DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way Castle Rock, CO 80109 720-437-6200	DATE FILED May 20, 2025 4:18 PM CASE NUMBER: 2025CV30410
ROBERT C. MARSHALL, LORA THOMAS, JULIE GOODEN, Plaintiffs, v. **THE BOARD OF COUNTY COMMISSIONERS FOR DOUGLAS COUNTY, COLORADO,** Defendant.	*(COURT USE ONLY)*
	Case No.: 2025CV30410 **Courtroom/Division: 6**

ORDER RE: PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER is before the Court on the Motion for Preliminary Injunction filed by Plaintiffs Robert C. Marshall, Lora Thomas, and Julie Gooden. This Court, having reviewed the motion and response thereto, as well as witness testimony and exhibits, the applicable law, and otherwise being fully advised in the premises, hereby FINDS and ORDERS as follows:

PROCEDURAL BACKGROUND

On March 25, 2025, at a publicly noticed business meeting the Board of County Commissioners for Douglas County, Colorado ("Defendants") unanimously passed two (2) resolutions designed to initiate the election process necessary to become a home rule county. Those resolutions: (1) Bring to a vote whether the County should form a 21-person Charter

Commission to draft a charter to bring to the public at a later election; and (2) To establish voter district boundaries for such an election. Passage of these resolutions called for a Special Election that is currently scheduled for June 24, 2025.

Subsequent to the adoption of those two resolutions, on April 22, 2025, Plaintiffs filed suit to challenge their adoption by alleging various violations of Colorado's Open Meetings Laws, Section 24-6-402, C.R.S. (the "OML"). Plaintiffs alleged that the Defendants violated the OML in three sperate ways: 1) by holding unnoticed meetings on December 17, 2024; January 2, January 7, February 18, February 24, March 4, March 11, March 18, March 21, April 7, and April 14 of 2025; 2) by attending meetings together that were hosted by outside organizations on April 2, and April 17, 2025; and 3) by holding unnoticed meetings with other elected officials on March 3, March 10, and March 17, 2025. Plaintiffs further allege that the formal action to proceed with the solutions was made at one or more of these meetings and the public vote on March 25, 2025, was a rubber stamp of that prior action.

Plaintiffs also moved for a preliminary injunction seeking to enjoin the election. Defendants filed their Response, and an evidentiary hearing was held on April 29, 2025, during which each side had the opportunity to present evidence, call witnesses, and make argument.

FACTUAL FINDINGS

Plaintiffs called Dru Campbell, office manager for Douglas County; Toby Damisch, the elected Douglas County Assessor; and Christopher Pratt, Managing Douglas County Attorney, as witnesses. Defendants called County Attorney Jeffrey Garcia and Commissioner George Teal as witnesses. Each side admitted exhibits. Following is a summary of the facts as found by the Court.

During the 2024 election of two Douglas County Commissioners, both George Teal and Kevin Van Winkle campaigned on platforms that included increasing local control, and specifically from Commissioner Teal included presenting the voters the question of becoming a Home Rule County. Both commissioners won their elections. In December 2024, after former Commissioner Lora Thomas resigned, the Governor appointed Commissioner Van Winkle serve the remainder of Thomas' term.

Starting December 2024 and continuing after the March 25th adoption of the Home Rule Resolutions, Defendants held "Advance Planning Meetings" (hereinafter "APM"). Mr. Garcia and Commissioner Teal testified that these meetings were held from time to time to discussions that are limited to administrative matters, including scheduling issues and media planning. There was no testimony elicited that the Defendants discussed policy making related to Home Rule, or any other policy-making function during the APM's.

In January 2025, at a publicly noticed retreat of all elected officials and department heads for Douglas County, attendees were asked to discuss their goals for the new year. County Attorney Jeff Garcia suggested this might be the year to address Home Rule—an idea that had been discussed since COVID, and opposed by then-commissioner, now Plaintiff, Lora Thomas. Following the retreat, Mr. Garcia to prepared materials on the legal process for adopting a Home Rule Charter, including a PowerPoint presentation addressing legal compliance with the statutory framework, which he shared in February 2025 during his Legal Updates to the Board. These Legal Updates were a part of properly noticed Work Sessions, which the public may attend. At those sessions the Board adjourned into Executive Session to receive Legal Advice about Home Rule. Following these sessions, the Defendants requested Mr. Garcia brief the other county elected

officials on the legal issues surrounding Home Rule to alleviate any concern the other elected officials may have regarding Home Rule.

These legal briefings were done during three (3) publicly noticed meetings attended by all Douglas County Elected Officials. During the meetings, Mr. Garcia and Commissioner Teal testified that the Commissioners adjourned the meetings into Executive Session so that the officials could receive legal advice from him as their lawyer. This adjournment was not recorded nor were minutes kept.

Before March 25, 2025, Mr. Garcia prepared two Resolutions for consideration at a publicly noticed Special Business Meeting set for March 25, 2025, addressing: (1) Whether the County should form a 21-person Charter Commission to draft a home rule charter for public consideration at a later election; and (2) To establish voter district boundaries for the election of charter commission members should such an election call for its formation. In addition to the Special Business Meeting, the Board called a press conference and invited members of the press, local leaders, and the public to attend a properly noticed meeting during the hour immediately preceding the Special Business Meeting. At this meeting, the Defendants took questions and heard comment from the public. The Board convened at 1:00, on March 25, 2025, to consider the two Resolutions. The Board unanimously voted in favor of Resolutions 25-106 and 25-017, setting the Special Election for June 24, 2025.

LEGAL STANDARD

At common law, a preliminary injunction is appropriate if the petitioner can demonstrate that: (1) there is a reasonable probability of success on the merits; (2) there is a danger of real, immediate, and irreparable injury that may be prevented by injunctive relief; (3) there is no plain,

speedy, and adequate remedy at law; (4) the granting of an injunction will not disserve the public interest; (5) the balance of equities favors the injunction; and (6) the injunction will preserve the status quo pending a trial on the merits. *Langlois v. Bd. of Cty. Comm'rs of El Paso*, 78 P.3d 1154, 1158 (Colo. App. 2003) (citing *Rathke v. MacFarlane*, 648 P.2d 648, 653-654 (Colo. 1982)).

Under Colorado law, the plaintiff bears the burden of proving the allegations of the complaint by a preponderance of the evidence. *Littlehorn v. Stratford*, 653 P.2d 1139, 1142 (Colo. 1982). The finder of fact, here the Court, must only rely on facts in evidence and may not base it decision on mere speculation or conjecture. *In re People in Int. of R. D. S.*, 514 P.2d 772, 75 (1973).

Pursuant to the Colorado Constitution, Art. XIV, section 16, a County may choose to become Home Rule through a process that requires two separate elections by the citizens of Douglas County under the statutory framework of section 30-11-501 *et seq*., C.R.S. These elections are triggered by the passing of two resolutions by the Board of County Commissioners of a statutory county.

"The Open Meetings Law does not undertake to direct public bodies in the State of Colorado as to how to do their business." *Van Alstyne v. Hous. Auth. of City of Pueblo, Colo.,* 985 P.2d 97, 101 (Colo. App. 1999). "The OML does not identify what types of meetings conducted by public bodies are subject to its requirements. Still, our supreme court has held that it applies to meetings occurring for the purpose of policy making." *Wisdom Works Counseling Servs., P.C. v. Colorado Dep't of Corr.*, 360 P.3d 262, 266 (Colo. App.) The Supreme Court has recognized a distinction between "meetings that are convened for the purpose of policy-making" and mere "discussions of matters of public importance." *Board of County Commissioners v. Costilla County Conservation Dist.,* 88 P.3d 1188, 1193 (Colo. 2004). "[I]n order for a meeting to be subject to

the OML, the record must demonstrate a meaningful connection between the meeting itself and the policy-making powers of the public body holding or attending the meeting." *Id.*, at 1194 (emphasis added). The Colorado Supreme Court has held that "merely discussing matters of public importance" does not always trigger a requirement to abide by all the strictures of the Open Meetings Law. *Id.*, at 1193. "However, meetings involving the day-to-day oversight of property or supervision of employees by county commissioners are exempt from the notice requirement." *Arkansas Valley Publ'g Co. v. Lake Cnty. Bd. of Cnty. Commissioners*, 369 P.3d 725, 727 (Colo. App.). Courts distinguish between actions associated with policy making and formal action, which fall within the Board's policy making powers, and other actions that do not. *Intermountain Rural Elec. Ass'n v. Colorado Pub. Utilities Comm'n,* 298 P.3d 1027, 1032 (Colo. App. 2012). Furthermore, "[t]he mere fact that a public body reaches a "decision" does not necessarily mean that making the decision is a "formal action." *Id.* at 1033. There have been some instances of public bodies violating the OML by having discussions between various members of that body outside of a formal meeting in an overt attempt to arrive at a formal decision. *See Marshall v. Douglas County Board of Education,* 2022CV30071 (Douglas Cty. Dist. Ct. Jun. 16, 2023).

ANALISYS

On April 22, 2025, Plaintiffs filed suit alleging various violations of the OML. Plaintiffs allege that the Defendants violated the OML in three sperate ways: 1) by holding unnoticed meetings on December 17, 2024; January 2, January 7, February 18, February 24, March 4, March 11, March 18, March 21, April 7, and April 14 of 2025; 2) by attending meetings together that were hosted by outside organizations on April 2, and April 17, 2025; and 3) by holding unnoticed meetings with other elected officials on March 3, March 10, and March 17, 2025. Plaintiffs do

not argue that the March 25, 2025, Special Business Meeting adopting the Resolutions failed to comply with the OML; rather, they allege that the real decisions were made in prior closed-door meetings and were subsequently "rubber-stamped" at the March 25 Special Business Meeting.

The Court considers the evidence presented at the hearing and applies it to the aforementioned *Rathke* factors, as follows:

1. Reasonable Probability of Success on the Merits

The OML requires, in part, that, "[a]ll meetings of two or more member of any ... local public body at which public business is discussed... are declared to be public meetings open to the public" and "any meeting at which the adoption of any .... resolution ... shall be held only after full and timely notice." Section 24-6-402(2)(a) and (2)(c)(1), C.R.S. The Plaintiffs presented no evidence at the hearing regarding meetings hosted by outside groups, as such the Court does not consider those allegations in this order. Plaintiffs alleged several meetings to have been held in violation of these provisions. For ease of analysis, these meetings can be broken down into two types; Advance Planning Meetings and Elected Official Luncheons (hereinafter "EO Luncheons.").

Advance Planning Meetings

Plaintiffs' Exhibit 1 demonstrates that Defendants held several APMs, which were not noticed and which the public cannot attend. Mr. Garcia and Commissioner Teal testified that these meetings are held from time to time to coordinate schedules and discuss such matters as communications with the public and media pertaining to various matters of County business, but that there were no substantive discussions about the Home Rule Resolutions at these meetings. Specifically pertaining to the requested injunction, there was no testimony elicited that the two

resolutions regarding Home Rule were discussed at the APM's. More broadly the Court heard no evidence that policy discussions or formal actions occurred at the APM's.

Against this backdrop, the Court must determine, on this evidence, whether the OML applies to these APMs. The Colorado Supreme Court has held that, "a meeting must be part of the policy-making process to be subject to the requirements of the OML." *Board of County Commissioners of Costilla County v. Costilla County Conservation Dist.,* 88 P.3d 1188, 1194 (Colo. 2004)("If, as a threshold matter, a meeting is part of the policy-making process, then the requirements of the OML must be met. If not, nothing in the OML prevents some or all members of a local public body from attending a meeting, **even if public notice has not been given**."). C.R.S. §24-6-402(f) codifies an exception to OML for the day-to-day supervision of staff and management of property by county commissioners, "The provisions of paragraph (c) of this subsection (2) shall not be construed to apply to the day-to-day oversight of property or supervision of employees by county commissioners." "[M]eetings involving the day-to-day oversight of property or supervision of employees by county commissioners are exempt from the notice requirement." *Arkansas Valley Publ'g Co. v. Lake Cnty. Bd. of Cnty. Commissioners*, 369 P.3d 725, 727 (Colo. App.).

It is undisputed that, here, a quorum of the Board was in attendance or expected to attend these APMs. However, the notion that mere attendance by a quorum of the Board triggers the OML requirements is at odds with the Supreme Court holding that, in order for the OML to apply, a meeting must be part of the policy-making function. The answer lies in the definition of "meeting" provided by the OML at C.R.S. § 24-6-402(1)(b); that is, "'Meeting,' means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by

other means of communication." Accordingly, this Court finds that, while these APMs might create the opportunity for a violation of the OML, they do not inherently violate the OML. Whether there was a violation is determined by whether there were substantive discussions that were part of the policy-making functions of the Board.

The evidence before the Court does not demonstrate that any substantive discussions, about the Home Rule Resolutions or any other topic, occurred, nor that the APMs were a part of the policy-making process. Moreover, the evidence and testimony before the Court demonstrated APMs were limited to day-to-day direction to staff. Indeed, Plaintiffs' Exhibit 1 includes an agenda from one of these meetings and the topics, such as scheduling a tour of the AdventHealth Cancer Center, a citizen survey, or detailing the release of a public statement, are consistent with the explanation that these are administrative meetings for the purpose of coordinating schedules and coordinating public outreach. It is also consistent with the testimony that there were no substantive discussions about Home Rule or any other public policy making in any of the APMs. Indeed, the APM's appear to fall under C.R.S. §24-6-402(f) as "day-to-day oversight. . . or supervision of employees by county commissioners."

Interestingly, Defendants also raise the point that, with respect to Home Rule, not only did the Board not make any policy decision, but also, they cannot make policy on Home Rule, as that is the function of the Charter Committee. The Board's power is limited to simply referring the matter to the voters, who will then decide this matter. While the Court is unwilling to rule that a discussion about an election can never implicate a policy-making function, the Court is satisfied that there was no evidence of any policy-making function at these APMs and therefore, on the evidence before the Court, the OML did not apply to these meetings.

EO Luncheons

Like the APMs, if the OML applies depends on whether these EO Luncheons were a part of the policy-making process. Commissioner Teal and Mr. Garcia testified that these are typically held quarterly, but they can be held more often as was the case here.

Mr. Garcia testified that during one-on-one conversations with the commissioners, a concern was raised about not catching other elected officials off guard should the Board pursue referring Home Rule to the voters.[1] Doing so could, for example, result in their offices switching from elected office to appointed. Mr. Garcia suggested that, just as the commissioners had the opportunity to discuss their legal questions and concerns with him during Legal Updates, he should hold a special session with the other elected officials to provide legal advice to them about the potential legal implications of pursuing Home Rule status.

The next EO Luncheon was scheduled for March 3, 2025, the Defendants adjourned into Executive Session during the EO Luncheon in order to receive legal advice regarding The Home Rule process. Mr. Garcia testified that, in his opinion, these Luncheons don't really meet the definition of a public meeting but, as a matter of transparency and caution, they post notice in advance and allow the public to attend, though the public had never attended. These EO Luncheons are informal. They center around a lunch, during which a variety of casual conversations may occur, but no County business is conducted. These are simple updates amongst the Counties elected officials.

[1] Importantly, Mr. Garcia is the County Attorney and is acting as counsel for the Defendants and therefore is not a member of the public body; thus, these one on one conversations he is having with commissioners do not implicate the OML. Were the Court to find that it did, this would destroy the ability of public officials to receive legal advice.

After a typical lunch and idle conversation, according to Mr. Garcia's testimony, he suggested that they as a matter of practice adjourn into Executive Sessions so that he could provide legal advice on the ramifications of referring Home Rule to the voters.

Under the OML, an Executive Session may be called during a regular or special meeting by announcing the topic, citing the statutory authority, and recording the Executive Session in case the basis for the Executive Session is called into question. If the Executive Session is called for legal advice, as was the case here, the recording requirement is satisfied with the attorney's certification, on the record or later by affidavit, that the discussion was for legal advice. Section 24-6-402(4) C.R.S. It is undisputed that there is no record of the adjournment into executive session during the March 3rd EO Luncheon. Plaintiffs argues, and the Court agrees, that the proper steps for adjourning to an Executive Session from an open meeting under the OML were not strictly adhered to at the EO Lunches. While the EO Luncheons are noticed and open to the public, they lack other indicia of an open meeting that occurred, for example, at the March 25th Special Meeting. More specifically, the EO Luncheons are neither recorded nor live-streamed, and no minutes are taken. In the absence of a recoding or minutes, there was simply no convenient avenue for Mr. Garcia to strictly adhere to the requirements under the OML of certifying that the Executive Sessions were for legal purposes and the Court finds that there was therefore no OML Executive Session held at the March 3rd EO Luncheon. However, that is not the end of the Court's analysis.

As to the content of the Executive Session, Mr. Damisch specifically testified that the resolutions were never discussed and that no formal action regarding home rule was taken. Rather, he testified that aside from receiving legal advice from Mr. Garcia, the elected officials simply asked legal questions about the process. Therefore, the Court finds that these meetings are not

covered by the OML. As such because the Court has found that the meetings were not subject to the OML, compliance therewith was not required.[2]

To the degree that Plaintiffs argue that utilizing some of the tools found in the OML (such as publicly noticing the meeting and then adjourning into executive session in order to protect privileged attorney-client conversations) converts the meeting into one covered by the OML, the Court disagrees. Public bodies should not be discouraged from being more transparent than the law requires simply out of fear of litigation.

Mr. Garcia testified that, because of the short time set for EO Luncheons, and the fact that a large portion of the meeting was consumed, as usual, with lunch and idle conversation, he did not have sufficient time to get to everyone's questions. Consequently, he was asked if he could set up another Executive Session the following week, which he did on March 10th. After a similar lunch, Mr. Garcia testified that he again found himself lacking sufficient time to get to everyone's questions, not only because of the many questions, but also due to unexpected questions from the Clerk and Recorder about how to run the election and from a number of attendees who wanted to know about the process to become a candidate for the Charter Commission. When time ran out again, he was asked to do yet a third Executive Session, which he did, on March 17th.

Plaintiffs are correct that, under the OML, "No resolution... of a state or local government body shall be valid unless taken or made at a meeting that meets the requirements of the subsection (2) of this section." C.R.S. § 24-6-402(8). However, previously discussed, the EO Lunch meetings were not subject to the OML and therefore any noncompliance could not have invalidated the later

[2] The Court has not been asked to weigh in on whether these particular meetings and their content are nonetheless still protected by attorney-client privilege, but that was clearly the intent of those involved and the court notes that the substance of those conversations has not been discussed as part of the hearing.

approved resolutions. Furthermore, Plaintiffs did not produce any evidence at the hearing that the resolutions were discussed. Therefore, the Court cannot conclude that approval of the resolutions at the March 25th, 20205, special business meeting was a rubber stamp.

Moreover, even if the OML had applied, this Court has already noted that the March 25th adoption of the Resolutions was done in facial compliance with the OML. That finding can only be changed by evidence that the actual decision was made in violation of the OML and simply rubber-stamped at the March 25th Special Business Meeting. The Court finds the Plaintiffs did not present any evidence of such an illegitimate decision at any of the prior meetings. The Plaintiffs have merely assumed as much based on evidence that Home Rule was at least partially a topic of discussion at other meetings. While this may cause Plaintiffs to speculate, it is insufficient to carry Plaintiff's burden to show that it is more likely than not that the decision to advance Home Rule was made at one of these meetings and rubber-stamped at the Special Business Meeting.

In short, these Luncheons, like the APMs, create an opportunity for violations, but raising the specter of a violation is not sufficient to demonstrate that the Board made its decision at one or more of these Luncheons and simply rubber-stamped that decision at a later meeting. Accordingly, the Court finds that Plaintiffs are not reasonably likely to succeed on the merits of their case.

2. Danger of Real, Immediate and Irreparable Harm

Plaintiffs did not put on any evidence of a harm and the Court can not assume a harm. In fact, the concept of immediate harm is undercut by the preliminary nature of this process. In a very real sense, the only decision that has been made is a decision to let the voters participate in

an election. The June election that Plaintiffs seek to enjoin can do nothing more than initiate the process by potentially setting a Charter Commission—a yet-to-be-formed body for which the Plaintiffs have the opportunity to participate (and indeed have successfully petitioned to be candidates for that body)—followed by a final vote later to approve or deny the work of that Commission.

Given that the Plaintiffs have an equal opportunity to participate, campaign and vote, it is likewise difficult to see how any harm from an election to form an exploratory commission could be irreversible because the only "harm" is an election and, even that election, does nothing more than elect a group of people to create a proposal about which Douglas County voter will have another opportunity to decide.

Finally, even if the Court were to find that the Resolutions had been adopted in violation of the OML, the Board would have the opportunity to reconvene and reach the same conclusion in compliance with the OML. *See, e.g., Colorado Off-Highway Vehicle Coal. v. Colorado Bd. of Parks & Outdoor Recreation*, 292 P.3d 1132, 1137–38 (Colo. 2012) (A local public body may "cure" a violation of the OML by holding a subsequent complying meeting). Hence, whatever harm Plaintiffs fear can only be delayed. A vote on the resolutions itself, even assuming it is a harm, ultimately is only a vote to allow the citizens of the County to participate in the democratic process and make the ultimate decision themselves. Plaintiffs have offered no evidence of how they would be harmed by allowing a democratic process with an uncertain outcome to proceed.

3. No Plain, Speedy Adequate Remedy

An injunction should not issue unless there is no other plain, speedy, adequate remedy available. In this instance, the obvious plain, speedy adequate remedy for Plaintiffs is to defeat

the effort in a vote. Indeed, for the reasons spelled out above—that an injunction can b delay the vote—an injunction itself is not an adequate remedy. The vote of the people cannot be forever suppressed. If these Resolutions are declared invalid, the Board can simply pass two more; hence, the only adequate remedy available to the Plaintiffs is the vote.

4. Public Interest

An injunction will not issue if, to do so, would disserve the public interest. In general, it is difficult to imagine how letting the citizens decide an issue is not well within the public interest and the Court has seen no evidence to suggest that delaying that vote is consistent with any public interest. Plaintiffs have offered no evidence of how public interests is better served by delaying this Home Rule vote and the burden is theirs to prove.

Furthermore, the Board set the first election for June 24, 2025. Because the County Clerk and Recorder is required to send out absentee ballots for people in the military 45 days prior to this election (Section 1-8.3-110(1), C.R.S.), some ballots will have already been sent out by the time of this Order. Given that an election is likely to occur at some point, an injunction to delay that vote would cause County taxpayers additional costs, create confusion for the voting public, and generally disserve the public interest.

5. Balancing the Equities

Plaintiffs don't purport to speak on behalf of the voters of Douglas County and an injunction would have the most profound impact on their right to vote. Therefore, a consideration of the equities must include Douglas County voters' rights because they are innocent parties harmed by Plaintiffs' request. The Court is unwilling to sacrifice the public's right to vote on this Home Rule issue in order to vindicate the harm that Plaintiffs feel they have suffered. A delay

will have a profound impact on the Defendants but allowing the elections to proceed will have only the impact of allowing the Plaintiffs to participate as candidates and voters in the process. Equity in these circumstances does not require Court intervention.

6. Status Quo

When granted, a preliminary injunction should maintain the status quo pending final resolution. Here, the status quo is Douglas County voters right to participate in an election called for by the Board of County Commissioners, the voters right to participate in election and Board's authority to call for a special election are not changed by granting injunctive relief. Plaintiffs can argue that the status quo is no vote, but preventing the vote, or even delaying it, is not a status quo that this Court views as worthy of preservation.

ORDER

For the reasons stated herein, Plaintiffs' Motion for Preliminary Injunction is DENIED. The Court makes no finding or award of attorney's fees at this time; however, should Plaintiffs continue to base their complaint on allegations not supported by evidence or testimony or by information obtained after Plaintiffs' Complaint was filed, the Court will consider a motion to determine Plaintiffs' Complaint as groundless pursuant to C.R.S. §24-6-402(9)(b).

Signed by the Court this 20th day of May, 2025.

BY THE COURT:

Douglas County District Court Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **ORDER RE: PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** was served electronically upon all parties of record on this 9th day of May 2025.

/s Ashley Chamberlain

Pursuant to C.R.C.P. 121 § 1-26(9), a signed original is on file in the Office of the County Attorney, Douglas County, Colorado.