<table>
<tr><td>DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO
1437 Bannock Street
Denver, Colorado 80202</td><td>DATE FILED
July 17, 2026 3:06 PM
CASE NUMBER: 2026CV31311

▲ COURT USE ONLY ▲</td></tr>
<tr><td>Plaintiff:

DERRICK BLANTON,

v.

Defendants:
LINDSEY DAUGHERTY, in her official capacities as Colorado State Senator and Co-Chair of the Colorado Opportunity Caucus, SEAN CAMACHO, in his official capacities as Colorado State Representative and Co-Chair of the Colorado Opportunity Caucus, THE COLORADO OPPORTUNITY CAUCUS, a public entity.</td><td>Case Number: 26CV31311

Courtroom: 424</td></tr>
<tr><td colspan="2">ORDER ON DEFENDANT THE COLORADO OPPORTUNITY CAUCUS' SPECIAL MOTION TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT AND APPLICATION FOR AN ORDER TO SHOW CAUSE WITH EXPEDITED SETTING UNDER C.R.S. § 24-72-204(5) PURSUANT TO C.R.S. § 13-20-1101(3)</td></tr>
</table>

THIS MATTER comes before the Court on Defendant Colorado Opportunity Caucus' Special Motion to Dismiss Plaintiff's Verified Complaint and Application for an Order to Show Cause with Expedited Setting Under C.R.S. § 24-72-204(5) Pursuant to C.R.S. § 13-20-1101(3) filed June 1, 2026. The Court held a hearing on the Special Motion on July 15, 2026. The Court, having reviewed the parties' briefs, affidavit, argument, and applicable law, FINDS and ORDERS as follows:

BACKGROUND

Plaintiff Derrick Blanton filed his Verified Complaint and Application for an Order to Show Cause with Expedited Briefing Under C.R.S. 24-72-204(5) on April 10, 2026. In his Verified Complaint, Plaintiff seeks records related to a policy summit/retreat held by the Colorado Opportunity Caucus ("COC") at the Sonnenalp hotel in Vail, Colorado in 2025. Plaintiff alleges that COC is a public entity and that Defendants Daughtery and Camacho, who are both Colorado state legislators, are co-chairs of the COC. Plaintiff made a request for records under the Colorado Open Records Act ("CORA") on Defendants at the Office of Legislative Legal Services ("OLLS"). OLLS responded that Daughtery and Camacho possessed no responsive documents[1] and that the COC, "is not an entity created within the Colorado General Assembly, but rather it is a separate 501(c)(4) nonprofit" such that "the Colorado Open Records Act is not the mechanism to get those records." Compl. Ex. A.

On May 4, 2026, COC moved to dismiss the Verified Complaint under C.R.C.P. 12(b)(5). The Court denied the motion, finding that it could not determine without additional facts whether COC could be deemed a public entity subject to CORA.

On June 1, 2026, while the Rule 12 motion was pending, COC filed the instant Special Motion, asking the Court to apply the procedure set forth in section 13-20-1101, C.R.S. (Colorado's "Anti-SLAPP statute") and dismiss Plaintiff's Verified Complaint because it arises out of COC's engagement in protected First Amended speech or conduct and because Plaintiff is unable to establish that there is a reasonable likelihood that he will prevail on his claims. *See* § 13-

[1] Subsequently the legislators supplemented their responses with limited documents. Compl. Ex. B.

20-1101(3)(a). More specifically, COC alleges that the records sought relate to COC's First Amendment right of freedom of association and because COC is not a public entity, Plaintiff cannot demonstrate that CORA applies.

After briefing, a hearing was held on July 15, 2026 pursuant to section 13-20-1101(5). At the hearing, both sides presented argument on the application of the Anti-SLAPP statute, and whether Plaintiff had met his burden to move forward in the case. In support of its Special Motion, COC filed an affidavit of D. Scott Martinez, corporate counsel for COC. Plaintiff did not present affidavits but relied on his Verified Complaint.

APPLICABLE LAW

A "Special Motion to Dismiss" is a unique procedure created by the General Assembly. Ordinarily, C.R.C.P. 12(g) requires that all defenses be consolidated in a single motion. However, the Anti-SLAPP statute allows for a separate motion, provided it is filed withing 63 days after service of the complaint. *See* § 13-20-1101(5).

In considering a Special Motion under section 13-20-1101, the court first considers "whether the motion and supporting affidavit establish a prima facie case that the plaintiff's cause of action falls within the anti-SLAPP statute — that is, whether the claim arises from an act in furtherance of the defendant's right of petition or free speech in connection with a public issue." *Salazar v. Pub. Tr. Inst.*, 522 P.3d 242, 248 (Colo. App. 2022) (citations omitted). Acts in furtherance of a person's right to petition or free speech include, "[a]ny other conduct or communication in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." § 13-20-1101(2)(a)(IV). Part of the purpose of the statute is to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, to protect the rights of persons to file meritorious lawsuits for demonstrable injury." § 13-20-1101(1)(b).

If the first prong is met, the court next considers whether the plaintiff through pleadings and affidavits has established a reasonable likelihood of success on his claims. *Id*. A motion to dismiss under Rule 12(b)(5) and a Special Motion under section 13-20-1101 involve different standards of review. In a 12(b)(5) analysis, the court considers no facts outside the pleadings, takes all assertions in the complaint as true, and the movant bears the burden to show the plaintiff has failed to state a claim as a matter of law. *Denver Post Corp. v. Ritter*, 255 P.3d 1083 (Colo. 2011); *Edge Telecom, Inc. v. Sterling Bank*, 143 P.3d 1155 (Colo. App. 2006).

Under section 13-20-1101, if the first prong is met, the plaintiff bears the burden to show a reasonable likelihood of prevailing on his claim. *Rosenblum v. Budd*, 538 P.3d 354, 362 (Colo. App. 2023). The court "neither simply accept[s] the truth of the allegations nor [does it] make an ultimate determination of their truth. Instead, . . . [the court] . . . assess[es] whether the allegations and defenses are such that it is reasonably likely that a [fact finder] would find for the plaintiff." *Salazar* 522 P.3d at 248. The court does not weigh evidence or assess credibility. *L.S.S. v. S.A.P.*, 523 P.3d 1280, 1290 (Colo. App. 2022).

Matters brought under CORA may be challenged under section 13-20-1101. *See* § 13-10-1101(4)(b).

"Freedom of association is considered to be an element of the broad right to freedom of expression and protects the right of individuals to associate to further their personal beliefs." *State Bd. for Cmty. Colleges & Occupational Educ. v. Olson*, 687 P.2d 429, 439 (Colo. 1984). "The right to associate thus recognizes one's right to join with others to pursue goals independently protected by the First Amendment, such as . . . political change. . . .” *Id*. The First Amendment and the right to freedom of speech encompasses “a wide spectrum of activities, including the right to distribute and sell expressive materials, the right to associate with others, and, most importantly to this case, the right to receive information and ideas.” *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1051 (Colo. 2002), *as modified on denial of reh'g* (Apr. 29, 2002).

"[I]n order to show that [the Colorado Open Records Act] applies, a plaintiff must show that the public entity in question: (1) improperly; (2) withheld; (3) a public record. All three of these prongs must be shown or the Act will not apply." *Wick Commc'ns Co. v. Montrose Cnty. Bd. of Cnty. Comm.*, 81 P.3d 360, 363 (Colo. 2003). When the entity in question is a private entity, whether it is subject to CORA is a fact-intensive inquiry. *Denver Post Corp. v. Stapleton Dev. Corp.*, 19 P.3d 36, 40 (Colo. App. 2000) (finding private non-profit was subject to CORA because it was deemed to be a political subdivision of the state).

The court may consider several factors in determining whether a private entity is subject to CORA: “(1) the level of public funding; (2) whether there had been a commingling of funds; (3) whether the activity was conducted on publicly owned property; (4) whether services contracted for were an integral part of the public agency's chosen decision-making process; (5) whether the private entity was performing a governmental function or a function which the public agency otherwise would perform; (6) the extent of the public agency's involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity was functioning.” *Id*.

ANALYSIS

Because service was waived and made effective on April 13, 2026, the Special Motion was timely filed. Defendant was not obligated by rule or otherwise to combine the Special Motion with its Rule 12 motion.

The first question before the Court is whether Colorado's Anti-SLAPP statute applies. Here, COC is a non-profit corporation organized to provide a "forum for education on complex issues and policies." Martinez Aff. ¶¶ 3, 4. Plaintiff's Verified Complaint seeks records of COC related to a policy summit/retreat held in 2025. Comp. ¶ 1. Among other things, Plaintiff seeks the records to determine who are the legislative members of COC, who attended the summit, and what the attendees saw and heard at the summit. *Id*. In his Complaint, Plaintiff maintains that the attendees of the summit participated in educational programs and learned about current legislative topics, including health care, education, and artificial intelligence. *Id*. ¶ 19(c). In essence, Plaintiff wants to know who is associating with and talking to legislators about issues of public interest. Indeed, if the summit did not relate to legislators and others getting together and meeting about issues of public interest, Plaintiff would not be seeking the records he requests.

In his response, Plaintiff does not contest that his Verified Complaint arises out of COC's First Amendment rights in connection with public issues or issues of public interest. Instead, he argues that section 13-20-1101 was intended to apply to common law claims such as defamation, not CORA claims. Plaintiff cites no authority supporting his interpretation of section 13-20-1101. The Court finds that by its plain language, section 13-20-1101 applies to CORA claims and Defendant COC has met its burden to meet the first prong of its motion: the Anti-SLAPP statute applies to this case because the Verified Complaint arises out of COC's actions in furtherance of

COC's rights to associate, petition, and/or free speech under the First Amendment in connection with public issues.

Regarding the second prong, the Court finds that Plaintiff has not demonstrated by his pleadings or affidavit that he has a reasonable likelihood of prevailing on his claims, namely because Plaintiff has failed to show a reasonable likelihood that COC is subject to CORA. Plaintiff argues that because he prevailed on the Rule 12 motion to dismiss, he has met his burden on the instant motion. A Rule 12 motion and a motion under section 13-20-1101 involve different standards of review. Unlike a Rule 12(b)(5) motion where movant bears the burden, for the instant motion, Plaintiff bears the burden on the second prong. In order for Plaintiff to prevail, he must demonstrate that there are facts to support a finding that COC, a private non-profit, is subject to CORA. The plain language of section 24-72-201, C.R.S., the Colorado Open Records Act, does not on its face apply to private non-profits such as COC. Only if the nine *Denver Post* factors are met could the Court find COC is essentially a public entity such that its records are public records under CORA.

Plaintiff relies solely on the Verified Complaint for factual support of his claims. There is no dispute that COC is a private non-profit corporation. The key factual allegation on which Plaintiff rests to assert COC is a public entity is that Defendants Camacho and Daughtery in response to ethics inquiries asserted that COC is "part of the state government." Compl. ¶ 18. Apparently, these statements were made in support of arguments that the legislators' attorney fees should be paid by the legislature in responding to an ethics complaint made by a different non-profit against the legislators. *Id.* ¶ 19(a)-(d), Exs. E and F. At the hearing on the Special Motion, Plaintiff argued that even though these statements were made by individuals in a different context, they are relevant to the Court's inquiry and that the admission is "critical." But Plaintiff also conceded that the statements are not the statements of COC nor are they formal admissions by COC. The Court finds that the fact that Defendants Camacho and Daughtery asserted that COC is part of the government in an ethics inquiry is insufficient evidence for this Court to find COC is essentially a public entity and thus subject to CORA under the *Denver Post* analysis.

Plaintiff's Verified Complaint does not allege facts that address the *Denver Post* factors. For example, Plaintiff's Verified Complaint contains factual assertions regarding money paid by lobbyists to attend and/or speak at the COC summit, or paid to Defendant Camacho by COC. However, assuming these facts are true, Plaintiff does not explain how these allegations support a finding that COC is acting as a public entity subject to CORA. More specifically, the facts do not show public funding, commingling of funds, or that the state has a substantial financial interest in COC.

To rebut Plaintiff's claims, COC presented an affidavit of D. Scott Martinez negating the *Denver Post* factors. Mr. Martinez asserts that COC was incorporated as a non-profit corporation, COC was not incorporated by ay state agency or institution, COC is not controlled by any government institution of agency, COC does not receive funding from the state, COC does not commingle funds with any state agency, no state agency has any financial interest in COC, COC does not perform public functions, the COC conducts business at non-publicly-owned property,[2] COC does not contract with the state to provide public services, and COC has not been delegated authority by the state to provide any public service. Martinez Aff. ¶¶ 3, 6-13. Excepting the

[2] It is also undisputed that the summit/retreat at issue took place at the Sonnenalp hotel in Vail, which no party contends is publicly owned property.

statement by the legislator Defendants that COC is part of the state government, Plaintiff presented no evidence via pleading nor affidavit to address any of Mr. Martinez's assertions. Plaintiff argued instead that the Court should question the credibility of Mr. Martinez given his role as counsel for COC; however, at this stage the Court is not to assess credibility of affiants.

In sum, the Court finds Plaintiff has failed to demonstrate a reasonable likelihood that he will prevail on his CORA claims because he has not shown even minimal evidence that COC is essentially a public entity that is subject to CORA. Plaintiff has not met his burden on the second prong of the Anti-SLAPP analysis.

CONCLUSION

For the foregoing reasons, Colorado Opportunity Caucus' Special Motion to Dismiss Plaintiff's Verified Complaint and Application for an Order to Show Cause with Expedited Setting Under C.R.S. § 24-72-204(5) Pursuant to C.R.S. § 13-20-1101(3) filed June 1, 2026 is GRANTED. Plaintiff's claims against the Colorado Opportunity Caucus are DISMISSED.

DATED July 17, 2026

BY THE COURT:

Ericka F H Englert

Hon. Ericka F. H. Englert
District Court Judge