

COLORADO SUPREME COURT

2 East 14th Avenue  
Denver, CO 80203

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Certiorari to the Colorado Court of Appeals,  
Case No. 2025CA26  
Opinion by Dunn, J., Roman, C.J. and Welling,  
J., concur

Boulder County District Court  
Case No. 2024CV30320  
Gunning and Kotlarczyk, JJ.

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Petitioner:

**CITY OF BOULDER**

v.

Respondent:

**SMB ADVERTISING, INC. dba YELLOW  
SCENE MAGAZINE**

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Case No: **2026SC279**

**CITY OF BOULDER'S REPLY IN SUPPORT OF ITS PETITION FOR  
WRIT OF CERTIORARI**

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this Reply in Support of Petition for Writ of Certiorari complies with all requirements of C.A.R. 28 and 32, including all formatting requirements set forth in these rules. I further certify that this Reply complies with C.A.R. 53(f)(1) because it does not exceed 3,150 words. This Reply contains 1,795 words.

I acknowledge that this Reply may be stricken if it fails to comply with any of the requirements of C.A.R. 32 and 53.

By: /s/Luis A. Toro  
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Petitioner Boulder<sup>1</sup> respectfully submits this reply in support of its June 18, 2026 petition for a writ of *certiorari*.

Respondent SMB’s opposition to Boulder’s petition (“Opposition”) only highlights the need for the Court to grant review of this case. SMB argues for a “plain meaning” of the CCJRA that is contradicted by the statute’s language, and urges the Court to let stand a ruling regarding the meaning of C.R.S. § 29-1-304.5(1) that deprives that statute of any potential application. The case presents important questions, not only because of the dollar amounts at stake, but due to the importance of the applicable statutes and the new questions that will arise if the Court of Appeals’ decision is allowed to stand.

**I. The Court of Appeals’ Erroneous Interpretation of the LEIA and the CCJRA Presents a Question of Statewide Import.**

SMB’s contention that the Court of Appeals merely applied C.R.S. § 24-72-306’s plain language is indefensible. To the contrary, this Court read the statute according to its plain language when it said in *People v. Bell*, 2026 CO 28, ¶ 37, that a criminal justice agency “may assess reasonable fees for the search, retrieval, and redaction of criminal justice records requested except that any fee provisions shall not apply to discovery materials that a criminal justice agency is required to

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<sup>1</sup> Defined terms used herein shall have the same meaning given them in Boulder’s Petition.

provide in a criminal case pursuant to Colo. R. Crim. P. 16.” *Id.* (cleaned up). The Court in *Bell* did not read the statute’s plain language as making application of the CCJRA dependent on the language of a records request, as SMB maintains and the Court of Appeals agreed. This Court already rejected the key premise of the Court of Appeals’ ruling in *Bell*.

C.R.S. § 24-72-306(3) unambiguously carves out only Colo. R. Crim. P. 16 discovery from the custodian’s authority to charge fees. It is unreasonable to infer the General Assembly intended the clause “requested pursuant to this part 3” to overturn well-established case law that the CCJRA applies whenever a requester seeks criminal justice records, even if the request is labeled as one under another statute such as CORA. *See, e.g., Harris v. Denver Post Corp.*, 123 P.2d 1166, 1170-71 (Colo. 2005); *Freedom Newspapers, Inc. v. Bowerman*, 739 P.2d 881 (Colo. App.), *cert. denied* (Colo. 1987). Contrary to the Court of Appeals’ implicit determination, “pursuant to” does not mean “invoking” and cannot reasonably be read to convey that a requester may choose which law governs its request. The primary legal definition of “pursuant to” is “[i]n compliance with; in accordance with; under <she filed the motion pursuant to the court’s order>.” “Pursuant to,” Black’s Law Dictionary (12<sup>th</sup> ed. 2024). None of the other possible dictionary definitions of the term “pursuant to” supports the meaning given the phrase by the

Court of Appeals. *See id.* Rather, the dictionary definition supports what Boulder has said from the outset: a request is made “pursuant to” the CCJRA when it seeks criminal justice records, the release of which is governed by that statute.

The Court of Appeals’ conclusion that Subsection (3) was intended only to reinforce that the custodian can never charge fees unless a requester expressly says their request is made pursuant to the CCJRA similarly cannot be defended. The governing rule is “words and even clauses in constitutions and statutes that might in some sense be redundant are often specifically included to illuminate and clarify what would otherwise be merely implicit.” *Benefield v. Colorado Republican Party*, 2014 CO 57, ¶ 17. The only thing Subsection (3) could have illuminated or clarified is that only Colo. R. Crim. P. 16 discovery is excluded from the custodian’s authority to charge fees. *Benefield* provides no license for a court to disregard the express language of a statutory provision; it is only one tool to address a situation where language might be construed as redundant.

Next, the legislative history of the 2008 amendments to the CCJRA establishes that the General Assembly’s sole intent was to overturn the result of *People v. Trujillo*, 114 P.3d 27 (Colo. App. 2004), *cert. denied* (Colo. 2005). There is no indication that the General Assembly in 2008 considered the potential application of any other legal authority besides Colo. R. Crim P. 16 as providing

for release of criminal justice records. SMB has never been able to point to the existence of any other law in 2008 that the General Assembly might have intended to exclude from the fee provision in addition to Colo. R. Crim. P. 16.

The consequences of the Court of Appeals’ construction, which it expressly declined to consider (*SMB Advertising Inc. v. City of Boulder*, 2026 COA 25M, ¶ 38) deserve thoughtful review if the Court believes the statutes are ambiguous. The Court of Appeals’ interpretation of the LEIA as a stand-alone criminal justice records system denies requesters access to CCJRA remedies and may trigger an avalanche of additional complications identified by the County Sheriffs of Colorado in their *amicus curiae* brief. Boulder did not ask the Court of Appeals to “import” one statute into another, it contended that the consequences of treating the LEIA and the CCJRA as siloed disclosure systems produces consequences not intended by the General Assembly. The General Assembly intended the CCJRA and the LEIA to work hand-in-hand because they both pertain to the release of certain criminal justice records. *See Crowe v. Tull*, 126 P.3d 196, 206 (Colo. 2006).

The sensible interpretation is that the General Assembly in 2020 and 2021 was aware of the CCJRA and intended it to apply to the extent it is not manifestly inconsistent with the express provisions of the LEIA. *See id.* Otherwise, it would have amended the definition of “criminal justice record” in C.R.S. § 24-72-302(4)

or added an additional carve-out to C.R.S. § 24-72-306. This would be the correct application of the rule that legislative silence may sometimes be interpreted as intentional. The Court of Appeals' conclusion that local governments are not empowered to charge fees except where expressly authorized by statute promises to generate its own complications in future cases.

SMB attempts to minimize the financial impact of the Court of Appeals' ruling by suggesting that criminal justice agencies have to review all video recordings already and can just perform statutorily required blurring while reviewing the video for other purposes. Not so. First, in critical incidents it is common for other police departments to review the conduct of the involved officers, as was done in this case. CF, p 127 ("BPD did not participate in the use-of-force investigation"). Next, review of video recordings to make the precise blurring required by C.R.S. § 24-31-902(2) necessarily requires careful, close attention. There is no reason to assume the blurring could be performed more efficiently by a supervisor in the course of reviewing video to evaluate an officer's performance as opposed to records staff already trained in document review. Similarly, the Court should not accept SMB's suggestion that artificial intelligence ("AI"), a technology with no track record of accuracy, could replace human review and judgment.

Boulder and SMB do agree on one point: the LEIA's goals are of great public importance. *See* Opposition at pp. 2, 13-15. The fact the LEIA was passed on an expedited basis to accomplish important goals provides more reason, not less, to presume the General Assembly intended it to work in harmony with other existing statutes.

The questions presented by Boulder's Petition are of statewide importance and the Court of Appeals' decision is inconsistent with *Bell*, with this Court's oft-reaffirmed principles of statutory interpretation expressed in cases such as *Normandin v. People*, 91 P.3d 383, 387 (Colo. 2004), and with Division V's determination in *Trujillo* that the CCJRA should be construed in harmony with other statutes pertaining to release of criminal justice records. Review is appropriate under C.A.R. 49(b) and (c).

## **II. C.R.S. § 29-1-304.5(1) Must Not Be Interpreted as Meaningless.**

Both the Court of Appeals and SMB maintain that whenever a statute says a local government "shall" do something, but fails to provide funding to cover that mandate, that later statute will always irreconcilably conflict with and therefore prevail over C.R.S. § 29-1-304.5(1). But no conflict exists, because C.R.S. § 29-1-304.5(1) expressly provides that when the General Assembly tells a local government to provide a service it mandates, but does not appropriate funds to

cover the costs of the mandate, the mandate “shall be optional on the part of the state government.” The General Assembly is presumed to know its own enactments and its decision not to amend C.R.S. § 29-1-304.5(1) when it enacted the LEIA must be viewed as intentional. *See Anderson v. Longmont Toyota, Inc.*, 102 P.3d 323, 330 (Colo. 2004).

SMB argues that C.R.S. § 29-1-304.5(1) will retain vitality even after the Court of Appeals’ decision to the extent it applies to mandates issued by state agencies. There is no reason why this would be the case. If an agency acting within its statutory authority says a local government “shall” take some action, functionally that is the same thing as the General Assembly requiring a local government to do so; if the agency operates outside its authority, its regulation may be struck down on that basis. In any event, SMB’s argument that C.R.S. § 29-1-304.5(1) may still apply to administrative regulations is an admission the statutory language regarding statutory enactments is ineffective in all potential applications under the Court of Appeals’ construction.

SMB continues to characterize C.R.S. § 29-1-304.5(1) as an “affirmative defense” and criticizes Boulder for not developing a factual record. By its terms, the application of C.R.S. § 29-1-304.5(1) requires only that a court review the General Assembly’s budget as it would any other legislative enactment and

compare it to the language of the statute appearing to require a local government to do something.

Finally, SMB makes the eyebrow-raising assertion that the General Assembly may require a home rule city to spend its tax revenue to extinction in fulfillment of state mandates without violating the Home Rule Amendment. Boulder disagrees, but its point is merely that future litigation over the constitutionality of the LEIA's purported mandate should be unnecessary. The constitutional question would arise only if the Court does not correct the Court of Appeals' erroneous interpretation of the interaction between C.R.S. § 24-31-902(2) and C.R.S. § 24-72-306(3) or between C.R.S. § 24-31-902(2) and C.R.S. § 29-1-304.5(1). And as ably pointed out by the Colorado Municipal League in its brief of *amicus curiae*, C.R.S. § 29-1-304.5(1) serves to respect local governments' ability to appropriate their own tax dollars even if the Home Rule Amendment is not implicated.

The Court should grant review of Boulder's proposed second question pursuant to C.A.R. 49(b).

## **CONCLUSION**

The Court should grant Boulder's Petition.

Respectfully submitted this 9th day of July 2026.

OFFICE OF THE CITY ATTORNEY

By: /s/ Luis A. Toro

Luis A. Toro

Senior Counsel

*Attorney for Petitioner City of  
Boulder*

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of July 2026, a true and correct copy of the foregoing **CITY OF BOULDER'S REPLY IN SUPPORT OF ITS PETITION FOR WRIT OF CERTIORARI** was filed and served via the Colorado Courts E-Filing System to counsel of record appearing herein.

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