

Petitioner Robert C. Marshall (“Marshall”), through counsel, submits this Verified Petition and Complaint against Douglas County, the Board of County Commissioners of Douglas County (“Board”), and Sheri Davis in her official capacity (“Clerk”), and states:

Nature of Proceeding

1. This is an expedited pre-election proceeding challenging two resolutions passed by the Board. The first is Resolution No. R-026-061 (“R-026-061”), which adds a fiscal note to a citizen-initiated initiative to expand the number of Douglas County commissioners. R-026-061 is contrary to law and an *ultra vires* act of the Board as the statute does not allow for a fiscal note to be added to a citizen-initiated initiative. It further violates state law because the fiscal note is not intended to fix a misleading ballot title but instead is being added to cause confusion and conflict with the citizen-initiated initiative.
2. The second resolution, Resolution No. R-026-062 (“R-026-062”), by which the Board purports to refer to the County’s registered electors involves a conditional question concerning the election of county commissioners. R-026-062 provides: “In the event the Douglas County Board of Commissioners is increased to five members, shall all registered Douglas County voters continue to elect all County Commissioners?”
3. The question is not authorized by the statutory scheme governing an increase from three to five county commissioners; fails to designate the statutory election methods that must accompany a lawful expansion referral; and is misleading because its legal effect—including residency requirements and the governing election configuration—is indeterminate.
4. The Board adopted R-026-062 after a process that, on information and belief, failed to provide full and timely public notice of the resolution, which included an improperly announced

executive session in violation of the Colorado Open Meetings Law (“COML”). The Court must invalidate the resolution for violating COML. § 24-6-401 et seq., C.R.S.

5. Marshall seeks the expedited statutory relief required to preserve an accurate, lawful ballot and to prevent the certification, printing, or placement of R-026-061 and R-026-062 on the November 3, 2026 general-election ballot.

Parties

6. Marshall is a registered elector and resident of Douglas County, Colorado, residing at 2 Jack Rabbit Place, Highlands Ranch, Colorado. He brings this action as contestor under § 1-11-203.5, C.R.S., and as an eligible elector under § 1-1-113, C.R.S. Marshall has standing to bring claims under COML pursuant to § 24-6-402(9)(a), C.R.S.

7. Douglas County is a political subdivision of Colorado. It is the contestee required by § 1-11-203.5(2), C.R.S., because it proposed to place R-026-061 and R-026-062 on the ballot.

8. The Board of County Commissioners is Douglas County’s governing body and adopted R-026-061 and R-026-062. It is the contestee required by § 1-11-203.5(2), C.R.S., because it proposed to place R-026-061 and R-026-062 on the ballot. The Board also is a local public body and subject to COML pursuant to § 24-6-402(1)(a), C.R.S.

9. Abe Laydon, George Teal, and Kevin Van Winkle are Douglas County Commissioners. They are contestees required by § 1-11-203.5(2), C.R.S., because they voted to approve the placement of R-026-061 and R-026-062 on the ballot. As commissioners that are persons charged with a duty to act in accordance with the law, and they breached that duty or engaged in negligent conduct to violate their duty under the law.

10. Clerk Davis is the Douglas County Clerk and Recorder and the designated election official responsible for election-related actions within the scope of her official duties. She is sued

solely in her official capacity.

Jurisdiction and Venue

11. This Court has jurisdiction under §§ 1-11-203.5(1)–(3), 1-1-113(1), and 24-6-402(9), C.R.S.

12. Venue is proper in Douglas County because the ballot questions, challenged official actions, relevant public meetings, and contemplated election administration arise in Douglas County.

13. This petition is timely. The Board adopted and fixed the challenged ballot title/question on August 31, 2026. Marshall files and serves this verified petition within the time prescribed by § 1-11-203.5(2), C.R.S., as computed under § 1-1-106, C.R.S.

14. Marshall contemporaneously tenders a bond with sureties for the Court’s approval as required by § 1-11-203.5(1), C.R.S.

Factual Allegations

15. On February 27, 2026, a committee known as Stop the Power Grab submitted an Initiative Petition titled “Douglas County BOCC Expansion to 5 Members” to the Clerk for approval. A copy of the Initiative Petition is attached hereto as “Exhibit 1.”

16. The citizen-initiated initiative included a threshold question whether to increase the Board from three to five members and directed voters to select one of two identified election methods if the expansion were approved.

17. On March 4, 2026, the Clerk sent a letter to Stop the Power Grab advising that the petition had been reviewed and found compliant to form per § 31-11-106, C.R.S., and was approved for circulation effective March 5, 2026.

18. The citizen-initiated petition followed the requirements of § 30-10-306.5(3)(a), (5)(a),

and (6)(a), C.R.S.

19. Stop the Power Grab began the process of collecting signatures for the citizen initiative.

20. On August 12, 2026, the Clerk determined that the “Stop the Power Grab” committee had submitted sufficient valid signatures to qualify a citizen-initiated initiative concerning expansion of the Board from three to five members. A copy of the verification is attached hereto as “Exhibit 2.”

21. On August 27, 2026, the Board provided notice of a special business meeting scheduled for August 28, 2026. A copy of the special meeting agenda is attached hereto as “Exhibit 3.”

22. On information and belief, the posted materials contained two agenda entries for resolutions but attached identical copies of one resolution, rather than the text of the second resolution later adopted as R-026-062.

23. At the August 28, 2026 meeting, the Board convened an impromptu executive session for purported legal advice. In calling for the executive session, the County Attorney cited as authority “C.R.S. § 24-6-402(b).”

24. There is no § 24-6-402(b) in COML.

25. The executive session was not properly or timely noticed on the special business meeting agenda. *See* Exhibit 3.

26. Upon information and belief, the Board and County Attorney discussed passing the first resolution at the August 28, 2026 meeting, and passing the second resolution at a later meeting.

27. In fact, after the executive session, the Board publicly explained that the legal advice received required them to “continue” the second resolution to an August 31, 2026 meeting.

28. A motion was made based on the legal advice received in the illegal executive session to continue the second resolution to an August 31, 2026 meeting, a second was provided, a vote

was taken, which was unanimous.

29. After the executive session, the Board continued the agenda item that later became R-026-062 to August 31, 2026, stating that additional information was needed.

30. The Board passed the first resolution, R-026-061, which now included a fiscal note to the citizen-initiated initiative. *See* Exhibit 4, Resolution R-026–061.

31. The first resolution was not a clarification of the language of the citizen-initiated initiative, or designed to fix a misleading title.

32. Upon information and belief, the Board unlawfully added a fiscal note to the ballot title of the citizen-initiated initiative to create confusion about the citizen-initiated initiative.

33. With respect to R-026-062 that was pulled from the August 28, 2026 special meeting agenda, on information and belief, the Board did not timely or properly post the actual text of the second resolution for public notice before taking final action on August 31, 2026.

34. On August 31, 2026, the Board adopted R-026-062. The resolution purports to rely on the Colorado Constitution and Colorado law, including § 30-10-306.5, C.R.S. A copy of R-026-062 is attached hereto as “Exhibit 5.”

35. R-026-062 refers the following question to the registered electors at the next general election:

In the event the size of the Douglas County Board of Commissioners is increased from three (3) to five (5) members, shall all Douglas County registered voters continue to be permitted to vote and elect all members of the Douglas County Board of County Commissioners?
[Yes] [No]

36. R-026-062 does not itself increase the membership of the Board from three to five.

37. R-026-062 does not designate two or more election methods as required by § 30-10-306.5(5) or (6), C.R.S.

38. The question does not specify whether, if approved, commissioners must reside in districts, whether all five members would be district-resident commissioners, or whether the resulting structure would include at-large commissioners.

39. The question, therefore, does not fairly disclose the legal and practical effect of a “yes” or “no” vote and conflicts with or creates confusion alongside the citizen-initiated expansion measure in violation of Colorado law.

40. R-026-062 was not designed to fix any language that might cause public confusion. Instead, it was designed to be in conflict with the citizen-initiated initiative.

First Claim for Relief
Contest of Ballot Title and Ballot Order — § 1-11-203.5, C.R.S.

41. Marshall incorporates paragraphs 1 through 40.

42. Section 1-11-203.5 provides the exclusive procedure for a pre-election contest concerning the order on the ballot or the form or content of a local ballot title.

43. The statute requires a verified petition that states the grounds for the contest and proposes alternative ballot-title text or an alternative ballot order. § 1-11-203.5(2), C.R.S.

44. R-026-062 fails to conform to the Colorado Constitution and statutes because § 30-10-306.5(2), C.R.S., authorizes a Board resolution increasing membership from three to five only if the resolution designates not fewer than two election methods set forth in § 30-10-306.5(5) or (6), C.R.S.

45. R-026-062 does neither. Instead, it presents a conditional, single yes/no question regarding countywide voter participation without identifying the legally operative election structure.

46. In addition, pursuant to § 30-11-103.5, C.R.S., county-referred measures follow municipal referred-measure procedures to the extent county procedures are not otherwise

prescribed. Under § 31-11-111(3), C.R.S., a referred-measure ballot title must correctly and fairly express the true intent and meaning of the measure and should avoid voter confusion or unclear effects of a yes/no vote.

47. R-026-062 is misleading and legally incomplete because it gives voters no way to know what electoral system will result from their vote, including residency qualifications and whether voting will occur countywide, by district, or under a mixed structure.

48. The Colorado Supreme Court recognizes that § 1-11-203.5 is the exclusive, expedited means to challenge local ballot-title form or content and requires strict observance of the five-day deadline. [Cacioppo v. Eagle County School District RE-50J, 92 P.3d 453 \(Colo. 2004\).](#)

49. Under § 1-11-203.5(3), C.R.S., the Court must provide the corrected ballot title or ballot order upon a finding of nonconformity.

50. Marshall proposes the following alternative ballot order: R-026-062 shall not be certified, printed, placed, or counted as a separate ballot question at the November 3, 2026 election unless and until the Board adopts and lawfully sets a measure that conforms to the statutory requirements governing the proposed change, and only if such acts by the Board are to intended to fix a misleading title.

51. Marshall further proposes that the original language of the title of the citizen-led ballot petition be restored, such that the language of Exhibit 1 is used rather than the language of Exhibit 4.

Second Claim for Relief
Breach and Threatened Breach of Election Duty — § 1-1-113, C.R.S.

52. Marshall incorporates paragraphs 1 through 51.

53. The Clerk and other authorized County election officials are charged with duties under the Uniform Election Code, including conducting the election in substantial compliance with the

Election Code and implementing only legally authorized ballot measures.

54. Individual commissioners had a duty under Colorado law to ensure that they complied with passing lawful resolutions related to the citizen-initiated initiative.

55. Certifying, printing, placing, or counting R-026-061 or R-026-062 notwithstanding their statutory nonconformity would constitute a breach or threatened breach of duty and other wrongful act within the meaning of § 1-1-113(1), C.R.S.

56. The Board breached this duty by referring R-026-061 and R-026-62, which do not comply with the legal requirements, *supra* at ¶¶ 28-38, and by unlawfully modifying the citizen-initiated initiative as an attempt to create confusion and conflict.

57. R-026-061 also creates confusion and conflicts with the citizen-initiated initiative as it unlawfully adds a fiscal note to the ballot initiative. A fiscal note is not intended to fix a misleading title, particularly as the title of the citizen-initiated initiative has not been challenged as misleading. The Board added the fiscal note simply to create confusion and to cause conflict with the citizen-initiated initiative.

58. Adding a fiscal note outside of Colorado law was an *ultra vires* act by the Board, and a breach of the Board's election duties.

59. Marshall has given, or contemporaneously will give, notice to each official from whom relief is sought, together with a meaningful opportunity to be heard, as § 1-1-113(1), C.R.S., requires.

60. Good cause exists for immediate relief because election-administration deadlines are imminent and a post-election remedy will not prevent voter confusion or cure the unlawful placement of R-026-061 or R-026-062 on the ballot.

61. The Court should order the Clerk and all responsible County election officials to desist

from any further action to certify, print, distribute, or count R-026-061 or R-26-062 pending disposition of this proceeding and thereafter. The Court should also order that the original citizen-led petition of Exhibit 1 be placed on the ballot with the original language and title.

Third Claim for Relief
Colorado Open Meetings Law — §§ 24-6-401 and 24-6-402, C.R.S.

62. Marshall incorporates paragraphs 1 through 61.

63. The formation of public policy is public business and may not be conducted in secret. § 24-6-401, C.R.S.

64. The Board is a local public body. Meetings of a quorum or three or more members, whichever is fewer, at which public business is discussed, or formal action may be taken must be open to the public. § 24-6-402(2)(b), C.R.S.

65. A meeting at which a public body adopts a proposed resolution or takes formal action must occur only after full and timely notice (no less than twenty-four hours prior to the holding of the meeting) to the public. The notice must include specific agenda information where possible. § 24-6-402(2)(c), C.R.S.

66. Notice shall be posted in public places with full and timely notice and specific agenda information. § 24-6-402(2)(c)(III), C.R.S.

67. The August 27, 2026 notice did not provide full and fair notice of the R-026-062 resolution actually considered and ultimately adopted. On information and belief, the notice and attached materials represented that two resolutions would be considered but supplied the same resolution twice, omitting the text of R-026-062.

68. The defect was material. R-026-062 addressed the election method for a potential five-member Board and was separate from the resolution that fixed the citizen-initiated expansion measure's ballot title.

69. The Board’s purported “continuation” of the August 28, 2026 agenda item to August 31, 2026, did not provide full and timely notice of the actual resolution before the Board adopted it. On information and belief, the Board did not post the actual R-026-062 text as an agenda item for a separately noticed August 31, 2026 meeting.

70. The executive-session procedure also appears not to have complied with § 24-6-402(4), C.R.S. A local public body must publicly announce the topic, identify the particular matter to be discussed in as much detail as possible without compromising the purpose of the executive session, state the specific authorizing citation in § 24-6-402(4), and obtain the requisite affirmative vote. A local public body may not adopt a proposed policy, position, resolution, rule, regulation, or formal action in executive session.

71. On information and belief, the Board’s impromptu announcement cited “C.R.S. § 24-6-402(b),” rather than specifically identifying the applicable subsection of § 24-6-402(4), and failed to identify the particular matter with the required detail.

72. During the illegal executive session, the Board discussed the passage of R-026-061 and continuing R-026-062 to a later date for passage.

73. Thereafter, in open session, the Board engaged in formal action to “continue” R-026-062 to an August 31, 2026 meeting based on the advice of counsel received in the unlawful executive session.

74. The Board passed R-026-061.

75. The Supreme Court evaluates whether COML notice gives fair notice from the perspective of an ordinary community member and recognizes that the statute does not permit bad-faith circumvention of notice requirements. [Town of Marble v. Darien, 181 P.3d 1148 \(Colo. 2008\)](#).

76. COML restricts executive sessions to the statutory conditions and does not permit the adoption of a position or formal action outside public view. [The Sentinel Colorado v. Rodriguez, 2023 COA 118.](#)

77. Under § 24-6-402(8), C.R.S., a resolution or formal action of a local public body is invalid unless taken at a meeting that complies with § 24-6-402(2).

78. Marshall was denied, or threatened with denial of, rights conferred on the public by the COML and therefore has standing under § 24-6-402(9)(a), C.R.S.

79. Marshall is entitled to an injunction enforcing the COML and, if he prevails, costs and reasonable attorney fees. § 24-6-402(9)(b), C.R.S.

Request for Expedited Setting and Preservation of Status Quo

80. Marshall requests immediate setting of this matter because §§ 1-11-203.5 and 1-1-113 require expedited adjudication of pre-election disputes.

81. Marshall requests that, pending the Court's prompt merits determination, the Court direct the Clerk and all County officials acting in concert with her to preserve the status quo by refraining from certifying, printing, placing, distributing, or counting R-026-062 and -061.

82. This requested temporary restraint is ancillary to and preserves the Court's ability to grant the statutory corrective relief; it is not offered as a substitute for the statutory contest.

83. Marshall further requests an expedited hearing to address his claims under COML. Should the Court find that the Board violated COML, the remedy would be to invalidate the votes taken to pass R-026-061 and R-026-062.

Prayer for Relief

WHEREFORE, Marshall respectfully requests that the Court:

A. Assume jurisdiction over the § 1-11-203.5 contest after approving the tendered bond;

B. Set an expedited hearing and direct prompt service and response consistent with §§ 1-11-203.5 and 1-1-113, C.R.S.;

C. Determine that the form, content, and/or ballot order of R-026-061 and R-026-062 do not conform to Colorado constitutional and statutory requirements;

D. Enter an alternative ballot order directing that R-026-062 not be certified, printed, placed, distributed, counted, or otherwise submitted as a separate question at the November 3, 2026 election unless the Board first lawfully adopts and sets a conforming resolution and ballot title in conformance with state law. The Court should further enter an alternative ballot order eliminating the fiscal note language of R-026-061;

E. Under § 1-1-113, C.R.S., order the Clerk and all responsible County election officials to desist from any breach of election duties arising from the certification, printing, placement, distribution, or counting of R-026-061 and R-026-062;

F. Declare that the Board adopted R-026-062 in violation of the Colorado Open Meetings Law and hold the resolution invalid under § 24-6-402(8), C.R.S.;

G. Enjoin Defendants and persons acting in concert with them from implementing R-026-061 and R-026-062 or taking election-administration action based on either resolution;

H. Award Marshall costs and reasonable attorney fees under §§ 1-11-203.5(3) and 24-6-402(9)(b), C.R.S., as applicable;

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

Respectfully submitted this 7th day of September 2026.

Darren O'Connor LAW, LLC

By: /s/Darren O'Connor
Darren O'Connor, Reg. No. 54020
Attorney for Robert C. Marshall

Salazar Law, LLC,

By: /s/Joseph A. Salazar
Joseph A. Salazar, Reg. No. 35196
Attorney for Robert C. Marshall

Verification

I, Robert C. Marshall, declare under penalty of perjury under the laws of the State of Colorado that I have read the foregoing Verified Petition and Complaint and that its factual allegations are true and correct to the best of my knowledge, information, and belief.

Robert C. Marshall

Robert C. Marshall

Dated: 09 / 07 / 2026

Proposed Alternative Ballot Order

The Court orders that Douglas County Resolutions No. R-026-061 and R-026-062 shall not be certified to, printed on, placed on, distributed in connection with, or counted at the November 3, 2026 general election. Nothing in this Order prevents Douglas County from pursuing a future referral that complies with all applicable constitutional and statutory requirements.

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