COLORADO SUPREME COURT 2 East 14th Avenue, 4th Floor Denver, Colorado 80203 Name of Trial Court: Boulder County District Court Case No. 2026CV30894 Honorable Judge Dea M. Lindsey	
Plaintiffs-Petitioners: EVAN HARVIE, KATHARINE ROSENTHAL, and THERESA SCHULTZ, v. Defendant-Respondent: BOULDER VALLEY SCHOOL DISTRICT BOARD OF EDUCATION.	**▲COURT USE ONLY▲**
Attorneys for Plaintiffs-Petitioners: Eric Maxfield, #29485 357 S. McCaslin Blvd., Suite 200 Louisville, Colorado 80027 (303) 502-7849 Eric@ericmaxfieldlaw.com	Case No:
IN RE: *HARVIE, et al, v. BOULDER VALLEY SCHOOL DISTRICT BOARD OF EDUCATION* **PETITION FOR RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21**	

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this Petition complies with C.A.R. 28 and 32. It contains 4,877 words. I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1 and C.A.R. 32.

/s/ Eric Maxfield
Eric Maxfield, Attorney for Plaintiffs-Petitioners

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Ex. II Deann Bucher

Ex. Z Jorge Chávez

Ex. HH Alex Medler

Ex. Y Ana Temu Otting

Ex. JJ Lalenia Quinlan Aweida

Ex. E Nicole Rajpal

Ex. L Jason Unger

Declarations of Boulder Valley School District Staff

Ex. K Superintendent Rob Anderson and

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Appendix 1 Order complained of– Order on Emergency Motion for Preliminary Injunction (10/28/26)

Appendix 2 Transcript of 10/8/26 Preliminary Injunction hearing

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Appendix 4 First Amended Verified Open Meetings Law Complaint

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Appendix 10 *Blackford v. School Board of Orange County*, 375 So. 2d 578, 580 (Fla. Dist. Ct. App. 1979)

Petitioners-Plaintiffs Evan Harvie, Katharine Rosenthal, and Theresa Schultz, through Eric Maxfield Law, LLC, respectfully Petition this Court under C.A.R. 21 to issue an order to show cause and grant relief from the district court's denial of their preliminary-injunction motion. In the challenged 10/28/26 Order (Appendix 1), the court found that, so long as board members neither finalize their positions at the meetings nor discuss the meetings later, a series of coordinated private gatherings involving no more than two board members at a time complied with the Colorado Open Meetings Law (COML) absent any independent assessment of whether that serial process moved part of policy formation behind closed doors in violation of §§ 24-6-401, 402, C.R.S. In support thereof, Petitioners state:

IDENTITY OF PARTIES

Evan Harvie, Katharine Rosenthal, and Theresa Schultz, are the Plaintiffs in the underlying matter. Plaintiffs are represented in this action by Eric Maxfield of Eric Maxfield Law, 357 S. McCaslin Blvd. Suite 200, Louisville, CO 80027. Proposed Respondent, Boulder Valley School (BVSD) District Board of Education is the Defendant in the underlying matter (hereinafter referred to as

"Respondent"). BVSD's Board of Education is represented by Elliott Hood and Zoe B. Verhoeven of Caplan & Ernest, LLC.

SUMMARY

Petitioners brought the underlying claim under Colorado's Open Meetings Law ("COML"), §§ 24-6-401 to -402, challenging the process through which the Boulder Valley School District Board of Education developed and adopted the Resilient Schools Proposal (RSP), its school closure and consolidation plan, and sought a preliminary injunction preventing implementation while the court adjudicated those claims. Appendix 3, 4 (Emergency Motion for Preliminary Injunction and First Amended Verified Open Meetings Law Complaint). This petition concerns the district court's ruling that a coordinated series of private meetings (labeled "pre-meetings" by BVSD's counsel, Tr. 104:17-23) between district administrators and every Board member held to discuss and answer questions about the RSP complied with COML.

Section 24-6-402(2)(b), C.R.S. requires that meetings involving three or more members of a local public body—or a quorum, whichever is fewer—to be open to the public when public business is discussed or formal action may be taken. Section 24-6-401 declares that the formation of public policy is public

business and may not be conducted in secret. The question presented here is whether satisfying §24-6-402(2)(b)'s numerical threshold at serial meetings between the superintendent and paired or individual board members shields those meetings from review of whether that process collectively moved part of the Board's policy-forming process outside public view, where no finalized decisions were made at the serial meetings[1] and the members refrain from subsequently discussing the meetings.[2]

In August 2026, before publicly releasing the Resilient Schools Proposal ("RSP"), Superintendent Rob Anderson and Assistant Superintendent of Operations Rob Price met with all seven board members through a series of three paired (collectively involving a six members) and one individual meeting to discuss the RSP. Price Decl. at ¶35; Anderson Decl. ¶13. Staff presented and discussed the Proposal including answering member questions. Price Decl. ¶35; Tr.

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[1] The court repeatedly emphasized the absence of decisions. In distinguishing Marshall, it stated that "importantly, unlike Marshall, no policy decision was made." Likewise, in distinguishing Blackford, it stressed: "[i]mportantly, no decisions about the Plan were made in any of the meetings held between the Board and BVSD staff." Order at 14.

[2] The trial court also relied on the absence of an intent to violate COML, but intent is legally irrelevant to the inquiry. See *O'Connell v. Woodland Park School District*, 2025 CO 55, ¶51 ("COML is concerned with the fact of the violation, not with whether an alleged violation was intentional or unintentional.")

79:21–81:22. Those exchanges included explanations of the reasoning underlying the regional options, school geography, walking distances, open-enrollment policies, transportation, and support for affected families. Tr. 40:23–41:2, 48:4–11, 79:21–81:22. At his meeting, Board member Alex Medler asked Anderson and Price to explain the proposed regional options and the reasoning underlying each. Tr. 40:23–41:2. Medler testified that he was "developing an opinion" about the proposal during his meeting. Tr. 41:10–14.

The district court nevertheless found that the serial meetings did not violate COML. In so ruling, the court relied on attendance of only one or two Board members at each session without substantively assessing the dispositive issue of whether the coordinated series moved part of the Board's policy formation process outside public view in violation of §24-6-401's ban on formulating public policy in private. Order at 13–14.

Accordingly, Petitioners respectfully request that this Court issue an order to show cause whether the district court erred by finding compliance with COML without ever evaluating whether the coordinated series of meetings constituted part of the policy-formulation function through which the Board considered the RSP in violation of § 24-6-401. Boards seeking to comply with COML, including this

Board, need guidance on whether and how serial private meetings may be used without moving part of the policy-forming process outside public view. This Court should exercise original jurisdiction here because, absent relief, Petitioners and similarly situated families face decisions profoundly affecting their children and communities without the public access to the policy-formation process guaranteed by COML, and because guidance on the use of serial meetings is a matter of statewide importance to boards seeking to comply with the law while ensuring that their members have the information they need to move forward with pending proposals.

IDENTITY OF THE COURT AND THE PROCEEDING BELOW

This civil action is pending in the Boulder County District Court, the Twentieth Judicial District, Case Number 2026CV030894, Division 2. The subject order and ruling were issued by the Honorable Dea M. Lindsey, District Judge of the Boulder County 1777 Sixth Street Boulder, Colorado 80302 on October 28, 2026. There are no related civil actions or proceedings.

THE ORDER AND RULING COMPLAINED OF AND THE RELIEF SOUGHT

The Parties appeared for a preliminary injunction hearing on October 8, 2026. In denying relief, the court found that the board members had not reached

decisions at their private serial meetings, and that they did not discuss those meetings. In that context, the court found that the paired and individual meetings complied with COML because no more than two Board members attended any session as mandated in § 24-6-402(2)(b). Order at 13–14. It therefore concluded that Plaintiffs had not demonstrated a reasonable probability of success on the merits. Id. at 14.

NO OTHER ADEQUATE REMEDY IS AVAILABLE

The exercise of original jurisdiction is within the sound discretion of this Honorable Court. C.A.R. 21(a)(1); *Wesp v. Everson*, 33 P.3d 191, 194 (Colo. 2001). This Court has exercised that jurisdiction when an appellate remedy would be inadequate or a party would otherwise suffer irreparable harm. *People v. Silva-Jaquez*, 2025 CO 14, ¶ 7. Review is warranted here because implementation threatens harm that ordinary appellate review cannot adequately remedy.

Here, implementation of the challenged Board action has already begun. As discussed in Petitioners' verified contempt motion, BVSD excluded the affected elementary schools from its enrollment showcase and removed Flatirons from its school-finder map, directing searches within its attendance area to Whittier instead. Verified Motion for Contempt Citation ¶¶5, 8. The motion further explains that

precluding enrollment and forcing families to plan around other schools independently threatens the affected schools' continued viability. *Id.* ¶6.

Absent this Court's intervention, families will make enrollment choices implementing the challenged closures during the November 1–December 18, 2026 lottery window, dispersing the affected schools' enrollment to other schools before ordinary appellate review can occur. *See id.* ¶7 (reproducing BVSD's enrollment notice); Emergency Motion for Preliminary Injunction at 29 (quoting Rosenthal Affidavit, Ex. 16). A later favorable ruling could not reliably restore that enrollment or reconstitute those school communities because, as Rosenthal explained, families' enrollment decisions may be difficult or impossible to reverse, and the resulting disruption cannot be fully undone even if the closures are set aside. Emergency Motion for Preliminary Injunction at 29. Ordinary appellate review therefore cannot adequately remedy the threatened harm.

THIS CASE PRESENTS AN UNRESOLVED QUESTION OF STATEWIDE PUBLIC IMPORTANCE

This Court has exercised original jurisdiction to review unresolved questions of statutory interpretation of significant public importance. *Wesp,* 33 P.3d at 194; *Ronquillo v. EcoClean Home Services, Inc.*, 2021 CO 82, ¶¶10–11. Review is warranted here because the petition presents an unresolved question concerning

harmonizing §§24-6-401 and 24-6-402(2)(b) as they apply to the use of coordinated serial private meetings, a practice used across Colorado to conduct substantive discussions outside public view.

This case asks whether staff may conduct substantive discussions of a pending proposal with a local governing body through coordinated private meetings involving only one or two members at a time, without examination of whether that series of meetings collectively moved part of policy formation outside public view. Section 24-6-402(2)(b) permits conversations involving fewer than three local officials, unless they constitute a quorum. But whether that numerical provision insulates coordinated, private, serial meetings from scrutiny under §24-6-401's prohibition against secret policy formation remains unresolved by this Court.

The question has immediate significance throughout Colorado. Segmented meetings are not unique to BVSD; they have been used across jurisdictions and expressly recommended in official training. For example, Englewood's *2019 City Council Orientation* lists "City staff meeting with Councilmembers two-by-two to discuss (but not poll) an upcoming topic" among meetings that do not violate the Sunshine Law. City of Englewood, *2019 City Council Orientation*, at Slide 36, "Colorado Sunshine/Open Meetings Law," subsection "What are examples of

meetings that are not in violation?" (official training materials). Thus, some Colorado officials are already being taught that staff may discuss upcoming public business with members in private two-by-two meetings—the very format used here to present and discuss a major school-closure proposal outside public view.

Another example is Boulder Councilmember Tina Marquis description of council business conducted through successive private meetings: "Currently, the city council discusses these confidential issues by meeting in 5 separate meetings with 1-2 council members, our lawyer and other staff." Boulder Progressives, *Vote YES on 2D*, statement attributed to Councilmember Marquis (published statement). Although this concerned whether to authorize executive sessions, the statement documents the same structural practice of dividing a governing body's participation into successive small meetings.

At a February 22, 2022 Boulder City Council study session, Teresa Taylor Tate advised: "Council members are permitted to meet two by two and that doesn't trigger the Colorado open meetings law." City of Boulder, *City Council Study Session Transcript*, 2:24:31.830–2:24:50.730 (official transcript). Colorado Springs likewise used a two-by-two format for consultations with counsel in place

of a planned executive session. Billie Stanton Anleu, *Open meetings advocate says Colorado Springs council broke state law*, The Gazette (June 14, 2015) (article).

Finally, *Marshall* produced a judicial finding that serial one-on-one discussions concerning a superintendent's employment violated COML. *Marshall v. Douglas County Board of Education*, No. 2022CV30071, Findings of Fact, Conclusions of Law, and Orders at 3–5 (Douglas Cnty. Dist. Ct. June 16, 2023) (order). The relaying of opinions and agreement across meetings distinguish *Marshall's* facts. But the district court's declination in this case to endorse *Marshall's* reasoning, Order at 14, underscores the need for guidance from this Court.

These examples establish that the practice of using serial, private meetings for the purpose of holding discussions on substantive issues outside the public eye—and advice approving it—extends beyond this dispute. Beyond these examples, it is likely that serial meetings are being used in contexts where the public never learns of its use. In this case, for example, Plaintiffs learned of the use of private "pre-meetings" during the course of the litigation. *See e.g.* Anderson Decl. ¶13; Price Decl. ¶35. Without this litigation, the public would have lacked the account now before the Court regarding the series of "pre-meetings" where

Board members privately received and explored the RSP before its public release. Because of the repeated use of the serial meeting format, public officials and their counsel need to know when the use of serial private meetings turns permissible individual contacts into private policy formulation in violation of section 24-6-401.

Another problem set up by the court's decision is the scenario (not present here) where a majority, but not the full Board participates. This case opens the door to coordinated sessions with a selected majority thought likely to support a proposal while excluding anticipated dissenters. The selected members would receive staff's explanations and explore the proposal in private before opposing colleagues or the public could hear those exchanges. *Blackford* held that excluding one Board member from many of the serial discussions did not alter its conclusion that the coordinated meetings violated the open-meetings law. *Blackford v. School Board of Orange County*, 375 So. 2d 578, 580, n.1 (Fla. Dist. Ct. App. 1979). The ruling thus opens the door to manipulation of deliberation through participant selection and scheduling.

This Court should exercise original jurisdiction to clarify whether coordinated serial meetings held under § 24-6-402(2)(b), may escape scrutiny

under § 24-6-401's prohibition of formulation of public policy in secret merely because members do not reach a decision at the meeting or subsequently discuss them. Without that guidance, public officials taking affirmative steps to follow the law as they understand it (i.e. by keeping the serial meetings under the numerical thresholds established in § 24-6-402(2)) may find themselves involved in law suits over the validity of their decisions under §§ 24-6-401 and 24-6-402(8), disrupting the orderly development of public policy. Thus, this Court should exercise original jurisdiction here to clarify when the use of serial meetings can constitute policy formation outside the public view.

ISSUE PRESENTED

Did the trial court err when it found that coordinated two-by-two or individual board member meetings with staff which complied with § 24-6-402(2)(b)'s numerical threshold complied with COML absent any substantive review of whether those serial meetings moved part of the Board's policy-forming process outside public view, contrary to § 24-6-401.

Facts Necessary to Understand The Legal Issue

The following facts are necessary to understand the issue:

- The Boulder Valley School District (BVSD) Board of Education has seven members. In early August 2026, Superintendent Anderson and Assistant Superintendent of Operations Price met privately with every member through three paired meetings and one individual meeting. Anderson Decl. ¶13.
- The pairs were Rajpal and Bucher, Medler and Chávez, and Unger and Quinlan Aweida. Board member Ana Temu Otting met individually with Price and Anderson. Rajpal Decl. ¶20; Bucher Decl. ¶6; Medler Decl. ¶15; Chávez Decl. ¶15; Unger Decl. ¶16; Quinlan Aweida Decl. ¶15; Otting Decl. ¶6.
- At the "pre-meetings," Anderson and Price presented and discussed the Resilient Schools Proposal ("RSP") with Board members and fielded their questions before its August 25 public presentation. Anderson Decl. ¶13; Price Decl. ¶35 (discussion of the proposal was a purpose of the meetings); Otting Decl. ¶6 (acknowledging that staff presented the proposal, "which we discussed"); Tr. 40:8–12, 17–22 (Medler confirming discussion and questioning about the proposal).

- Although the declarations described the proposal as a "draft," *see e.g.* Anderson Decl. ¶13; Price Decl. ¶35, Anderson testified that while he and Price sought feedback regarding how the information would be communicated, "the proposal itself was … in a place where it was ready to go forward." Tr. 96:13–18.
- During his paired meeting, Medler asked Anderson and Price to explain the proposed regional options and "the thinking that had gone into each of the different regional options." Tr. 40:23–41:2.
- Other questions asked at the serial meetings concerned school geography, walking distances, open-enrollment policies and transportation issues. Tr. 48:4–11, 79:21–80:3, 17–22.
- Medler acknowledged participating in discussion and "developing an opinion about the proposal" during his meeting.[3] Tr. 41:10–14.

[3] In closing, Defendant's counsel dismissed this testimony arguing that "thinking about public policy is not forming public policy. You form public policy in meetings where you vote." Tr. 105:2–4. That articulation of the law ignores COML's protection of public access to the deliberative process through which public policy is formed, not just the voting process. Petitioners do not challenge Medler's private thoughts, they challenge the coordinated private discussions through which he acknowledged developing his opinion about the proposal. Tr. 41:10–14.

- All six members attending paired sessions declared that they did not engage directly with their paired colleague about the proposal or presentation or disclose how they would vote. Their declarations also acknowledged that both members asked staff questions during those sessions. Rajpal Decl. ¶20; Bucher Decl. ¶6; Medler Decl. ¶15; Chávez Decl. ¶15; Unger Decl. ¶16; Quinlan Aweida Decl. ¶15.
- The Board adopted the RSP at a public meeting on September 22, 2026, by a 5–2 vote. Order at 8.
- Following the October 8, 2026 preliminary-injunction hearing, the district court found that the private meetings complied with COML, emphasizing attendance of no more than two members at each session and finding that no decisions were made and that board members did not discuss their sessions with others. Order at 13–14.
- In distinguishing *Marshall*, the court stated: "There was no evidence that the Board then had other discussions with each other about what took place in those other meetings, and importantly, unlike Marshall, no policy decision was made." Order at 14.

- In distinguishing *Blackford v. School Board of Orange County*, 375 So. 2d 578, 580 (Fla. Dist. Ct. App. 1979). (Florida Appellate Court finds that orchestrated serial meetings violated that state's open meetings law requiring policy to be formulated in open, public meetings) the court again emphasized the absence of decisions and that members did not discuss the segmented sessions. Order at 14.
- The court denied the preliminary injunction on October 28, 2026, concluding that Plaintiffs had not demonstrated a reasonable probability of success on the merits. Order at 14–15.

Here, despite the fact that the Board's own case demonstrates that substantive discussion regarding the merits of the RSP occurred during the serial meetings and one board member's express acknowledgment that he began developing an opinion about the RSP in real time during his meeting, the court declined to assess whether the use of the serial meetings moved part of the Board's policy-forming process behind closed doors. Order at 13–14.

I.

ARGUMENT AND POINTS OF AUTHORITY

The District Court Erred[4] When, After Ascertaining that the Serial Meetings Involved Sub-threshold Numbers of Board Members and that no Decisions were Finalized at the Meetings, it Declined to Review Whether the Facts Demonstrated that Part of the Policy Formation Process Occurred in Secret in Violation of § 24-6-402(2)(b).

A.

A coordinated Board-wide briefing split into serial meetings to comply with § 24-6-402(2)(b)'s numerical threshold differs from independent conversations between two members.

In the challenged Order, the trial court held that serial, private, two-by-two discussions between district administrators and school Board members about the RSP prior to public release did not violate §24-6-401's prohibition against secret policy formation without undertaking an independent review of whether policy formation occurred at those meetings. Order at 13–14.

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[4] The trial court also erred when it held, in the alternative, that "[s]trictly speaking, the Court finds that the public was not entitled under the law to notice of any change in direction of the Long Range Advisory Committee (LRAC's) process for determination of recommendations to the Board, as the Board never adopted the single-school application of the LRAC metrics as an official policy to address declining enrollment." See *Board of County Commissioners of Costilla County v. Costilla County Conservancy District*, 88 P.3d 1188, 1194 (Colo. 2004) (requiring only a meaningful connection between the meeting and the public body's policymaking responsibilities, rather than prior formal adoption of the policy under consideration).

But the evidence established that the meetings did in fact involve substantive discussions that were critical to the policy-making process. At the serial meetings, Superintendent Anderson and Assistant Superintendent of Operations Price presented the still-unreleased Resilient Schools Proposal (RSP) to BVSD's entire seven-member Board in three paired meetings and one individual meeting with Board member Otting, and answered Board member questions. Anderson Decl. ¶13. Discussing the RSP with members was a purpose of the meetings and the meetings were the first time that Board members learned which schools would be affected. Price Decl. ¶35. Rajpal Decl. ¶20; Medler Decl. ¶15; Chávez Decl. ¶15; Unger Decl. ¶16; Quinlan Aweida Decl. ¶15; Decl. ¶6; Otting Decl. ¶6. Questions in the meetings ranged from requesting explanations of "the thinking that had gone into each of the different regional options" Medler, Tr. 40:23–41:2, to the geography of the schools selected, Tr. 48:4–11, Tr. 49:10–12, walk distances, Tr. 79:21–80:3; Tr. 81:17–22, open enrollment policies, Tr. 79:21–80:3; Tr. 81:17–18 and transportation issues. Tr. 81:19–22. At the hearing, the following colloquy occurred with Board member Medler:

Q: Did you participate in discussion in that meeting?

A: Yes.

Q: In that meeting, were you developing an opinion about the proposal?

A: Yes. Tr. 41:10–14.

Because the court never independently reviewed the serial meetings for compliance with § 24-6-401, however, the court never even addressed whether the public was entitled to access to these formative discussions.

B.

§§ 24-6-401 and 24-6-402 must be read together.

Section 24-6-401, C.R.S., declares that "the formation of public policy is public business and may not be conducted in secret." As relevant here, § 24-6-402(2)(b) requires that discussions of public business between three or more local body members must be open to the public. While the openness requirement applies to meetings where formal action takes place, it also applies to meetings where public business is ***discussed,*** regardless of whether decisions are reached. Courts interpreting these two sections must give both provisions harmonious effect where possible. See *McCoy v. People*, 2019 CO 44, ¶38 (requiring statutes to be read as a whole, giving harmonious effect to all provisions).

A ***hypothetical*** functional equivalent of BVSD's serial meetings demonstrates the point. Assume a meeting where district staff calls together a

seven member Board to passively receive a presentation about a soon-to-be-released proposal while board members listen silently together. After the presentation, five noise-cancelling headphones are handed out. The two without the headphones ask questions and discuss the proposal with staff in a conversation not heard by the members wearing the headphones. The headphones then rotated to provide all seven board members with a chance to ask questions of the staff, six in pairs, and one individually. As discussed below, this scenario illustrates how the pre-meetings held here violated COML.

Staff Presentation of the RSP

The first COML issue arising from the hypothetical is the shared presentation, even before any discussion and questioning began. *Board of County Commissioners of Costilla County v. Costilla County Conservancy District*, 88 P.3d 1188, 1194 (Colo. 2004) establishes that COML applies where there is a meaningful connection between the meeting and the public body's policymaking responsibilities. *Id*. Here, that connection is direct since the presentation was designed to inform the Board's consideration of the pending vote. While the format used here (i.e.: four separate meetings where Board members passively received the presentation) was different from the one joint meeting posed in the

hypothetical, these two formats were functionally identical, since Anderson and Price presented the same proposal through a common slide presentation at four private meetings. Anderson Decl. ¶13; Tr. 96:13–18.

As the Wisconsin Supreme Court explained, "[l]istening and exposing itself to facts, arguments and statements constitutes a crucial part of a governmental body's decisionmaking." *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 572, 494 N.W.2d 408 (1993). Under that reasoning, the hypothetical presentation to the assembled Board need not include back-and-forth discussion to warrant public access. Dividing receipt of the presentation into separate sessions did not change its policy-forming function. The dispositive question both in the hypothetical and in the four meetings where the proposal was presented is whether the dissemination of that information was part of the policymaking process subject to COML. Based on the Board's own evidence, the meeting was intended to explain the RSP to board members. Price Decl. ¶35, Anderson Decl. ¶13. This question disappeared, however, when the trial court declined to independently review the dispositive question of whether the pre-meetings complied with § 24-6-402(2)(b).

Question and Answer Sessions with the Board

Defendant's own declarations acknowledge that, during the paired meetings, Board members were exposed both to their paired member's questions and to staff answers to them. Medler Decl. ¶15; Chávez Decl. ¶15; Unger Decl. ¶16; Quinlan Aweida Decl. ¶15; Anderson Decl. ¶13. Just as appellate judges can influence each other through questions directed at the parties, so could the board member questions have impacted their paired member. Thus the lack of direct interaction between board members at the serial pre-meetings does not answer the critical question of whether the segmenting of the sessions allowed part of the Board's deliberative work to be done in private. *Badke, supra,* 173 Wis. 2d 553, 572–74, (1993)("interaction between members . . . is not necessary for . . . a meeting to have taken place.)" Although *Badke* involved a quorum, its reasoning applies here to explain why the absence of direct debate does not prove that the meetings lacked deliberative significance. If those exchanges were part of the policy-making process, the public was entitled to access to them.

The obvious alternative to these serial private meetings was one unified public meeting to present the proposal to the Board and answer member questions. This would have spared Anderson and Price's four repetitions of the

presentation, it would have allowed the Board access to the same information relating to the proposal, while also ensuring public access to the policy-making process as guaranteed in §24-6-401.

C.

The absence of a completed decision did not establish compliance.

In this case, the court relied on the absence of a completed policy decision at the private meetings. Order at 14; s*ee also* n. 1 above. But that finding did not resolve whether those meetings were part of the policy formation process. In *Bagby v. School District No. 1*, 528 P.2d 1299, 1301–02 (Colo. 1974), this Court rejected the contention that private superintendent conferences were permissible because no decisions were made at them, stating "[o]ne has not participated in a public meeting if one witnesses only the final recorded vote." Although *Bagby* involved larger gatherings under predecessor statutes, its reasoning identifies the harm created here of excluding the public from deliberations underlying the eventual vote. Thus, the absence of decisions at the segmented meetings did not resolve Petitioners' claim. The dispositive question was whether those serial meetings brought the admitted substantive discussions within COML—not whether members finalized positions during their meeting.

Blackford addresses the coordinated serial meeting format directly. There, a superintendent conducted successive private discussions with individual members about school redistricting. As here, staff did not share board member comments across meetings, receive directions to change the proposal, or obtain voting commitments. *Blackford v. School Board of Orange County*, 375 So. 2d 578, 580 (Fla. Dist. Ct. App. 1979). Nevertheless, the court found that what occurred was "not so much a willful violation of the Sunshine Law, but rather an attempt not to violate it, yet keep the various options secret." *Id.* Thus, the trial court's distinguishing of *Blackford* thus missed the point. Order at 14. Compliance with the attendance limit at each session did not resolve whether the coordinated meetings circumvented COML's protection of public access to policy formation. Although Florida's statute differs, *Blackford* demonstrates why the court needed to examine what the coordinated series of meetings actually accomplished.

Marshall involved serial discussions, but there, members relayed opinions, and agreement between the sub-threshold meetings. *Marshall v. Douglas County Board of Education*, No. 2022CV30071, Findings of Fact, Conclusions of Law, and Orders at 3–5 (Douglas Cnty. Dist. Ct. June 16, 2023). While those facts distinguish *Marshall*, they do not make exchanged opinions or finalized decisions

prerequisites to examining private policy formation. Further, the district court's express declination to endorse *Marshall*, Order at 14, creates confusion regarding *Marshall's* conclusions, warranting guidance from this Court.

D.

Was revelation of the serial meetings during the course of the litigation a "smoking gun?"

During closing argument, addressing what he called the August, 2026 "pre-meetings," Defendant's counsel argued:

"This is not the smoking gun [that Plaintiffs] think it is. Let's be clear. The Open Meetings Law requires for local public officials that there be three or more present for there to be a meeting that needs to be noticed. There were not three members ever present for those meetings. For that reason alone, those meetings are not a violation of [C]OML." Tr. 104:17–23.

And he was right to the extent that the fact of serial meetings does not, standing alone, establish a COML violation. But neither does keeping attendance below § 24-6-402(2)(b)'s numerical threshold establish compliance.

Counsel's remark glosses over the reason public bodies use serial meetings in the first place, they are trying, in the words of the *Blackford* court, to both comply with the applicable sunshine laws while still keeping their discussions private. *Blackford, supra* at 375 So. 2d at 580. That tension is why examining the sub-meetings for compliance with § 24-6-402, and inquiring whether decisions

were made at those meetings or board members discussed them afterward cannot ensure compliance with COML's fundamental command that the formation of public policy cannot be conducted in secret. Assessment of each installment cannot substitute for review of the serial meeting process as a whole because serial meetings organized to reach a quorum, a majority, or the entire board can perform a collective function that independent two-member conversations cannot achieve.

Here, Defendant's own evidence established that substantive discussions about the RSP -- which was pending a vote by the Board -- took place at the serial meetings. For example, in his meeting Medler asked staff to explain "the thinking that had gone into each of the different regional options [contained in the RSP]" Tr. 40:23–41:2. He acknowledged developing his opinion about the RSP during the meeting. Tr. 41:10–14. Those and other facts mandated review of whether the serial meetings illegally shifted part of the policy formation process outside public view, and neither compliance with §24-6-402(2)(b)'s numerical threshold nor the absence of finalized decisions at the sub-meetings or subsequent exchanges about those meetings could not resolve that question. Construing §24-6-402(2)(b) together with §24-6-401 requires this dispositive inquiry; otherwise, segmentation itself becomes the means of shielding private policy formation from scrutiny.

CONTACT INFORMATION FOR ALL PARTIES

Attorney for Plaintiffs-Petitioners:
Eric Maxfield, #29485
ERIC MAXFIELD LAW, LLC
357 S. McCaslin Blvd. Suite 200
Louisville, Colorado 80027
303-502-7849
Eric@ericmaxfieldlaw.com

Attorneys for Defendant-Respondent:
Elliott V. Hood, #45060
Zoe Verhoeven, #54283
CAPLAN & EARNEST, LLC
3107 Iris Avenue, Suite 100
Boulder, CO 80301
303-443-8010
ehood@celaw.com
zverhoeven@celaw.com

CONCLUSION

Accordingly, Plaintiffs respectfully ask that this Honorable Court grant their Petition and issue a Rule to Show Cause to address the trial court's error in failing to evaluate whether the serial meetings used in this case resulted in moving part of the policy-formulation process to these secret meetings.

Respectfully submitted this 3rd day of November, 2026.

/s/ Eric Maxfield
Eric Maxfield, #29485
ERIC MAXFIELD LAW, LLC
Attorney for Plaintiffs-Petitioners

CERTIFICATE OF SERVICE

This is to certify that I have duly served the Petition this 3rd day of November, 2026, by filing and serving via the Colorado Courts E-filing System and by email to counsel for the Defendant-Respondent to:

Elliott V. Hood
Zoe Verhoeven
Caplan and Earnest LLC
ehood@celaw.com;
zverhoeven@celaw.com

s/ Eric Maxfield