SUMMARY
May 23, 2024

2024COA59

No. 23CA1969, *Roane v. Elizabeth School District* — Administrative Law — Colorado Sunshine Act — Open Meetings Law — Standing — Injury In Fact — Legally Protected Interest

In this interlocutory appeal under C.A.R. 4.2, a division of the court of appeals considers as a matter of first impression whether a plaintiff has standing to pursue a violation of the Open Meetings Law (OML) under section 24-6-402, C.R.S. 2023, when the plaintiff has not pleaded meaningful connections to the local public body whose actions are being challenged. In concluding that he does, the division first holds that section 24-6-402(9)(a) creates a legally protected interest in favor of at least every natural person in Colorado — including the plaintiff here — to have public bodies conduct public business in compliance with the OML. The division then determines that the plaintiff has articulated sufficient injury in

fact by alleging a violation of that interest. Because the plaintiff has satisfied both requirements of the standing test enunciated in *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d 535, 539 (1977), the division affirms the district court's order denying defendant's motion to dismiss for lack of standing.

COLORADO COURT OF APPEALS **2024COA59**

Court of Appeals No. 23CA1969
Elbert County District Court No. 23CV30058
Honorable Theresa Slade, Judge

Matt Roane,

Plaintiff-Appellee,

v.

Elizabeth School District,

Defendant-Appellant.

ORDER AFFIRMED

Division IV
Opinion by JUDGE KUHN
Navarro and Schock, JJ., concur

Announced May 23, 2024

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¶ 1 In this interlocutory appeal, we consider whether a plaintiff has standing to sue a local public body for a violation of the Colorado Open Meetings Law (OML) when the plaintiff has not pleaded meaningful connections to the local public body whose actions are being challenged. Applying the standing test enunciated in *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d 535, 539 (1977), we first hold that section 24-6-402(9)(a), C.R.S. 2023, creates a legally protected interest in favor of at least every natural person in Colorado — including the plaintiff here — in having public bodies conduct public business in compliance with the OML. We then determine that the plaintiff has articulated a sufficient injury in fact by alleging that the local public body violated that interest. We therefore conclude that the plaintiff has standing and affirm the district court's decision denying the local public body's motion to dismiss.

I. Background

¶ 2 Plaintiff, Matt Roane, is an attorney in Pagosa Springs — a town located in southwestern Colorado — who has developed a niche legal practice. He reviews meeting agendas, minutes, and recordings of local public bodies across the state for their OML

compliance. Upon perceiving a potential violation of the statute, he sues the local public body as a pro se plaintiff. He then seeks attorney fees in the action or offers to settle for a set amount. Since 2019, Roane has filed approximately 100 OML-related actions — a majority of which have been directed against school districts.

¶ 3 The present appeal arises out of one such suit. Roane alleged that defendant, Elizabeth School District, improperly announced an executive session during a public meeting on April 10, 2023, in Elizabeth — 300 miles and several counties to the northeast of Pagosa Springs. He asserted that during that meeting, the members of the School District's board of education convened in a private executive session "for the purpose of seeking legal advice" from their attorney. Roane claims this action violated section 24-6-402(4) because the School District "failed to describe the particular matter it intended to discuss in the Executive Session in any manner whatsoever."

¶ 4 In response, the School District filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to C.R.C.P. 12(b)(1)." The School District contended that Roane lacked standing to pursue the action because, as a resident of a distant county with no

apparent ties to Elizabeth or the School District, he didn't suffer any injury in fact from the alleged irregularities in the executive session announcement. Disagreeing with the School District, the district court denied the motion to dismiss. It reasoned that because Roane is a citizen of Colorado, "he has a legally protected interest in having public bodies conduct public business openly in conformity with the provisions of the [OML]."

¶ 5 The School District timely sought certification of the district court's ruling denying the standing challenge under C.A.R. 4.2(c). The court ordered the certification over Roane's objection. The School District then filed a petition in this court to allow the interlocutory appeal under C.A.R. 4.2(d), which another division of this court granted.

¶ 6 On appeal, the School District contends that the district court erred by denying the motion to dismiss because the court

(1) applied the incorrect legal standard in deciding it; and

(2) concluded that Roane had standing to maintain his lawsuit under the OML, even though, in the School District's view, he did not suffer an injury in fact as a result of the claimed violation. We disagree with the School District on both counts.

II. Appellate Jurisdiction

¶ 7 Before turning to the merits of the School District's appeal, we first explain why interlocutory review of the district court's order is appropriate.

¶ 8 With limited exceptions, this court has jurisdiction only over final judgments — that is, judgments that end an action, leaving nothing further for the district court to do to completely determine the parties' rights. *Wilson v. Kennedy*, 2020 COA 122, ¶¶ 5-7. One such exception is set forth in section 13-4-102.1(1), C.R.S. 2023, and C.A.R. 4.2, which allow this court, in its discretion, to review a non-final order in a civil case when the district court certifies, and we agree, that (1) immediate review may promote a more orderly disposition or establish a final disposition of the litigation; (2) the order involves a controlling question of law; and (3) that question of law is unresolved. *S. Conejos Sch. Dist. RE-10 v. Wold Architects Inc.*, 2023 COA 85, ¶ 11. We conclude that each of these requirements is satisfied here.

¶ 9 First, our immediate review of the question presented to us — whether Roane has standing to sue the School District for the alleged violation of the OML — may "establish a final disposition of

the litigation." C.A.R. 4.2(b)(1). If we conclude that Roane lacks standing in this matter, then his action against the School District fails. *See Hickenlooper v. Freedom from Religion Found., Inc.*, 2014 CO 77, ¶ 7 ("If a court determines that standing does not exist, then it must dismiss the case."); *see also Barber v. Ritter*, 196 P.3d 238, 245 (Colo. 2008) ("Standing is a threshold issue that must be satisfied in order for a court to decide a case on the merits.").

¶ 10 Second, the question presented is a controlling question of law. Whether a particular question is controlling depends on the nature and circumstances of the order being appealed. *Affiniti Colo., LLC v. Kissinger & Fellman, P.C.*, 2019 COA 147, ¶ 17. We consider a number of factors in making that decision, including, as relevant here, whether the question may be dispositive of the case. *Id.*; *see also Indep. Bank v. Pandy*, 2015 COA 3, ¶ 10, *aff'd*, 2016 CO 49. Because standing is a constitutional prerequisite to the district court's ability to entertain the parties' dispute, *see Freedom from Religion Found.*, ¶ 7, our resolution of the School District's standing challenge could result in the dismissal of Roane's complaint. This makes the question of standing case dispositive

and, therefore, controlling. *See Indep. Bank*, ¶ 11 (finding the second requirement satisfied in similar circumstances).

¶ 11 Finally, the relevant question is an unresolved question of law. A question of state law is unresolved if it hasn't been decided by our supreme court or determined in a published decision of this court. C.A.R. 4.2(b)(2). While a division of our court considered the scope of a plaintiff's standing under the OML in *Weisfield v. City of Arvada*, 2015 COA 43, neither the supreme court nor a published decision of this court has resolved the exact legal question before us. Indeed, the division in *Weisfield* expressly declined to address the issue raised here:

> We need not determine whether the expansive language of section . . . 24-6-402(9) should be read literally to allow any citizen of Colorado to challenge any violation of the [OML], even if, for example, the citizen does not reside within the jurisdiction of the public body whose actions are being challenged.

Weisfield, ¶ 24. Consequently, the third requirement is also satisfied.

¶ 12 Accordingly, we conclude that our review of the School District's interlocutory appeal is warranted under section

13-4-102.1(1) and C.A.R. 4.2(b). We turn next to the merits of that appeal.

III. The Incorrect Legal Standard Argument

¶ 13 The School District first contends that the district court applied the wrong legal standard in analyzing the motion to dismiss. We disagree.

A. Applicable Law and Standard of Review

¶ 14 Standing is usually — as was the case here — challenged in a motion to dismiss under C.R.C.P. 12(b)(1). *TABOR Found. v. Colo. Dep't of Health Care Pol'y & Fin.*, 2020 COA 156, ¶ 6 n.3. If such a motion involves a factual attack on the jurisdictional allegations of the complaint, then the district court may conduct a hearing to receive evidence and resolve the factual dispute. *See Trinity Broad. of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 924-26 (Colo. 1993). Thus, while a court must take the plaintiff's allegations in the complaint as true and draw all inferences in the plaintiff's favor when considering a motion to dismiss for failure to state a claim under C.R.C.P. 12(b)(5), a motion to dismiss based on jurisdiction permits the court "to weigh the evidence and satisfy itself as to the

existence of its power to hear the case." *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001) (citation omitted).

¶ 15 Whether a district court applied the correct standard of review in ruling on a motion is a question of law that we review de novo. *In re Marriage of Durie*, 2018 COA 143, ¶ 19, *aff'd*, 2020 CO 7.

B. Discussion

¶ 16 The School District argues that "[t]he district court improperly treated [the] motion to dismiss pursuant to C.R.C.P. 12(b)(1) as a motion for failure to state a claim under C.R.C.P. 12(b)(5)." We're not persuaded.

¶ 17 The crux of the School District's argument is that by focusing on Roane's complaint, the district court "essentially disregard[ed] all relevant information related to Roane and his legal practice, which almost exclusively targets school districts for alleged violations of the OML." But when the parties don't present a factual dispute bearing upon the district court's jurisdiction, the court may resolve that issue as a matter of law without conducting an evidentiary hearing. *See Finnie v. Jefferson Cnty. Sch. Dist. R-1*, 79 P.3d 1253, 1259-60 (Colo. 2003); *see also St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 2014 CO 33, ¶ 9 n.6.

¶ 18 The School District's motion to dismiss didn't dispute the factual allegations in Roane's complaint. Instead, it described the nature of Roane's law practice and argued that Roane had too attenuated a connection to the challenged executive session to give him standing. But that discussion was all legal argument. As the School District noted in its reply, Roane didn't "dispute any of the facts asserted by [the School District] regarding his lack of connection to the Town of Elizabeth or Elbert County." Thus, neither party identified disputed jurisdictional facts that the court needed to find. And neither party asked for a hearing.

¶ 19 In the absence of a factual dispute and request for a hearing, then, the district court could — and did — decide the motion under Rule 12(b)(1) as a question of law. *See Finnie*, 79 P.3d at 1259-60; *see also St. Vrain Valley Sch. Dist. RE-1J*, ¶ 9 n.6.

¶ 20 True, in the section of the order titled "Standard of Review," the district court incorrectly identified the legal standard applicable to a motion to dismiss under Rule 12(b)(5). But importantly, the court didn't actually apply that standard in analyzing the merits of the School District's standing challenge. Rather, it resolved the issue as a matter of law and after noting a single uncontested fact

— that Roane was a citizen of Colorado. We see nothing in the court's analysis suggesting that it actually applied the wrong standard in resolving the motion.

¶ 21 And even if the court did err in that regard, any such error is harmless here because we review the motion to dismiss de novo. *See Hannon L. Firm, LLC v. Melat, Pressman & Higbie, LLP*, 293 P.3d 55, 59 (Colo. App. 2011), *aff'd*, 2012 CO 61.

IV. Standing

¶ 22 We next address the crux of this appeal: whether the district court erred by deciding that Roane had standing to maintain his lawsuit. We conclude that it didn't.

A. Standard of Review

¶ 23 Whether a plaintiff has standing to sue is a question of law that we review de novo. *Barber*, 196 P.3d at 245. Likewise, we review de novo the court's other legal conclusions, including its interpretation of a statute. *Sterling Ethanol, LLC v. Colo. Air Quality Control Comm'n*, 2017 COA 26, ¶ 7.

¶ 24 When interpreting a statute, our task is to ascertain and give effect to the intent of the legislature. *Dep't of Nat. Res. v. 5 Star Feedlot, Inc.*, 2021 CO 27, ¶ 20. To do so, we first consider the

plain language of the statute, giving its words and phrases their plain and ordinary meanings. *Id.* We look to the entire statutory scheme to give consistent, harmonious, and sensible effect to all of its parts, and we avoid constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results. *Elder v. Williams*, 2020 CO 88, ¶ 18. If we conclude that the statute is unambiguous, then we apply it as written and need not resort to other rules of statutory construction. *Id.*

B. Standing in Colorado

¶ 25 In Colorado, plaintiffs benefit from a relatively broad definition of standing. *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). To establish standing, the plaintiff must have (1) suffered an injury in fact (2) to a legally protected interest. *Wimberly*, 194 Colo. at 168, 570 P.2d at 539.

¶ 26 Both tangible and intangible injuries satisfy the injury-in-fact requirement for standing. *Weisfield*, ¶ 10. Thus, "[d]eprivations of many legally created rights, although themselves intangible, are nevertheless injuries-in-fact." *Ainscough*, 90 P.3d at 856. But "[s]tanding is conveyed by neither the remote possibility of a future

injury nor an injury that is overly 'indirect and incidental' to the defendant's action." *Id.* (citation omitted).

¶ 27 The injury-in-fact requirement represents the constitutional prong of our standing jurisprudence. *Colo. State Bd. of Educ. v. Adams Cnty. Sch. Dist. 14*, 2023 CO 52, ¶ 22. "It is 'rooted in [a]rticle VI, section 1 of the Colorado Constitution, under which we limit our inquiry to the resolution of actual controversies.'" *Id.* (quoting *City of Greenwood Village v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000)). This, in turn, maintains the separation of powers of state government by preventing courts from invading legislative and executive spheres. *Freedom from Religion Found.*, ¶ 9. This requirement also "ensures a 'concrete adverseness' that sharpens the presentation of issues to the court." *Id.* (quoting *City of Greenwood Village*, 3 P.3d at 437).

¶ 28 The legally-protected-interest requirement for standing, on the other hand, promotes judicial self-restraint. *Adams Cnty. Sch. Dist. 14*, ¶ 23. "This prudential consideration recognizes 'that unnecessary or premature decisions of constitutional questions should be avoided, and that parties actually protected by a statute or constitutional provision are generally best situated to vindicate

their own rights.'" *Freedom from Religion Found.*, ¶ 10 (quoting *City of Greenwood Village*, 3 P.3d at 437). Claims for relief under the constitution, the common law, a statute, or a rule or regulation satisfy this standing requirement. *Id.*

¶ 29 We next turn to the statute at the center of our analysis — the OML.

C. Colorado's Open Meetings Law

¶ 30 Enacted by a citizen initiative over half a century ago, the OML requires that any meeting of a public body where public business is discussed, or formal action is taken, must be open to the public. § 24-6-402(2)(a)-(b). The statute "was conceived to 'afford the public access to a broad range of meetings at which public business is considered.'" *Hanover Sch. Dist. No. 28 v. Barbour*, 171 P.3d 223, 227 (Colo. 2007) (quoting *Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 652 (1978)). The OML declares that it is "a matter of statewide concern and the policy of [Colorado] that the formation of public policy is public business and may not be conducted in secret." § 24-6-401, C.R.S. 2023.

¶ 31 Not all portions of all meetings are public, though. The OML contains exceptions allowing public bodies to convene in closed-

door executive sessions under certain circumstances.

§ 24-6-402(3)-(4). Specifically — and as pertinent here — subsection (4) provides that

> [t]he members of a local public body[1] subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session [to] . . . consider[] any of the following matters . . . :
>
> . . . .
>
> (b) Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions.

§ 24-6-402(4).

¶ 32 The OML also establishes a mechanism in subsection (9) by which private citizens may seek enforcement of the statute:

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[1] A "local public body," as defined in the OML, includes the members of a school district's board of education. *See* § 24-6-402(1)(a)(I)-(II), C.R.S. 2023.

> (a) Any person denied or threatened with denial of any of the rights that are conferred on the public by the [OML] has suffered an injury in fact and, therefore, has standing to challenge the violation of [the OML].
>
> (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.

§ 24-6-402(9).

¶ 33 With this legal framework in mind, we now turn to whether Roane satisfies the two-prong *Wimberly* test for standing.

D. Legally Protected Interest

¶ 34 The School District contends that the district court erred by concluding that Roane, solely by virtue of being a Colorado citizen, has standing to sue under the OML. In its briefing in this court, the School District "concedes that *all Colorado citizens* have a legally protected interest" under the OML. (Emphasis added.) But, it argues, the district court's interpretation of the statute means "that all Colorado citizens suffer an individualized injury in fact and thus have standing any time there is a violation of the OML anywhere in the state." Contrary to that interpretation, it urges that the references to "any person" and "any citizen" in the OML

"must be read to contemplate an individual who has some legitimate nexus to the local jurisdiction and the challenged conduct."

¶ 35 The School District frames its standing challenge as only implicating Roane's lack of injury in fact. However, the two prongs of the standing test do not exist independently of one another. We evaluate whether a plaintiff suffered an injury in fact *to* a legally protected interest. Thus, the scope of the legally protected interest also informs what constitutes an injury to that particular interest. Accordingly, we must first examine the scope of the legally protected interest under the OML. At bottom, we have to decide whether the rights protected by the OML depend on the extent to which an individual has some close nexus to the local entity (by, for example, residing in the local jurisdiction or having personal interest in the topic discussed during the meeting).

¶ 36 Our starting point is *Weisfield*. The division in that case didn't address this question because the plaintiff resided within the jurisdiction of the public body whose actions he challenged. *Weisfield*, ¶¶ 23-24. But, after analyzing the statute, the division concluded "that the [OML] creates a legally protected interest on

behalf of Colorado citizens in having public bodies conduct public business openly in conformity with its provisions." *Id.* at ¶ 22.

¶ 37 As we have already noted, subsection (9)(a) provides that "*[a]ny person* denied or threatened with denial of any of the rights that are conferred on the *public* by [the OML] has suffered an injury in fact and, therefore, has standing to challenge the violation of [that statute]." § 24-6-402(9)(a) (emphasis added). Section 2-4-401(8), C.R.S. 2023, provides that person "means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity." *See also* § 24-72-202(3), C.R.S. 2023 (provision of the Colorado Open Records Act stating that "'[p]erson' means and includes any natural person . . . and any corporation, limited liability company, partnership, firm, or association"). But it doesn't define "[a]ny person" or "public," so we look to the plain meaning of these words. *See Edwards v. New Century Hospice, Inc.*, 2023 CO 49, ¶ 20. Merriam-Webster defines "any" as meaning "every," "all," or "unmeasured or unlimited in amount, number, or extent." Merriam-Webster Dictionary, https://perma.cc/92KD-7YNK. And the term "public" is defined in

Black's Law Dictionary as "[o]f, relating to, or involving an entire community, *state*, or country." Black's Law Dictionary 1483 (11th ed. 2019) (emphasis added).

¶ 38 Considering the plain and ordinary meaning of these terms along with the statutory definitions, then, we hold that subsection (9)(a) establishes a legally protected interest in favor of *at least* every natural person in Colorado — including Roane — to have public bodies conduct public business in compliance with the OML. *See infra* ¶ 42 n.3. Other language in the OML supports this interpretation. For example, subsection (9)(b) says that Colorado courts "shall have jurisdiction to issue injunctions to enforce the *purposes* of this section upon application by *any citizen* of this state." § 24-6-402(9)(b) (emphasis added). And the declaration of legislative intent, section 24-6-401, says that it is "a matter of *statewide* concern and the policy of [Colorado] that the formation of public policy is public business and may not be conducted in secret." (Emphasis added.) These provisions also use broad

language implicating all Coloradans with no distinction between statewide or local public bodies.[2]

¶ 39 The School District points to no language in the statute supporting such a distinction. If the General Assembly wanted to limit the scope of legally protected rights under the OML based on the geographical reach of the public body involved or its relationship to the person, it would have employed language to do so. *See Sinclair Mktg. Inc. v. City of Commerce City*, 226 P.3d 1239, 1243 (Colo. App. 2009) (noting that the General Assembly's

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[2] The School District directs our attention to a district court order in *Demanding Integrity in Government Spending v. Boulder County*, (Colo. Dist. Ct., Boulder Cnty. No. 23CV30058, Mar. 28, 2022) (unpublished order) — which is part of the record on appeal — denying standing under the OML to a plaintiff from another county. In so concluding, the court said that "the 'public' referenced in the statute is the people who may be affected by the public business being conducted, which would primarily be the citizens of the political body forming the public policy." Consequently, in interpreting section 24-6-402(9)(a), the court concluded that while it makes sense that any citizen of Colorado may sue a statewide public body, extending that provision "to allow *any citizen* of the state the ability to sue *any local/municipal* public body goes against the basic principle that a plaintiff must personally suffer an injury in fact." To the extent the School District relies on this case to argue that a person's legally protected interest to an OML-compliant meeting depends on whether the meeting is conducted by a state or local public body, we disagree with that contention for the reasons stated in this opinion.

omission of a term from one statutory provision, where that term was included in other parts of the statute, was evidence that the omission was intentional). We see no such indication. After all, while some parts of the OML distinguish between state and local public bodies, subsection (9)(a) doesn't. *See* § 24-6-402(2)-(4).

¶ 40 We agree with the School District that the General Assembly cannot create standing where none exists. *See Pueblo Sch. Dist. No. 60 v. Colo. High Sch. Activities Ass'n*, 30 P.3d 752, 753-54 (Colo. App. 2000). But ultimately, we must decide how broad a right the General Assembly intended to create based on the words it used. *5 Star Feedlot, Inc.*, ¶ 20. By stating that any person denied one of the rights conferred on the public has standing to sue, the General Assembly chose to create a broad right with statewide reach. A person has a protected interest under the OML by virtue of being a member of the public, not by virtue of the person's relationship with the public body or based on the nature of their individual interest in the underlying meeting where the alleged violation occurred.

¶ 41 The School District points to no language in the OML — and we see none — that compels the conclusion that Roane has no legally protected interest in an open meeting in the district unless

he also proves a connection with that district. While the School District's frustration is clear, the provisions of the OML demonstrate that the General Assembly intended a broad right to a transparent government for everyone in Colorado.

¶ 42 Thus, applying the plain language of the statute, we conclude that Roane has a legally protected interest in having had the School District conduct its April 10 meeting in compliance with the OML, regardless of his connection to the local public body conducting that meeting.[3]

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[3] While we conclude that the OML is unambiguous in that it extends a legally protected interest to every person in Colorado, we note that the statute's legislative history further bolsters our interpretation of section 24-6-402(9)(a). Subsection (9)(a) was added to the OML through House Bill 1390, in direct response to the *district court's* denial of standing in *Weisfield v. City of Arvada*, 2015 COA 43. During the legislative debates preceding the enactment of the bill, one of its primary sponsors, Representative Bob Gardner, said that "the idea that the [OML was] only to protect the particular affected individual and not citizens of the community at large [was] kind of incredible to [him]." Hearings on H.B. 1390 before the H. Judiciary Comm., 69th Gen. Assemb., 2d Reg. Sess. (Apr. 24, 2014). He clarified that the rights under the statute are conferred upon any person. *Id.* And when discussing the language of the bill, Representative Gardner said that the legislators "opted for a fairly expansive definition of who can bring the suit" by using the term "any person," as opposed to a narrower construction such as "any citizen of the community" or even "any citizen of Colorado,"

E. Injury in Fact

¶ 43 Last, we consider whether Roane has sufficiently alleged an injury in fact to the legally protected interest described above.

¶ 44 To determine whether there is an injury in fact, we accept as true the allegations in the complaint. *Ainscough*, 90 P.3d at 857. In his complaint, Roane alleged that as a result of the School District's failure to describe the subject matter of the legal advice it intended to seek at the executive session, he was prevented from (1) "knowing the particular matter the [School District] discussed in the Executive Session" and (2) "witnessing the [School District] conduct public business openly in conformity with the statute."

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because "there are businesses that are doing business in the community that are from outside the community and maybe from outside the state that likewise have an interest" in a particular open meeting. *Id.* Likewise, one of the co-sponsors, Senator Rachel Zenzinger, stated that the bill "makes it crystal clear that any member of the public who is denied access to the processes in OML has indeed suffered an injury in fact and therefore has standing to challenge a violation of that law." Hearings on H.B. 1390 before the S. Local Gov't Comm., 69th Gen. Assemb., 2d Reg. Sess. (May 1, 2014). These statements are consistent with our conclusion that access to open meetings of state and local public bodies is a right that, at the very least, belongs to every person in Colorado, including Roane.

¶ 45 On appeal, the School District directs our attention to the nature of Roane's law practice and asserts "that he has not suffered any legitimate injury sufficient to confer standing." The School District asserts that because Roane regularly sues local governments and school districts for even the most minor OML violations, "he is taking advantage of small rural communities and school districts for alleged violations that have not impacted him at all." Any violation of the statute during the April 10 meeting, the School District continues, didn't amount to an injury in fact sufficient to confer standing on Roane because he "is not a resident of the community where the alleged violation occurred"; doesn't "have any legitimate connection to the [T]own of Elizabeth"; and, consequently, "is not impacted by the [School District's] executive session of April 10th, or any action of the [School District] for that matter." Moreover, the School District says that "[h]e never even asked the School District for the recording of the executive session." Thus, the School District reasons, the district court erred by determining that Roane had standing under section 24-6-402(9) by merely being a citizen of Colorado because that interpretation

impermissibly disregarded the injury-in-fact requirement rooted in the Colorado Constitution.

¶ 46 We agree with the School District that the existence of an injury in fact "is not a requirement that may be abrogated by statute." *Pueblo Sch. Dist. No. 60*, 30 P.3d at 753. But we don't perceive that to be the case here.

¶ 47 As we note above, the OML says that a plaintiff suffers an injury in fact when he is "denied or threatened with denial of any of the rights that are conferred on the public by [the OML]." § 24-6-402(9)(a). That includes, broadly, every person's right to have public bodies conduct public business in compliance with the statute, and in the context of this case, Roane's right to at least have notice of the subject matter of the legal advice the School District intended to seek during the April 10 executive session. *See Guy v. Whitsitt*, 2020 COA 93, ¶ 27. Roane's complaint alleged that he was denied knowledge about what was discussed during the executive session because even though the School District "knew the general subject matter of the legal advice it sought from its attorney," it failed to include that information in its executive session announcement. Accepted as true, *see Ainscough*, 90 P.3d

at 857, the allegations of Roane's complaint demonstrate an injury in fact to his interest in an open and transparent government. *Cf. Pueblo Sch. Dist. No. 60*, 30 P.3d at 753 (concluding that the plaintiffs lacked standing to challenge a violation of the OML because they conceded that they had *actual knowledge* of the meetings where the alleged violation occurred).

¶ 48 The supreme court's analysis of standing in *Ainscough* supports this conclusion. In that case, state employees and their labor organizations challenged an agency's decision to eliminate automatic deductions of union dues. 90 P.3d at 852. In addressing standing, the supreme court first determined that these plaintiffs had a legally protected right to request payroll deductions and to have the agency director exercise discretion in a non-arbitrary manner when considering their requests. *Id.* at 857. The court then concluded that the plaintiffs' allegations that the deprivation of their right to apply for payroll deductions constituted an injury in fact sufficient to confer standing. The court observed that

> [t]he employees and associations specifically allege that they were using a state-provided service — some for decades — but are now precluded from doing so by a change in government policy and practice. In order to

> show an injury-in-fact, it is unnecessary for the plaintiffs to credibly allege that they have an automatic right to receive a payroll deduction or even that they would likely be successful in receiving one. *It is enough if they claim they were deprived of a right to apply for a deduction and receive a non-arbitrary ruling on their application*.

Id. at 857-58 (emphasis added).

¶ 49 Similarly, Roane alleges that his injury derives from the School District's failure to provide him with what he is legally entitled to under the OML — notice of the general subject matter of the legal advice solicited during the executive session. Whether or not Roane credibly alleged having an interest in — or a use for — the information discussed in the underlying executive session doesn't alter the nature of his legally protected right. And the lack of such an allegation doesn't change the alleged conduct by the School District or whether its conduct violated that right. *See id.* at 856 (noting that deprivations of legally created rights, although intangible, are nonetheless injuries in fact).

¶ 50 For several reasons, we are also unpersuaded by the School District's argument that Roane has "at best" alleged an informational injury, and that such an injury, without "downstream

consequence[s] of the failure to receive more information regarding the executive session topic," is insufficient to confer standing.

¶ 51 For starters, while it's true that the supreme court has held that receipt of unwanted information didn't constitute injury in fact for purposes of standing, *see Freedom from Religion Found.*, ¶ 19, this case is distinguishable. In *Freedom from Religion Foundation*, a group of plaintiffs, who identified themselves as "nonbelievers," challenged the Governor's annual honorary proclamations recognizing a Colorado Day of Prayer. *Id.* at ¶¶ 2-3. The plaintiffs alleged in support of their individual standing argument, among other things, that they suffered "psychic harm" because "they were exposed to unavoidable and extensive media coverage revealing the existence of the honorary proclamations," which, in turn, made them feel like political outsiders. *Id.* at ¶¶ 16, 18. In rejecting the plaintiffs' argument, the supreme court concluded that "their circuitous exposure to the honorary proclamations and concomitant belief that the proclamations expressed the Governor's preference for religion [wa]s simply too indirect and incidental an injury to confer individual standing." *Id.* at ¶ 19.

¶ 52 Here, in contrast, Roane has alleged an informational injury that has come about as a direct consequence of what he alleges was the School District's lack of compliance with the OML. Moreover, "the statute protects the 'public's right of access to public information,' a right that is vitally important to our democratic system of government." *Weisfield*, ¶ 13 (quoting *Cole v. State*, 673 P.2d 345, 350 (Colo. 1983)). In that regard, the informational injury here is not just a byproduct of Roane's subjective perception of government information. Instead, his right of access to public information is at the heart of the OML's protections. *See Freedom from Religion Found.*, ¶ 19.

¶ 53 The School District also relies on the United States Supreme Court's holding in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), to argue that an informational injury must be accompanied by "downstream consequences" to constitute an injury in fact. In that case, a class of consumers sued a credit reporting agency, alleging that the agency's credit reports failed to comply with the Fair Credit Reporting Act. *Id.* at 421. The plaintiffs alleged, among other things, that the mailed reports "were formatted incorrectly and deprived them of their right to receive information in the format

required by statute." *Id.* at 440. In determining whether the plaintiffs had alleged sufficient injury for the purpose of having standing under Article III of the Federal Constitution, the Court considered whether they had suffered an informational injury by receiving the improperly formatted reports. In concluding that they hadn't, the Court observed that "[t]he plaintiffs did not allege that they failed to receive any required information," or that they experienced any downstream consequences from failing to receive the required information. *Id.* at 441-42. Importantly, however, the Court distinguished its inquiry in *TransUnion* from two of its other decisions because those cases — like the case here — "involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information." *Id.* at 441 (distinguishing *Fed. Election Comm'n v. Akins*, 524 U.S. 11 (1998), and *Pub. Citizen v. U.S. Dep't of Just.*, 491 U.S. 440 (1989)).

¶ 54 The problem with the downstream consequences argument is that it engrafts a limitation on the scope of the legally protected interest that doesn't exist in the text of the OML. As we have already explained, the OML defines the legally protected interest as the interest *in the open functioning of government*. A person suffers

an injury in fact under the statute when that right of access to open meetings is violated. And we are not at liberty to add words to, or subtract words from, the statute. *Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 12.

¶ 55 The OML doesn't require a plaintiff to provide a reason for seeking access to an open meeting, prove their proximity or connection to the political subdivision that is holding the meeting, explain the existence of an individual interest in the topic discussed during the meeting, or justify the purposes for which the impermissibly withheld information could have been used. We can't alter that conclusion by reading into the statute words that the General Assembly didn't include.[4] *See TABOR Found. v. Reg'l*

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[4] The School District focuses on the negative impacts that Roane and his business model have on them and other school districts. For their part, Roane and his supporting amici curiae raise the specter that reading a connection requirement into the OML would negatively impact reporters, journalists, researchers, and others responsible for keeping the public informed. We don't discount any of these concerns. But ultimately, the scope of the rights protected under the OML represents a policy choice for the General Assembly. We conclude that the statute is unambiguous, so our task is to enforce it as written. *Seaman v. Heather Gardens Ass'n*, 2023 COA 125, ¶ 12.

Transp. Dist., 2016 COA 102, ¶ 29 (citing *Bedee v. Am. Med. Response of Colo.*, 2015 COA 128, ¶ 39), *aff'd*, 2018 CO 29.

¶ 56 Put differently, the legally protected right under the OML is access to meetings where public policy is shaped, and an injury in fact occurs when that right is abridged. As the *Weisfield* division noted, the OML "does not regulate substantive *outcomes*; rather, it requires the decision-making *process* to be conducted openly and not in secret."[5] *Weisfield*, ¶ 29.

¶ 57 Roane's complaint doesn't reflect a lack of injury or merely displeasure by an undifferentiated member of the public. Instead, he alleges that he tried to access information to which he had a statutorily protected right, but that he was denied that right.

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[5] In this regard, the OML is similar to the Colorado Open Records Act (CORA). The supreme court has said that CORA regulates, as a general matter, the inspection and copying of governmental records by any person without limitation as to the reason or reasons for which the inspection is undertaken. *Martinelli v. Dist. Ct.*, 199 Colo. 163, 177, 612 P.2d 1083, 1093 (1980). While *Martinelli* didn't deal with the issue of standing, it lends further support to the notion that when a statute confers upon every person the right of access to public information — like the OML and CORA both do — the operative injury is the denial of that access, regardless of the relevance of information withheld to the person's individual interests.

¶ 58 Consequently, we conclude that Roane has alleged a sufficient injury in fact to a legally protected interest to confer standing in this matter. While we express no opinion on the merits of his case, Roane has pleaded enough to move forward with his lawsuit at this point.

V. Disposition

¶ 59 The order is affirmed.

JUDGE NAVARRO and JUDGE SCHOCK concur.