CORA must be interpreted to permit a litigant to use a public records request to obtain relevant evidence from a public entity to make any sense of C.R.S. § 24-72-204(5)(b), whatsoever. The only penalty the litigant pays for

using the process under CORA rather than discovery is foregoing a reimbursement of fees and costs incurred in the effort.

In her Opening Brief, Archuleta urges the Court to examine federal courts' interpretation of the Freedom of Information Act (FOIA) to determine what Colorado's legislature intended concerning the interplay of CORA and discovery. (Answer Brief, p. 14.) Such a review would reinforce the interpretation of CORA set forth above, however, the exercise is unnecessary. C.R.S. § 24-72-204(5)(b) provides all the information the Court needs to know to understand the General Assembly's intent for the citizens of Colorado. When a local jurisdiction so clearly expresses its intent, a foreign jurisdiction's treatment of a similar statute is irrelevant. The local jurisdiction's unambiguous statement of *its* intent is the first, final, and only expression of intent that matters.

### E. No Supreme Court Rule Prohibits Roane's Inspection of the Recording

As the record custodian, Archuleta bore the burden of proving an exemption to CORA applied authorizing her withholding of the Recording. Zubeck v. El Paso County Retirement Plan, 961 P.2d 597, 600 (Colo. App. 1998). To that end, she argues in general terms that disclosure of the Recording is prohibited by the rules governing discovery as stated in Colorado's rules of civil

procedure. However, Archuleta never points to a single rule that expressly states as much. Instead, she argues how disclosure of public records under CORA *could* conflict with the rules governing discovery. But again, she never points to an actual rule that resolves a conflict between the two processes in favor of discovery, specifically, or prohibits use of a public records request to obtain evidence, generally. The exemption to disclosure set forth in C.R.S. § 24-72-204(1)(c) requires actual "rules promulgated by the supreme court." Where is the actual rule that says, "a litigant cannot use a public records request to obtain records from a public entity for use in pending litigation"? If one existed, Archuleta certainly would have pointed to it long ago, or the district court or the Court of Appeals would have discovered it themselves. But none of them did because the Supreme Court simply has never promulgated such a rule.

To the extent Archuleta argues that the rules governing discovery of evidence *imply* a rule prohibiting use of a public record request to obtain the same evidence, that exact argument was rejected a long time ago. In People in Interest of A.A.T., 759 P.2d 853 (Colo. App. 1988), the plaintiffs were involved in litigation with the Arapahoe County Department of Social Services (the Department) concerning the termination of parental rights. Id. at 853. During the course of the litigation, the plaintiffs served a CORA request upon the

Department. The request expressly sought records related to the parental rights case at hand. Id. at 854. Exactly like Archuleta, the Department denied the plaintiffs' record request characterizing it as an impermissible discovery request. The Department then sought a protective order from the trial court. Id. Like Roane, the plaintiffs responded that they were entitled to the documents under CORA regardless of their status as litigants against the Department and regardless of the relevancy of the documents to the action pending between them. Id. The trial, however, rejected the plaintiffs' position. The court treated the public record request as a discovery request and granted the Department a protective order against it. Id.

In its opinion, the Court of Appeals first held that the public record request was not a discovery request. "[A]ccess to public records under the Act presents issues distinct from the issue of discoverability of possible evidence for use in litigation." Id. at 855. Any dispute concerning the public record request had to be resolved via the procedure set forth in C.R.S. § 24-72-204(5) and (6) rather than the rules governing discovery. Id. The trial court adjudicating the parental rights case did not even have subject matter jurisdiction needed to address the public records request. Id.

Given the distinct nature of public record requests, the Court of Appeals next held that the plaintiff had to file a second lawsuit against the Department to resolve the public records dispute. The dispute could not be resolved as a part of the parental rights litigation that spawned the request in the first place. Id.

The entire opinion in People in Interest of A.A.T. works to reject Archuleta's position in this case, but the second portion of the opinion is the most damaging. If the Court of Appeals believed that the rules limiting discovery somehow implied a rule that totally excluded a litigant's right to use a public record request to obtain evidence, the Court never would have required the plaintiffs to file a second lawsuit to resolve the CORA dispute. There would have been no need for a second lawsuit because the discovery rules would have invalidated the public record request, altogether. But of course, the Court of Appeals did not hold that. The CORA dispute had to be resolved because the plaintiff's public records request was perfectly permissible despite the contemporaneous availability of the records via discovery. Clearly, the opinion in People in Interest of A.A.T. reveals there is no rule, *express or implied*, requiring CORA to cede to the discovery process.

### F. No Court Order Prohibits Roane's Inspection of the Recording

From the outset of this dispute, Archuleta has seized upon the Supreme Court's decision in Martinelli v. District Court in and for City and County of Denver, 612 P.2d 1083 (Colo. 1980), to defend her withholding of the Recording. Archuleta has also briefly cited to the Supreme Court's decision in City of Colorado Springs v. White, 967 P.2d 1042 (Colo. 1998), but a cursory review of that opinin reveals that it simply regurgitates language from Martinelli without providing any additional relevant analysis. See City of Colorado Springs, 967 P.2d at 1055. Beyond these two opinions, Archuleta has never identified any other court order prohibiting a litigant's access to public records, generally, or Roane's access to the Recording, specifically.

#### i. Martinelli is Not an Order That Prohibits Disclosure of Public Records

CORA prohibits the inspection of a public record if such inspection is prohibited "by the order of any court." C.R.S. § 24-72-204(1)(c). Archuleta considers Martinelli to be such an order, and the Court of Appeals expressly declined to agree or disagree with her on that point. But the Court of Appeals should have. The answer to the issue was contained in Martinelli, itself.

In Martinelli, the Court analyzed the phrase "order of any court" as used in C.R.S. § 24-72-204(1)(c) and explained it was "expressive of the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest." 612 P.2d at 1093. The explanation makes an obvious reference to the considerations and associated order a record custodian can obtain pursuant to the process set forth in C.R.S. § 24-72-204(6). That subsection specifically provides: "If ... disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection ... the official custodian may apply to the district court ... for an order permitting him or her to restrict such disclosure ...." C.R.S. § 24-72-204(6)(a). So, an order issued pursuant to C.R.S. § 24-72-204(6) which evaluates the potential injury that might result from the disclosure of a specific public record is the only type of order the General Assembly intended when it created the exception to disclosure stated in C.R.S. § 24-72-204(1)(c).

The Court in Martinelli did not conduct any balancing of the benefits to be gained by permitting litigants to use public records requests to obtain evidence in pending litigation against the harm to the public interest in doing so. C.R.S. § 24-72-204(6)(a) was not even mentioned in the case. All the Court did in Martinelli

was to determine whether CORA exceptions to disclosure could also serve as exceptions to production in the discovery process. 612 P.2d 1094. So, while the opinion may technically be an order of a court, it is certainly not the specific type of order the General Assembly intended to allow override an otherwise mandatory disclosure of public records under CORA.

### ii. Martinelli Does Not Prohibit Contemporaneous Use of Public Record Requests and Discovery

Even if the opinion in Martinelli were the type of court order the General Assembly intended to permit to override CORA's disclosure provisions, the opinion would not serve the purpose Archuleta needs. Martinelli simply does not address the interplay between record production under CORA and record production under discovery in litigation between a citizen and a public entity. Archuleta essentially relies upon one sentence in the opinion to make her case, but she takes the sentence completely out of context as any reasonable reading of the opinion reveals.

In Martinelli, the plaintiff served requests for the production of documents pursuant to C.R.C.P. 34 upon the defendants – the City and County of Denver, the Denver Police Department, and individual police officers. 612 P.2d at 1086.

Following the defendants' objection to the request, the trial court ordered the documents produced. Id. at 1087.

On appeal, the defendants argued that production of the documents pursuant to C.R.C.P. 34 was precluded by virtue of the "personnel file" exception to CORA as set forth in C.R.S. § 24-72-204(3)(a)(II). Id. They believed the CORA exception provided a valid privilege against production pursuant to a discovery request. Id. at 1093. The Supreme Court, however, disagreed.

In its ruling, the Supreme Court explained that CORA and discovery are two independent processes, regulating two different situations. Id. Because of the processes' independent natures, the Supreme Court ruled that CORA privileges do not apply in the discovery process. Id. at 1094. This conclusion gave birth to the now infamous quote, "the legislature did not intend that the open records laws would supplant discovery practice in civil litigation." Id. at 1093. Given that the CORA exception did not provide a privilege to the pending discovery request, the Supreme Court directed the trial court to re-examine the document request under the discovery rules only to determine whether production should be compelled. Id. at 1094.

The only principle of law that the Supreme Court established in Martinelli is that exceptions to record inspection contained in CORA do not provide

privileges to document production in discovery. The two processes are independent of one another and governed by independent sets of rules. Thus, one set of rules does not supplant the other set of rules. That is all the infamous quote means. Nowhere in the opinion did the Supreme Court establish a rule prohibiting a litigant from accessing potential evidence under CORA if the same evidence was also available in discovery. How could it? There was not even a CORA request submitted in Martinelli. It simply was not an issue before the Court.

Archuleta has pulled one quote out of the Supreme Court's opinion and repeated it out of context for three years now. For three years, she has also failed to explain how the phrase "the legislature did not intend that the open records laws would supplant discovery practice" somehow means the legislature *did* intend for the discovery practice to supplant the open record laws which is the position she argues in this case. The sentence in Martinelli is irrelevant to the issues in the present case. The district court recognized it. The Court of Appeals recognized it. And Roane knows this Court will recognize it, as well.

### G. Public Entities Are Already Protected From Onerous Record Requests

In her Opening Brief, Archuleta alleges a parade of horribles that will result if citizens are allowed to use public record requests to obtain evidence from

public entities in litigation pending between the parties. She then urges the Court to adopt a rule that absolutely prohibits the citizen's use of public record requests in any type of litigation to avoid such outcomes. As pointed out earlier in this brief, the Court did not task the parties with arguing whether there *should* be a rule that prohibits use of public record requests in litigation but rather whether there *is* a rule prohibiting use of public record requests in litigation.

Nonetheless, it is worth pointing out that that every evil Archuleta fears will result if citizens continue to use public record requests to obtain evidence can already be addressed in a case by means of an order issued pursuant to C.R.S. § 24-72-204(6). Upon a showing of substantial injury to the public interest, any court can authorize a record custodian to withhold a public record that is otherwise subject to disclosure under CORA. The subsection provides a case specific solution to a case specific problem rather than the one-size fits-all solution Archuleta proposes. The mechanism to protect public bodies from onerous public record requests is already in place if a particular situation gets out of hand. There is no need for this Court to create a rule employing a second one.

## VIII. RELIEF SOUGHT BY ROANE

For all the foregoing reasons, the lower courts did not err in requiring Archuleta to produce the Recording to Roane. Accordingly, Roane seeks an affirmance of those decisions and Archuleta's production of the Recording to him without further delay.

## IX. REQUEST FOR ATTORNEY FEES AND COSTS

Roane does not seek an award of attorney fees or costs in this matter in accordance with the prohibition contained in C.R.S. § 24-72-204(5)(b).

Respectfully submitted this 28th day of December, 2023.

MATT ROANE LAW

Matt Roane
Respondent

**Proof of Service**

I certify that on December 28, 2023, I served a true and correct copy of Petitioner's Answer Brief upon Todd Weaver, Archuleta County Attorney, counsel of record for Petitioner Kristy Archuleta, and Andrew D. Ringel, Hall & Evans, L.L.C., counsel of record for Colorado Counties, Inc., by means of Colorado's E-file system.

Matt Roane
Respondent