

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202		
Plaintiffs: Public Trust Institute, a Colorado nonprofit corporation and David Fornof v. Defendants: The Colorado House of Representatives, Colorado House Speaker Julie McCluskie, Representative Bob Marshall, The Colorado Senate, Colorado Senate President Steve Fenberg, Senator Jeff Bridges, Senator Chris Hansen, and Andrew Lindinger		
Attorney for Plaintiffs: Suzanne M. Taheri, #23411 WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com		
<p style="text-align: center;">VERIFIED COMPLAINT</p>		

Plaintiffs Public Trust Institute (“PTI”) and David Fornof, by and through its undersigned counsel, hereby submit this verified complaint as follows:

INTRODUCTION

This Complaint comes as the result of a practice recently adopted by the members of the Democratic caucus of both bodies of the General Assembly. This practice, known as “quadratic

voting” is done without proper public notice using the equivalent of a secret ballot to determine how bills are prioritized for consideration of the Colorado General Assembly.

In the course of its regular business, the Colorado General Assembly must work in the open. All committee meetings, House and Senate meetings, and legislative caucus meetings are open to the public. Records of votes are kept so that the People may know how our laws are made and who is influencing the legislative process. Indeed, this requirement is enshrined in the Colorado Constitution: “The sessions of each house, and of the committees of the whole, shall be open, unless when the business is such as ought to be kept secret.” Colo. Const. Art. V, § 14.

The need to conduct legislative activities in the open is further codified in the Colorado Open Meetings Law (COML): “It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.” § 24-6-401, C.R.S.

The practice of quadratic voting is purposely constructed to conceal information that the public is entitled to know. Specifically, it casts a veil of secrecy over the priorities of specific legislators and replaces them with a caucus consensus. This practice denies the public the right to hold individual legislators accountable for the way they prioritize legislation and allows certain bills to be killed or advanced in a secret process instead of being subjected to public discussion and debate. The practice also violates COML because it involves the secret exchange of information related to the public process among multiple legislators. This is defined as a public meeting in statute, yet the legislature refuses to conduct the meeting in public.

Early in the legislative process, quadratic voting replaces individual, public votes with a consensus, leading to a legislative process where each bill is entered with predetermined success or failure.

When Plaintiff PTI submitted requests for individual score sheets under the Colorado Open Records Act (CORA), each member of the General Assembly from whom the score sheets was requested did not disclose any information related to their individual votes. Nor did they disclose any contract, privacy agreement, or user agreement with the vendor RadicalxChange. Plaintiff Fornof similarly received no information on the individual votes or other agreements with RadicalxChange.

Plaintiffs bring this action to obtain records of individual scoring of bills during the quadratic voting process and any user agreements. Plaintiffs further request that individual scoring records be made available to the public in the future and that meetings be properly noticed and open to the public.

PARTIES

1. Plaintiff Public Trust Institute is a Colorado nonprofit corporation whose mission is to uphold our state's constitution and defend the principles of individual freedom and personal responsibility on which Colorado was founded.

2. Plaintiff David Fornof is a registered voter residing in Douglas County, Colorado.

3. Defendant the Colorado House of Representatives is the chamber of the Colorado General Assembly composed of 65 elected members vested with authority to formulate public policy, including the introduction, discussion, and passage of bills for further consideration by the Senate and/or the Governor. See Colorado Constitution Article 5, Section 1, subsection (1).

4. Defendant the Colorado Senate is the chamber of the Colorado General Assembly composed of 35 elected members vested with authority to formulate public policy, including the introduction, discussion, and passage of bills for further consideration by the House of Representatives and/or the Governor. See Colorado Constitution Article 5, Section 1, subsection (1).

5. Defendant Julie McCluskie is the Speaker of the Colorado House of Representatives.

6. Defendant Bob Marshall is a member of the Colorado House of Representatives.

7. Defendant Steve Fenberg is the Colorado Senate President.

8. Defendant Jeff Bridges is a state senator who sits on the Joint Budget Committee and is chair of the Senate Appropriations Committee.

9. Defendant Chris Hansen is a member of the Colorado Senate.

10. Defendant Andrew Lindinger is a budget and policy analyst for the Colorado Senate Democrats, employed by the General Assembly.

JURISDICTION AND VENUE

11. Jurisdiction is proper in this Court pursuant to C.R.S. § 24-6-402(9) and § 24-72-204(5).

12. Venue is proper in the Judicial District Court for Denver County pursuant to C.R.C.P. 98(b)(2) because all defendants are public officials and/or state public bodies whose actions giving rise to this Complaint occurred in Denver County.

GENERAL ALLEGATIONS

A. The Governing Law

13. Each of the Defendants is an employee of the State of Colorado.
14. The House of Representatives constitutes a distinct state public body under the COML. See § 24-6-402(1)(d)(I), C.R.S. (2023).
15. The State Senate constitutes a distinct state public body under the COML. See § 24-6-402(1)(d)(I), C.R.S. (2023).
16. Under the COML, any gathering of two or more members of a state public body at which any public business is discussed is declared to be a public meeting which must be “open to public at all times.” See § 24-6-402(2)(a), C.R.S. (2023).
17. Under the COML, the “[m]inutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection.” See § 24-6-402(2)(d)(I), C.R.S. (2023).
18. Under the COML, elected officials cannot discuss “pending legislation or other public business among themselves” via electronic mail unless such communications fully comply with the requirements of contemporaneous public access. See § 24-6-402(d)(III), C.R.S. (2023); see also § 24-6-402 (1)(b) (defining a “meeting” subject to COML as “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by [any] other means of communication.”).
19. COML prohibits secret balloting by public bodies, stating: “Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot.” § 24-6-402(2)(d)(IV), C.R.S.

20. COML defines a “secret ballot” as: “For purposes of this subparagraph (IV), “secret ballot” means a vote cast in such a way that the identity of the person voting or the position taken in such vote is withheld from the public.” *Id.*

21. The Colorado Supreme Court has declared that “[Colorado Open Meetings Law] prohibits bad-faith circumvention of its requirements.” *Darien v. Town of Marble*, 159 P.3d 761 (2006).

22. CORA requires, “that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.” § 24-72-201, C.R.S.

23. CORA states that correspondence including electronic mail generated during the conduct of public business is public record. § 24-72-202(1), C.R.S.

24. CORA includes: “an[y] electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval.” § 24-72-202 (1.2), C.R.S.

25. Under CORA, “‘Public records’ means and includes all writings made, maintained, or kept by the state...” § 24-72-202(6)(a)(I), C.R.S.

26. “Writings” means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. “Writings” includes digitally stored data, including without limitation electronic mail messages, but does not include computer software. § 24-72-202(7), C.R.S.

27. CORA specifically includes correspondence of elected officials in the definition of “public records” with certain exclusions. § 24-72-202(6)(a)(II), C.R.S. and § 24-72-202(6)(b)(II), C.R.S.

28. When a public entity has a contractual right to access documents from a third party, that entity has "direct[ed] [the third party] to have care, custody, or control of the document[s]." *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1091 (Colo. 2011). If the documents are used for a public purpose, the documents are public records within the meaning of CORA, and the public entity must produce those documents upon a proper CORA request. *Leonard v. Interquest N. Bus. Improvement Dist.*, 2022 COA 78, P2.

B. Statement of Facts

29. On April 25, 2023, Public Trust Institute sent CORA requests to Defendants Hansen, McCluskie, and Fenberg requesting: “All records regarding caucus quadratic voting for bill priorities for the 2023 session. This request includes all voting results, ballots, forms, and communications with regard to the caucus quadratic voting process and outcomes.”

30. On April 26, 2023, Sharon Eubanks, Director of the Office of Legislative Legal Services, responded on behalf of Defendant Hansen. The response included one responsive record which was an email from Senator Bridges containing instructions for the quadratic voting process. The response further indicated that Senator Hansen withheld or redacted some documents that he classified as work product.

31. On April 28, 2023, Eubanks responded on behalf of Speaker McCluskie. The response included the emailed quadratic voting instructions as well as the aggregated results. Speaker McCluskie withheld or redacted some documents that she classified as work product.

32. On April 28, 2023, Eubanks responded on behalf of Senator Fenberg. The response included the emailed quadratic voting instructions as well as the aggregated results. Senator Fenberg withheld or redacted some documents that he classified as work product.

33. On April 27, 2023, Public Trust Institute sent a CORA request for: “All records regarding caucus quadratic voting for bill priorities for the 2023 session. This request includes all voting results, ballots, forms, and communications with regard to the caucus quadratic voting process and outcomes” to Defendants Bridges and Lindinger.

34. On May 3, 2023, Sharon Eubanks responded on behalf of Senator Bridges, stating that one responsive record was found. The response did not make reference to anything withheld as work product.

35. The record supplied by Senator Bridges was an email from a news aggregator that Senator Bridges received. It contains a KUNC article regarding the quadratic voting process.

36. Among the records received from Senator Fenberg was an email from Senator Bridges to Senator Fenberg giving instructions and links for the quadratic voting. The email header indicates that the message is from March 24, 2023. Senator Bridges did not provide a copy of this email in his response.

37. On May 12, 2023, Sharon Eubanks responded on behalf of Andrew Lindinger. The response referenced the work product exception. It included records of calendar appointments with RadicalxChange, aggregated score sheets, and what appears to be a record of individual scores which was so heavily redacted that it contains only a list of senators and the email address of one senator.

38. On July 7, 2023, Plaintiff Public Trust Institute sent a 14-day notice of intent to seek judicial review of the CORA responses it received to Sharon Eubanks, Director of the Office of Legislative Legal Services as required by § 24-72-204 (5)(a), C.R.S.

39. On July 20, the Office of Legislative Legal Services provided supplemental records from Defendant Lindinger.

40. The supplemental records received on July 20 include additional aggregated score sheets for pending legislation in various categories of legislation.

41. The supplemental records received also included a less redacted copy of the spreadsheet used to track the voting links for each state senator in the Democratic caucus.

42. The link tracking spreadsheet includes numerous redacted email addresses which on information and belief indicates that state legislators are using personal email to conduct state business.

43. On June 1, 2023, Plaintiff David Fornof sent a request to Representative Bob Marshall requesting records related to quadratic voting.

44. On June 2, 2023 the Office of Legislative Legal Services responded to Mr. Fornof's request, with additional responses all the way up to June 9, 2023.

45. The responses included a summary of the scores for various bills as well as instructions for how votes would be taken, but did not include any individual scoring data.

46. Rep. Marshall did not provide data of how he voted, saying only that the records were not in his custody.

47. On June 24, 2023, Mr. Fornof sent notice of intent to seek judicial review of Representative Marshall's response to the Office of Legislative Legal Services.

48. On June 27, 2023, the Office of Legislative Legal Services responded to Mr. Fornof's notice and requested a meeting to review the request.

49. On July 21, 2023, counsel for the Plaintiffs met with the Office of Legislative Legal Services to discuss the requests made by Mr. Fornof.

50. In the 2023 Regular Session of the Colorado General Assembly, quadratic voting was an integral part of the legislative process.

51. On information and belief, the quadratic voting process is administered by an outside vendor, RadicalxChange. *See Exhibit 1;*

<https://www.radicalxchange.org/media/announcements/quadratic-voting-in-colorado/>

52. By using a third-party vendor to administer the quadratic voting process rather than utilizing the technology available to the State, Defendants ensure the secrecy of the votes.

53. Defendant Hansen admitted secrecy was the goal, "My hope was that it did take some of the intense political lobbying out of it and allowed people to express their preference in a private way." *See Exhibit 2;* <https://coloradosun.com/2019/05/28/quadratic-voting-colorado-house-budget/>

54. The process where individual legislators submit scores to a third party outside the state system is designed to circumvent COML requirements.

55. If the current system administered by a third-party vendor were not in place, the caucus would be required to meet in public to discuss legislative priorities.

56. Use of a third-party vendor to administer the quadratic voting process increases the difficulty for an interested party to access the voting records.

57. Using a third-party to administer voting does not legally convert public records to private records.

58. The individual score sheets from quadratic voting process constitute votes on pending legislation.

59. The individual score sheets express a final decision on the prioritization of legislation by elected officials.

60. This directly impacts the legislation that is introduced and debated. *See Exhibit 3; https://www.kunc.org/news/2023-05-25/a-wildfire-camera-bill-repeatedly-fails-secret-survey-results-at-the-capitol-might-explain-why?_amp=true*

61. Bills that rank higher get scheduled earlier, “And the earlier something gets moved, the better chance it has of success.” *Exhibit 3, quote from Plaintiff Hansen.*

62. The individual score sheets constitute “writings” for the purposes of CORA.

63. The fact that legislators use personal emails to participate in this voting system is further evidence of the design to circumvent CORA requirements.

64. All legislators and staff from whom individual score sheets were requested failed to provide the requested documents.

65. If the ballots or score sheets are not disclosed, then they are “secret ballots” in violation of § 24-6-402(2)(d)(IV), C.R.S.

66. The quadratic voting system currently in use by Defendants is designed to circumvent the requirements of COML and CORA in an effort to conceal the priorities of individual legislators.

67. The failure of the legislators to provide user agreements and contracts with RadicalxChange deprives the people of knowing what information is held by the vendor, what information is sold or shared by the vendor and who else has access to this information that could be used for the purpose of influencing law makers.

68. On information and belief, the quadratic voting system is used exclusively by the Democratic caucuses of the State Senate and the State House of Representatives; Republican members of the General Assembly are not included in the process.

FIRST CLAM FOR RELIEF

For Declaratory Relief for Past Violations of the Colorado Open Meetings Law

69. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein:

70. The practice of quadratic voting as used by the Defendants constitutes the discussion of public business among two or more of their members outside of meetings that were open to the public.

71. Defendants convened meetings of a quorum of the members of their respective chambers to discuss pending legislation but did not provide public notice of such meetings and did not provide for an open meeting.

72. Two or more members of the Colorado House of Representatives engaged in the discussion of public business, did not promptly record meeting minutes, and still have not made meeting minutes available to the public.

73. Two or more members of the Colorado Senate engaged in the discussion of public business, did not promptly record meeting minutes, and still have not made meeting minutes available to the public.

74. As a result of their unlawful conduct, Defendants deprived Plaintiffs, and those similarly situated, of their rights under the Colorado Open Meetings Law to full and timely notice of public meetings, to an opportunity to observe discussions of public business in real time, and to access the promptly recorded minutes of all such meetings.

75. Plaintiffs suffered an injury in fact and have standing as set forth in § 26-6-402(9)(a), C.R.S.

76. Plaintiffs are entitled to the entry of a Declaration and Finding by this Court that Defendants' conduct set forth above was in violation of the Colorado Open Meetings Law.

SECOND CLAIM FOR RELIEF

For Injunctive Relief Barring Further Violations of the Colorado Open Meetings Law

77. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

78. The individual Defendants have been unwilling or unable to voluntarily change the modus operandi of the Colorado General Assembly, as set forth above.

79. The unlawful practices described above will continue unless the Defendants are enjoined from doing so by this Court.

80. Plaintiffs, and all members of the public, who have rights to full and timely notice of public meetings, to an opportunity to observe discussions of public business in real time, and

to access the promptly recorded minutes of all such meetings, will suffer irreparable injury if future violations are not enjoined.

81. Plaintiffs are entitled to the entry of both preliminary and permanent injunctive relief that precludes the Defendants from further violations of the COML.

THIRD CLAIM FOR RELIEF

For an Order to Produce Records Held by Defendants Under the Requirements of the Colorado Open Records Act

82. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

83. Defendants failed to provide individual score sheets of each legislator's votes.

84. Despite providing a log demonstrating a series of meetings with RadicalxChange, Defendants failed to provide any contract or user agreement with the vendor.

85. Senator Bridges failed to supply an email that he sent which was supplied by one of the recipients, Senator Hansen.

86. Plaintiffs are entitled to review all records of quadratic voting held by any of the defendants or by the vendor they hired to facilitate the process.

FOURTH CLAIM FOR RELIEF

For an Order Requiring Any Records of Quadratic Voting Ballots, Score Sheets, and Results to be Posted Publicly in the Future

87. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

88. In an effort to obtain individual score sheets and other granular data on legislative priority setting, Plaintiffs submitted CORA requests to each of the Defendants.

89. Defendants failed to produce several records relevant to the request.

90. Plaintiffs, like all members of the public, are entitled to know and understand the reasons why legislative decisions are being made and how individual legislators are voting.

91. These decisions include the prioritization of legislation.

92. Defendants wish to keep records of legislative priorities secret.

93. Unless this Court enters an Order requiring public disclosure of individual voting records and ballots, Defendants will continue their secret voting in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiffs Public Trust Institute and David Fornof request the Court enter a judgment in its favor as follows:

1. Enter an Order declaring that the quadratic voting process violates the Colorado Open Meetings Law;
2. Enter an Order preliminarily and permanently enjoining the Defendants from committing any further similar violations of the Colorado Open Meetings Law.
3. Enter an Order requiring Defendants to disclose individual ballots, score sheets, and other records related to RadicalxChange.
4. Enter an Order requiring any records of quadratic voting to be posted publicly in the future.
5. Enter an Order commanding Defendants to pay Plaintiffs their reasonable attorney fees and costs for bringing this successful action to enforce their, and the public's,

rights under the Colorado Open Meetings Law and the Colorado Open Records

Act; and

6. Such other further relief as the Court deems just and proper.

Dated this 26th day of July, 2023

s/Suzanne Taheri
Suzanne Taheri
West Group

VERIFICATION OF PETITION

I, David Fornof, declare under the penalty of perjury to the law of Colorado that the factual allegations set forth in the foregoing Verified Complaint under C.R.S. §§ 24-6-402(9) and 24-72-204(5) are true and correct to the best of my knowledge, information, and belief.

David Fornof

David Fornof (Jul 26, 2023 14:27 CDT)

David Fornof

VERIFICATION OF PETITION

On behalf of Public Trust Institute, I, Suzanne Taheri, declare under the penalty of perjury to the law of Colorado that the factual allegations set forth in the foregoing Verified Complaint Under C.R.S. §§ 24-6-402(9) and 24-72-204(5) are true and correct to the best of my knowledge, information, and belief.



Suzanne Taheri (Jul 26, 2023 11:02 MDT)

Signature