ADVANCE SHEET HEADNOTE
September 15, 2025

2025 CO 55

No. 24SC34, *O'Connell v. Woodland Park School District*—Colorado's Open Meetings Law—Purpose of Open Meetings Laws—Costs and Fees.

The cure doctrine provides that a public body may resolve a violation of Colorado's Open Meetings Law (the "COML"), §§ 24-6-401 to -402, C.R.S. (2024), by holding a subsequent meeting that complies with the COML and that does not merely rubber-stamp the earlier decision. The doctrine was first recognized in Colorado by the court of appeals in *Colorado Off-Highway Vehicle Coalition v. Colorado Board of Parks & Outdoor Recreation*, 2012 COA 146, 292 P.3d 1132 ("*COHVC*"). The supreme court granted certiorari to consider whether *COHVC* was wrongly decided or, in the alternative, wrongly applied by the division of the court of appeals below, and whether O'Connell is entitled to costs and reasonable attorney fees as a prevailing party. *O'Connell v. Woodland Park Sch. Dist.*, No. 22CA2054 (Dec. 7, 2023).

The supreme court affirms the division in part, holding that the cure doctrine does not contravene the COML or longstanding precedent. It further

concludes that the COML focuses on the fact of a violation, not on whether an alleged violation was intentional or unintentional. However, the court reverses the division's holding regarding attorney fees and concludes that O'Connell is a prevailing party because she successfully proved the original COML violation by the Woodland Park School District Board of Education, which was not cured until *after* O'Connell filed suit. Accordingly, she is entitled to an award of costs and reasonable attorney fees pursuant to section 24-6-402(9)(b), C.R.S. (2024). The supreme court, therefore, reverses that part of the division's opinion and remands the case with instructions that the matter be returned to the district court to determine and award O'Connell her costs and reasonable attorney fees.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 57

Supreme Court Case No. 24SC34
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 22CA2054

Petitioner:

Erin O'Connell,

v.

Respondents:

Woodland Park School District; Woodland Park School District Board of Education; Chris Austin, in his official capacity as Board Member; Gary Brovetto, in his official capacity as Board Member; David Illingworth II, in his official capacity as Board Member; Suzanne Patterson, in her official capacity as Board Member; and David Rusterholtz, in his official capacity as Board Member.

Judgment Affirmed in Part and Reversed in Part
en banc
September 15, 2025

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE SAMOUR** joined.
CHIEF JUSTICE MÁRQUEZ concurred in part and dissented in part.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 The cure doctrine provides that a public body may resolve a violation of Colorado's Open Meetings Law (the "COML"), §§ 24-6-401 to -402, C.R.S. (2024), by holding a subsequent meeting that complies with the COML and that does not merely rubber-stamp the earlier decision. The doctrine was first recognized in Colorado by the court of appeals in *Colorado Off-Highway Vehicle Coalition v. Colorado Board of Parks & Outdoor Recreation*, 2012 COA 146, 292 P.3d 1132 ("*COHVC*"). Petitioner Erin O'Connell asks us to hold that *COHVC* was wrongly decided or, in the alternative, wrongly applied by the division of the court of appeals below. *O'Connell v. Woodland Park Sch. Dist.*, No. 22CA2054 (Dec. 7, 2023).

¶2 We granted certiorari to consider (1) whether the cure doctrine squares with the plain meaning of the COML and longstanding Colorado precedent; (2) if it does, whether the doctrine applies only to unintentional COML violations; and (3) whether O'Connell is entitled to costs and reasonable attorney fees as a prevailing party.

¶3 We affirm the division in part, holding that the cure doctrine does not contravene the COML or longstanding precedent. We further conclude that the COML focuses on the fact of a violation, not on whether an alleged violation was intentional or unintentional. However, we reverse the division's holding regarding attorney fees and conclude that O'Connell is a prevailing party because

she successfully proved the original COML violation by the Woodland Park School District Board of Education (the "School Board"), which the Board did not cure until *after* O'Connell filed suit. Accordingly, she is entitled to an award of costs and reasonable attorney fees pursuant to section 24-6-402(9)(b), C.R.S. (2024). We therefore reverse that part of the division's opinion and remand the case with instructions that the matter be returned to the district court to determine and award O'Connell her costs and reasonable attorney fees.

I. Facts and Procedural History

¶4 In November 2021, four new members were elected to the School Board. These four—David Rusterholtz, David Illingworth II, Suzanne Patterson, and Gary Brovetto—joined Chris Austin, the other member of the five-member School Board. At the newly constituted School Board's first regular meeting on December 8, Rusterholtz, Illingworth, and Austin were elected School Board president, vice president, and secretary, respectively.

¶5 All the new directors had campaigned on the issue of school choice, and one of their priorities was to make a school known as Merit Academy a charter school of the Woodland Park School District (the "School District"). A year earlier, Merit Academy had applied to become chartered in the School District, but its application was unanimously denied by the previous board due to concerns surrounding transportation, food service expense, and financial viability. Instead,

Merit Academy opened as a contract school. It continued, however, to pursue admission into the School District as a charter school.

¶6 At a special board meeting on December 15, the School Board directed the School District's superintendent, Dr. Mathew Neal, to find a way to streamline Merit Academy's admission into the School District as a charter school. Neal and the School District's counsel, Brad Miller, reasoned that because Merit Academy had recently applied to become chartered and was already operating as a contract school, it would be redundant to begin the application process anew. They proposed that the School District and Merit Academy execute a Memorandum of Understanding ("MOU"), the purpose of which was to allow Merit Academy to skip the application process and move directly to negotiating a potential charter school contract with the School District.

¶7 Rusterholtz, Neal, and Miller met before the next board meeting to set the meeting agenda. Miller had several topics he wished to discuss with the School Board, including the proposed MOU, which he suggested discussing under an agenda item broadly titled "BOARD HOUSEKEEPING." The proposed agenda did not mention Merit Academy or the MOU. Only Miller, Neal, Rusterholtz, and Illingworth saw the MOU before the next board meeting, held on January 26, even though they intended to present and discuss the MOU to the School Board at the meeting.

¶8 At the beginning of the meeting, Austin indicated that he was "not comfortable approving the agenda" because he did not understand what the "BOARD HOUSEKEEPING" agenda item meant, and he believed that the public would not either. Miller responded that, "from a purely legal perspective, . . . it's not an absolute necessity to provide granularity to the public" or "to tell the public in advance about every single thing that's being issued." Austin continued to express his concerns about the lack of notice and transparency, asking whether the agenda item was left ambiguous "so that we don't have a houseful of people who have opinions" about chartering Merit Academy.

¶9 Rusterholtz commented that he was "concerned about Mr. Austin's concern" and that the "only reason that it [was] on the agenda as housekeeping . . . [was] because of advice of counsel." Ultimately, the School Board approved the agenda in a 4–1 vote, with Austin casting the sole no vote. Miller subsequently introduced the MOU during the discussion of the "BOARD HOUSEKEEPING" agenda item. He and Neal then explained the purpose of the MOU, and after making an amendment to the original draft, the School Board approved the MOU in a 5–0 vote.

¶10 When Rusterholtz opened a School Board work session the next day, he apologized for the January 26 agenda's lack of transparency regarding the agenda item titled "BOARD HOUSEKEEPING." He explained that he had received calls

from multiple members of the community expressing frustration with how the agenda item was framed, and he admitted that he could have been more transparent about what that agenda item entailed.

¶11 The agenda for the next regular school board meeting, held on February 9, listed "Re-Approval of MOU with Merit Academy" as an action item. At the meeting, Neal explained that even though this was discussed and approved in a previous meeting, the MOU was being "reapproved . . . for the sake of full transparency." The School Board received public comment during the meeting, including from O'Connell, but it did not read the MOU into the record or engage in lengthy discussion regarding the document. The School Board voted unanimously to approve the MOU again.

¶12 On March 30, O'Connell filed a verified complaint against the School Board, along with an emergency motion for a preliminary injunction, alleging that its members had violated the COML. She asserted that the School Board's January 26 agenda failed to provide proper notice regarding the discussion of the MOU with Merit Academy as required under section 24-6-402(2)(c). She further claimed that the notice provided by the School Board's February 9 agenda was inadequate under the COML and that, because the School Board did not engage in deliberations, the School Board's vote at that meeting merely rubber-stamped its invalid January 26 decision.

¶13 On April 13, two weeks after O'Connell filed suit, the School Board held another meeting. The agenda for this meeting indicated that there would be a "Discussion and Reconsideration of Re-Approval of MOU with Merit Academy" by the School Board. This time, the School Board discussed the MOU for approximately one hour, and each School Board member made a statement regarding the MOU. The four new members voted in favor of the MOU; Austin cast the sole no vote.

¶14 Several weeks later, the district court held a hearing on O'Connell's motion for preliminary injunction. All five School Board members, Neal, and O'Connell testified. The School Board argued that even if the January 26 discussion of the MOU with Merit Academy violated the COML, the subsequent two meetings cured the violation.

¶15 In its written order granting the injunction, the court found that the "clear priority of the majority of the [School] Board was to charter Merit" and that the January 26 "'BOARD HOUSEKEEPING' [a]genda item was a conscious decision to hide a controversial issue regarding Merit, the MOU[,] and intent to charter." The district court further found that an "ordinary member of the community could not have understood or known what 'BOARD HOUSEKEEPING' . . . meant."

¶16 The court rejected the School Board's argument that the February 9 or April 13 meetings cured the January 26 COML violation, instead concluding that

the School Board merely rubber-stamped the January 26 decision at the two subsequent meetings. The district court issued an injunction against the School Board, ordering it to "comply with the [C]OML by clearly, honestly[,] and forthrightly listing all future [a]genda items regarding Merit Academy. Perhaps something as simple as 'Merit Academy Charter School Application.'"

¶17 In June, O'Connell filed a motion for contempt against the School Board, alleging that the agenda for its May 4 meeting failed to comply with the court's injunction. Following a hearing on the contempt motion, the court concluded that the School Board did not violate the COML or, by extension, the preliminary injunction at the subsequent meeting. After the parties filed cross-motions for summary judgment, the court granted the School Board's motion. The district court partially reversed course in that ruling, concluding that the School Board cured the January 26 violation at its April 13 meeting. Applying *COHVC*, the court specifically found that the School Board's decision at the April 13 meeting did not merely rubber-stamp its earlier decision. Further, the district court held that O'Connell was "not the prevailing party" and thus denied her request for costs and reasonable attorney fees pursuant to section 24-6-402(9)(b).

¶18 O'Connell appealed the district court's entry of summary judgment, asserting several bases for her appeal. First, she invited the division to conclude that the court of appeals erred in adopting the cure doctrine in *COHVC* because

the doctrine contravenes the plain language of the COML. It does this, she claimed, by allowing public bodies to make decisions in secret and then benefit from a backdated effective date by later holding a compliant meeting. Additionally, O'Connell contended that the doctrine upends longstanding Colorado precedent regarding the interpretation of the COML.

¶19 O'Connell further asserted that even if *COHVC* was decided correctly, it was distinguishable and thus inapplicable to her case. In her view, *COHVC* stood for the proposition that a public body could only cure a prior violation if it proved there was (1) an unintentional violation of the COML, (2) prompt admission of the violation, (3) a change in course prior to the filing of a lawsuit, and (4) the occurrence of a subsequent compliant meeting. Here, according to O'Connell, the School Board's violation was intentional.

¶20 Next, O'Connell contended that even if *COHVC* controlled, the School Board did not cure its prior violation. Finally, O'Connell argued that because she proved that the School Board violated the COML, the district court erred in declining to award her costs and reasonable attorney fees under section 24-6-402(9)(b).

¶21 The division was not convinced. In its view, the reasoning in *COHVC* was persuasive because "the purpose of the [C]OML is to require open decision-making, not to permanently condemn a decision made in violation of the

statute." *O'Connell*, ¶ 18 (quoting *COHVC*, ¶ 31, 292 P.3d at 1137). The division was also unmoved by O'Connell's contention that the cure doctrine would improperly incentivize public bodies to make decisions in secret if decisions made in violation of the COML could later be backdated by a compliant vote. *Id.* at ¶ 20. It reasoned that, "[i]f anything, it would be more cumbersome to try and flout the statute's requirements since any action would eventually have to be ratified at a subsequent complying meeting, and those members might have to explain why they decided to make their decision outside of the public purview." *Id.*

¶22 Additionally, the division endorsed the rationale in *COHVC* that without the ability to give retroactive effect to prior invalid actions, the work of public bodies would be stymied, and this "may do more disservice to the public good than the violation itself." *Id.* at ¶ 21 (quoting *Alaska Cmty. Colls.' Fed'n of Tchrs., Loc. No. 2404 v. Univ. of Alaska*, 677 P.2d 886, 891 (Alaska 1984)). The division further determined that *COHVC* did not upend longstanding precedent. *Id.* at ¶ 22. In its view, neither of the cases relied on by O'Connell precluded the conclusion that a prior invalid action can be cured. *Id.*

¶23 The division was also unpersuaded by O'Connell's argument that the cure doctrine as adopted in *COHVC* only applies to unintentional violations of the COML. *Id.* at ¶ 26. The distinction between intentional and unintentional violations, the division emphasized, "never factored into the [*COHVC*] division's

analysis on whether the entity had cured its prior violations." *Id.* Additionally, it noted that, in granting summary judgment, the district court did not find that the School Board had intentionally violated the COML. *Id.*

¶24 Turning to O'Connell's argument that the subsequent meetings did not cure the January 26 violation, the division explained that a subsequent compliant meeting is one that conforms to the COML, including the requirement that the meeting is "held only after full and timely notice to the public." *Id.* at ¶ 28 (quoting § 24-6-402(2)(c)(I)). Applying this standard, the division determined that "an ordinary member of the community would have understood what the [April 13] agenda item labeled 'Discussion and Reconsideration of Re-Approval of MOU with Merit Academy' would cover." *Id.* at ¶ 30.

¶25 The division reached this conclusion after highlighting the extended controversy and press coverage surrounding Merit Academy's admission into the School District and the fact that the April 13 meeting was the third time the MOU had been presented to the public. *Id.* Furthermore, it observed, O'Connell gave public comment at both the February 9 and April 13 meetings. *Id.* She had also testified at the preliminary injunction hearing that Merit Academy was the "primary focus" of the School Board at the meetings. *Id.* Therefore, the division concluded that there was sufficient evidence in the record to show that an ordinary

member of the public had full notice of what would be discussed at the April 13 meeting. *Id.*

¶26 The division then assessed whether the School Board merely rubber-stamped the MOU at the April 13 meeting. Like the district court, it determined that because every School Board member made a statement on the record during the April 13 meeting and one of the School Board members even changed his vote, the School Board did not merely rubber-stamp the MOU at the April 13 meeting. *Id.* at ¶ 31. Because the School Board held a subsequent compliant meeting on April 13 and did not merely rubber-stamp the MOU at that meeting, the division concluded that the School Board cured its January 26 violation. *Id.* at ¶ 32.

¶27 Finally, the division concluded that O'Connell was not a prevailing party because no outstanding violations of the COML remained after the April 13 meeting effectively cured the January 26 violation. *Id.* at ¶ 35. Thus, the division affirmed the district court's denial of her request for costs and reasonable attorney fees. *Id.*

¶28 O'Connell then petitioned this court for certiorari review, which we granted.[1]

[1] Specifically, we granted certiorari to review the following issues:

II. Analysis

¶29 We begin by explaining the standard of review and our rules of statutory interpretation. Next, we examine the COML and relevant case law in greater detail before turning to the three issues presented here. Then, applying the COML and relevant case law, we affirm the judgment of the court of appeals in part and reverse in part. Specifically, we affirm the division's determinations that (1) the cure doctrine does not contravene the COML or longstanding precedent; and (2) the doctrine does not distinguish between intentional and unintentional violations of the COML. However, because we conclude that the School Board did not cure its January 26 COML violation until April 13, *after* O'Connell filed suit,

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1. Whether the judicially created cure doctrine allowing public bodies to "cure" prior violations of Colorado's Open Meetings Law (COML) contravenes COML's plain meaning and longstanding precedent.
2. Whether expanding the judicially created cure doctrine to apply to intentional violations of statutory notice requirements for the purpose of addressing a controversial issue outside the public eye contravenes the plain language and intent behind COML and this court's mandates regarding its interpretation.
3. Whether the court of appeals erred by expanding the judicially created cure doctrine to permit formal actions under section 24-6-402(8), C.R.S. 2023, to be reinstated retroactive to the date of the original violation and thereby preclude an award of prevailing-party attorney fees under section 24-6-402(9), C.R.S. 2023, to the plaintiff who successfully proved the original violation.

we reverse the division's holding regarding costs and reasonable attorney fees. O'Connell was the prevailing party with respect to the violation that precipitated her lawsuit; thus, we remand the case with instructions that the matter be returned to the district court to determine and award O'Connell costs and reasonable attorney fees pursuant to section 24-6-402(9)(b).

A. Standard of Review and Rules of Statutory Interpretation

¶30 Because our interpretation of the COML involves a question of law, we review the division's decision de novo. *Bd. of Cnty. Comm'rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1192 (Colo. 2004). As we interpret the COML, "we are guided by well-established principles of statutory construction." *Id.* We "construe the statute as a whole to give 'consistent, harmonious[,] and sensible effect to all its parts.'" *Id.* (quoting *People v. Luther*, 58 P.3d 1013, 1015 (Colo. 2002)). We must also interpret the statute in a manner that gives effect to the General Assembly's intent. *Id.* at 1193. To do this, "we begin with the language of the statute, giving words their plain and ordinary meaning." *Id.* We must respect the legislature's choice of language, meaning we may not add or subtract words from the statute. *UMB Bank, N.A. v. Landmark Towers Ass'n*, 2017 CO 107, ¶ 22, 408 P.3d 836, 840. If the statute is unambiguous, we look no further. *Luther*, 58 P.3d at 1015.

B. Colorado's Open Meetings Law

¶31 The COML provides that all meetings of "three or more members of any local public body . . . at which any public business is discussed or at which any formal action may be taken" are "public meetings open to the public at all times." § 24-6-402(2)(b). Additionally, the COML mandates:

> Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, *shall be held only after full and timely notice to the public*. . . . The posting shall include specific agenda information where possible.

§ 24-6-402(2)(c)(I) (emphasis added).

¶32 When the General Assembly adopted the COML, it declared it "to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." § 24-6-401, C.R.S. (2024). The legislature "clearly intended to afford the public access to a broad range of meetings at which public business is considered." *Benson v. McCormick*, 578 P.2d 651, 652 (Colo. 1978). This court has, accordingly, "interpreted [the COML] broadly to further the legislative intent that citizens be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved." *Cole v. State*, 673 P.2d 345, 347 (Colo. 1983); *see also Bagby v. Sch. Dist. No. 1*, 528 P.2d 1299, 1302 (Colo. 1974) (holding that because the COML is "designed [p]recisely

to prevent the abuse of 'secret or "star chamber" sessions of public bodies,'" the COML "should be interpreted most favorably for the beneficiary, the public" (quoting *Dobrovolny v. Reinhardt*, 173 N.W.2d 837, 840 (Iowa 1970))).

¶33 Importantly, the COML 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" these requirements. § 24-6-402(8). The COML, however, does not address whether a public body may cure a violation after a noncompliant meeting. As the court of appeals reasoned in *COHVC*, "existing Colorado case law interpreting the [C]OML implies that a state or local public body may [cure a violation], provided the subsequent meeting is not a mere 'rubber stamping' of an earlier decision." ¶¶ 25, 28, 292 P.3d at 1136.

¶34 In reaching this conclusion, the *COHVC* division primarily relied on two cases: *Bagby*, 528 P.2d at 1300, and *Van Alstyne v. Hous. Auth.*, 985 P.2d 97, 98 (Colo. App. 1999). In *Bagby*, this court held that a school board violated the COML when it made decisions regarding pending business in private and then adopted the decisions at public meetings afterward. 528 P.2d at 1300. We concluded that the COML's prohibition against making final policy decisions and taking formal action outside of "a public meeting is not meant to permit 'rubber stamping' previously decided issues." *Id.* at 1302. In *Van Alstyne*, which involved COML violations by a housing authority, a division of the court of appeals interpreted

Bagby to mandate that "a public body's meeting is not in compliance with the [COML] if it is held merely to 'rubber stamp' previously decided issues." 985 P.2d at 101.

¶35 Considering the rationale in these two cases, the *COHVC* division determined that a public body *could* cure a COML violation because

> if, under *Van Alstyne* and *Bagby*, a state or local public body could violate the [C]OML by merely "rubber stamping" an earlier decision made in violation of the [C]OML, then it follows that a state or local public body would *not* violate the [C]OML by holding a subsequent complying meeting that is not a mere "rubber stamping" of an earlier decision.

¶ 28, 292 P.3d at 1136. The *COHVC* division also considered out-of-state cases interpreting similar open meetings laws as permitting public bodies to cure violations. *Id.* at ¶ 30, 292 P.3d at 1137 (collecting cases). Last, the division emphasized that "the purpose of the [C]OML supports our interpretation that a state or local public body may 'cure' a prior [C]OML violation" because its purpose "is to require open decision-making, not to permanently condemn a decision made in violation of the statute." *Id.* at ¶ 31, 292 P.3d at 1137. For these reasons, the *COHVC* division concluded that a public body may cure a prior COML violation with a subsequent complying meeting, provided it does not merely rubber-stamp its earlier decision. *Id.* at ¶ 33, 292 P.3d at 1137–38.

¶36 With this background in mind, we turn to O'Connell's arguments.

C. Public Bodies Can Cure COML Violations

¶37 O'Connell contends that *COHVC* was wrongly decided. Specifically, she argues that the cure doctrine runs afoul of the COML and existing precedent because it eliminates the remedy of invalidation and the mandatory award of costs and reasonable attorney fees under section 24-6-402(8) and (9)(b). She asserts that the plain language of the COML prescribes remedies that are narrowly tailored to ensure transparency while also allowing public bodies to move forward after COML violations. In her view, section 24-6-402(8) invalidates formal actions taken in violation of the COML but invites public entities to re-take the action in a compliant meeting, meaning that such action is only effective *prospectively*, once it is re-taken at a compliant meeting.

¶38 O'Connell also contends that longstanding case law reaffirms the "simple proposition" that invalidation under section 24-6-402(8) renders the original action null and void but does not bar the subsequent taking of the same action in a compliant meeting. *See, e.g.*, *Van Alstyne*, 985 P.2d at 99 (concluding that the defendant complied with the plaintiff's request to reconsider a formal action in full compliance with the COML); *Darien v. Town of Marble*, 159 P.3d 761, 766 (Colo. App. 2006) (requiring the town to give public notice in accordance with the COML if it intended to vote on the project again), *rev'd on other grounds*, 181 P.3d 1148, 1151 (Colo. 2008).

¶39 According to O'Connell, allowing the School Board to retroactively cure its January 26 violation effectively allowed the School Board to "erase" the original violation, thereby undermining the specific remedies prescribed in section 24-6-402(8) and (9)(b). We disagree.

¶40 First, as we have emphasized, there is no language in the COML that suggests a violation can *never* be cured. Rather, it simply states no "formal action . . . shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section." § 24-6-402(8). To "cure" a COML violation does not mean that there was no prior violation or that the subsequent action erases a prior violation. Instead, to "cure" a violation means that, under the COML, an entity can conduct a complying meeting after a violation and confirm the prior action, retroactive to the first meeting.

¶41 Requiring a governmental body to start all over (i.e., not allowing the "cure") would be inconsistent with the proper functioning of the government and, consequently, the COML. This is because the focus of the COML "is on the *process* of governmental decision making, not on the *substance* of the decisions themselves." *COHVC*, ¶ 31, 292 P.3d at 1137. As we explained in *Cole*, the "intent of the [COML] is that citizens be given the opportunity to obtain information about and to participate in the legislative decision-making process." 673 P.2d at 349. It follows, then, that when a public body provides an opportunity for citizens to

participate in the decision-making process in a subsequent compliant meeting, that opportunity—so long as it is not a mere rubber stamp—cures the prior violation. This aligns with the purpose of the COML.

¶42 The cure doctrine also squares with this court's conception of the "full and timely notice" requirement in section 24-6-402(2)(c)(I), the COML provision at the heart of the dispute in this case. This part of the statute, we have explained, establishes a flexible standard pursuant to which courts consider both the public's interest in open access to a public body's meetings and the body's interest in reasonably conducting its business. *Town of Marble*, 181 P.3d at 1152.

¶43 We agree with the division and those jurisdictions that have concluded that an overly rigid "vacation of decisions made in nonconformity with the [COML] may do more disservice to the public good than the violation itself." *Alaska Cmty. Colls.' Fed'n of Tchrs.*, 677 P.2d at 891; *see also Valley Realty & Dev., Inc. v. Town of Hartford*, 685 A.2d 292, 295 (Vt. 1996) ("Without an effective way of curing a violation, necessary public action may become gridlocked."). That is, it is important to provide "a mechanism through which public bodies can promptly cure prior invalid actions [to enable] them to carry out their duties without undue hindrance." *O'Connell*, ¶ 21. Because the work of public bodies would be stymied without the ability to give retroactive effect to prior invalid actions, we read the

COML to guarantee public access to public bodies' decision-making processes while simultaneously allowing necessary public action to progress.

¶44 We also note that the General Assembly has amended the COML since the holding in *COHVC* and has not changed the language in section 24-6-402(8), which this court interprets "as evidence of [the General Assembly's] acquiescence to the judicial construction of the terms." *City of Colo. Springs v. Powell*, 156 P.3d 461, 467 (Colo. 2007); *see also Tompkins v. DeLeon*, 595 P.2d 242, 243–44 (Colo. 1979) ("When the legislature reenacts or amends a statute and does not change a section previously interpreted by settled judicial construction, it is presumed that it agrees with judicial construction of the statute."). In sum, the cure doctrine does not violate the plain language or purpose of the COML.

¶45 We are similarly unpersuaded that longstanding Colorado precedent prohibits the cure of prior nonconforming acts. To be sure, the cases cited by O'Connell affirm that formal actions taken at a noncompliant meeting are null and void. *See, e.g.*, *Wisdom Works Counseling Servs., P.C. v. Colo. Dep't. of Corr.*, 2015 COA 118, ¶ 25, 360 P.3d 262, 267 ("[T]he [C]OML voids any of the listed actions taken at a meeting that does not comply with the requirements of section 24-6-402(2)."); *Colo. Med. Bd. v. Boland*, 2018 COA 39, ¶ 24, 488 P.3d 5, 8 ("[A] formal action taken at a meeting that does not comport with the [COML] is 'null and void.'") (quoting *Van Alstyne*, 985 P.2d at 100), *aff'd on other grounds*,

2019 CO 94, 451 P.3d 848; *Rogers v. Bd. of Trs.*, 859 P.2d 284, 289 (Colo. App. 1993) (same). But none of these cases speak to whether a violation can be cured in a subsequent compliant meeting.

¶46 O'Connell's reliance on *Van Alstyne*, which holds that noncompliant actions "cease to exist or to have any effect, and may not be rekindled by *simple reference* back to them," is similarly misplaced. 985 P.2d at 101 (emphasis added). A subsequent meeting that complies with the COML is significantly different than a "simple reference back to" a prior noncompliant action. Thus, *Van Alstyne* is consistent with the conclusion that noncompliant actions may be cured once the public body holds a subsequent complying meeting. *COHVC*, ¶ 33, 292 P.3d at 1137–38; *see also Bjornsen v. Bd. of Cnty. Comm'rs*, 2019 COA 59, ¶ 32, 487 P.3d 1015, 1022 ("But under [*COHVC*], retroactive notice does not cure an improperly convened [public meeting].").

¶47 For these reasons, we affirm that part of the division's opinion holding that the cure doctrine does not contravene the COML's plain meaning or longstanding Colorado precedent.

D. The Cure Doctrine Does Not Distinguish Between Intentional and Unintentional Violations

¶48 O'Connell next contends that even if *COHVC* were correctly decided, the cure doctrine was never intended to apply to public bodies that use it to intentionally thwart the COML's transparency goals. She argues that the division

expanded the doctrine to include intentional violations. It should only be available, she posits, in limited situations like those in *COHVC*, where the public body promptly admitted the violation and voluntarily came into compliance with the COML *prior* to the filing of a lawsuit. Permitting boards that act in bad faith to circumvent the requirements of the COML would, she asserts, undermine its purpose.

¶49 O'Connell's argument rests on shaky ground. First, the district court did not find that the School Board intentionally violated the COML. *See O'Connell*, ¶ 26. Moreover, she misconstrues *COHVC*. The question of whether the public body in that case committed an intentional or unintentional violation did not factor into the *COHVC* division's analysis of whether the entity had cured its prior violations. *See* ¶¶ 33–34, 292 P.3d at 1137–38.

¶50 More problematically, O'Connell's proposed approach is at odds with the purpose of the COML, which, as we have emphasized, is to ensure that public business is conducted in full view of the public. By creating incurable categories of violations, public bodies would have little incentive to admit and correct mistakes.

¶51 For all these reasons, we conclude that the COML is concerned with the fact of the violation, not with whether an alleged violation was intentional or unintentional.

E. A Prevailing Party Is One Who Proves a COML Violation

¶52 O'Connell next contends that the division erred because it used the cure doctrine to *eliminate* the School Board's original violation. This, she argues, effectively precluded her from recovering prevailing-party costs and reasonable attorney fees despite the district court and the division both concluding that the School Board violated the COML at the January 26 meeting. The division's interpretation, she asserts, contravenes the "General Assembly's establishment of mandatory consequences for a violation of the statute." *Van Alstyne*, 985 P.2d at 100. She proved that the School Board violated the COML and thus contends that she is entitled to costs and reasonable attorney fees.

¶53 Section 24-6-402(9)(b) mandates that "[i]n any action in which the *court finds a violation*" of the COML, "the court shall award the citizen prevailing in such action costs and reasonable attorney fees." (Emphasis added.) That is, the statute explicitly requires that the court find a violation of the COML. *See, e.g.*, *Zubeck v. El Paso Cnty. Ret. Plan*, 961 P.2d 597, 601 (Colo. App. 1998) (awarding attorney fees upon finding that the governmental entity violated any provision of the COML); *Anzalone v. Bd. of Trs.*, 2024 COA 18, ¶¶ 48–49, 549 P.3d 255, 265 (same).

¶54 The School Board counters that O'Connell was not a prevailing party because the School Board conceded the violation in its cross-motion for summary judgment. We are not persuaded.

¶55 As we already noted, curing a COML violation does not mean that there was no prior violation or that the subsequent action erases a prior violation. Instead, to "cure" a violation means that, under the COML, an entity can conduct a complying meeting after a violation and confirm the prior action, retroactive to the first meeting.

¶56 Additionally, the logical consequence of the School Board's position would take the teeth out of the COML. By conceding a violation, a public body could effectively prevent the award of costs and reasonable attorney fees to prevailing plaintiffs even though they are a mandatory consequence for a violation of the statute.[2] To interpret section 24-6-402(9)(b) in this manner would contravene the General Assembly's unequivocal mandate. This is something we may not do.

¶57 The School Board also expresses concern that allowing plaintiffs like O'Connell to recover costs and reasonable attorney fees will incentivize them to misuse the COML. These plaintiffs, in the School Board's telling, would force public bodies into litigation not to compel compliance with the COML, but simply to recover costs and reasonable attorney fees. To the extent the School Board is concerned about misuse of the COML, its concern is a policy matter that is best left to the General Assembly.

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[2] Of course, a prompt concession may reduce the award to a prevailing party of costs and reasonable attorney fees.

¶58 Moreover, while an award of attorney fees to a prevailing party is a mandatory consequence for a violation of the statute, the COML requires district courts to assess the specific circumstances of each case in deciding who is a prevailing party. Only those plaintiffs who, "through the exercise of their public spirit and private resources, *caused* a public body to comply with the [COML]" are prevailing parties entitled to their costs and attorney fees. *Van Alstyne*, 985 P.2d at 100 (emphasis added). And, as the COML explicitly provides, the award of attorney fees to a prevailing party is not without limit: the court shall award "costs and *reasonable* attorney fees." § 24-6-402(9)(b) (emphasis added).

¶59 Here, because the January 26 meeting violated the COML and this violation was not cured until April 13, *after* O'Connell filed suit, O'Connell is the prevailing party and is entitled to costs and reasonable attorney fees. We, accordingly, remand the case with instructions that the matter be returned to the district court to determine and award costs and reasonable attorney fees.

III. Conclusion

¶60 We affirm the division's conclusions that the cure doctrine does not contravene the COML or longstanding precedent or distinguish between intentional and unintentional violations. However, we reverse the division's decision regarding costs and reasonable attorney fees. Because O'Connell successfully proved the original COML violation, which was not cured until *after*

she filed suit, she is the prevailing party and, accordingly, is entitled to costs and reasonable attorney fees as mandated by section 24-6-402(9)(b). Therefore, we remand the case with instructions that the matter be returned to the district court to determine and award O'Connell costs and reasonable attorney fees.

CHIEF JUSTICE MÁRQUEZ, concurring in part and dissenting in part.

¶61 I agree with the majority that when a public body makes a decision at a meeting that violates Colorado's Open Meetings Law (the "COML"), §§ 24-6-401 to -402, C.R.S. (2024), the public body may cure the violation by holding a properly noticed meeting at which the body does not merely rubber-stamp that decision. Maj. op. ¶ 41. I also agree that the Woodland Park School District Board of Education (the "School Board") cured its violation in this case. *Id.* at ¶¶ 29, 59.

¶62 However, having applied the cure doctrine to the conduct of the School Board, the majority erroneously concludes that Petitioner Erin O'Connell is entitled to an award of costs and reasonable attorney fees. *Id.* at ¶ 59. This conclusion is logically inconsistent with the cure doctrine. Section 24-6-402(9)(b), C.R.S. (2024), requires a court to "find[] a violation of" the COML to justify an award of costs and reasonable attorney fees. But as a matter of logic, a court cannot "find[] a violation" of the COML if the violation has been cured. A cure is a complete remedy; it fully repairs the legal defect of the earlier act. We know this because (as the majority correctly holds) a cure operates retroactively to validate an otherwise invalid act. Maj. op. ¶¶ 40, 55. Critically, the legal validity of the earlier act is possible *only because the defect has been fully remedied*. Simply put, the violation no longer exists. Here, because the violation was cured (allowing the School Board's initial decision to have legal effect), a court cannot "find[] a

violation" under section 24-6-402(9)(b) to serve as a basis for an award of costs and fees. The majority errs in holding otherwise. For this reason, and because I fear that today's ruling will have adverse consequences beyond this case, I respectfully dissent in part.

I. The COML Focuses on Open and Transparent Processes

¶63 The Colorado General Assembly has declared that "the formation of public policy is public business and may not be conducted in secret." § 24-6-401, C.R.S. (2024). Importantly, the COML focuses on "the *process* of governmental decision making, not on the *substance* of the decisions themselves." *Colo. Off-Highway Vehicle Coal. v. Colo. Bd. of Parks & Outdoor Recreation*, 2012 COA 146, ¶ 31, 292 P.3d 1132, 1137 ("*COHVC*"); *see also Cole v. State*, 673 P.2d 345, 349 (Colo. 1983) ("The intent of the [COML] is that citizens be given the opportunity to obtain information about and to participate in the legislative decision-making process."). Before a meeting at which a public body takes formal action, the COML requires, for example, "full and timely notice to the public," including the posting of "specific agenda information where possible." § 24-6-402(2)(c)(I).

¶64 The COML also makes clear that "[n]o . . . formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements" of the statute. § 24-6-402(8). Put differently, a decision reached by a public body without following required processes is legally ineffective.

¶65 Under section 24-6-402(9)(b), any citizen may file suit "to enforce the purposes of [section 24-6-402]." If the court "finds a violation" of section 24-6-402, the court shall award the prevailing citizen costs and reasonable attorney fees. § 24-6-402(9)(b). These provisions make clear that the COML is not intended to serve as a vehicle to challenge a public body's substantive decisions, but to ensure that open and transparent processes are followed to arrive at those substantive decisions. In general, open meetings laws exist to deter misconduct, encourage government to be responsive to constituents, allow for public input, foster public acceptance of governmental action, and promote accurate reporting of governmental processes and decisions. *See Alaska Cmty. Colls.' Fed'n of Tchrs., Loc. No. 2404 v. Univ. of Alaska*, 677 P.2d 886, 891 (Alaska 1984). The rights at stake are the rights of the *public*, not individuals. Thus, when a public body deliberates openly and transparently to arrive at a decision, the purpose of the COML has been met. § 24-6-401.

II. A Violation That Has Been Cured Is Fully Remedied and No Longer Exists

¶66 Colorado courts first recognized the cure doctrine in the COML context in *COHVC*. The *COHVC* division held that a public body can cure a COML violation by holding a compliant meeting that is not a mere "rubber stamping" of the earlier violation. ¶ 33, 292 P.3d at 1137–38. The majority adopts this view. Maj. op. ¶ 41. I fully agree. However, the majority holds that O'Connell is nonetheless entitled

to an award of costs and reasonable attorney fees because she "successfully proved the original COML violation." *Id.* at ¶¶ 3, 60. But how can a court logically "find[] a violation" when that violation has been cured? The majority's decision defies the logic of the cure doctrine.

¶67 Merriam-Webster defines "cure" as "a complete or permanent solution or remedy." *Cure*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/cure [https://perma.cc/KAR3-TZH6]. Similarly, Black's Law Dictionary defines "cure" as "[t]o remove one or more legal defects to correct one or more legal errors." *Cure*, Black's Law Dictionary (12th ed. 2024). Under Colorado law, an act that cures a violation protects the curing party from further liability. *See, e.g.*, § 8-43-304(4), C.R.S. (2024) ("If the violator cures the violation within such twenty-day period, . . . no penalty shall be assessed."); *Foster Lumber Co. v. Weston Constructors, Inc.*, 521 P.2d 1294, 1298 (Colo. App. 1974) ("From the creditor's point of view, it is as though a default had not occurred since any harm resulting from late payment has been cured.").

¶68 In the context of the COML, when a public body cures a violation by subsequently holding a compliant meeting, the process violation is fully remedied. As a result, the cure doctrine treats the public body's earlier decision as though it were COML-compliant in the first place, and the earlier decision is rendered valid and effective as of the date it was made. Importantly, the initial decision is

rendered valid only because the earlier violation has been fully remedied and *no longer exists*. But if there is no violation, then there is no basis for an award of costs and fees.

¶69 The majority acknowledges that the cure doctrine applies retroactively, allowing a public body to conduct a compliant meeting after a violation that validates the earlier decision. Maj. op. ¶¶ 40, 55. This is critical because it allows the original decision to have full legal effect. *See id.* I wholeheartedly agree. Yet, having determined that the violation was fully cured for purposes of giving legal effect to the School Board's original decision, the majority insists that the violation still exists for purposes of awarding costs and fees. *Id.* at ¶¶ 59–60. The majority cannot have it both ways. If the cure doctrine reaches back in time to cure the original violation of the COML, as the majority holds, then no violation remains to justify the award of costs and fees.

¶70 Notably, the majority's interpretation strays from the text of section 24-6-402(9)(b): that provision requires a court to "find[] a violation" of the COML before awarding a prevailing plaintiff costs and fees. It does not mandate an award of costs and fees to a plaintiff who "successfully prove[s] the original COML violation." Maj. op. ¶ 60. To the extent the majority relies on *Van Alstyne v. Housing Authority*, 985 P.2d 97 (Colo. App. 1999), to conclude that a plaintiff is entitled to an award of costs and fees when she *causes* a public body to comply

with the COML, its reliance is misplaced. The division in *Van Alstyne* did not address the cure doctrine; the issue was not raised in that case. *See id.* Indeed, the Housing Authority in that case argued that its subsequent compliance with the COML rendered its initial violation moot. *Id.* at 99. Thus, the division's analysis in *Van Alstyne* does not support the majority's application of it here.

¶71 The majority's decision today loses sight of the purpose and logic of the cure doctrine. When a public body cures a defective decision-making process, there no longer exists any violation of the COML. Indeed, that truth is the only basis for giving legal effect to the public body's earlier decision.

¶72 Under the majority's reasoning, a "cure" remedies a violation for purposes of establishing the validity of the School Board's action. Again, I agree. But having so concluded, the majority cannot logically also hold that the violation still exists for purposes of awarding costs and fees under section 24-6-402(9)(b). The majority attempts to escape its own internally inconsistent logic by redefining a "cure" to mean retroactive confirmation of an earlier decision. Maj. op. ¶¶ 40, 55. This reasoning obscures the distinction between the *substance* of the public body's decision and the *process* followed to reach that decision. Retroactive "confirmation" simply reaffirms the substance of the earlier decision. In contrast, a cure (in this context) remedies the process followed to arrive at the decision.

Only the latter can give legal validity to an earlier decision that was reached through a defective process.

¶73 In this case, the School Board cured the COML violation on April 13, and the district court did not issue its findings until April 29. Because the School Board cured the violation, its decision-making process was fully remedied. As a result, there was no violation for the court to "find" as part of its April 29 ruling. I would therefore affirm the division's holding that O'Connell is not entitled to an award of costs and reasonable attorney fees.

III. Policy Considerations

¶74 To the extent the majority is concerned that a logically consistent application of the cure doctrine would "contravene the General Assembly's unequivocal mandate," *id.* at ¶ 56, its concern is misplaced. Applying the cure doctrine to preclude a fee award where a violation has been cured fully aligns with the purpose of the COML and the plain language of section 24-6-402(9)(b). Such an approach still (1) entitles plaintiffs to an award of costs and fees when public bodies fail to cure violations of the COML; (2) achieves the core purpose of the COML; and (3) discourages misuse of the fees provision of the COML, particularly with respect to public bodies with few budgetary resources.

¶75 First, a court *can* find a violation under section 24-6-402(9)(b) when a public body fails to cure the defect in its decision-making process. The cure doctrine

validates a defective process only when a public body fully complies with the strictures of the COML. If a public body fails to hold a compliant meeting or otherwise chooses not to cure its violation, a plaintiff is entitled to an award of costs and fees under section 24-6-402(9)(b). The majority's fear of contravening an unequivocal mandate to award costs and fees is unfounded.

¶76 Second, public bodies have natural incentives to comply with the COML for the simple reason that a violation will render invalid any decisions the body has made. The idea that precluding fee awards in cases where a public body has cured a COML violation will somehow incentivize public bodies to simply disregard the COML makes little sense. The purpose of the law is to foster transparent formation of public policy and offer citizens the opportunity to meaningfully participate in the decision-making process—not to generate attorney fees. Permitting public bodies to cure violations without invariably bearing costs and fees achieves that purpose. After today's decision, however, public bodies can expect to be penalized regardless of whether they cure a COML violation.

¶77 Third, the majority's interpretation encourages citizens to initiate litigation even in circumstances that may not warrant it and forces public bodies to shoulder the costs, even when the violation has been fully remedied. For example, if a citizen discovers even a relatively inconsequential violation before the public body has an opportunity to cure it, the citizen need only file a lawsuit and prove the fact

of the violation in order to recover attorney fees—even if the public body promptly admits and later cures the violation.

¶78 To the extent the majority construes section 24-6-402(9)(b) to enable such a scenario, it loses sight of the COML's primary goal: to ensure transparency in the formation of public policy. *See* § 24-6-401. I fear that today's decision will incentivize shrewd citizens (and their attorneys) to take advantage of even inadvertent violations of the COML simply because proving the violation guarantees that their court costs and fees will be covered. Moreover, public bodies in Colorado's under-resourced communities now stand to suffer even more from the personnel challenges and funding shortfalls that can lead to inadvertent violations of the COML in the first place. *Cf.* Brief for Colorado Association of School Boards as Amicus Curiae Supporting Respondents, at 12 (describing the challenges Colorado's rural school districts may experience in attempting to comply with the COML).

¶79 In sum, as currently formulated, the General Assembly clearly requires a court to "*find[]* a violation" to award costs and fees to a plaintiff. § 24-6-402(9)(b) (emphasis added). As a matter of logic, once a public body cures a COML violation, the violation has been fully remedied; there no longer exists a violation to serve as a basis for costs and fees.

IV. Conclusion

¶80 Under the cure doctrine, a public body's violation of the decision-making process is fully remedied, *as if there had been no violation*. This cure is what allows the public body's earlier (otherwise invalid) decision to have retroactive legal effect. Once the cure has remedied the violation, there is no basis for an award of costs and fees. Because the district court logically cannot "find[] a violation" in a decision-making process that the School Board has properly cured, § 24-6-402(9)(b), there is no basis for an award of costs and fees in this case. Accordingly, I respectfully dissent in part.