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| **COLORADO SUPREME COURT**  Colorado State Judicial Building  2 E. 14th Avenue, Denver, Colorado 80203  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.  Attorneys for *Amici Curiae*  Name: Robert L. Walker\*  A. Louisa Brooks\*  Address: 1776 K Street NW  Washington, DC 20006  Phone/Fax: (202) 719-7000 / (202) 719-7049  E-mail: rlwalker@wileyrein.com  lbrooks@wileyrein.com  \**pro hac vice* motions to be filed  Name: Clifford L. Beem, CO Bar No. 917  A. Mark Isley, CO Bar No. 26107  Address: 730 Seventeenth Street, Suite 850  Denver, Colorado 80202  Phone/Fax: (303) 894-8100 / (303) 894-8200  E-mail: clbeem@beemlaw.net  amisley@beemlaw.net | **COURT USE ONLY**  Case Number: 2016SC637 |
| **BRIEF OF DIANA BRICKELL, TAMMY HOLLAND, AND KAREN SAMPSON**  **AS *AMICI CURIAE* ON BEHALF OF PETITIONER**  **COLORADANS FOR A BETTER FUTURE** | |

**Certificate of Compliance**

I hereby certify that this brief complies with all requirements of C.A.R. 28(a)(2)-(3), C.A.R. 29, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The *amicus* brief complies with the applicable word limit set forth in C.A.R. 29(d).**

🗹 It contains 4,728 words (does not exceed 4,750 words).

**The *amicus* brief complies with the content and form requirements set forth in C.A.R. 29(c).**

**I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28(a)(2)-(3), C.A.R. 29, and C.A.R. 32.**

s/ Robert L. Walker

Dated: October 20, 2016 Signature of attorney or party

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**IDENTITIES AND INTEREST OF *AMICI CURIAE***

Diana Brickell, Tammy Holland, and Karen Sampson are present or former Colorado residents who have experienced firsthand the burdensome complexity of Colorado’s campaign finance laws and the harmful effects of the private prosecution system that enforces them. Over the past decade, each woman became separately embroiled in campaign finance lawsuits after speaking publicly on an issue of importance to her. Only with the assistance of legal counsel was each able to pursue vindication of her First Amendment rights in court.

The *amici* are intimately familiar with the damage and costs that Colorado’s campaign finance regime can inflict upon an ordinary citizen’s freedom of expression. And the *amici* know that while the existing campaign finance regime remains in place, affordable access to legal counsel is indispensable to securing the First Amendment freedoms of ordinary citizens in Colorado. The *amici* thus seek to ensure that legal counsel remains readily available for others, as it was for them.

**Diana Brickell** received her Ph.D. in Philosophy from the University of Colorado in 2009. A former Colorado resident, Dr. Brickell currently resides in California but plans to return to Colorado at the end of 2016. She is the co-founder and sole principal of the Coalition for Secular Government (the “Coalition”), a Colorado nonprofit corporation that “seeks to educate the public about the necessary secular foundation of a free society, particularly the principles of individual rights and separation of church and state.” Coalition for Secular Government, *About CSG*, available at http://www.seculargovernment.us/csg.shtml. The Coalition was the appellee and prevailing party in *C**oalition for Secular Government v. Williams*, 815 F.3d 1267 (10th Cir. 2016), a civil rights lawsuit filed by the Coalition with the assistance of pro bono legal counsel.

**Tammy Holland** is a Colorado resident and working parent to a middle-school-aged son. She lives in Strasburg, Colorado, with her husband and son. Holland is the plaintiff in the ongoing civil rights lawsuit *H**olland v. Williams*, No. 1:16-CV-138 (D. Colo. filed Jan. 20, 2016), in which she is represented by pro bono legal counsel.

**Karen Sampson** is a Colorado resident and records management consultant. She lives in Parker North, a part of unincorporated Douglas County outside of Denver. Together with several other residents of Parker North, Sampson was the appellant and prevailing party in *S**ampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010), a civil rights lawsuit litigated with the assistance of pro bono legal counsel.

**SUMMARY OF ARGUMENT**

In the decision below, the Colorado Court of Appeals ruled that pro bono and discounted legal services are “contributions” under Colorado’s campaign finance law. *C**ampaign Integrity Watchdog v. Coloradans for a Better Future*, No. 14CA2073, 2016 WL 1385200 (Colo. App. Apr. 7, 2016). This ruling will burden political speakers throughout Colorado by making it more difficult for them to secure legal counsel, both to aid them in complying with Colorado’s complex campaign finance laws and to defend against campaign finance suits brought under the state’s private enforcement system.

The *amici* exemplify how the state’s campaign finance regime already burdens ordinary citizens exercising their freedom of speech. Their experiences demonstrate that access to affordable legal counsel is indispensable to securing the First Amendment freedoms of Colorado’s residents. By diminishing the access to these legal services, the Court of Appeals’ decision will increase the burdens placed on ordinary citizens under Colorado’s campaign finance regime.

**ARGUMENT**

1. THE BURDENS OF COLORADO’S CAMPAIGN FINANCE LAWS FALL HARDEST ON ORDINARY CITIZENS EXERCISING THEIR FIRST AMENDMENT FREEDOMS.
   1. The complexity of Colorado’s campaign finance framework makes it virtually impossible for ordinary citizens to interpret and comply with its requirements.

Political activity in Colorado is regulated by a complex body of law derived from a multiplicity of sources: Article XXVIII of the state Constitution; the Fair Campaign Practices Act, Colo. Rev. Stat. Ann. §§ 1-45-101 to -118; regulations promulgated by the Secretary of State, 8 Colo. Code Regs. 1505-6; state and federal judicial decisions construing the law’s requirements; hundreds of administrative court rulings issued in enforcement actions; and numerous Advisory Opinions issued by the Secretary of State. The Secretary also publishes nearly 140 pages of guidance in its *Campaign and Political Finance Manual*.

Predictably, the result of this agglomeration is a complicated regulatory framework not easily understood by ordinary citizens. The Tenth Circuit has found this framework to be “complex” and “overly burdensome,” *see C**oalition for Secular Government v. Williams*, 815 F.3d 1267, 1277, 1279 (2016), and the Secretary of State has acknowledged the law’s complexity, *see* Mot. of Sec’y of State for Leave to File *Amicus* Br. 3. In short, “[t]he average citizen cannot be expected to master on his or her own the many campaign financial-disclosure requirements” of Colorado’s regime, nor to “sift through them all to determine which apply.” *S**ampson v. Buescher*, 625 F.3d 1247, 1259-60.

The *amici* include a Ph.D. in philosophy, a working mother, and a consultant—ordinary citizens with no legal training. As their personal experiences illustrate, the Colorado campaign finance regime’s complexity makes it difficult for ordinary citizens to anticipate when their speech may be regulated and to comply with the law’s requirements.

* 1. Karen Sampson did not foresee that participation in a neighborhood effort could subject her to campaign finance regulation.

*Amicus* Karen Sampson lives in Parker North, a residential area in unincorporated Douglas County outside Denver, Colorado. In February 2006, Ms. Sampson learned at a Town Council meeting that a few residents of Parker North had initiated an effort to annex the community to the Town of Parker, Colorado. *See* *S**ampson v. Buescher*, 625 F.3d 1247, 1251 (10th Cir. 2010). Ms. Sampson opposed annexation, and she and several other residents of Parker North began working together to oppose the proposal. *I**d.* They purchased and distributed signs, mailed postcards to the residents of Parker North, and gathered signatures on a document opposing annexation to submit to the Town Council. *I**d.*

Unknown to Ms. Sampson and her neighbors, the proponents of the annexation effort registered with the state as an issue committee, “Parker Yes,” in May 2006. *I**d.* Article XXVIII of the state Constitution, in relevant part, defines an “issue committee” to include any group of two or more persons that accepts contributions or makes expenditures exceeding $200 to support or oppose a ballot question. Colo. Const. art. XXVIII, § 2(10)(a). Under this definition, the group of neighborhood residents opposing annexation would also become an issue committee—subject to registration and reporting—the moment they raised or spent more than $200.

Ms. Sampson and her neighbors did not know any of this. Their first notice that their activities could subject them to state campaign finance regulation came in early July 2006, when two leaders of Parker Yes filed a complaint with the Secretary of State alleging that Ms. Sampson and her neighbors had violated state campaign finance law by failing to register and report as an issue committee. 625 F.3d at 1251. When Ms. Sampson received notification of the suit in the mail, she was in “utter disbelief”; she had no idea that she and her neighbors could be sued “for speaking out against the annexation of [their] little neighborhood.” Declaration of Karen Sampson at 3, *S**ampson v. Coffman*, No. 1:06-CV-1858 (D. Colo. Nov. 30, 2007).

Ms. Sampson spent more than 20 hours researching Colorado law in an effort to determine what she and her neighbors should do about the complaint against them, but she could not find clear definitions that related to their efforts. *I**d.* at 5. Eventually, they retained an attorney to defend them against this complaint; on counsel’s advice, they also registered as an issue committee. 625 F.3d at 1251-52. At the time of the complaint, the group’s contributions totaled $782.02.

With the assistance of pro bono counsel, Ms. Sampson and her neighbors later filed a lawsuit challenging the constitutionality of Colorado’s issue committee requirements. *I**d.* at 1253. The Tenth Circuit ultimately held the law unconstitutional as applied to a group such as Ms. Sampson’s that spent less than $1,000 on advocacy. *I**d.* at 1261.

* 1. Dr. Diana Brickell researched the campaign finance requirements but still found compliance challenging and burdensome.

*Amicus* Dr. Diana Brickell holds a Ph.D. in philosophy from the University of Colorado. Dr. Brickell did not initially retain an attorney to assist her in complying with Colorado’s campaign finance laws; however, she later engaged pro bono counsel to vindicate her First Amendment rights in federal court. Her experience illustrates both the difficulty faced by ordinary citizens attempting to navigate the campaign finance regime, as well as the essential role of legal counsel in securing citizens’ free speech rights.

In 2008, Dr. Brickell co-founded the Coalition for Secular Government (the “Coalition”), a Colorado nonprofit corporation that advocates for government based solely on secular principles of individual rights.[[1]](#footnote-1) To further its mission, the Coalition publishes a policy paper that argues against the so-called “personhood” movement to grant individual rights before birth. *C**oal. for Secular Gov’t v. Williams*, 815 F.3d 1267, 1269 (10th Cir. 2016). The Coalition periodically updates and disseminates the paper, including during some years in which a “personhood” initiative appears on the Colorado general election ballot. *I**d.*

The Coalition first published the paper in 2008, using funds contributed by Dr. Brickell to support publication and distribution. *I**d.* Out of an abundance of caution, Dr. Brickell researched whether the Coalition’s contributions and expenditures might trigger campaign finance disclosure under Colorado law. She initially concluded that the Coalition was “in the clear” based on her review of the state’s provisions. *C**oal. for Secular Gov’t v. Gessler*, 71 F. Supp. 3d 1176, 1179 n. 2 (D. Colo. 2014).[[2]](#footnote-2) After a friend familiar with Colorado’s campaign finance regime questioned this conclusion, however, Dr. Brickell researched further. 71 F. Supp. 3d at 1179 n.2. Ultimately finding it “impossible” to determine whether the Coalition was actually required to register as an issue committee under applicable law, Dr. Brickell decided to err on the side of caution and register the Coalition. *I**d.* This required the committee to file reports—12 during an election year—which, among other things, required disclosure of the name and address of every person who contributed $20 or more. 815 F.3d at 1271.[[3]](#footnote-3)

In 2010, a personhood initiative again qualified for the Colorado ballot, and Dr. Brickell again registered the Coalition as an issue committee. 71 F. Supp. 3d at 1178-79. In October 2010, the state fined Dr. Brickell $50—the per-day penalty mandated by the state Constitution—for non-compliance with the committee reporting requirements. *I**d.* Dr. Brickell’s house had flooded, and in the resulting confusion she had neglected to file the report on its due date, incurring the fine for the one-day-late filing. 71 F. Supp. 3d at 1179. To obtain a waiver of the fine, she had to seek an administrative remedy. *I**d.*

Dr. Brickell’s encounter with Colorado’s issue committee requirements left her frustrated by their chilling effect on her and others’ freedom of speech. In 2011, she testified before the Secretary of State that the Coalition’s efforts were “severely hampered” by the registration and reporting requirements. *See* Testimony of Diana Hsieh[[4]](#footnote-4) (Dec. 15, 2011), recording available at https://www.youtube.com/watch?v=0Wk0GKJ4wy8. In particular, the state’s reporting requirements resulted in the Coalition losing contributions from donors who did not wish to be disclosed on the committee’s reports. *I**d.*

In 2012, Dr. Brickell anticipated another personhood initiative in Colorado. This time, with the assistance of pro bono legal counsel, Dr. Brickell filed a lawsuit in federal district court challenging the constitutionality of Colorado’s issue committee registration and reporting requirements. 71 F. Supp. 3d at 1177. The Coalition’s case took a long, tortuous path through the federal courts and to this court; but after four years of litigation, the Tenth Circuit determined this March that Colorado’s “overly burdensome” regulatory framework for issue committees was unconstitutional as applied to the Coalition. 815 F.3d at 1279, 1281.[[5]](#footnote-5)

Both Dr. Brickell’s and Ms. Sampson’s experiences illustrate the difficulties ordinary citizens encounter when trying to navigate Colorado’s campaign finance regime. The law’s extensive reach leaves citizens such as Ms. Sampson predictably unaware that their speech could be covered; and Dr. Brickell’s story demonstrates that even if they are aware, researching the law does not guarantee citizens will be able to discern what the complex regime requires. Both women ultimately relied on pro bono legal counsel to secure their First Amendment rights.

1. COLORADO’S PRIVATE ENFORCEMENT SYSTEM ALLOWS INDIVIDUALS TO COMMANDEER STATE LAW TO SILENCE THEIR POLITICAL OPPONENTS.

Beyond being complex and difficult to navigate, what makes Colorado’s campaign finance regime uniquely treacherous is its enforcement mechanism: lawsuits filed by private individuals. Nearly every other state enforces its campaign finance law through its Secretary of State or another specialized agency; Colorado instead allows “any person” who believes a violation of the law has occurred to initiate an enforcement proceeding by filing a complaint with the Secretary. Colo. Const. art. XXVIII, § 9(2)(a). The Secretary must refer all complaints to an administrative law judge for a formal hearing. *I**d.* Notably, the law provides no process for evaluating a complaint’s legal merit or factual basis prior to scheduling a hearing. The frivolous and the valid go into the same referral pile, all automatically triggering full-blown enforcement proceedings.

Unsurprisingly, this private enforcement system is rife with abuse. By simply filing a complaint, anyone can cause a political opponent to be hauled in front of an administrative law judge. The alleged offender is forced to spend the time, money, and effort to defend against the proceeding, even if the complaint has no merit. Such abusive enforcement suits are not conjectural; *amici* Karen Sampson and Tammy Holland experienced them firsthand.

* 1. Karen Sampson was sued by the supporters of the annexation she and her neighbors opposed.

As described in Section I.A., Karen Sampson and her neighbors learned of Colorado’s issue committee requirements when the pro-annexation leaders filed a complaint with the Secretary alleging that they had violated state law by failing to register as an issue committee. Although the complaint only named six residents the pro-annexation group had identified as the “most vocal” of its opponents, *see* Dec. of Karen Sampson at 4, it ominously warned that these individuals had exposed all persons who had had contact with them to potential investigation and campaign finance sanctions, 625 F.3d at 1251.

Following the complaint, the pro-annexation group’s next move was to serve Ms. Sampson and her neighbors with a subpoena demanding an exhaustive array of documents and information, including receipts, personal contact information, bank account information, and “[a]ll communications amongst [the group] or anyone else concerning the issue of annexation.” 625 F.3d at 1252. Although the administrative law judge narrowed a few of the subpoena’s requests, it was largely permitted to stand. *I**d.* at 1252-53.

Dealing with the complaint and searching for the subpoenaed materials took significant time, forcing Ms. Sampson to miss work. Dec. of Karen Sampson at 4-5. Ms. Sampson believes the purpose of the complaint and subpoena was “to intimidate [the group], punish us, and shut us up.” *I**d.* at 4.

Ultimately, Ms. Sampson and her neighbors hired an attorney to defend them against the campaign finance suit. They spent $1,179 for attorneys fees—more than the entirety of their spending on the efforts to oppose annexation. 625 F.3d at 1261.

* 1. Tammy Holland was subjected to two baseless lawsuits filed by individuals who disagreed with her views on public education.

Perhaps the most egregious of the private enforcement system’s flaws is the lack of any process of review of a complaint’s merits before it is referred to the administrative law court. Complainants can—and do—allege virtually any violation they can concoct. In the case of *amicus* Tammy Holland, these allegations reached the meritless and the nonsensical. Colorado public school officials sued Ms. Holland—twice—for publishing newspaper ads that were not even covered by state campaign finance law.

Ms. Holland and her husband live in Strasburg, Colorado, with their middle-school-age son, a former student of the Byers Public School District near their home. Complaint at 3, *H**olland v. Williams*, No. 1:16-CV-138 (D. Colo. Jan. 20, 2016). Ms. Holland had long opposed the use of “Common Core” curricula and its emphasis on standardized testing, and when the Byers School District adopted this curriculum, Ms. Holland and her husband eventually made the decision to withdraw their son from the district. *I**d.*

Even though her son is no longer a student in the public school system, Ms. Holland remains dedicated to addressing the problems of Colorado’s standardized testing system. *I**d.* To educate others and encourage discussion on this issue, Ms. Holland placed ads in her local newspaper between January and September 2015. *I**d.* at 4. Two of these ads addressed the then-approaching school board election, encouraging readers to educate themselves about the candidates and their objectives. *I**d.* The ads did not advocate for or against any particular candidate. *I**d.*

In response to these ads, the Superintendent of the Byers School District filed a campaign finance complaint against Ms. Holland, both on his own behalf and on behalf of the school district. *I**d.* at 8. The complaint alleged (1) that Ms. Holland should have registered as a political committee under Colorado law, and (2) that she violated *federal law* by failing to include a “paid for by” disclaimer on her ads. *I**d.*

The complaint’s first allegation was meritless. Ms. Holland’s ads did not expressly advocate for or against any candidate and thus could not have triggered political committee registration under Colorado law. The second allegation leaned toward nonsensical, as federal disclaimer requirements apply only to federal elections. But Ms. Holland is not a campaign finance attorney; she had no way of knowing whether the claims against her had any merit. And, regardless, the complaint against her would result in an administrative court hearing. So Ms. Holland retained an attorney.

Two days before the October 8, 2015 hearing date, the Superintendent withdrew the complaint. *I**d.* at 9. At that point, Ms. Holland had already incurred legal fees of more than $3,500. *I**d.* Although she moved to recover her fees from the Superintendent and school district for filing a groundless complaint, her motion was ultimately denied. Order, *Turrell v. Holland*, OS2015-0016 (Office of Admin. Cts. Jan. 14, 2016).

On October 15, 2015, Ms. Holland attended a meeting of the Byers school board, where she learned that one of the school board members—up for reelection and mentioned in Ms. Holland’s ads—had “instructed” the Superintendent to file the complaint against her. Complaint at 9, No. 1:16-CV-138 (D. Colo. Jan. 20, 2016). Further, the board member stated he was planning to re-file the complaint in his own name. *I**d.* He advised Ms. Holland, “I think you’d better keep your lawyer.” *I**d.*

The school board member re-filed the complaint against Ms. Holland several days later. *I**d.* The second complaint made the same meritless claims as the original. Yet, as the Colorado Constitution requires, the Secretary’s office again forwarded the complaint to the Office of Administrative Courts, and a hearing was scheduled for January 21, 2016. *I**d.* at 11. In a statement to news media, the school board member made clear that his only goal was to force a public apology from Ms. Holland; “I don’t want anything out of it except that,” he stated. Kathy Smiley, *Byers School, Parent Dispute Alleged Violation of P**olitical Ad Law*, The I-70 Scout, Oct. 29, 2015, available at http://i-70scout.com/blog/2015/10/byers-school-parent-dispute-alleged-violation-of-political-ad-law/**.**

Before she was sued, Ms. Holland had planned to run an additional ad that October before the school board election, encouraging members of the community to vote. She had also planned to continue publishing ads on the Common Core issue in general. Understandably, faced with back-to-back legal complaints, Ms. Holland did not run her planned ad before the election and has not continued her efforts to inform the community about Common Core issues through advertising.

On January 20, 2016, Ms. Holland filed suit in federal court challenging the constitutionality of Colorado’s private enforcement provisions. *H**olland v. Williams*, No. 1:16-CV-138 (D. Colo. filed Jan. 20, 2016). On April 7, a Colorado administrative law judge granted summary judgment for Ms. Holland in her state campaign finance proceeding. *T**hompson v. Holland*, OS2015-0024 (Office of Admin. Cts.).

Ms. Holland’s case illuminates the potential for oppressive and costly abuse in the private enforcement system. The complaint against her had no legal merit, yet she was subjected to months of legal proceedings and thousands of dollars in attorneys’ fees. More importantly, Ms. Holland’s opponents used the private enforcement system—established by the state Constitution and campaign finance law—to chill her speech on an issue of public importance.

1. THE DECISION BELOW WILL INHIBIT ACCESS TO THE LEGAL SERVICES VITAL TO SECURING THE FIRST AMENDMENT FREEDOMS OF COLORADANS.

As the *amici*’s experiences illustrate, Colorado’s campaign finance law presents a regulatory minefield for ordinary citizens exercising their First Amendment rights. One often necessary solution for those attempting to comply with the law is to hire an attorney. Indeed, even the Secretary—the officer charged with administering Colorado’s campaign finance laws—advises hiring an attorney to ensure compliance. The office’s *Campaign and Political Finance Manual* states that its guidance “should not be used as a substitute for legal advice,” see *M**anual* at 2, and when the Secretary’s office receives a question it cannot answer, the Secretary recommends the inquirer retain an attorney, *see* 625 F.3d at 1250.

“The First Amendment does not permit laws that force speakers to retain a campaign finance attorney . . . before discussing the most salient political issues of our day.” *C**itizens United v. Federal Election Comm’n*, 558 U.S. 310, 324 (2010). In their separate cases, the *amici* have challenged the constitutionality of Colorado’s laws for precisely this reason. As long as the state’s complex campaign finance regulation and private enforcement system remain in effect, the *amici* know it is vital for ordinary citizens and small-scale groups to have access to affordable legal services, both to aid them in compliance with, and to defend against private lawsuits brought under, this complex regime. The *amici* are therefore concerned that the Court of Appeals’ ruling that providing pro bono and discounted legal services constitutes a political “contribution” to the recipient will make it more difficult for other speakers like themselves—caught up in the tangle of Colorado’s campaign finance laws—to obtain affordable counsel.

First, attorneys are likely to provide fewer services to political entities, like issue committees, that are required to disclose the identities of many of their contributors. Colo. Rev. Stat. § 1-45-108(1)(a)(I). An attorney who might otherwise be willing to advise such a committee may in the future elect not to do so to avoid appearing on the committee’s reports. Dr. Brickell’s Coalition, for example, conducts activity related to public policy on the controversial issue of abortion. A number of her contributors either reduced or withdrew their contributions when they learned their names would appear on the committee reports. *C**oal. for Secular Gov’t*, 815 F.3d at 1279. Some attorneys may similarly choose not to counsel issue committees in the future because they will not want the disclosure of their “contribution” on the committee’s reports to be interpreted as an endorsement of that committee’s views.

A second and closely related point is that attorneys who provide advice or defense to a speaker will also be putting themselves at risk for campaign finance suits based on their “contributions.” For example, had Ms. Holland lost her state campaign finance case, the legal services of the attorneys who defended her would have instantly become “contributions” to her political committee. This would expose the attorneys to the potential for complaints filed against them for violations such as minor contribution reporting errors, or, for the many committees subject to contribution limits in Colorado, for exceeding those limits. Faced with the possibility that they could be subject to suit if their professional services become contributions, attorneys may hesitate or decline to defend speakers like Ms. Holland in the future.

Third, the likely reduction in pro bono and discounted legal services will fall hardest on speakers such as small-scale issue committees, for whom the cost of hiring an attorney is likely to exceed the total amount of the committee’s contributions. *See S**ampson*, 625 F.3d at 1260. That was certainly true for Ms. Sampson and her neighbors, whose in-kind contributions for signs, a banner, postcards, and postage comprised all of $782.02. *I**d.* at 1252. Similarly, Dr. Brickell’s Coalition never received more than $3,500 in contributions to fund its policy paper. 815 F.3d at 1274 n.5. At an hourly rate usually in the hundreds of dollars, retaining an attorney would have eaten significantly into these groups’ funds or been altogether impossible. Discounted and pro bono legal services are thus the only viable option for such groups to have access to counsel.

Relatedly, it is self-evident that money spent on legal counsel inevitably diminishes funding for, and so diminishes the amount of, speech a group can engage in. By discouraging the provision of pro bono or discounted legal services, the Court of Appeals’ ruling will thus have the effect of chilling the speech of the small-scale speakers who can least afford to pay full-freight for the advice of counsel.

The *amici* understand that Colorado’s law is riddled with traps for the unwary and that legal counsel is an indispensable tool for ensuring compliance and defending against private enforcement suits. By lending their voices to this case, they seek to ensure that the attorneys who assist speakers in navigating the Colorado campaign finance regime will not be limited in the amount of services they can provide on a discounted or pro bono basis.

**CONCLUSION**

The *amici* have experienced firsthand the Colorado campaign finance regime’s chilling effect on the speech of ordinary citizens. The body of law is complicated and not easily understood, and it is so far-reaching that speakers may be unaware that their activities are covered. Under the private enforcement system, even activity wholly outside the scope of the campaign finance law can subject a speaker to a private lawsuit.

As two of the *amici*’s cases have already borne out, Colorado’s law is unconstitutional in many of the circumstances it purports to regulate. While the regime remains in effect, however, it is vital that ordinary citizens are able to obtain affordable legal counsel to help them navigate the system and defend against the private enforcement suits it facilitates.

Accordingly, *amici* Diana Brickell, Tammy Holland, and Karen Sampson respectfully request that this Court reverse the decision of the Court of Appeals.

Dated October 20, 2016.

Respectfully submitted,

s/ Robert L. Walker

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of October, 2016, I have served a true and correct copy of the foregoing Brief of *Amici Curiae*on all parties herein by depositing copies of the same via the Court’s E-Filing System (ICCES) or by U.S. mail, first-class postage prepaid, addressed as follows:

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1. *See* Coalition for Secular Government, *About CSG*, available athttp://www.seculargovernment.us/csg.shtml. The Coalition is essentially a one-person shop; Dr. Brickell is the sole principal and is responsible for all of the Coalition’s operations. *C**oal. for Secular Gov’t v. Williams*, 815 F.3d 1267, 1269 (10th Cir. 2016). [↑](#footnote-ref-1)
2. The Coalition only received about $200 in monetary contributions during 2008, *i**d.*, and its expenditures were limited to the costs of printing and mailing the paper, 815 F.3d at 1272. [↑](#footnote-ref-2)
3. In light of the Tenth Circuit’s decision in *C**oalition for Secular Government v. Williams*, the section of the Fair Campaign Practices Act containing the reporting requirements was amended to exempt from these reporting requirements committees with aggregate contributions and expenditures of $5,000 or less. *See* Colo. Rev. Stat. § 1-45-08(1.5). [↑](#footnote-ref-3)
4. Dr. Brickell’s last name was Hsieh at the time of this testimony. [↑](#footnote-ref-4)
5. The U.S. Supreme Court recently denied Secretary Williams’ petition for certiorari in the case. *C**oal. for Secular Gov’t v. Williams*, 2016 WL 3598151 (Oct. 3, 2016). [↑](#footnote-ref-5)