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2025 CO 58

No. 24SC51, *The Sentinel Colorado v. Rodriguez* —Municipal, County, and Local Government—Attorney Fees—Attorney-Client Privilege.

The supreme court determines that The Sentinel Colorado newspaper, as a corporation, is a "citizen" under the Colorado Open Meetings Law ("COML"). Accordingly, the supreme court reverses the court of appeals on the question of whether The Sentinel may recover attorney fees from the Aurora City Council for the Council's violation of the COML if it is ultimately the prevailing party. Further, the supreme court determines that a public letter disclosing the fact that a stipulated agreement was discussed during an Aurora City Council executive session does not waive the attorney-client privilege because it did not detail the communications between the Council and its attorney.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 58

Supreme Court Case No. 24SC51
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 22CA1934

Petitioner/Cross-Respondent:

The Sentinel Colorado,

v.

Respondent/Cross-Petitioner:

Kadee Rodriguez, City Clerk, in her official capacity as Records Custodian for the City of Aurora.

Judgment Reversed
en banc
October 7, 2025

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JUSTICE HART delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.
CHIEF JUSTICE MÁRQUEZ dissented.

JUSTICE HART delivered the Opinion of the Court.

¶1 A Colorado "citizen" who proves a violation of Colorado's Open Meetings Law ("COML") may recoup attorney fees from the local public body that violated the law. § 24-6-402(9)(b), C.R.S. (2025) ("subsection (9)(b)"). One of the questions we confront here is whether The Sentinel Colorado ("The Sentinel") newspaper, as a corporation, is a "citizen" entitled to recover fees under the COML after its successful challenge to an improperly convened executive session of the Aurora City Council ("the Council"). We also consider whether a public letter disclosing the fact that a stipulated agreement was discussed during a Council executive session waives the attorney-client privilege protecting communications made during that executive session.

¶2 Considering the statutory scheme of the COML as a whole, we hold that the word "citizen" includes corporations in section 24-6-402(9). Accordingly, we conclude that The Sentinel may recover attorney fees under the COML if it is the prevailing party in litigation. Further, we conclude that the letter in question did not waive the attorney-client privilege because it did not detail the communications between the Council and its attorney but instead only recounted unprivileged facts. We therefore reverse the judgment of the court of appeals and remand for proceedings consistent with this opinion.

I. Facts and Procedural History

¶3 In January 2022, The Sentinel, a newspaper owned and operated in Aurora, Colorado, reported that Aurora City Council member Danielle Jurinsky had appeared on a talk radio show where she stated that the Aurora Police Department chief and deputy police chief were "trash" and called for their removal from office. In response to Jurinsky's conduct, another member of the Council initiated proceedings to censure her for allegedly violating the Council's governing rules.

¶4 On March 14, 2022, the Council held and recorded an executive session to, among other things, receive legal advice about the censure proposal. The public agenda for that session included, as relevant here, that the Council would meet regarding:

- "Negotiations," for an estimated time of forty-five minutes, citing section 24-6-402(4)(e);
- "Personnel Matters," for an estimated time of thirty minutes, citing section 24-6-402(4)(f);
- "Legal Advice," for an estimated time of one hour, citing section 24-6-402(4)(b); and
- "Legal Advice," for an estimated time of forty-five minutes, citing section 24-6-402(4)(b).

¶5 Four days later, a reporter for The Sentinel filed a records request seeking access to the recording of the March 14 executive session. Kadee Rodriguez, the official records custodian, denied this request, asserting that the record was both

subject to the attorney-client privilege and exempt from disclosure under the COML.

¶6 The Sentinel petitioned the district court for access to the recording, the minutes from the March 14 executive session, and, if necessary, an in camera review to assess any need for redactions. The Sentinel alleged in its application that the Council had violated the COML when it omitted any description of "legal advice" on the executive session agenda and when it engaged in "formal action" by taking a roll call vote to end the investigation into Jurinsky. In response, the records custodian reasserted the attorney-client privilege. The district court granted an in camera review.

¶7 In the meantime, on March 28, the Council held a regular public meeting. The agenda included an item described as: "Motion to Approve the Stipulation and a Request for Payment of Attorney Fees" and Council staff attached a packet of information to the agenda. In the packet, a document entitled "Council Agenda Commentary" stated that special counsel "representing the City ha[d] reached an agreement for a stipulation to resolve the [censure] issue," and that the "stipulation [was] included in the backup for this item." The packet also included a letter to the Council members from the special counsel, explaining what Jurinsky had been charged with; the fact that special counsel had been appointed; that at

the March 14 meeting the Council directed special counsel to enter a stipulation; and the terms of the stipulation.

¶8 In July, the district court issued an order based on its in camera review of the executive session. It found that (1) "the subject of the [e]xecutive [s]ession was to receive information from legal counsel on the process to be followed in addressing a censure complaint"; (2) "[t]he Council did not 'vote' on ending the censure action as alleged in [T]he Sentinel's complaint[;] however, there was a roll-call taken on what direction to give to legal counsel on how to proceed"; and (3) "the announcement of the [e]xecutive [s]ession does not appear to comply with the requirements of the applicable statutes." *Sentinel Colo. v. Rodriguez*, No. 22CV30927, at *2 (Dist. Ct., Arapahoe Cnty., July 26, 2022). The district court concluded that the Council had violated the COML and ordered that the executive session recording be released to The Sentinel. *Id.* at *3.

¶9 The court did, however, stay its ruling to allow the records custodian time to argue why release would violate the attorney-client privilege. *Id.* The records custodian promptly did so by filing a motion for reconsideration. In the motion, the records custodian also argued that the Council had cured its COML violations by providing public notice of the executive session in the agenda and agenda packet for its regular meeting. The Sentinel opposed this motion.

¶10 The district court granted the motion for reconsideration and ordered that the recording not be released. Specifically, it found that the regular meeting identified what took place at the executive session and therefore cured any COML violation. The district court did not reach a conclusion as to whether the attorney-client privilege applied.

¶11 The Sentinel appealed and argued, as relevant here, that the Council (1) violated the COML when it voted to terminate the investigation and enter a stipulation with Jurinsky; (2) waived any attorney-client privilege covering the executive session through the regular meeting agenda and agenda packet; and (3) did not cure its COML violations. The Sentinel also requested attorney fees as the prevailing "citizen" under the COML. *See* § 24-6-402(9)(b).

¶12 A division of the court of appeals largely agreed with The Sentinel. *Sentinel Colo. v. Rodriguez*, 2023 COA 118, ¶¶ 46–48, 544 P.3d 1278, 1285–86. The division held that the Council had violated the COML by taking "formal action" in an executive session when it took a "roll call" vote to end the investigation into Jurinsky and enter a stipulation. *Id.* at ¶¶ 30–32, 544 P.3d at 1283–84. Further, it concluded that the Council had waived the attorney-client privilege when it published the letter from special counsel in the regular meeting agenda packet because that letter "describe[d] everything that occurred" during the executive session. *Id.* at ¶ 40, 544 P.3d at 1285. Finally, the division concluded that the

Council did not cure its COML violations because the curing doctrine does not apply outside of situations where a party seeks to invalidate an action taken in an improper executive session. *Id.* at ¶ 41, 544 P.3d at 1285.

¶13 The division, however, disagreed with The Sentinel that it was entitled to attorney fees. *Id.* at ¶ 49, 544 P.3d at 1286. It recognized that the COML authorizes fees for "the citizen prevailing," *id.* at ¶ 50, 544 P.3d at 1286 (quoting § 24-6-402(9)(b)), but reasoned, based on the definition of "citizen" in the Merriam-Webster Dictionary, that The Sentinel was not covered by that provision of the statute because it is not a person who owes allegiance to a government or receives governmental protection. *Id.* at ¶ 51, 544 P.3d at 1286.

¶14 The Sentinel petitioned this court for certiorari review, and Rodriguez, in her official capacity as the records custodian for the City of Aurora, cross-petitioned.[1] We granted both petitions.[2]

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[1] Because Rodriguez is named here in her official capacity on behalf of the City of Aurora, we refer to respondent as the "City."

[2] We granted certiorari to review the following issues:

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 section 24-6-402(9)(b), C.R.S. (2023), of the Colorado Open Meetings Law ("COML" or "OML").
2. Whether the court of appeals erred in finding that a general description of the discussion of an executive session in a later public City Council agenda packet constituted a waiver of the entire

II. Analysis

¶15 We begin by addressing the core principles of statutory interpretation and the COML. Then, after analyzing the COML, we hold that the word "citizen" in section 24-6-402(9)(b) is used interchangeably with "person" and that each word logically encompasses any party with standing to pursue litigation under the statute. Accordingly, we conclude that The Sentinel is entitled to its attorney fees under subsection (9)(b) of the COML.

¶16 We then turn to the City's contention that the Council did not waive the attorney-client privilege by publishing the letter from special counsel recounting the factual details underlying its stipulation agreement with Jurinsky. We agree with the City and conclude—because the letter did not contain privileged communications between the Council and its attorney—that the letter did not waive the attorney-client privilege.

¶17 Accordingly, we reverse the judgment of the court of appeals and remand the case for further proceedings consistent with this opinion.

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attorney-client privilege and the executive-session privilege by the public body.

A. Standard of Review and Principles of Statutory Interpretation

¶18 We review issues of statutory interpretation de novo. *McCoy v. People*, 2019 CO 44, ¶ 37, 442 P.3d 379, 389. In construing a statute, our primary aim is to effectuate the legislature's intent. *Id.* Accordingly, we first look to the plain and ordinary meaning of the statutory language, reading its words and phrases in context. *Id.* We read the statute as a whole, "giv[ing] consistent, harmonious, and sensible effect to all its parts." *In re Marriage of Ikeler*, 161 P.3d 663, 667 (Colo. 2007). In doing so, we must consider the interactions between the statute's subparts, *Huber v. Kenna*, 205 P.3d 1158, 1162 (Colo. 2009), and construe its provisions to be consistent with the overall statutory design, *People in Int. of T.B.*, 2019 CO 53, ¶ 23, 445 P.3d 1049, 1054. We will not follow an interpretation that leads to an illogical or absurd result. *Frazier v. People*, 90 P.3d 807, 811 (Colo. 2004).

¶19 As a rule, we interpret statutes involving open meetings broadly, *Cole v. State*, 673 P.2d 345, 347 (Colo. 1983), and in the manner most favorable to the public, *Bagby v. Sch. Dist. No. 1*, 528 P.2d 1299, 1302 (Colo. 1974).

¶20 If a statute is clear and unambiguous, then we will not proceed to interpretive rules of statutory construction. *State Farm Mut. Auto. Ins. Co. v. Fisher*, 2018 CO 39, ¶ 12, 418 P.3d 501, 504. But if the statute is ambiguous then we may consider "the legislature's intent, the circumstances surrounding the statute's adoption, and the possible consequences of different interpretations to determine

the statute's proper construction." *Elder v. Williams*, 2020 CO 88, ¶ 18, 477 P.3d 694, 698. "A statute is ambiguous when it is reasonably susceptible of multiple interpretations." *Id.*

B. Application of the COML

¶21 The COML generally requires that if a quorum or three or more members (whichever is less) of a local public body, like the Council, meets to take any formal action or consider public business, that meeting must be open to the public. § 24-6-402(1)(a)(I), (2)(b). However, in limited circumstances, the COML allows a public body to hold an executive session that is closed to the public. § 24-6-402(4)(a)–(g). One such circumstance is when the local public body seeks to confer with an attorney "for the purposes of receiving legal advice on specific legal questions." § 24-6-402(4)(b).

¶22 An executive session held pursuant to section 24-6-402(4)(b) must (1) include a "specific citation" to that statutory provision; (2) identify the topic of discussion in "as much detail as possible without compromising the purpose for which the executive session is authorized"; (3) be supported by two-thirds of a quorum's vote in favor of entering into an executive session; and (4) not adopt "any proposed policy, position, resolution, rule, regulation, or formal action." § 24-6-402(4) ("subsection (4)"). And although an executive session is closed to the public, the executive session must be electronically recorded and that recording

must be kept unless the discussions during that session are protected by the attorney-client privilege. § 24-6-402(2)(d.5)(II)(A), (B).

¶23 Under the COML, any person may apply for access to the record of an executive session and, if a court finds that the local public body took up "substantial discussion of any matters not enumerated" in subsection (4), or "adopted a proposed policy, position, resolution, rule, regulation, or formal action" as prohibited by subsection (4), the "portion of the record" containing the unauthorized conduct will be made open to public inspection. § 24-6-402(2)(d.5)(II)(C). The COML further provides that "[i]n any action in which the court finds a violation of [section 24-6-402], the court shall award the citizen prevailing in such action costs and reasonable attorney fees." § 24-6-402(9)(b).

¶24 Here, the Council concedes that it improperly convened an executive session by failing to identify the topic of discussion in "as much detail as possible without compromising the purpose for which the executive session is authorized" as required by subsection (4). And the division concluded that the Council did not cure this deficiency by detailing the same subject matter in its March 28 hearing. *Sentinel Colo.*, ¶¶ 41, 46, 544 P.3d at 1285–86. Therefore, the fact of a COML violation is not at issue here. Instead, the issue before us is a narrow one: Whether The Sentinel, having brought a COML claim challenging a violation of the law,

may collect attorney fees under the statute if it ultimately prevails in this case. The Sentinel argues that it should be entitled to recoup fees if it is a prevailing party in COML litigation.[3] We agree for two reasons.

¶25 First, any other conclusion would exclude certain members of the public—media corporations like The Sentinel—from the ability to protect public interests in open meetings and collect attorney fees for successful litigation. This is illogical and even absurd. Second, the division concluded, without analysis, that The Sentinel could not be a "citizen" by relying on a single dictionary definition of citizen. *Sentinel Colo.*, ¶ 51, 544 P.3d at 1286 (defining citizen as "a native or naturalized person who owes allegiance to a government and is entitled to protection from it" (quoting *Citizen*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/citizen [https://perma.cc/26V4-JCSM])). This was error. Even a statutory interpretation analysis that stops at what it describes as the "plain meaning" of a word must still examine that word in the context of its statute or relevant statutory provision. *T.B.*, ¶ 23, 445 P.3d at 1054–55. Both the statutory and legislative history of this provision further

[3] In the alternative, the newspaper contends that the Colorado Open Records Act ("CORA") authorizes it to receive fees because the executive session recording is a public record and it is a "person" under CORA.

support the conclusion that "citizen," as used in section 24-6-402(9) includes media organizations like The Sentinel.[4]

1. Section 24-6-402(9) of the COML

¶26 The relevant statutory provision is section 24-6-402(9), which provides in pertinent part:

> (a) Any person denied or threatened with denial of any of the rights that are conferred on the public by this part 4 has suffered an injury in fact and, therefore, has standing to challenge the violation of this part 4.
>
> (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. 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. . . .

¶27 Accordingly, this statute provides that any person has standing to challenge a violation of the COML and that any citizen can seek an injunction to enforce the COML.

¶28 Neither the term "person" nor the term "citizen" is defined in the COML itself. § 24-6-402. However, another provision of the Colorado Sunshine Law—of

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[4] "[W]e use 'statutory history' to refer to the evolution of a statute as it is amended over time by the legislature and 'legislative history' to refer to the development of a statute during the legislative process and prior to enactment or amendment." *Colo. Oil & Gas Conservation Comm'n v. Martinez*, 2019 CO 3, ¶ 30 n.2, 433 P.3d 22, 29 n.2.

which the COML is a part—defines "[p]erson" to mean "an individual, limited liability company, partnership, committee, association, corporation, or any other organization or group of persons." § 24-6-301(4), C.R.S. (2025) (defining "person" under the "Regulation of Lobbyists" provision of the Colorado Sunshine Law). While "person" is not expressly defined in the COML, we presume that the legislature intended a term to have consistent meaning across related sections of a statute. *See Castillo v. People*, 2018 CO 62, ¶ 42, 421 P.3d 1141, 1148 (noting statutory definitions of words used elsewhere in the same statute furnish authoritative evidence of legislative intent); *see also Montezuma Valley Irrigation Co. v. Bd. of Cnty. Comm'rs*, 2020 COA 161, ¶ 25, 486 P.3d 428, 433 ("Although the General Assembly didn't include a definition of 'maintain' (or any other term) in section 43-5-305, we can presume that it intended to use the word in a way similar to how it is used in other sections within Title 43.").[5]

[5] While looking to the legislature's definition of a term in one section of a statute is relevant context for understanding the legislature's intent in using the same term in other portions of the same statute, we note that such persuasive value has its limits. For instance, using the legislature's definition of "person" in Colorado's Uniform Commercial Code, *see* § 4-9.5-103(10), C.R.S. (2025), is of limited value to understanding its use of "person" in the COML because the legislative intent is likely different from statute to statute, *see Bertrand v. Bd. of Cnty. Comm'rs*, 872 P.2d 223, 228 (Colo. 1994) ("[T]he interpretation of one statute by reference to an *unrelated* statute is an unreliable means of ascertaining legislative intent." (emphasis added)).

¶29 Reading these sections, it is evident that "person" and "citizen" are used interchangeably to refer to the plaintiff in a COML lawsuit. It would be illogical to read the law to allow "a person" to file an application seeking records of an allegedly improper executive session, but to limit a court's jurisdiction to issue injunctions only to circumstances where the applicant is, as the division's opinion would require, "a native or naturalized person who owes allegiance to a government and is entitled to protection from it." *See Sentinel Colo.*, ¶ 51, 544 P.3d at 1286. Similarly, it would be absurd that a party who is explicitly conferred standing to challenge a violation of the COML would be unable to seek an injunction to redress that violation. Looking to a dictionary to define the word "citizen" in the COML ignores the fact that multiple divisions of the court of appeals have, over many years, recognized suits brought by newspapers and other corporations under the COML. *See, e.g.*, *Prairie Mountain Publ'g Co. v. Regents of Univ. of Colo.*, 2021 COA 26, ¶ 1, 491 P.3d 472, 474; *Ark. Valley Publ'g Co. v. Lake Cnty. Bd. of Cnty. Comm'rs*, 2015 COA 100, ¶ 1, 369 P.3d 725, 725; *Wisdom Works Counseling Servs., P.C. v. Colo. Dep't of Corr.*, 2015 COA 118, ¶ 3, 360 P.3d 262, 264; *Zubeck v. El Paso Cnty. Ret. Plan*, 961 P.2d 597, 598 (Colo. App. 1998). The question presented here has never been addressed in this court, but the consistent interpretation of "citizen" by divisions of the court of appeals to include corporations like The Sentinel merits our consideration.

¶30 Relying on a dictionary definition of the word citizen is also somewhat surprising considering the common legal usage of the word in the context of jurisdictional law. As recently as 2023, we have stated that "[f]or diversity [jurisdiction] purposes, a *corporation's citizenship* or domicile is where it is registered to do business or its principal place of business." *Nelson v. Encompass PAHS Rehab. Hosp., LLC*, 2023 CO 1, ¶ 20, 522 P.3d 707, 712 (emphasis added). Thus, it is not novel that the word "citizen" may include corporations. And given the structure of the COML, we conclude that, in that context, it does.

¶31 Our conclusion is bolstered by the very limited legislative history available about the enactment of and amendments to the COML. The COML was originally enacted in 1973 as a result of a 1972 ballot initiative. Ch. 456, sec. 1, § 3-37-402(1)(f), 1973 Colo. Sess. Laws 1660, 1666. At the time, the first sentence of what is now section 24-6-402(9)(b) was located in section 24-6-402(6), C.R.S. (1973).[6] That section provided, "The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application of any citizen of this state." § 24-6-402(6), C.R.S. (1973).

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[6] Between the time the legislature enacted section 3-37-402 and the printing of the 1973 Colorado Revised Statutes in 1974, section 3-37-402 was recodified as section 24-6-402. The laws enacted and amended in 1973 were not printed in a supplement to the 1973 Colorado Revised Statutes but were printed for the first time in 1974 using a new numbering system.

¶32 When the entire COML was revised in 1991 that language was moved to section 24-6-402(9). Ch. 142, sec. 2, § 24-6-402(9), 1991 Colo. Sess. Laws 815, 820. At that time, the remaining language of what is now subsection (9)(b), including the language allowing an award of fees and costs to a prevailing "citizen," was added. 1991 Colo. Sess. Laws at 820. As one legislator noted in a hearing on the changes: one purpose of the COML's fee-shifting provision was to "open up the doors to the courthouse" to those seeking to deter public bodies from violating the law and to compensate them for those efforts.[7] Hearings on S.B. 33, S. State Affs. Comm., 58th Gen. Assemb., 1st Sess. (Jan. 14, 1991). The legislator observed that "quite often, it is . . . the press [who] does take a lead" on COML issues. *Id.*

¶33 The use of the two distinct words "person" and "citizen" in section 24-6-402(9) was introduced in 2014, when the legislature added section 24-6-402(9)(a), referring to the standing of "[a]ny person" aggrieved by a violation of the COML, and moved what had previously been the complete section 24-6-402(9) into subsection 24-6-402(9)(b). Ch. 380, sec. 1, § 24-6-402(9), 2014 Colo.

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[7] This legislator is not identified in the oral records of the hearings. However, while the identity of a legislator may add context to the legislative history, we have not required specific identification as a prerequisite for using statements made during hearings to interpret legislative intent. Rather, the legislative intent inquiry focuses on the *substance* of the statements made, and their relevance to the statute in question. *See generally People v. Rockwell*, 125 P.3d 410, 419 (Colo. 2005) (focusing on the testimony made before the congressional committee to identify legislative intent).

Sess. Laws 1859, 1859. This amendment created the current distinction between "person" and "citizen" but offered no explanation for the distinction.

¶34 The complete structure of section 24-6-402(9) suggests no significant distinction between persons and citizens. It would be absurd to allow corporations—who are recognized as persons in one part of the statutory scheme and by divisions of our court of appeals—to have standing to pursue COML claims but then deny them the ability to seek injunctions to prevent violations and compensation for their efforts to protect public rights. Nothing in the legislative history suggests that the legislature intended to draw any distinction. In light of all these points, we hold that corporations, like The Sentinel, are entitled to attorney fees under the COML when they are prevailing parties in litigation pursuant to that law.

¶35 Because we hold that subsection (9)(b) includes corporations in its use of the word "citizen," we do not address The Sentinel's argument in the alternative for attorney fees under CORA. The newspaper may collect attorney fees under the COML if it ultimately prevails in this case.

C. The Council Did Not Waive the Attorney-Client Privilege

¶36 In its cross-petition, the City argues that the division erred when it concluded that the Council waived the attorney-client privilege covering the

executive session through the letter from special counsel included in the March 28 meeting agenda packet.[8] We agree.

¶37 The attorney-client privilege applies to protect "matters communicated by or to the client in the course of gaining counsel, advice, or direction with respect to the client's rights or obligations." *Jordan v. Terumo BCT, Inc.*, 2024 CO 38, ¶ 29, 550 P.3d 628, 634 (quoting *Gordon v. Boyles*, 9 P.3d 1106, 1123 (Colo. 2000)). The privilege only protects the communications—it does not protect "any underlying and otherwise unprivileged facts that are incorporated into a client's communication to his attorney." *Gordon*, 9 P.3d at 1123. The client may not assert the attorney-client privilege to protect relevant facts simply because those facts have been previously communicated to counsel. *Id.* A client can waive the attorney-client privilege by disclosing "privileged communications to a third party." *People v. Trujillo*, 144 P.3d 539, 543 (Colo. 2006). But disclosing non-privileged information, like factual assertions, does not waive the privilege. *Id.* at 544–45. "The burden of establishing a waiver or an exception lies with the

[8] During oral argument in this case, The Sentinel alleged that Jurinsky's attorney was present at the executive session and, therefore, that the Council entirely waived the attorney-client privilege by virtue of allowing a third-party presence. The Sentinel did not, however, make this argument in its briefing before this court, or before the division. And, in any event, whether a third-party presence waived the attorney client privilege is not within the scope of the question on which we granted certiorari.

party seeking to overcome the privilege." *Id.* at 542 (citing *Wesp v. Everson*, 33 P.3d 191, 198 (Colo. 2001)).

¶38 The division concluded that the Council "waived any attorney-client privilege from the . . . executive session" because the letter from special counsel included in the March 28 agenda packet "describe[ed] everything that occurred" in the executive session. *Sentinel Colo.*, ¶ 40, 544 P.3d at 1285. Our review of the record shows that this is inaccurate. The letter from special counsel did not describe everything that took place during the executive session. Instead, it recounted:

- the charges against Jurinsky;
- the procedures subsequently followed to advise Jurinsky, the mayor of Aurora, and the Council of the censure proceedings;
- the procedures followed to appoint special counsel;
- the fact of the March 14 meeting at which the Council directed special counsel to enter a stipulation; and
- the terms of the stipulation.

¶39 These are factual assertions, not privileged communications. The letter did not, for example, detail what advice special counsel provided to the Council with regard to whether to enter a stipulation at all or what the terms of the stipulation should be. Accordingly, the Council did not waive its attorney-client privilege by publishing the letter in its March 28 meeting agenda packet.

¶40 The Sentinel, however, argues that *Guy v. Whitsitt*, 2020 COA 93, 469 P.3d 546, is indistinguishable from this case and therefore requires disclosure. According to The Sentinel, because an improperly convened executive session is considered open to the public, the records related to that session—including those subject to the attorney-client privilege—must be released. The holding in *Guy*, however, does not speak to the attorney-client privilege at all.

¶41 In *Guy*, a town council failed to provide sufficient notice of an executive session under subsection (4) of the COML. ¶ 5, 469 P.3d at 549. After the town council denied him a copy of the records from that executive session, asserting they were either nonexistent or not subject to disclosure, Guy initiated proceedings requiring the town council to show cause for its denial and sought a declaration that the town council had violated the COML. *Id.* at ¶ 6, 469 P.3d at 549. The district court, as relevant here, ruled in favor of the town council and concluded that it did not have to provide detail beyond the fact that it sought general "legal advice" in its notice of the executive session because of the "nature of the attorney-client privilege," and that it did not have to detail the "personnel matters" on its agenda given the privacy interests of an individual involved. *Id.* at ¶ 9, 469 P.3d at 549–50. Guy appealed and argued that the district court's conclusion was in error; a division of the court of appeals agreed as to these issues. *Id.* at ¶ 11, 469 P.3d at 550. The division found that the town council could have

provided more information regarding the topic of the legal advice being discussed without waiving the attorney-client privilege as to its substance. *Id.* at ¶ 21, 469 P.3d at 551. And the division concluded that the personnel matters to be discussed could have at least named the individual involved. *Id.* at ¶ 32, 469 P.3d at 554.

¶42 The division concluded, "[b]ecause the Town Council did not comply with [COML's] notice requirements, Guy [was] entitled to the recordings and minutes of the executive session (to the extent they exist) involving the matters not properly noticed." *Id.* at ¶ 33, 469 P.3d at 554. The Sentinel relies on this result to support its position that the attorney-client privilege no longer protects the records in this case. The *Guy* division, however, found only that Guy was entitled to the *existing* records involving matters *not properly noticed*; it did not specify that this included attorney-client privileged communications. *Id.* Only the underlying nonprivileged facts, not the substance of privileged communications, should have been noticed. In fact, when determining that some factual details could be included in a notice of an executive session for legal advice, the division emphasized that a waiver of the attorney-client privilege "must be of confidential portions of the privileged communications . . . [which] does not include the fact of the communication, the identity of the attorney, the subject discussed, and details of the meetings, which are not protected by the privilege." *Id.* at ¶ 21, 469 P.3d at

551 (quoting *Roberts v. Legacy Meridian Park Hosp., Inc.*, 97 F. Supp. 3d 1245, 1253 (D. Or. 2015)).

¶43 The division's conclusion in *Guy* therefore supports our result here. The letter from special counsel did not waive the attorney-client privilege by recounting the factual details of the Council's stipulation with Jurinsky. Accordingly, we conclude that the division erred when it found that the Council waived the attorney-client privilege as it related to the March 14 executive session.[9]

III. Conclusion

¶44 A corporate entity, like The Sentinel, falls within the meaning of the word "citizen" in section 24-6-402(9)(b) and is therefore entitled to seek attorney fees if it prevails in a COML action. Further, under the circumstances presented here, the Council did not waive the attorney-client privilege by publishing the letter from its special counsel. In light of the foregoing, we reverse the judgment of the court of appeals as to both issues and remand for proceedings consistent with this opinion.

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[9] The Sentinel also requests attorney fees related to its litigation in this court and the court of appeals, pursuant to C.A.R. 39.1. Rule 39.1 allows appellate attorney fees for parties who articulate a legal and factual basis to support their entitlement to an award; a mere citation to the rule is insufficient. Here, The Sentinel argues that it is entitled to fees on appeal because, again, it is a "prevailing citizen" under the COML. Because The Sentinel is a "citizen" under subsection (9)(b) of the COML, we agree it is entitled to seek fees pursuant to Rule 39.1; entitlement to receive those fees depends on whether The Sentinel is in fact a prevailing party.

CHIEF JUSTICE MÁRQUEZ dissented.

CHIEF JUSTICE MÁRQUEZ, dissenting.

¶45 The majority holds that the word "citizen" in section 24-6-402(9)(b), C.R.S. (2025), is used interchangeably with "person" in section 24-6-402(9)(a) and encompasses "corporations" for purposes of granting an award of attorney fees. *See* Maj. op. ¶ 29. I disagree. First, the statutory history of section 24-6-402(9) reveals that the legislature did not use the terms "person" and "citizen" interchangeably, and we must assume that its choice to use different terms, particularly in the same statutory subsection, was intentional. Second, because the legislature did not define either "person" or "citizen" in the Colorado Open Meetings Law ("COML"), §§ 24-6-401 to -402, C.R.S. (2025), we must turn to the plain and ordinary meanings of these terms—neither of which includes corporations. Because I cannot agree with the majority that the General Assembly intended for corporations to be able to obtain fee awards under the COML, I respectfully dissent.[1]

[1] I would not reach the second issue in this case concerning waiver of the attorney-client privilege. I would conclude that The Sentinel Colorado lacks standing to sue under section 24-6-402(9)(a) because the plain and ordinary meaning of "person" excludes corporations. *See* § 24-6-402(9)(a) (granting only "person[s]" standing to sue under the COML).

I. The Statutory History of Section 24-6-402(9) Demonstrates that the General Assembly Did Not Use the Terms "Citizen" and "Person" Interchangeably

¶46 The statutory history of section 24-6-402(9) does not support the majority's assertion that the legislature used the terms "person" and "citizen" interchangeably in that provision. *See* Maj. op. ¶ 25 n.4*; see also Colo. Oil & Gas Conservation Comm'n v. Martinez*, 2019 CO 3, ¶ 30 n.2, 433 P.3d 22, 29 n.2 ("[W]e use 'statutory history' to refer to the evolution of a statute as it is amended over time by the legislature and 'legislative history' to refer to the development of a statute during the legislative process and prior to enactment or amendment.").

¶47 The COML was enacted as part of the Colorado Sunshine Act of 1972 ("Sunshine Act"). *See* Ch. 456, sec. 1, §§ 3-37-101 to -402, 1973 Colo. Sess. Laws 1660, 1660–66. The COML was Part 4 of the Sunshine Act, *id.* at 1666, while Part 2 established public disclosure obligations for government officials, *id.* at 1660–62, and Part 3 imposed provisions regarding the regulation of lobbyists, *id.* at 1662–65.

¶48 Notably, the legislature chose in Part 2 of the Sunshine Act to use the word "person" to refer to human beings. *See* § 24-6-202, C.R.S. (1973) (formally numbered as section 3-37-202, *see* Maj. op. ¶ 31 n.6). Part 2 offers a list of official governmental positions, available only to human beings, such as governor, secretary of state, judge, etc., and proceeds to refer to them as "persons" throughout. *Id.* And when the General Assembly refers to "corporations" or other

business entities in Part 2, it refers to them explicitly by terms such as "corporation," "firm," "partnership," or "other business enterprise." § 24-6-202(2)(e)–(h). In Part 3, governing the regulation of lobbyists, the General Assembly also chose to use "person" but expressly defined the term to include corporations for purposes of those provisions. *See* § 24-6-301(4), C.R.S. (1973). And in Part 4, the COML provided courts the authority to issue injunctions to enforce the COML upon application of any "citizen." § 24-6-402(6), C.R.S. (1973). The legislature chose the specific term "citizen" again in 1991 when it added the provision allowing for the award of attorney fees to prevailing "citizen[s]." Ch. 142, sec. 2, § 24-6-402(9), 1991 Colo. Sess. Laws 815, 820. The General Assembly's use of different terms in different parts of the Sunshine Act reflects that it did not intend the term "person" and "citizen" to be interchangeable.

¶49 More than forty years after its enactment, in 2014, the legislature separated section 24-6-402(9) into two subsections. These amendments added a new subsection, (9)(a), that granted "person[s]" standing to sue. *See* Ch. 380, sec. 1, § 24-6-402(9)(a)–(b), 2014 Colo. Sess. Laws 1859, 1859. What had been the entirety of section 24-6-402(9) (including the attorney fees provision) became section 24-6-402(9)(b). *Id.* Notably, the legislature did not adopt any definition of "person" for purposes of the COML, and it left the attorney fees language referring to a prevailing "citizen" unchanged.

¶50 The majority states that the structure of section 24-6-402(9) expresses "no significant distinction between persons and citizens" and insists that "[n]othing in the legislative history suggests that the legislature intended to draw any distinction." Maj. op. ¶ 34. But when the General Assembly uses different terms in the same section—and especially within the same subsection of a single provision like we have here—we assume the General Assembly intended those different terms to have different meanings. *See Colo. Med. Bd. v. Off. of Admin. Cts.*, 2014 CO 51, ¶ 19, 333 P.3d 70, 74 ("[T]he use of different terms signals the General Assembly's intent to afford those terms different meanings."). In other words, the statutory history *is* strong evidence of the General Assembly's intent to draw a distinction between its use of the terms "person" and "citizen" in the Sunshine Act.

¶51 In sum, the majority's insistence that the structure of section 24-6-402(9) "suggests no significant distinction between persons and citizens," Maj. op. ¶ 34, is contradicted by the use of those terms in the Sunshine Act as well as the statutory history of the COML.

II. The Plain and Ordinary Meanings of Both "Person" and "Citizen" Do Not Include Corporations

¶52 Because the COML does not define the terms "person" or "citizen," we look to their plain and ordinary meanings and resort to other rules of statutory construction only if the plain and ordinary meanings create ambiguity. *See Town*

of Minturn v. Tucker, 2013 CO 3, ¶ 27, 293 P.3d 581, 590; *see also Dep't of Revenue v. Agilent Techs., Inc.*, 2019 CO 41, ¶ 16, 441 P.3d 1012, 1016 ("If the statutory language is clear, we apply it as written and need not resort to other rules of statutory construction.").

¶53 The majority reasons that the term "person" in section 24-6-402(9)(a) includes corporations. *See* Maj. op. ¶ 28. From that premise, the majority concludes that the term "citizen" in section 24-6-402(9)(b) must also include corporations because it would make no sense for corporations to have standing to sue under subsection (9)(a) yet be ineligible to obtain fee awards under subsection (9)(b) if they prevail. *Id.* But because the majority's premise is incorrect, it reaches the wrong conclusion. In the absence of broader statutory definitions, the terms "person" and "citizen" do not include corporations.

¶54 First, the term "person" is commonly understood to be an individual human being—not a corporation. *Person*, Black's Law Dictionary (12th ed. 2024) (defining "person" simply as a "human being"); *see also Person*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/person [https://perma.cc/9VYP-VG3L] (defining person as a "human, individual").[2] When the

[2] The majority criticizes the division's reliance on a single dictionary definition to interpret section 24-6-402(9)(b). *See* Maj. op. ¶¶ 29–30. But this court routinely relies on dictionary definitions to convey the plain and ordinary meanings of undefined terms. *See Miller v. Amos*, 2024 CO 11, ¶ 24, 543 P.3d 393, 399 (citing dictionary definition of "every"); *Plemmons v. People*, 2022 CO 45, ¶¶ 25–26,

General Assembly uses the term "person" without defining it, it refers to the plain and ordinary definition—i.e., human beings. *See, e.g.*, § 24-6-202.

¶55 When the General Assembly wishes to include corporations in the definition of "person," it does so expressly. *See, e.g.*, § 4-9.5-103(10), C.R.S. (2025) (defining "[p]erson" to include corporations in the article concerning the central filing of effective financing statements under the Uniform Commercial Code); § 15-2.5-102(12), C.R.S. (2025) (defining "[p]erson" to include corporations in the Uniform Powers of Appointment Act for probate, trusts, and fiduciaries); § 15-1-1502(17), C.R.S. (2025) (defining "[p]erson" to include public corporations in the Revised Uniform Fiduciary Access to Digital Assets Act); § 24-72-202(3), C.R.S. (2025) (defining "[p]erson" to include corporations in the Colorado Open Records Act). Importantly, each definition is limited to the specific context in which it appears.

¶56 Critically, the legislature did not define "person" in the COML to include corporations. We must assume that this decision was intentional. *See Dep't of Transp. v. Stapleton*, 97 P.3d 938, 943 (Colo. 2004) ("[W]e presume that the General Assembly understands the legal import of the words it uses and does not use

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517 P.3d 1210, 1217–18 (citing the dictionary definitions of "harm," "infect," and "injure"); *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (citing the dictionary definitions of "immunity" and "prosecution").

language idly, but rather intends that meaning should be given to each word."). The majority cannot simply import or otherwise rely on the statutory definition of "[p]erson" from Part 3 of the Sunshine Act, which governs the regulation of lobbyists. *See* Maj. op. ¶ 28 (discussing section 24-6-301(4), C.R.S. (2025)). This is because section 24-6-301 expressly limits its definition of "person" to *Part 3* of the Sunshine Act. § 24-6-301 (defining terms "[a]s used in this [P]art 3"). This limiting language aligns with the legislature's consistent practice across the Colorado Revised Statutes: the word "person" includes corporations only when the legislature expressly so defines it, and only for purposes of that specific context. Because the COML does not define "person," we must rely on the plain and ordinary meaning of that term, which refers to an individual human being, not a corporation.

¶57 Second, the plain and ordinary meaning of "citizen" likewise excludes corporations. "Citizen" refers to a particular subset of persons—namely, "[s]omeone who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections." *See Citizen*, Black's Law Dictionary (12th ed. 2024); *see also Citizen*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/citizen [https://perma.cc/BG6Y-87YD] (defining citizen as "a native or naturalized person who owes allegiance to a government

and is entitled to protection from it"). Again, corporations are not persons, let alone "native or naturalized" persons with particular rights and obligations. Nothing about the plain and ordinary meaning of "citizen" suggests that the legislature intended this term in subsection (9)(b) to include corporations.

¶58 The majority supports its interpretation by pointing to a handful of court of appeals decisions that involved suits brought by corporations under the COML. *See* Maj. op. ¶ 29 (citing *Prairie Mountain Publ'g Co. v. Regents of Univ. of Colo.*, 2021 COA 26, ¶ 1, 491 P.3d 472, 474; *Ark. Valley Publ'g Co. v. Lake Cnty. Bd. of Cnty. Comm'rs*, 2015 COA 100, ¶ 1, 369 P.3d 725, 725; *Wisdom Works Counseling Servs., P.C. v. Colo. Dep't of Corr.*, 2015 COA 118, ¶ 1, 360 P.3d 262, 264; *Zubeck v. El Paso Cnty. Ret. Plan*, 961 P.2d 597, 598 (Colo. App. 1998)). But this court is not bound by those decisions; moreover, none of the cases cited addressed the question of whether corporations qualify as citizens for purposes of attorney fees awards under the COML.

¶59 The majority's other justifications for departing from the plain and ordinary definitions of "person" and "citizen" are similarly unpersuasive. The majority relies on a single unidentified legislator's comment during a hearing on the 1991 amendments to the COML. *See* Maj. op. ¶ 32. This is particularly thin support for its position. The remark that "the press" often "does take a lead" on COML cases is ambiguous at best. Although the phrase "the press" can include press

organizations, it can just as readily refer to individual reporters. Indeed, to the extent the majority is concerned that "the press" would be precluded from pursuing enforcement of the COML if the term "citizen" in subsection (9)(b) is read to exclude corporations, that concern is unfounded. Certainly, a citizen member of "the press" may bring a suit under the COML and, if successful, that individual may be awarded attorney fees. In any event, the isolated reference to "the press" in a 1991 hearing is no basis to discern the legislative intent of the term "citizen" in section 24-6-402(9).

¶60 The majority next draws comparisons to case law in which corporations are described as having citizenship for purposes of federal diversity jurisdiction. Maj. op. ¶ 30. This example is not only far removed from the COML, it is outside Colorado law entirely. Federal diversity jurisdiction is grounded in federal statute. 28 U.S.C. § 1332. Even if the language of a federal statute could offer guidance as to the Colorado General Assembly's intent in drafting the COML, the text of 28 U.S.C. § 1332 offers little support for the majority's interpretation. That provision furnishes a definition of corporations as citizens for the sole purpose of establishing domicile when analyzing diversity jurisdiction. Moreover, that definition applies only to sections 1332 and 1441. 28 U.S.C. § 1332(c)(1). Colorado has no comparable statutory provision reflecting legislative intent to treat corporations as having "citizenship"—for any purpose.

¶61 On the other hand, Colorado law is replete with examples of the terms "person" and "citizen" referring to human beings, consistent with their plain and ordinary meanings. Moreover, several provisions that use both terms clearly establish that "citizens" are a subset of "persons." For example, the Colorado Constitution states that "[n]o *person* shall be eligible to the office of governor or lieutenant governor[, secretary of state, state treasurer, or attorney general] . . . unless . . . he shall be a *citizen* of the United States." Colo. Const. art. IV, § 4 (emphases added); *see also* Colo. Const. art. V, § 4 ("No *person* shall be a representative or senator . . . who shall not be a *citizen* of the United States." (emphases added)). Similarly, as a subset of human "persons," only "citizens" are qualified to vote in elections, Colo. Const. art. VII, § 1, or serve as jurors, § 13-71-105(1), C.R.S. (2025) (stating that "[a]ny *person* who is a United States *citizen*" and who meets certain residency requirements shall be qualified to serve as a juror (emphases added)). All of these examples demonstrate that the legislature does not use "person" and "citizen" interchangeably; moreover, these terms do not apply to corporations unless expressly so defined.

¶62 Still, according to the majority, adopting the division's definition of "citizen" would create absurd results. Maj. op. ¶¶ 25, 29, 34. Not so. A "harsh or unfair" result is not enough to "render a literal interpretation absurd"; rather, we only disregard the otherwise unambiguous language when the result "'shock[s]

the general moral or common sense.'" *Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186, 1191 (Colo. 2010) (quoting *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930)); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 237 (2012) ("The absurdity must consist of a disposition that no reasonable person could intend."). In other words, an absurd result is one for which there is no rational basis. That is not the case here.

¶63 Here, it is not absurd to exclude corporations from section 24-6-402(9) because the General Assembly could rationally intend for the COML to empower only individual human beings to bring suit, acquire injunctive relief, and garner attorney fees. After all, the purpose of the COML is to ensure that members of the public, i.e., the individual human citizens who make up the People of Colorado, are apprised of governmental decision-making. *See* § 24-6-401, C.R.S. (2025) ("It is . . . the policy of this state that the formation of public policy is public business . . . ."). In short, reading section 24-6-402(9) to exclude corporations is not absurd.

III. Conclusion

¶64 Although granting corporations the right to sue and obtain fee awards under the COML may be reasonable policy, that is a choice for the legislature, not this court. As currently drafted, section 24-6-402(9) uses the terms "person" and "citizen"—neither of which is expressly defined (or otherwise commonly

understood) to include corporations. We must assume the General Assembly's choice was intentional. Because the term "citizen" in section 24-6-402(9)(b) cannot be read to allow corporations to obtain attorney fees awards, I respectfully dissent.