

**COLORADO SUPREME COURT**

Ralph L. Carr Judicial Center  
2 East 14<sup>th</sup> Avenue  
Denver, Colorado 80203

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On Certiorari to the Court of Appeals

Court of Appeals Case No. 22CA2054

Opinion by Justice Alex J. Martinez; Tow and  
Brown, JJ., concur

District Court, Teller County, Colorado

Case No. 22CV30023

Judge Scott Sells

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**Plaintiff-Appellant:**

Erin O'Connell

v.

**Defendants-Appellees:**

Woodland Park School District, et al.

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Case No. 24SC34

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**BRIEF OF *AMICI CURIAE* REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS, COLORADO PRESS ASSOCIATION, AND  
COLORADO BROADCASTERS ASSOCIATION IN SUPPORT OF  
PLAINTIFF-APPELLANT**

## **CERTIFICATE OF COMPLIANCE**

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

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

☒ It contains **[1,831]** words (does not exceed 4,750 words).

**The 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. 29 and C.A.R. 32.**

/s/Rachael Johnson

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*Counsel of Record for Amici Curiae*

## **TABLE OF CONTENTS**

CERTIFICATE OF COMPLIANCE .....	ii
TABLE OF AUTHORITIES.....	iv
IDENTITY AND INTEREST OF <i>AMICI CURIAE</i> .....	1
INTRODUCTION.....	2
ARGUMENT .....	3
I. The press plays a vital role in ensuring that the COML fulfills its statutory purpose. ....	3
II. Violations of the COML impose tangible harms on the press and public that after-the-fact ratification does not remedy.....	5
CONCLUSION .....	9
CERTIFICATE OF SERVICE.....	10

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Bd. of Cnty. Comm’rs v. Costilla Cnty. Conservancy Dist.</i> , 88 P.3d 1188 (Colo. 2004) .....	3
<i>Bjornsen v. Bd. of Cnty. Comm’rs</i> , 2019 COA 59 .....	5
<i>City of Westminster v. Dogan Constr. Co.</i> , 930 P.2d 585 (Colo. 1997) .....	6
<i>Cole v. State</i> , 673 P.2d 345 (Colo. 1983) .....	3, 4
<i>Cox Broad. Corp. v. Cohn</i> , 420 U.S. 469 (1975) .....	4, 5
<i>First Nat’l Bank of Bos. v. Bellotti</i> , 435 U.S. 765 (1978) .....	3, 4
<i>Gumina v. City of Sterling</i> , 119 P.3d 527 (Colo. App. 2004) .....	6
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923) .....	4
<i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 555 (1980) .....	4

### **Statutes**

§ 24-6-401, C.R.S. ....	6
§ 24-6-402, C.R.S. ....	5
§ 24-72-201, C.R.S. ....	6
Colorado Open Meetings Law §§ 24-6-401 <i>et seq.</i> , C.R.S. ....	1, 2, 3

## Other Authorities

- Knight Found., *In Defense of the First Amendment* (2016),  
[https://kf-site-production.s3.amazonaws.com/publications/pdfs/000/000/185/original/KF-editors-survey-final\\_1.pdf](https://kf-site-production.s3.amazonaws.com/publications/pdfs/000/000/185/original/KF-editors-survey-final_1.pdf).....7
- Lara Takenaga, *More Than 1 in 5 U.S. Papers Has Closed. This Is the Result*,  
N.Y. Times (Dec. 21, 2019),  
<https://www.nytimes.com/2019/12/21/reader-center/local-news-deserts.html> .....6
- Media barred from public lead water crisis meeting in New Jersey*,  
U.S. Press Freedom Tracker (Aug. 27, 2019),  
<https://pressfreedomtracker.us/all-incidents/media-barred-public-lead-water-crisis-meeting-new-jersey/> .....7, 8
- Penelope Muse Abernathy, Ctr. for Innovation & Sustainability in Local  
Media, *The Expanding News Desert* (2018),  
[https://www.cislm.org/wpcontent/uploads/2018/10/The-Expanding-News-Desert-10\\_14-Web.pdf](https://www.cislm.org/wpcontent/uploads/2018/10/The-Expanding-News-Desert-10_14-Web.pdf) .....7
- Reporter, public barred from Illinois township board meeting*,  
U.S. Press Freedom Tracker (Feb. 13, 2024),  
<https://pressfreedomtracker.us/all-incidents/reporter-public-barred-from-illinois-township-board-meeting/> .....7

The Reporters Committee for Freedom of the Press (the “Reporters Committee”), the Colorado Press Association, and the Colorado Broadcasters Association (collectively, “*amici*”) respectfully submit the following *amici curiae* brief in support of Plaintiff-Appellant Erin O’Connell, on the question of judicial “cure” following a violation of the Colorado Open Meetings Law, §§ 24-6-401 *et seq.*, C.R.S. (“COML” or the “Law”).

### **IDENTITY AND INTEREST OF *AMICI CURIAE***

The Reporters Committee is an unincorporated nonprofit association. It was founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide *pro bono* legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The Colorado Broadcasters Association (“CBA”) is a non-profit trade association formed in 1949. The CBA’s mission is to build a stronger broadcast industry. The CBA represents broadcasters, both public and private, interacts with state and national officials and trade groups to further the business of broadcasting, and works to provide public media access to the courts and fights to open public records. Among its many activities, the CBA is probably best known for its annual “Awards Of Excellence,” which honor broadcasters’ service to their communities.

The Colorado Press Association is a trade association dedicated to the preservation, progression and modernization of Colorado’s newspaper and related industries. It is organized to represent the common interests of Colorado’s news organizations.

Members of the news media rely on access to government meetings to gather news and inform the public. Accordingly, the proper application of state open meetings laws, including the COML, is a matter of significant importance to journalists and news organizations. *Amici* thus have a strong interest in the outcome of this case.

## **INTRODUCTION**

Access to public meetings enables the press to gather and report newsworthy information about the actions of government bodies—information that is necessary for effective public oversight of government officials and for public participation in the democratic process. State open meetings laws like the COML, §§ 24-6-401 *et seq.*, C.R.S., that guarantee access are thus essential to ensuring that journalists can keep the public informed about state and local government activities that affect their communities and their daily lives.

*Amici* agree with, and file this brief to join, the arguments set forth in the *amici curiae* brief of the Colorado Freedom of Information Coalition (“CFOIC”), American Civil Liberties Union of Colorado, League of Women Voters, and

Parents-Safety Advocacy Group, that no judicially created “cure” doctrine should preclude the recovery of statutory attorney fees in the context of violations of the COML. *See Amici Br. of CFOIC, et al.*, at 3–12 (Oct. 24, 2024). *Amici* write to emphasize why reversal of the Court of Appeals’ decision, below, is both compelled by the COML and of particular importance to the news media.

## **ARGUMENT**

### **I. The press plays a vital role in ensuring that the COML fulfills its statutory purpose.**

The state of Colorado enacted the COML to ensure that governmental bodies do not meet in secret. §§ 24-6-401 *et seq.*, C.R.S. As this Court has recognized, the “intent of the [COML] is that citizens be given the opportunity to obtain information about and to participate in the legislative decision-making process.” *Cole v. State*, 673 P.2d 345, 349 (Colo. 1983). To that end, the COML mandates press and public access to a broad range of meetings in order to ensure public oversight of government activities and prevent “secret” meetings that violate the public trust. *Bd. of Cnty. Comm’rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo. 2004).

In so doing, the COML facilitates “[t]he public’s right of access to public information.” *Cole*, 673 P.2d at 350; *see also id.* (“The First Amendment plays an important role in affording the public access to discussion, debate, and the dissemination of information and ideas.”); *First Nat’l Bank of Bos. v. Bellotti*, 435



U.S. 765, 783 (1978) (explaining that the First Amendment “prohibit[s] government from limiting the stock of information from which members of the public may draw”); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (noting the First Amendment right “to acquire useful knowledge”). That constitutional right plays a particularly powerful role when it comes to information about government. As this Court has explained, “[a] free self-governing people needs full information concerning the activities of its government not only to shape its views of policy and to vote intelligently in elections, but also to compel the state, the agent of the people, to act responsibly and account for its actions.” *Cole*, 673 P.2d at 350; *see also Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (describing the First Amendment’s “purpose of assuring freedom of communication on matters relating to the functioning of government”).

Courts have long recognized the vital role the press plays as a proxy for the public in the context of monitoring the activities of government. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491–92 (1975) (explaining that because “each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations”). And open meetings mandated by laws like the COML are one of the most essential tools at a journalist’s disposal for keeping the public informed about government activities at

the state and local level. *See id.* (noting that the press has a responsibility “to report fully and accurately the proceedings of government” and that “official records and documents open to the public are the basic data of governmental operations”). If journalists cannot attend government meetings, and thus cannot obtain information about the activities of public bodies, local communities ultimately will suffer.

## **II. Violations of the COML impose tangible harms on the press and public that after-the-fact ratification does not remedy.**

Woodland Park’s effort to rewrite the COML to give government officials license to violate the Law (without consequence or any recourse by members of the public) if the officials later “cure” their violation by ratifying their prior actions would—if accepted by this Court—undermine the efficacy of the COML.<sup>1</sup> After-the-fact “cure” permits public bodies to correct their actions in future sessions, but it does not erase the real costs—including attorney fees—imposed on members of the press and public who are shut out of government meetings and must devote

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<sup>1</sup> The COML does not by its terms allow a local public body to “cure” prior COML violations. *See* § 24-6-402, C.R.S. And although Colorado case law has interpreted the Law to permit a local public body to “cure an improperly convened executive session by holding a subsequent meeting that [is] open to the public to consider the matters discussed in the executive session,” *Bjornsen v. Bd. of Cnty. Comm’rs*, 2019 COA 59, ¶ 31 (citation omitted), it does not follow from that line of cases that mere ratification of a prior action taken in violation of the Law is sufficient to erase the violation, or that it eliminates a member of the public’s right to recover attorney fees under the Law.

time and resources to challenging open meetings violations. When a COML violation occurs, the “get out of jail free” card endorsed by the Court of Appeals, below, eliminates the disincentives for government officials who would prefer to improperly meet behind closed doors—disincentives that the General Assembly expressly included in the statutory framework. And when a COML violation is intentional, the result here would be particularly insidious.

The Court of Appeals’ decision allowing “cure” without consequences, if not reversed, would therefore undercut the Law’s very purpose. *See Gumina v. City of Sterling*, 119 P.3d 527, 530–31 (Colo. App. 2004) (explaining the “purpose” of the COML “that the formation of public policy is public business and may not be conducted in secret” (quoting § 24-6-401, C.R.S.)); *cf. City of Westminster v. Dogan Constr. Co.*, 930 P.2d 585, 589 (Colo. 1997) (observing that “[t]he legislature passed the Act to declare and implement the public policy that ‘all public records shall be open for inspection’” except for specific statutory exceptions (quoting § 24-72-201, C.R.S.)).

A strong COML that ensures public access to the debate and deliberations of government bodies is particularly vital given the dwindling resources of local newsrooms. *See, e.g.,* Lara Takenaga, *More Than 1 in 5 U.S. Papers Has Closed. This Is the Result*, N.Y. Times (Dec. 21, 2019), <https://www.nytimes.com/2019/12/21/reader-center/local-news-deserts.html> (“Over the past 15 years, more

than one in five papers in the United States has shuttered, and the number of journalists working for newspapers has been cut in half . . . .”); Penelope Muse Abernathy, Ctr. for Innovation & Sustainability in Local Media, *The Expanding News Desert* 96 (2018), [https://www.cislm.org/wpcontent/uploads/2018/10/The-Expanding-News-Desert-10\\_14-Web.pdf](https://www.cislm.org/wpcontent/uploads/2018/10/The-Expanding-News-Desert-10_14-Web.pdf) (describing the rise of “ghost newspapers” in local communities across the United States, which once provided comprehensive news and now offer significantly scaled back coverage); Knight Found., *In Defense of the First Amendment* 5 (2016), [https://kf-site-production.s3.amazonaws.com/publications/pdfs/000/000/185/original/KF-editors-survey-final\\_1.pdf](https://kf-site-production.s3.amazonaws.com/publications/pdfs/000/000/185/original/KF-editors-survey-final_1.pdf) (showing that more than two-thirds of editors who responded to a Knight Foundation survey stated that the news media was less able to pursue First Amendment legal action than it was a decade prior).

Across the country, a decrease in resources for local reporting has emboldened public officials to increase secrecy and preclude public access to what should be “public” meetings. *See, e.g., Reporter, public barred from Illinois township board meeting*, U.S. Press Freedom Tracker (Feb. 13, 2024), <https://pressfreedomtracker.us/all-incidents/reporter-public-barred-from-illinois-township-board-meeting/> (explaining how news media was prevented from attending a town board meeting “in apparent violation of Illinois’ Open Meetings Act”); *Media barred from public lead water crisis meeting in New Jersey*, U.S.

Press Freedom Tracker (Aug. 27, 2019), <https://pressfreedomtracker.us/all-incidents/media-barred-public-lead-water-crisis-meeting-new-jersey/> (detailing how “[t]he news media was barred from attending a public meeting on Newark, New Jersey’s ongoing lead contamination crisis”). Examples of state and local government officials barring reporters from public meetings and restricting public access to government information serve as a stark reminder of the importance of interpreting laws like the COML in a manner consistent with their purpose.

If public bodies are allowed to rubber-stamp prior actions taken in clear violation of the COML’s requirements and avoid paying the attorney fees guaranteed under the Law for reporters and members of the public who successfully challenge violations of the Law, journalism will be stifled in Colorado, and the public will ultimately suffer. Journalists and news organizations with decreased resources to devote to coverage of state and local government already face substantial challenges to reporting on government bodies throughout the state. And without the ability to recover attorney fees, the press may be less willing or simply unable to challenge even the most flagrant, intentional open meetings violations—a result that would encourage government secrecy in

contravention of the Law's purpose.

### **CONCLUSION**

For the reasons herein, *amici* respectfully urge this Court to reverse the decision of the Court of Appeals.

Dated: October 24, 2024

Respectfully submitted,

/s/ Rachael Johnson

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## **CERTIFICATE OF SERVICE**

I hereby certify that, on October 24, 2024, a true and correct copy of the foregoing **BRIEF OF AMICI CURIAE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, COLORADO PRESS ASSOCIATION, AND COLORADO BROADCASTERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLANT** was served via the Colorado Courts E-Filing system upon:

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