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COLORADO SUPREME COURT
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Certiorari to Colorado Court of Appeals,
Case No. 2014CA2073
Judges Taubman, Jones, and Harris

Office of Administrative Courts,
Case No. OS2014-0008
Hon. Robert N. Spencer, Administrative Law Judge

Petitioner: COLORADANS FOR A BETTER FUTURE,

v.

Respondents: CAMPAIGN INTEGRITY WATCHDOG,

and

OFFICE OF ADMINISTRATIVE COURTS.

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REPLY BRIEF FOR THE PETITIONER

CERTIFICATE OF COMPLIANCE

I hereby certify that this Reply Brief for the Petitioner complies with all applicable requirements of C.A.R. 28, 32, and 57, including all formatting requirements set forth in these rules. I also certify that this brief contains 4,780 words, excluding material not counted under C.A.R. 28(g)(1).

s/ Paul M. Sherman
Paul M. Sherman

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This Court granted review of the question whether "pro bono and reduced-cost legal services are 'contributions' within the meaning of Colorado's campaign-finance laws." As explained in Petitioner Coloradans for a Better Future's (CBF) opening brief, they are not. Neither of the two statutory provisions on which the Court of Appeals relied covers legal services provided to "political organizations" like CBF. The first provision covers only monetary support, not services; the second applies to candidates alone. These interpretations accord with the statute's text, structure, and history. So construed, the provisions also avoid the grave constitutional doubt that would follow from burdening political speakers' access to affordable counsel.

Respondent Campaign Integrity Watchdog's (CIW) answer brief provides no sound alternative to CBF's plain-language reading. At the same time, CIW offers several good reasons for the Court to favor CBF's interpretation. CIW appears to concede, for example, that abridging access to legal services raises constitutional questions in many settings—when the client speaks out about "issues," for instance, or is of "modest means." Answer Br. 28. CIW also volunteers a breathtaking example of how the Court of Appeals' alternative interpretation would work in practice. As explained by CIW, if a law firm offers pro bono aid, or provides discounted services, or even gets stiffed by a defaulting

client, that firm must designate not just *itself* as having made a contribution to its client's campaign; it must also list each of its partners as having made the contribution *personally*, based pro rata on each partner's stake in the firm. *See* Answer Br. 6 n.1; C.R.S. § 1-45-103.7(5)(d)(II). Here, for example, CIW envisions that Holland & Hart LLP should have listed its hundreds of partners nationwide as each having made a microscopic "contribution" to CBF—years after CBF engaged in any political activity—because one of their colleagues helped file the entity's three-page termination report. *See* Answer Br. 6 n.1. Multiply that by the hundreds of political speakers working with dozens of law firms throughout Colorado and beyond. And for each of them, even the slightest reporting misstep would invite lawsuits—and more legal costs—under Colorado's system of private campaign-finance enforcement.

A law that applies in this way would be unjust and unconstitutional. Fortunately, the most natural reading of the law avoids the constitutional and practical problems created by the decision below. Reasonably construed, neither of the provisions on which the Court of Appeals relied covers the legal services at issue here. The judgment of the Court of Appeals should be reversed.[1]

[1] CIW's answer brief makes a number of factual assertions relating to the professionalism of CBF's former attorney that are not supported by evidence in the

I. The Plain Language of Colorado's Campaign-Finance Laws Excludes Pro Bono or Discounted Legal Aid from the Definition of "Contribution."

As CBF's opening brief explains (Br. 10-16), the two provisions on which the Court of Appeals relied do not support classifying the legal services rendered to CBF as political "contributions." Given its placement in a long list of terms denoting monetary support, the reference to "gift" in Section 1-45-103(6)(c)(I) is best read to mean a gift of money. And Section 1-45-103(6)(b) does not apply to political organizations like CBF at all; on its face, it is directed at "candidate committee[s]." Respondent CIW's arguments to the contrary lack merit.

A. Section 1-45-103(6)(c)(I) covers monetary contributions only.

CIW contends that Section 1-45-103(6)(c)(I) "includes a 'gift' of any kind," including all manner of services and aid. Answer Br. 19. Yet that interpretation cannot be squared either with the provision itself or with its neighbors. As the opening brief explained, the term "gift" is commonly understood as "a voluntary transfer of *property* to another without consideration." Opening Br. 11 (quoting *City of Aurora v. Pub. Utilities Comm'n*, 785 P.2d 1280, 1288 (Colo. 1990)) (emphasis added); *see also* Black's Law Dictionary 803 (10th ed. 2014). And

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record. Answer Br. 6, 8-9. CBF denies those assertions—which are baseless—but does not respond to them at length because they are not relevant to the question this Court accepted for review. Order 2 (Sept. 8, 2016).

because the terms surrounding the word "gift" uniformly denote transfers of money—payment, loan, pledge, advance of money, and guarantee of a loan—interpretive principles favor construing "gift" similarly to mean monetary support. Opening Br. 11-12. That reading also avoids surplusage elsewhere in the statute, which defines "contribution" separately to cover all other gifts of "property." C.R.S. § 1-45-103(6)(c)(III); Opening Br. 13.

Beyond suggesting, improbably, that an English-speaker might refer to making a "pledge" or "loan" of services, CIW offers virtually no response to this textual argument. *See* Answer Br. 19. Instead, CIW suggests that even if Section 1-45-103(6)(c)(I) does not extend to gifts "of any kind," *id.* 19, it should be construed to cover a patchwork of "monetary" support and "non-monetary provision of services," *id.* 22. But that is an exercise in statutory redrafting, not interpretation. Nothing in Section 1-45-103(6)(c)(I) suggests that the General Assembly meant for the term "gift" to extend beyond monetary support, much less extend haphazardly to "non-tangible services." Answer Br. 22. To the contrary, along with the textual and structural considerations already discussed, the deliberate variation between Section 1-45-103(6)(c)(I) and other provisions of the campaign-finance laws strongly signals that the General Assembly intended it to cover monetary aid alone. When the campaign-finance code defines "contribution"

to reach forms of non-monetary support—that is, support without a face value—the law provides explicitly for how the value of that support is to be computed. *See, e.g.*, Colo. Const. art. XXVIII, § 2(5)(a)(III) (contribution of property to be assigned its "fair market value"); C.R.S. § 1-45-103(6)(c)(III) (same). Section 1-45-103(6)(c)(I) has no such language for an obvious reason: The General Assembly intended it to cover contributions in the form of monetary transfers, which are already assigned a face value.

CIW's non-textual arguments are also unsound. CIW suggests that its interpretation is supported by "issued guidance" from the Secretary of State, citing an advisory *Campaign & Political Finance Manual*. Answer Br. 19-20. But none of the passages CIW quotes appear in the portion of the manual pertaining to "political organizations," such as CBF. And to the extent the manual says anything at all about political organizations, it supports CBF's view that the legal services at issue here are not regulated. In the manual's words, political organizations should report only contributions and spending that are "used to influence or attempt to influence the election or defeat of any individual to any Colorado state or local public office." Colo. Sec'y of State, *Campaign & Political Finance Manual* 25 (rev. Oct. 2016), https://goo.gl/MvALGn. So construed, legal services would rarely if ever qualify as contributions.

CIW's resort to federal authority is also mistaken. CIW contends that the definition of "contribution" under the Federal Election Campaign Act covers "legal services provided to a political entity for any purpose." Answer Br. 21. That was wrong when CIW first argued it, *see* Opp. to Cert. 15, and it is wrong still. To begin with, federal campaign-finance law has no bearing on state elections. Moreover, analogizing to federal law only underscores how far afield the Court of Appeals strayed. As explained in CBF's reply supporting certiorari (at 6-7), federal campaign-finance law exempts a wide range of legal services from regulation as "contributions," including services like those at issue here:

- For federal candidates, legal services are excluded when they are provided "for the purpose of ensuring compliance with" the Federal Election Campaign Act. 52 U.S.C. § 30101(8)(B)(viii)(II).
- For decades, the Federal Election Commission has ruled that candidates may operate separate, unregulated "legal defense funds" to defend their committees against a range of lawsuits. Fed. Election Comm'n, Advisory Op. 2011-01, 2011 WL 7629546, at *2 (Feb. 17, 2011).
- For federal political committees, all legal services are excluded unless they "directly further" a specific candidate's campaign. 52 U.S.C. § 30101(8)(B)(viii)(I).

- For groups that make occasional independent expenditures or electioneering communications (the federal entities most like CBF), the only donations to be reported are those "made for the purpose of furthering" those messages. 11 C.F.R. § 104.20(c)(9); *see also* 52 U.S.C. § 30104(c)(2)(C); *see generally Van Hollen v. FEC*, 811 F.3d 486, 501 (D.C. Cir. 2016).

If, as CIW urges, Colorado's definition of "contribution" were to be read "consistent" with its federal counterpart, *see* Answer Br. 21, that would be a dispositive reason to reverse the Court of Appeals' judgment.

B. Section 1-45-103(6)(b) applies to candidate committees only.

Equally meritless is CIW's interpretation of Section 1-45-103(6)(b), the second provision on which the Court of Appeals relied. CIW was right not to invoke this provision before the lower courts, *see* Opening Br. 6, and its effort to rehabilitate the Court of Appeals' reasoning falls short. CIW makes no effort to explain how the text of Section 1-45-103(6)(b)—which speaks exclusively in terms of contributions to "candidate committee[s]"—supports applying the provision to "all committee types" indiscriminately. *See* Answer Br. 23. CIW does not explain what purpose the reference to "candidate committee[s]" possibly serves if not to limit the provision's compass to candidate committees. Opening Br. 15. Nor does

CIW acknowledge the significance of the provision's history. As the opening brief explained, the language of Section 1-45-103(6)(b) long predates the General Assembly's decision to regulate "political organizations" like CBF, and the General Assembly left that language untouched when it enacted a separate definition of "contribution" tailor-made for those organizations. Opening Br. 15-16; *see also* Ch. 36, sec. 3, § 1-45-103, 2000 Colo. Sess. Laws 123.

CIW argues only that it would be "illogical" and "absurd" to construe Section 1-45-103(6)(b) as governing only support for candidate committees. Answer Br. 23. Yet under current campaign-finance doctrine, contributions to candidates are often subject to more comprehensive regulation than contributions to groups like CBF, which act independently of candidates. That is because independent groups do not present "[t]he opportunity for a quid pro quo arrangement." *Dallman v. Ritter*, 225 P.3d 610, 622 (Colo. 2010). Thus, the courts have reasoned, the government's interest in "preventing corruption and preventing the appearance of corruption" justifies regulating candidate contributions differently from contributions to independent speakers. *See id.* at 623. Against this backdrop, it is not surprising that Colorado's campaign-finance code has long defined "contribution" more broadly for candidates than for other participants in the electoral process. Colo. Const. art. XXVIII, § 2(5)(a)(IV); Opening Br. 15. And

it is equally intuitive that the General Assembly would draft Section 1-45-103(6)(b) with an eye towards candidates specifically. *Accord* C.R.S. § 1-45-103.7(3)–(4.5) (establishing other provisions unique to candidate contributions); Colo. Const. art. XXVIII, § 3(1)-(2) (same).

II. CBF's Interpretation Avoids Unconstitutionality Under the First Amendment and the Supremacy Clause.

For the reasons discussed above, Sections 1-45-103(6)(c)(I) and 1-45-103(6)(b) cannot reasonably be read to cover pro bono or reduced-cost legal services to political organizations. If any doubt remained, however, constitutional-avoidance principles put a dispositive thumb on the scale for CBF's (and the Secretary's) more natural reading. Interpreting "contribution" to include pro bono or reduced-cost legal services would violate both the First Amendment and the Supremacy Clause.

A. Classifying pro bono legal services as a contribution would violate the First Amendment.

The opening brief explains (Br. 17-22) that regulating pro bono legal services as "contributions" would severely constrain speakers' access to legal counsel, placing Colorado law in conflict with the First Amendment. As the federal courts have repeatedly stressed, "'[t]he average citizen cannot be expected to master on his or her own the many campaign financial-disclosure requirements set

forth' in the Colorado Constitution, the Act, and the Secretary's rules." *Coal. for Secular Gov't v. Williams*, 815 F.3d 1267, 1277 (10th Cir.) (quoting *Sampson v. Buescher*, 625 F.3d 1247, 1259 (10th Cir. 2010)), *cert. denied*, 137 S. Ct. 173 (2016). Nor can many afford a full-price campaign-finance expert, whose services "would often cost more than" all the speaker's resources combined. *Id.*; *accord Majors v. Abell*, 361 F.3d 349, 358 (7th Cir. 2004) (Easterbrook, J., dubitante) ("These laws and regulations are written in language that only specialists can fathom."). Thus, "it is vital for ordinary citizens and small-scale groups to have access to affordable legal services." Br. *Amicae Curiae* of Brickell et al. 18.

Colorado's abuse-prone enforcement system only magnifies the problem. As CBF has explained, private complainants—CIW among them—regularly sue political speakers with the goal of draining their targets' resources. *See* Opening Br. 3-4, 17-18; *see also, e.g.*, Pet. for Cert. 10 (collecting authority). This system itself raises constitutional concerns of the highest order. *See Holland v. Williams*, No. 16-cv-138, 2016 WL 7675315, at *5 (D. Colo. Dec. 29, 2016) ("[Plaintiff] has stated a claim that Colorado's system of private enforcement impermissibly chills political speech in violation of the First Amendment.") (report & rec.). Requiring many targets of these enforcement suits to pay full cost for defense would only compound the injustice. It would also put them in the unique position of being the

only defendants statewide who are hindered by law from seeking out discounted or free legal help. That cannot be reconciled with the First Amendment. Whatever harms the campaign-finance system may be designed to curtail, a surplus of affordable lawyers is not one of them.

CIW largely ignores these constitutional concerns. In fact, it all but concedes that regulating legal services as contributions would raise First Amendment problems in many circumstances. When speakers engage in "purely 'issues' speech related to the public good," CIW appears to accept that there would be a First Amendment problem in burdening their access to legal counsel. *See* Answer 28. Likewise when citizens or groups are "of modest means." *See id.* But these are precisely the speakers who would be hardest hit by the Court of Appeals' interpretation; CBF, for example, reported a balance of $0.00 when its former attorney helped file its termination report. *See* Pet. App. 5-6 (referring to "zero balance"). And, of course, the decision below would reach far beyond political organizations like CBF. It would also expand the definition of "contribution" for many other groups regulated under Colorado's campaign-finance laws: issue committees, political committees, small-donor committees, and others. Opening Br. 15; *see also* Br. *Amicus Curiae* of Sec'y 23-24.

In any event, CIW's line between those "speaking out on issues" (who may rely on pro bono legal aid) and those speaking out about candidates (who may not) is both unconstitutional and unworkable. *See* Answer Br. 26 (emphasis omitted). Contrary to CIW's view, there is not a "fundamental distinction" between the constitutional protections these subjects enjoy. *Id.*; *see also id.* 29 (asserting that talking about issues "enjoy[s] greater First Amendment speech protections" than talking about candidates). To the contrary, the Supreme Court has made clear that the sort of content-based distinction CIW advocates is presumptively unconstitutional. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015).

In practice, moreover, there is a clear and "often significant overlap between candidates and the issues that they champion or oppose." *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248, 1254 (Colo. 2012). So even setting aside the constitutional problem of CIW's content-based categories, the line "between discussion of issues and candidates and advocacy of election or defeat of candidates" would "dissolve in practical application." *See id.* (quoting *Buckley v. Valeo*, 424 U.S. 1, 42 (1976) (per curiam)). No one knows this better than CIW, whose founder spent *years* litigating whether another of his organizations was "an 'issue committee' or a 'political committee' for purposes of Colorado campaign

finance law." *Colo. Ethics Watch v. Clear the Bench Colo.*, 277 P.3d 931, 932 (Colo. App. 2012).

CIW also contends that regulating pro bono or discounted legal services as contributions has no adverse effects when the client is subject only to disclosure laws rather than contribution limits. Answer Br. 27. But CIW ignores that the Court of Appeals' reasoning applies equally to speakers who operate under strict limits on the support they may accept. *See supra* p. 11; *see also* Opening Br. 15; Br. *Amicus Curiae* of Sec'y 23-24; Br. *Amicae Curiae* of Brickell et al. 19-20. Moreover, CIW is wrong to suggest that the disclosure laws do not burden access to affordable counsel in their own right. For public-interest firms, being recorded as having "contributed" to partisan clients would incorrectly suggest that they had broken federal tax laws. Opening Br. 21; Br. *Amicus Curiae* of Ctr. for Competitive Politics 12-17. And for any firm, equating reduced-cost or pro bono services with a political contribution necessarily conveys an endorsement of the client's political views. Opening Br. 20-21.

Being listed as having made a "contribution" to their clients' campaigns thus has an obvious deterrent effect for many legal professionals, who, in every other context, are guided by the principle that "representing a client does not constitute approval of the client's views or activities." Colo. RPC 1.2 cmt. [5]; *see also* Colo.

RPC 1.2(b) ("A lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities."). Not only that, but listing counsel as involuntary contributors would affirmatively disserve the government's purported "informational goal." *See Sampson*, 625 F.3d at 1259 (citation omitted). By aligning counsel with political and ideological positions they may have no sympathy for, the campaign-finance reports would "convey some misinformation to the public" about who supports political messages. *See Van Hollen*, 811 F.3d at 497; *see also* Br. *Amicus Curiae* of Ctr. for Competitive Politics 8.

CIW claims that the deterrent effect of forcing firms to endorse their clients' agendas is "exaggerate[d]." Answer Br. 28. Yet CIW's answer brief demonstrates vividly the consequences of the ruling below. Because the typical law firm operates as a partnership or a limited liability company, CIW maintains that a "contribution" in the form of pro bono or reduced-cost services would have to be attributed not just to the firm but also to each partner personally. *See id.* 6 n.1; *see also* C.R.S. §§ 1-45-103.7(5)(d)(II) (requiring limited-liability-company contributor to attribute its contribution "to each member of the limited liability company"), 1-45-103.7(8) (defining "limited liability company" to include "domestic entity"), 7-90-102(13) (defining "domestic entity" to include

partnerships). On CIW's theory, therefore, the minutes CBF's former attorney spent filing CBF's termination report should have been (1) assigned a monetary value, (2) divided pro rata between each of the hundreds of partners at Holland & Hart LLP, and (3) reported and published on the Secretary's website, along with each partner's address. *See* Answer Br. 6 n.1 (asserting that Holland & Hart LLP "would have been required to file an affirmation and affidavit apportioning the value among its members"). Even if a political client were to outright refuse to pay an invoice, CIW's interpretation still would have each firm partner record a personal contribution based on that default.[2]

Whatever the level of First Amendment review, that scheme could not possibly be tailored to the governmental interests underpinning Colorado's campaign-finance laws. "Not every intrusion into the First Amendment can be justified by hoisting the standard of disclosure." *Stop This Insanity Inc. Emp. Leadership Fund v. FEC*, 761 F.3d 10, 16 (D.C. Cir. 2014); *see also Coal. for Secular Gov't*, 815 F.3d at 1280 (holding law unconstitutional where it "demands too much of the [speaker] given the public's modest informational interest in the [speaker's] disclosures"); *Sampson*, 625 F.3d at 1261 (holding law unconstitutional

[2] For firms with just a single partner who is not a U.S. citizen, moreover, even a minute of pro bono, reduced-cost, or unpaid services by any attorney in the firm could often be illegal. *See* C.R.S. § 1-45-103.7(5)(a)(III), (5)(b)(II).

where "the governmental interest in imposing those regulations is minimal, if not nonexistent"). Like all the other constitutional problems that follow from the decision below, this one can and should be avoided by adopting CBF's more natural reading of the statute.

B. Classifying pro bono legal services as a contribution would render many applications of the Colorado statute unconstitutional under the Supremacy Clause.

CIW fares no better in squaring its preferred interpretation with the Constitution's Supremacy Clause. As the opening brief explains (Br. 22-25), regulating pro bono aid as a political contribution violates the Supremacy Clause when applied to civil-rights lawsuits under 42 U.S.C. § 1983. Congress and the federal courts have long emphasized that "'[i]n many cases arising under [the] civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer.'" *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986) (plurality opinion) (quoting Sen. Rep. N. 94-1011 at 2 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5908, 5910). For that reason, the Civil Rights Act is structured deliberately to encourage attorneys to offer discounted or pro bono services in this sphere. And as the brief *amicae curiae* illustrates, the need for civil-rights representation in Colorado is acute. *See* Br. *Amicae Curiae* of Brickell et al. 21-22.

CIW does not dispute that regulating legal representation as a contribution would interfere with the ability of civil-rights plaintiffs to vindicate their and their fellow citizens' rights. Instead, CIW argues that "this case" is not a Section 1983 suit. Answer Br. 29. But as the opening brief explained, constitutional-avoidance principles serve as a guide "whether or not th[e] constitutional problems pertain to the particular litigant before the Court." Opening Br. 26 (quoting *Clark v. Martinez*, 543 U.S. 371, 381 (2005)).

CIW's more ambitious claim—that Section 1983 litigation can never arise from "candidate-related campaigns and political finances"—is likewise unsound. *See* Answer Br. 29. CBF's opening brief catalogued a number of recent civil-rights challenges to Colorado's campaign-finance system. Opening Br. 23-24. CIW dismisses that history as "inapposite," seemingly because one of the civil-rights cases CBF cited involved speech about ballot issues rather than candidates. Answer Br. 29. But the protections of the First Amendment and the Civil Rights Act do not turn on facially content-based distinctions between talking about issues and talking about candidates; the federal reports are filled with civil-rights cases brought on behalf of candidates and groups speaking about or supporting them. In short, "affordable access to legal counsel is indispensable to securing the First Amendment freedoms of ordinary citizens in Colorado"—whatever the speaker's

topic might be. Br. *Amicae Curiae* of Brickell et al. 1. By hindering Coloradans in their ability to vindicate their First Amendment rights, the decision below thus conflicts directly with the Civil Rights Act. To prevent that unconstitutional outcome, the Colorado statute should be construed according to its most natural meaning: Neither Section 1-45-103(6)(c)(I) nor Section 1-45-103(6)(b) is reasonably read to cover the legal services at issue here.[3]

III. Respondent CIW's Residual Arguments Lack Merit.

CIW devotes much of its brief to issues that are not before the Court. It draws distinctions, for example, between pro bono legal services, reduced-cost legal services, and legal services the provider writes off after the fact. Answer Br. 14-15. But CIW appears to misunderstand many of these concepts. It suggests that legal services provided to political speakers can never be "pro bono" because it is

[3] CIW also argues that Section 1983 is "not applicable" to 527 political organizations like CBF. Answer Br. 29. That is incorrect. Nothing in Section 1983 conditions a speaker's ability to enforce its constitutional rights on the tax status it elects, and virtually all state and local candidates, parties, and committees operate under Section 527. *See* 26 U.S.C. § 527(e)(1)-(2), (i)(5)(C); *see generally* Richard Briffault, *The 527 Problem . . . and the* Buckley *Problem*, 73 Geo. Wash. L. Rev. 949, 949 n.2 (2005). CIW further suggests that because "[c]ivil-rights cases are, axiomatically, not 'campaign-related activity,'" civil-rights representation would not be regulated under its reading of Colorado law. Answer Br. 29. Yet Colorado law has no carve-out for civil-rights representation, and CIW argues elsewhere that "'contributions' . . . cannot be contingent on whether any particular gift is intended or used for supporting or opposing candidates." *Id.* 18.

not "'for the public good' to support or oppose candidates in contested elections." Answer Br. 15. That is wrong. *See, e.g.*, *Majors*, 361 F.3d at 356 (Easterbrook, J., dubitante) ("[T]he ability to denounce public officials by name and call for their ouster is *the* core of the Constitution's protection."); *see also Colo. Republican Party v. Williams*, 370 P.3d 650, 651-52 (Colo. App. 2016). CIW also argues that only services offered to the indigent through legal-aid organizations (Legal Services Corporation, for instance) can qualify as pro bono services. Answer Br. 15. CIW cites nothing to support this proposition, and it is also wrong.

More fundamentally, CIW's fine distinctions distract from a more obvious point: The Court of Appeals left no doubt that it construed the statute to regulate as "contributions" *all* legal services that are "billed but not paid" or "pro bono services." Pet. App. 20. If accepted, that interpretation would have sweeping implications for every political speaker who accepts free legal help, who bargains for a discounted fee, or who is unable to muster the funds to pay her legal bills. Regardless of whether legal services are offered pro bono, discounted up front, or reduced in cost afterward, the provisions on which the Court of Appeals relied cannot reasonably be read to cover them. *See supra* Section I.

CIW next resorts to innuendo, speculating that the original legal services rendered to CBF, in late 2012 or early 2013, may have been "paid by another

(undisclosed) third party." Answer Br. 6 n.1. There is no basis in the record for that factual assertion. Nor does it bear on the statutory question accepted for review; the services CIW cites did not give rise to the decision now before this Court. In fact, the Court of Appeals has twice rejected CIW's claim of reporting errors in connection with the "legal services in 2012 or 2013 for defending the previous campaign finance complaints." Pet. App. 10-14; *see also Arnold v. Coloradans for a Better Future*, No. 14CA0122 (Colo. App. Feb. 5, 2015) (unpublished) (affirming dismissal of different complaint involving the same legal services). For the services giving rise to *this* appeal—which consisted solely of helping CBF file its termination report—the Court of Appeals held it "undisputed" that the "legal services at issue" were either "billed but not paid" or "pro bono services." Pet. App. 20; *see also id.* 15 & n.5; Opening Br. 5 & n.1. That frames the question presented, and for the reasons discussed above, the most reasonable reading of Sections 1-45-103(6)(c)(I) and 1-45-103(6)(b) is that they do not cover the legal services CBF received.

CIW further suggests that the Court should interpret the statute with a blind eye to any constitutional infirmity that might result, arguing that CBF has waived the right to make that argument. *See* Answer Br. 25. But that confuses claims, which must be preserved, with arguments, which need not. *Cf. Citizens United v.*

FEC, 558 U.S. 310, 331 (2010) ("[O]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." (citation omitted)). Here, CIW concedes that "the issue of applicable statutory interpretation" is properly before the Court. Answer Br. 18. And the courts "have a duty to interpret a statute in a constitutional manner" whenever possible. *People v. Montour*, 157 P.3d 489, 503 (Colo. 2007); *see also* C.R.S. § 2-4-201(1)(a). As discussed in the certiorari briefing, moreover, the Court always "reserve[s] to itself the discretion to notice any error appearing of record, whether or not a party preserved its right to raise or discuss the error on appeal." *Roberts v. Am. Family Mut. Ins. Co.*, 144 P.3d 546, 550 (Colo. 2006); *see also* Reply in Supp. of Cert. 13-14 (discussing reasons for CBF's delay in appearing below); Opening Br. 9. Put most simply, there is no reason for the Court to ignore the obvious constitutional problems that follow from the Court of Appeals' reading of the statute.

Finally, CIW contends that it would violate the Equal Protection Clause for the General Assembly to exempt legal services from the definition of "contribution," seemingly because some services lawyers provide might be offered by non-lawyers as well. Answer Br. 32. But that misconstrues CBF's argument. CBF is not asking this Court to amend the campaign-finance statute to carve out an

exemption for legal services. It is asking the Court to construe the statute as it is written; and as written, neither Section 1-45-103(6)(c)(I) nor Section 1-45-103(6)(b) applies to *any* services offered to political organizations, legal or non-legal. Accordingly, even if an exemption for legal services would raise an equal-protection question, that question is not before the Court.

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The judgment of the Court of Appeals should be reversed.

Dated: January 19, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I have served this Reply Brief for the Petitioner on all parties herein by depositing copies of the same via ICCES or by United States mail, first-class postage prepaid (via ICCES), this 19th day of January, 2017, addressed as follows:

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