

<p>COLORADO COURT OF APPEALS Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203</p> <hr/> <p>Appeal from: The District Court for the City and County of Gunnison District Court Judge: Hon. J. Steven Patrick District Court Case Number: 2022CV30017</p> <hr/> <p>Plaintiff-Appellee: ANDREW BROOKHART, in his official capacity as the executive director and custodian of records of the Gunnison County Library District</p> <p>v.</p> <p>Respondent-Appellant: MARK REAMAN, in his capacity as the editor of the Crested Butte News</p> <hr/> <p>Attorney for Respondent-Appellant: 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 rjohnson@rcfp.org</p>	<p>DATE FILED: July 5, 2022 10:19 AM FILING ID: 8F9357BBE74B4 CASE NUMBER: 2022CA1119</p> <p style="text-align: center;">COURT USE ONLY</p> <hr/> <p>Court of Appeals Case No.</p> <hr/>
<p>NOTICE OF APPEAL</p>	

Respondent-Appellant Mark Reaman, in his capacity as editor of the Crested Butte News, (“Respondent-Appellant”), by and through undersigned counsel, hereby respectfully submit his Notice of Appeal pursuant to C.A.R. 3(a), and states as follows in support thereof:

I. DESCRIPTION AND NATURE OF THE CASE

A. Nature of the Case

This case concerns a Colorado Open Records Act (“CORA”) request made by Respondent-Appellant on March 28, 2022 for access to “all Requests for Reconsideration Forms filed with the [Gunnison] library district since January 1, 2022 via email.” (Hereinafter, the “March 28, 2022 CORA Request”).

Request for Reconsideration Forms or Request to Reconsider Materials forms are generated by the Gunnison Library District (“Library District”) as part of their Collection Development and Use Policy. Any person, whether a library user or not, may submit this form to the Library District asking for the removal or movement of a book from the Library District’s collection, and may include the name, phone number, address of the requestor. Respondent-Appellant sought completed request forms, including the name of the requestor, in his March 28, 2022 CORA Request to the Library District.

In response to Respondent-Appellant’s March 28, 2022 CORA request, Plaintiff-Appellee filed an Application for Judgment Pursuant to §24-72-204(6)(a), C.R.S. with the Gunnison District Court on April 13, 2022. By his application, Plaintiff-Appellee asked the District Court to determine whether §24-90-119, C.R.S., which pertains to privacy of library user records, precludes public disclosure of the Requests for Reconsideration and, if it did not, whether disclosure

would cause substantial injury to the public interest under §24-72-204(6)(a), C.R.S. Specifically, the application sought a determination as to whether the Library District had to either: 1) release the Request for Reconsideration forms in their entirety; 2) release the forms with redactions; or 3) refuse to release the forms to Respondent-Appellant.

In his letter response to the Court, filed on May 3, 2022, Respondent-Appellant argued, among other things, that the Request for Reconsideration Forms are public records, and are not “user documents” under §24-90-119, C.R.S. or contemplated by §24-72-203(3)(a)(VII).¹ It is Respondent-Appellant’s position that individuals who voluntarily submit requests to remove material from the Library District’s collection are not “users” within the meaning of §24-90-119, C.R.S., and the March 28, 2022 CORA Request does not seek access to information about how any individual uses library services—such as what books an individual has checked out. It is Respondent-Appellant’s position, as a member of the news media, that the public has a strong interest in knowing who has requested that books be removed from the Library District’s collection, information which is highly newsworthy.

The District Court held a status conference on May 2, 2022, at which both parties made oral arguments. The parties agreed that a formal hearing was

¹ Respondent-Appellant represented himself pro se before the District Court.

unnecessary, and the District Court reviewed filed materials from both parties to issue its decision. The District Court issued its final order on May 16, 2022.

B. Order Appealed and Basis for Appellate Jurisdiction

In its May 16, 2022 final order, the District Court ordered that the Request for Reconsideration Forms be disclosed to Respondent-Appellant with the name and other identifying information of the requester redacted, even though the District Court concluded that the name of the individual submitting the Relocation Request Form—and which book(s) the individual wanted removed or relocated—was in the public’s interest. Further, the District Court held that a “user” under the statute “is not limited to someone who reads material in the library, or, checks out material, but [is] inclusive of any person ‘using’ library services.” *See* Appendix A to this notice.

The Court has jurisdiction over this appeal pursuant to C.R.S.; §13-4-102, C.R.S.; C.A.R. 3 and C.A.R. 4.

C. Whether there are any remaining issues to be resolved:

All the issues in the case have been decided.

D. Attorney Fees and Costs:

Not applicable.

E. Magistrate Review:

Not applicable.

F. Post-Trial Motions:

No post-judgment motions have been filed. No party has requested an extension of time to file a motion for post-trial relief.

G. Extension of Time to File the Notice of Appeal:

No request has been made to extend the deadline to file this notice of appeal.

H. Issues on Appeal:

Among the issues that may be raised on appeal in this case are the following:

1. Whether the District Court erred in holding that individuals who submit Request for Reconsideration Forms seeking to remove or move material from the Library District's collection are "users" as defined in §24-90-119, C.R.S. and §24-72-203(3)(a)(VII), C.R.S.
2. Whether the District Court otherwise erred in ordering redaction of the requestor's name and other identifying information from the Request for Reconsideration Forms, including by misinterpreting or misapplying *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1980) and/or *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (Colo. 2002).

Respondent-Appellant hereby specifically reserves the right to raise other issues, whether or not specified above. *See Giampapa v. Am. Family Mut. Ins. Co.*, 919 P.2d 838, 840 (Colo. App. 1995) (issue statement in a notice of appeal is

merely advisory, not jurisdictional), *disapproved on other grounds*, 64 P.3d 230 (Colo. 2003).

I. Necessity of Transcript:

A transcript is necessary to review the issues on appeal. Respondent-Appellant represented himself pro se in a status conference on May 2, 2022. Transcripts of the May 2, 2022 status conference are part of the Record on Appeal. No formal hearing was set in this matter.

J. Lawyer or Party Information:

For Respondent-Appellant:

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
rjohnson@rcfp.org

For Plaintiff-Appellee:

Michael P. O’Loughlin
Schumacher & O’Loughlin, LLC
Attorneys at Law
232 W. Tomichi Ave, Suite 204
Gunnison, CO 81230
Phone: (970) 641-4900
Fax: (970) 641-5005
Email: mike@gunnisonlaw.net

K. Appendix:

A copy of the final order being appealed, Appendix A, is attached.

Respectfully submitted this 5th day of July 2021.

By  _____

Rachael Johnson

REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

*Attorney for Respondent-Appellant
Mark Reaman, editor of the Crested
Butte News*

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July 2021, a true and correct copy of the foregoing **NOTICE OF APPEAL** 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:

Michael P. O’Loughlin
Schumacher & O’Loughlin, LLC
Attorneys at Law
232 W. Tomichi Ave, Suite 204
Gunnison, CO 81230
Phone: (970) 641-4900
Fax: (970) 641-5005
Email: mike@gunnisonlaw.net



Rachael Johnson

And filed with the:

DISTRICT COURT, CITY AND COUNTY OF GUNNISON
200 E. Virginia Ave
Gunnison, CO 81230