

<p><b>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</b></p> <p>Court Address: 7325 S. Potomac St. Centennial, CO 80112</p> <hr/> <p><b>Plaintiff:</b> THE SENTINEL COLORADO, v.</p> <p><b>Defendant:</b> KADEE RODRIGUEZ, city clerk, in her official capacity as records custodian</p> <hr/> <p><b>Attorney for Plaintiffs:</b> 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 Facsimile: (202) 795-9310 rjohnson@rcfp.org</p>	<p style="text-align: center;"><b>COURT USE ONLY</b></p> <hr/> <p>Case Number: 2022CV030927</p> <p>Division:</p>
<p><b>PLAINTIFF'S BRIEF</b></p>	

In accordance with the Court’s order at the July 7, 2022 status conference in this matter, plaintiff *The Sentinel Colorado* (“Plaintiff” or the “*The Sentinel*”), by and through undersigned counsel, submits this brief on the issue of what “grounds” are “sufficient to support a reasonable belief” that a public body violated the Colorado Open Meetings Law (“COML”) for purposes of §24-72-204(5.5), C.R.S. of the Colorado Open Records Act (“CORA”).

**INTRODUCTION**

An application to the district court for access to the record of an executive session must “show grounds sufficient to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or

(4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session.” §24-72-204(5.5)(a), C.R.S. If the Court finds that sufficient grounds exist to support such a reasonable belief, the Court then conducts an in camera review of the executive session minutes or recording to determine whether, in fact, the public body violated the COML. §24-72-204(5.5)(b)(I), C.R.S.

Though no Colorado court appears to have interpreted or defined “reasonable belief” in the context of §24-72-204(5.5), C.R.S., there can be no doubt that standard is satisfied here. As discussed below, setting forth “grounds sufficient to support a reasonable belief” that a violation of the COML occurred is not a heavy burden—it does not require substantial evidence or other proof that a violation occurred; it merely requires an applicant, like Plaintiff, to set forth in its application grounds that would lead a reasonable person to believe that a violation may have occurred, in order to trigger in camera review by the district court. And, here, the facts alleged in Plaintiff’s application—including public statements from two councilmembers, Aurora’s City Attorney, and the City’s spokesperson, admitting that the Aurora City Council engaged in substantial discussion about halting the censure process against Councilwoman Jurinsky and, indeed, took a “roll call” vote to do so during the March 14, 2022 Executive Session—are sufficient grounds to support a “reasonable belief” that the Council violated the COML.

Defendant attempts to evade immediate in camera review and delay public disclosure of the record of that Executive Session by arguing that the on-the-record public statements from its own employees are either all untrue or inadmissible hearsay; according to Defendant, this Court is required to hold a full-blown evidentiary hearing before conducting an in camera review under §24-72-204(5.5)(a), C.R.S. But this extreme position finds no support, whatsoever, in the statutory language; the statute does not require an evidentiary hearing, or evidence to be found

admissible to establish sufficient grounds to support a “reasonable belief” warranting in camera review. Nor is Defendant’s argument supported by any case law or policy rationale. On the contrary, limiting in camera review to situations where a COML violation has been found, after an evidentiary hearing, to have occurred—which is, effectively, what Defendant argues is required—would eliminate the purpose of in camera review by the district court at an early stage of the proceeding and burden applicants, like Plaintiff, who come forward to challenge what they reasonably believe, based on publicly available information, to be violations of the COML.<sup>1</sup>

For the reasons herein, the Court should conduct an in camera review of the March 14 Recording pursuant §24-72-204(5.5)(a), C.R.S.; should it find based on that review that the City engaged in substantial discussion or took a position or formal action during the Executive Session, it must order the March 14 Recording open to public inspection and award Plaintiff

---

<sup>1</sup> Defendant also claims it is “unusual” for a Court to review attorney-client privileged materials in camera. But Colorado courts do review such materials in camera when appropriate. *City of Colorado Springs v. White*, 967 P.2d 1042, 1054 (Colo. 1998)(holding that the trial court should conduct an in camera inspection to determine, *inter alia*, whether material is privileged and to sever privileged from non-privileged material if feasible); *see also People v. Madera*, 112 P.3d 688, 689 (Colo. 2005)(“In camera review is appropriate when a party opposing assertion of the attorney client-privilege makes some showing that an exception to the attorney client-privilege applies or that the privilege has been waived either explicitly or impliedly.”) And, in any event, no attorney-client privileged materials are at issue here. As Plaintiff’s application notes, the purportedly adverse party, Councilwoman Jurinsky, along with her counsel, were present during the March 14 Executive Session. Exhibit D. Her presence would destroy any privilege as to communications providing the Council legal advice regarding its dispute with Councilwoman Jurinsky regarding her censure. *Black v. Southwestern Water Conservation Dist.*, 74 P.3d 462, 469 (Colo. App. 2003)(“The privilege only applies to communications given in confidence, and intended and reasonably believed to be part of an on-going and joint effort to set up a common legal strategy.”). Moreover, the City already secured a limited waiver of the privilege from the Council in order to permit this Court to review the March 14 Recording in camera. Defendant Exhibit 1 at 14.

costs and attorney’s fees. *See Gumina*, 119 P.3d at 531-532; § 24-6-402(9), C.R.S.; § 24-72-204(5), C.R.S.; *see also Van Alstein v. Housing Auth.*, 985 P.2d 97, 99-100 (Colo. App. 1998).<sup>2</sup>

### ARGUMENT

No Colorado court appears to have interpreted “reasonable belief” in §24-72-204(5.5), C.R.S. Indeed, only a handful of cases even mention this provision of the CORA, and none of those define what constitutes grounds sufficient to support a “reasonable belief” that a violation of the COML has occurred. *See Gumina*, 119 P.3d at 532; *Arkansas Valley Publishing Company v. Lake County Board of County Commissioners*, 369 P.3d 725 (Colo. App 2015).<sup>3</sup>

Black’s Law Dictionary has defined “reasonably believe” as “[t]o believe (a given fact or combination of facts) under circumstances in which a reasonable person would believe.” *Reasonably believe*, Black’s Law Dictionary (10th ed. 2014); *see also Bernal-Molina v. State*, 492 P.3d 904, 909 (Wyo. 2021) (citing definition). When discussing “reasonable belief” more generally in the context of criminal or civil matters, Colorado courts have not defined it, but have

---

<sup>2</sup> It is already clear that the Council’s March 14 Executive Session violated at least the notice provisions of the COML. As discussed in Plaintiff’s application, the March 14 Executive Session occurred *before* the Council’s March 14 public meeting, at which Mayor Coffman merely noted the Executive Session without stating that any part of it involved the provision of legal advice concerning the censure proceeding against Councilwoman Jurinsky. *See* The Aurora Channel, City Council meeting, March 14, 2022, <https://www.youtube.com/watch?v=jHoDS0t0kBg> at 8:30. The only prior notice of the Executive Session was the Agenda, which improperly states only “legal advice” without notice of the “particular” topic. *Gumina v. City of Sterling*, 119 P.3d 527, 532 (Colo. App. 2004).

<sup>3</sup> Other states’ open meetings and public records laws are of little assistance. Colorado is unique in requiring grounds sufficient to support a “reasonable belief” to warrant in camera review in this context. Other states give judges discretion to decide whether to review records in camera, or automatically mandate in camera once the legality of a closed meeting is challenged. *See* Kan. Stat. Ann. § 45-222(b); *Leek v. Peterson*, No. 112,704, 2015 WL 5009983, at \*4 (Kan. Ct. App. 2015) (“It is within a district court’s discretion to decide to review documents in controversy. . . .”); *see also* Utah Code Ann. § 52-4-304(1)(to challenge the legality of a closed meeting held by a public body, the court shall: (a) review the recording or written minutes of the closed meeting in camera; and (b) decide the legality of the closed meeting.”)

made clear it is not synonymous with either proof or certainty. *See Walford v. Blinder, Robinson & Co.*, 793 P.2d 620, 624 (Colo. App. 1990) (“Probable cause means that a defendant in good faith had a reasonable belief that a plaintiff was liable for the claim that was made.”); *People v. Jones*, 675 P.2d 9,13 (Colo. 1984) (noting that “reasonable belief rather than absolute certainty is the touchstone of self-defense” in the criminal context under §18-1-704, C.R.S.). And, in any event, “reasonable suspicion”—a standard lower than probable cause in the criminal context—may be a more appropriate analogue to “reasonable belief” under §24-72-204(5.5). *See People v. George*, 914 P.2d 367, 369 (Colo. 1996)(“A police official’s suspicion is “reasonable” when it has an “articulable and specific basis in fact.””)

As any—and all—of these definitions make clear, a “reasonable belief” standard does not set a high bar—it does not require absolute certainty, substantial or clear and convincing evidence, or, indeed, any evidence deemed admissible by a court. It is merely a threshold requirement that an applicant, like Plaintiff, with a good faith, reasonable belief that a public body may have violated the COML sufficiently articulate the facts and/or circumstances upon which that reasonable belief is based before a court will engage in an in camera review.

If the Court defines “grounds sufficient for a reasonable belief” that a given violation of the COML may have occurred as “circumstances in which a reasonable person would believe” such a violation has occurred, Black’s Law Dictionary (10th ed. 2014), Plaintiff’s application unquestionably sets forth such grounds. As the application states, Councilmembers Juan Marcano and Alison Coombs (who were present at the March 14 Executive Session) both stated on-the-record in a news article that Mayor Mike Coffman asked each councilmember in the March 14 Executive Session to weigh in on whether the censure process against Councilwoman Jurinsky should continue, and members voted along party lines to end the censure process and

settle the matter. Exhibit C, D. Their public statements *alone*—whether hearsay or not—are circumstances that would lead a reasonable person to believe that a violation of the COML may have occurred at the March 14 Executive Session and enough to warrant in camera review.

But those public statements do not stand alone. The timeline also indicates that the City Council reached its decision to end the censure process against Councilwoman Jurinsky during the March 14 Executive Session. The City had previously stated on the record that “[a] public hearing on the [censure] matter has been set for Mar. 30 in the City Council chamber at 6:30 p.m.” Exhibit B. However, the City’s spokesperson, Ryan Luby, stated on-the-record to *The Sentinel* on March 21, 2022, that the City Attorney’s Office instead planned to deliver “an update” on the censure process during the Council’s March 21 study session. Exhibit C. And, at the study session, City Attorney Daniel Brotzman publicly acknowledged that the decision to halt the censure process was made at the March 14 Executive Session, saying the Council “gave direction” to City staff to reach a settlement with Councilwoman Jurinsky’s attorney that would address the scope of the investigation, how attorney’s fees will be paid, and other topics. *See* Exhibit D; Aurora City Council Study Session, March 21, 2022, <https://www.auroratv.org/video/study-session-3-21-22>, at 3:03. Further, during the March 21, 2022 study session, Councilwoman Bergan confirmed that the Council took a position on the stipulation with Brotzman citing *The Sentinel’s* reporting. *Id.*

All of these publicly available facts stated in Plaintiffs’ application, taken together, are grounds more-than sufficient to support a “reasonable belief” that the Aurora City Council engaged in substantial discussion of the censure process and took a position or formal action to vote to end that process during the March 14 Executive Session. Defendant’s contrary position—that this extensive public record is not sufficient to lead a reasonable person to believe

that a violation of the COML may have occurred—defies common sense and, if adopted, would effectively require a full-blown evidentiary hearing *in every* such case.

For the reasons herein and in Plaintiff’s application, the Court should review the March 14 Recording in camera to determine whether, in fact, the COML was violated under § 24-72-204(5.5), C.R.S. & § 24-6-402(d.5)(I)(C), C.R.S.

Respectfully submitted this 11<sup>th</sup> day of July 2022.

By \_\_\_\_\_

Rachael Johnson  
Reporters Committee for Freedom of the Press  
*Attorney for Plaintiff*  
*The Sentinel*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of July 2022, a true and correct copy of the foregoing **PLAINTIFF'S BRIEF** was served on the following counsel through the Colorado Courts E-File & Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

Corey Y. Hoffmann  
Hoffmann, Parker, Wilson & Carberry, P.C.  
511 16<sup>th</sup> Street, Suite 610  
Denver, CO 80202  
[cyh@hpwclaw.com](mailto:cyh@hpwclaw.com)

\_\_\_\_\_  
Rachael Johnson