

COLORADO COURT OF APPEALS
2 East 14th Ave
Denver, Colorado 80203

DATE FILED: November 21, 2022 3:00 PM
FILING ID: 3BB725A59769F
CASE NUMBER: 2022CA1119

Appeal from Gunnison County District Court
Honorable J. Steven Patrick
Case No. 2022CV30017

Appellant:
MARK REAMAN, in his capacity as the Editor of
the Crested Butte News

v.

Appellee:
ANDREW BROOKHART, in his official
capacity as the Executive Director and Custodian
of Records for the Gunnison County Library
District

▲ COURT USE ONLY ▲

Attorney for Proposed *Amicus Curiae* Colorado
Freedom of Information Coalition

Steven D. Zansberg, Atty. Reg. #26634
Law Office of Steven D. Zansberg, L.L.C.
100 Fillmore Street, Suite 500
Denver, Colorado 80202
Telephone: (303) 385-8698
Facsimile: (720) 650-4763
steve@zansberglaw.com

Court of Appeals Case No.:

**PROPOSED BRIEF OF PROPOSED *AMICI CURIAE*
THE COLORADO FREEDOM OF INFORMATION
COALITION IN SUPPORT OF APPELLANT**

EXHIBIT 1

CERTIFICATE OF COMPLIANCE

I hereby certify that this Proposed Brief of *Amici Curiae* in Support of the Appellant complies with the requirement of Rule 29(d). This amicus brief contains 592 words. In addition, I certify that this brief complies with the content and form requirements of C.A.R. 29 and 32.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

/s/ Steven D. Zansberg, #26634

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

IDENTITY OF THE AMICI AND THEIR INTEREST IN THIS CASE.....1

ARGUMENT.....2

CONCLUSION.....3

TABLE OF AUTHORITIES

Case Law

Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974)).....2

Denver Publ'g v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).....3

Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).....3

Land Owners United, LLC v. Waters, 293 P.3d 86 (Colo. App. 2011).....2,3

Statutes

§ 24-90-119(1), C.R.S.....3

Court Rules

C.A.R. 29 i

C.A.R. 32 i

IDENTITY OF THE AMICI AND THEIR INTEREST IN THIS CASE

CFOIC is a 501(c)(3) not-for-profit, educational, and nonpartisan alliance of news organizations, citizen groups and individuals dedicated to ensuring the transparency of state and local governments in Colorado by promoting open access to government records and meetings, and more generally, a free flow of information to We the People. Among CFOIC's member organizations are The ACLU of Colorado, Colorado Bar Association, Colorado Broadcasters Association, Colorado Association of Libraries, Colorado Press Association, Common Cause, and The Independence Institute.¹ CFOIC has a significant interest in the issues of this case. CFOIC submits this brief in support of Appellant.

The CFOIC (and all residents of Colorado) have a vested and continuing interest in the issues presented by this appeal. The District Court erred in ruling that a member of the public who submits a request to a public library to have books, magazines, films, music, or any other materials be removed from the circulating inventory of the library is not a "user" of library services and therefore the records memorializing such a request is not exempt from disclosure under Colorado's Open Records Act.

¹ The position(s) set forth in this proposed amicus brief by the CFOIC do not necessarily represent the views of each member of the coalition.

ARGUMENT

Colorado's Open Records Act ("CORA) provides all of the state's residents the right to inspect all writings that are created and/or maintained by government agents, public servants, that reflect their discharge of official duties.² Over the past decades, the General Assembly has itemized and amended a list of specifically identified exemptions from the broad presumption of public access, in recognition of individual privacy and myriad other countervailing interests. One such exemption, enacted in 1983 as a portion of a bill protecting the privacy of library patrons, mandates that records processed by public librarians that disclose the reading choices of library users are confidential and not available for public inspection.³

The District Court in this case erred by ignoring the well-established precedent requiring that all such statutory exemptions be construed narrowly to maximize the amount of information available to the public.⁴ A proper, narrow construction of the operative exemption does not extend to a written form submitted by a member of the public, **not an actual "user" of library services**, asking library officials to prevent *actual library users* from accessing books or other information in the library's collection.

² *Land Owners United, LLC v. Waters*, 293 P.3d 86, 94 (Colo. App. 2011) (citing *Denver Publ'g Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974)).

The public has a right to inspect the public records submitted by a member of the public requesting that a government agency take any action affecting other members of the public, absent some statutory exemption that promotes some other recognized societal interest. Here, no existing statutory exemption affords such protection to the “Request for Reconsideration” form at issue.

CONCLUSION

For the reasons stated above, *Amici Curiae* the Colorado Freedom of Information Coalition respectfully asks the Court to reverse the judgment below.

DATED: November 21, 2022

Respectfully submitted,

/s/ Steven D. Zansberg
Steven D. Zansberg
Counsel for Proposed *Amici Curiae*

³ See also § 24-90-119(1), C.R.S. (2022) (mandating that “a publicly supported library shall not disclose any record or other *information that identifies a person as having requested or obtained specific materials* or service or as otherwise having *used the library.*”) (emphasis added).

⁴ *Land Owners United, LLC*, 293 P.3d at 94 (citing *Freedom Newspapers, Inc. v. Tollefson*, 961 P.2d 1150 (Colo. App. 1998); *Denver Publ'g v. Univ. of Colo.*, 812 P.2d 682, 684-85 (Colo. App. 1990)).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PROPOSED BRIEF OF PROPOSED *AMICUS CURIAE* IN SUPPORT OF APPELLANT** was e-filed and served November 21, 2022 via the Colorado Courts E-filing System on all counsel of record in this case.

/s/ Steven D. Zansberg

Steven D. Zansberg