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On Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 2022CA001119
Denver District Court Case No. 2022CV30017

MARK REAMAN, in his capacity as editor of the *Crested Butte News,*
Petitioner

v.

ANDREW BROOKHART, in his official capacity as the executive director and custodian of records of the Gunnison County Library District,
Respondent

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Case No:

PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition complies with all requirements of C.A.R. 53, and C.A.R. 25, 28 and 32. Specifically, the undersigned certifies that the Petition complies with the word limit, and it contains 3,797 words (3,800 limit).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 53, 28, and 32.

/s/Rachael Johnson
Rachael Johnson, #43597

Attorney for Petitioner Reaman

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ADVISORY LISTING OF ISSUES PRESENTED FOR REVIEW

1. Whether the Colorado Court of Appeals erred as a matter of law when it concluded that individuals who submitted Request for Reconsideration Forms to a library meet the definition of a "user" of a library "service" as defined in § 24-72-204(3)(a)(VII), C.R.S. and § 24-90-119, C.R.S.

OPINION FROM WHICH REVIEW IS SOUGHT; BASIS OF JURISDICTION

Review is sought from *Brookhart v. Reaman*, 2023 COA 93, No. 22CA1119 ("Opinion"). Jurisdiction is based on §§ 13-2-127 & 13-4-108, C.R.S. and C.A.R. 49, 52(b).

Petitioners are unaware of any pending case in which the Court has granted certiorari review of the legal issue presented in this Petition.

STATEMENT OF THE CASE

This case presents a statutory interpretation question of first impression under the Colorado Open Records Act, §§ 24-72-201, C.R.S. *et seq*. ("CORA") and the Colorado Library Law, §§ 24-90-101, C.R.S. *et seq*., with significant implications for the public's ability to understand an urgent controversy affecting communities across Colorado and the country. If left undisturbed, the Opinion will preclude Coloradoans from knowing the identities of persons who request the removal of books and other materials from public library shelves.

A. The CORA Request

Respondent-Appellant Mark Reaman ("Reaman") is editor of the *Crested Butte News*, a paper of general circulation based in Crested Butte, Colorado. CF, pp. 1, 12. This case concerns a Colorado Open Records Act ("CORA") request made by Reaman for access to "all Requests for Reconsideration Forms filed with" the Gunnison Library District ("Library District") "since January 1, 2022 via

email" (hereinafter the "Request"). CF, p. 12. Request for Reconsideration Forms or Request to Reconsider Materials Forms are generated by the Library District pursuant to their Collection Development and Use Policy. CF, p. 1-2. Any person—whether a library patron or not; member of the community or not—may use the form to request the Library District remove or move a book from its collection. *Id*. Completed forms may include the requestor's name, phone number, and address, CF, p. 2, but the requestor does not need to complete the form in its entirety for it to be considered. *Id.* The disclosure of any information on the Request for Reconsideration Form is completely voluntary. *Id.* The Library District identified four Request for Reconsideration Forms in response to Reaman's Request. CF, p. 2.

Prior to submitting the Request, Reaman had previously sought and obtained from the Library District, under CORA, a Request for Reconsideration Form that had been submitted on November 19, 2021. CF, p. 3. In accordance with the Library District's policy at the time, the November 19 Request for Reconsideration was included on the public agenda for—and discussed during—a January 20, 2022 public meeting of the Library District's Board of Trustees ("Library Board"). CF, p. 3.[1] During a subsequent public meeting, the individual submitting the

[1] Sometime after Reaman submitted the November 19, 2021 request, the Library Board amended its Collection Development Policy to remove the

November 19 Request for Reconsideration spoke publicly to advocate for the book *Gender Queer* to be removed from the Library District's collection, thereby revealing her identity to the public. CF, p. 3, 13. Following that meeting, on or around January 21, 2023, Reaman filed a CORA request seeking the Request for Reconsideration Form submitted on November 19, 2021. CF, p. 2. The Library District released a copy of the form to Reaman, which included the requestor's information, including her name. CF, pp. 3, 13.

In response to the Library District's release of that Request for Reconsideration form, the requestor filed a police report against Plaintiff-Appellee Andrew Brookhart, Executive Director of the Library District, under § 24-90-119(3), C.R.S. CF, p. 3. An investigation by the Office of the District Attorney for the Seventh Judicial District resulted in no charges. *Id*.

Reaman's March 28, 2022 CORA Request sought Request for Reconsideration Forms later submitted to the Library District seeking the relocation or removal of certain books from the library. CF, pp. 10–14, 24.

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requirement that Requests for Reconsideration be placed on the public agendas for its public meetings. CF, p. 4.

B. Proceedings Before the District Court

In response to the Request, Brookhart filed an Application for Judgment Pursuant to § 24-72-204(6)(a), C.R.S. with the district court on April 13, 2022. CF, p. 1. By that application, Brookhart asked the district court to determine whether § 24-90-119, C.R.S. precludes public disclosure of Request for Reconsideration forms and, if not, whether disclosure would cause substantial injury to the public interest under § 24-72-204(6)(a), C.R.S. *Id.* Specifically, the application sought a determination as to whether the Library District was obligated under CORA to either: (i) release the requested forms in their entirety; (ii) release them with redactions; or (iii) deny Reaman's Request. CF, p. 6.

In his May 3, 2022 letter response to the district court, Reaman argued, *inter alia*, that Request for Reconsideration forms are public records and are not "user documents" under § 24-90-119, C.R.S. or contemplated by § 24-72-204(3)(a)(VII).[2] CF, p. 13. Reaman asserted that persons who voluntarily submit requests to remove books and other material from the Library District's collection are not "users" within the meaning of § 24-90-119, C.R.S. *Id*. He further argued that because such forms are "a voluntary public submittal to the administration of the public Library District to alter current library district policy and/or practices,"

[2] Reaman represented himself *pro se* before the district court.

the public has a strong interest in knowing who has made such requests which, if granted, result in the removal of books from library shelves. CF, p. 12.

The district court held a status conference on May 2, 2022, at which both parties agreed that a formal hearing was unnecessary. TR 05/02/22, pp. 3:17–4:11. When Brookhart filed the application on April 13, 2022, he submitted to the district court unredacted copies of the four requested forms as Exhibits B-1, B-2, B-3, B-4. CF, pp. 10–14. On May 16, 2022, the district court issued its final order stating that the four forms requested by Reaman should be disclosed on the grounds that "user in the statute under this analysis is not limited to someone who reads material in the library, or, checks out material, but inclusive of any person 'using' library services," CF, p. 18. Nevertheless, the district released to Reaman copies of the four requested forms—***redacted*** to conceal the requestors' personal identifying information, including their names[3].

Subsequently, on July 5, 2022, Reaman filed a Notice of Intent to Appeal CF, p. 23.

[3] Upon transfer of the certified Record on Appeal, unredacted copies of the four Request for Reconsideration forms at issue—Exhibits B-2, B-3, B-4, and C in the district court, below—were transferred to undersigned counsel for Reaman. Reaman has not reviewed, or had access to, the unredacted copies. Subsequently, the Court of Appeals ordered the parties to destroy the original record and cite from the Supplemental Record which does not include Exhibits B-2, B-3, B-4, and C.

C. Proceedings before the Court of Appeals

On October 5, 2023, following oral argument, the Court of Appeals issued its Opinion holding that CORA's exception for library user records—§24-72-204(3)(a)(VII), C.R.S. and §24-90-119(1), C.R.S.—is applicable to the Request for Reconsideration forms sought by Reaman. Opinion, p. 16–29. The Court affirmed the district court's holding that such forms may be disclosed as long as requesters' identifying information, including names, are redacted. Opinion, p. 29–30.

APPLICABLE STATUTORY FRAMEWORK

CORA declares "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." § 24-72-201, C.R.S.

The relevant CORA exception in this case, § 24-72-204(3)(a)(VII), C.R.S., cross-references and incorporates § 24-90-119, C.R.S. of the Colorado Library Act, into CORA statute. It states:

> The custodian shall deny the right of inspection of the following records, unless otherwise provided by law . . .
>
> . . . .
>
> (VII) Library records disclosing the identity of a user **as prohibited by section 24-90-119**[.]

Id.

Provision § 24-90-119(1), C.R.S. states:

> Except as set forth in subsection (2) of this section, a publicly supported library shall not disclose any record or other information that identifies a person as having requested or obtained specific materials or service or as otherwise having used the library.

Id.

Two key terms in these provisions are not defined by statute: "user" in the CORA exception, *see* § 24-72-202, C.R.S., (or under the Colorado Library Law and § 24-90-103, C.R.S.); and "service" in the statute incorporated by explicit reference therein, *see* § 24-90-119(1), C.R.S. (or under the Colorado Library Law and § 24-90-103, C.R.S.)

All exceptions to CORA's disclosure mandate must be narrowly construed. *See City of Westminster v. Dogan Constr. Co*., 930 P.2d 585, 589 (Colo. 1997) (en banc).

PRESERVATION AND STANDARD OF REVIEW

The statutory meaning of the terms "user" and "service" are questions of law reviewed by this Court *de novo*. *Harris v. Denver Post Co.*, 123 P.3d 1166, 1170 (Colo. 2005) (questions of law concerning the correct construction and application of CORA is reviewed *de novo*); *E-470 Pub. Highway Auth. v. 455 Co.*, 3 P.3d 18, 22 (Colo. 2000) (" . . . conclusions of law are generally reviewed under a de novo standard."). Whether Request for Reconsideration forms qualify as a library "user" record and whether requesting the removal of a book from the Library District's collection constitutes use of a library "service" are issues that

were preserved in the district court and Court of Appeals. CF, p. 4, 12, 18, 24; Opinion at 8, 16–22.

REASONS FOR GRANTING THE PETITION

This Petition should be granted for the following special and important reasons. *See* C.A.R. 49.

I. The Opinion disregards the requirement that CORA exceptions be interpreted narrowly and that all statutory provisions be interpreted to effectuate the General Assembly's intent.

In interpreting any statute, a 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." *Harris*, 123 P.3d at 1170; *see also Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004) ("Our primary task in construing a statute is to determine and give effect to the intent of the General Assembly."); *Bd. of Cnty. Comm'rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo. 2004) (courts may consider the "legislative history, prior law, the consequences of a given construction, and the goal of the statutory scheme to ascertain the correct meaning of a statute.").

Further, when interpreting CORA, specifically, "exceptions to the broad, general policy of the Act" in favor of disclosure must "be narrowly construed." *City of Westminster*, 930 P.2d at 589 (quoting *Sargent Sch. Dist. No. RE-33J v.*

Western Servs., Inc., 751 P.2d 56, 60 (Colo. 1988)). *See also Shook v. Pitkin Cnty. Bd. of Cnty. Comm'rs*, 2015 COA 83, ¶ 6, 411 P.3d 158, 160 (Colo. App. 2015) (any exceptions to CORA must be narrowly construed in favor of disclosure).

Though the Court of Appeals acknowledged "the general rule that courts 'construe any exceptions to CORA's disclosure requirements narrowly,'" Opinion, p.17 (quoting *Jefferson Cnty. Educ. Ass'n v. Jefferson Cnty. Sch. Dist. R-1*, 2016 COA 10, ¶ 14, 378 P.3d 835, 838 (Colo. App. 2016)), its Opinion does the opposite. Rather than construe the CORA exception at issue narrowly, and attempt to give effect to the General Assembly's intent in enacting the statutory provisions at issue, the Court of Appeal instead looked singularly to the broadest possible definitions of a single, ambiguous, statutory term: "service." Opinion, p.18 (stating that "the key to resolving this case is the meaning of "service" in section 24-90-119(1)").

As the Court of Appeals explained, it read the district court's order as construing the term "service" in § 24-90-119(1) "broadly" for purposes of determining whether the CORA exception incorporating that provision by reference was applicable to the forms requested by Reaman. Opinion, p.18. Under the Court of Appeals' reading of the district court's order, the district court's interpretation of the term "service" directly contravened this Court's mandate to narrowly construe CORA exceptions, *City of Westminster*, 930 P.2d at 589. And

the Court of Appeals erred as a matter of law by "agreeing with" what it described as the district court's broad "interpretation" of that term[4]. Opinion, p.18.

To arrive at its unreasonably broad construction of the term "service," the Court of Appeals looked solely to dictionary definitions, Opinion, pp. 19–20. *But see City of Westminster*, 930 P.2d at 590 n.8 (expressing "skepticism concerning the reliability of dictionary definitions as a guide to legislative intent in construing" CORA exceptions). Specifically, the Court of Appeals identified two potentially applicable dictionary definitions:

> [A] "service" is (1) "[t]he official work or duty that one is required to perform" or (2) labor performed "in the interest or under the direction of others; specif[ically], the performance of some useful act or series of acts for the benefit of another." . . . The second definition "denotes an intangible commodity in the form of human effort, such as labor, skill, or advice."

Opinion, p.19 (quoting Black's Law Dictionary, 1643 (11th ed. 2019)).[5]

The Court of Appeals did not consider that the existence of at least two different definitions of "service" rendered its meaning in the relevant statute ambiguous. And instead of construing either of those two dictionary definitions narrowly in light of the statutory context, or in view of the General Assembly's

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[4] Though the Court of Appeals attributed its "broad" interpretation of the term "service" in § 24-90-119(1), C.R.S. to the district court, Opinion, p. 17–19, the district court's order does not define that term. CF, pp. 15–18.

[5] Black's Law Dictionary includes multiple other potential definitions of "service." Black's Law Dictionary (11th ed. 2019).

intent, the court found "both dictionary definitions" applied, Opinion, p.19, and that it need not consult "legislative histories." Opinion, p.23 (citing *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1089 (Colo. 2011)).

As this Court recently explained: "A statute is ambiguous when it is reasonably susceptible of multiple interpretations," in which case courts should "turn to other aids of statutory construction . . . and the statute's legislative history" to determine the General Assembly's intent. *Pellegrin v. People*, 532 P.3d 1224, 1229 (Colo. 2023), *reh'g denied* (Aug. 7, 2023)*; see also Land Owners United, LLC v. Waters*, 293 P.3d 86, 92 (Colo. App. 2011), *as modified on denial of reh'g* (Sept. 29, 2011) (finding CORA exception was ambiguous "because it is susceptible of at least two different reasonable but conflicting interpretations" and, accordingly, looking to legislative history to determine legislative intent). Yet, here, despite acknowledging (and, indeed, applying) multiple potential interpretations of the term "service" in the relevant statute, the Court of Appeals declined to consider authoritative sources illuminating the General Assembly's intent in enacting the underlying statutory provisions at issue, including legislative history and purpose. *See City of Westminster*, 930 P.2d at 592 ("Legislative history provides guidance to the intent of the legislature"); *Larimer Cnty. Bd. of Equalization v. 1303 Frontage Holdings LLC*, 2023 CO 28, ¶ 57, 531 P.3d 1012,

1026 (Colo. 2023), *reh'g denied* (July 17, 2023) (considering the "purpose" of an ambiguous statute).

In declining to consider these other available interpretive aids, the Court of Appeals relied on this Court's decision in *Ritter*. That decision, however, concerned interpreting CORA's definition of "public record," 255 P.3d at 1089, rather than, as here, interpreting an exception to CORA. These are different interpretive exercises because CORA exceptions must be construed narrowly. *City of Westminster*, 930 P.2d at 589. Moreover, in *Ritter*, this Court based its interpretation of a contested term on numerous interpretive sources, including other terms within CORA. 255 P.3d at 1091 (considering the CORA definition of "writing" in § 24–72–202(7), C.R.S., and its components). Here, the Court of Appeals made the precise interpretive error the *Ritter* dissent warned against: relying exclusively on dictionaries to "select between several plausible meanings of an ambiguous term." *Id.* at 1095.

In sum, the Court of Appeals erred as a matter of law in failing to construe the CORA exception at issue—including the cross-referenced statutory term "service"— narrowly, and by looking solely to dictionary definitions of "service" to interpret the statutory language. By doing so, the Court of Appeals arrived at an impermissibly broad construction of the CORA exception that was "contrary to the ascertainable legislative purpose." *City of Westminster*, 930 P.2d at 592.

II. Properly construed, a request to remove a book from a library's collection is not the use of a library "service."

Had the Court of Appeals considered the legislative history and purpose of the relevant statutory provisions, it would have recognized the General Assembly's clear intent in enacting the CORA exception at issue: to safeguard the privacy of library patrons accessing books and other materials at libraries—not to shield the identities of persons seeking to have books removed from library shelves.

The legislative history of § 24-90-119, C.R.S., supports this conclusion. As the General Assembly considered H.B. 1114—the bill that led to § 24-90-119, C.R.S.—lawmakers and supporters of the legislation repeatedly focused on library patrons and, specifically, protecting their freedom to read. Before the House State Affairs Committee, for example, Representative Paulson, one of the bill's co-sponsors explained that the legislation was intended to protect information about "what kind of books, what kind of book requests" were checked out by "individual patrons of the library," which he said was "nobody's business." *Hr'g on H.B. 83-1114 Before the H. State Affairs Comm.* ("*H. State Affairs Comm. Hr'g*"), 54th Gen. Assemb., at 1:45 (Colo. Jan. 18, 1983), available at HB 83-1114_House State Affairs Committee. At the same hearing, Maryanne Brush, Assistant Director of the Jefferson County Public Library, testifying in support of the bill, emphasized that "in order for people to make full and effective use of library resources, they must feel unconstrained by the possibility that *the books they read, materials they*

use, [and] the questions they ask could become public knowledge." *H. State Affairs Comm. Hr'g* at 7:15; 9:13; *see also id.* at 9:25 (summing up the bill protecting "the freedom to read"). Addressing the bill's scope, she expressly noted it would protect information regarding "materials borrowed, information sought, and meetings attended." *Id.* at 9:15. When asked about what information that would be protected under the bill was currently maintained by her library, Assistant Director Brush addressed only circulation records. *Id.* at 10:10.

Similarly, before the Senate State Affairs Committee, State Senator Traylor—one of the bill's co-sponsors—testified that the bill would protect information about "what kinds of books we as individuals check out and read." *Hr'g on H.B. 83-1114 Before the S. State Affairs Comm.* ("*S. State Affairs Comm. Hr'g*"), 54th Gen. Assemb., at 3:30 (Colo. Feb. 23, 1983), available at HB 83-1114_Senate State Affairs Committee. To illustrate the privacy concern legislators intended the bill to address, Senator Traylor noted that federal law enforcement officials had recently sought to obtain records from a Colorado library detailing the reading history of John W. Hinckley Jr., the attempted assassin of President Reagan. *S. State Affairs Comm. Hr'g* at 2:45; Albert B. Crenshaw, *Library Snoops*, Wash. Post (June 21, 1981), https://perma.cc/4TRD-RHB2. And asked about the bill's proposed penalty for disclosing protected information, Senator Traylor said the aim was to ensure library employees and volunteers were "well-apprised of the fact" that they were

"not to give out the record of the books that you've been reading." *S. State Affairs Comm. Hr'g* at 6:00.

Nothing in the relevant legislative history suggests that the General Assembly believed that a "user" of a library "service" would include a person who requests the removal of a library book or other material—a person who may have never set foot in a Colorado library. Instead, the "genesis [of] the legislators' concerns," *City of Westminster*, 930 P.2d at 591, was to protect records reflecting "materials borrowed, information sought, and meetings attended" by library patrons. *H. State Affairs Comm. Hr'g* at 9:15.

When this legislative history is viewed through the lens of a court's obligation to construe exceptions to CORA's mandate of disclosure narrowly, *City of Westminster*, 930 P.2d at 589, it is clear that the proper interpretation of the term "service" does not include requests to remove books from library shelves. The Court of Appeals' Opinion to the contrary, which expansively interpreted "service" to exempt from disclosure under CORA forms submitted by individuals—who may not be library patrons—asking the Library District to remove books from its collection so that library patrons cannot read them, directly conflicts with the General Assembly's intent in enacting § 24-90-119, C.R.S. and should be reversed.

III. Properly construed, library "user" does not include an individual who submits a Request for Reconsideration form.

For the same reasons that "service" in § 24-90-119(1) is not properly construed to encompass requests to remove books from the Library District's collection, the term "user" in § 24-72-204(3)(a)(VII) cannot properly be construed to include individuals who submit those requests. As noted above, the Court of Appeals based its Opinion solely on its broad interpretation of the term "service" in § 24-90-119(1). *See* Opinion, pp. 28–29 ("As we conclude above, the plain language of sections 24-72-204(3)(a)(VII) and 24-90-119(1) unambiguously forbids the disclosure of the identifying information of persons who 'requested or obtained . . . [a] service' that the library district offers to the public."). It did not consider whether those persons who submit Requests for Reconsideration forms qualify as library "user[s]." *See* § 24-72-204(3)(a)(VII), C.R.S.

Construed narrowly and consistently with the General Assembly's intent, detailed above, CORA's exception for records of library "users" does not apply to records of persons who—far from using a library service—seek to change Library District policy to restrict what books and other materials will be available to library patrons. The legislative history makes clear that the General Assembly's purpose was to protect circulation records and other information that would reveal "materials borrowed, information sought, and meetings attended" by individual library patrons. *H. State Affairs Comm. Hr'g* at 9:15. There is nothing in the

legislative history that would suggest the General Assembly intended a maximalist construction of the term "user." As such, the district court erroneously construed the term "user" unacceptably broadly, concluding that "user in the statute . . .] [is] inclusive of any person 'using' library services." CF, p.18. Far from a narrow construction, this broad interpretation of "user" has no discernible limitation and should be rejected.

CONCLUSION

For the reasons herein, this Court should grant the Petition for Writ of Certiorari and reverse the Opinion.

Respectfully submitted this 13th day of November 2023.

By */s/Rachael Johnson*

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2023, a true and correct copy of the foregoing **PETITION FOR WRIT OF CERTIORARI** was served on the following counsel through the Colorado Courts E-File & Serve electronic court filing system:

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