

DISTRICT COURT, COUNTY OF JEFFERSON,
COLORADO
100 Jefferson County Parkway
Golden, Colorado 80401
303-271-6215

Plaintiffs:

FREE SPEECH DEFENSE COMMITTEE, an
unincorporated association, BEN SCRIBNER, in his
individual capacity, and TARYN BROWNE, in her
individual capacity

Defendants:

DAVID J. THOMAS, as District Attorney for the First
Judicial District, and CITIZENS ADVISORY BOARD
FOR THE OFFICE OF THE DISTRICT ATTORNEY,
FIRST JUDICIAL DISTRICT

Attorney/Party Without Attorney:

Name(s): Marc D. Flink #12793
Holli L. Hartman #31558

Address: Baker & Hostetler LLP
303 E. 17th Ave., #1100
Denver, Colorado 80203

Phone Number: 303-861-0600

Fax Number: 303-861-7805

Email: mflink@bakerlaw.com
hhartman@bakerlaw.com

Name(s): Mark Silverstein, Legal Director

Address: American Civil Liberties Union
Foundation of Colorado
400 Corona Street
Denver, Colorado 80218

Phone Number: 303-777-5482

Fax Number: 303-777-1773

Email msilver2@worldnet.att.net

▲ COURT USE ONLY ▲

Case No.

Div:

Ctrm:

**VERIFIED COMPLAINT SEEKING DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF PURSUANT TO COLORADO OPEN MEETINGS LAW,
COLO. REV. STAT. § 26-4-401 ET SEQ.**

Plaintiffs Free Speech Defense Committee, Ben Scribner, in his individual capacity, and Taryn Browne, in her individual capacity (collectively, “Plaintiffs”), through counsel Baker & Hostetler LLP in cooperation with the American Civil Liberties Union Foundation of Colorado, for their Verified Complaint Seeking Declaratory Judgment and Injunctive Relief Pursuant to Colorado Open Meetings Law, Colo. Rev. Stat. § 26-4-401 et seq., against defendants David J. Thomas as District Attorney for the First Judicial District and Citizens Advisory Board for the Office of the District Attorney, First Judicial District and (collectively, “Defendants”) states as follows:

INTRODUCTION

Plaintiffs bring this suit against David J. Thomas as District Attorney for the First Judicial District (“District Attorney”) and the Citizens Advisory Board for the Office of the District Attorney, First Judicial District (“Advisory Board”) to enforce the provisions and policy of the Colorado Open Meetings Law, which mandates that the public business not be conducted in secret. The District Attorney founded the Advisory Board in 1993 when he took office so that he could meet with a select group of citizens to discuss issues important to the District Attorney and the community. The Advisory Board’s meetings have never been open to the public, despite that the Advisory Board is a state body or local public body that is subject to the Open Meetings Law. Plaintiffs have made requests to attend Advisory Board meetings but have been turned away by Defendants each time. Plaintiff, therefore, seek declaratory and injunctive relief to order Defendants to hold meetings of the Advisory Board only in full compliance with all provisions of the Open Meetings Law.

PARTIES

1. The Free Speech Defense Committee (“FSDC”) is an unincorporated association that sues in its common name “for the purpose of enforcing for or against it a substantive right.” Colo. R. Civ. P. 17(b). FSDC’s members live in the Denver, Colorado metropolitan area.

2. Ben Scribner (“Mr. Scribner”) is a resident of Denver, Colorado, and a member of the Free Speech Defense Committee.

3. Taryn Browne (“Ms. Browne”) is a resident of Denver, Colorado, and a member of the Free Speech Defense Committee.

4. Mr. Thomas as District Attorney for the First Judicial District (“District Attorney”) is an elected official who serves as District Attorney pursuant to Colo. Rev. Stat. § 20-1-101 et seq.

5. The Citizens Advisory Board for the Office of the District Attorney (“Advisory Board”), on information and belief, is an entity formed in 1993 by District Attorney David J. Thomas (“Mr. Thomas”). Mr. Thomas formed the Advisory Board for the purpose of discussing with a select number of citizens issues and programs of interest to the Office of the District Attorney and to solicit from members of the Advisory Board input on matters relating to

decisions and policies considered by the Office of the District Attorney. The Advisory Board meets once a month at the Office of the District Attorney, located at 500 Jefferson County Parkway, Golden, Colorado 80401.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Colorado's Open Meetings Law, Colo. Rev. Stat. § 24-6-402(9), the Colorado Uniform Declaratory Judgments Law, Colo. Rev. Stat. § 13-51-105, and Rule 57 of the Colorado Rules of Civil Procedure.

7. Venue is proper in this District because this suit is an action against a Jefferson County "public officer or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who by his command, or in his aid, does anything touching the duties of such officer, or for a failure to perform any act or duty which he is by law required to perform." Colo. R. Civ. P. 98(b)(2).

GENERAL ALLEGATIONS

8. On June 12, 2001, Mr. Scribner and Ms. Browne, in their individual capacities and as members of the FSDC, made requests to the District Attorney's office to attend a scheduled meeting of the Advisory Board.

9. Mr. Scribner had learned about the existence of the Advisory Board via a website posted by the Office of the District Attorney and located on the Internet at <http://ww2.co.jefferson.co.us/ext/dpt/officials/da/>. See Exhibit 1 attached hereto.

10. Mr. Scribner learned from the website that the Advisory Board meets on the second Tuesday of every month at the District Attorney's office. See Exhibit 1.

11. Mr. Scribner also learned via the website that the Advisory Board had been formed in 1993 as a tool for Mr. Thomas to "keep in touch with the needs and concerns of the community." See Exhibit 1.

12. On June 12, 2001, Mr. Scribner called the District Attorney's office to inquire whether he or another member of the FSDC could attend that evening's Advisory Board meeting. A representative from the District Attorney's office told him neither he nor any other member of the FSDC could attend the meeting that evening.

13. Ms. Browne arrived at the District Attorney's office the evening of June 12, 2001, and made a request in person to attend the Advisory Board's meeting. A representative from the Advisory Board told Ms. Browne that she could not attend or observe the Advisory Board's meeting that evening.

14. On June 14, 2001, Mr. Scribner called the District Attorney's office and again asked to attend the meetings of the Advisory Board. A representative of the District Attorney's

office told him that neither he nor any other member of the FSDC could attend the Advisory Board meetings.

15. On June 22, 2001, Mr. Scribner wrote a letter on behalf of the FSDC to Aura Leigh Ferguson, Community Program Director for the Office of District Attorney (“Ms. Ferguson”), who, on information and belief, organizes the Advisory Board’s meetings. In the letter, Mr. Scribner asked whether the Advisory Board’s meetings were open to the public and whether members of the FSDC could attend, observe, or ask questions at the meeting. See Exhibit 2 attached hereto.

16. Ms. Ferguson responded to Mr. Scribner’s letter in a letter dated July 2, 2001. See Exhibit 3 attached hereto. In the July 2, 2001 letter, Ms. Ferguson wrote as follows:

The District Attorney’s Citizens Advisory Board meeting is not a “public meeting”. The District Attorney created the board when he took office in 1993 as a tool to help him and his office stay in touch with Jefferson and Gilpin County citizens. Members meet with the District Attorney to learn about issues and programs of interest to the DA and Board and to engage in frank and candid discussions regarding the same. The Board has no legal authority and serves completely at the pleasure of the District Attorney. Members of the Board are chosen through a process of written application, telephone interview and background screening. The District Attorney strives to have a board representing diverse points of view, while at the same time discouraging single-issue advocates. The board does not create policy or make decisions. Therefore we do not believe it to be a meeting that falls under the purview of the [sic] any laws governing open meetings.

17. The July 2, 2001 letter also stated that, because the Advisory Board is an “unofficial board,” Mr. Scribner or members of the FSDC would not be able to attend any Advisory Board meetings without an invitation. See Exhibit 3. Ms. Ferguson stated that she relayed Mr. Scribner’s and the FSDC’s request to attend the meetings to the Advisory Board and to Mr. Thomas, but they declined to extend an invitation.

18. The July 2, 2001 letter stated that members of the FSDC who are citizens of the First Judicial District were invited to apply to become members of the Advisory Board during the next application process, expected to occur in early 2002.

19. On information and belief, the Advisory Board consists of about 20 to 25 members who submit applications to the District Attorney’s office and are handpicked by Mr. Thomas to serve two-year terms. The terms are staggered so that half the Advisory Board is replaced each year.

20. On information and belief, Mr. Thomas has stated that he sees the Advisory Board as a means to facilitate two-way communication with the community and as a means for getting input from the community on issues important to the office.

21. On information and belief, Mr. Thomas has stated in the past that the Advisory Board could provide input on such issues as metro-wide policy on children and guns and, in the face of budget cuts, provide feedback on the value of community programs such as consumer fraud and diversion.

22. On information and belief, Mr. Thomas uses the Advisory Board to test his public policy ideas and to help him make decisions about how to allocate his budget for community programs.

23. On information and belief, the Advisory Board has availed itself of public tax funds and facilities, and it operates under the seal of the District Attorney's office.

24. On information and belief, the Advisory Board has never publicly posted notices of its meetings with specific agenda items to be discussed.

First Claim for Relief
(Declaratory Judgment)

25. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 24 as though fully set forth herein.

26. The Office of the District Attorney is either a "political subdivision of the state," as defined by Colo. Rev. Stat. § 24-6-402(1)(c) of the Open Meetings Law, or a "state agency" or "state authority" as contemplated in § 24-6-402(1)(d) of the Open Meetings Law.

27. The Advisory Board is either a "local public body," as defined by § 24-6-402(1)(a), or a "state public body," as defined by § 24-6-402(1)(d) of the Open Meetings Law.

28. The Advisory Board has regularly scheduled monthly meetings, as defined by § 24-6-402(1)(b) of the Open Meetings Law.

29. Pursuant to §§ 24-6-402(2)(a) and (b) of the Open Meetings Law, Plaintiffs, as members of the public, may attend all meetings of any state public body or local public body at which any public business is discussed.

30. Defendants, upon requests from Plaintiffs, have refused to open the meetings of the Advisory Board to the public, giving rise to the actual controversy that made this action necessary.

31. Declaratory judgment relief pursuant to the Uniform Declaratory Judgment Law, Colo. Rev. Stat. § 13-15-101 et seq. and Colo. R. Civ. P. 57 declaring that Defendants are subject to the Open Meetings Law is necessary and proper to determine the rights of the parties.

32. Declaratory judgment relief declaring that Defendants violated the Open Meetings Law by refusing to let Plaintiffs attend meetings of the Advisory Board and by failing to post in public notice of its meeting times, locations, and agendas is necessary and proper to determine the rights of the parties.

Second Claim for Relief
(Injunctive Relief)

33. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 32 as though fully set forth herein.

34. Defendants have banned and continue to ban Plaintiffs and other members of the public from meetings of the Advisory Board, in violation of the Open Meetings Law.

35. Defendants have also failed to meet other requirements of the Open Meetings Law, including posting notices of meetings with specific agenda items and recording minutes.

36. Plaintiffs wish to attend Advisory Board meetings in the future, and Defendants' ongoing refusal to comply with the Open Meetings Law adversely affects Plaintiffs' and the public's right of access to public information.

37. A grant of injunctive relief requiring Defendants to open Advisory Board meetings to the public is the proper remedy for violations of the Open Meetings Law. Injunctive relief will serve the public by not allowing government to conduct its business in secret, thus enforcing the public policy as set forth in the Open Meetings Law.

WHEREFORE, Plaintiffs respectfully request this Court to grant relief as follows:

A. Issue a declaratory judgment ruling that Defendants are subject to the Open Meetings Law and that their actions with regard to Plaintiffs and the public constituted a violation of the Open Meetings Law;

B. Grant preliminary and permanent injunctive relief pursuant to the Open Meetings Law, Colo. Rev. Stat. § 24-6-402(9), to restrain and enjoin Defendants from barring the attendance of Plaintiffs and members of the public at Advisory Board meetings;

C. Grant preliminary and permanent injunctive relief pursuant to the Open Meetings Law, Colo. Rev. Stat. § 24-6-402(9), requiring Defendants to comply with all provisions of the Open Meetings Law in the future;

D. Award to Plaintiffs their attorneys' fees, costs, and expenses incurred in this action, pursuant to the Open Meetings Law, Colo. Rev. Stat. §14-6-402(9); and

E. Award such other and further relief as the Court deems proper.