

**DISTRICT COURT, DENVER COUNTY,  
COLORADO**

1437 Bannock Street  
Denver, CO 80202

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ELISABETH EPPS, and  
ROBERT C. MARSHALL,  
Plaintiffs

v.

THE COLORADO HOUSE OF  
REPRESENTATIVES,

JULIE McCLUSKIE, in her official capacity as  
Speaker of the House of Representatives,

MONICA DURAN, in her official capacity as the  
Majority Leader of the House of Representatives,

MIKE LYNCH, in his official capacity as the Minority  
Leader of the House of Representatives,

THE DEMOCRATIC CAUCUS OF THE  
COLORADO HOUSE OF REPRESENTATIVES,

THE REPUBLICAN CAUCUS OF THE  
COLORADO HOUSE OF REPRESENTATIVES,

Defendants.

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Case Number: 23-cv-\_\_\_\_\_

Division: \_\_\_\_

**VERIFIED COMPLAINT**

Plaintiffs Elisabeth Epps and Robert C. Marshall, by and through their undersigned  
counsel, hereby submit this Verified Complaint as follows:

## INTRODUCTION

“[T]he formation of public policy is public business and may not be conducted in secret.”

§ 24-6-401, C.R.S. (2023).

“There is rarely any purpose to a nonpublic pre-[hearing] conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting[s law] frustrate these evasive devices.”

*Cole v. State*, 673 P.2d 345, 348 (Colo. 1983).

This lawsuit, brought by two members of the public who are also members of the Colorado General Assembly, seeks to halt a series of long-standing practices by various formally constituted state public bodies that violate the Colorado Open Meetings Law (“COML”). Quorums of state public bodies in the House of Representatives routinely meet in secret to discuss public business. These discussions inform the course of legislative action to be later taken publicly and are routinely conducted outside of public view, without providing public notice, and without recording or publishing meeting minutes that the public can access.

This lawsuit also aims to prevent further unlawful non-public conversations about public business among two or more members of the House of Representatives Committees of Reference and among members of Democratic and Republican Caucuses, via self-deleting digital communications platforms, during open legislative Committee hearings.

Shortly after being sworn into office as State Representatives, Plaintiffs became aware of pervasive violations of COML committed by state public bodies of which they are members. Plaintiffs, acting independently and separately, each tried to stop these unlawful practices by taking their concerns directly to House Leadership. Plaintiffs requested that Leadership ensure compliance with Colorado law and sought long-overdue updates to COML for more efficient transaction of the

People’s business in the House of Representatives. Despite Plaintiffs’ best efforts, ultimately House Leadership failed to act and Defendants continued to violate COML. Accordingly, Plaintiffs are forced to enlist the authority of the State’s judicial branch to bring the legislature into compliance with COML and to ensure that the House of Representatives conducts its public business publicly as required by Colorado law, not in secret.

## **PARTIES**

1. Plaintiff Elisabeth Epps is a resident of the City and County of Denver, Colorado. Ms. Epps is a member of the House of Representatives, elected in November 2022 to represent Colorado’s 6th House District.

2. Plaintiff Robert C. Marshall is a resident of Douglas County, Colorado. Mr. Marshall is a member of the House of Representatives, elected in November 2022 to represent Colorado’s 43rd House District.

3. Defendant the Colorado House of Representatives is the chamber of the Colorado General Assembly composed of 65 elected members vested with authority to formulate public policy, including the introduction, discussion, and passage of bills for further consideration by the Senate and/or the Governor. *See* Colorado Constitution Article 5, Section 1, subsection (1).

4. Defendant Julie McCluskie is Speaker of the House of Representatives.

5. Defendant Monica Duran is House Majority Leader (Democratic Party).

6. Defendant Mike Lynch is House Minority Leader (Republican Party).

Defendants McCluskie, Duran, and Lynch are referred to collectively herein as “House Leadership.”

7. Defendant Democratic Caucus of the House of Representatives (“Democratic Caucus”) is the policy-making body composed of all State Representatives who are registered Democrats. The Democratic Caucus is a “state public body” subject to the COML. *See Cole v. State*, 673 P.2d 345 (Colo. 1983).

8. Defendant Republican Caucus of the House of Representatives (“Republican Caucus”) is the policy-making body composed of all State Representatives who are registered Republicans. The Republican Caucus is a “state public body” subject to the COML. *Id.*

### **JURISDICTION AND VENUE**

9. Jurisdiction is proper in this Court pursuant to C.R.S. § 24-6-402(9).

10. Venue is proper in the Judicial District Court for Denver County pursuant to C.R.C.P. 98(b)(2) because all defendants are public officials and/or state public bodies whose actions giving rise to this Complaint occurred in Denver County.

### **GENERAL ALLEGATIONS**

#### **A. The Governing Law**

11. A majority of the House of Representatives (33 members) constitutes a quorum of that state public body. *See* Colorado Constitution Article 5, Section 11.

12. A majority of any Committee of Reference<sup>1</sup> in the House of Representatives constitutes a quorum of that Committee.

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<sup>1</sup> In the First Regular Session of the 74th General Assembly there were 11 Committees of Reference in the House of Representatives: Agriculture, Water & Natural Resources; Appropriations; Business Affairs & Labor; Education; Energy & Environment; Finance; Health & Insurance; Judiciary; Public & Behavioral Health & Human Services; State, Civic, Military, & Veterans Affairs; and Transportation, Housing & Local Government. Each committee had either 11 or 13 members, and members of the Democratic Caucus hold a majority of seats on each committee. *See* <https://leg.colorado.gov/agencies/house-representatives/committee-membership>.

13. In the First Regular Session of the 74th General Assembly, there were 46 members of the House Democratic Caucus and 19 members of the House Republican Caucus.

14. The House of Representatives, each House Committee of Reference, the Democratic Caucus, and the Republican Caucus all constitute distinct state public bodies under the COML. *See* § 24-6-402(1)(d)(I), C.R.S. (2023). Hereinafter, those Defendants are referred to collectively as “State Public Body Defendants.”

15. Under the COML, any gathering of two or more members of a state public body at which any public business is discussed is declared to be a public meeting which must be “open to public at all times.” *See* § 24-6-402(2)(a), C.R.S. (2023).

16. Under the COML, any meeting of a state public body at which a quorum is “expected to be in attendance” can occur only following “full and timely notice to the public.” *See* § 24-6-402(2)(c), C.R.S. (2023).

17. Under the COML, the “[m]inutes of *any* meeting of a state public body *shall be taken and promptly recorded*, and such records *shall be open to public inspection*.” *See* § 24-6-402(2)(d)(I), C.R.S. (2023) (emphasis added).

18. Under the COML, elected officials cannot discuss “pending legislation or other public business among themselves” via electronic mail<sup>2</sup> unless such communications fully comply with the requirements of contemporaneous public access. *See* § 24-6-402(d)(III), C.R.S. (2023); *see also* § 24-6-402 (1)(b) (defining a “meeting” subject to COML as “any kind

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<sup>2</sup> The Colorado Supreme Court interpreted the term “electronic mail” in the Colorado Open Records Act to include instant text messaging via pagers, even though such messages are not transmitted over a computer-to-computer e-mail exchange system. *See Denver Publ'g Co. v. Bd. of Cnty. comm'rs of Arapahoe Cnty.*, 121 P.3d 190, 192 n.1 (Colo. 2005).

of gathering, convened to discuss public business, in person, by telephone, *electronically*, or by [any] *other means of communication.*”) (emphasis added).

19. The Colorado Supreme Court has declared that “[Colorado Open Meetings Law] prohibits bad-faith circumvention of its requirements.” *Darien v. Town of Marble*, 159 P.3d 761 (2006).

**B. Operative Facts Giving Rise to Plaintiffs’ Claims**

20. Throughout the First Regular Session of the 74th General Assembly, Democratic Caucus members constituting a quorum of every House Committee of Reference met outside of public view, usually weekly, to discuss pending legislation. All Democratic Committee members were expected to attend these meetings which included presentations by bill sponsors, question and answer period, and discussion of members’ expected votes. These meetings were never publicly noticed. Defendants directed legislative aides to omit or disguise these mandatory meetings from Representatives’ calendars. Defendants did not promptly record meeting minutes and did not make minutes available to the public.

21. On information and belief, a quorum of the Republican members of House Committees of Reference met similarly to discuss the formation of public policy relating to pending legislation assigned to House Committees of Reference. These meetings were not publicly noticed. Defendants did not promptly record meeting minutes and did not make minutes available to the public.

22. For almost the entirety of the First Regular Session of the 74th General Assembly, a quorum of the Democratic Caucus met twice weekly (Monday mornings and Tuesday middays), outside of public view, to discuss public business. Defendants instructed

legislative aides to omit or disguise these meetings from Representatives' calendars. These meetings at which the formation of public policy was discussed were not publicly noticed.

Meeting minutes were not recorded and were not made available to the public.

23. On information and belief, during the First Regular Session of the 74th General Assembly, a quorum of the Republican Caucus met weekly, outside of public view, to discuss public business and the formation of public policy. These meetings were not publicly noticed, minutes were not promptly recorded, and minutes were not made available to the public.

24. Throughout the First Regular Session of the 74th General Assembly, House members regularly used an ephemeral digital communications platform (Signal) to discuss public business outside of public view, in real time, during public hearings of House Committees of Reference. Signal communications included consideration of witness testimony and discussion of members' expected votes. These electronic/digital communications among House Committee members were not available to the public for contemporaneous observation and were set for automatic deletion via a disappearing messages function.

25. Two or members, and members constituting quorums, of Committees of Reference utilized this electronic communications during committee hearings without ever providing public notice of these non-public *meetings within meetings*. The self-destructing writings transmitted among House members were not retained, and therefore were not available for public inspection as is required by the Colorado Open Records Act.

26. Both the Democratic and Republican Caucuses regularly utilized Signal to discuss public business outside of public view. For example, on May 8, 2023, members of the Republican Caucus exchanged electronic communications via Signal to orchestrate a

coordinated walkout in protest against the public business being conducted and formation of public policy being discussed contemporaneously in the House of Representatives at that time.<sup>3</sup>

27. This secret electronic communication among a quorum of the Republican Caucus on the last day of the First General Session of the 74th General Assembly exemplifies the brazen nature of COML violations committed as a matter of routine practice by both Democrats and Republicans. On information and belief, such violations began well before individual Defendants ascended to their current roles in House Leadership, and the commonplace violations were standard operating procedures of the State Public Body Defendants long before Plaintiffs' election to the General Assembly.

28. Plaintiffs are not the first people to approach House Leadership seeking compliance with COML. During the 73rd General Assembly at least one House staff member took their concerns about COML violations, in writing and along with detailed proposed solutions, to both the preceding Speaker of the House and the Chair of House Judiciary Committee. Instead of properly addressing the documented violations of COML in 2022, House Leadership dismissed staff concerns and continued violating Colorado law.

29. While the First Regular Session of the 74th General Assembly ended on May 8, 2023, open meetings of year-round and interim House Committees as well as meetings of both partisan Caucuses have begun and will continue over the interregnum.<sup>4</sup> On information and belief, the State Public Body Defendants will continue practices in violation of the COML

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<sup>3</sup> See <https://coloradotimesrecorder.com/2023/05/colorado-republicans-private-group-chat-may-violate-open-meetings-law/53611/>.

<sup>4</sup> See <https://leg.colorado.gov/interim-schedule>.



while conducting meetings throughout the interim and during future legislative sessions.

30. On multiple occasions during the First Regular Session of the 74th General Assembly, beginning on the third day of the legislative session<sup>5</sup>, Plaintiffs individually, and eventually collectively, brought their concerns regarding violations of the COML to House Leadership (The Speaker) and to the Office of Legislative Legal Services in efforts to ensure the State Public Body Defendants complied with Colorado law.

31. Plaintiffs were assured, separately and repeatedly, by House Leadership that these unlawful practices would be properly addressed.

32. Unfortunately, violations persist. House Leadership has not brought the State Public Body Defendants into compliance with the mandates of COML. Consequently, Plaintiffs have no confidence that Defendants can or will change these unlawful practices without judicial intervention.

33. These enduring bipartisan illegal practices of the General Assembly have placed Plaintiffs in an untenable position: Plaintiffs must either knowingly violate Colorado law by participating in unlawful discussions of public business to ensure that their constituents are represented in meetings where public policy is being formed; or they can comply with the law by extricating themselves from critical discussions thereby depriving their constituents of representation at meetings where public policy is formed.

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<sup>5</sup> The First General Session of Colorado's 74th General Assembly opened Jan. 9, 2023 and ended May 8, 2023. The third day of the 120-day legislative session was Jan. 11, 2023.

**FIRST CLAIM FOR RELIEF**  
**For Declaratory Relief for Past Violations**  
**of the Colorado Open Meeting Law**

34. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

35. The State Public Body Defendants engaged in discussion of public business among two or more of their members outside of meetings that were open to the public.

36. The State Public Body Defendants, and the individual Defendants who serve as leadership of those bodies, convened meetings of a quorum of those state public bodies to discuss pending legislation and other public business but did not provide public notice of such meetings.

37. Two or more members of the State Public Body Defendants engaged in discussion of public business, did not promptly record meeting minutes, and did not make meeting minutes available to the public.

38. As a result of their unlawful conduct, Defendants deprived Plaintiffs, and those similarly situated, of their rights under the Colorado Open Meetings Law to full and timely notice of public meetings, to an opportunity to observe discussions of public business in real time, and to access the promptly recorded minutes of all such meetings.

39. Plaintiffs suffered an injury in fact and have standing as set forth in § 26-6-402(9)(a), C.R.S.

40. Plaintiffs are entitled to the entry of a Declaration and Finding by this Court that Defendants' conduct set forth above was in violation of the Colorado Open Meetings Law.

**SECOND CLAIM FOR RELIEF**  
**For Injunctive Relief Barring Further Violations**  
**of the Colorado Open Meetings Law**

41. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

42. The individual Defendants (House Leadership) have been unwilling or unable to voluntarily change the modus operandi of the State Public Body Defendants, as set forth above.

43. The unlawful practices described above will continue unless the Defendants are enjoined from doing so by this Court.

44. Plaintiffs, and all other members of the public, who have rights to full and timely notice of public meetings, to an opportunity to observe discussions of public business in real time, and to access the promptly recorded minutes of all such meetings, will suffer irreparable injury if future violations are not enjoined.

45. Plaintiffs are entitled to the entry of both preliminary and permanent injunctive relief that precludes the Defendants from further violations of the COML.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Elisabeth Epps and Robert C. Marshall request the Court enter a judgment in their favor as follows:

- (1) Enter an Order declaring that the meetings of the state public bodies described above were conducted in violation of the Colorado Open Meetings Law;
- (2) Enter an Order preliminarily and permanently enjoining the Defendants from committing any further similar violations of the Colorado Open Meetings Law, as they have indicated their intention of doing; specifically, Defendants should be enjoined from

- (a) convening a meeting to discuss public business at which a quorum of any state public body is expected to be in attendance without providing public notice;
  - (b) conducting any meeting of two or more members of the House of Representatives to discuss public business, through electronic or any other means of communication, which is not open to the public; and
  - (c) conducting any meeting of two or more members of the House of Representatives to discuss public business without promptly preparing minutes of such meetings and making those minutes available to the public;
- (3) Enter an Order commanding Defendants to pay Plaintiffs their reasonable attorney fees and costs for bringing this successful action to enforce their, and the public's, rights under the Colorado Open Meetings Law; and
- (4) Such other and further relief as the Court deems just and proper.

## VERIFICATION

I, Elisabeth Epps, under the penalty of perjury, certify that the factual statements contained in this Complaint are true and correct to the best of my knowledge and belief.

Dated this 7th day of July, 2023.

*s/ Elisabeth Epps (original signature on file)*

Elisabeth Epps

I, Robert C. Marshall, under the penalty of perjury, certify that the factual statements contained in this Complaint are true and correct to the best of my knowledge and belief.

Dated this 7th day of July, 2023.

*s/ Robert C. Marshall (original signature on file)*

Robert C. Marshall

Dated this 7th day of July, 2023.

**Law Office of Steven D. Zansberg, L.L.C.**

*s/ Steven D. Zansberg*

Steven D. Zansberg

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