

<p><b>DISTRICT COURT, WELD COUNTY, COLORADO</b></p> <p>Court Address: 7325 South Potomac Street Centennial, CO 80112</p> <hr/> <p><b>THE PEOPLE OF THE STATE OF COLORADO</b></p> <p>v.</p> <p><b>Defendant: SHAWN RALPH</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: 2021CR2072</p> <p>Division: 402</p>
<p><b>MEDIA COALITION’S RESPONSE TO THE DEFENDANT’S OBJECTION TO BAR DISCLOSURE OF INCIDENT RECORDING FOOTAGE</b></p>	

KDVR Fox31 Nexstar Media Group, Inc.; KUSA 9News; KMGH The Denver Channel; KCNC, CBS4 News; The Associated Press; The Colorado Broadcasters Association, and the Colorado Freedom of Information Coalition (collectively, the “News Media Coalition”), by and through undersigned counsel, hereby submit this response to the Defendant’s October 5 objection to the disclosure of body-worn camera footage pursuant to § 24-31-902(2)(a), C.R.S. In support, the News Media Coalition states the following:

**INTRODUCTION**

1. On or around September 14, 2021, Defendant Shawn Ralph, an officer with the Sheridan Police Department, was arrested in connection with a September 3, 2021 incident in which he allegedly placed a woman in a chokehold restraint during an arrest. *See Sheridan Officer Shawn Ralph Charged With Assault For Alleged Chokehold Use*, KCNC-TV CBS4, <https://perma.cc/RK7W-A7ED> (last visited Oct. 12, 2021).

2. The Media Coalition consists of news organizations in Colorado who routinely provide their readers and viewers with important information and news that impacts their community. KDVR Fox 31 is owned by Nexstar Media Group, Inc.; KUSA 9News is owned by Tegna, Inc.; KCNC CBS4 News is owned by the CBS Television Stations subsidiary of ViacomCBS; KMGH The Denver Channel is owned by the E.W. Scripps Company; and The AP Denver is a division of *The Associated Press*. The Colorado Freedom of Information Coalition and the Colorado Broadcasters Association are non-profit trade organizations.

3. Members of the Media Coalition have reported on the above-captioned case. *See, e.g.,* KMGH The Denver Channel, *Sheridan police officer charged with assault, accused of choking shoplifting suspect* (Sept. 15, 2021) <https://perma.cc/AJ4S-6P9M> (last visited Oct. 12, 2021); KUSA 9News, *Officer accused of putting theft suspect in chokehold* (Sept. 15, 2021) <https://perma.cc/7PU9-5CP3> (last visited Oct. 13, 2021); KDVR Fox 31, *Sheridan police officer facing assault charge after allegedly placing suspect in chokehold* (Sept. 15, 2021), <https://perma.cc/4T45-W422> (last visited Oct. 13, 2021). And members of the Media Coalition will continue to report on this matter.

4. Pursuant to § 24-31-902(2)(a), C.R.S., the Media Coalition, for newsgathering and reporting purposes, seeks access to all unedited body-worn camera and dash camera recordings of the September 3, 2020 incident which led to Defendant's arrest.

5. Pursuant to § 24-31-902(2)(a), C.R.S., the Media Coalition has standing to respond to the Defendant's October 5, 2021 objection asking that this Court bar the release of any and all video and/or audio recordings made by body-worn cameras and dash cameras related to this case. For the reasons herein, the Media Coalition respectfully requests that the Court order the immediate public release of the incident recording footage at issue as required by § 24-31-902(2)(a), C.R.S.

#### **APPLICABLE LAW**

6. 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."

7. Further, § 24-31-902(2)(a), C.R.S. states: "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.” This provision creates a *presumption of release*.

8. Section 24-31-902(c), C.R.S. permits an officer facing a misconduct complaint to file a constitutional objection to the “release of the recording in the pending criminal case before the twenty-one-day period expires.” This section does not create a mechanism allowing the defendant to bar the release of body camera video or other related footage to the public upon request. Instead, once the defendant asserts a constitutional objection to disclosure, the Court must consider whether the release of the footage, based on the evidence, would in fact impinge on the defendant’s right to a fair trial.<sup>1</sup>

9. The Media Coalition is informed and believes that the September 3, 2021 incident—which was the subject of a complaint of peace officer misconduct that led to the pending felony assault charge against the Defendant—was captured on body-worn camera and/or dash camera footage by officers of the Sheridan Police Department, including Defendant himself. Other officers who were at the scene with the Defendant during the arrest reported the incident to the Sheridan Police Department and the incident was investigated by Sheridan Police Chief Jeffrey Martinez. Chief Martinez issued a statement saying that he “promptly presented the case to the Arapahoe County District Attorney’s Office.” See The Denver Post, *Sheridan officer allegedly uses a chokehold on a shoplifting suspect* (Sept. 15, 2021) <https://perma.cc/3GLV-YCRW> (last visited Oct. 12, 2021); see also Colorado Community Media, *Sheridan Police Officer Charged with Assault* (Sept. 16, 2021) <https://perma.cc/BQ93-ZYGA> (last visited Oct. 13, 2021); KUSA 9News, *Officer accused of putting theft suspect in chokehold* (September 15, 2021) <https://perma.cc/7PU9-5CP3> (last visited Oct. 13, 2021).

10. Because the September 3 incident resulted in the filing of a complaint of officer misconduct, as members of the public, the Media Coalition are entitled to “all unedited video and audio recordings of the incident, including those from body-worn cameras, dash cameras, or otherwise” pursuant to § 24-31-902(2)(a), C.R.S.

## ARGUMENT

### **A. All unedited body-worn camera and dash camera footage of the September 3, 2021 incident should be released to the public under § 24-31-902(2)(a), C.R.S.**

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<sup>1</sup> See *Siding with news media coalition, judge orders release of body-camera footage in case of Greeley officer accused of using chokehold*, CFOIC (Oct. 7, 2021), <https://perma.cc/55QD-9F55> (last visited Oct. 13, 2021) (holding that a defendant bears the burden to come forward with evidence to support a constitutional objection and overcome the “statutory presumption of release” applicable to body-worn camera and dash camera recordings).

11. As members of the public, the Media Coalition seek access to any and all body-worn camera and dash camera footage related to the September 3 incident that must be disclosed under law.

12. Section 24-31-902(2)(a), C.R.S., plainly states that “[f]or 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).

13. Here, the Defendant was arrested on September 3, 2021, and charged on or around September 8, 2021 based on a complaint of peace officer misconduct filed by officers from the Sheridan Police Department, who witnessed the alleged choking. *See* Colorado Community Media, *Sheridan Police Officer Charged with Assault* (Sept. 16, 2021) <https://perma.cc/BQ93-ZYGA> (last visited Oct. 13, 2021).

14. Accordingly, pursuant to the mandate found in § 24-31-902(2)(a), C.R.S. all unedited footage related to the September 3 incident involving Defendant should have been released to the public on September 29, 2021—21 days after the complaint of misconduct was made received by the Sheridan Police Department on September 8, 2021. That date has now passed; thus, the body-worn camera footage, dash camera footage, and any other video or audio recordings of the incident otherwise collected through investigation should be immediately released to the public and the Media Coalition.

**B. Disclosure of the body camera footage will not prejudice the Defendant’s Sixth Amendment right to a fair trial.**

15. In his objection to disclosure of the body-worn camera footage, Defendant cites *People v. John Haubert*, 2021CR01676, to argue that release of the incident recording footage here will have a prejudicial effect on his constitutional right to a fair trial. The Defendant argues that because the video footage in that case was released before the 21-day objection period it “*may* have violated Mr. Haubert’s right to a fair trial.” Def’s Obj. 2 (emphasis added). But there was no showing that the defendant’s right to a fair trial was actually infringed in that case, and merely noting that the public release of the body-camera footage in that case **ahead** of the 21-day period “*may*” have violated that defendant’s right to a fair trial has no application here.

16. Here, the 21-day period has passed, and the Defendant has come forward with no evidence that the incident recordings at issue in this case will have any effect on his right to a fair trial.

17. A recent decision in *People v. Kenneth Amick*, 21CR1321 in Weld County District Court is instructive. There, the court ordered release of body-worn camera recordings over the objection of the defendant police officer pursuant to section 24-31-902(c).<sup>2</sup> In that case, the court found that the defendant did not provide any evidence to overcome the presumption of public release under section 24-31-902(2)(a) because his arguments that releasing the recordings would have a prejudicial effect on his right to a fair trial were speculative and unsubstantiated. The court further noted that the defendant would have the opportunity to address fair-trial issues during jury selection or in connection with any request for a change of venue. See *Siding with news media coalition, judge orders release of body-camera footage in case of Greeley officer accused of using chokehold*, CFOIC (Oct. 7, 2021), <https://perma.cc/55QD-9F55> (last visited Oct. 13, 2021).

18. As in *Amick*, there has been no showing by the Defendant in this case that releasing the incident recording footage will materially prejudice his right to a fair trial. The Defendant has only made speculative claims that “recordings of law enforcement officers engaged in uses of force have been circulating with great speed on statewide and national news outlets” and “in light of the current atmosphere surrounding law enforcement officers, ... disclosing the body-worn camera, like in the matter *People v. Haubert*, the Defendant may not receive a fair trial.” Def’s Obj. 2. This is not enough to overcome the presumption of release.

***The pre-trial publicity is not massive, pervasive or inherently prejudicial***

19. The Defendant argues that “the denial of a fair trial may be presumed when pretrial publicity is massive, pervasive, and inherently prejudicial.” Def’s Obj. 2 (citing *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *People v. Loscutt*, 661 P.2d 274 (Colo. 1983); *Walker v. People*, 458 P.2d 238 (Colo. 1969)). But no such pretrial publicity has surrounded the Defendant’s case; the Defendant does not—and could not—approach meeting the applicable constitutional standard.

20. As the U.S. Supreme Court has explained, “pretrial publicity, even pervasive, adverse publicity does not inevitably lead to an unfair trial.” *Nebraska Press Association*, 427

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<sup>2</sup> Although the court in *Amick* initially granted the Defendant’s Motion for a Protective Order to preclude release of incident recordings (attached hereto as Exhibit A), the court explicitly noted 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[.]” *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”). Upon considering an objection from a coalition of media organizations, the court lifted the protective order and ordered that the incident footage be immediately released to the public.

U.S. 539, 554 (1976). And in *People v. McCrary*, 549 P.2d 1320, 1325 (Colo. 1976), the Colorado Supreme Court reasoned that pre-trial publicity is not enough to require a change of venue, even if the publicity is extensive.<sup>3</sup> The court held that “[o]nly when the publicity is so ubiquitous and vituperative that most jurors in a community could not ignore its influence is a change of venue required *before* voir dire examination.” *Id.* at 1326 (emphasis added).

21. Thus, in *People v. Hankins*, 361 P.3d 1033, 1036–37 (Colo.App. 2014), the Colorado Court of Appeals held that pretrial publicity infringes on a defendant’s right to a fair trial only in extreme circumstances.<sup>4</sup> The appellate court in *Hankins* defined extreme circumstances as present “[o]nly when the publicity is so ubiquitous and vituperative that most jurors ... could not ignore its influence.” *Id.* at 1035. The court held the pretrial publicity in the case before it, though extensive, was not so massive, pervasive, and prejudicial as to create presumption of prejudice justifying change of venue before jury voir dire.

22. Courts have also held that purely factual reporting is not considered prejudicial. *See U.S. v. Angiulo*, 897 F.2d 1169, 1181 (1st Cir. 1990) (purely factual coverage creates no presumption of prejudice); *see also McCrary*, 549 P.2d 1320, 1325 (Colo. 1976).

23. Further, courts have tools at their disposal to safeguard a defendant’s constitutional rights and prevent potential juror bias.

24. *Voir dire* is the “preferred safeguard against” pretrial publicity. *In re Charlotte Observer*, 882 F.2d 850, 855. Careful *voir dire* has been used successfully in “massive[ly]” publicized cases, including the prosecution of defendants involved in watershed controversies like Watergate and Abscam, without incident. *Id.* at 855-56; *see also People v. Bartowsheski*, 661 P.2d 235 (Colo. 1983) (where trial court allowed extensive voir dire of potential jurors to ensure impartial verdict and resolved most juror challenges in favor of defendant, voir dire examination failed to establish any obvious nexus between pretrial publicity of the case and juror prejudice against defendant).

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<sup>3</sup> *See Id.* at 1325 (denying change in venue despite many newspaper and broadcast reports on the allegations, including a story about the defendant’s family indicating a connection to as many as 22 murders; distinguishing from the kind of massive, pervasive and prejudicial publicity in *Sheppard v. Maxwell*, 384 U.S. 333 (1966)).

<sup>4</sup> For context, in *Hankins*, the defendant was on trial for the murder of his wife. “The Craig Daily Press,” published 24 articles regarding the crime, including some mentioning the defendant’s confession to the killing and dismemberment of the victim’s body. The defendant requested a change of venue because he believed the publicity from such articles would preclude him from receiving a fair trial. The court denied the request, reasoning that the publicity in the case was extensive “but *not* massive, pervasive and prejudicial as to create a presumption that defendant was denied a fair trial.”

25. As the *McCrary* Court 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.” *Id.* at 1325.

26. The Supreme Court in *Nebraska Press* similarly underscored that “[p]rominence does not necessarily produce prejudice, and juror *impartiality*, we have reiterated, does not require *ignorance*.” *Skilling v. United States*, 561 U.S. 368, 381 (2010) (emphasis in original). It is an underlying basis of our justice system “that jurors will set aside their preconceptions when they enter the courtroom and decide cases based on the evidenced presented.” *Id.* at 399.

27. Contrary to the Defendant’s contention that considering the “current atmosphere surrounding law enforcement officers” releasing the body camera footage will taint the image of police officers in jurors’ eyes, any such potential biases can be identified and addressed during voir dire. Def’s Obj. 2.

28. In sum, alternatives exist to protect the Defendant’s fair trial rights, and the Defendant cannot show that disclosure of the body-worn camera footage will be prejudicial to his right to a fair trial.

***The facts and circumstances surrounding the Defendant’s arrest are publicly available; thus, releasing the body or dash camera footage is not prejudicial to the Defendant fair trial rights***

29. Further, the Defendant ignores the fact that the factual account of the September 3 incident has already been released to the public. *See U.S. v. Angiulo*, 897 F.2d 1169, 1181 (1st Cir. 1990) (purely factual coverage creates no presumption of prejudice); *see also People v. McCrary*, 549 P.2d 1320, 1325(1976) (“To hold that jurors can have no familiarity through the news media with the *facts* of the case is to establish an impossible standard.... It is therefore sufficient if jurors can lay aside the information and opinions they have received through pretrial publicity”).

30. The salient facts and circumstances surrounding the Defendant’s arrest are publicly available based on news reports, and presumably compiled in the complaint:

The incident took place Sept. 3 at a 7-Eleven store at 3495 South Federal Boulevard, according to court documents obtained by CBS4.

[Officer] Ralph and other officers say they approached a woman, Benni Montano, suspicious that she had shoplifted items from the convenience store. The store owner said Montano had stolen several items from the store.

She was handcuffed but officers said she was resistant and attempted to spit on the store owner, but her saliva allegedly hit Ralph in the eye.

Officer Ralph then reaches out and up with his left hand, grabbing Montano by the neck. Officer Ralph can be heard not giving verbal commands but instead saying, ‘F—g spit on me,’ according to an affidavit in the case. Another officer wrote “Officer Ralph grabbed Montano’s right arm and put his left hand around her throat and took her to the ground while saying, ‘F—g spit on me.’”

The woman — who had an active felony warrant for her arrest — said she hit her head on the ground and received medical treatment.

In a statement, Ralph said “To prevent continuous spitting and contamination, I reached for Benni’s mouth with my gloved hand. Benni moved backward as I tried to cover her mouth, making my hand slip from her mouth and onto her chin.”

*Sheridan Officer Shawn Ralph Charged With Assault For Alleged Chokehold Use*, KCNC-TV CBS4, <https://perma.cc/RK7W-A7ED> (last visited October 12, 2021).

Once on the ground Officer Ralph’s body camera captures (the suspect’s) face while his hand is around her neck, the affidavit said. The woman is wincing and appears to be in pain as if being choked or from her head striking the ground.

*Sheridan officer allegedly uses a chokehold on a shoplifting suspect*, The Denver Post (September 15, 2021), <https://perma.cc/MU4U-MRCA> (last visited October 13, 2021)

31. These reported facts substantially detail the events that led up to the incident in which the Defendant allegedly used excessive force by placing the victim in a chokehold. Additionally, based on news reports citing to an affidavit regarding the incident, a detailed description of what is purportedly on the body camera footage is now public as well.

32. And, further, as indicated above, the Defendant himself has already made a detailed statement about the incident, thus, injecting “testimony” that might be expected in trial into the public.

33. Further, a news release was published by the Sheridan Police Department regarding the September 3 incident, resulting in news coverage:

On September 3, 2021, at approximately 1:30 a.m., members of the Sheridan Police Department handled a shoplifting incident in the 3400 block of South Federal Boulevard. An adult female was detained after being identified as the party who had allegedly committed the offense. While officers were completing their investigation, the female assaulted a Sheridan Police Officer by spitting in his eyes and face.



The officer reacted to the assault by allegedly grabbing the female party around the front of her neck and forcing her to the ground. Other officers who were present, including a supervisor, took immediate physical action to intervene in the incident and deescalated the situation.

Medical attention was sought for the female who was later cleared at the hospital with no apparent injuries. The supervisor and other officers present at the scene took swift action and reported the incident to command level personnel at the Sheridan Police Department. The officers then documented their observations in written reports.

As the Chief of Police of the Sheridan Police Department, I was concerned with the incident and immediately initiated an investigation and promptly presented the case to the Arapahoe County District Attorney's Office.

The officer was immediately placed on Administrative Leave pending the outcome of the criminal and administrative investigation as is standard procedure. Body worn cameras were in use during the incident and release of that footage is subject to the requirements of state statute.

We believe in the integrity of both the criminal and administrative processes and will withhold judgement until both are completed. I want to assure our community the Sheridan Police Department is committed to providing outstanding service, transparency, and safety to the community we serve.

KDVR Fox 31, *Sheridan police officer facing assault charge after allegedly placing suspect in chokehold* (Sept. 15, 2021), <https://perma.cc/4T45-W422> (last visited Oct. 13, 2021) (quoting statement by Sheridan Police Chief Jeffrey Martinez).

34. The above are examples of purely factual coverage of the events likely captured incident recording footage. These details are already known to the public and, for that reason too, Defendant has not presented—and could not present—any credible basis not to release the footage under 24-31-902(a)(2), C.R.S.

**C. There is significant public interest in access to police body-worn camera and dash camera footage when excessive force is allegedly used against a citizen.**

35. The public's right to know whether the public officials tasked with protecting their communities are doing so safely is a matter of significant public concern. 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. Here, the Defendant was placed on administrative leave after the September 3 incident and has been charged with felony assault.

36. Coloradoans have a significant interest in the disclosure of information about police officers who are alleged to have used excessive force, especially when, as here, an officer places a citizen in a chokehold or neck restraint. In fact, the Colorado legislature enacted SB20-217, Enhance Law Enforcement Integrity, banning peace officers from using a chokehold and requiring other officers to report excessive force.<sup>5</sup>

37. There is also a strong public interest in disclosure of officer misconduct captured on incident recordings, as the General Assembly has recognized. The public has a right to know whether the peace officers sworn to protect their communities have been charged with misconduct or a felony. And, the public's interest is well-served by disclosure of this footage in accordance with § 24-31-902(2)(a), C.R.S.

38. In order to promote accountability and transparency in law enforcement, the General Assembly recently mandated that all police officers must wear body cameras while on duty and during their interaction with a member of the public. § 24-31-902(1)(a)(II)(A), C.R.S. The purpose of the law is to make recordings of such incidents public, which is why it includes a statutory presumption of access.<sup>6</sup>

39. Therefore, the public interest in access to body-worn camera footage is evident, not only based on recent legislative enactments, but also based on the strong public interest in ensuring transparency and accountability of police to the public.

### **REQUEST FOR RELIEF**

40. The Media Coalition respectfully request that the Court immediately release to the public “all unedited video and audio recordings of the [September 3, 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 14 day of October 2021.

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<sup>5</sup> See KUSA 9News, *Bans on chokeholds, mandated cams & more: Governor signs police reform bill into law*, (Jun. 19, 2020), <https://perma.cc/GB6H-7GXR> (last visited Aug. 12, 2021).


<sup>6</sup> See KDVR Fox31, *Idaho Springs cop's arrest could be first test of Colorado's new body-camera law*, (Jul. 8, 2021) <https://perma.cc/4FSS-UBE5> (last visited Aug. 13, 2021) (“Rep. Leslie Herod, D-Denver, [sponsored HB-1250](#) and said it forces transparency and accountability”).

By  \_\_\_\_\_

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of October 2021, a true and correct copy of the foregoing **MEDIA COALITION'S RESPONSE TO THE DEFENDANT'S OBJECTION TO BAR DISCLOSURE OF INCIDENT RECORDING FOOTAGE** was served through the Colorado Courts E-File & Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

  
\_\_\_\_\_  
Rachael Johnson