

SUPREME COURT OF NORTH CAROLINA

IN THE MATTER OF CUSTODIAL)	<u>From Guilford County</u>
LAW ENFORCEMENT RECORDING)	No. COA 18-992
SOUGHT BY THE CITY OF)	
GREENSBORO)	

BRIEF OF AMICUS CURIAE THE BELOVED COMMUNITY CENTER OF GREENSBORO, THE LEAGUE OF WOMEN VOTERS OF THE PIEDMONT TRIAD, RECLAIMING DEMOCRACY, ROCH SMITH JR., THE GUILFORD ANTI-RACISM ALLIANCE, THE HOMELESS UNION OF GREENSBORO, TRIAD CITY BEAT, THE CAROLINA PEACEMAKER, THE PULPIT FORUM OF GREENSBORO AND VICINITY, DEMOCRACY GREENSBORO, THE UNCG CHAPTER OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, ST. BARNABAS EPISCOPAL CHURCH, COMMUNITY PLAY!/ALL STARS ALLIANCE, THE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, NC WARN, AND THE CITY OF DURHAM NC IN SUPPORT OF PETITIONER-APPELLANT THE CITY OF GREENSBORO

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INTRODUCTION

This case concerns an unprecedented abridgement of the people’s fundamental constitutional rights to self-governance and protection against prior restraints. At its root are some of the most politically charged issues of our time: racialized police violence and government accountability for policing policies and practices that unjustly target people of color. For the *amici* parties, the gag

order ratified by the Court of Appeals constitutes judicial complicity with our nation's legacy of brutal bodily, economic, and social oppression of African Americans and the role that law enforcement officials have played in that legacy. The gag order undermines the ability of the people, through their elected representatives, to hold the government accountable on a matter of critical public concern. It silences the very discourse critical to addressing police misconduct, implicit or unconscious bias, and racialized fear. In so doing, the order feeds the very political turmoil it seeks to suppress.

The gag order undermines the sovereign power of the people of North Carolina to hold accountable the elected officials that represent them. Article I, Sections 2 and 3 of the North Carolina Constitution respectively guarantee that “[a]ll political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole,” and “[t]he people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof. . . .” The gag order subverts these rights and the people's ability to fulfill their foundational civic duty to be informed and engaged on important issues impacting the community, which is necessary to ensure that their elected government officials are effectively representing their interests. The gag order also encroaches on the constitutional rights guaranteed under Article I, Section 12

which provides: “The people have a right to assemble together to consult for their common good, to instruct their representatives . . .” The right to instruct is dependent on free and open communication between constituents and the people they elect. The gag order makes it impossible for the people to exercise this basic right, which is critical to a functional democracy. By imposing these restrictions, the gag order violates the most basic and cherished rights of sovereignty of the people and constitutional self-government.

The gag order is also an unconstitutional prior restraint of free speech. Because such restrictions directly threaten the vitality of our democracy by smothering public debate on important issues, prior restraints are among the most egregious violations of the right to free speech. The danger of this form of censorship is elevated in moments of political discord, where free speech is indispensable to ensuring the public’s right to be fully informed. Only through unfettered communication between citizens and their elected representatives can the North Carolina Constitution’s promise to vest all government power in the people be realized, and only through such open communication will our legacy of racial oppression begin to be remedied.

BACKGROUND

On 10 September 2016, ten City of Greensboro police officers were involved in the tasing and aggressive use of force in arresting several African-American

men. Police body cameras captured the incident and the arrests, as did some cell phone video taken by a witness at the scene. One of the persons arrested claimed that the officers violated his civil rights and made a complaint to the Greensboro Police Community Review Board (“PCRB”). See Jordan Green, *Complaint Against GPD for Profiling Black Men Downtown*, TRIAD CITY BEAT, Sept. 13, 2017, <https://triad-city-beat.com/complaint-gpd-profiled-escalated-conflict-black-men-downtown/>.

Pursuant to the provisions of the NC Public Records Act (N.C. Gen. Stat. § 132-1 et. seq), the PCRB petitioned the Superior Court of Guilford County for release of the footage. (R p 3). Two of the arrestees also filed for release of the video, as did the City, which asserted that it was “necessary to advance a compelling public interest.” (R pp. 5-11). Guilford County Superior Court Judge Susan Bray agreed with the City that release of the footage was necessary to advance a compelling public interest, but severely limited the terms of the release, holding that only “the City Manager, City Council members, [and] legal counsel for the City” could view the footage. Additionally, all those persons were required to sign a pledge of confidentiality that they would not disclose or discuss the videos with anyone except each other in their official capacity as managers, council members, and legal counsel for the City, “as necessary to perform their legal duties.” The order held that any violation would subject the viewer to criminal

contempt proceedings, including a “fine of up to \$500 and imprisonment of up to 30 days.” (R p 27).

This sweeping gag order meant council members could not discuss this critical matter of public concern with their constituents or any members of the public. The order imposed the additional burden on council members that if they wanted to exercise the right to speak with constituents about this matter—which the court already agreed was such a serious matter of public interest that it released the video to the City—they would first have to prove their speech was necessary to carrying out their duties as an elected representative.

Following the resolution of all the underlying criminal matters, the City did just that, petitioning the court to modify the gag order and expressly noting that it prevented council members from performing their legal duties as elected officials or from fulfilling their oath of office. (R p 33-34). During the hearing on the motion, the court bristled at the fact that, in an effort to honor their legal and constitutional responsibilities to their constituents in the face of the gag order’s restrictions, council members declined to view the video. Without making any findings of facts or conclusions of law, the court refused to amend the gag order. (R pp. 37-38).

The City appealed the ruling, with substantial public support from several of the *amici* groups and their members, many of whom have been working on

issues of police misconduct and accountability in the city for decades. The Court of Appeals affirmed the gag order on August 6, 2019.

ARGUMENT

I. THE COURT OF APPEALS OPINION VIOLATES THE FOUNDATIONAL CONSTITUTIONAL PRINCIPLES OF DEMOCRATIC SELF-GOVERNMENT BECAUSE IT PREVENTS THE PEOPLE FROM BEING ABLE TO HOLD THEIR ELECTED OFFICIALS ACCOUNTABLE, PARTICULARLY ON MATTERS OF VITAL PUBLIC CONCERN.

“Knowledge will forever govern ignorance. And a people who mean to be their own governor must arm themselves with the power that knowledge gives. A popular government without popular information or the means for acquiring it is but a prologue to a farce or tragedy or perhaps both.”—James Madison

a. In constraining the ability of the City Council to discuss the video, the Court of Appeals opinion subverts the constitutional rights of the people to ensure that their elected government officials are effectively representing their interests.

The Court of Appeals opinion fails to consider or recognize that, while the gag order at issue is directed at the members of the city council, silencing these government representatives also violates the fundamental rights of the constituents that elected them and from whom those municipal officials derive their power. A court order which prevents a city council from discussing matters of vital public interest with the people they serve infringes upon the sovereign power of the people to self-government and the ability of those elected officials to meaningfully determine and execute the will of the people.

Article I of the North Carolina Constitution, The Declaration of Rights, sets forth the fundamental rights of the people of the State of North Carolina, which include:

Sovereignty of the People: All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole. Art. I, Sec. 2.

Internal government of the State: The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States. Art. I, Sec. 3.

Recurrence to fundamental principles: A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty. Art. I, Sec. 35.

This Court has repeatedly reaffirmed the primacy of the constitutional rights of the people, that the government derives its power from the people, and that it must in turn use this power to preserve and protect the rights of the people:

During the past 172 years, the organic law of this State has contained the solemn warning that a frequent recurrence to first principles is absolutely necessary to preserve the blessings of liberty. When the representatives of the people of North Carolina assembled in Congress at Halifax on November 12, 1776, for the express purpose of framing a constitution, they possessed an acute awareness of the long and bitter struggle . . . for some substantial measure of freedom and dignity for the individual. They loved liberty and hated tyranny, and were

convinced that the government itself must be compelled to respect the inherent rights of the individual if freedom is to be preserved and oppression is to be prevented.

State v. Ballance, 229 N.C. 764, 768, 51 S.E.2d 731, 733-34 (1949).

In 1992, this Court recognized a direct right of action against government actors for violations of the provisions of the Declaration of Rights. In doing so, the Court again highlighted the constitutional primacy of the principle that all power derives from the people:

As a matter of fundamental jurisprudence the Constitution . . . is the instrument by which “We, the people of the State of North Carolina,” first acknowledge our individual rights and liberties and then create a government to better secure our enjoyment of those rights and liberties. The significant fact is that “We, the people,” created the Constitution and the government of our State in order to limit our actions as the body politic. The Constitution is intended to protect our rights as individuals from our actions as the government.

Corum v. University of North Carolina, 330 N.C. 761, 787-88, 413 S.E.2d 276, 292-93 (1992).

The *amici* are primarily community-based organizations which are devoted to the promotion of racial equity, social justice, and civic engagement. They are also all dedicated to meaningful public participation, transparency, and engaged communications with local government. As noted in detail below, the issues of police misconduct and racialized police violence, and the City’s review, oversight, and accountability for police practices have been a divisive and high-profile issue within the community for decades. For the *amici* and their members, these issues

remain some of the most important ones regarding political representation and the effective governance of the city. These organizations understand that for the City to function as a democracy— that is, for the people to be able to meaningfully exercise their sovereign political power and their “inherent, sole, and exclusive right to regulate the internal government and police” of the city—it is imperative that their elected representatives be able to freely discuss vital matters of public concern with their constituents.

The City also recognized these fundamental concerns and reflected them in its motion to modify the gag order. The City expressly stated that the restrictions imposed were inconsistent with Council members’ legal and constitutional duties, as well as inherently contradictory to the court’s conclusion that release of the video was necessary to advance a compelling public interest.

City Council requests a modification . . . as the current restrictions pose a substantial impediment in discharging their duties as Council members. Council members further indicated that their inability to discuss pressing uses of social concern with the police and the community at large “is in direct contradiction” to the duties of the elected body. As outlined in the City Council Guide, “City Council is a legislative body, and Council members act as the voice of their constituents.” In relevant part, Council’s duties and responsibilities include, but are not limited to, providing political representation to various community groups, staying informed regarding current issues, and handling constituent concerns and questions as needed. . . .Council members are specifically prohibited from conducting political discourse with various community groups and is thereby constrained from responding to constituent concerns and questions surrounding

the body-worn camera recordings These restrictions impeded the City Council from fulfilling their Oath of Office.

(R pp. 33-34).

By affirming the gag order, the opinion below subverts the free and open communication necessary for the people to protect and assert their constitutional rights and to hold their elected representatives publicly accountable. The Court of Appeals never even considered the critical implications of its decision for the constitutional rights of the people or its profound impacts on their right to self-government. In addition to substantively thwarting the open and transparent communication between elected officials and the public necessary for basic democratic self-governance, the gag order also undermines public trust and transparency regarding the most important public concerns in the community (and nationally): racial bias and racialized violence by police, and the ability of municipal governments to confront and remedy these injustices. Because of the broad negative consequences for the rights of residents to meaningfully engage with and make informed decisions regarding their elected representatives, the Court of Appeals ruling should be reversed.

- b. The Court of Appeals opinion fails to recognize the compelling public interest at stake here: that issues of police misconduct and violence against people of color, and of government accountability for police actions, are matters of vital public concern in general, and especially in the City of Greensboro.**

This case, at its core, concerns a fundamental issue of race and injustice: disproportionate police violence against people of color. *See, e.g.*, Niraj Choksi, *How #BlackLivesMatter Came to Define a Movement*, N.Y. Times, Aug. 22, 2016, <https://www.nytimes.com/2016/08/23/us/how-blacklivesmatter-came-to-define-a-movement.html>. North Carolina has been a focal point of a larger national conversation regarding racialized police violence and the role of police body camera footage in potentially holding police and local governments accountable. For instance, three years ago, when our state grappled with the killing of Keith Lamont Scott by the Charlotte-Mecklenburg Police Department (“CMPD”), the city recognized the need for public transparency and released the officer’s body-camera and other footage of the shooting. Colin Dwyer, *Amid Mounting Pressure, Charlotte Police Release Video Of Shooting*, NPR, Sept. 24, 2016, <https://www.npr.org/sections/thetwo-way/2016/09/24/495318164/amid-mounting-pressure-charlotte-police-to-release-video-of-shooting> (Police Chief agrees to release “everything that we can at this point,” including from body-worn cameras and dashboard cameras). This pattern of racialized police misconduct followed by public pressure regarding access to body camera footage of the underlying incident

has been tragically replicated in many communities across the state. *See, e.g.,* Sarah Delia, *Police Body Camera Video Raises Questions About Shooting of N.C. Black Man*, N.P.R., Apr. 18, 2019, <https://www.npr.org/2019/04/18/714563464/police-body-camera-video-raises-questions-about-shooting-of-north-carolina-black>; Adam Lawson, *Police Release Body-Cam Footage from Officer-Involved Shooting*, Gaston Gazette, Nov. 30, 2018, <https://www.gastongazette.com/news/20181130/police-release-body-cam-footage-from-officer-involved-shooting>; Elizabeth Pattman, *Burlington Police Release Body Camera Video of Oct. 4 Arrest*, The Times-News, Oct. 6, 2019, <https://www.thetimesnews.com/news/20191011/burlington-police-release-body-camera-video-of-oct-4-arrest>.

The City of Greensboro has grappled with allegations of racialized police misconduct at least since the internationally-known Greensboro Massacre in 1979, when five people were killed and more than a dozen injured by Greensboro police officers and white supremacists, in full view of TV cameras. This incident led to a 1985 verdict against two police officers, two Klansmen, and two Nazis for wrongful death. Pressure by the community (over the wishes of officials) led to the creation of the groundbreaking Greensboro Truth and Reconciliation Commission, which issued its final report in 2006. *See* www.greensborotrc.org.

Over the last several years, there have been a series of high-profile incidents involving police harassment and abuse of persons of color in the City. In 2012, the City paid damages to Eva Foster, an 85-year-old retired educator whose wrist was fractured when she was forced to the ground following a confrontation with police, although she was not arrested. *Greensboro Reaches Settlement in Eva Foster Lawsuit*, Dec. 18, 2012, https://www.greensboro.com/news/local_news/greensboro-reaches-settlement-in-eva-foster-lawsuit/article_9f696371-3e66-5b7d-b803-9a5d2ee4f70a.html. In 2015, the City paid \$50,000 to settle claims with two African-American brothers who asserted they had been illegally tased and assaulted by a white officer. Sarah Newell Williamson, *Scales Brothers Get Apology, \$50,000, No Admission of Fault from City*, May 3, 2016, https://www.greensboro.com/news/local_news/scales-brothers-get-apology-no-admission-of-fault-from-city/article_1c54dca0-7427-5d8e-8426-21418cb84118.html. The City paid another \$95,000 to settle a similar claim following the release of body-camera footage that revealed the arrestee had been assaulted by officers. *City Reaches Settlement with Dejuan Yourse, Apologizes for Former Officer's Action*, May 5, 2017, <https://www.wxii12.com/article/city-reaches-settlement-with-dejuan-yourse-apologizes-for-former-officers-actions/9611947>.

The issue of racially biased policing in Greensboro made national news as well. See Sharon LaFraniere and Andrew W. Lehren, *The Disproportionate Risks of*

Driving While Black, N.Y. Times, Oct. 24, 2015,

<https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html>. The Times story noted specifically that:

Here in North Carolina's third-largest city, officers pulled over African-American drivers for traffic violations at a rate far out of proportion with their share of the local driving population. They used their discretion to search black drivers or their cars more than twice as often as white motorists — even though they found drugs and weapons significantly more often when the driver was white.

Officers were more likely to stop black drivers for no discernible reason. And they were more likely to use force if the driver was black, even when they did not encounter physical resistance. . . .

And more than four times as many blacks as whites are arrested on the sole charge of resisting, obstructing or delaying an officer, an offense so borderline that some North Carolina police chiefs discourage its use unless more serious crimes are also involved.

More recently, while this matter (which began with the illegitimate arrests, tasing, and assault by GPD officers on four African American men) was pending, the community was again devastated and outraged by the issue of racialized police violence when GPD officers hogtied and killed Marcus Smith, a mentally-ill African-American man. Litigation against the City in that matter, which also involved police body-camera video, is ongoing. See Richard M. Baron, *Marcus Smith Supporters Mark the Anniversary of His Death with Vigil; Family 'Still Lost, Still Confused with Unanswered Questions'*, Sept. 8, 2019, <https://www.greensboro.com/>

news/local_news/marcus-smith-supporters-mark-the-anniversary-of-his-death-with/article_30f91206-73a1-5ced-8b27-e9b89ea5cdd2.html#1.

Recognizing that the issue of racialized police violence is a priority for the community, and in an effort to begin to address these continuing tensions between the GPD and communities of color in Greensboro, the City Council laudably sought to approach this incident with transparency and with an intent to responsibly fulfill its obligations to engage its constituents on this matter of vital public concern. As the City itself acknowledged, the prohibition on the free communication with the public eliminated Council members' ability to effectively respond to their constituents concerns or to be held accountable by them. By sanctioning such an order, the Court of Appeals opinion betrays fundamental principles of representative democracy, the sovereign power vested in the people by the North Carolina Constitution, and their "inherent, sole, and exclusive right of regulating the internal government and police thereof."

- c. **The Court of Appeals' disregard for the unlawful prior restraint is made more egregious by the matters of public concern at stake in the gag order.**

One of the primary purposes of the constitutional guarantee of free speech is to curb prior restraints, including "administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur." *Alexander v. United States*, 509 U.S. 544, 550 (1993)

(quoting M. Nimmer, *Nimmer on Freedom of Speech* § 4.03, p. 4-14 (1984)). Prior restraints are prohibited because of their potential for overbreadth with little accountability. Thomas Emerson, *The System of Freedom of Expression*, 20 *Law & Contemp. Probs.* 648, 657 (1955) (noting courts can use judicial orders to suppress a wide range of speech through “a simple stroke of the pen” without being subject to public scrutiny). Given these serious concerns, our democratic system prefers to punish those who abuse their speech rights after they violate the law, rather “than to throttle all others beforehand.” *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546, 559 (1970).

Gag orders are quintessential prior restraints and are thus “subject to strict and rigorous scrutiny under the First Amendment.” *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs*, 184 N.C. App. 110, 116, 645 S.E.2d 857, 860 (2007) (quoting *Sherrill v. Amerada Hess Corp.*, 130 N.C. App. 711, 719, 504 S.E.2d 802, 807 (1998)). The gag order at issue here is a “court order that actually forbid(s) speech activities,” and as such, falls squarely within the classic definition of “prior restraints.” *Id.*

Speech regarding matters of public concern “occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection.” *Connick v. Meyers*, 461 U.S. 138, 145 (1983). *See also First Nat'l Bank v. Bellotti*, 435 U.S. 765, 776 (1978) (noting speech pertaining to public affairs lies “at the heart of

the First Amendment’s protection”); *New York Times v. Sullivan*, 376 U.S. 254, 296-97 (1964) (Black, J. and Douglas, J., concurring) (finding speech on matters of public concern is “the kind of speech the First Amendment was primarily designed to keep within the area of free discussion”). In keeping with these principles, the Fourth Circuit Court of Appeals recently vacated a trial court’s gag order in a high-profile trial pertaining to the hog farm industry in North Carolina. *Murphy-Brown LLC v. American Farm Bureau Federation*, 907 F.3d 788 (4th Cir. 2018). Trial court concerns about publicity could not justify the damage wrought by a gag order and its “mut[ing] political engagement on a contested issue of great public and private consequence.” *Id.* at 795. “[E]ven in short doses, these harms are hostile to the First Amendment.” *Id.*

However, that is exactly what the Court of Appeals has allowed to occur in this case. Racialized police violence has caused political and social turmoil in Greensboro, our state and the nation; but that turmoil does not immunize prior restraints from constitutional scrutiny. Nor can a prior restraint be justified by inconvenient consequences that may result from the speech. In *New York Times Co. v. United States*, the U.S. Supreme Court struck down an order enjoining the New York Times and Washington Post from publishing the Department of Defense’s top-secret, 47-volume history of the Vietnam War. 403 U.S. 713, 714 (1971). Despite the delicate nature of the documents in question, the Court held

that the executive branch did not overcome the heavy presumption against the constitutionality of prior restraints. *Id.* Forcefully condemning prior restraints, Justice Hugo Black in his concurrence noted:

The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

Id. at 719-20 (Black, J., concurring) (quoting *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937)). In fact, every moment the dissemination of “current news of vital importance to the people” is restrained constitutes a “flagrant, indefensible and continuing violation of the First Amendment.” 403 U.S. at 715 (Black, J., concurring).

The Fourth Circuit has reinforced such longstanding First Amendment principles in racialized police misconduct cases. Recently, in *Nero v. Mosby*, 890 F.3d 106, 114 (4th Cir. 2018), Baltimore police officers sued the Baltimore State’s Attorney who prosecuted them for the death of Freddie Gray, a black man who died of non-accidental spinal cord injuries while in police custody. In the aftermath of Gray’s death, the citizens of Baltimore rallied to express their outrage about the disproportionate levels of police brutality against people of color. Sheryl

G. Stolberg and Stephen Babcock, *Scenes of Chaos in Baltimore as Thousands Protest Freddie Gray's Death*, N.Y. TIMES, Apr. 25, 2015, <https://www.nytimes.com/2015/04/26/us/baltimore-crowd-swells-in-protest-of-freddie-grays-death.html>. After an investigation proved Mr. Gray's death to be a homicide, the Baltimore State's Attorney announced in a press conference that the city would be pressing criminal charges against the officers involved. *Nero*, 890 F.3d at 114. Three of the officers sued the State's Attorney for defamation based on comments from her press conference. *Id.*

Rejecting this challenge to the State Attorney's speech, the Fourth Circuit emphasized the importance of unrestricted exchange between the people and those entrusted with carrying out the public duties of our government. In his concurrence, Judge Wilkinson recognized, "the First Amendment was founded on the belief 'that the greatest menace to freedom is an inert people; that public discussion is a political duty.'" *Id.* (citing *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J. concurring)). The public has a right to be fully informed of issues implicating current events, and it would be inimical to our "most cherished constitutional ideals" to punish an elected official for discharging their democratic duties. *Id.* See also *Bank v. Floyd*, 385 U.S. 116, 136-37 (1966) (noting elected officials have "an obligation to take positions on controversial political questions").

From the height of the Vietnam War, to more recent civil unrest in Baltimore, and now to the streets of Greensboro, “the censors never sleep.” *Nero*, 890 F.3d at 133 (Wilkinson, J., concurring). Neither does the First Amendment, nor its skepticism of prior restraints, especially in moments of discord. Because this is a fraught moment in our nation, North Carolina, and Greensboro between law enforcement and communities of color, this Court should support the argument for transparency and overturn the gag order currently in place.

d. The Court of Appeals opinion grants overly broad and unfettered discretion to the judiciary.

In affirming the gag order, the Court of Appeals erroneously relies on an overbroad interpretation of provisions of the North Carolina Public Records Act. In doing so, it fosters unfettered discretion in the trial court judge which contravenes the letter and spirit of the Act, encroaches on the separation of powers, and creates the potential for further serious abuse.

The Public Records Act begins with an unambiguous statement of public policy: “the public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people.” N.C. Gen. Stat. § 132-1(b). Our courts have made clear that the terms of the Act are to be interpreted broadly and in favor of release of records. *Jackson v. Charlotte Mecklenburg Hosp. Authority*, 238 N.C. App. 351, 768 S.E.2d 23 (2014). While N.C. Gen. Stat. § 132-1.4A(b) states that police body camera recordings are exempt from

the definition of a “public record,” our courts have similarly held that exemptions to the statute should be interpreted narrowly. *Wallace Farm, Inc. v. City of Charlotte*, 203 N.C. App. 144, 689 S.E.2d 922, review denied 364 N.C. 334, 701 S.E.2d 681 (2010).

Here, in the first appellate decision considering the applicability of the Public Records Act with respect to body camera videos, the Court of Appeals has ignored these basic parameters of public records jurisprudence. Instead, relying on merely the fact that these recordings are exempt, the lower court reads the statute to permit unfettered discretion in the trial court to impose restrictions on release, stating in this context that any constitutional rights that may be implicated are subordinate to “the grace of the legislature.” (Slip Op. 6).

The willingness of the Court of Appeals to ignore the constitutional implications of the gag order requires reversal. “If there is a conflict between a statute and the Constitution, this Court must determine the rights and liabilities or duties of the litigants before it in accordance with the Constitution, because the Constitution is the superior rule of law in that situation.” *Nicholson v. State Ed. Assistance Authority*, 275 N.C. 439, 447, 168 S.E.2d 401, 406 (1969). The mere fact that the constitutional encroachment was effectuated by legislative action does not absolve our courts from the obligation to protect the rights of the people:

The civil rights guaranteed by the Declaration of Rights in Article I of our Constitution are individual and personal rights entitled to

protection against state action.... The fundamental purpose for [the] adoption [of the Declaration of Rights] was to provide citizens with protection from the State's encroachment upon these rights. Encroachment by the State is, of course, accomplished by the acts of individuals who are clothed with the authority of the State. The very purpose of the Declaration of Rights is to ensure that the violation of these rights is never permitted by anyone who might be invested under the Constitution with the powers of the State.

Corum, at 782–83, 413 S.E.2d at 289–90 (internal citations omitted).

The overbroad discretion the Court of Appeals has now approved for lower courts in determining the scope of release of body camera videos means that these orders are practically unreviewable. Particularly where, as in this case, the gag order constrains elected officials from being able to fulfill their statutory and constitutional obligations, such sweeping discretion implicates the separation of powers (and, by extension and as noted above, the constitutional rights of the people to hold those officials accountable). *See Neuse River Foundation Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 118, 574 S.E.2d 48, 54 (2002) (“It is not the role of the judicial branch of government to pre-empt the legislative branch’s policy considerations and appropriate authorization of an activity. . . . Wisely, the citizens of this state *have not granted judges wide latitude to dictate public policy*. It is critical for our purposes to remain focused on North Carolina’s timeless separation of powers doctrine.”) (emphasis added).

The Court of Appeals’ overbroad reading of the statute raises two distinct separation of powers considerations. The first, noted above, is the ability of the

court to constrain the power of local elected officials, thereby undercutting their legislative and executive authority to effectively oversee the police or represent the interests of their constituents. The second relates to the delegation of authority by the state legislature to the judiciary. While our courts have held that some delegation by the legislature is permissible, the Constitution requires that any such transfer of authority must be “accompanied by adequate guiding standards to govern the exercise of the delegated powers.” *Hope- A Women’s Cancer Center, P.A. v. State*, 203 N.C. App. 593, 598, 693 S.E.2d 673, 677 (2010) (quoting *Adams v. N.C. Dep’t of Natural & Econ. Res.*, 295 N.C. 683, 697, 249 S.E.2d 402, 410 (1978)). In assessing whether a delegation of authority includes adequate guidance, the court noted that the inclusion of “procedural safeguards” is relevant to the determination. *Id.*

Here, there are no procedural safeguards to provide a check on the delegation of power to the judiciary in making determinations about the release of body camera footage. In response to this overly-broad delegation of authority, the Administrative Office of the Courts has created a standardized form that gives the Superior Court Judge the power to “dictate legislative policy” merely by checking some boxes. The Court of Appeals should have engaged in some critical analysis of scope of the lower courts’ authority under the statute and provided some clear guidance on reconciling its broad terms with the related statutory and

constitutional provisions. The Court of Appeals had an opportunity and a responsibility to identify the necessary procedural safeguards to ensure lower courts remain within constitutional boundaries. By failing to do so, it committed reversible error.

The harms presented by the overbroad, and according to the Court of Appeals ruling, unreviewable delegation of authority are twofold: a chilling effect on free speech rights, and the potential for unchecked abuse of discretion by the trial court judge. *See City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 759 (1988) (“We have previously identified two major First Amendment risks associated with unbridled licensing schemes: self-censorship by speakers in order to avoid being denied a license to speak; and the difficulty of effectively detecting, reviewing, and correcting content-based censorship “as applied” without standards by which to measure the licensor's action.”). The gag order at issue here has produced both constitutional harms.

Although the trial court authorized the City to view the body camera footage, the gag order imposed severe restrictions on Council members. In order to see the video, each was required to sign a confidentiality agreement, the violation of which would subject the viewer to criminal contempt proceedings, including a “fine of up to \$500 and imprisonment of up to 30 days.” (R p 27). During the hearings related to the terms and conditions of the release, there was a

great deal of confusion about the restrictions, in part because there was also video of the incident recorded by a bystander that had been circulating publicly. As a result, there were both ongoing public discussions about the underlying arrest and police activity, as well as questions from the parties as to how to reconcile their having seen the public video with the terms of the gag order. (23 Jan T pp 5-8; 19 Feb T 14-20).

Despite being confronted with the widespread dissemination of the public video and the related obligations to address the issue with their constituents, Council members chose *not* to view the body-camera video because of the sweeping terms and punitive measures contained in the gag order. This reluctance to publicly engage in vital matters of public interest is exactly the kind of self-censorship that the First Amendment was designed to prevent. Ironically, the self-censorship that the trial court itself created was then cited by the judge in denying the City's motion to amend the order ("I'm really not inclined to entertain their motion if they haven't even bothered to watch it I think that's ridiculous to say I want to be able to discuss something I didn't even watch." (19 Feb T pp 21-2)).¹

The Council members' fears of the overbroad discretion of the trial court proved not unwarranted. On August 27, 2019, Judge Bray, acting *sua sponte*,

¹ The City was only seeking to have the restrictions on being able to discuss the video removed. The City never sought to release the video to the public.

initiated disciplinary proceedings against Graham Holt, the civil rights attorney who represented men whose assault by GPD was captured on the body camera video at issue in this case. According to the court, Attorney Holt had allegedly violated the gag order in attempting to communicate with the City Council, which had also been authorized by the court to view the footage. Judge Bray's order initiating disciplinary proceedings against Attorney Holt goes far beyond the gag order's express terms, which limits the penalty for violation of the order to a "fine of up to \$500 and imprisonment of up to 30 days." The order also appointed the attorney to prosecute the disciplinary hearing and the panel of attorneys to investigate the conduct at issue, which Judge Bray describes as "Mr. Holt may have acted with impropriety calculated to bring contempt upon the administration of justice." Initiation of Disciplinary Proceedings, Aug. 27, 2019, 19 M 2278 (Guilford County Superior Court) (attached hereto as "Exhibit 1"). By initiating these proceedings, the court not only invites the full range of disciplinary actions the panel may impose, but expressly highlights its "inherent authority" to impose additional disciplinary measures beyond whatever the State Bar may impose, including suspension of the right to practice law before the court or in the state, payment of fines or attorney fees, and disbarment. *Id.*

This sweeping threat to the livelihood of a lawyer known in the community for bringing civil rights claims related to police misconduct is a grim example of

the exact kind of unchecked abuse of discretion the Supreme Court warned of in *City of Lakewood*. Similarly, the Council members' reluctance to view the video evidences the chilling effect that the Supreme Court highlighted as one of the "identifiable risks" engendered by the "evils" of unfettered discretion coupled with prior restraint. 486 U.S. at 757.

CONCLUSION

The fundamental right of the people to engage their elected officials and to hold those officials accountable is imperative in moments of social and political controversy. Racialized practices, potential misconduct, and external oversight of police departments are among the most contentious issues confronting not just the City of Greensboro and North Carolina, but also this nation, and so the free and open discussion of these matters between residents and their City Council must be protected. By undermining these communications, the gag order prevents members of the community from fulfilling their foundational civic duty to be informed of matters of vital public concern and to ensure that their elected government officials are effectively representing their interests. The gag order thereby violates the most critical rights of the sovereignty of the people and constitutional self-government.

The gag order imposed by the lower court conflicts with this country's history and commitment to the protections of free speech and engaged democratic

participation. Opposition to prior restraints were central to the ratification of the First Amendment. Discourse on matters of public importance between the people and their elected representatives “occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection.” *Connick*, 461 U.S. at 145. Judicial skepticism of efforts to suppress such discourse transcends the fraught nature of almost any moment.

Accordingly, the *amici* parties urge this Court to reverse the Court of Appeals’ opinion.

Respectfully submitted this the 25th day of October, 2019

Electronically submitted

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N.C.R. App. P 33(b) Certification: I, Mark Dorosin, certify that the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing brief on counsel for the Appellee by depositing a copy, contained in a first-class postage-paid wrapper, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

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Attorneys for GPD Officers

This the 25th day of October, 2019.

/s/ Mark Dorosin
Mark Dorosin

Exhibit 1

STATE OF NORTH CAROLINA

GUILFORD COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE

2019 AUG 27 P 11 52 SUPERIOR COURT DIVISION

GUILFORD COUNTY, C.S.C.

19 M 2278

BY

Initiation of Disciplinary Proceeding

IN RE GRAHAM HOLT

THIS GUILFORD COUNTY SUPERIOR COURT, by its inherent authority to discipline lawyers (*In re Northwestern Bonding Co.*, 16 N.C. App. 272 (1972)), now initiates a disciplinary proceeding against Graham Eugene Holt, North Carolina Bar #34817.

It has come to the Court's attention that on August 9, 2019, Mr. Holt sent an email to Mayor Nancy Vaughan and all members of the Greensboro City Council (Sharon Hightower, Goldie Wells, Yvonne Johnson, Justin Outling, Marikay Abuzuaiter, Nancy Hoffman, Michelle Kennedy and Tammi Thurm) wherein he discusses body worn camera footage of an incident where his client Zared Jones and others were arrested on January 29, 2018 by Greensboro police officers.

By Order on Petition for Release of Custodial Law Enforcement Agency Recording in 17 CVS 9539 (Petitioner Attorney Graham Holt on behalf of Zared Kinah Jones) entered January 22, 2018, Mr. Holt and his client Jones were ordered "not to disclose or discuss the body-worn camera recordings except with each other or in association with any official hearing where they are present together with the Police Community Review Board."

Mr. Holt's email to the mayor and council members is a public record and has been released as such by the City of Greensboro. Copy of said email is attached as Exhibit A.

It appears that Mr. Holt may have acted with impropriety calculated to bring contempt upon the administration of justice.

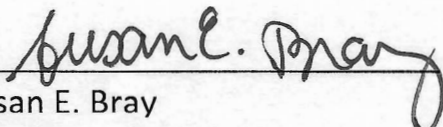
This Court appoints Attorney Walter "Kirk" Burton to prosecute this disciplinary proceeding.

This Court appoints attorneys Wendy M. Enochs, Kearns Davis and Don D. Carter as a committee to review/investigate Mr. Graham's conduct and make recommendations to the judge presiding over the disciplinary proceeding.

The Hon. Allen Baddour has been commissioned to conduct the proceeding during the September 30, 2019 session of civil superior court in Greensboro. Should this date pose a conflict or problem for Mr. Holt, the Committee or Mr. Burton, they shall notify Trial Court Coordinator Brittany Robinson by September 13, 2019 so that an alternate date can be arranged.

Be it known that the Court's authority to impose discipline applies to any lawyer practicing before the court, even if the case which gives rise to the discipline is not currently pending. *In re* Robinson, 37 N.C. App.671, 677. Further, a court using its inherent authority to discipline lawyers is not limited to the sanctions that the State Bar might impose. "Sanctions available include citations for contempt, censure, informing the North Carolina State Bar of the misconduct, imposition of costs, suspension for a limited time of the right to practice before the court, suspension for a limited time of the right to practice law in the State, and disbarment." *Id.* at 676. The court may order the misbehaving lawyer to pay attorney fees, pay a fine, and/or suspend the lawyer's right to represent indigents.

This the 27th day of August, 2019.



Susan E. Bray
Resident Superior Court Judge

This Order Initiating Disciplinary Proceeding shall be served on Attorney Graham Holt by the Guilford County Sheriff.
Copies of the Order shall be sent to Walter "Kirk" Burton, Wendy M. Enochs, Kearns Davis and Don D. Carter.

Exhibit A—Email from Graham Holt to Mayor and Council

Davis, Rosetta

From: Vaughan, Nancy (Mayor)
Sent: Friday, August 09, 2019 4:33 PM
To: newsmedia
Subject: FW: [Talk to Council Form] - CONFIDENTIAL Zared Jones

From: donotreply@greensboro-nc.gov
Sent: Friday, August 9, 2019 4:32:56 PM (UTC-05:00) Eastern Time (US & Canada)
To: Hightower, Sharon; Vaughan, Nancy (Mayor); Wells, Goldie; Johnson, Yvonne; Outling, Justin; Abuzuaiter, Marikay; Hoffmann, Nancy; Kennedy, Michelle; Thurm, Tammi
Subject: [Talk to Council Form] - CONFIDENTIAL Zared Jones

Dear Mayor Vaughan and City Council Members,

While I no longer represent Zared Jones, Clifton Ruffin, Aaron Garrett and Alfonso Thomas, I encourage you to watch the body worn camera footage of their unlawful arrests. It is imperative that you watch ALL of the footage and not an edited version.

And I would like to thank you for appealing Judge Bray's gag order which prevents myself, the Mayor Vaughan and members of the City Council from disclosing or discussing to third parties the police BWC footage. The recent ruling of the NC Court of Appeals is disturbing and sets a dangerous precedent. I hope the city plans to appeal to the NC Supreme Court.

As you all know, Judge Bray's order, while it prevents disclosure or discussion with third parties about the body worn camera footage of the incident, the order expressly grants myself, the Mayor and the City Council permission to watch the footage. I drafted this letter alone and I am not asking you to violate Judge Bray's order nor am I in violation of the order by delivery of this letter.

On January 29, 2018, I watched about four hours of the footage captured of the incident. I was not allowed to watch the footage captured when the officers involved first approached and questioned Zared and his friends near Cheesecakes by Alex downtown. I was told by Sergeant Flynt this footage was erased three months after it was captured. This is suspect to say the least because the City referred to this portion of the footage in court filings requesting release of the footage. Attorneys for the GPD were in court for all three hearings before Judge Bray and never alerted the attorneys or the Court that a crucial portion of the footage we were arguing about in open court, and which the Judge Bray referenced in various orders, had been erased.

There is an overwhelming amount of police abuse and constitutional violations in the footage. Much of the abuse captured is highly methodical and deliberate. It is your duty to watch this footage and take appropriate action. In this letter, I have chosen parts of the footage to discuss so that you will understand the gravity of the situation. But it is your duty to watch all the footage on your own. All the footage is crucially important.

On September 10, 2016, Zared Jones, Clifton Ruffin, Aaron Garrett and Alfonso Thomas were arrested in downtown Greensboro. After the four men arrived downtown and parked their car, officers approached them on

bicycles and repeatedly asked them what they were doing downtown and where they were going. The four men objected to the harassment and after some back and forth they went on their way. The police then followed the four men down Elm Street to the Boiler Room Bar near Elm Street on West McGee Street. Alphonso, alarmed that the officers were following them, began recording the officers on his cell phone. Once the four men reached the Boiler Room, Alphonso approached the bouncer, Jermain Parson who was working the front door. On the footage, Alphonso and Jermain Parson are smiling and shaking hands and being very friendly with each other. Officer Alvarez approaches Alphonso and says, "look, I got you on camera too and your loitering." Officer Alvarez then steps back onto West McGee Street and discusses arresting the men with Officers Flowers. Even though the men have not broken any laws, the officers agree with each other that "these guys are going to jail tonight". The footage reveals the officers plotted to arrest the young men long before the men had done anything but walk through downtown.

While the officers are waiting outside the Boiler Room and watching the four men, Zared Jones enters the Boiler Room only to be kicked out shortly thereafter. Inside the Boiler Room, Zared paid the bartender for a beer but the bartender refused to serve him. He was carried out by a bouncer after he asked to speak to a manager. The footage shows Zared being removed from the Boiler Room by the bouncer and he is calm and non-combative. Zared then approaches Officer Alvarez and asks him for help. Zared tells Alvarez that he was assaulted in the Boiler Room by the staff and that he wants the police to help him file a complaint with the police. Officer Alvarez ignores Zared's request and says, "you don't belong in this area". Needless to say, this a deeply disturbing response to hear coming from a police officer. On the footage, Officer Johnson then steps in and asks Zared for his identification, which Zared promptly provides. Officer Johnson orders Zared to remain in front of the Boiler Room and to wait for his return from investigating Zared's complaint.

While Officer Johnson is walking around with Zared's ID in his hand investigating Zared's complaint, Sergeant Flowers rushes up to the door of the Boiler Room and rushes back and declares that Zared Jones and his three friends had all been kicked out of the bar. Sergeant Flowers then orders the men to leave. Zared explains that he can't leave because Corporal Johnson has his I.D. and that he was ordered to remain where he was. While Zared is explaining, Sergeant Flowers, suddenly and without warning, grabs Zared by the arm and slams a handcuff down on Zared's wrist. Aaron, exasperated by what is happening to Zared, places his hand on top of Zared's handcuffed hand and says to Officer Flowers, "what are you doing?" At this moment, Officer Alvarez lunges at Aaron with both hands and pushes him with the full force of his weight. Aaron reacts by turning around swinging his hand at his unseen attacker. Officer Alvarez grabs Aaron and throws him against a nearby car. Officer Alvarez and another officer grab Aaron by the ankles and pull his feet out from under him. Aaron barley gets his hands in front of him in time to prevent his face from slamming against the sidewalk. Aaron then somehow gets up on his feet and starts backing away from the officers pleading with them to stop. Three of the officers simultaneously shoot their tasers into his body. He falls to the ground screaming and shaking in violent fits as the electricity from the tasers surges through his body. Zared was charged with Second Degree Trespassing and Intoxicated and Disruptive, both by magistrate's order sworn to by Officer Alvarez. The charging document says Zared "was disruptive in that the defendant did interfere with passage across a sidewalk." But the footage clearly shows that Zared was ordered by the police to remain in front of the Boiler Room.

Throughout the encounter, you will see the officers very deliberately giving contradictory orders to all four men. The officers can be seen and heard on the footage using contradiction and double speak as tactics designed to escalate the situation. The goal being to frustrate the young men to the point that they do something to give the officers an excuse to arrest them. On the footage, as the officers become more and more agitated, Aaron (the man who is eventually tased) and Alphonso try multiple times to get their friends to leave the scene. Every time they try an officer steps in to stop them from encouraging the others to leave. At one point, Aaron and Alphonso

approach Zared, and not knowing that Officer Johnson had Zared's ID, they plead with him to leave but are ordered to stop by Officer Alvarez. The entire time the police are doing all they can to prevent them from leaving while at the same time telling them they must go and that they are trespassing. In the footage recorded at the jail, when the officers are discussing how to fabricate the charges against the men, Officer Alvarez openly says that Aaron Garret was trying to get his friends to leave.

After Zared, Aaron and Alphonso were arrested, officers Alvarez and Johnson stand in the street and discuss what to do about Clifton. Clifton was across the street and was not present for any of the events leading to the arrest of his friends. After the others are taken to jail, Alvarez looks across the street at Clifton and says, "he doesn't even know." Meaning, Clifton didn't know that his friends had been arrested. Clifton left the scene earlier and before things escalated. At one point in the footage, Officer Johnson says he wants to keep an eye on the other guy, meaning Clifton, who had gone across the street to a different bar. Officer Johnson can be heard saying, "we need to take care of him too." After the others were arrested, Clifton, who had no idea what had happened, can be seen walking across the street to the Boiler Room hoping to locate his friends. He stops on the sidewalk at the entrance and speaks with the bouncer Jermaine Parson. Jermaine Parson greets him and does not call the police over and he does not ask Clifton to leave. The two men are simply talking to each other. Nevertheless, Officer Johnson approaches Clifton and starts questioning him. Clifton barely gets a single sentence out before Officer Johnson handcuffs him. Clifton, completely confused, begins to take a small step away from the officers. The Officers then grab Clifton and push him forward and tell him to stop resisting. Just like with the other three men, the officers are producing the appearance of resistance so they can make an arrest. Officer Wright then wraps his arm around Clifton's neck and strangles him in a half-nelson choke hold (the same style choke hold which famously killed Eric Garner in New York City in 2014). Clifton's body is completely still while he is being choked and he clearly cannot breathe. Despite Clifton's lack of movement or resistance, Officer Wright continues to choke him as he repeatedly tells Clifton to stop resisting. Just before he loses consciousness, Officer Wright releases the choke hold and Clifton is taken to jail. Clifton had no idea what had happened to his friends and at no point in the evening did he break the law. He was stalked by the police, strangled and taken to jail for nothing.

Clifton and Zared were both charged with second degree trespass and intoxicated and disruptive while Alfonso was only charged with second degree trespass. Aaron was charged with second degree trespass, resist public officer and assault on a government official. On June 28, 2017, Aaron went to trial in Guilford County District Court. The second-degree trespass was dismissed by the Judge at the close of State's evidence and he was found not guilty of resist public officer but was found guilty of assault on government official. After months of court dates, all the charges filed against Zared, Clifton and Alphonso were dismissed.

All four men were charged with second degree trespassing by magistrate orders sworn to, respectively, by Officers Alvarez, D. M. Harmon, F. T. Wright and J. M. Chavez. All four documents list Jermaine Parson as the sole civilian witness and the person who notified the men to leave the Boiler Room. However, the footage clearly shows that this was fabricated by the officers. On the footage, Officer Johnson asks the Boiler Room bouncer Jermaine Parson if he dealt with the men and he answers, "no". But then just to placate Officer Johnson, Jermaine Parson says, "but you can use my name if you want." Throughout the footage, Jermaine Parson is clearly happy the young men were there and can be seen shaking their hands and he even has his arm around Alphonso as they joke and laugh together. This display of comradery can be seen to have occurred after the time the officers allege that the men, other than Zared, had been kicked out of the bar.

Please watch the entirety of the footage. It is my understanding that the Police Community Review Board watched an edited version of the footage. It is imperative that you watch all of the footage and not an edited

version. Every moment of the footage is important. Thank you.

Sincerely,

Graham Holt

Contact Information

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Sent To:

MAYOR AND ENTIRE CITY COUNCIL

**Exhibit B—Order on Petition for Release of Custodial Law
Enforcement Agency Recording 17 CVS 9539**

1/24/18

STATE OF NORTH CAROLINA

17 CVS 9539

Guilford County

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

FILED

ORDER ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING

Name Of Petitioner
Attorney Graham Holt (on behalf of Zared Kinah Jones)

2018 JAN 23 P 12:08

Address
The Law Office of Graham Holt
PO Box 41023

GUILFORD CO., C.S.C.

City, State, Zip
Greensboro, NC 27404

- G.S. 132-1.4A(f) – Person authorized to receive disclosure
- G.S. 132-1.4A(g) – General

This matter came before the undersigned Superior Court Judge to determine whether release of a law enforcement agency recording is warranted under Chapter 132 of the General Statutes. Following a hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On 12/14/2017 (date), the petitioner named above filed a petition for release of a custodial law enforcement agency recording to Attorney Graham Holt on behalf of Zared Kinah Jones.
2. Petitioner served did not serve a copy of the the petition on the head of the custodial law enforcement agency and the District Attorney.
3. The head of the custodial law enforcement agency did did not give notice of the petition and hearing to all law enforcement agency personnel whose image or voice is in the recording and also to the head of each such person's employing agency.
4. Each person entitled to be notified of this proceeding was was not given an opportunity to be heard, either individually or by such person's designated representative.
5. The Court conducted an in-camera review of the recording on Jan 17-21, 2018 (date). 6913
6. The recording was made was made in some portion was not made in this county.

- 7. Request made pursuant to G.S. 132-1.4A(f)
The Court determined that the person to whom release of the recording is sought is the following:
(NOTE TO JUDGE: "Personal representative" is defined as "A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased." G.S. 132-1.4A(a)(5).)
 - A person whose image or voice is in the recording.
 - A personal representative of an adult person whose image or voice is in the recording and the adult person has consented to the disclosure.
 - A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
 - A personal representative of a deceased person whose image or voice is in the recording.
 - A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.
 - None of the above.

and

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.

(Over)

17 CVS 9539

Attachment A

Attachment A

Recordings are to be viewed in presence and under direction and control of the Greensboro Chief of Police or his designee. No one other than Attorney Graham Holt and his client Zared Kinah Jones shall be present. No photographs, screen shots or other duplications or recordings of the body-worn camera footage shall be made. Attorney Graham Holt and his client Zared Kinah Jones shall sign a pledge of confidentiality and are not to disclose or discuss the body-worn camera recordings except with each other or in association with any official hearing where they are present together with the Police Community Review Board. The Court is aware that Zared Kinah Jones could have issued a subpoena for these recordings as related to his criminal cases, but he chose not to pursue that route. Failure to comply with these restrictions subjects Attorney Holt and Zared Kinah Jones to the contempt powers of the court (fine of up to \$500 and imprisonment of up to 30 days). If any of these restrictions pose a substantial impediment to Attorney Holt or Zared Kinah Jones, he may ask the Court to modify the restrictions (upon notice and an opportunity to be heard to the affected parties).