

<p><b>DISTRICT COURT, WELD COUNTY, COLORADO</b></p> <p>Court Address: 915 10th Street Greely, CO 80632</p> <hr/> <p><b>THE PEOPLE OF THE STATE OF COLORADO</b></p> <p>v.</p> <p><b>Defendant: KENNETH AMICK</b></p> <hr/> <p><b>Attorney for Media Coalition:</b> Rachael Johnson, #43597 Reporters Committee for Freedom of the Press c/o Colorado News Collaborative 2101 Arapahoe Street Denver, CO 80205 Telephone: (970) 486-1085 Facsimile: (202) 795-9310 rjohnson@rcfp.org</p>	<p style="text-align: center;"><b>COURT USE ONLY</b></p> <hr/> <p>Case Number: 2021CR1321</p> <p>Division: 17</p>
<p><b>MEDIA COALITION’S OBJECTION TO PROTECTIVE ORDER</b></p>	

KDVR Fox31/Nexstar Media Group, Inc.; KUSA 9News; KMGH The Denver Channel; KCNC, CBS4 News; The Associated Press; and The Gazette and The Denver Gazette (collectively the “Media Coalition”), by and through undersigned counsel, hereby submit this objection to the protective order issued in the above-captioned case—*People v. Kenneth Amick*, Case No. 2021CR1321—on July 23, 2021. In support of its objection, the Media Coalition states the following:

### INTRODUCTION

1. On June 28, 2021, Defendant Kenneth Amick, a Greeley Police Department officer, was charged with one count of second-degree assault, a felony, stemming from a June 7, 2021 incident in which he allegedly placed the victim in a chokehold during an arrest. *Formal charges filed in strangulation case involving GPD officer*, Weld County District Attorney’s Office, <https://perma.cc/K9MY-5Y8P> (last visited August 13, 2021).

2. The Media Coalition consists of news organizations who work to provide their readers and viewers in Colorado with news that impacts their community.<sup>1</sup> To that end, the Media Coalition has reported on the above-captioned case, which is a matter of undisputed public concern. *See, e.g.*, The Denver Gazette, *Northern Colorado officer charged with assault for putting man in chokehold* (June 28, 2021) <https://perma.cc/3GLV-YCRW> (last visited August 12, 2021); KUSA 9News, *Greeley officer charged with felony in excessive force case* (June 28, 2021) <https://perma.cc/7PU9-5CP3> (Last visited August 13, 2021); *see also*, KDVR Fox 31, *Judge bars Greeley police officer body cam video release to public despite new law* (July 23, 2021), <https://perma.cc/D3P8-FB5X> (Last visited August 13, 2021). The Media Coalition will continue to report on this matter, including through the completion of the pending criminal proceedings against Defendant.

3. Pursuant to § 24-31-902(2)(a), C.R.S., the Media Coalition, for its newsgathering and reporting purposes, seeks access to all unedited body-worn camera (“body-cam”) and dash camera (“dash-cam”) recordings of the June 7, 2020 incident that led to Defendant’s prosecution (collectively the “Incident Recordings”).

4. On July 20, 2021, Defendant filed an Objection to Release of Incident Recordings and Motion for Protective Order (“Defendant’s Motion for Protective Order”). On July 23, 2021, the Court held a hearing on the Defendant’s Motion for Protective Order. That same day, the Court entered an order granting the Defendant’s Motion for Protective Order without objection from the prosecution. *See* Exhibit A. The protective order entered by the Court blocks disclosure of the Incident Recordings to the public, including the Media Coalition.

5. The Court’s July 23, 2021 order notes that § 24-31-902, C.R.S.—which establishes a “presumption of release of body cam and dash cam footage to the public within certain timeframes when there is a complaint of peace officer misconduct”—“provides the public, including the victim and the media standing to be heard” as to the entry of a protective order blocking such release. *Id.* Accordingly, the Court granted leave for “any party with standing under the statute to file an objection” to the July 23, 2021 protective order. *Id.* (stating that if an objection is filed “this Court or any other Court having jurisdiction over this matter will address the issue on the merits at that time”).

6. Pursuant to § 24-31-902, C.R.S., the Media Coalition has standing to object to the July 23, 2021 protective order and, for the reasons herein, respectfully requests that the Court modify and/or rescind that protective order to provide for the public release of the Incident Recordings at issue.

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<sup>1</sup> KDVR Fox 31 is owned by Nexstar Media Group, Inc.; KUSA 9News is owned by Tegna, Inc.; The Gazette and The Denver Gazette are owned by Clarity Media Group LLC, a wholly owned subsidiary of the Anschutz Corporation; KCNC CBS4 News is owned by the CBS Television Stations subsidiary of Viacom CBS; KMGH The Denver Channel is owned by the E.W. Scripps Company; and The Associated Press.

## APPLICABLE LAW

7. Pursuant to § 24-31-902(1)(a)(II)(A), “except as provided in subsection (1)(a)(II)(B) or (1)(a)(II)(C) of this section, a peace officer shall wear and activate a body-worn camera or dash camera, if the peace officer’s vehicle is equipped with a dash camera, when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law.”

8. Pursuant to § 24-31-902(2)(a), C.R.S.: “*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 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 complaint of misconduct.*” (Emphasis added.)

9. Pursuant to § 24-31-902(2)(c), C.R.S.: “If criminal charges have been filed against any party to the incident, that party must file any constitutional objection to release of the recording in the pending criminal case before the twenty-one-day period expires. . . .”

10. The Media Coalition is informed and believes that the June 7, 2021 incident—which was the subject of a complaint of peace officer misconduct that led to the pending felony assault charge against Defendant—was captured on body camera and/or dash camera by officers of the Greeley Police Department, including Defendant himself. *See* The Denver Gazette, *Northern Colorado officer charged with assault for putting man in chokehold* (June 28, 2021) <https://perma.cc/3GLV-YCRW> (last visited August 12, 2021).

11. The Media Coalition, for the reasons stated herein, is entitled to “all unedited video and audio recordings of the [June 7, 2021] incident, including those from body-worn cameras, dash cameras, or otherwise” pursuant to § 24-31-902(2)(a), C.R.S. The “constitutional objection” to public disclosure made by Defendant in his Motion for Protective Order fails to overcome the statutory presumption of access under § 24-31-902(2)(a), C.R.S.

## ARGUMENT

### **a. All unedited body camera and dash camera footage of the June 7, 2021 incident should be made public under § 24-31-902(2)(a), C.R.S.**

12. As members of the public, the Media Coalition seeks access to Incident Recordings that are required to be disclosed under Colorado law. *See* § 24-31-902(2)(a), C.R.S.

13. Defendant was charged on June 28, 2021 based on a complaint of peace officer misconduct made by two other officers from the Greeley Police Department. *See Formal charge filed in strangulation case involving GPD officer*, Weld County District Attorney’s Office, <https://perma.cc/K9MY-5Y8P> (last visited August 13, 2021); *see also Colorado officer charged with assault over alleged chokehold*, Associated Press (June 28, 2021), <https://perma.cc/7YJM-FL5X> (last visited August 13, 2021).

14. The complaining Greeley police officers reportedly believed Defendant’s use of force—Amick allegedly placed the victim in a chokehold and brought him to the ground—was excessive, and they reported the incident to their department. *See Greeley police officer charged with assault following arrest, placed on unpaid leave*, KDVR-TV (June 28, 2021), <https://perma.cc/43N5-9TDB> (last visited August 12, 2021); *see also CBS4 News KCNC, Man Arrested By Greeley Officer Ken Amick, Who Faces Felony Assault Charge, Denies Arson Claim* (June 29, 2021) <https://perma.cc/2DLK-CZMS> (Last visited August 13, 2021).

15. Thereafter, the Greeley Police Department reportedly investigated the incident and, finding probable cause that Defendant had committed an assault, referred the matter to the District Attorney’s Office. *See Greeley police officer charged with assault for using chokehold on suspect*, The Denver Post (June 28, 2021), <https://perma.cc/3K68-5KWJ> (last visited August 13, 2021).

16. Under § 24-31-902(2)(a), C.R.S., the Greeley Police Department was required to “release 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” it received the complaint of Defendant’s misconduct.

**b. Defendant’s objection to disclosure of the Incident Recordings is without merit; disclosure will not prejudice the Defendant’s Sixth Amendment right to a fair trial.**

17. In his Motion for Protective Order, Defendant argues that public release of the Incident Recordings will prejudice his right to a fair trial under the Sixth Amendment. *See* Def.’s Mot. for Protective Order at 2–4 (arguing that “release of any incident recordings will allow potential jurors to pre-judge this incident and some, but not all, of the potential evidence to be presented at trial.”).

18. Defendant, however, has not (and could not) demonstrate that public disclosure of the Incident Recordings—purely factual information about the underlying incident—would prevent him from receiving a fair and impartial trial. *See U.S. v. Angiulo*, 897 F.2d 1169, 1181 (1st Cir. 1990) (purely factual media coverage creates no presumption of prejudice).

19. Many facts about the incident that led to Defendant’s prosecution are publicly known and have been reported by members of the news media. For example, on June 28, 2021, The Denver Post reported that “On June 7, Amick responded to the City Center North building after someone activated a panic alarm. Arriving officers learned the man also was making threats

of arson, according to a news release from the Greeley Police Department.” Thereafter, as The Denver Post reported:

“As Amick walked [the alleged victim, Matthew Wilson] out of the building, the man became agitated and complained of his handcuffed wrists hurting, police said.

‘Officer Amick suddenly placed (the man) into a chokehold,’ the [Greeley Police Department’s] news release states. ‘After several seconds, (the man) showed ill effects from this hold while being placed on the ground. A second officer attempted to intervene during this initial encounter.’

The man recovered from the chokehold and continued to walk to a patrol car. Amick then used knee strikes against the man’s leg after the man tried to grab his hand, the release states.

The man as well as two other Greeley police officers told police that excessive force was used during the arrest.”

*Greeley police officer charged with assault for using chokehold on suspect*, The Denver Post (June 28, 2021), <https://perma.cc/P4DY-CDGT> (last visited August 12, 2021); *see also Northern Colorado officer charged with assault for putting man in chokehold*, The Denver Gazette (June 28, 2021) <https://perma.cc/3GLV-YCRW> (last visited August 12, 2021) (reporting that the District Attorney Michael Rourke stated in a press release that “Amick, with intent to cause bodily injury to another person, unlawfully and feloniously applied sufficient pressure to impede or restrict the breathing or circulation of the blood of Matthew Wilson[.]”)

20. The victim, Mr. Wilson, also gave an interview to KCNC describing the incident, saying: “I remember waking up on the ground afterwards and being told I could walk like a man.” *See* CBS4 News KCNC, *Man Arrested By Greeley Officer Ken Amick, Who Faces Felony Assault Charge, Denies Arson Claim* (June 29, 2021) <https://perma.cc/2DLK-CZMS> (Last visited August 13, 2021).

21. The above examples of the purely factual media coverage of Defendant’s alleged crime do not begin to approach the extent or nature of pretrial publicity that courts have found may be prejudicial to a criminal defendant’s Sixth Amendment rights. As the Supreme Court stated in *Nebraska Press Association v. Stuart*, 427 U.S. 539, 554 (1976), a case cited by Defendant: “even pervasive, adverse [pretrial] publicity does not inevitably lead to an unfair trial.” To the contrary, as the Colorado Supreme Court held *People v. McCrary*, 549 P.2d 1320, 1325 (Colo. 1976),<sup>2</sup> “[o]nly when the publicity is so ubiquitous and vituperative that most jurors

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<sup>2</sup> Though it addressed a change of venue request, *McCrary* is instructive. In that case, despite numerous newspaper clippings and broadcast transcripts presented in the pretrial hearing,

in a community could not ignore its influence is a change of venue required before voir dire examination” to protect a criminal defendant’s Sixth Amendment rights. *Id.* at 1326. Defendant has not been the subject of anything remotely approaching prejudicial pretrial publicity. Nor can Defendant demonstrate that public disclosure of additional factual information about the underlying incident—*i.e.*, the Incident Recordings—would result in such prejudicial pretrial publicity.

22. Further, it is well-settled that *voir dire* is the “preferred safeguard against” any effects of pretrial publicity. *In re Charlotte Observer*, 882 F.2d 850, 855 (4th Cir. 1989). Careful *voir dire* has been used successfully in “massive[ly]” publicized cases, including the prosecution of defendants involved in the Watergate scandal, without incident. *Id.* at 855-56; *see also People v. Bartowsheski*, 661 P.2d 235, 238 n.5, 240–41 (Colo. 1983) (rejecting argument that pretrial publicity prevented the impaneling of an impartial jury where trial court permitted extensive voir dire of potential jurors). Thus, even if, as Defendant claims, releasing of the Incident Recordings in light of the “current societal climate and attitudes toward police officers” could affect some potential jurors, Def.s’ Mot. For Protective Order at 2, *voir dire* is adequate to protect Defendant’s Sixth Amendment rights.

23. As the Colorado Supreme Court in *McCrary* explained: “an important criminal case can be expected to generate much public interest and usually the best qualified jurors will have heard or read something about the case. To hold that jurors can have no familiarity through the news media with the facts of the case is to establish an impossible standard in a nation that nurtures freedom of the press. It is therefore sufficient if jurors can lay aside the information and opinions they have received through pretrial publicity.” *People v. McCrary*, 549 P.2d 1320, 1325 (Colo. 1976); *see also Skilling v. United States*, 561 U.S. 368, 381 (2010) (“Prominence does not necessarily produce prejudice, and juror *impartiality*, we have reiterated, does not require *ignorance*.”) (emphasis in original).

24. Because it is a fundamental tenet of our justice system “that jurors will set aside their preconceptions when they enter the courtroom and decide cases based on the evidence presented[.]” *id.* at 399, courts do not, as Defendant suggests, block public access to information about pending criminal cases pretrial merely because there is public interest in the case. Defendant’s generalized arguments would apply in *any* criminal case arising out of a peace officer’s misconduct and, if adopted, amount to a rule that the statutory presumption of public access to body-cam and dash-cam recordings is overcome *any time* a peace officer is prosecuted

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including a story about the Defendant’s family that suggested they were connected to as many as 22 murders, the Court denied a change of venue because it did not find the kind of intense, pervasive and prejudicial publicity that was present in *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966), that would contaminate the jury pool and render it impossible for the Defendant to obtain a fair and impartial trial.

for the alleged misconduct captured in those recordings. Because here *voir dire* is adequate to protect Defendant's fair trial rights, and Defendant cannot show that disclosure of the Incident Recordings will deprive him of his fair trial rights, the Incident Recordings must be disclosed pursuant to § 24-31-902(2)(a), C.R.S.

**c. The public has a powerful interest in access to the Incident Recordings.**

25. The public's right to know whether peace officers tasked with protecting their communities are doing so safely is a matter of significant public interest. The Colorado Supreme Court in *Freedom of Colorado Information, Inc. v. El Paso County Sheriff's Dept.*, 196 P.3d 892, 902 (Colo. 2008) recognized that discharging an officer for malfeasance is a matter of public interest. The Defendant was placed on unpaid leave after the June 7 incident. KUSA 9News, *Greeley officer charged with felony in excessive force case* (June 28, 2021) <https://perma.cc/7PU9-5CP3> (Last visited August 13, 2021).

26. Coloradoans have a significant interest in the disclosure of information about police officers who use excessive force, especially when an officer places a citizen in a chokeholds or neck restraints. In fact, the Colorado legislature created SB20-217 Enhance Law Enforcement Integrity which bans peace officers from using a chokehold and requires other officers to report excessive force.<sup>3</sup>

27. There is also a strong public interest in disclosure of recordings like the Incident Recordings. In order to promote accountability and transparency in law enforcement, the General Assembly, presumably, did not enact § 24-31-902, C.R.S. to deny the public access to incidents of misconduct caught on camera while an officer is performing his or her job. It would defeat the purpose of the law,<sup>4</sup> and only foment public distrust of law enforcement. A blanket denial of access to the incident recording footage would not align with the Legislature's purpose in creating the law.

28. Therefore, the public interest in access to body camera footage is evident, not only based on legislative enactment, but based on the strong public interest in ensuring that there is transparency and accountability in police responses to persons who they come in contact with.

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<sup>3</sup> See KUSA 9News, *Bans on chokeholds, mandated cams & more: Governor signs police reform bill into law*, (June 19, 2020), <https://perma.cc/GB6H-7GXR> (Last visited August 12, 2021).

<sup>4</sup> See KDVR Fox31, *Idaho Springs cop's arrest could be first test of Colorado's new body-camera law*, (July 8, 2021) <https://perma.cc/4FSS-UBE5> (Last visited August 13, 2021) ("Rep. Leslie Herod, D-Denver, [sponsored HB-1250](#) and said it forces transparency and accountability").

## REQUEST FOR RELIEF

29. The Media Coalition respectfully requests that the Court rescind and/or modify the July 23, 2021 protective order entered in the above-captioned matter to require the release to the public of “all unedited video and audio recordings of the [June 7, 2021] incident, including those from body-worn cameras, dash cameras, or otherwise” pursuant to § 24-31-902(2)(a), C.R.S.

Respectfully submitted this 17 day of August 2021.

By 

Rachael Johnson  
Reporters Committee for Freedom of the Press  
*Attorney for The Media Coalition*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of August 2021, a true and correct copy of the foregoing **MEDIA COALITION'S OBJECTION TO PROTECTIVE ORDER** was served on the following counsel through the Colorado Courts E-File & Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

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