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On Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 2022CA001934

The District Court for the City and County of Arapahoe
Case No. 2022CV30927

COURT USE ONLY

THE SENTINEL COLORADO,
Petitioner

Case No.

v.

KADEE RODRIGUEZ, city clerk, in her official
capacity as records custodian
Respondent.

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PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition complies with all requirements of C.A.R. 53, and C.A.R. 25, 28 and 32. Specifically, the undersigned certifies that the Petition complies with the word limit, and it contains 2,681 words (3,800 limit).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 53, 28, and 32.

/s/Rachael Johnson
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ADVISORY LISTING OF ISSUES PRESENTED FOR REVIEW

1. Whether The Sentinel Colorado (“the Sentinel”), which is owned by Aurora Media Group, LLC, and operated by the Aurora Sentinel Community Media, a Colorado 501(c)(3) corporation, is a “citizen” for the purposes of § 24-6-402(9)(b), C.R.S., of the Colorado Open Meetings Law (“COML” or “OML”).

**OPINION FROM WHICH REVIEW IS SOUGHT; BASIS OF
JURISDICTION**

Review is sought from *The Sentinel Colorado v. Rodriguez*, No. 2022CA001934, (Colo. App. Dec. 7, 2023) (“Opinion”) (App. A). Jurisdiction is based on §§ 13-2-127**Error! Bookmark not defined.** & 13-4-108, C.R.S.**Error! Bookmark not defined.** and C.A.R. 49, 52(b).

Petitioner is unaware of any pending case in which the Court has granted *certiorari* review of the legal question presented in this Petition.

STATEMENT OF THE CASE

While several issues were presented in the lower courts and are outlined briefly below, The Sentinel appeals *only* the Court of Appeals’ determination that The Sentinel, the prevailing party, was not entitled to attorney fees under the COML, §§ 24-6-401, C.R.S. *et seq.*, because it is not a “citizen” under the plain meaning of the statute. Opinion at 19. The question of law for which The Sentinel seeks review is an issue of first impression and a matter of statutory interpretation that, **Error! Bookmark not defined.**if left undisturbed, will limit the effectiveness of the COML and shield agencies from accountability when they violate the law.

The case below concerned a request under the COML by a Sentinel reporter for access to the audio and video recording¹ (the “Recording”) of a March 14, 2022 executive session of the Aurora City Council (“the City” or “the Council”). CF, p. 21. In the request, Levy sought a “[r]ecording of the section of the Aurora City Council’s March 14 executive session pertaining to the censure of Danielle Jurinsky.” *Id.* In a response by the City to Levy on or around March 22, 2022, the City denied Levy’s request on the ground that the “record being sought is privileged attorney/client communication and is exempt from disclosure, pursuant to C.R.S. 24-6-402(d.5)(II)” of the COML. CF, p. 22.

The Sentinel filed a complaint on May 23, 2022 under § 24-72-204(5) & (5.5), C.R.S. of the CORA and §§ 24-6-401 *et seq.* of the COML to review the City’s decision to withhold the Recording on grounds that access should be afforded to the public pursuant to § 24-6-402(d.5)(II)(C), C.R.S. and could not be denied by the City pursuant to § 24-6-402(d.5)(II), C.R.S. In its Complaint, The Sentinel sought attorney fees. CF, p. 35, 43.

The trial court issued a July 26, 2022 order finding that the Council violated the COML because it failed to properly notice the executive session and ordered the March 14, 2022 Recording to be released. CF, pp. 19, 99, 161. The court stayed its

¹ Mr. Levy sought access to any meeting minutes of the March 14 executive session (should they exist) on the ground that they are public records under the CORA, §§ 24-72-201, C.R.S. *et seq.*

order for fourteen days so that Respondent could address and substantiate its privilege claims with the Court. CF, p. 100. The court did not award attorney fees. *Id.* Subsequently, the Respondent moved the trial court for reconsideration of its July 26 order and on September 22, 2022, the trial court issued a final order granting Respondent’s motion for reconsideration CF, pp. 155–59. The Sentinel appealed the trial court’s order.

On December 7, 2023, the Court of Appeals reversed the trial court and ordered the Council to release the recording. Opinion at 20. The Court agreed with “The Sentinel in all respects except its request for attorney fees.” Opinion at 2. With respect to The Sentinel’s request for attorney fees pursuant to § 24-6-402(9)(b), C.R.S., the Court determined that The Sentinel was not entitled to fees under the OML because it is not a prevailing “citizen” under the plain meaning of the statute. Opinion 19.

The Sentinel filed a Motion for Partial Reconsideration on December 20, 2023, solely on the issue of attorney fees. *See* Dkt. No. 25D8AE469001E (*The Sentinel Colo. v. Rodriguez*, No. 22CA1934, 2023 COA 118). The Sentinel argued that as a Colorado corporation, it is a “citizen” within the meaning of § 24-6-402(9)(b), C.R.S. because it is a citizen of the state in which it is domiciled and where its principal place of business is located; Colorado courts have awarded attorney fees to corporations or organizations; and the denial of an attorney fees

award under the OML would undermine the legislature’s purpose in enacting a mandatory fee provision for prevailing plaintiffs in litigation to enforce the requirements of the OML.

Respondent responded to The Sentinel’s motion on December 27, 2023. *See* Dkt. No. 446186A5B1D45 (*The Sentinel Colo. v. Rodriguez*, No. 22CA1934, 2023 COA 118). On December 28, 2023, the Court of Appeals denied The Sentinel’s motion, with one judge dissenting, and ordered a stay of its mandate to January 26, 2024, to allow both parties time to petition this Court for review. Order Denying Pet. at 1. The Sentinel respectfully files this petition for writ of certiorari solely of that portion of the Opinion pertaining to its request for an award of attorney fees.

APPLICABLE STATUTORY FRAMEWORK

Colorado Courts award mandatory attorney’s fees to the prevailing party in matters under the COML and the CORA. *See* § 24-6-402(9)(b), C.R.S.; § 24-72-204(5), C.R.S.; *Van Alstyne v. Hous. Auth. of Pueblo*, 985 P.2d 97, 99–100 (Colo. App. 1998). Furthermore, § 24-6-402(9)(b), C.R.S. states:

The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees

PRESERVATION AND STANDARD OF REVIEW

Whether The Sentinel would be entitled to its attorneys fees as the prevailing party under § 24-6-402(9)(b), C.R.S. and § 24-72-204(5), C.R.S. was raised in The Sentinel’s initial Complaint, CF, p. 43; Plaintiff’s Response to Defendant’s Motion for Reconsideration, CF, p. 142; its Notice of Intent to Appeal, CF, p. 180; and before the Court of Appeals. Opening Br. at 36. Thus, the issue was properly preserved at the District Court and at the Court of Appeals. Opinion at 19–20.

The issue of attorney’s fees is a question of law concerning the application of section § 24-6-402(9)(b), C.R.S. and § 24-72-204(5), C.R.S. of the COML and the Colorado Open Records Act (“CORA”). Matters of statutory interpretation present questions of law subject to *de novo* review on appeal. *People v. Sprinkle*, 489 P.3d 1242, 1245 (Colo. 2021).

REASONS FOR GRANTING THE PETITION

This Petition should be granted for the following special and important reasons. *See* C.A.R. 49.

I. The Sentinel, a Colorado corporation, is a “citizen” within the meaning of §24-6-402(9)(b), C.R.S.

In enacting § 24-6-402(9), C.R.S. the General Assembly established a mandatory fee-shifting provision for violations of the COML. *Zubeck v. El Paso Cnty. Ret. Plan*, 961 P.2d 597, 601 (Colo. App. 1998) (“Under the provisions of the OML, plaintiffs are entitled to an award of attorney fees upon a finding that the

governmental entity has violated any of the provisions of the law.”). In this case, the Court of Appeals found, among other things, that the “City Council violated section 24-6-402(4) of the OML by improperly convening and taking a ‘position ... or formal action,’” Opinion at 19, when it ended censure proceedings against a Councilmember during an improperly noticed executive session. Accordingly, The Sentinel is the prevailing party under the OML because it obtained a finding that a governmental entity violated the OML.

Furthermore, the Sentinel is a “citizen” for the purposes of § 24-6-402(9)(b), C.R.S. for several reasons. First, a corporation is a citizen of the state in which it is domiciled and where its principal place of business is located. *Nelson v. Encompass PAHS Rehab. Hosp. LLC*, 522, P.3d 707, 712 (Colo. 2023). The Sentinel is owned by Aurora Media Group, LLC, which is operated by the Aurora Sentinel Community Media, a Colorado 501(c)(3) corporation. CF, p. 35. Aurora Sentinel Community Media is a nonprofit corporation domiciled in Colorado. Its principal place of business was 3033 S Parker Rd, Suite 208, in Aurora, Colorado, but it relocated to 2600 S Parker Rd., Suite 4-141, Aurora, Colorado 80014. CF, p. 35; *see also* <https://sentinelcolorado.com/contact-us/>. Under Colorado law, a corporation or nonprofit corporation that is domiciled or incorporated in the state is considered a Colorado “citizen.” *Nelson*, 522 P.3d at 712 (“For diversity purposes, a corporation’s citizenship or domicile is where it is registered to do business or its

principal place of business.”) (emphasis added); *see also Pilgrim’s Pride Corp. v. Baker Refrigeration Sys., LLC*, No. 2022 CV 30148, 2022 WL 19764589, at *4 (Colo. Dist. Ct. Dec. 13, 2022) (holding a corporation is a citizen of both the state where it is incorporated and where it has its principal place of business); *Bob Blake Builders, Inc. v. Gramling*, 18 P.3d 859, 863 (Colo. App. 2001) (“Once properly formed, a corporation has existence and becomes a ‘person.’” (citing *Micciche v. Billings*, 727 P.2d 367 (Colo. 1986))); *Jotter v. Charles B. Marvin Inv. Co.*, 189 P. 22, 23 (Colo. 1919) (recognizing “the fundamental rule that corporations are entitled to the benefit of the law equally with individuals.”). Accordingly, The Sentinel is a citizen of Colorado, the state where it is domiciled and registered to do business under the plain meaning of § 24-6-402(9)(b), C.R.S.

A. Colorado Courts have interpreted “citizen” to include corporations like the Sentinel when awarding attorney fees in COML cases.

The Court of Appeals’ decision to deny The Sentinel prevailing party status on the basis that it is not a “citizen” under § 24-6-402(9)(b), C.R.S. is inconsistent with other decisions by that Court. For example, in *Zubeck*, the Court of Appeals found that a newspaper, the *Colorado Springs Gazette*, and an individual were jointly entitled to “reasonable attorney fees” because they prevailed in bringing a claim to remedy a OML violation. 961 P.2d at 602. Similarly, in *Wisdom Works Couns. Servs., P.C. v. Colo. Dep’t of Corr.*, 360 P.3d 262, 271 (Colo. App. 2015),

the court awarded attorney fees to the prevailing professional corporation. Indeed, the Court of Appeals awarded trial court *and* appellate attorney fees to the corporate plaintiff. *Id.* at 271 (“In addition to the attorney fees awarded by the trial court, Wisdom Works requests appellate attorney fees. Wisdom Works is entitled to an award of fees incurred in successfully defending on appeal the judgment enforcing the OML”). The Sentinel has been unable to locate any decision of this Court or of the Court of Appeals denying a prevailing corporate party attorney fees under § 24-6-402(9)(b), C.R.S. on the ground that it is not a “citizen.” *Cf. Ark. Valley Publ’g Co. v. Lake Cnty. Bd. of Cnty. Comm’rs*, 369 P.3d 725, 729 (Colo. App. 2015) (denying newspaper attorney fees under § 24-6-402(9)(b), C.R.S. because the Board did not violate the OML); *Colo. Off-Highway Vehicle Coal. v. Colo. Bd. of Parks & Outdoor Recreation*, 292 P.3d 1132, 1138 (Colo. App. 2012) (denying attorney fees to a *coalition* under § 24-6-402(9)(b), C.R.S. based on a finding that the coalition was not the prevailing party in the action; not on the ground that it was not a “citizen.”). These cases imply that had the corporation or government body prevailed in the COML action, attorney fees would have been awarded.

In its decision below, the Court of Appeals erred by narrowly construing the COML attorney fees provision to apply only to a “citizen” who is a naturalized person. Opinion at 20. In so holding, the court ignored its prior rulings to the contrary, *see supra* Section IA, as well as Colorado precedent confirming that

corporations are “citizens” entitled to legal rights, *see supra* Section I. Even though it is true that one definition of a “citizen” is “a native or naturalized person who owes allegiance to a government and is entitled to protection from it,” Opinion at 20 (quoting Merriam-Webster Dictionary), § 24-6-402(9)(b), C.R.S. does not state or even imply that only a “native or naturalized” person can be deemed a “citizen” for purposes of seeking and obtaining attorney fees as the prevailing party in a COML action. *Wisdom Works Counseling Servs., P.C.*, 360 P.3d at 271. Moreover, in a CORA case, this Court awarded the Colorado Republican Party attorney fees on the grounds that it was a “prevailing applicant” under § 24-72-204(5), C.R.S. *Benefield v. Colo. Republican Party*, 329 P.3d 262, 268 (Colo. 2014) (“Upon remand, the district court should exercise its discretion in determining the amount of costs and reasonable attorney fees to which the Colorado Republican Party, as prevailing applicant, is entitled in light of its partial success in this litigation.”). Although, the word “citizen” was not at issue in *Benefield*, this Court nevertheless awarded attorney fees to an organization that does not meet the constrained definition of a naturalized person or native prevailing applicant.

Indeed, Colorado courts have jurisdiction to enforce injunctions against nonnative persons, corporations, and government agencies deemed “citizens” under the meaning of § 24-6-402(9)(b), C.R.S. The statute states:

(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)(b), C.R.S. (emphasis added); *see Doe 1 v. Colo. Dep't of Pub. Health & Env't*, 454 P.3d 327, 334 (Colo. App. 2018) (Courts “have jurisdiction to issue injunctions to enforce [the OML] upon application by any citizen of this state.”). Here, the legislature could not have meant only native or naturalized persons given the myriad of OML cases in which both parties to the lawsuit are corporations, or nonnative persons, that are subject to injunctions to enforce the OML under § 24-6-402(9)(b), C.R.S. *See Colo. Off-Highway Vehicle Coal.*, 292 P.3d 1132; *Pueblo School District No. 60 v. Colo. High Sch. Activities Ass'n*, 30 P.3d 752 (Colo. App. 2001); *Wisdom Works Couns. Servs., P.C.*, 360 P.3d 262; *Ark. Valley Publ'g Co.*, 369 P.3d 725. Based on this State’s established jurisprudence regarding corporate citizens, had the legislature meant to exclude corporate citizens from fee recovery, it would have said so explicitly.

B. The Court of Appeals’ decision would permit agencies to violate the law without accountability.

The Court of Appeals’ denial of an attorney fees award under the OML on the ground that The Sentinel is not a “citizen” within the meaning of § 24-6-402(9)(b), C.R.S., if not reviewed, would undermine the legislature’s purpose in enacting a mandatory fee provision for prevailing plaintiffs in litigation to enforce the requirements of the OML. *See Bd. of Cnty. Comm'rs v. Costilla Cnty. Conservancy*

Dist., 88 P.3d 1188, 1193 (Colo. 2004) (holding that, in interpreting the OML, courts must give effect to the intent of the General Assembly and give words their plain and ordinary meaning). Indeed, government agencies are already using the court’s holding with respect to attorney’s fees in this case to attempt to circumvent the mandatory fee requirements of another statute designed to ensure government transparency, the Colorado Open Records Act (“CORA”). *See* Dkt. No. A4810051CB9B9 (Appellee Denver Public Schools citing *The Sentinel Colo. v. Rodriguez*, No. 22CA1934, 2023 COA 118, ¶¶ 49–51 (Colo. App. Dec. 7, 2023), in its notice of supplement authority concerning issue of attorney fees.).

CONCLUSION

When considering the plain meaning of the statute, the intent of the General Assembly, and the established jurisprudence of this State, The Sentinel is a “citizen” of Colorado—the state where it is domiciled, has its principal place of business and is registered to do business. For the reasons herein, this Court should grant the Petition for Writ of Certiorari and reverse the Opinion of the Court of Appeals on the issue of awarding attorney fees under § 24-6-402(9)(b), C.R.S.²

Respectfully submitted this 23rd day of January 2024.

² The Sentinel is also entitled to attorney fees on appeal under C.A.R. 39.1, *see* Opening Br. at 36, stating its specific request for attorney fees.

By /s/Rachael Johnson
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Reporters Committee for Freedom
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January 2024, a true and correct copy of the foregoing **PETITION FOR WRIT OF CERTIORARI** was served on the following counsel through the Colorado Courts E-File & Serve electronic court filing system:

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