NO. 13-1481

IN THE

Supreme Court of the United States

JO ANN SCOTT,

Petitioner,

v.

PEOPLE OF THE STATE OF COLORADO,

Respondent.

On Petition for Writ of Certiorari to the District Court for the City and County of Denver, Colorado

AMICUS BRIEF OF 40 DAYS FOR LIFE, SIDEWALK ADVOCATES FOR LIFE, ABBY JOHNSON AND LEILA JEANNE HILL IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

***Cases*:**

***Constitutional Provisions*:**

***Statutes and Ordinances*:**

INTERESTS OF AMICI[1]

Amici are all peaceful pro-life advocates whose First Amendment protected activities are jeopardized by the Colorado statute at issue in this case and similar statutes establishing indefinite buffer zones around abortion facilities around the country.

Amicus 40 Days for Life is a community-based campaign that draws attention to the consequences of abortion in communities and in the lives of real people. The most public and visible activities of 40 Days for Life are peaceful prayer vigils it holds at abortion facilities where participants pray and fast for a 40 day period. Since its first prayer vigil, over 100,000 volunteers and more than 3,600 churches have coordinated fourteen 40 Days for Life campaigns in 253 locations (including Colorado) in 10 countries. 40 Days for Life supports pregnant mothers who are contemplating abortion so they will know they have other options. At least 738 women have chosen not to follow through with their abortion plans as a result of these campaigns.

Amicus Abby Johnson is a pro-life advocate who previously worked many years for America's largest

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[1] Counsel of record for both parties received timely notice of the intent to file this brief as required by Rule 37.2(a). The parties have consented to the filing of this brief and those consents are on file with the Clerk of the Court. As required by Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than the *Amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

abortion provider, Planned Parenthood, including as facility director for Planned Parenthood's Bryan, Texas abortion facility. During the first-ever 40 Days for Life prayer vigil in 2009, members of 40 Days for Life prayed day after day for Ms. Johnson and for the mothers who entered this abortion facility. Ms. Johnson considered herself "pro-choice" until the day she witnessed an abortion first-hand. When Ms. Johnson saw on an ultrasound the unborn baby struggling to avoid the abortionist's surgical instruments, her life was forever changed. Ultimately Ms. Johnson, with the support and assistance of 40 Days for Life, quit her job with Planned Parenthood and has since become one of America's leading pro-life advocates. She founded and manages And Then There Were None, a non-profit organization devoted to providing support to people in Colorado and across the country who seek to leave the abortion industry.

Amicus Sidewalk Advocates for Life is a nationally-coordinated effort that trains, equips, and supports local advocates in peaceful "sidewalk counseling" and in effectively offering charitable aid and comfort to pregnant mothers who are considering entering a local abortion facility. Sidewalk Advocates for Life launched its program on April 1, 2014, and has trained advocates in 34 communities around the United States and the world. At least 114 children are living today as a result of this effort as their mothers heard about alternatives and chose not to have an abortion.

Amicus Leila Jeanne Hill is a pro-life advocate who is a long time resident of Colorado. She was

Plaintiff Hill in *Hill v. Colorado*, 503 U.S. 703 (2000). Mrs. Hill remains committed to protecting life and to the right of Coloradans to engage in sidewalk counseling and to speak out for those who cannot speak for themselves.

SUMMARY OF ARGUMENT

In this case, the government and the lower courts relied on the Court's decision in *Hill v. Colorado,* 530 U.S. 703 (2000) to justify the criminal prosecution of 58-year-old Jo Ann Scott who, while on a public street in Denver, Colorado, and more than 100 feet from the entrances of an abortion facility, calmly approached and simply *spoke* to another woman for a total of 26 seconds.

Forty-two days after this 26 second encounter, Ms. Scott was criminally charged and prosecuted for a violation of COLO. REV. STAT. § 18-9-122(2) ("Preventing Passage To and From a Health Care Facility") that makes it a crime to "knowingly obstruct[], detain[], hinder[], impede[], or block[] another person's entry to or exit from a health care facility." Unlike the statute at issue in this Court's recent decision in *McCullen v. Coakley*, No. 12-1168, slip op. (June 26, 2014), which involved a 35-foot fixed buffer zone and included definitions of the statute's essential terms, the Colorado statute does not define *any* of these terms other than the term "health care facility." Nor were any of these terms, other than the term "health care facility," defined for the jury that, after a one day trial, convicted Ms. Scott

Although *Hill* involved a different subsection of this same Colorado statute which establishes an 8-foot floating buffer zone within 100 feet of any entrance door of a health care facility, COLO. REV. STAT. § 18-9-122(3), this Court's *Hill* decision was cited to justify Ms. Scott's prosecution and, following

her conviction, to incarcerate her for her peaceful pro-life advocacy on a public street.

In light of this Court's recent decision in *McCullen*, as well as the overbreadth and vagueness issues raised in the Petition, certiorari should be granted and this case remanded for reconsideration. COLO. REV. STAT. § 18-9-122(2) is so vague that it effectively creates a *de facto* and unconstitutional indefinite buffer zone outside of Colorado abortion facilities. Just as the statute in *McCullen* was constitutionally infirm, COLO. REV. STAT.. § 18-9-122(2) is likewise unconstitutional.

The Colorado statute violates the U.S. Constitution both on its face and as applied to Ms. Scott. The statute fails to define essential terms and provides no notice as to what conduct or speech is prohibited. The statute also permits unfettered discretion and selective prosecution and punishment. In fact, *Amici* are unaware of a single person, other than Ms. Scott and other pro-life advocates, who have been prosecuted under this Colorado statute.

The practical effect of this statute is to silence pro-life advocates such as the Court's *Amici* anywhere in the general vicinity of an abortion facility, even while in a traditional public forum more than 100 feet away from an abortion facility entrance. If mere words can be construed as "hinder[ing]," "detain[ing]," or "imped[ing]," as the government in fact argued during Ms. Scott's jury trial, then *all* communication, oral or written, is effectively prohibited and there are no other methods of communication left open. Under this statute and

the government's interpretation and application thereof, a pro-life advocate, while anywhere near an abortion facility, who persuades a woman not to proceed with an abortion would be guilty of a criminal offense despite the pregnant woman's own appreciation and acceptance of the pro-life advocate's message. Additionally, because there are absolutely no geographic barriers set forth in the statute in connection with "hinder[ing]," "detain[ing]," or "imped[ing]," this statute constitutes a *de facto unlimited buffer zone* extending to the borders of the State of Colorado.

This case illustrates the potential unconstitutional consequences of the application of the Court's *Hill* decision. Pro-abortion advocates have, as here and elsewhere, been able to use *Hill* to enact vague criminal statutes that completely silence and even threaten criminal prosecution of those, like *Amici*, who peacefully speak out against abortion while in public near abortion facilities and who dare to express concern for those desperate mothers who, without the hopeful guidance of pro-life advocates like *Amici,* see no alternative but to abort their unborn babies.

ARGUMENT

I. The Petition should be Granted and the Case Remanded for Reconsideration in Light of *McCullen v. Coakley*.

After the Petition was filed, the Court issued its opinion in *McCullen*, which held unconstitutional a Massachusetts statute that imposed 35-foot fixed bubble zones around abortion facilities from which speakers were categorically excluded.

The Court noted that the statute in *McCullen* regulated access in what were undisputedly traditional public fora. *McCullen*, slip op. at 8. The Court acknowledged that "public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he [or she] is not simply preaching to the choir." *Id.* The Court further acknowledged that the government's ability to restrict speech in these places is "very limited." *Id.* at 9 (citing *United States v. Grace*, 461 U.S. 171, 177 (1983)). Although the government may impose reasonable time, place and manner restrictions on protected speech, if such restrictions are "justified without reference to the content of the regulated speech," they must be "narrowly tailored to serve a significant governmental interest, and they must leave open ample alternative channels for communication of information." *Id.* (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

According to *McCullen*, a law is content-based, and therefore subject to strict scrutiny, if it is "concerned with undesirable effects that arise from" speech, namely because "speech outside [] abortion clinics cause[s] offense or ma[kes] listeners uncomfortable." *Id.*, slip op. at 13. By *McCullen*'s standard, COLO. REV. STAT. § 18-9-122(2) is content-based because it is indeed concerned with undesirable effects that arise from speech and, so far as *Amici* know, has been enforced only at Colorado abortion facilities and against pro-life advocates. The record in this case confirms that pure speech—constitutionally protected speech was targeted.

Even assuming that COLO. REV. STAT. § 18-9-122(2) is content-neutral, like the Massachusetts statute in *McCullen* it is not narrowly tailored to serve a significant governmental interest, nor does it leave open ample alternative communication channels. The law is not tailored to specifically address physical obstruction or physical hindering of abortion facility patients and employees—it entirely omits any reference whatsoever to *physical conduct or contact* and contains no definitions of any of the statute's essential terms to help guide law enforcement, prosecutors, and juries.[2] *Chicago v. Morales*, 527 U.S. 41, 65 (1999) (O'Connor, J., concurring) (citations omitted).

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[2] Evidence that Ms. Scott "touched" the complaining witness was disputed at trial and not depicted on the abortion clinic surveillance videos admitted as evidence at the trial. In any event, Ms. Scott was acquitted of a criminal harassment charge which required proof, beyond a reasonable doubt, of a "touch."

Under the statute's terms, and as argued by the government in Ms. Scott's trial, a person can be "hinder[ed]," "detain[ed]," or delayed simply by another's words. Thus a speaker, like Ms. Scott, who was in no way physically obstructing another person, can, as was Ms. Scott, be found in violation of this statute. Indeed, the speaker whose words may thus "hinder" could even be many miles from any abortion facility. Since mere words can violate the law, this statute effectively leaves *no* open channels of communication. If verbally beseeching a person not to have an abortion constitutes a violation of this statute, it is difficult to imagine any scenario under which a person could not be charged with such a violation; thus, the speech of law-abiding citizens will be inevitably chilled because they would be left with no safe mode of communication.

Notably, *McCullen* clarifies that there is no right to be protected from "uncomfortable" speech on public streets and sidewalks. The Court, in acknowledging that streets and sidewalks occupy a "special position in terms of First Amendment protection because of their historic role as sites for discussion and debate," noted that such "remain one of the few places where a speaker can be confident that he [or she] is not simply preaching to the choir." *McCullen*, slip op. at 8. Indeed, this Court noted that when an individual is on a public street or sidewalk, a "listener often encounters speech he might otherwise tune out." *Id*. Further, "'one-on-one communication' is 'the most effective, fundamental and perhaps economical method of political discourse.'" *Id.* at 21 (citations omitted). Communicating a message advocating a politically

controversial viewpoint is "the essence of First Amendment expression." *Id.* (citations omitted).

Whether the complaining witness wanted to hear Ms. Scott's message or not is irrelevant. The First Amendment affords citizens the right to "reach the minds of willing listeners and to do so there must be opportunity to win their attention." *Kovacs v. Cooper*, 336 U.S. 77, 87 (1949). In the pro-life debate, since the law has foreclosed the ability of citizens to ban abortion through the normal political process, "citizens who oppose abortion must seek to convince their fellow citizens of the moral imperative of their cause." *Hill,* 530 U.S. at 787-88 (2000) (Kennedy, J., dissenting). "[T]he fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection." *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 118 (1991) (citations omitted); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) ("Speech is often provocative and challenging. It may. . . have profound unsettling effects as it presses for an acceptance of an idea.").

The State of Colorado is employing a vague statute to prosecute peaceful citizens for speech with which it disagrees. This is unconstitutional and contrary to the Court's *McCullen* opinion. Certiorari should be granted, or in the alternative, the case should be remanded for reconsideration in light of *McCullen* and the overbreadth and vagueness issues raised in the Petition.

II. Certiorari Should be Granted to Review the Constitutional Status of *De Facto* Unlimited Buffer Zones After *McCullen*.

In this case, the encounter occurred well outside of the 100-foot buffer zone which was considered by the Court in *Hill*. The encounter also occurred outside of a tall fence that completely surrounds a large secured parking lot which contains ample parking for clients and employees of the abortion facility—in fact, the video of the encounter shows a parking spot immediately in front of the building. Instead, the complaining witness, who had been to the abortion facility on several prior occasions, chose to park on the street and then walk in the middle of a public street to the abortion facility.

If calmly walking beside and talking to a person in a public street that is well beyond 100 feet of the facility's doors[3] (and outside of a large fenced and secured area) and expressing care and concern to the person for a total of 26 seconds constitutes a crime, there can be no limit to the "buffer zone" created by such a statute. Conceivably, a crime could be charged anywhere in the State of Colorado; thus a concerned neighbor even miles away from an abortion facility who attempts to persuade a mother not to abort her unborn baby could be prosecuted. Consequently, COLO. REV. STAT. § 18-9-122(2)

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[3] According to the detective's trial testimony, the encounter occurred approximately 164 feet from where they first met up to the entry into the Planned Parenthood facility. Trial Transcript, p. 187.

creates a *de facto* unlimited buffer zone for abortion facilities. This our Constitution prohibits.

This statute is not unique to Colorado. Other states and municipalities have statutes that attempt to prohibit "obstruction" or blocking entry to or exit from abortion facilities, including some that utilize the very same or nearly identical language. For example, MASS. GEN. LAWS. ANN. CH. 266 §120E ½(e) establishes a crime for "any person who knowingly obstructs, detains, hinders, impedes or blocks another person's entry to or exit from a reproductive health care facility. . . ." Burlington, Vermont has a municipal ordinance that is almost identical to the Colorado statute. BURLINGTON, VT, CODE OF ORDINANCES, § 21-113(1) provides: "No person shall knowingly obstruct, detain, hinder, impede, or block another person's entry to or exit from a Reproductive Health Care Facility." No definitions are provided for "obstruct, detain, hinder, impede or block" in the definitions subsection of § 21-113.[4] Consequently,

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[4] *See also* CAL. PENAL CODE §§ 423-423.6; D.C. CODE §§ 22-1314.01–1314.02; KAN. STAT. ANN. § 21-5808; ME REV. STAT. ANN. Tit. 5, §§ 4684, 4684-A, 4684-B; MD CRIM. Law § 10-204; MINN. STAT. ANN. § 609.7495; NEV. REV. STAT. ANN. § 449.760; NY PENAL LAW § 240.70; N.C. GEN. STAT. ANN. §§14-277.2, .4; OR REV. STAT. § 164.365; and WASH. REV. CODE ANN. §§ 9A.50.005 to .902. These statutes use a variety of language, some more similar to the Colorado statute than others. However, even those statutes that expressly require "physical" interference or obstruction are helpful to the analysis in this case because such statutes demonstrate the ease with which state governments may tailor their laws to address the concern regarding physical hindering of access to or from an abortion facility. Such statutes also demonstrate the failure of the Colorado legislature to specify precisely what conduct is

the important First Amendment issues raised by this Petition are not limited to Colorado, and this Court should grant certiorari to address them, not only for the citizens of Colorado, but also for citizens of other States with similar statutes.

III. The Colorado Statute and Similar Statutes Violate the First and Fourteenth Amendments of the U.S. Constitution.

A law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that people are uncertain as to what conduct is prohibited or, conversely, what conduct is not. *Chicago v. Morales*, 527 U.S. 41, 56 (1999). Citizens must be able to conform their conduct to the law and not be required to guess as to the meaning of penal laws. *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). Additionally, a law can be invalidated for being impermissibly vague if it authorizes or encourages arbitrary or discriminatory enforcement. *Morales*, 527 U.S. at 56-57. If law enforcement officials are able to arbitrarily decide whom they will charge, the law is invalid. "The Constitution does not permit a legislature to 'set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large.'" *Id.* at 60 (citing *United States v. Reese*, 92 U.S. 214, 221 (1876)). COLO. REV. STAT. § 18-9-122(2) and similar statutes and

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prohibited, and thus to assure that protected speech may not be criminally prosecuted.

ordinances throughout the country utterly fail to provide the required notice due process requires.

A. The Statute is Impermissibly Vague Because It Fails to Define Essential Terms, and Is Not Limited to Conduct but Also Targets Protected Speech.

Colorado's indefinite buffer zone statute is impermissibly vague and violates due process. The statute fails to provide basic definitions of the essential terms used in the subsection, and further fails to include language that would clarify that the statute is not intended to prohibit pure speech. The statute simply states it is a crime if a person "knowingly obstructs, detains, hinders, impedes, or blocks another person's entry to or exit from a health care facility." COLO. REV. STAT. § 18-9-122(2). Curiously, none of those terms are defined other than the term "health care facility." COLO. REV. STAT. § 18-9-122(4). The statute provides no clarification that it is directed at, and only prohibits, certain *physical* behavior or threats of force or violence. Nowhere in the statute or in Colorado law are these terms limited to conduct. Consequently, they can be – and have been – construed as prohibiting speech that might "hinder," "delay," or "impede" a person's access.

In fact, that is precisely what the district attorney argued to the trial court in this case. The prosecutor advised the trial court, "The facts as alleged here are that Ms. Scott had also used some language, not just walked beside her, but *had used*

some language…. These things could hinder someone *or detain them from seeking access* to medical service *or just turning around and going away….*" 11/2/10 Motions transcript, p. 24 (emphasis added). This argument is blatantly unconstitutional, and contradicts the fundamental First Amendment principle that the government "has no power to restrict expression because of its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

The prosecutor repeatedly attacked witnesses for their pro-life *speech*, not their conduct, and at one point even asked one defense witness, "Would you be pleased if somebody heard your words and didn't go into the [abortion] clinic?"[5] and, "In fact, your goal is to prevent them from going into the Planned Parenthood [abortion] facility?"[6] The government's view is, therefore, that a sidewalk counselor's success in conveying her First Amendment message inevitably violates this statute since the listener would have decided (and thus been prevented, i.e., obstructed, hindered, delayed, etc.) from entering the abortion facility. It also confirms that the government was absolutely focused on the content of speech rather than constitutionally proscribable conduct.

The prosecutor, continuing the focus on pro-life speech, asked a witness, "And you show posters and ugly depictions of--and what are the purposes of those posters?" The witness responded that the

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[5] Trial Transcript, p. 153, Lines 19-20.
[6] Trial Transcript, p. 153, Lines 22-23.

purpose is to "show the truth of what goes on inside" the abortion facility.[7] Very clearly targeting pure speech, the prosecutor continued to press the witness by trying to get her to say that pro-life messages would alarm people, and asked, "So it shouldn't surprise you that somebody may see a sign like that and be alarmed."[8]

During closing arguments, the prosecutor again focused on speech, i.e., the language used and the alleged offensiveness of the pro-life message. Neither the prosecutor nor the trial court ever advised the jury that the statute requires a physical act, nor were any terms other than the term "health care facility" defined for the jury. The prosecutor went on to specifically and expressly argue to the jury that these pro-life words—i.e., protected First Amendment speech—that were allegedly spoken 164 feet from the entrance way to the abortion facility (an additional distance to the actual door of the facility), constituted a violation of this Colorado law:

> *She is being <u>hindered</u> by the words being said, by the other communication that's happening in this area.* She is being *hindered*. We're asking you to follow the law on that simple point. It's the entrance to a health care facility. You should be able to go into it *unhindered*.[9]

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[7] Trial Transcript, p. 154, Lines 8-11.
[8] Trial Transcript, p. 155, Lines 13-14.
[9] Trial Transcript, p.204, Lines 6-11 (emphasis added).

Although on appeal to the District Court, the attorney for the government changed course and correctly noted that the subsection must be based on *physical* conduct,[10] that is not the position that the prosecution took during the jury trial, and it is contrary to what was specifically argued by the government to the jury and which resulted in Ms. Scott's conviction. The record is devoid of any evidence that the jury was ever instructed that the statute applied to physical conduct and not to pure speech.

The prosecutor compounded this error when he argued "intent" based on speech. He said, "Defense counsel would have you believe that her intent is to educate and offer help. The People are asking you and we submit that her intent is to prevent people from going in there." He continued, "How does she do that? She does that by going to anybody…going into the facility, and telling them things that, as [complaining witness said] 'It's difficult to hear those things.' The intent--being on a ladder [Ms. Scott was not on a ladder], yelling loudly [Ms. Scott was not yelling loudly], saying offensive things [Ms. Scott presented a pro-life message in an inoffensive way], telling somebody that they're supporting murder when all they're doing is going in to get counseling for a very difficult time in their life."[11] Continuing with the focus on speech, the prosecutor argued to the jury:

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[10] People's Answer Brief, p. 17, 20.
[11] Trial Transcript, pp. 204-205.

> And **she's allowed to say what she wants to say, but she can't do it--two situations. She can't hinder somebody going into the health care facility**, which she did…And she can't--with the intent to harass, annoy, or alarm, she can't follow somebody, which she clearly did...[12]

To argue that this prosecution was not based on protected speech requires one to suspend reason and disregard virtually the totality of the evidence presented and the express arguments of the government to the jury.

B. The Statute is Overbroad and Punishes All Speech, Including Constitutionally Protected Speech, That Occurs in a Quintessential Public Forum More Than 100 Feet From the Doors of an Abortion Facility.

The First Amendment unequivocally provides that: "Congress shall make no law. . .abridging the freedom of speech . . . ." U.S. CONST. amend. I. That this freedom is paramount in our country has been long recognized. Freedom of speech is among the "fundamental personal rights and liberties" that are "secured to all persons by the Fourteenth Amendment against abridgment" by the State. *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940).

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[12] Trial Transcript, p. 207, Lines 3-8.

To the extent that COLO. REV. STAT.§ 18-9-122(2) regulates speech on the public streets and sidewalks, it violates the First Amendment. It is beyond dispute that the encounter here occurred on a quintessential public forum—a public street and sidewalk. *Id. Frisby v. Schultz*, 487 U.S. 474, 481 (1988); *Schenck v. Pro-Choice Network of W. New York,* 519 U.S. 357, 377 (1997). COLO. REV. STAT.§ 18-9-122(2) is not limited to 100 feet from an abortion facility entrance as does the Hill provision, COLO. REV. STAT.§ 18-9-122(3), and this encounter occurred well outside of this 100 feet zone.

As described above, the statute as applied in this case casts a net so wide that it encompasses constitutionally protected speech, including speech a person may find "difficult to hear." In this case, however, Ms. Scott simply told the complaining witness that she did not need to "do this;" she did not, even by the government's own evidence, call her any names or say anything harsh. She simply expressed concern about the planned abortion. Ms. Scott was prosecuted for, in the complaining witness's own words, calmly approaching the complaining witness, expressing great concern that she was going into the abortion facility, and saying, "Don't go in there, don't participate in a murder, you don't have to do this. . ."[13] The government is thus using COLO. REV. STAT. § 18-9-122(2) to stamp out all pro-life speech anywhere in the vicinity of an abortion facility. The statute and the way it is being enforced effectively silences all pro life messages,

[13] Trial Transcript, p. 106, Lines 21-23.

including those by *Amici*, even when they are, as here, peaceful.

C. The Statute Permits Unfettered and Selective Discretion with Regard to Who Gets Punished.

Due process forbids laws that leave punishment of citizens up to the unfettered discretion of government officials. This law does precisely that. Because the law is so vague and lacking in definition, it permits law enforcement to decide who gets charged and who does not—beyond the level of orderly discretion that is necessarily tolerated in our system.

With the Colorado statute, an officer can decide to charge a person for *verbally* "hindering" another person's "access" to the facility or the officer can decide not to. In fact, the officer can decide subjectively what constitutes "detains," what constitutes "hinders," and what "impedes." An officer is free to decide that one person's speech hinders or impedes simply because the officer doesn't like the views expressed. There are no statutory definitions to which the accused may turn in order to refute the officer's conclusion, nor are there definitions to guide the officer's discretion. Quite simply, the officers can charge who they want to charge and not charge who they don't want to charge simply based on their own views, unguided by any objective definition that places everyone on notice—including law enforcement and members of the public—as to what constitutes proscribed conduct or speech.

CONCLUSION

For the reasons stated above, *Amici* respectfully submit that this Court should grant certiorari to review the important constitutional issues presented in the Petition, or in the alternative, vacate and remand this case for further consideration in light of the Court's decision in *McCullen*.

Respectfully submitted,

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