SUPREME COURT, STATE OF COLORADO

Court Address: 2 East 14th Avenue
Denver, Colorado 80203

Colorado Court of Appeals
Opinion by Judge Webb
Bernard, J. concurs
Dunn, J. dissents
Case No. 12 CA 2613

District Court, County of Chafee
Hon. Charles M. Barton
Civil Action No. 11 CV 132

Petitioner:
JOYCE RENO, in her official capacity as Chafee County Clerk and Recorder

v.

Respondent:
MARILYN MARKS

The Colorado Press Association:
Steven D. Zansberg, #26634
Thomas B. Kelley, #1971
LEVINE SULLIVAN KOCH & SCHULZ, LLP
1888 Sherman Street, Suite 370
Denver, Colorado 80203
Telephone: (303) 376-2400
Facsimile: (303) 376-2401
szansberg@lskslaw.com
tkelley@lskslaw.com

Colorado Ethics Watch:
Luis Toro, #22093
Margaret Perl, #43106
COLORADO ETHICS WATCH
1630 Welton Street, Suite 415
Denver, CO 80202
Telephone: (303) 626-2100
Facsimile: (303) 626-2101
ltoro@coloradoforethics.org
pperl@coloradoforethics.org

▲ **COURT USE ONLY** ▲

Case Number: 2014SC235

BRIEF OF *AMICI CURIAE* THE COLORADO PRESS ASSOCIATION COLORADO ETHICS WATCH, AND COLORADO FREEDOM OF INFORMATION COALITION

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

- The brief complies with C.A.R. 28(g). It contains 4,582 words in those portions subject to the Rule.
- The brief complies with C.A.R. 28(k). For the party responding to the issue: It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

Respectfully submitted December 3, 2014.

By: *s/ Steven D. Zansberg*
Steven D. Zansberg, #26634
Thomas B. Kelley, #1971
LEVINE SULLIVAN KOCH & SCHULZ, LLP
1888 Sherman Street, Suite 370
Denver, Colorado 80203
Telephone: (303) 376-2400
Facsimile: (303) 376-2401
szansberg@lskslaw.com
tkelley@lskslaw.com

Attorneys for *Amici Curiae* The Colorado Press Association And the Colorado Freedom of Information Coalition

By: *s/ Luis Toro*
Luis Toro, #22093
Margaret Perl, #43106
COLORADO ETHICS WATCH
1630 Welton Street, Suite 415
Denver, CO 80202
Telephone: (303) 626-2100
Facsimile: (303) 626-2101
ltoro@coloradoforethics.org
pperl@coloradoforethics.org

Attorneys for *Amicus Curiae* Colorado Ethics Watch

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Statutes

Other Authorities

INTRODUCTION

Amici are all organizations that rely heavily on the Colorado Open Records Act ("CORA"), § 24-72-204, *et seq.*, C.R.S., in their efforts to inform the public and hold public officials accountable. The central issue raised by this case—whether CORA requesters are entitled to recover reasonable attorneys' fees and costs even when the custodian who has denied access wins the "race to the courthouse" to file a petition—is of critical importance to *Amici*'s work and to the public at large. If citizens cannot be assured they will be entitled to recover their attorneys' fees and costs after they provide notice of their intent to file suit to challenge a denial, and thereafter litigate a case (regardless of which party files first), the very purpose of the CORA amendment passed by the General Assembly in 2001—to incentivize citizens to exercise their rights to judicial review of denial decisions—will be eviscerated.

STATEMENT OF THE CASE

Amici adopt and incorporate by reference the statement of the case as stated in the Appellee's Answer Brief.

STANDARD OF REVIEW

Amici adopt and incorporate by reference the statement of the Appellee with respect to the standard of review applicable in this case.

SUMMARY OF ARGUMENT

When a member of the public asks to inspect a public record and the custodian of the record *denies* that request and, upon being notified of the citizen's intent to challenge that denial, the custodian files a petition seeking "an order *authorizing non-disclosure*" of the record, and, thereafter, the custodian provides access to the public record(s), that person is entitled to some portion of his or her attorney's fees for having "prevailed" in challenging the custodian's *denial* decision. Only when a custodian is truly "unable" and "in good faith" to determine IF a requested record is subject to a mandatory non-disclosure provision—a set of facts indisputably *not* at issue here—may the court relieve the custodian of her statutory obligation to pay the reasonable attorney's fees incurred by the citizen or person for having **successfully challenged the withholding of a public record**. This is both the plain language and unambiguous intent of the General Assembly when it enacted HB-01-1359. To deny a successful records requester her entitlement to recover reasonable attorney's fees when the custodian "files first," as here, would defeat the very purpose of that important amendment to the state's open records law.

ARGUMENT

One fact central to the resolution of the present appeal is undisputed: Ms. Reno did **not** petition the district court seeking ***a determination if disclosure***

of the records Ms. Marks sought to inspect was "prohibited pursuant to part 2" of the CORA; instead, Ms. Reno petitioned the district court under the provision of § 24-72-204(6)(a), C.R.S. which allows a custodian to request that the court enter "an order *permitting [her] to restrict such disclosure*" on the grounds that "in the opinion of [Ms. Reno], disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available for public inspection." Thus, this case provides no occasion for the court to address the applicability of the alternative provision of § 24-72-204(6), C.R.S., which allows for a custodian to petition the court for guidance when the custodian is "unable to determine" *whether* a particular record *must* be withheld.

In this brief, the two distinct prongs of the "official custodian petition provision," § 24-72-204(6)(a), C.R.S. will be described as follows: A petition in which the official custodian, *after issuing a denial* to the records requester, seeks an order *authorizing non-disclosure*, will be referred to as a **"Denial Provision" petition.** *See* R. CF. p. 267.[1] The plain text of § 24-72-204(6)(a), C.R.S. makes clear that "the attorney fees provision of subsection (5)" *shall apply* to all such petitions.

[1] Notably, this provision was the only existing basis for a custodian petition prior to the passage of HB 01-1359 in 2001.

A petition in which the official custodian, who is genuinely and in good faith "unable to determine if disclosure of a public record is prohibited under this part 2" of the CORA, and who cannot determine the answer "without a ruling by the court," will be referred to herein as a **"Reasonable Uncertainty Provision" petition**. *See* R. CF., p. 267. As explained below, such a petition may only be filed if the custodian first notifies the records requester that she is, in fact, "unable to determine" *if disclosure of the particular record(s) requested is prohibited* by law.

Only when the latter type of petition has been foretold by the custodian and thereafter filed may the custodian *potentially* be excused from "[t]he attorney fees provision of subsection (5)," *i.e.*, only if the court enters the statutorily required *findings* of (a) good faith, (b) reasonable inquiry, (c) reasonable diligence exercised, and (d) inability to determine whether disclosure is statutorily prohibited. As the court of appeals properly found, "Reno's petition did not seek judicial guidance on the basis that she was unable to determine if disclosure was prohibited."[2] . . . Had she petitioned on [that alternative] basis, the attorney fee

[2] Ms. Reno has not challenged the trial court's rejection of her argument, below, that she was also proceeding under the "Reasonable Uncertainty Provision." See R. CF. 263, n.3; R. CF. p. 267, n.6; Reno's Opening Br. at 12 (acknowledging that she did not appeal this finding).

issue might well have been resolved differently." *Reno v. Marks*, --- P.3d ----, 2014 COA 7 at ¶ 13, 2014 WL 171326, at *3 (Colo. App. Jan. 16, 2014).

As demonstrated below, once Ms. Reno communicated to Ms. Marks that the latter's request to inspect public records was **denied**, Ms. Reno could no longer petition the court under the "Reasonable Uncertainty Provision," because she simply could not thereafter assert to the court that, *when she denied Ms. Marks' request* to inspect the particular records she had asked to inspect, Reno was "*in good faith . . . unable to determine* if disclosure of the public record was prohibited without a ruling by the court." § 24-72-204(6)(a), C.R.S.

I. A Records Requester Who Obtains Access to Wrongfully Withheld Public Record(s) Is Entitled to Attorney's Fees in Any Action Commenced Under the CORA, by Requester or Custodian, with Only One Statutory Exception

When in response to receiving a records requester's intent to sue,[3] a Records Custodian files a "Denial Provision" petition under § 24-72-204(6)(a), C.R.S., and thereafter provides the records requester access to one or more of the previously withheld public record(s), the statutory text of § 24-72-204(5) and § 24-72-204(6)(a), C.R.S, mandate that the court award reasonable attorney's fees to the records requester. Ms. Reno's entire argument hangs on the fact that subsection

[3] Ms. Marks provided such notice in her second email message to Ms. Reno. *See* Ex. C to the Petition below.

204(5) states that attorney's fees are available only to a successful "*applicant*," meaning one who files an "application for an order to show cause" under that provision. So, under Ms. Reno's view, had Ms. Marks, in responding to Ms. Reno's petition, formally "applied" to the Court for an order to show cause why she should not be provided access to the records that were denied her, then she would undoubtedly have formally been a "*applicant*" under § 24-72-204(5) C.R.S., who prevailed in gaining access to an improperly withheld public record. And, had she filed an "application" as an Answer and/or counterclaim to Ms. Reno's Denial Petition, Ms. Marks would unquestionably be entitled to an award of *some portion* of her reasonable attorney's fees, even under Ms. Reno's theory. *See Benefield v. Colo. Republican Party*, 329 P.3d 262 (Colo. 2014).

Under Ms. Reno's proposed reading of the statute, a records requester who did *not* file an "application" in response to a Custodian's Denial Petition would be barred from recovering his or her attorney's fees.[4] Such a result would certainly place on notice all future records requesters that they must formally "apply," in response to a custodian's petition, but it would elevate formality over substance, and would therefore violate the statutory directive that statutes, as whole, are presumed intended to produce a "just and reasonable result." § 2-4-201(c), C.R.S.;

[4] It is undisputed that Ms. Marks did not file an Answer to the Petition below, and therefore did not seek an "order to show cause" as a counterclaim.

see also People v. Hale, 654 P.2d 849, 850 (Colo. 1982) (literal interpretation not applied where it would produce an absurd result not contemplated by the legislature).

As this Court recognized earlier this year, when Colorado's General Assembly passed HB-01-1359 in 2001, it dramatically altered the then-existing status quo under the Colorado Open Records Act. *See Benefield*, 329 P.3d at 264. By adopting a mandatory fee shifting regime, in place of the former "arbitrary or capricious" standard, the General Assembly sought to incentivize citizens to exercise their statutory right to access public records. *Id.* The pre-condition for an award of such fees was a new requirement, that in response to a *denial* of access to records, the potential plaintiff must first provide three days' written notice of an "intent to sue" through the filing of an application for an order to show cause. § 24-72-204(5), C.R.S. The purpose of this notice requirement is to provide the records custodian the opportunity *to reconsider his denial decision*, produce the requested record(s) and thereby avoid liability for attorney's fees and costs. *See Benefield*, 329 P.3d at 264. However, if the custodian chooses to defend his or her denial decision, (s)he does so at the risk of having to pay the "prevailing applicant"—a citizen who gains access to the previously withheld record(s)—as a result of the court challenge, so long as the court does not enter a finding that the withholding was proper.

House Bill 01-1359 also inserted another set of phrases into section 204(6) of the CORA; to provide an opportunity for a custodian who legitimately and "in good faith" is "unable to determine"—at the time of initially responding to the request—whether disclosure of a particular record is statutorily prohibited from being disclosed. For example, the record requested may potentially or arguably be subject to FERPA or HIPAA, or it may potentially contain "personnel file" information. In that case, the custodian would so inform the records requester, *e.g.*, "having diligently and in good faith investigated whether we are permitted to allow you to inspect or copy [document X], we are unable to determine if disclosure is prohibited because the record may, in fact, be subject to mandatory non-disclosure by [insert statutory provision]. Accordingly, if you wish to proceed with your request to inspect this record, we shall require guidance from the court on that question." The custodian would then seek the court's guidance by filing a "**Reasonable Uncertainty Provision**" of section 204(6).[5] Under that provision, if the trial court makes the appropriate findings, the custodian is not required to pay the records requester's attorney's fees for having sought the court's guidance on an

[5] Upon filing such a petition under § 24-72-204(6)(a), C.R.S., seeking such judicial guidance, the records custodian must, by necessity take a "neutral" position as to the disclosure question—after all, the custodian appears before the Court claiming to be "unable to determine if" disclosure is prohibited, not certain of that fact and not advocating in favor of a prior denial decision.

uncertain application of a mandatory non-disclosure provision. (As noted above, none of that happened in this case).

What is equally clear, from the statutory text, is that a records custodian cannot, after providing the citizen with the statutorily required, written explanation of the basis for a *denial* of access, § 24-72-204(4), C.R.S., if it had been requested, thereafter claim that she was, at the time of the request, and remains, "unable . . . in good faith" to determine whether disclosure is prohibited. Allowing such a ploy, which regrettably has become quite commonplace, *see infra* Section III, would only reward custodians for saying "no" to the records requester, and then upon being notified that the denial is to be challenged in court, suddenly "change his mind" and suddenly claim to be "uncertain," in the hopes of avoiding an attorney's fees award.[6]

Here, having informed Ms. Marks that she had *denied* Ms. Marks's request to inspect the anonymous voted ballots at issue, Ms. Reno could no longer petition the court under the "Reasonable Uncertainty Provision" of section 204(6). And, as she has conceded, *she did not so petition the court*.

[6] Of course, "intent to sue" letters may only be prompted by a custodian's unqualified denial of the right to inspect, not by a custodian's statement that she is "unable to determine" whether disclosure is prohibited, *see* § 24-72-204(5), C.R.S.; so, a custodian cannot, "in good faith" assert the latter position after receiving an intent to sue letter that was triggered by an earlier unequivocal *denial*.

Because Ms. Marks was *forced to respond* to Ms. Reno's "Denial Provision" petition,[7] and Ms. Marks thereafter obtained access to one or more public records she had asked to inspect, she is entitled, under sections 204(5) and 204(6) of the CORA, to a fees award. In short, Ms. Marks prevailed by obtaining access, *as a result of the litigation she had prompted*, to a public record, and the court did not enter a finding that the public record had been "properly withheld."[8]

II. A Records Requester Need Not Obtain Access to an Improperly Withheld Record *Pursuant to a Court Order* to Be Deemed a "Prevailing Applicant" Entitled to a Fees Award

Ms. Reno urges the Court to adopt a rule that would foreclose a records requester from receiving an award of attorney's fees unless the production of public records by the custodian, after a court action has been filed, is the result of a court order commanding the custodian to provide access to the records. Reno Op.

[7] It is undisputed that Ms. Reno and Ms. Marks actively engaged in the civil litigation precipitated by the records request, including negotiating and filing stipulations and thereafter vigorously contesting Ms. Marks' request for attorney's fees. Had Ms. Reno simply agreed to pay Ms. Marks her fees for responding to the petition, when there had been no counterclaims asserted nor any show cause hearing, the amount of Ms. Marks' fees recoverable at that point would have been nominal at most. And, as the Court of Appeals noted, Ms. Reno could also have agreed to produce the records, post litigation, upon Ms. Marks' agreement to relinquish any claim to her minimal fees at that point.

[8] Section 204(5) makes clear that following a denial of access, the only time a person who gains access to a public record as a result of the ensuing litigation may not recover his attorney's fees is when "the court finds that the withholding was proper." No such finding was made here.

Br. at 9. For rather obvious policy reasons, this simply cannot be the law, and it is not the law that this Court has already applied in *Benefield*, 329 P.3d 262, and the Court of Appeals has applied previously.

First, as to policy—Ms. Reno's proposed rule would produce absurd and unjust results: after receiving a legally invalid denial of access to public records, a records requester, would provide three days' notice of intent to file an application for an order to show cause, as required by § 24-72-204(5), C.R.S., just as Ms. Marks did below. Then, either the applicant would retain counsel to prepare a Complaint and Application, or the Custodian would race to court ahead of the Applicant, *see infra* Section III; thereafter, there might be extensive motions practice and even appeals, prior to a hearing on an order to show cause. *See, e.g.*, *Denver Post Corp. v. Ritter*, 230 P.3d 1238 (Colo. App. 2009), *aff'd*, 255 P.3d 1083 (Colo. 2011) (en banc) (case litigated through court of appeals and supreme court before any show cause hearing occurred). Then, a lengthy hearing on an order to show cause might be held (some hearings have lasted more than three days). Upon realizing that the court is likely to rule in favor of the records requestor with respect to some or all of the records that were withheld, the custodian could then "voluntarily" provide the withheld records to the applicant, thereby mooting the need for a court order commanding production, or, could argue that the records were provided in advance of (and therefore not in response to) a court order, and

claim—under Ms. Reno's theory—that the applicant did not "prevail" and was therefore not entitled to recover any of her quite large expenditure of attorney's fees. *See, e.g.*, *Denver Post Corp. v. Stapleton Dev. Corp.*, 19 P.3d 36 (Colo. App. 2001).

Obviously, this is not what the General Assembly intended when it commanded courts, in HB-01-1359, to award attorney's fees to a "prevailing applicant" who, as a result of commencing a lawsuit (or prompting the Custodian to commence one), obtains access to public records that were withheld prior to the initiation of the lawsuit.

This is, in fact, the very reason the bill, HB 10-1359 contained the three days' notice requirement. If the applicant prevails—obtains access to public records as a result of the lawsuit, without a judicial finding that the previous withholding/denial was proper—then the custodian, not the applicant, bears the cost of having prompted the litigation. If, instead, the custodian does not believe his/her denial decision will be upheld by the court, then (s)he has three days in which to make that determination and avoid the attorney's fees exposure by providing the public records *before* the announced litigation is commenced.

Beyond the straightforward policy reason, above, there's the unambiguous statutory text: "*unless the court finds* that the denial of inspection was proper, *it shall . . . award* court costs and [] attorneys' fees to the prevailing applicant."

§ 24-72-204(5), C.R.S. This means that once litigation has been initiated (by either party), and the custodian thereafter "voluntarily" discloses the documents previously withheld, the case is not mooted by that disclosure because there remains to be determined the plaintiff's entitlement to attorneys' fees, and the amount of those fees. This was the express holding of *Denver Post Corp. v. Stapleton Development Corp.*, 19 P.3d 36, in which the custodian claimed that the action was moot because it had voluntarily complied with CORA by providing redacted copies of the documents in issue. In the opinion written by former Chief Justice William Erickson, the court recognized that "[a] case becomes moot when relief, if granted, would have no practical legal effect upon the existing controversy." 19 P.3d at 38. However, the Court held that there remained issues in controversy, including "whether plaintiffs were entitled to their . . . attorney fees under the CORA" for the documents that had been voluntarily disclosed after the litigation was filed. *Id.*

Notably, the Colorado Open Meetings Law's ("COML"), § 24-6-402, *et seq.*, C.R.S., fee-shifting provision differs from that of CORA because *it requires a judicial determination of noncompliance*,[9] whereas under the CORA an applicant's

[9] "In any action *in which the court finds a violation of this section*, the court shall award the citizen prevailing in such action costs and reasonable attorney fees." § 24-6-402(9)(b), C.R.S. (emphasis added).

entitlement to a fee award occurs automatically when the action results in voluntary compliance, so long as the court does *not* enter a finding that the earlier withholding decision was proper. This marked difference in the default position for fees recovery is meaningful, and instructive because both statutes address similar subject matter and in fact, cross-reference one another. Indeed, HB-10-1036 amended both statutes in one bill. *See Nelson v. Indus. Claim Appeals Office*, 981 P.2d 210, 212 (Colo. App. 1998) ("we must . . . attempt to harmonize statutes dealing with the same subject matter").

Thus, whenever a records custodian provides access to one or more public records that were withheld prior to the suit being filed, with or without a court order so directing the custodian, the records requester is entitled to a reasonable fee award in the absence of a judicial finding that the original denial had been proper.

III. Allowing Custodians to Avoid Paying Attorneys Fees to a Prevailing Records Requester if the Custodian Files First Will Create a "Race to the Courthouse" that *Applicants Can Never Win*, and Would Therefore Render the Attorneys Fees Provision Meaningless

As explained above, prior to filing an application for an order to show cause why inspection of a public record should not be permitted, a records requester must provide three days' written notice of his/her intent to challenge a denial decision. Thus, if a records custodian were permitted to thereafter "change his mind" and declare that he suddenly "is unable . . . in good faith" to determine if disclosure is prohibited, the three-day notice would always provide a custodian with sufficient

time to do so and thereby potentially eliminate a citizen's legitimate claim to attorney's fees. This is not, and cannot be, what the General Assembly intended. Thankfully, several trial court judges have already rejected such efforts by records custodians to do just as is described above.

For example, the Colorado Independent Ethics Commission ("IEC") responded to an open records request from *amicus* Colorado Ethics Watch ("Ethics Watch") by filing an application with the court for an order that the documents should not be released on the ground that their release would cause substantial injury to the public interest. The application was consolidated with a later-filed petition by Ethics Watch for an order compelling production of the records. The district court ruled Ethics Watch was entitled to some, but not all, of the documents it sought, and therefore was a "prevailing applicant." On the issue of attorneys' fees, the court rejected the custodian's assertion of safe harbor protection, ruling that because this was "not a case filed by a custodian who was '*unable to determine* if disclosure of a public record is *prohibited*,'" CORA mandated an award of fees to Ethics Watch. *In re Colo. Indep. Ethics Comm'n*, Nos. 2008-CV-7995 & 2008-CV-8857, slip op. at 8 (Denver Dist. Ct. May 14, 2009) (emphasis added) (attached as App'x 1).

Similarly, after being notified of a records requester's intent to file an application for an order to show cause, the Town of Breckenridge filed a pre-

emptive lawsuit against a local newspaper and asked the court to authorize the Town's withholding a settlement agreement with a former town employee, on grounds that disclosure would cause substantial injury to the public interest. The newspaper then applied for an order of disclosure under Subsection 204(5) of CORA. After a hearing, the court ordered that the settlement agreement be made available to the newspaper, but denied any award of attorneys' fees. On a motion for reconsideration, Judge Terry Ruckreigle ruled that the plain language of Subsection 204(6)(a) "clearly and unambiguously allows for the avoidance of an award for attorney fees, [only] if the official custodian 'proves' and the Court then 'finds' that 'the custodian, in good faith, after exercising reasonable diligence, and after making reasonable inquiry, was unable to determine if disclosure of the public record was prohibited without a ruling by the court.'" *Town of Breckenridge v. Colo. Mountain News Media d/b/a Summit Daily News*, No. 2005-CV-535 at 3 (Summit Cnty. Dist. Ct. Oct. 21, 2009) (order granting motion for partial reconsideration) (citation omitted) (attached as App'x 2). Because the Town had presented no evidence supporting such a finding—indeed, the Town had vigorously asserted that disclosure of the requested public record *would cause* "substantial injury to the public interest"—the district court found that an award of "reasonable and necessary attorneys' fees" was mandatory. *Id.* at 4-5; *see also Anderson v. Marks*, No. 2011-CV-3576, slip op. at 10 (Jefferson Cnty. Dist. Ct.

Apr. 23, 2012) (awarding attorneys' fees to claimant who obtained public records after pre-emptive petition was filed by County Clerk because the Clerk "declared that disclosure was prohibited rather than uncertain" and "these facts are insufficient as a matter of law to substantiate Petitioner's qualification under the safe-harbor provision") (attached as App'x 3).

All of these cases demonstrate that the frequent ploy of records custodians, to respond to a notice of intent to file an application by "racing to the courthouse" during the mandatory three-day waiting period, have not confused trial judges who are able, unlike these custodians, to read and apply the plain language of § 24-72-204(6), C.R.S. Thus, the only basis for a records custodian to avoid an attorneys fees award to a "successful" records requester (whether she was the original "applicant" or the "respondent" to a pre-emptive filing) is by demonstrating to the court that *in response to the original records request*—not the 3-day notice letter—(s)he was genuinely, and in good faith, after conducting diligent investigation, unable to determine if disclosure was prohibited. Otherwise, once litigation ensues and access is provided, fees shall be awarded to the citizen (unless the court finds that the withholding/denial of access that prompted the litigation was proper).

Finally, to the extent that the Court believes subsection 204(6) is subject to more than one reasonable interpretation, *Amici* respectfully urge the Court to abide by the canon of statutory construction requiring that remedial statutes, such as the

CORA, must be construed broadly in favor of the public. *Moeller v. Colo. Real Estate Comm'n*, 759 P.2d 697, 701 (Colo. 1988) (citing NORMAN J. SINGER, 3 SUTHERLAND STAT. CONST. § 60.01 (4th ed. 1986 & 1988 Supp.)). Of course, the General Assembly may always amend a statute if it disagrees with the Court's interpretation; there are several recent examples of this happening to the CORA and the companion COML.[10] Nevertheless, this Court is bound by the aforementioned cannon to provide a reasonable reading in support of the public's interest when interpreting remedial statutes such as Colorado's sunshine laws. *See Sargent Sch. Dist. No. RE-33J v. W. Servs. Inc.*, 751 P.2d 56, 60 (Colo. 1988) (holding that all exemptions in the CORA must be "narrowly construed"); *Zubeck v. El Paso County Ret. Plan*, 961 P.2d 597, 600 (Colo. App. 1998) (construing both the COML and the CORA in harmony and requiring narrow construction of any exemption limiting public access); *cf. Bagby v. Sch. Dist. No. 1*, 528 P.2d 1299, 1302 (Colo. 1974) (holding that the "Public Meetings" law is a "remedial" statute, and "*[a]s a rule, these kinds of statutes should be interpreted most favorably for*

[10] The General Assembly amended the CORA to "reverse" court decisions holding that the "deliberative process privilege" provides an absolute bar to disclosure, that records custodians need not provide access to public records in a digitized format, and have amended the COML to "reverse" court rulings holding that a public body's use of secret ballots did not violate the COML and that a citizen denied access to, or notice of, a public meeting lacked standing under the OML to challenge such denial.

the beneficiary, the public" (emphasis added) (citation omitted)); *Bd. of County Comm'rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1195 (Colo. 2004) (holding that the COML "should be construed as *broadly as possible to increase governmental transparency*" (emphasis added)).

CONCLUSION

For all of the reasons set forth above, as well as those set forth in the Respondent's Answer Brief, *Amici* respectfully submit that this Court should affirm the judgment of the Court of Appeals.

Respectfully submitted this 3rd day of December, 2014.

By: *s/ Steven D. Zansberg*
Steven D. Zansberg, #26634
Thomas B. Kelley, #1971
LEVINE SULLIVAN KOCH & SCHULZ, LLP
1888 Sherman Street, Suite 370
Denver, Colorado 80203
Telephone: (303) 376-2400
Facsimile: (303) 376-2401
szansberg@lskslaw.com
tkelley@lskslaw.com

Attorneys for *Amicus Curiae* The Colorado Press Association And the Colorado Freedom of Information

By: *s/ Luis Toro*
Luis Toro, #22093
Margaret Perl, #43106
COLORADO ETHICS WATCH
1630 Welton Street, Suite 415
Denver, CO 80202
Telephone: (303) 626-2100
Facsimile: (303) 626-2101
ltoro@coloradoforethics.org
pperl@coloradoforethics.org

Attorneys for *Amicus Curiae* Colorado Ethics Watch

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2014, I served a true and correct copy of the foregoing **BRIEF OF *AMICI CURIAE* THE COLORADO PRESS ASSOCIATION, COLORADO ETHICS WATCH, AND THE COLORADO FREEDOM OF INFORMATION COALITION** via the ICCES electronic filing system:

Counsel for Petitioners:

Jennifer A. Davis, Atty. Reg. # 025072
Chaffee County Attorney's Office
104 Crestone Avenue
P.O. Box 699
Salida, CO 81201
Telephone: 719-530-5564
FAX: 719-539-7442
jdavis@chaffeecounty.org

Counsel for Respondent:

Robert A. McGuire
Robert McGuire Law Firm
9233 Park Meadows Drive
Lone Tree, CO 80124

**Counsel for *Amici Curiae* Colorado Counties, Inc.,
Colorado County Clerks Association,
Special District Association of Colorado,
Colorado Association of School Boards,
The Colorado Municipal League**

Thomas J. Lyons
Stephanie A. Montague
Hall & Evans, L.L.C.
1001 Seventeenth St., Suite 300
Denver, CO 80202

Chaffee County District Court

The Honorable Charles M. Barton
Chaffee County District Court
142 Crestone Ave.
Salida, CO 81201

s/ Marla D. Kelley
Marla D. Kelley, Paralegal