COLORADO SUPREME COURT 2 East 14th Ave., Denver, CO 80203	
Certiorari to the Colorado Court of Appeals, Opinion issued by Justice Martinez, (Judge Tow and Judge Brown concurring) Case No. 2022CA2054: Teller County District Court No. 2022CV030023, Honorable Scott A. Sells, Judge	
Erin O'Connell Petitioner **v.** **Woodland Park School District, Woodland Park School District Board of Education, and Chris Austin, Gary Brovetto, David Illingworth, II, Suzanne Patterson, and David Rusterholtz in their Official Capacities as Board Members** Respondents	▲**COURT USE ONLY**▲
Attorney for Respondents Bryce Carlson, Atty. Reg. #52509 Miller Farmer Carlson Law 5665 Vessey Road Colorado Springs, Colorado 80908 970-744-0247 bryce@millerfarmercarlson.com	Case No. 2024SC000034
ANSWER BRIEF	

Certificate of Compliance

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

> It contains 9,497 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

> **In response to each issue raised**, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Bryce Carlson

Signature of attorney

TABLE OF CONTENTS

Table of Contents

Table of Authorities

Page

Cases

Table of Authorities

Page

Table of Authorities

Page

Statutes

STATEMENT OF THE CASE

In November 2021, four new directors were elected to the Board of Education (the "Board") in Woodland Park and were all sworn in at the Board's regular meeting held on December 8, 2021. (EX, p 5.) The new directors, David Rusterholtz, David Illingworth, Suzanne Patterson, and Gary Brovetto joined the only existing director, Chris Austin, to fill out the five-member Board.[1] (EX, p 5.) At the Board's regular meeting on December 8th, David Rusterholtz was elected president, David Illingworth was elected vice-president, and Chris Austin was elected secretary. *Id.*

Each of the new directors campaigned on the issue of school choice, and most of them campaigned specifically on their intent to bring Merit Academy into the Woodland Park School District (the "District") as a charter school. (CF, pp 343, 353, 378–79, 401.) At the time, Merit Academy was a contract school authorized by the Education reEnvisioned BOCES and was operating within the geographic boundaries of the District. (EX, p 1.) Merit Academy had previously

[1] Gary Brovetto, Chris Austin, and David Illingworth are no longer on the Board.

applied to be a District charter school but was denied by the prior Board. (EX, p 1; CF, p 295.)

Merit Academy was a significant topic at almost every Board meeting in the early months after the new Board was elected. (*See e.g.*, CF, pp 422–24.) At one of those meetings, the Board charged the former superintendent Dr. Matthew Neal with finding a way to streamline the process for welcoming Merit Academy into the District as an authorized charter school. (CF, pp 343–44.) To that end, Dr. Neal, in consultation with District counsel Brad Miller, developed the idea to execute a memorandum of understanding ("MOU" or "Merit Academy MOU") between the District and Merit Academy that would operate to approve the school and move the parties directly to the charter contract negotiation phase. (CF, p 415.) Given that Merit Academy had submitted an application the year prior and was already operating as a successful brick-and-mortar school within the District, the thinking was that an entire new application review process was unnecessary, particularly given the new directors' clear intent to charter Merit Academy. (CF, pp 422–423.)

Prior to the Board's meeting on January 26, 2022, President Rusterholtz met with Dr. Neal and Attorney Miller to set the agenda for the upcoming meeting.

(CF, pp 386–387.) There were multiple items that Attorney Miller potentially intended to discuss with the Board; accordingly, Attorney Miller suggested an agenda item for "Board Housekeeping." (CF, p 387.) No other Board member was a part of developing the agenda, nor did any other Board member know with complete certainty that the Merit Academy MOU was going to be discussed at the meeting. (CF, pp 301, 325, 359, 376.) In fact, President Rusterholtz was not even sure that the MOU would be discussed. (CF, pp 398–99.)

At the outset of the January 26th meeting, Secretary Austin raised concerns over the "Board Housekeeping" agenda item but was advised by Attorney Miller that the Board was free to adopt the agenda as-is. (EX, pp 97–98.) The Merit Academy MOU was in fact introduced by Attorney Miller under the "Board Housekeeping" agenda item. (EX, pp 159–162.) The Board had a thorough public discussion about the MOU, including comment from Dr. Neal regarding why the MOU was developed and what it accomplished. (EX, pp 159–189.) The Board approved the MOU on a 5–0 vote. (EX, p 189.)

After reflecting on the "Board Housekeeping" agenda item and hearing from the community, President Rusterholtz regretted the lack of transparency regarding the January 26th agenda. (CF, pp 390–91.) Accordingly, President

Rusterholtz issued a public apology the very next day at the Board's work session. (CF, pp 390–91.) Additionally, President Rusterholtz put the Merit Academy MOU back on the agenda for reconsideration at the Board's next regular meeting to be held on February 9, 2022, under the heading: "Re-Approval of MOU with Merit Academy." (EX, p 62.)

At the meeting, the Board heard public comment, including remarks from Petitioner, and again heard from Dr. Neal regarding the purpose of the MOU. (EX, pp 62–65; 294–298.) The Board then re-approved the MOU on a 5-0 vote without any further discussion. (EX, p 64.)

On March 30, 2022, Petitioner filed her verified complaint and an emergency request for preliminary injunction. (CF, pp 1–37.) The complaint argued that the January 26th agenda violated the Colorado Open Meetings Law ("OML") and that the February 9th meeting was an improper rubber stamp of the prior violation. (CF, p 11.) Petitioner additionally argued that the Board had engaged in a "walking quorum" or series of one-on-one communications that together constituted an illegal meeting under the OML. (CF, p 12.)

Two weeks after Petitioner filed the complaint, the Board again added the Merit Academy MOU to the agenda for its regular meeting on April 13, 2022. (EX,

p 90.) The agenda item read: "Discussion and Reconsideration of Re-Approval of MOU with Merit Academy." (EX, p 90.) Given that the Board did not further discuss the MOU prior to voting at its meeting on February 9th, the Board decided to bring the MOU back for a third time to fully deliberate on the MOU in public. (CF, p 38.) On April 13th, the Board received public comment, heard from Dr. Neal, and then discussed the MOU for approximately one hour before re-voting. (EX, p 412.) The MOU was passed on a 4–1 vote. (EX, p 412.) Secretary Austin changed his mind from previous meetings and voted in the negative. (EX, p 412.)

The preliminary injunction hearing was held on April 26, 2022. (CF, p 49.) The court ultimately rejected Petitioner's walking quorum theory but issued a preliminary injunction on the basis that the Board violated the OML with its meeting agenda of January 26th. (CF, pp 162–63.) The court further decided that the February 9th and April 13th meetings were improper rubber stamps of the prior violation and that the subsequent notices referencing the Merit Academy MOU could not have been understood by an ordinary member of the community. (CF, p 163.) The preliminary injunction required the Board to obey the OML regarding meetings involving Merit Academy. (CF, p 164.)

On June 3, 2022, Petitioner filed a motion to hold the Board in contempt of the preliminary injunction based on a subsequent Board agenda. (CF, pp 181–88.) A show cause hearing was set for September 2, 2022 (CF, p 530), where the court ultimately determined that the Board had not violated the preliminary injunction or the OML (CF, pp 649–54).

Petitioner and Respondents filed Cross Motions for Summary Judgment. (CF, pp 461–92; 512–27.) In its Order on Defendants' Cross Motion for Summary Judgment, the court ruled that Respondents cured the prior OML violation on April 13, 2022, by holding a properly noticed meeting that was not a rubber stamp. (CF, p 658.) The court additionally found that Petitioner was not a prevailing party and thus not entitled to costs and attorney fees. (CF, p 658.) This appeal followed.

SUMMARY OF THE ARGUMENTS

In 2012, the Court of Appeals held that the Colorado Open Meetings Law ("OML") permits a local public body to cure a prior violation where it holds a subsequent properly noticed meeting that fully complies with the requirements of the law. *See Colorado Off-Highway Vehicle Coal. v. Colorado Bd. of Parks & Outdoor Recreation*, 292 P.3d 1132, 1137–38 (Colo. App. 2012) (hereinafter referred to as "*COHVC*"). Notwithstanding the well-reasoned opinion of the Court of Appeals,

Petitioner has argued throughout this case that *COHVC* was incorrectly decided. According to Petitioner, the OML does not permit a local public body to cure a prior violation. However, Petitioner's Opening Brief leaves much to be desired with respect to the practical application of reversing the holding of *COHVC*. If Petitioner is correct that the OML does not permit a cure of prior violations and actions taken in violation of the OML are thus permanently null and void, then in the present case, the Merit Academy MOU must be invalidated. And yet, Petitioner readily acknowledges that prior violations do not permanently condemn the underlying action—so long as the cure is not retroactive. Accordingly, Petitioner appears to agree that curing a prior violation is in some respects permitted.

It is through this lens then that Petitioner's motives for this entire case come into focus. All of Petitioner's arguments come down to two main objectives: (1) using the OML to punish the Board and obstruct the chartering of Merit Academy, and (2) recover attorney's fees for her efforts. Neither objective under the circumstances here should receive this Court's blessing.

In holding that a local public body may cure a prior violation, the court in *COHVC* struck a careful balance. *COHVC* upholds the statutory mandate of

transparency and broad access to open meetings while not allowing the OML to unnecessarily obstruct public business. To reverse *COHVC* would be to depart from the vast number of states with similar open meetings laws that have interpreted them to allow local public bodies to cure violations. Further, preventing an effective and efficient mechanism for curing violations will incentivize bad behavior from prospective plaintiffs and encourage needless litigation designed only to punish and sanction offenders. Allowing local public bodies to cure violations of the OML promotes public transparency and supports the overall purpose of the law.

COHVC requires good faith compliance with the law and full public transparency; thus, there is no need to complicate the concept of cure by attempting to differentiate between intentional and unintentional violations. Not only is this a significantly subjective inquiry into the motives of numerous public officials, but it is also irrelevant to the purpose of the OML—that is ensuring that public business is conducted in full view of the public. Even if a local public body behaved badly, it cannot escape the requirements of the OML by simply sweeping the matter under the rug later under the guise that it cured the violation.

Finally, the holding of *COHVC* does not automatically strip a plaintiff from ever receiving costs and attorney's fees pursuant to C.R.S. § 24-6-402(9)(b). In appropriate circumstances, plaintiffs may still recover fees. In the present case, the district court carefully reviewed the facts of the case, and the litigation as a whole, and correctly determined that Petitioner was not a prevailing party. Specifically, she was not successful in any aspect of the litigation and thus was not entitled to an award of fees. In short, the holding of *COHVC* did not strip Petitioner of prevailing party status; she never was a prevailing party in the first place.

COHVC was persuasively and correctly decided by the Court of Appeals. This Court should affirm.

ARGUMENT

I. The Colorado Open Meetings Law Allows a Local Public Body to Cure a Prior Violation.

Standard of Review

Respondents agree that this Court may review *de novo* the issue of whether the OML allows a local public body to cure a previous violation. Respondents further agree that the issue of whether *COHVC* was correctly decided was preserved.

Discussion

A. *Colorado Off-Highway Vehicle Coalition* Persuasively Established that Curing a Prior Violation is Permitted Under the OML.

Petitioner asserts that the OML does not allow a local public body to cure a previous violation—or in other words, to ratify a prior decision made at a nonconforming meeting. (Opening Br., p 30.) However, the Court of Appeals in *COHVC* left no ambiguity that curing a previous violation is not only permitted but often necessary to promote the public good. *See* 292 P.3d at 1137–38. While Petitioner goes to great lengths arguing that *COHVC* was a dangerous decision that destroys transparency in government, she fails to meaningfully discuss the substance of the case and the well-reasoned analysis of the opinion.

In *COHVC*, the Colorado Parks and Wildlife Board, which is responsible for managing all state parks and outdoor recreation areas and for administering all state park and outdoor recreation programs, held a series of private meetings in violation of the OML regarding changes to one of the programs it oversees. *Id.* at 1134. However, after the improper meetings, the Wildlife Board held a properly noticed meeting where it "heard additional public comment and engaged in renewed deliberations before announcing their subsequent decision to ratify the [changes to

the program]." *Id.* at 1135. Petitioners in *COHVC* argued that "no right to cure OML violations has been recognized in Colorado and that, in any event, the Board did not cure the prior OML violations because its . . . meeting merely displayed the orchestrated, unanimous rubber stamping of the decisions reached during prior meetings that violated the OML." *Id.* (internal quotation marks omitted).

In determining that a local public body may cure a previous violation, the court stated that "the purpose of the OML is to require open decision-making, not to permanently condemn a decision made in violation of the statute. Because the focus of the OML is on the process of governmental decision making, not on the substance of the decisions themselves, it follows that the OML would permit ratification of a prior invalid action, provided the ratification complied with the OML and was not a mere 'rubber stamping' of an earlier decision made in violation of the act." *Id.* at 1137. Specifically, the Court found that "the meeting did not merely constitute a rubber stamping of a prior decision. At the meeting, the board heard additional comment from several key players, including a COHVCo representative, heard public comment from many interested parties, and engaged in renewed deliberations before announcing its ultimate decision." *Id.* (internal quotation marks omitted).

In finding that a cure of prior violations is permitted by the OML, the court in *COHVC* additionally relied on *Van Alstyne v. Hous. Auth. of City of Pueblo, Colo.*, 985 P.2d 97 (Colo. App. 1999). In *Van Alstyne*, a municipal housing authority held private meetings to discuss the sale of real property. *Id.* at 98. As a result of the meetings, the housing authority adopted a resolution to accept an offer on the property. *Id.* A group of neighbors to the property then filed suit against the housing authority on the basis that the meetings were not noticed to the public and thus violated the OML. *Id.* After the complaint was filed, the housing authority held a properly noticed meeting to reconsider the sale. *Id.* at 98–99. The lower court granted summary judgment in favor of the housing authority on the basis that the claims were moot considering the subsequent properly noticed meeting. *Id.* at 99.

The court in *Van Alstyne*, relying on *Bagby v. Sch. Dist. No. 1, Denver*, 528 P.2d 1299 (Colo. 1974), determined that simply rubber stamping a previous decision made at an improperly noticed meeting is a violation of the OML and thus could not remedy a prior invalid decision. *Id.* at 101. Given that there were factual disputes remaining on whether the housing authority's subsequent meeting was

merely a rubber stamp, the court in *Van Alstyne* reversed the grant of summary judgment and remanded the case for further consideration. *Id.* at 101–02.

In light of *Van Alstyne* and *Babgy*, the Court in *COHVC* stated:

> "[I]f . . . a state or local public body could violate the OML by merely 'rubber stamping' an earlier decision made in violation of the OML, then it follows that a state or local public body would not violate the OML by holding a subsequent complying meeting that is not a mere 'rubber stamping' of an earlier decision."

292 P.3d at 1137.

Finally, the court in *COHVC* found that failing to recognize an ability to cure under the OML may cause more damage to the public good than the original violation itself. *See* 292 P.3d at 1137. ("We are also influenced by the effect and consequences of plaintiffs' position. 'Mechanistic vacation of decisions made in noncomformity with the [open meetings] law may do more disservice to the public good than the violation itself.' That is, without an effective way of curing an OML violation, necessary public action may become gridlocked") (citations omitted).

This warning about the dangers of not allowing an effective way of curing a previous violation is especially prescient as this case demonstrates. Merit Academy is a District authorized charter school operating in a District facility under an approved facilities lease. And yet, Petitioner's requested penalty for the District

has been to eliminate all decisions and agreements related to Merit Academy and essentially suspend the school as a District charter by making it "start from square one." (CF, p 486) (Petitioner's Mot. for Summ. J.). This would be an incredible injury to the community and the hundreds of students and families who have chosen Merit Academy. Petitioner's requested remedy or punishment represents the exact type of disservice to the public good that the court in *COHVC* was concerned about. *See* 292 P.3d at 1137.

As further discussed, Part I.C, *infra*, Petitioner has now reversed course on the argument that invalidation of the MOU would have no impact on Merit Academy. She now argues that the "record is devoid of evidence to support a claim that invalidation of the January, February and April votes taken at non-compliant meetings will have any impact whatsoever on Merit's on-going operations. That genie is out of the bottle, and O'Connell seeks only the remedies of invalidation and the award of mandatory attorney fees, as prescribed by COML." (Opening Br., p 40 n.15.)[2] However, the record is in fact replete with examples of how Petitioner

[2] If it were true that Petitioner seeks only invalidation of the three separate votes on the MOU and is not interested in impacting Merit Academy's ongoing operations, then this appeal ultimately concerns only whether Petitioner can collect fees from the District. Petitioner concedes that the Board is free to execute a new

has attempted to use the OML to obstruct Merit Academy from operating as a District charter school. (*See e.g.,* CF, pp 462–63) ("All actions taken in non-compliant meetings should be determined to be null and void *ab initio*, including the memorandum of understanding (MOU) with Merit Academy (Merit) and any contracts with Merit that rely on the MOU, including any lease placing Merit on the grounds of the Woodland Park Middle School.") (Pl.'s Mot. for Summ. J.); (*see also* CF, p 186) (Petitioner requests that the district court "[i]nvalidate any steps taken in relation to Merit Academy sharing space with Woodland Park Middle School from May 4, 2022 onward) (Pl.'s Mot. for Contempt Citation); (*see also* CF, p 553) ("Equally fatal to Defendants [sic] attempt to avoid restarting the chartering process is that even if Merit would be detrimentally impacted by the application of this remedy, (a fact which Plaintiff disputes) in the context of this case, Defendants can hardly be heard to appeal to the equities.") (Pl.'s Resp. to Def.'s Cross Mot. For Summ. J.)

MOU even if *COHVC* is reversed by this Court. If Petitioner were to prevail here, the practical result is that the Board would be forced to take a now meaningless vote on the MOU for a fourth time for no other reason than allowing Petitioner to collect attorney's fees. This is an absurd outcome given that the Board openly and transparently corrected its mistake regarding the MOU almost two years ago at this point.

Despite Petitioner's attempt to sanitize her previous arguments aimed at punishing the District and obstructing Merit Academy, she cannot escape the fact that her efforts throughout this litigation would "do more disservice to the public good than the violation itself." *COHVC*, 292 P.3d at 1137.

In interpreting the OML, *COHVC* persuasively struck a balance between promoting transparency and open government while not allowing it to be used in a way that would gridlock necessary public action. This Court should affirm.

B. Petitioner's Argument that Longstanding Colorado Precedent Prohibits Ratification of Prior Nonconforming Acts is Objectively Incorrect.

Petitioner has argued throughout this case that Colorado courts have consistently interpreted the OML to mean that nonconforming acts "can never be rekindled" (Opening Br., pp 34–35), and that the concept of curing prior violations of the OML "upends decades of precedent." (COA Opening Br., p 42.) However, none of the cases cited by Petitioner support such a sweeping proposition. Further, she provides no meaningful analysis from the opinions but rather selectively quotes them to further her argument while ignoring their substance. To be very clear, none of the cases cited by Petitioner are upended by the holding in *COHVC*, and none of them support the argument that prior nonconforming acts under the OML "can never be rekindled."

For example, Petitioner cites *Wisdom Works Counseling Servs., P.C. v. Colorado Dep't of Corr.*, 360 P.3d 262 (Colo. App. 2015) for the conclusion that noncompliant decisions of a local public body are void under C.R.S. § 24-6-402(8). (Opening Br., p 35.) However, nothing about curing a previous violation upsets the language of C.R.S. § 24-6-402(8). *Wisdom Works* involved a challenge to the Colorado Department of Corrections ("DOC") based on its denial of an application submitted by Wisdom Works to be an approved treatment provider to DOC parolees. *Wisdom Works*, 360 P.3d at 264. The DOC denied the application upon the decision of two members of their Approved Treatment Provider Review Board in violation of the OML. *Id.* at 264; 267–68.

While the court invalidated the decisions of the DOC Review Board under C.R.S. § 24-6-402(8), the DOC never made any attempt to cure the previous violation. *Id.* at 267–68. The DOC argued throughout the litigation, including the case before the Court of Appeals, that there was no violation of the OML and that the members of the Review Board properly denied the application without the need for a public meeting. *Id.* at 267. Accordingly, *Wisdom Works* is entirely inapposite to the issues presented here, and its holding is not affected at all by allowing local public bodies to cure prior violations.

Petitioner additionally cites *Rogers v. Bd. of Trustees of Town of Fraser*, 859 P.2d 284 (Colo. App. 1993), for the proposition that "formal action taken outside an open public meeting [is] null and void.'" (Opening Br., p 35.) Like *Wisdom Works*, *Rogers* does nothing to upset the fact that noncompliant decisions in violation of the OML are void under C.R.S. § 24-6-402(8), notwithstanding the fact that the OML allows for curing prior violations.

In *Rogers*, the Board of Trustees of the Town of Fraser terminated an employee and denied his grievance in a meeting closed to the public in violation of the Public Meetings Law (a precursor to the OML.) *Rogers*, 859 P.2d at 286, 289. The employee argued that while the lower court properly determined that the town violated the Public Meetings Law, it erred as a matter of law in not ordering his reinstatement with back pay. *Id.* at 289. According to the employee, reinstatement with back pay was the only proper remedy given the nature of the violation. *Id.* The lower court ruled that the Board of Trustees' actions were "null and void" as a result of the violation but did not order reinstatement with back pay. *Id.* at 286.

Instead, the lower court ordered that the Board of Trustees implement appropriate administrative review procedures to ensure the employee an opportunity for a fair administrative hearing and appeal comporting with due

process. *Id.* at 286–87. The Court of Appeals affirmed the trial court, holding that reinstatement with back pay "was not the only appropriate relief available to the district court." *Id.*

Here, Petitioner essentially makes the same argument as the employee in *Rogers*—that is, because the Board adopted an MOU at an improperly noticed meeting, the only available remedy is to tear it up along with all subsequent decisions related to Merit Academy. However, like *Rogers*, the district court chose a different remedy. Rather than eliminating the MOU, charter contract, and facilities lease, the district court and Court of Appeals accepted that the Board cured the prior violation at its April 13th meeting based on the standard established in *COHVC*. (CF, p 658.) While *Rogers* was not cited in *COHVC*, the case supports the concept of curing a violation. The lower court's order to implement an appropriate administrative and appeal procedure after the fact was essentially a cure of the Board of Trustees' earlier violation.

Petitioner additionally cites *Barbour v. Hanover Sch. Dist. No. 28*, 148 P.3d 268, 273 (Colo. App. 2006), for the proposition that: "When a school board fails to comply with the requirements of the Open Meetings Law, its actions are invalid." (COA Opening Br., p 46.) Like *Wisdom Works* and *Rogers*, *Barbour* is not impacted

whatsoever by allowing local public bodies to cure prior violations. The Court of Appeals in *Barbour* held that a local school board's actions at subsequent meetings were a rubber stamp of prior invalid actions and thus could not be a ratification or cure. 148 P.3d at 273. Accordingly, *Barbour* is not impacted by *COHVC*, where the court's holding was specifically predicated on the fact that the subsequent decision was not a mere rubber stamp. 292 P.3d at 1137–38.

No Colorado precedent is upended or even remotely called into question by allowing local public bodies to cure prior violations. To the contrary—multiple divisions of the Court of Appeals, in addition to the division here, have discussed and recognized the holding of *COHVC* and the ability of local public bodies to cure prior violations of the OML. *See Bjornsen v. Bd. of Cnty. Commissioners of Boulder Cnty.*, 2019 COA 59; *see also Sentinel Colorado v. Rodriguez*, 2023 COA 118, *reh'g denied* (Dec. 28, 2023), *cert. granted in part,* No. 24SC51, 2024 WL 3526414 (Colo. July 22, 2024). Reversing the holding of *COHVC* would be a profound departure from a 12-year-old legal precedent in Colorado related to the interpretation of the OML. Local public bodies across the state have come to rely on *COHVC* in the last decade, and their reliance interests on the doctrine are significant. Petitioner's

arguments that *COHVC* upsets longstanding precedent is incorrect and should be rejected.

C. Nearly All States with Similar Open Meeting Statutes Have Interpreted the Law to Support Curing Prior Violations.

There is a common thread that runs through the analysis regarding curing open meetings violations in just about every state that has addressed the issue. That is—curing prior violations of open meetings statutes is permitted; ***provided that***, the ratifying action is not merely a rubberstamp of the previous decision and takes place at a meeting that fully complies with the law. That is exactly what the court held in *COHVC*, and this approach has been mirrored across the nation.

The *COHVC* court relied on numerous cases from other states with similar open meetings laws that permitted curing prior violations. *See Gronberg v. Teton County Housing Authority*, 247 P.3d 35 (Wyo. 2011) (Court held that a public agency could cure a void action that violated the Public Meetings Act "by conducting a new and substantial reconsideration of the action in a manner which complies with the Act," reasoning that the "purpose of the act was not to permanently condemn a decision or vote in violation of the Act, but to require open decision making.") (internal quotations and citations omitted); *see also Tolar v. Sch. Bd.*, 398 So.2d 427, 429 (Fla. 1981); *see also Allen v. Bd. of Selectmen*, 58 Mass. App. Ct. 715, 792 N.E.2d

1000, 1004 (2003); *see also Picone v. Bangor Area Sch. Dist.*, 936 A.2d 556, 563 (Pa. Commw. Ct. 2007); *see also Valley Realty & Dev., Inc. v. Town of Hartford*, 165 Vt. 463, 685 A.2d 292, 294–95 (1996).

These cases cited by the court in *COHVC* are far from exhaustive as to an inventory of state courts that have interpreted their open meetings laws to permit curing violations. For example, the Iowa Supreme Court in remanding a case to the trial court acknowledged that a local public body may cure a violation of the state's open meetings law. *Hutchison v. Shull*, 878 N.W.2d 221, 237–38 (Iowa 2016) ("[I]n considering what relief is appropriate under the circumstances of this case, the court should note that the board eventually approved the reorganization plan at an open meeting and should consider whether this subsequent approval complied with the open meetings requirements and cured any violation of the open meetings law.") (citing *Valley Realty*, 685 A.2d at 296).

Tennessee has a nearly identical provision to C.R.S. § 24-6-402(8) in its open meetings law, which provides that "[a]ny action taken at a meeting in violation of this part shall be void and of no effect." T.C.A. § 8–44–105. In discussing whether the law permitted a subsequent cure, the state's intermediate appellate court stated:

> "We hold that the purpose of the act is satisfied if the ultimate decision is made in accordance with the Public Meetings Act, and if it is a new and substantial reconsideration of the issues involved, in which the public is afforded ample opportunity to know the facts and to be heard with reference to the matters at issue."

Dossett v. City of Kingsport, 258 S.W.3d 139, 149 (Tenn. Ct. App. 2007) (quoting *Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432 (Tenn. Ct. App. 1990).

Louisiana recognizes the necessity of allowing local public bodies to cure violations. *See Brown v. Monroe Mun. Fire & Civ. Police Serv. Bd.*, 262 So. 3d 985, 989 (La. App. 2 Cir. 2018) ("[I]f there was any violation of the Open Meetings Law at the first meeting, it was cured at the second meeting. There was no reason for the trial court to reach a conclusion whether there was a violation . . . because the second meeting was in compliance and ratified the first meeting.").

Again, the common theme with respect to curing violations is that the ratification must not be a "perfunctory crystallization" or rubberstamp of prior invalid actions. That is exactly what *COHVC* requires, and there no is compelling reason to depart from its holding.

D. The Plain Language of C.R.S. § 24-6-402(8) Does Not Preclude Ratification of Prior Invalid Formal Actions.

C.R.S. § 24-6-402(8) provides that "[n]o resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken

or made at a meeting that meets the requirements of subsection (2) of this section." Respondents do not disagree that formal actions taken in violation of the OML are thus invalid pursuant to C.R.S. § 24-6-402(8); however, this does not mean that a presumptively invalid act cannot be later ratified. This is precisely what the concept of cure contemplates and what the Court of Appeals held in *COHVC*.

Petitioner prefers an overly simplistic reading of C.R.S. § 24-6-402(8) in concluding that defective formal actions can never be later ratified. According to Petitioner, because C.R.S. § 24-6-402(8) does not preclude a local body from re-taking a formal action with a prospective effective date, then that must necessarily mean that a local public body cannot cure prior invalid formal actions retroactively. (*See* Opening Br., pp 33–34) ("And while §24-6-402(8) creates no bar to the re-taking of formal action after a violation, Colorado courts have consistently interpreted its 'invalid[ation]' to render the original action null and void such that it can never be rekindled.")[3] However, the OML does not address one way or the

[3] Petitioner quotes *Van Alstyne*, 985 P.2d at 101, for the proposition that any actions taken at a meeting "that is held in contravention of the Open Meetings Law cease to exist or to have any effect, and may not be rekindled by simple reference back to them." (Opening Br., p 35.) However, the court in *Van Alstyne* was specifically discussing an attempt to cure in *Bagby* where the local public body gave only "cursory treatment" to the issues previously discussed at a noncompliant

other the effective date of a formal action that is later cured when a local public body retakes a formal action at a meeting that complies with the requirements of C.R.S. § 24-6-402. Common sense dictates though that if a local public body may cure a prior violation, the effective date necessarily will be retroactive. Without a retroactive effective date, the concept and practical effect of curing a violation is eliminated. In other words, prohibiting a local public from ratifying a prior formal action is essentially the same as reversing the holding of *COHVC* and finding that the OML prohibits a local public body from curing prior violations. As previously discussed, this would be a significant departure from the current state of the law in Colorado and across the nation.

Other states with similar statutes regarding the nullity of formal actions taken in violation of open meetings laws have specifically addressed this issue. For example, the open meetings law in Louisiana provides: "any action taken in violation of this Chapter shall be voidable by a court of competent jurisdiction." La.

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meeting. 985 P.2d at 101. The local public body in *Bagby* argued that "a debate on the issues had previously taken place." *Bagby v. Sch. Dist. No. 1, Denver*, 528 P.2d 1299, 1302 (Colo. 1974). Thus, *Van Alstyne* does not hold that formal actions can "never be rekindled" but rather that a cure cannot be effective simply by rubberstamping a prior invalid decision. 985 P.2d at 101–02.

Stat. § 42:24. This provision mirrors C.R.S. § 24-6-402(8) in that all actions taken in violation of open meetings requirements are effectively invalid. However, courts in Louisiana have expressly rejected the argument advanced by Petitioner here—that is, a formal action void for failure to comply with the OML "can never be rekindled." Louisiana's intermediate appellate court has stated with respect to this issue:

> This provision's use of the word "voidable" indicates that official actions taken in violation of the Open Meetings Law are relative nullities, not absolute nullities, and thus can be cured: A simple reading of this section compels the conclusion that an action taken by a public body without compliance with the Open Meeting Law is not an absolute nullity. General law and common sense dictate that a resolution which is not absolutely null and void, which came into being and existence when adopted, but which may be subsequently declared void because of technical violations of the law, may be corrected by ratification, provided the ratification is adopted after full compliance with the law.

Brightwell v. City of Shreveport, 356 So. 3d 586, 594 (La. App. 2 Cir. 2023) (citations omitted).

In the present matter, preventing the ratification of the Merit Academy MOU would create an absurd and somewhat confusing result. Merit Academy has operated as a District charter school for nearly three academic years. That means that it has been receiving public funds, paying teachers, educating students,

entering into employment agreements, and everything in between. Should this Court find that there can be no retroactive cure allowed under the OML, what then becomes of the status of the school? After all, the MOU essentially stood in the place of an approved charter application. Should the school's facilities lease and charter contract be struck down—as Petitioner has argued—because they were predicated on the approval of the MOU? Should Merit Academy be required to refund District per pupil revenue? Should Merit Academy students be required to repeat grades since the school was not operating under an approved charter contract and thus not technically a District-authorized charter school? Should the school be immediately closed until further notice? These questions reveal the absurd nature of prohibiting a local public body from fixing a mistake retroactively. *See AviComm, Inc. v. Colorado Pub. Utilities Comm'n*, 955 P.2d 1023, 1031 (Colo. 1998) ("[A] statutory interpretation that defeats the legislative intent or leads to an absurd result will not be followed.").

Nothing about the plain language of C.R.S. § 24-6-402(8) prevents ratification of formal actions at meetings that fully comply with the OML, and common sense dictates that if a local public body can cure a prior violation, then it must be able to do so retroactively.

E. Failing to Recognize a Mechanism for Local Public Bodies to Cure Prior Violations Will Incentivize Plaintiffs to Misuse the OML.

While this case is—on the surface at least—about compliance with the OML and the need for transparency in the conduct of public business, the reality is that Petitioner has used the OML as a vehicle to interfere with the District's priority to charter Merit Academy. This does not excuse mistakes or obviate the need to correct them when they occur, but a thoughtful review of the underlying circumstances suggests that this case is less about alleged violations of the OML and more about Petitioner's policy differences with the Board.[4] As discussed above, Part I.A, *infra*, Petitioner's requested remedies throughout this case have had little to do with ensuring transparency related to the discussion of the Merit Academy MOU but instead have focused on halting the school's progress (i.e., start the chartering process over (CF, p 489), void all subsequent agreements

[4] For example, at nearly every meeting of the Board of Education in early 2022, Petitioner harshly criticized the Board's priority to charter Merit Academy and clearly disagreed with approving a charter school in the District. (*See e.g.*, CF, pp 294–98.) While Petitioner is without question entitled to disagree with the direction of the Board in this regard, the OML should not be used as a weapon to reshape public policy.

between the District and Merit Academy (CF, 463–64), prohibit Merit Academy from sharing space at the middle school, etc. (CF, pp 469–70)).

Since the day Petitioner filed suit, she knew with certainty that the Merit Academy MOU was a legal agreement with the District that operated to approve Merit Academy as a District charter school and move the process to the contract negotiation phase. For example, in Petitioner's verified complaint, filed on March 30, 2022, she explicitly referenced that the MOU was a "proxy for Merit Academy charter approval." (CF, p 10.) Further, Petitioner attended the April 13th Board meeting where the MOU was discussed by the Board at length (EX, p 412), and she even gave public comment at that meeting (EX, pp 440–42). And yet, in her Motion for Summary Judgment, she argued that an "ordinary member of the community could not have understood or known what 'Re-Approval of MOU with Merit Academy' meant." (CF, p 484.)[5]

[5] Respondents conceded that "Board Housekeeping" was an inadequate agenda item; however, Petitioner then changed her approach and argued that even the subsequent agenda items of February 9th and April 13th, each specifically referencing a re-approval of the Merit Academy MOU, were equally defective under the OML because an ordinary member of the community could not have understood what the Merit Academy MOU represented. (*See e.g.,* CF, p 484.) While the district court initially agreed with this argument, the court reversed itself in its Order on Defendants' Cross Motion for Summary Judgment, finding that an

When pressed on this issue at the preliminary injunction hearing under oath, Petitioner was less than forthright with the court, to put it mildly. On direct examination when asked about whether people would understand that the MOU was about chartering Merit Academy, Petitioner's response was: "I didn't and I've been on a board." (CF, p 437.) When asked on cross-examination to clarify whether she understood what reapproval of Merit Academy MOU meant, she responded: "Based on the wording, I would not be able to deduce that that was the intention." (CF, p 441.) This directly contradicts her statement in the Complaint where she made abundantly clear her understanding that the MOU was a proxy for charter approval. (CF, p 10.) It is one thing for Petitioner to state a belief that the agenda was unclear. It is another thing for Petitioner to say that by April 13th where the Board cured Its prior violation, she did not know or was confused about what the MOU represented.

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ordinary member of the community would have in fact understood what "Merit Academy MOU" meant. (CF, p 658.) The important issue, as relevant here, is that in her attempt to persuade the court that the February 9th and April 13th agendas were inadequate, Petitioner falsely claimed that she did not understand the meaning of the Merit Academy MOU. (CF, p 437.)

Notwithstanding that Respondents had transparently reintroduced and re-voted on the Merit Academy MOU twice after the initial violation, thus fully redressing the harm to Petitioner, she was undeterred in her crusade and used the OML as the vehicle to punish and sanction the Board. However, there is no mention in the OML of sanctions or punishment. Even the fee shifting provision is not intended to be punitive but rather to remunerate a prevailing party in bringing an action with private resources. *See Van Alstyne*, 985 P.2d at 100. The OML concerns ensuring that the formation of public policy be done in public. C.R.S. § 24-6-401. Thus, the OML's declaration, that "[n]o resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section," is about ensuring transparency in the conduct of public business. *See* C.R.S. § 24-6-402(8). Sanctions and punishment simply have no place as a permitted remedy under the law.

Should this Court hold that the OML does not allow for curing prior violations, plaintiffs, like Petitioner here, will be incentivized to misuse the OML. Rather than accepting a local public body's public and transparent cure of a prior violation, plaintiffs can instead follow Petitioner's example by forcing local public

bodies into litigation that serves no purpose other than to punish and sanction the offender.[6] This would be a dangerous precedent.

II. The Holding of *Colorado Off-Highway Vehicle Coalition* Inherently Guards Against Intentional Violations and Need Not Be Modified to Support the Purpose of the OML.

Standard of Review

Respondents agree that this Court may review *de novo* the issue of whether the OML allows a local public body to cure an intentional violation of the OML. Respondents further agree that the issue was preserved.

Discussion

A. Effectively Curing a Prior Violation under *COHVC* Necessarily Requires Good Faith Compliance with the COML.

Petitioner has argued throughout this case that *COHVC* does not apply to intentional violations of the law. (*See e.g.*, Opening Br., pp 50–51.)[7] To begin, while

[6] Some states require plaintiffs to first make a demand on the local public body to cure a violation as a prerequisite to filing a complaint. *See e.g.*, Cal. Gov't Code § 54960. While the OML contains no such provision, it is nonetheless illustrative of need for a mechanism to cure violations and thus avoid needless litigation.

[7] Respondents maintain that they did not intentionally violate the OML. The record reflects that the Board attempted to correct its error immediately at its next meeting and prior to Petitioner's complaint. (*See* EX, p 64.) Further, the Board president publicly apologized the very next day and vowed to ensure transparency

Respondents do not concede that they intentionally violated the law, the OML does not address any distinction between intentional violations and inadvertent ones. However, even if a violation was intentional, the holding of *COHVC* keeps local public bodies accountable. In other words, even under *COHVC*, local public bodies do not get a free pass to violate the law and quietly sweep it under the rug later.

As discussed in Part I.A, *supra*, *COHVC* requires three distinct elements that must be present to sufficiently cure a violation. To effectively cure a violation, a local public body must hold a properly noticed meeting where it (1) receives additional comment from key players in decision-making, (2) allows public comment from interested parties, and (3) engages in renewed deliberations before announcing its ultimate decision. *COHVC*, 292 P.3d at 1135. Specifically, a local public body cannot rubberstamp a prior violation and thus evade the intent of the law.

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moving forward. (EX, p 61.) Petitioner has attempted to vilify Respondents throughout this case; however, her efforts in this regard are exaggerated and inaccurate.

The court in *COHVC* specifically discussed and relied on cases like *Van Alstyne* and *Bagby* to make clear that the OML will only allow for ratification of prior violations where there is subsequent compliance with all requirements of the law and thus full transparency to the public. In *Van Alstyne*, the trial court granted the defendant's motion for summary judgment on the basis that a subsequent meeting cured a previous violation, thus mooting the case. 985 P.2d at 99. However, a division of the Court of Appeals reversed and remanded on the basis that there were disputed factual questions as to whether the subsequent meeting was nothing but a rubberstamp of the previous decision. *Id.* at 101–02. Similarly, in *Bagby*, this Court determined that a school board violated the OML where it made decisions during private discussions and then ratified them in public with very little discussion or deliberation. 528 P.2d at 1302.

Accordingly, the holding in *COHVC* inherently addresses alleged intentional or bad faith violations. In short, the motivation behind a violation of the OML is ultimately not relevant to the process for remedying the error. As *COHVC* already requires, only full transparency and compliance with the law is sufficient to cure.

In the present case, even if Respondents intentionally violated the OML, which they do not concede, the process they have endured to fix their mistake has

been nothing short of exhaustive, and the issue of the Merit Academy MOU has been fully and transparently discussed and voted upon in public. Should this Court depart from *COHVC* and recognize under the OML separate categories of violations, it would do nothing to create greater transparency but would instead create unintended negative consequences, as further discussed below.

B. Creating a Separate Standard for Alleged Bad Faith Violations Will Discourage Good Faith Corrective Action.

The concept of curing violations of the OML is designed to allow corrective action when a local public body makes a mistake. That is exactly what happened in the present case. The Board president publicly apologized for the "Board Housekeeping" agenda item and vowed to fix it. (CF, pp 390–91.) From a policy perspective, that is exactly what the public should want—a mechanism to allow local public bodies to quickly and effectively comply with the law and allow for public transparency. However, should this Court judicially create categories of violations where alleged bad faith violations are set in stone, local public bodies will have little incentive to admit and correct mistakes.

For example, in the present case, Respondents would have been far less likely to voluntarily admit their error and seek to reverse course if a court could ultimately decide that the initial error was intentional and thus ineligible to be

effectively cured. In that instance, Respondents may have been better off digging in their heels and litigating the alleged violation, thus delaying the transparency that the public deserves.

While Petitioner goes to great lengths to paint Respondents as bad actors, departing from *COHVC* and creating a separate bad faith standard would ultimately lead to needless litigation as opposed to good faith compliance with the law.

III. The Court of Appeals Did Not Expand the Holding of *Colorado Off-Highway Vehicle Coalition* to Preclude an Award of Attorney's Fees.

Standard of Review

Defendants disagree with the standard of review cited by Petitioner on whether the district court erred in denying Petitioner's request for costs and attorney's fees. Petitioner properly concluded that interpreting the OML presents a matter of law that is reviewed *de novo*. However, the *de novo* standard of review does not extend to the question of whether Petitioner was a "prevailing party" in the litigation.

The district court Order concluded that "Petitioner is not the prevailing party and is not entitled to attorney fees as per C.R.S. 24-6-402(9)." (CF, p 658.)

Accordingly, the issue presented for review here is not a matter of interpreting the OML. Rather, it is whether Petitioner was a prevailing party in the litigation. Whether a litigant is the prevailing party and thus entitled to costs and attorney fees is reviewed for an abuse of discretion. *See Anderson v. Pursell*, 244 P.3d 1188, 1194 (Colo. 2010), *as modified on denial of reh'g* (Jan. 10, 2011) ("Like the decision to award attorney fees, we review determinations of which party is the 'prevailing party' under a fee shifting provision for an abuse of discretion. We use this standard because the trial court is in the best position to observe the course of the litigation and to determine which party ultimately prevailed.") (citations omitted); *see also Gonzales v. Windlan*, 411 P.3d 878, 887 (Colo. App. 2014) ("We review an award of costs for an abuse of discretion and will only disturb the award if it is manifestly arbitrary, unreasonable, or unfair.") (citation omitted).

Respondents agree that the issue of whether costs and attorney fees should have been awarded was preserved.

Discussion

Petitioner framed the final issue for review as if the Court of Appeals in this case expanded the holding of *COHVC* to "strip [her] of entitlement to fees." (Opening Br., p 11.) However, the Court of Appeals did not expand the holding of

COHVC in any way. In fact, the court in *COHVC* similarly did not award attorney's fees, notwithstanding that the plaintiff's complaint called attention to legitimate violations of the OML. 292 P.3d at 1138. Accordingly, Petitioner here mischaracterizes the issue for review.

The Court of Appeals below did not decide that attorney's fees are precluded if a local public body cures a prior violation. Rather, the court applied settled legal principles related to whether a plaintiff is a prevailing party and thus entitled to fees under the OML. The district court and the Court of Appeals correctly determined that she was not.

A. Petitioner Was Not a Prevailing Party and Was Thus Not Entitled to Costs and Attorney's Fees.

To be a prevailing party, a litigant "must succeed on a significant issue in the litigation and achieve some of the benefits sought." *Anderson*, 244 P.3d at 1194. Just because a party may have prevailed on some aspect of the litigation does not automatically make that party a prevailing party. *See id.* The lower court should look at the entirety of the litigation to determine whether a party is a prevailing party. *Id.* ("The court should examine the overall context of the case and should consider where in the case the parties spent the majority of their time and resources.") (citing *Archer v. Farmer Bros. Co.*, 90 P.3d 228, 232 (Colo. 2004)).

Here, Petitioner did not succeed on any significant issue in the litigation. To begin, Petitioner initially advanced a novel legal theory that "walking quorums," a series of one-on-one communications between members of a local public body, together constitute an illegal meeting under the OML. (CF, p 12.) This issue played a significant role in the hearing on Petitioner's Emergency Motion for Preliminary Injunction and was briefed by both parties. (*See e.g.*, CF, pp 78–81; CF, pp 113-19.) Petitioner did not prevail on this issue. The district court's Order on Petitioner's Motion for a Preliminary Injunction stated: "I reject the argument of Petitioner. I agree with Defendant that this trial Court should not legislate by reading a statute to accomplish something the plain language of 24-6-402(2)(b) does not say, suggest or mandate." (CF, pp 162–63.) Petitioner later moved to dismiss this issue from the case, (CF, pp 231–36), which was granted by the court (CF, p 531).

Next, while Petitioner alleged that the Board's meeting agenda on January 26, 2022, violated the OML and that the meeting on February 9, 2022, was an improper rubber stamp of the previous decision on the MOU, these issues took up very little space in the overall course of the litigation. Most of the time and energy in the litigation was spent on whether the Board's meeting on April 13, 2022, cured

any previous violation of the OML. For example, Defendants conceded that the January 26th agenda was improper and argued in their Cross Motion for Summary Judgment that the April 13th agenda and meeting was adequate under the OML to cure any prior violation. (CF, p 513, n2.) While Petitioner was successful at the preliminary injunction phase in arguing that the meeting on April 13th did not cure any previous violation, the district court completely reversed itself on that issue in its Order on Cross Motion for Summary Judgment. (CF, pp 658–60.) In other words, the preliminary injunction should never have been issued in the first place.

Finally, Petitioner filed a motion to hold the Board in contempt of the court's preliminary injunction based on a subsequent agenda allegedly in violation of the OML. (CF, pp 181–188.) Petitioner's motion for contempt required an evidentiary hearing. (CF, p 530.) The district court ultimately denied Petitioner's motion and found that the Board had not violated the OML and the court's Order. (CF, pp 649–54.)

Throughout this litigation Petitioner has argued that she "successfully proved" violations of the OML (Opening Br., p 42), and that the district court made "final findings" that violations occurred (Opening Br., p 31). This is incorrect, as the Court of Appeals recognized in its opinion. Specifically, the Court

of Appeals stated: "[E]ven though the court had initially determined in its preliminary injunction order that the violation from the January 26 meeting remained uncured, that order did not adjudicate the merits of the case." *O'Connell v. Woodland Park Sch. Dist.*, No. 22CA2054, 2023 WL 8642839, at ¶ 35 (Colo. App. Dec. 7, 2023). The Court of Appeals went on to hold that "contrary to her assertion, [Petitioner] was not 'stripped' of prevailing party status" because the district court had not adjudicated at the preliminary injunction phase the merits issues. *Id.*

Taken together with Petitioner's other failed attempts to prove OML violations (i.e., walking quorums) and hold the Board in contempt of court, she did not prevail in any aspect of the litigation and thus was not a prevailing party. Attorney's fees under the OML are not awarded as a penalty any time a local public body makes an error; rather, they are awarded to prevailing parties in litigation. On that basis, the district court and Court of Appeals correctly denied Petitioner an award of attorney's fees.

B. Allowing Local Public Bodies to Cure Prior Violations Does Not Automatically Strip a Plaintiff of Prevailing Party Status.

While the district court and Court of Appeals determined that Petitioner was not a prevailing party in this litigation, the holding in *COHVC* does not

automatically prevent attorney's fees in all circumstances. Under different facts, Petitioner may have been able to recover some amount of fees; however, based upon the record here, there is no reasonable argument that the district court's decision was "manifestly arbitrary, unreasonable, or unfair." *Gonzales*, 411 P.3d at 887.

Respondents were not forced to concede that their January 26th agenda was inadequate under the OML. Rather, they voluntarily endeavored to correct course even before Petitioner filed her complaint. Had Respondents decided to defend their "Board Housekeeping" agenda item, Petitioner would have had the opportunity to litigate that issue and collect costs and attorney's fees if she prevailed. But again, Respondents quickly reversed course to correct the violation, which is exactly aligned with the intent of the OML.

Further, notwithstanding Respondents' subsequent meetings in February and April to re-discuss and re-vote on the MOU, Petitioner pressed ahead in litigation, seeking a preliminary injunction, challenging the holding of *COHVC*, pursuing her "walking quorum" theory, and attempting to hold the Board in contempt. In all those efforts, she was not successful. Had Petitioner accepted that the Board cured its violation at its April meeting and simply requested her costs

and attorney's fees in filing her complaint, she perhaps would have been able to recover. However, as discussed above, her objective was never to simply witness the Board discuss the Merit Academy MOU in compliance with the OML. Instead, she attempted to punish the Board for its mistake and obstruct the chartering of Merit Academy. The OML was not designed to reward her for her effort.

ATTORNEY'S FEES

For the reasons discussed in Part III, *supra*, Respondents oppose any award of attorney's fees because Petitioner was not a prevailing party pursuant to C.R.S. 24-6-402(9)(b). Petitioner has stated no other independent basis for an award of attorney's fees on appeal, and none in fact exist.

CONCLUSION

For the foregoing reasons, Respondents request that this Court affirm the decision below.

RESPECTFULLY SUBMITTED this 16th day of January 2025

MILLER FARMER CARLSON LAW

**Original signature at the offices of
MILLER FARMER CARLSON LAW**

/s/ Bryce D. Carlson

BRYCE D. CARLSON, #52509
Attorney for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER BRIEF was served this 16th day of January 2025 through the Colorado Courts E-Filing system to the following:

Eric Maxfield, #29485
Eric Maxfield Law LLC
3223 Arapahoe Avenue, Suite 300
Boulder, Colorado 80303
303-502-7849
Eric@ericmaxfieldlaw.com

Carrie Lamitie, #27619
Lamitie Law, LLC
Lamitiecarrie@gmail.com

PHILIP J. WEISER, Attorney General
JOSEPH A. PETERS,* Senior Assistant Attorney General, No. 42328
*Counsel of Record
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor, Denver, CO 80203
Telephone: (720) 508-6079
Email: Joe.Peters@coag.gov

PHILIP J. WEISER, Attorney General
RUSSELL D. JOHNSON, #48482*
Deputy Solicitor General
ZACH W. FITZGERALD, #49226*
Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

Telephone: (720) 508-6351
E-mail: russell.johnson@coag.gov
zach.fitzgerald@coag.gov
*Counsel of Record

Corey Y. Hoffmann, Reg. No. 24920
Katharine J. Vera, Reg. No. 53995
Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202
Phone: (303) 825-6444
E-mail: cyh@hpwclaw.com
kjv@hpwclaw.com

Rachael Johnson, #43597
Reporters Committee for Freedom of the Press
c/o Colorado News Collaborative
2101 Arapahoe Street
Denver, CO 80205
Telephone: (970) 486-1085
rjohnson@rcfp.org

Katayoun A. Donnelly, #38439
AZIZPOUR DONNELLY, LLC
2373 Central Park Blvd., Suite 100
Denver, Colorado 80238
Telephone No.: (720) 675-8584
E-mail: katy@kdonnellylaw.com

Steven D. Zansberg, #26634
ZANSBERG BELYKIN LLC
100 Fillmore Street, Suite 500
Denver, CO 80206
Telephone No.: (303) 564-3669
E-mail: steve@zblegal.com

Timothy R. Macdonald, #29180
Sara R. Neel, #36904
ACLU FOUNDATION OF COLORADO
303 E. 17th Ave., Ste. 350
Denver, CO 80203
E-mail: tmacdonald@aclu-co.org
E-mail: sneel@aclu-co.org

/s/ Bryce Carlson