COLORADO SUPREME COURT Ralph L. Carr Colorado Judicial Center 2 East 14th Avenue, 4th Floor Denver, Colorado 80203 On Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 2021CA1880 Denver District Court Case No. 2021CV31519 **THE GAZETTE, CHRISTOPHER N. OSHER, reporter at *The Gazette*, and THE INVISIBLE INSTITUTE,** Petitioners, v. **ERIK BOURGERIE, in his official capacity as custodian and Director of the Colorado Peace Officer Standards and Training Board,** Respondent.	**COURT USE ONLY** Case No: 2023SC420
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OPENING BRIEF OF PETITIONERS

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CERTIFICATE OF COMPLIANCE

Petitioners hereby certify that this brief complies with the requirements of Colorado Appellate Rules 28 and 32.

Specifically, the undersigned certifies that the brief complies with the word limit, and it contains 8,925 words (9,500 limit). The brief also complies with the standard of review and preservation requirements set forth in Colorado Appellate Rule 28(a)(7)(A).

Petitioners acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colorado Appellate Rules 28 and 32.

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ISSUES PRESENTED FOR REVIEW

1. Whether the Colorado Court of Appeals erred as a matter of law when it concluded that Colorado Peace Officer Standards and Training ("POST") is a "criminal justice agency" as defined in § 24-72-302(3), C.R.S. (2023).

2. Whether the Colorado Open Records Act, §§ 24-72-200.1 to -205.5, C.R.S. (2023) ("CORA"), and not the Colorado Criminal Justice Records Act, §§ 24-72-301 to -309, C.R.S. (2023) ("CCJRA"), governs the disclosure of records Petitioners requested from POST.

STATEMENT OF THE CASE

In 2015 and 2016, Petitioner Christopher N. Osher wrote a series of articles detailing how law enforcement agencies in Colorado were employing officers with records of misconduct that would bar them from working in law enforcement in other states.[1] Osher, a journalist now with Petitioner *The Gazette*, based his reporting, in part, on records he obtained through requests made under the Colorado Open Records Act, §§ 24-72-200.1 to -205.5, C.R.S. (2023) ("CORA").[2] Specifically, because Colorado peace officers must be certified by the state to work in law enforcement,[3] Osher sought and obtained officer certification records from the state agency responsible for training and certifying peace officers: the Colorado Peace Officer Standards and Training Board ("POST").[4] Although incomplete, the officer certification records Osher obtained in 2015 were vital to his reporting.[5]

Around the same time, Petitioner The Invisible Institute was broadening its focus from reporting on the Chicago Police Department to reporting on law enforcement agencies throughout the country in partnership with local and national

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[1] TR 10/05/21, pp 119:1–121:16; EX, pp 124–156.

[2] TR 10/05/21, pp 116:24–117:10, 118:8–25, 122:1–17.

[3] § 24-31-305, C.R.S.,

[4] TR 10/05/21, pp 121:20–122:3.

[5] TR 10/15/21, p 123:1–25.

newspapers.[6] Relying on records obtained through public records requests and related litigation, The Invisible Institute's reporting about law enforcement in Chicago had been the culmination of more than ten years of public records requests and litigation in Illinois and contributed to more than 200 overturned convictions.[7] As it expanded the geographic scope of its work, The Invisible Institute submitted public records requests in numerous states seeking officer certification records.[8]

In 2019 and 2020, Osher—on behalf of himself and *The Gazette*—and The Invisible Institute sent a total of three separate requests to POST seeking records to advance their reporting on law enforcement in Colorado.[9] Petitioners each requested records that POST maintains in a database that houses training,

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[6] TR 10/15/21, pp 183:3–184:20; *see* Jason Tashea, *Largest Public Database of Chicago Police Misconduct Allegations Debuts*, ABA Journal (Nov. 10, 2015), https://perma.cc/2PYF-2EP6.

[7] *See generally* Jamie Kalven, *Code of* Silence, The Intercept (Oct. 6, 2016), https://perma.cc/A8UX-PJ56 (exposing official protection of police sergeant Ronald Watts and his team of corrupt officers that routinely planted drugs on people living in public housing); Andrew Papachristos, et al., *Early Detection of Corrupt Police May Stop the Next Watts Crew*, Chicago Tribune (May 5, 2022), https://www.chicagotribune.com/2022/05/04/andrew-papachristos-jamie-kalven-and-rajiv-sinclair-early-detection-of-corrupt-police-may-stop-the-next-watts-crew/ ("To date, 212 convictions involving Watts and his crew have been vacated due to the criminal activity of these officers.").

[8] TR 10/15/21, p 183:3–8, 184:125; EX pp 97, 101, 106.

[9] Respondent is named in his official capacity as the Director of POST.

certification, decertification, appointment and separation data for peace officers statewide (the "POST Database").[10] Petitioners anticipated they would receive a spreadsheet of data from POST in response.[11] Osher also separately requested all notifications of peace officer appointments to, and separations from, law enforcement agencies in 2020—records also maintained in the POST Database.[12] POST denied each of Petitioners' requests in full.[13] Each denial asserted that the request was governed by the Colorado Criminal Justice Records Act, §§ 24-72-301 to -309, C.R.S. (2023) ("CCJRA"), not CORA.

On May 14, 2021, Petitioners filed their complaint in Denver District Court alleging that POST had violated its statutory obligation to release the requested records under CORA.[14] POST did not file a responsive pleading. Following a June 16, 2021 status conference, the parties submitted simultaneous briefing on the issue of which statutory scheme—CORA or the CCJRA—applied to Petitioners'

[10] EX, p 97 (August 15, 2019 request by the Invisible Institute): EX, p 101 (June 4, 2020 request by Osher).

[11] TR 10/05/21, p 191:2–5; EX, p 101.

[12] TR 08/03/21, pp 61:25–62:2, EX, p 105.

[13] EX, pp 99–100, 103–104, 107–108.

[14] CF, p 1.

requests.[15] On August 3, after hearing testimony from Respondent and argument from the parties, the District Court ruled that POST falls within the statutory definition of a "criminal justice agency" and thus that the CCJRA—rather than CORA—governed disclosure or withholding of the requested records.

Thereafter, on October 5, 2021, the District Court held a second hearing to determine whether disclosure was required under the CCJRA. After hearing testimony from the Chief Deputy Attorney General Natalie Hanlon-Leh,[16] Osher,[17] and Sam Stecklow, a reporter at The Invisible Institute,[18] the District Court—after observing that the requested records "go to the very heart of the public's confidence in its law enforcement officers"—concluded that the court's "hands here, legally, [were] somewhat tied."[19] Although the District Court stated that POST's decision to withhold records under the CCJRA was not "the paradigm of discretionary review," it held that POST had not abused the discretion afforded by

[15] CF, pp 137 (Petitioners' brief), 161 (POST's brief); *see* CF p 113 (notice of status conference).

[16] TR 10/05/21, pp 9–111.

[17] *Id.* pp 113–178.

[18] *Id.* pp 180–221.

[19] TR 10/05/21, pp 221:16–222:11.

that statute.[20] Accordingly, the District Court issued an oral bench ruling denying Petitioners' application,[21] and entering final judgment in favor of POST.[22]

Petitioners appealed.[23] Briefing before the Court of Appeals was completed on June 21, 2022; oral argument took place on March 28, 2023. On April 27, 2023, the Court of Appeals affirmed the District Court's determination that POST is a "criminal justice agency" as defined in the CCJRA.[24] Although members of the three-judge panel expressed concern during oral argument about the broad implications of such a decision,[25] the Court of Appeals held that POST meets the statutory definition of "criminal justice agency" because when an officer is arrested POST must determine whether to revoke that officer's certification and, in making that determination, POST will obtain, and sometimes save, the relevant arrest

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[20] TR 10/05/21, p 227:11–19.
[21] *Id*. p 227:21–23.

[22] *Id.* pp 227:25–228:5.

[23] CF, p 4141.

[24] The Opinion of the Court of Appeals, announced April 27, 2023, is cited herein as "COA Op. __".

[25] Appellate Court's Live Broadcast (2023), https://cojudicial.ompnetwork.org/sessions/265190?embedInPoint=1260&embedOutPoint=3303&shareMethod=link at 36:02 (asking counsel for POST whether POST's interpretation of the statute would "mean that essentially every state agency becomes a criminal justice agency" and concluding, POST's "answer" to be "essentially, 'yes.'"), 37:50 (asking counsel for POST "if we interpret the statute the way you're arguing right now, wouldn't that lead to some rather absurd results?").

report and a record of the disposition of the officer's criminal case. COA Op. 8–12 ("We conclude that POST is a criminal justice agency under section 24-72-302(3) because it collects and stores arrest and criminal records information when it revokes a peace officer's certification.")

Petitioners seek this Court's review and reversal of the April 27, 2023 judgment of the Court of Appeals.

APPLICABLE STATUTORY FRAMEWORK

A. The POST Act

POST is charged with ensuring that peace officers meet the professional standards that the General Assembly has determined are necessary for them to serve the people of Colorado safely and effectively.[26] To fulfill that purpose, POST has certain statutory duties and powers, set forth in section 24-31-303, including:

> (c) To establish procedures for determining whether or not an applicant has met the standards which have been set;
>
> (d) To certify qualified applicants and withhold, suspend, or revoke certification; . . .
>
> (f) To require a background investigation of each applicant by means of fingerprint checks through the Colorado bureau of investigation and the federal bureau of investigation or such other means as the P.O.S.T. board deems necessary for such investigation;

[26] § 24-31-301, *et seq.*, C.R.S.

> (g) To promulgate rules and regulations deemed necessary by such board for the certification of applicants to serve as peace officers or reserve peace officers in the state pursuant to the provisions of article 4 of this title; . . .
>
> (m) . . . to adopt and promulgate, under the provisions of section 24-4-103, rules as the board may deem necessary or proper to carry out the provisions and purposes of this article, which rules must be fair, impartial, and nondiscriminatory; . . . .[27]

B. CORA and the CCJRA

CORA codifies "the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law."[28] As this Court has noted,[29] the statutory definition of "public records" in CORA "determine[s]" its "reach":

> All writings made, maintained, or kept by the state, any agency, institution, a nonprofit corporation . . . or political subdivision of the state . . . and held by any local-government financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

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[27] *See* §§ 24-31-303(1)(c), -303(1)(d), -303(1)(f), -303(1)(g), -303(1)(m), C.R.S.

[28] § 24-72-201, C.R.S.

[29] *Denver Publ'g Co. v. Bd. of Cnty. Comm'rs of Arapahoe*, 121 P.3d 190, 197 (Colo. 2005).

§ 24-72-202(6)(a)(I), C.R.S. This definition reflects the legislature's intent that application of CORA be "a content-driven inquiry"—one that ensures that public records "tied to public functions or public funds"[30] are publicly available.

CORA provides a carveout for "criminal justice records," § 24-72-202(b)(I), C.R.S., which are subject to the CCJRA's disclosure framework rather than CORA's. "Criminal justice records" are defined in relevant part as:

> all books, papers, cards, photographs . . . that are made, maintained, or kept by any criminal justice agency . . .

§ 24-72-302(4), C.R.S. A "criminal justice agency," in turn, is defined in the CCJRA as:

> any court with criminal jurisdiction and any agency of the state . . . that performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.

§ 24-72-302(3), C.R.S.

Unlike CORA, the CCJRA vests records custodians with discretion to determine whether to release "criminal justice records," unless they are records of "official action," which are subject to mandatory disclosure; records of "official

[30] *Id.*; § 24-72-202(6)(a)(I), C.R.S.; *see also* § 24-72-201, C.R.S.

action," are defined in the CCJRA to include, *inter alia*, arrest records and records of the disposition of criminal matters.[31]

[31] §§ 24-72-302(7), -303, C.R.S.

SUMMARY OF THE ARGUMENT

The training, certification, decertification, appointment, and separation data for peace officers statewide that is maintained by POST is of immense public importance. The data provides crucial information about law enforcement officers in Colorado and transparency into the activities and efficacy of POST itself.

CORA requires access to that data. The POST Database falls squarely under CORA's definition of a "public record," and its release would accomplish what this Court has recognized to be the legislative intent of CORA: that records directly related to government function or public funds be available to the public.[32]

The Court of Appeals erroneously affirmed the District Court's finding that the CCJRA, rather than CORA, governs release of the requested records.[33] In so doing, the Court of Appeals committed essentially the same error in statutory interpretation as the District Court: it employed a far too literal reading of the phrases "any criminal justice agency," "any activity," and "collection, storage, or dissemination of arrest and criminal records information," without due regard to legislative purpose or the far-reaching consequences of its interpretation.[34]

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[32] *Denver Publ'g Co.*, 121 P.3d at 197.

[33] COA Op. 8–12.

[34] *Id.* at 5–7.

The Court of Appeals failed to give meaning to the General Assembly's intent as reflected in the CCJRA, CORA, and the POST Act. As a result, it reached the untenable conclusion that any agency—regardless of its statutory purpose—that downloads criminal case records from the state courts database or receives arrest records upon request from a police department, and stores those records for future reference, is exempt for all purposes from CORA's disclosure requirements. POST is far from the only agency the Court of Appeals' decision implicates—these same activities are carried out routinely by other state licensing boards and public bodies ranging from the Board of Mortgage Loan Originators to the State Board of Pharmacy and the Colorado Dental Board.

This was not the legislature's intent. The Court of Appeals' decision broadens the definition of a "criminal justice agency," as well as the scope of the CCJRA, beyond recognition. If it is permitted to stand, it will undermine the purpose of Colorado's public records laws and severely limit the public's ability to access government records.

ARGUMENT

I. POST is not a "criminal justice agency" as defined in the CCJRA.

Standard of review and preservation on appeal:

The meaning of "criminal justice agency" is an issue of statutory interpretation subject to this Court's *de novo* review. *People v. Sprinkle*, 2021 CO

60, ¶ 12; *Harris v. Denver Post Corp.*, 123 P.3d 1166, 1170 (Colo. 2005). POST bears the burden to demonstrate that it is a criminal justice agency. *Denver Publ'g Co.*, 121 P.3d at 199.

When a court considers "questions of law concerning the correct construction and application of CORA and the CCJRA," its "duty is to effectuate the General Assembly's intent, giving all the words of the statutes their intended meaning, harmonizing potentially conflicting provisions, and resolving conflicts and ambiguities in a way that implements the legislature's purpose." *Harris*, 123 P.3d at 1170. "[T]he intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result." *AviComm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023, 1031 (Colo. 1998).

This issue was raised in Petitioners' complaint, CF p 8–10, briefed in the District Court by both parties, CF, pp 137, 161, argued before that court at a preliminary hearing, TR 08/03/21, p 3:13–16, and ruled on by that court, TR 08/03/21, pp 88:8–90:5. It also was briefed and argued by both parties before the Court of Appeals, Opening Br. 15–18, and ruled on by that court, COA Op. 8–12.

Discussion:

A. "Criminal justice agency" must be construed to effectuate the General Assembly's intent and avoid an absurd result.

In determining whether POST falls within the CCJRA's definition of "criminal justice agency," this Court should "consider the statute as a whole to

give consistent, harmonious, and sensible effect to all its parts." *See People v. Raider*, 2022 CO 40, ¶ 19; *Harris*, 123 P.3d at 1170. The CCJRA defines "criminal justice agency," in relevant part, as "any agency of the state . . . that performs": (1) "any activity directly relating to the detection or investigation of crime"; (2) "criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information." § 24-72-302(3), C.R.S. Neither portion of that statutory definition encompasses POST.[35] The Court of Appeals based its decision to the contrary solely on its conclusion that POST "performs any activity directly relating to . . . the collection [and] storage . . . of arrest and criminal records information." COA Op. 10; TR 08/03/21, p 88:1–7.

As an initial matter, the Court of Appeals erred as a matter of law by concluding that each phrase in the definition of "criminal justice agency" is something that such an agency "performs any activity directly relating to," as opposed to the second and third phrases being something a criminal justice agency merely "performs." § 24-72-302(3), C.R.S., *see* COA Op. 11. The definition of "criminal justice agency" includes a list of three phrases separated by semicolons;

[35] Respondent has never asserted and no court has held that the portions of the CCJRA's definition of "criminal justice agency" concerning "apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders" are applicable to POST. *See* § 24-72-303(3), C.R.S.

the most natural, plain reading of this list is to distribute the word "performs" to each of the following three parallel clauses. *See generally United States v. Finn*, 502 F.2d 938, 942 (7th Cir. 1974) ("Under normal canons of construction, parallel and sequentially numbered clauses would all bear the same relationship to the rest of the sentence"). The Court of Appeals, like the District Court, also failed to give distinct meaning to the word "directly," rendering it superfluous. *See* COA Op. 5, 11 ("But the General Assembly deemed 'any' activity directly related to the described conduct sufficient to qualify an entity as a criminal justice agency."); *see also* TR 80/03/21, p 89:20–23 (District Court) ("And there's no—there's no mathematical qualifier in this description. It's any—any—activity, however minimal [that] puts this—puts the organization under the definition of criminal justice agency."); *cf. Sooper Credit Union v. Sholar Grp. Architects, P.C.*, 113 P.3d 768, 771 (Colo. 2005) ("We interpret every word, rendering none superfluous[.]"). The relationship between an activity "directly relating" to an objective is stronger and narrower than an activity merely "relating" to that objective.

But even setting aside those errors, the Court of Appeals' interpretation of "criminal justice agency" to include POST is incorrect as a matter of law. Regardless whether the phrase "any activity directly relating to" is read to apply to

the entirety of the definition of "criminal justice agency," three principles of statutory construction make clear that definition does not encompass POST.

First, exceptions to CORA's mandate of disclosure—including the statutory carveout for "criminal justice records" subject to the CCJRA—must be narrowly construed. *City of Westminster v. Dogan Const. Co.*, 930 P.2d 585, 589 (Colo. 1997) ("[E]xceptions to the broad, general policy of [CORA] are to be narrowly construed.") (cleaned up). CORA extends to "all public records," which "shall be open for inspection," § 24-72-201, C.R.S., unless an exception applies. Thus, in interpreting ambiguous statutory language in the CCJRA that would except records from CORA's disclosure mandate, this Court should adopt a narrow construction.

Second, the lower courts' broad construction of "criminal justice agency" ignores important statutory context.

> Statutes should not be read in isolation but together with all other statutes relating to the same subject or having the same general purpose, to the end that a statute's intent may be ascertained and absurd consequences avoided. . . . This is especially true where a statute intimates by its plain language an intent to incorporate other statutory provisions.

Huddleston v. Bd. of Equalization of Montezuma Cnty., 31 P.3d 155, 159 (Colo. 2001) (internal citations omitted). CCJRA was not enacted in a vacuum in 1977; it "excluded . . . records from the statutory definition of CORA public records."

Harris, 123 P.3d at 1172 (Colo. 2005). Here, the CCJRA must be read not only with CORA but also with the POST Act.

Finally, the statutory language must be construed to avoid an absurd result. As detailed below, POST's activities are typical of a state board charged with certifying (and decertifying) professionals. Interpreting "criminal justice agency" broadly to include POST would bring other such entities—like, for example, the Real Estate Commission, State Board of Pharmacy, and Colorado Dental Board—within the scope of the CCJRA, an absurd result that would undermine the General Assembly's intent to ensure public access to information about government activities and the use of public funds. *Denver Publ'g Co.*, 121 P.3d at 197.

B. POST is a training and certification agency; its duties, defined by statute, are regulatory and administrative.

"In 1992, the Colorado General Assembly enacted the [POST Act] to provide uniform training and certification for peace officers entrusted with protecting the safety of the citizens of this state." *Fraternal Ord. of Police, Colo. Lodge No. 27 v. City & County of Denver*, 926 P.2d 582, 585 (Colo. 1996) (citing §§ 24-31-301–307, C.R.S.). "The POST Act also created the Peace Officers Standards and Training Board (POST Board) to establish certification standards and to certify qualified peace officers." *Id.*

POST does not dispute that its powers and duties are defined by statute. *See* Resp. Answer Br. 12 (May 31, 2022). And those powers and duties, set forth in

the POST Act, are regulatory and administrative. *See* § 24-31-303(1)(a)–(u), C.R.S. POST is one of many state-run professional licensing bodies, a group that ranges from the Real Estate Commission, § 12-10-206, C.R.S., to the State Board of Pharmacy, *see* § 12-280-304, C.R.S. Like other state-run professional licensing agencies, POST has the statutory authority to establish standards for applicants, § 24-31-303(1)(c), C.R.S., formulate procedural rules designed to ensure those standards are met, § 24-31-303(1)(g), C.R.S., certify and revoke licenses, § 24-31-303(1)(d), C.R.S., and require—but not conduct—background checks for applicants, § 24-31-303(1)(f), C.R.S. *See also Jackson v. State*, 966 P.2d 1046, 1053 (Colo. 1998) (listing responsibilities of POST Board). Indeed, the Real Estate Commission has the statutory duty to formulate rules, § 12-10-210(6), C.R.S., certify and revoke licenses, §§ 12-10-203, -219, C.R.S., and require—but not conduct—background checks, § 12-10-203(1)(b), C.R.S. So, too, the State Board of Pharmacy. §§ 12-280-107 (rules), -108(1)(C) (certify and revoke licenses), -304, C.R.S. (fingerprint check requirement for wholesaler license applicants).

The laws of other states accord with the General Assembly's assignment of administrative and regulatory duties to POST. *See, e.g.*, Utah Code Ann. § 53-6-101, *et seq.* (defining regulatory powers of Utah Peace Officers Standards and Training Division); Wyo. Stat. Ann. § 9-1-701, *et seq.* (Wyoming Peace Officers

Standards and Training Commission). And predictably, in other jurisdictions with POST-equivalents, state courts have considered those entities to be professional licensing bodies. *See, e.g.*, *Wright v. Tenn. Peace Officer Standards & Training Comm'n*, 277 S.W.3d 1, 16 (Tenn. Ct. App. 2008) ("[W]e are doubtful that POST Commission decertification proceedings qualify as a 'law enforcement purpose' under the intended meaning of § 40–32–101. It seems far more likely that the legislature intended this language to refer to actual police investigations, not police-related personnel matters that are governed by other statutes."); *Stidham v. Peace Officer Standards & Training*, 265 F.3d 1144, 1151 (10th Cir. 2001) ("POST has been set up as the state *licensing agency* for peace officers[.]" (emphasis added)); *Doe v. Utah Dep't of Pub. Safety*, 782 P.2d 489, 493 (Utah 1989) (Utah Supreme Court noting the classification of Utah's POST as a licensing agency). Indeed, as the record reflects, The Invisible Institute has sought and obtained data maintained in police standards and training databases in more than twenty-five states via those states' public records laws. TR 10/05/21, p 196:2–19; EX, pp 168–175. The Court of Appeals' decision makes Colorado a stark outlier.

In sum, nothing in the POST Act indicates any intent on the part of the General Assembly that POST be considered a "criminal justice agency." *See* §§ 24-31-301–319, C.R.S. On the contrary, as both the District Court and the Court of Appeals acknowledged, the statutorily defined duties of POST all relate to

the training and certification of peace officers. TR 08/03/21, p 88:2–5 (the "main function of POST" is to "make sure that police officers are certified and are qualified and to provide assurance to the public that that is the case"); COA Op. 1 ("POST establishes certification standards, certifies qualified officers, and revokes certification for officers who violate its standards."). Those statutorily defined duties—which are regulatory and administrative in nature—are consistent with a legislative intent to create a state-run professional licensing board, not a "criminal justice agency."

C. POST's duties are not those of a "criminal justice agency."

1. Obtaining and storing some criminal court filings, arrest records, or the results of background checks, does not make POST a "criminal justice agency."

The Court of Appeals' conclusion that POST's statutory duty "to certify qualified applicants and withhold, suspend, or revoke certification," § 24-31-303(1)(d), C.R.S., meant that it "performs any activity directly relating to . . . the collection [and] storage . . . of arrest and criminal records information," § 24-72-302(3), C.R.S., was based on evidence that POST monitored ongoing criminal cases against peace officers. *See* COA Op. 9–10. Specifically, Respondent testified that when POST receives "a notice . . . that a peace officer has been fingerprinted in a criminal case," it "go[es] into the courts database and track[s] the case through disposition" to determine whether that peace officer's certification

should be revoked. *Id.* at 9. And, if there is a conviction for a revocable offense, POST will "store[]" the criminal case records it downloads from the courts database. *Id.* POST also occasionally "contact[s] the arresting law enforcement agency in order to receive" arrest records "to inform its revocation decision." *Id.* In short, in the course of fulfilling its administrative duties to certify and decertify peace officers, POST will obtain copies of public records,[36] and will sometimes save them. On that basis, the Court of Appeals concluded POST is a "criminal justice agency" under the CCJRA.

The Court of Appeals did not reach the District Court's conclusion that POST "performs any activity directly relating to . . . the collection [and] storage . . . of arrest and criminal records information" because POST has a statutory duty to "require a background investigation of each applicant by means of fingerprint checks through the Colorado bureau of investigation and the federal bureau of investigation or such other means as the P.O.S.T. board deems necessary for such investigation," § 24-31-303(1)(f), C.R.S; *see* TR 8/03/21, p 89:3–7; *cf.* COA Op. 12. Respondent testified that it facilitates and collects—but does not conduct—criminal background checks for peace officers seeking certification. TR 08/03/21, pp 20:16–21:8; TR 08/03/21, p 48:3–14. More specifically, Respondent testified

[36] As noted above, "arrest records" are "records of official action" under § 24-72-303(7), C.R.S. and, thus, subject to mandatory disclosure upon request under the CCJRA.

that facilitating and collecting fingerprints means only that POST "requires that the [training] academies ensure that their applicants get fingerprinted." *Id.* p 47:24. Respondent testified that any fingerprints POST collects for the purposes of background checks "are submitted directly to CBI," TR 08/03/21, p 47:24, and it is that agency and the FBI—not POST—that run the fingerprints against state and federal criminal history records databases. *Id.* p 48:3–18. As Respondent explained: "CBI and FBI are the ones who maintain the criminal databases that are used for these background checks." *Id.* p 48:9–14.

Neither of these two functions—obtaining and reviewing public records related to arrests and criminal cases, or facilitating background checks for applicants—make POST a "criminal justice agency" within the meaning of the CCJRA. Both tasks are routine for professional licensing boards carrying out statutory responsibilities similar to those set forth for POST in sections 24-31-303(1)(d) and (f) of the POST Act. For instance, both the Board of Mortgage Loan Originators and the State Board of Pharmacy collect and review the results of criminal history checks—including fingerprint-based background checks conducted by the CBI—as part of their certification (and decertification) processes. *See* § 12-10-704(6), C.R.S.; § 12-280-304(1)–(2), C.R.S.

Similarly, the Colorado Dental Board may take disciplinary action if a dentist is convicted of a felony or any crime, or engages in fraud,

misrepresentation, or deception to secure his or her dental license—a criminal offense. *See* § 12-220-201(1)(a)–(b), C.R.S. In order to determine if fraud or another criminal offense disqualifies a licensee, the Dental Board, as part of its statutory duties, will "gather evidence"—presumably arrest records and criminal court records—to inform its revocation decision. *See id*.; § 12-220-106(1)(b)(I)(A), (E), C.R.S. (citing § 12-20-403(1), C.R.S. ("[A] regulator may investigate, hold hearings, and gather evidence[.]")). Other than the substitution of the word "gather" for "collect," the Dental Board's statutory responsibility is nearly identical to what the Court of Appeals deemed sufficient to bring a state entity within the definition of "criminal justice agency." And, almost certainly, the Dental Board, too, "stores" evidence it gathers as part of the administrative investigations it conducts as part of its revocation process in the same way POST "stores . . . arrest and criminal records information" obtained as part of its revocation process. TR 08/03/21, pp 23:5–24:13, 71:13–15; COA Op. 8–10.

Any construction of the definition of "criminal justice agency" so broad that it would include the Colorado Dental Board, the Board of Mortgage Loan Originators, or the State Board of Pharmacy defies not only the intent of the General Assembly but also common sense. And under this Court's precedent, a literal interpretation of the "collection and storage . . . of criminal records information" that would include merely obtaining arrest records or public filings in

criminal cases, or sending fingerprints to the CBI to facilitate a background check, should be rejected if it is inconsistent with legislative intent and would lead to absurd results. *See AviComm, Inc*, 955 P.2d at 1031 ("[T]he intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result."); *see also* Norman Singer & Shambie Singer, 2A Sutherland Statutory Construction § 46:7 (7th ed., Nov. 2023) ("Judicial opinions are rife with many expressions favoring a literal interpretation. However, case law is equally clear that if the literal text of an act is inconsistent with legislative meaning or intent, or leads to an absurd result, a statute is construed to agree with the legislative intention.") (collecting cases).

Contrary to the Court of Appeals' decision, this statutory language is best understood as referring to law enforcement agencies that maintain and operate computerized criminal history records systems—*i.e.*, criminal history records databases—including for the purpose of conducting background checks. In Colorado, the CBI maintains a state criminal history records database. § 24-33.5-412(c), C.R.S. POST does not. § 24-31-303(f), C.R.S.; TR 08/03/21, p 48:9–14 (Respondent testifying that "CBI and FBI are the ones who maintain the criminal databases that are used for these background checks.").

The legislative history of the CCJRA supports this interpretation. The CCJRA was enacted to ensure Colorado's compliance with the federal Crime

Control Act of 1973, *see Harris*, 123 P.3d at 1171, which amended the federal Crime Control Act of 1968. *See* Pub. L. No. 93-83, 87 Stat. 297 (1973). That federal law created the (now defunct) Law Enforcement Assistance Administration ("LEAA"). *Id.* Among other things, the LEAA was empowered to award grant money to state and local law enforcement agencies "to improve and strengthen law enforcement" if certain statutory criteria were met. *Id.* § 402(A). One of the LEAA's grant programs was the Comprehensive Data Systems ("CDS") program and, "[b]y 1976, 26 States were participating in the Computerized Criminal History (CCH) component of the CDS program." U.S. Dep't of Just., *Use and Management of Criminal History Record Information: A Comprehensive Report*, 2001 Update at 26 (2001).[37] "These States and others had established central State repositories charged with maintaining statewide criminal history record systems." *Id.*

In order to qualify for a grant under the CDS program, states had to comply with statutory requirements for the handling of "records and related data, contained in an automated criminal justice informational system compiled by law enforcement agencies for purposes of identifying criminal offenders and alleged offenders"—what Congress referred to in the statute as "criminal history

[37] Available at https://bjs.ojp.gov/content/pub/pdf/umchri01.pdf (last visited Apr. 4, 2024).

information." Pub. L. No. 93-83, 87 Stat. 297 § 601(o). Specifically, states had to ensure that "criminal history information" in "automated criminal justice information system[s]" supported by LEAA grants was kept secure and private:

> All criminal history information . . . The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes.

Id. § 524(b); *see Harris*, 123 P.3d at 1172 (Colo. 2005) (noting that the federal Crime Control Act of 1973 "required state compliance to receive federal funds; compliance in part required creation of a scheme for managing and disseminating criminal records information").

In enacting the CCJRA, the General Assembly sought to exempt the contents of criminal history records databases from mandatory disclosure under CORA in order to comply with that federal requirement. *See Harris*, 123 P.3d at 1172 ("Because Colorado legislators did not believe the existing statutory provisions of CORA met the federal requirement, they enacted the CCJRA."). No provision of the federal Crime Control Act of 1973 or of the CCJRA suggests that exemption from CORA's disclosure mandate was intended to apply broadly to the records of any state licensing board or agency that merely receives information from a law enforcement agency that maintains and operates such a database.

This interpretation of "collection, storage, and dissemination of arrest and criminal records information" also squares with other states' statutes that use identical terms to describe operating a computerized criminal history database. For example, Arizona maintains a "central state repository for the collection, storage and dissemination of criminal history record information." Ariz. Rev. Stat. § 41-2205. The Georgia Crime Information Center "[o]btain[s] and file[s] fingerprints, descriptions, photographs, and any other pertinent identifying data," Ga. Code Ann. § 35-3-33, of alleged criminal offenders; its governing statute expressly supersedes all other statutes governing the "collection, storage, and dissemination or usage of fingerprint identification [and] offender criminal history," Ga. Code Ann. § 35-3-40. Similar statutory language abounds.[38] Indeed, the General Assembly, in referring to criminal history database management in another statute—one that "organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for

[38] *See, e.g.*, La. Stat. Ann. § 15:575 ("Available computer and communications technology now enables the coordination, collection, storage, and dissemination of relevant information heretofore dispersed in separate files throughout the state."); Haw. Rev. Stat. Ann. § 846-2.5 ("The Hawaii criminal justice data center, hereinafter referred to as the 'data center,' shall be responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data."); Utah Code Ann. § 36-29-111(7)(b) (creating "Criminal Justice Data Management Task Force" to recommend, *inter alia*, "ways to automate the collection, storage, and dissemination of the data").

noncriminal justice purposes authorized by Federal or State law, such as background checks"—referred to "the FBI's collection and dissemination of criminal history records." § 24-60-2702(a), C.R.S.

This interpretation of the statutory language is further supported by the express inclusion of the Department of Education ("CDE") in the definition of "criminal justice agency." § 24-72-302(3), C.R.S. Though the Court of Appeals did not reach the issue, POST has argued that the CDE's inclusion in the statutory definition indicates that the General Assembly intended "criminal justice agency" to encompass all agencies that require criminal background checks. Resp. Answer Br. 21; Respondent Opp. to Pet. for Cert. 21. On the contrary, the Department of Education's inclusion *undercuts* POST's position for two reasons.

First, the absence of any mention of POST juxtaposed with the clear intent of the General Assembly to specifically include the CDE in section 24-72-302(3) supports the conclusion that the General Assembly did not intend POST to be included within the definition of "criminal justice agency." If it had, the General Assembly could have expressly included POST in the definition.

Second, assuming POST is correct that the General Assembly's reason for including the Department of Education in section 24-72-302(3) was to "protect[] . . . background checks [received by the CDE from CBI] . . . from public dissemination, because they can contain sensitive information on individuals," TR

08/03/21, p 88:15–23, that indicates, at most, that a public body may be a "criminal justice agency" for some purposes (specifically, for the purpose of withholding criminal background check information received from the CBI or FBI from mandatory public disclosure under CORA) but not for others.

This is because the statutory text of CORA expressly forecloses an interpretation that would exempt *all* records of CDE from disclosure under CORA. The Department of Education and every school in the state (K-12 and higher education) are required to collect and store the criminal background check information for all teachers, § 22-2-119(3)(a)(II)–(4)(b), C.R.S.; § 23-64-110(1)(a), C.R.S. These entities are included in the CCJRA's definition of "criminal justice agency." § 24-72-302(3). But they are *also* expressly referenced in CORA's definition of "public records," which "means and includes all writings made, maintained, or kept by . . . any agency, institution . . . or political subdivision of the state." § 24-72-202(6)(a)(I), C.R.S. "Institution" is defined to include "every state institution of higher education" and "political subdivision" is defined to include "every . . . school district." §§ 24-72-202(1.5), -202(5), C.R.S. Indeed, requests for records made to colleges and school districts are routinely governed by CORA. *See, e.g.*, *Jefferson Cnty. Educ. Ass'n v. Jefferson Cnty. Sch. Dist. R-1*, 2016 COA 10, ¶ 3 (holding that "a teacher's request for sick leave is not part of the teacher's personnel file. CORA requires the custodian of such a record to disclose it upon

request.") Simply put, a conclusion that CDE is a "criminal justice agency" for any purpose *other than* the limited purpose of withholding the results of criminal background checks would be irreconcilable with the plain text of CORA.

In sum, the phrase "collection, storage and dissemination of arrest and criminal records information" in the CCJRA should be construed narrowly to mean maintaining and operating a database of arrest and criminal records information—*i.e.*, a criminal history records database. This interpretation is consistent with the relevant statutory language and history, and with legislative intent, and is necessary to avoid absurd results. Because POST does not maintain a criminal history records database like that of the CBI or FBI, TR 08/03/21, p 48:9–14, it does not meet the CCJRA's definition of a "criminal justice agency." The Court of Appeals' conclusion to the contrary, COA Op. 12, should be reversed.

2. Conducting administrative investigations for certification purposes does not make POST a "criminal justice agency."

Though not addressed by the Court of Appeals, below, POST also does not fall within the portion of the CCJRA's definition of "criminal justice agency" that includes "any agency of the state" that "perform[] any activity directly relating to the detection or investigation of crime." § 24-72-302(3), C.R.S. *See* COA Op. 12. That portion of the statutory definition encompasses agencies—like the CBI and

police departments—vested with the duty and authority to detect or investigate violations of the Colorado Criminal Code.

As detailed above, POST is responsible for the training and certification of peace officers in Colorado. § 24-31-303(1)(d), C.R.S. Respondent testified that in accordance with those statutory duties, POST "investigates" whether its certification requirements are met or if they have been violated. TR 08/03/21, p 26:3–11. Respondent has suggested that because a peace officer cannot be certified if he or she has violated certain criminal laws referenced in the POST Act, *see* § 24-31-305(1.5)(a), C.R.S., POST's certification inquiry amounts to a "criminal investigation." TR 08/03/21, p 26:1–11.

Specifically, Respondent testified that in connection with determining whether a violation bars certification, or requires that a peace officer's certification be revoked, Respondent and another POST employee will "review documents, [] interview witnesses, [] write a report, [] make an assessment, and if appropriate, [] refer the matter for prosecution." TR 08/03/21, p 26:17–21. As Respondent testified, such referrals—which are rare, TR 08/03/21, p 59:16–23—are made to a police department or prosecutor, and any subsequent criminal investigation that

follows is undertaken—not by POST—but by those law enforcement entities. TR 08/03/21, pp 27:10–14, 28:4–7, 31:19–25, 49:10–11.[39]

Respondent gave two examples of such referrals during his testimony; both underscore that while POST's statutory authority includes "certify[ing] qualified applicants and withhold[ing], suspend[ing], or revok[ing] certification," § 24-31-303(1)(d), C.R.S., it does not include "perform[ing] any activity directly relating to the detection or investigation of crime." § 24-72-302(3), C.R.S. First, Respondent testified about a peace officer who allegedly "misrepresented his previous certifications in other states, his work history, and also submitted a falsified document to POST as part of his certification process." TR 08/03/21, pp 26:22–27:4. Providing false information to obtain certification as a peace officer is a violation of POST Rules 10(A)(III) and 11. *See POST Rules*, POST Manual (Jan. 2024), ("POST Rules").[40] Submitting a falsified document to POST also violates Rule 10(A)(III) and implicates Rule 32, pursuant to which POST records incidents of "untruthfulness[.]" *Id.* After compiling an administrative report, POST provided that report to the Special Prosecutions Unit within the Criminal Justice Section of the Attorney General's Office because "they're the portion of the

[39] The District Court appeared to misunderstand Respondent's testimony as indicating that POST *"get[s]* a referral perhaps from the local district attorney's office," TR 08/03/21, p 89:15–16 (emphasis added).
[40] Available at https://perma.cc/4CCJ-SAXC (last visited Apr. 4, 2024).

Attorney General's Office . . . *that conducts criminal investigations and prosecutes crimes* statewide." TR 08/03/21, p 27:10–14 (emphasis added). When the Special Prosecutions Unit declined to investigate, the matter was referred to the CBI. *Id.* p 49:10–11. Second, Respondent testified about a matter involving "records Huerfano County had submitted for training for their officers that appeared to be fictitious." TR 08/03/21, p 31:8–21. POST again conducted an administrative investigation into this suspected violation of its rules and voted "[t]o refer the matter to the Denver District Attorney's Office for investigation." *Id.* p 31:19–25.

In neither situation did POST "perform[] any activity directly relating to the detection or investigation of crime." § 24-72-302(3), C.R.S. Conducting an administrative investigation to determine whether an individual meets (or has violated) the professional standards that POST has set for certification, preparing a report on its findings, and referring any conduct that may appear criminal in nature to a police department or prosecutor for investigation, TR 08/03/21, pp 26:24–27:4, is simply not the same as conducting a criminal investigation into a suspected violation of the Colorado Criminal Code. POST's "investigations"—such as they are—are administrative in nature; they are aimed at identifying any violations of the POST Rules, §§ 24-31-303(1)(g), -303(1)(m), C.R.S., and ensuring that peace officers meet the necessary qualifications and requirements to serve. *See, e.g.*, §§ 24-31-303(1)(c), -303(1)(d), -303(1)(f), -303(1)(l), -303(1)(m), C.R.S.

An interpretation of the CCJRA's definition of "criminal justice agency" that would include POST on the theory that, by fulfilling its administrative duties as a licensing body, POST "perform[s]" an "activity directly relating to the detection or investigation of crime," § 24-72-302(3), C.R.S., would be contrary to the intent of the General Assembly as reflected in the POST Act, CORA and the CCJRA, and would lead to absurd results. POST's referral process mirrors what members of other professional licensing bodies do if, in the course of fulfilling their statutory duties, they learn of possible criminal conduct. The Colorado Dental Board, for example, may take disciplinary action if a dentist commits fraud, misrepresentation, or deception to secure their license. *See* § 12-220-201(1)(a), C.R.S. If such conduct rose to the level of potential criminal activity, it—and the relevant contents of any administrative investigation undertaken by the board—would presumably be referred for criminal investigation and possible prosecution.[41] Such a referral would be consistent with that licensing board's duties to regulate the safe and lawful practice of the dental profession. They do not transform that licensing body into a "criminal justice agency."

[41] For instance, depending on the nature of the fraudulent or deceptive behavior in which the dentist engaged, the behavior might constitute an offense under Title 18, Article 5 of the Criminal Code. A criminal investigator or prosecutor might use information from the Dental Board's administrative investigation as it conducts its criminal investigation or prosecutes the alleged fraud.

Records subject to the CCJRA fall into two categories: they are either (1) records of "official action" under § 24-72-302(7), C.R.S., which must be disclosed; or (2) other records, which may be disclosed or withheld at the discretion of the records custodian. The provision describing "official action" is a clear statement of legislative intent as to the types of agencies the CCJRA is meant to apply to: those agencies that might carry out "an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence." *Id.* Police departments, criminal courts, and correctional departments undertake these activities, and their records of official action are subject to disclosure. *See In re T.L.M.*, 39 P.3d 1239 (Colo. App. 2001) (police); *Madrigal v. City of Aurora*, 2014 COA 67; *Off. of State Ct. Adm'r v. Background Info. Servs., Inc.*, 994 P.2d 420 (Colo. 1999) (criminal courts); *Kopec v. Clements*, 271 P.3d 607 (Colo. App. 2011) (Department of Corrections). POST does none of these things.

The legislative history of the CCJRA also supports this conclusion. "The federal government provided the initial impetus for the CCJRA with passage of the Crime Control Act of 1973." *Harris*, 123 P.3d at 1171. Congress stated that bill was intended to "reduce and prevent crime," in accord with its finding that "crime

is essentially a local problem that must be dealt with by state and local governments." Pub. L. No. 93-83, 87 Stat. 197 § 524(B). It follows that the CCJRA applies to agencies that engage in activities that "directly relat[e]" to "reduc[ing] and prevent[ing] crime"—not to licensing bodies like POST.

As this Court has indicated, a literal reading of the CCJRA that would "vitiate[], for all practical purposes" CORA cannot be correct. *See Ingram v. Cooper*, 698 P.2d 1314, 1317 (Colo. 1985) (departing from literal interpretation of sentencing statute to effectuate General Assembly's intent). Yet that is the result urged by POST and reached by the Court of Appeals. An interpretation of CCJRA's definition of "criminal justice agency" so broad it would capture—and exempt from CORA's mandatory disclosure obligations—dozens of professional licensing boards throughout Colorado cannot be correct. Such a result is not what the General Assembly intended when it created POST, or when it created a narrow exception to CORA's disclosure mandate for "criminal justice records" governed by the CCJRA. Because POST is not a "criminal justice agency" under the CCJRA the Court of Appeals' decision should be reversed.

II. CORA, not the CCJRA, governs the disclosure of the records Petitioners requested from POST.

Standard of review and preservation on appeal:

This Court "review[s] de novo questions of law concerning the correct construction and application" of statutes, including CORA and the CCJRA.

Harris, 123 P.3d at1170. As set forth above, in construing statutes, this Court must "effectuate the General Assembly's intent, giving all the words of the statutes their intended meaning, harmonizing potentially conflicting provisions, and resolving conflicts and ambiguities in a way that implements the legislature's purpose." *Id.* at 1170. And, as also noted above, "the intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result." *AviComm, Inc.*, 955 P.2d at 1031.

This issue was raised in Petitioners' complaint, CF 2, 9–10, briefed and argued in the District Court by both parties, CF 139, 148–49, 153–36 (Petitioners' District Court brief), 162 (POST's District Court brief); TR 08/03/21, pp 68:15–70:9, 73:7–16, 80:8–21, 81:9–17, 81:25–82:18, 88:15–21, and ruled on by the District Court, TR 08/03/21, pp 87:10–90:5. The parties also briefed this issue in the Court of Appeals, Opening Br. 9–15, Resp. Answer Br. 17, 25–31, and that court ruled on the issue in its April 27, 2023 opinion, COA Op. 1–12.

Discussion:

A. Disclosure of the requested records is governed by CORA because POST is not a "criminal justice agency."

There is no dispute that disclosure of the records requested by Petitioners is governed by CORA unless CORA's narrow carveout for "criminal justice records that are subject to [the CCJRA]" applies. *See* § 24-72-202(6)(b)(I), C.R.S. "Criminal justice records" are statutorily defined as those "made, maintained, or

kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule." § 24-72-302(4), C.R.S. For all the reasons set forth above, POST is not a "criminal justice agency" as defined in the CCJRA. Accordingly, the records at issue are not "criminal justice records," and disclosure of the requested records is governed by CORA.

B. Even if POST were a "criminal justice agency" for some purposes, the records requested by Petitioners are not "criminal justice records."

Until recently, POST responded to requests for records maintained in the POST Database pursuant to CORA. *See* TR 08/03/21, pp 45:22–46:23.[42] In this litigation, however, POST has claimed that its position within the Department of Law supports its contention that records in the POST Database are "criminal justice records," and that the CCJRA, rather than CORA, governs disclosure of the records sought by Petitioner. On the contrary, POST's arguments only underline why the records at issue here are not "criminal justice records."

[42] In a September 17, 2015 work session, then-POST Director Cory Amend presented an update to the POST Board, explaining that "[a] CORA request was granted in 2004 seeking the entire database of law enforcement officers maintained by [Colorado] POST[,]" and that "[s]everal CORA requests [were] granted since [that] first inquiry." TR 08/03/21, pp 45:24–25, 46:3–9; EX, pp 59–60. Further, POST has expressly required, including while this litigation was pending, recipients of grants to make certain records—including POST training application materials and contracts pertaining to POST funds—available under CORA. EX, p 38; TR 08/03/21, pp 39:2–40:15.

POST is located within the Division of Criminal Justice, which is, in turn, located within a larger government entity: the Department of Law. TR 08/03/21, p 10:9–13. This structure is unremarkable; large public agencies frequently have multiple component entities. For example, the Department of Local Affairs houses agencies as varied as the Colorado Youth Service Corps, the Office of Rural Development, and the Peace Officers Mental Health Grant Support Program. *See generally*, § 24-32-101, *et seq.*, C.R.S. POST, however, has contended that by virtue of its location in the Department of Law, its records are those of the Department of Law. *See, e.g.*, Resp. Answer Br. 25–27.

As a threshold matter, POST is incorrect that its records are those of the Department of Law for purposes of CORA and the CCJRA. While it may be true that if POST were to be abolished, its records would transfer to the Department of Law, *see* §§ 24-31-302(2), 24-1-105(2), C.R.S., that is of no relevance to a public records request made to POST—an existing, currently operative, statutorily created agency that creates and maintains records. *See* §§ 24-72-202(6)(a)(i) (defining "public records"); 24-72-302(4), C.R.S. (defining "criminal justice records").

Moreover, even if POST was indistinguishable from the Department of Law—it is not—not even the Department of Law takes the extreme view that *all* of its records are exempt from the mandatory disclosure requirements of CORA. *See* Colorado Open Records Act & Colorado Criminal Justice Records Act, Colorado

Office of the Attorney General (explaining that some records requests will be processed under CORA, while requests for "criminal justice records" will be processed under CCJRA).[43] Nor could it.

The General Assembly clearly contemplated that some public entities may be a "criminal justice agency" for some purposes and not others, and some public entities may possess certain "criminal justice records" and other records that do not meet that definition. For instance, as discussed above, the General Assembly's intent was that the Department of Education and institutions and school districts within its purview be considered "criminal justice agencies" only for purposes of requests for records of criminal background checks that they receive from CBI—not for other purposes. This is consistent with the overall purposes of both CORA and the CCJRA. While the General Assembly has determined that CBI's database of criminal history records be governed by the CCJRA—not CORA—professional licensing and other agencies that receive background check information from that database from CBI (like the Department of Education, POST, and other licensing boards or agencies, *see, e.g.*, § 12-10-704(6), C.R.S. (Board of Mortgage Loan Originators); § 12-280-304(1)–(2), C.R.S. (State Board of Pharmacy)) have many other types of records. In short, even if POST is a "criminal justice agency"

[43] Available at https://coag.gov/media-center/colorado-open-records-act-cora/ (last visited Apr. 3, 2024).

withing the meaning of the CCJRA for the limited purpose of withholding background check information it obtains from CBI or the FBI, the records requested by Petitioners are not "criminal justice records" under section 24-72-302(3). CORA, not the CCJRA should govern disclosure of the requested records.

CONCLUSION

The records at issue in this case squarely implicate the ability of the press and public in Colorado to scrutinize POST, the state entity charged with ensuring that the officers sworn to serve and protect their communities are properly trained and professionally qualified. For all the reasons herein, the judgment of the Court of Appeals should be reversed and this case remanded to the District Court for reconsideration under CORA.

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I certify that on this 22nd day of April, 2024, a true and correct copy of the foregoing brief was served on all counsel of record through the Colorado Courts E-Filing system:

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