DISTRICT COURT, COUNTY OF ELBERT, COLORADO 751 Ute Street, P.O. Box 232 Kiowa, Colorado 80117	DATE FILED: October 18, 2023 2:17 PM CASE NUMBER: 2023CV30058
Plaintiff: Matt Roane **v.** **Defendant:** Elizabeth School District	**▲COURT USE ONLY▲** **Case Number:** 2023CV30058 **Division:** 1

ORDER RE: MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO C.R.C.P. 12(b)(1)

THIS MATTER comes before the Court on Defendant Elizabeth School District's ("Defendant") *Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to C.R.C.P. 12(b)(1)* filed on July 18, 2023. Plaintiff Matt Roane ("Plaintiff") filed his *Response Opposing Defendant's Motion to Dismiss* on August 10, 2023. Defendant filed its *Reply in Support of Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to C.R.C.P. 12b)(1)* on August 16, 2023. The Court has reviewed all of the briefing, the file in its entirety, and the pertinent law. Being fully advised, the Court finds, concludes, and orders as follows:

STATEMENT OF THE CASE

This case arises out of a dispute stemming from a public meeting conducted on April 10, 2023 by the Elizabeth School District Board of Education. Plaintiff filed his Complaint on June 26, 2023 alleging one count of a Violation of the Colorado Open Meetings Law ("COML") – Unlawful Executive Session Announcement.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which relief can be granted, filed either in response to a pleading or as a separate motion, tests the formal sufficiency of a complaint. *See* COLO. R. CIV. P. 12(b)(5) (2017); *Hemman Mgmt. Servs. v. Mediacell, Inc.*, 176 P.3d 856, 858 (Colo. App. 2007); *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911 (Colo. 1996). In reviewing a motion to dismiss, the trial court may consider only the facts alleged in the pleadings, documents

attached as exhibits or incorporated by reference, and matters proper for judicial notice. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). In so doing, the reviewing court must assume the material factual allegations made by the plaintiff in the complaint are true. *Am. Family Mut. Ins. Co. v. Am. Nat'l Prop. & Cas. Co.*, 370 P.3d 319, 325 (Colo. App. 2015). Because motions to dismiss for failure to state a claim are viewed with disfavor, the court may dismiss a complaint only if the factual allegations in the complaint, taken as true and viewed in the light most favorable to the plaintiff, present no plausible grounds for relief. *Begley v. Ireson*, 399 P.3d 777, 779 (Colo. App. 2017) (citing *Bly v. Story*, 241 P3d 529, 533 (Colo. 2010); *Warne v. Hall*, 373 P.3d 588, 593, 595 (Colo. 2016)).

In *Warne*, the Colorado Supreme Court adopted the "plausibility standard" articulated by the United States Supreme Court as a statement of the pleading requirements under C.R.C.P. 8. *Warne*, 373 P.3d at 595. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Under this standard, the factual allegations within the complaint must be sufficient to raise a right to relief "above the speculative level," and provide "plausible grounds" for relief. *Warne*, 373 P.3d at 591 (citations omitted). This plausibility standard is predicated on two working principles: first, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions"; and second, "only a complaint that states a plausible claim for relief will survive a motion to dismiss." *Id.* at 591 (internal quotes and citations omitted).

ANALYSIS

Defendant asserts Plaintiff has not attempted to establish that he suffered any actual injury apart from claiming he was prevented from witnessing the Board conduct public business openly in conformity with the statue. Defendant claims Plaintiff resides in Pagosa Springs, 300 miles from Elbert County and has no connection to the Elizabeth School District, did not attend the board meeting, had no interest in the topic or contents of the executive session and never asked Defendant to produce the recording.

In order for a court to have jurisdiction over a dispute, the plaintiff must have standing to bring the case. *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004). Colorado courts apply the two-prong test for standing articulated in *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d 535, 539 (1977). To satisfy that test, the plaintiff must establish that (1) he or she suffered an injury

in fact and (2) the injury was to a legally protected interest. *Hickenlooper v. Freedom from Religion Found., Inc.*, 2014 CO 77, ¶ 8, 338 P.3d 1002 (citing *Wimberly*, 194 Colo. at 168, 570 P.2d at 539). This test for standing in Colorado "has traditionally been relatively easy to satisfy." *Ainscough*, 90 P.3d at 856; *see also Freedom from Religion Found.*, ¶ 17 ("Colorado courts provide for broad individual standing.").

The COML C.R.S. 24-6-402 (9)(a) and (b) states that:

> (a) Any person denied or threatened with denial of any of the rights that are conferred on the public by this part 4 has suffered an injury in fact and, therefore, has standing to challenge the violation of this part 4.
> (b) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees. In the event the court does not find a violation of this section, it shall award costs and reasonable attorney fees to the prevailing party if the court finds that the action was frivolous, vexatious, or groundless.

Relevant here, the COML specifically states that any person denied "any of the rights that are conferred on the public" under the COML "has suffered an injury in fact and, therefore, has standing to challenge the violation." *Knapp v. Academy District 20*, 2020 WL 12584130, at *9 (D.Colo., 2020); § 24-6-402(9)(a). The Colorado Court of Appeals has held that the COML "creates a legally protected interest on behalf of Colorado citizens in having public bodies conduct public business openly in conformity with its provisions." *Weisfield v. City of Arvada*, 361 P.3d 1069, 1073 (Colo. App. 2015). *see also* § 24-6-402(9)(b), C.R.S. 2017 (Courts "have jurisdiction to issue injunctions to enforce [the OML] upon application by any citizen of this state.").

Considering the COML, this Court is guided by well-established principles of statutory construction and first construes the statute as a whole to give "consistent, harmonious and sensible effect to all its parts." *People v. Luther*, 58 P.3d 1013, 1015 (Colo.2002) (internal quotation marks omitted). If an interpretation of the statute would produce an absurd result, that interpretation is not favored. *Id*. A court must interpret a statute in a manner that gives effect to the General Assembly's intent. *Carlson v. Ferris*, 85 P.3d 504, 508 (Colo.2003). To do this the court begins with the language of the statute, giving words their plain and ordinary meaning. *Id*. If the statute is unambiguous, the court looks no further. *Luther*, 58 P.3d at 1015. If the language is ambiguous, however, the court looks to "legislative history, prior law, the consequences of a given

construction, and the goal of the statutory scheme to ascertain the correct meaning of a statute." *Id*.

The COML is intended to "afford the public access to a broad range of meetings at which public business is considered." *Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 652 (1978). The Supreme Court of Colorado has sought to honor this aim by interpreting the COML broadly "to further the legislative intent that citizens be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved." *Board of Cnty. Com'rs, Costilla Cnty. v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo., 2004); *Cole v. State*, 673 P.2d 345, 347 (Colo.1983). "Public" is defined as "[o]f, relating to, or involving an entire community, state, or country." *Public*, Black's Law Dictionary (11th ed. 2019) Plaintiff is a citizen of Colorado – as specifically contemplated under the statute – thus, he has a legally protected interest in having public bodies conduct public business openly in conformity with the provisions of the statute.[1] Accordingly, the Court DENIES the Motion to Dismiss.

CONCLUSION

WHEREFORE it is hereby **ORDERED** Defendant's *Motion to Dismiss* filed on July 18, 2023 is hereby **DENIED**.

SO ORDERED on October 18, 2023.

BY THE COURT:

Theresa M. Slade
District Court Judge

[1] When discussing public business, local public bodies may only meet in closed, executive sessions if they comply with the COML's requirements for holding an executive session, including giving full and timely notice and identifying the topic to be discussed, which must be a permissible topic enumerated by the OML. See § 24-6-402(4). Also, under the OML, local public bodies may hold executive sessions to discuss "personnel matters" unless the "employee" subject to the session has requested an open meeting. § 24-6-402(4)(f)(I).