

<p>DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>Plaintiffs: ELISABETH EPPS and ROBERT C. MARSHALL,</p> <p>v.</p> <p>Defendants: 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; and THE REPUBLICAN CAUCUS OF THE COLORADO HOUSE OF REPRESENTATIVES.</p>	<p>DATE FILED: September 12, 2023 10:26 AM CASE NUMBER: 2023CV31990</p> <hr/> <p>COURT USE ONLY</p> <hr/> <p>Case No.: 23CV31990 Courtroom: 203</p>
<p align="center">AMENDED STIPULATED CONSENT JUDGMENT AND DECREE</p>	

THIS ACTION was filed by Elisabeth Epps and Robert C. Marshall (“Plaintiffs”), pursuant to the Colorado Open Meetings Law (“COML”) § 24-6-401, C.R.S. *et seq.* In their Complaint, Plaintiffs allege that the Colorado House of Representatives, a constitutional body sitting in the First General Session of the 74th General Assembly, and the House Democratic Caucus, and House Republican Caucus (“Defendants”) violated the COML by failing to provide advance public notice of meetings of quorums thereof, and failing to provide public access to, and to make publicly available, minutes of meetings of two or more members of those state public bodies at which public business was discussed. Defendants have not yet responded to the Complaint.

In the interest of an amicable resolution of this matter and avoiding the costs of litigation, Plaintiffs and Defendants (“the Parties”) now stipulate and agree that the following Consent Judgment and Decree should enter as the final judgment in this matter.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Consent Judgment and Decree, it is ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of this action and over the Parties for purposes of entering this Consent Judgment and Decree.

2. The terms of this Consent Judgment and Decree are adequate, fair, and reasonable.

3. This Consent Judgment and Decree conforms with the Colorado Rules of Civil Procedure and is not in derogation of the rights or privileges of any person.

4. This Consent Judgment and Decree resolves all claims arising out of the Complaint filed by Plaintiffs and constitutes a complete resolution of all claims that were made by Plaintiffs in relation to any meeting of any of the Defendants prior to the execution of this Consent Judgment and Decree.

5. This Consent Judgment and Decree comprises the full and exclusive agreement of the Parties with respect to the matters discussed herein. No inducements or representations have been offered to compromise this action other than those recited or referenced in this Consent Judgment and Decree.

6. This Consent Judgment and Decree is final and binding upon the

Parties.

7. Pursuant to the Parties' stipulation, the Court hereby Orders as follows:

(A) Until such time as the COML shall be amended, through the taking effect of legislation that materially alters the following statutory provisions (§§ 24-6-402(2)(a), 24-6-402(2)(c), 24-6-402(2)(d)(I), 24-6-402(2)(d)(III), C.R.S.) or such other provisions of law that govern the acts of Defendants as they relate to the claims in this action:

(i) Defendants shall not meet to discuss public business at which a quorum of any State Public Body is expected to be in attendance, or at which formal action may occur, without first providing public notice of that meeting, and thereafter promptly making minutes of said meeting publicly available; and

(ii) Two or more members of the House of Representatives shall not discuss public business through any electronic means (including, without limitation, any instant messaging platform or application), unless written minutes of such meeting are made publicly available upon request. The electronic messages or communications exchanged may constitute the written minutes. Members shall retain such messages or communications and produce them in response to any request under the Colorado Open Records Act.

(B) Within forty-five (45) business days of the entry of this Consent Judgment and Decree, Defendants will tender payment to Plaintiffs' counsel in the amount of \$13,000 in full and complete satisfaction of Plaintiffs' reasonable attorney fees and costs in this action.

8. Jurisdiction of this case is retained by the Court for the purposes of implementing and enforcing this Consent Judgment and Decree. Should the Court be called upon to enforce any alleged violation of the Consent Judgment and Decree, Defendants hereby reserve their right to interpose any and all equitable and legal defenses thereto, including but not limited to attempted judicial supervision of the legislative process. Any individually named Defendant (Julie McCluskie, Monica Duran, and Mike Lynch) may be liable for a proven violation of provision (ii) of paragraph 7 above only if these individually named Defendants do not, within ten (10) business days of the Court's acceptance of this Consent Judgment and Decree, circulate the attached Exhibit A to every member of the House of Representatives' Democratic Caucus and Republican Caucus.

9. The settlement of this dispute does not establish wrongdoing by any party.

10. This Consent Judgment and Decree is not intended to, and does not, vest standing in any third party with respect to the terms hereof. No portion of this Consent Judgment and Decree shall provide any rights to, or be enforceable by, any person or entity other than the Plaintiffs. The Plaintiffs may not assign or otherwise convey any right to enforce any provision of this Consent Judgment and Decree.

11. The settlement discussions and negotiations that resulted in this Consent Judgment and Decree have been undertaken in good faith and for settlement purposes only, and no evidence of negotiations or discussions

underlying this Consent Judgment and Decree shall be offered or received in evidence in any action or proceeding for any purpose. Neither this Consent Judgment and Decree nor any public discussions, public statements or public comments with respect to this Consent Judgment and Decree by any Party or its agents shall be offered or received in evidence in any action or proceeding for any purpose other than in a proceeding arising under this Consent Judgment and Decree.

12. The use of electronic signatures by counsel of record on this Consent Judgment and Decree shall be deemed the legal equivalent of the parties' actual written signatures.

IT IS SO ORDERED on this 12th day of September 2023.

BY THE COURT:



Jill D. Dorancy
Denver District Court Judge

EXHIBIT A TO CONSENT JUDGMENT AND DECREE

MEMORANDUM

DATE FILED: September 1, 2023 9:44 AM
FILING ID: 306A2A433F70F
CASE NUMBER: 2023CV31990

TO: All House Members
Seventy-fourth General Assembly

FROM: Office of the Speaker of the House of Representatives, Rep. Julie McCluskie
Office of the Majority Leader of the House of Representatives, Rep. Monica Duran
Office of the Minority Leader of the House of Representatives, Rep. Mike Lynch

DATE: [TBD]

SUBJECT: Practical conditions to note on settlement of *Epps and Marshall v. Colorado House of Representatives, et al.*

To All Members:

It is hereby declared to be the official policy of the House of Representatives that:

1. As required by §§ 24-6-402(2)(a), (2)(d)(I), and (2)(d)(III), C.R.S., whenever two or more House Members discuss public business through any electronic means of communication (including any instant messaging platform or application), written minutes of such meetings will be made publicly available upon request. The electronic messages or communications exchanged may constitute the written minutes for purposes of this policy. Members shall retain such messages or communications and produce them in response to any request under the Colorado Open Records Act.
2. Members shall not set an automatic delete function on any electronic communications platform or application used to transmit electronic messages between the Members that discuss public business.

This policy is effective until the effective date of the legislation enacted by the General Assembly that materially alters §§ 24-6-402(2)(a), 24-6-402(2)(c), 24-6-402(2)(d)(I), 24-6-402(2)(d)(III), C.R.S. of the Colorado Open Meetings Law or any other provision of law that governs the acts of Defendants as they relate to the claims in this action.