DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: City and County Building 1437 Bannock Street Denver, CO 80202	DATE FILED: May 10, 2024 3:25 PM CASE NUMBER: 2023CV495
Plaintiff: **COLORADO LIVESTOCK ASSOCIATION,** a Colorado nonprofit corporation, v. Defendants: **STATE OF COLORADO; JARED POLIS,** in his official capacity as Governor of Colorado**;** **JOSEPH M. BARELA,** in his official capacity as Executive Director of the Colorado Department of Labor and Employment**;** and **SCOTT MOSS,** in his official capacity as Director of the Division of Labor Standards and Statistics, Colorado Department of Labor and Employment	Case Number: **23CV495** Courtroom: **424**

ORDER
Re: Defendants' Motion for Judgment on the Pleadings

This is before the Court on the defendants' motion for judgment on the pleadings, filed pursuant to C.R.C.P. 12(c). The Court has reviewed the motion, the response and the reply filed thereto, as well as the pleadings and responses thereto filed on behalf of Defendant-Intervenors Colorado Legal Services, Inc., and Jane Doe. Upon consideration thereof, as well as the arguments and authorities presented upon oral argument, and having reviewed the Court's file and applicable authorities and being advised in the premises, the Court finds and orders as follows.

I. Introduction

The plaintiff, the Colorado Livestock Association (CLA), initiated this action on its own behalf and on behalf of its members, that includes agricultural employers and property owners engaged in the livestock industry, seeking to challenge as an impermissible governmental taking the key service provider access provision enacted as part of a comprehensive agricultural labor relations act. C.R.S. § 8-13.202(1)(b).

The complaint seeks declarative relief, including (1) a declaration that the KSP Access Provision constitutes a *per se* taking of each affected agricultural employer's and property owner's right to exclude persons from their property [Complaint, First Claim for Relief, ¶ 37]; (2) a declaration that such takings, without just compensation, are unconstitutional under the United States and Colorado constitutions [Second Claim for Relief, ¶ 43]; (3) a declaration that the challenged provision violates the takings clause of the Colorado constitution, and is therefore unconstitutional, invalid, ineffective and unenforceable because it disturbs property and divests propriety rights o the property owner before just compensation is paid [Third Claim for Relief, ¶ 47]; and (4) a declaration that the provision cannot justify or excuse any action by uninvited persons that would otherwise be a trespass, nuisance, or other unlawful infringement of the property rights of agricultural employers and property owners [Fourth Claim for Relief, ¶ 51].

The complaint also seeks injunctive relief, including (1) a permanent injunction prohibiting the enforcement of the KSP Access Provision when the State has not paid just compensation [Fifth Claim for Relief, ¶ 55]; and (2) a permanent injunction prohibiting enforcement of the provision because actions at law for money damages would not adequately remedy the continuous and repeated property intrusions that would occur in the absence of an injunction [Sixth Claim for Relief, ¶¶ 57 – 61].

The defendants seek summary judgment on the pleadings, asserting that equitable relief in the form of declaratory or injunctive relief is not available for alleged violations of the United States and Colorado takings clauses, and that the named plaintiff herein lacks standing to assert this action.

II. Standard of Review

C.R.C.P. 12(c) provides that "after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Judgment on the pleadings is appropriate if, from the pleadings, the moving party is entitled to judgment as a matter

of law. *City & Cnty. of Denver v. Qwest Corp.*, 18 P.3d 748, 754 (Colo. 2001). In evaluating a C.R.C.P. 12(c) motion for judgment on the pleadings, the court must construe the allegations of the pleadings strictly against the movant, consider the factual allegations in the complaint as true, and grant the motion only if the matter can be determined on the pleadings. *Barnes v. State Farm Mutual Automobile Insurance Company,* 497 P.3d 5 (Colo. App. 2021). The same standard of review applicable to motions to dismiss filed pursuant to Rule 12(b) is applicable to motions for judgment on the pleadings filed pursuant to Rule 12(c). *Paradine v. Goei,* 463 P.3d 868 (Colo. App. 2018). Accordingly, in order to survive a motion for judgment on the pleadings, a party must plead sufficient facts that, if taken as true, suggest plausible grounds to support a claim for relief. *Id.,* 463 P.3d at 869-70.

III. The Complaint

The Complaint asserts the following factual assertions, which the Court regards as true for purposes of the instant motion. The plaintiff, CLA, is a Colorado nonprofit corporation that works on behalf of its members "in the regulatory and legislative arenas in Colorado," and "whose purpose is to serve as the voice of Colorado's livestock industry." [¶ 1.] Its members are agricultural employers and property owners engaged in the livestock industry. [¶ 2.] The complaint asserts that "protecting the property interests of CLA's members against [impermissible] invasions is germane" to its purpose. [*Id.*]

On June 21, 2021, the Colorado general assembly enacted C.R.S. § 8-13.5-202(1)(b), referred as the KSP Access Provision, that provides

> An employer shall not interfere with an agricultural worker's reasonable access to key service providers at any location during any time in which the agricultural worker is not performing compensable work or during paid or unpaid rest and meal breaks, and with respect to healthcare providers during any time, whether or not the agricultural worker is working.

[¶¶ 19, 20.] The statute defines a "key service provider," and provides for remedies and sanctions for violations of the access provisions. [¶¶ 29, 30.]

Additionally, the Complaint recites the takings clauses of the United States and Colorado constitutions [¶¶ 13, 14], and references selected statements and pronouncements of the United States Supreme Court involving a California regulation that the plaintiff asserts is

analogous and applicable to Colorado's KSP Access Provision.[1] [¶¶ 15 – 18.] The Complaint asserts that the challenged provision constitutes "a *per se* taking, without compensation" [¶ 10], inasmuch as the effect of the provision is to "take[ ] away agricultural employer's right to exclude numerous persons from 'any location' on property owned or controlled by agricultural employers" [¶ 23]. The Complaint further asserts that "the State of Colorado has not paid any compensation related to the KSP Access Provision and denies that just compensation is required."[2] [¶ 28.]

IV. Analysis

The Court initially considers whether the plaintiff, CLA, has standing to pursue the claims asserted in its complaint. In order for a court to have jurisdiction over a dispute, the plaintiff must have standing to bring the case. Standing is a threshold issue that must be satisfied in order to decide a case on the merits. *Ainscough v. Owens,* 90 P.3d 851(Colo. 2004). A plaintiff must satisfy two criteria in order to establish standing: first, the plaintiff must have suffered an injury-in-fact, and second, this harm must have been to a legally protected interest. *Wimberly v. Ettenberg*, 570 P.2d 535 (Colo. 1977).

Here, the plaintiff asserts that it brings this action "on behalf of itself and its members who would otherwise have standing to sue in their own right." [¶ 2.] While the complaint asserts that CLA "serves as the voice" and "and on behalf" of its members, who are agricultural employers and property owners impacted by the enactment of the KSA Access Provision, the complaint asserts no facts establishing or even asserting that CLA, as an entity or organization, is subject to the challenged statute or is otherwise impacted as to constitute an injury, economic or otherwise, to any legally protected interest. The Court accordingly concludes that the CLA lacks standing to pursue this action "on behalf of itself."[3]

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[1] Unlike factual allegations, the Court is not required to, and does not, give deference to or construe as true legal allegations or conclusions.

[2] The first clause of the quoted sentence (i.e. the State has not paid any compensation) appears to be a factual allegation and is regarded as true for purposes of the motion. The second clause (i.e. "and denies . . .) is either argument or a legal conclusion, which is not entitled to deference.

[3] The defendant-intervenors assert that the CLA's failure to allege facts establishing that at least one identifiable member has suffered some quantifiable economic loss on account of the challenged statute fails to adequately allege or show an "injury in fact," thereby defeating CLA's standing to assert this action on behalf of its members. However, construing the complaint liberally and regarding the factual allegations as true, as required in considering a motion to dismiss pursuant to C.R.C.P. 12(c), the Court finds that the likelihood of enforcement of the challenged provision to CLA's generally identified membership, as alleged in the complaint, is a sufficient threat of actual injury as a result of the statute's operation or enforcement. *See Pennell v. City of San Jose,* 108 S.Ct. 849, 855 (1988). The Court has also considered the defendant-intervenors' assertion that the absence of allegations of compensable loss of specific property renders the claims in the complaint unripe and nonjusticiable. The Supreme Court's

The Court next considers whether the allegations asserted in the complaint are sufficient to confer the plaintiff associational standing. An organization has associational standing when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members of the lawsuit. *Colorado Union of Taxpayers Foundation v. City of Aspen,* 418 P.3d 506 (Colo. 2018).

Here, it is sufficient to conclude that an individual agricultural employer or property owner who may be adversely affected by the KSP Access Provision would have standing to bring an action for relief, albeit in an appropriate forum seeking cognizable relief. (*But see, infra.*) Additionally, the CLA's assertion that it acts "as the voice" of Colorado's livestock industry and works on behalf of its members "in the regulatory and legislative arenas in Colorado" are germane to the interest it seeks to protect in the instant action and confers upon the association "a stake in the resolution of the dispute." *Colorado Union of Taxpayers Foundation,* 418 P.3d at 511.

At issue is the third prong, i.e. whether the claim asserted and the relief requested does not require the participation of individual members of the lawsuit. The CLA asserts that, inasmuch as its claims for declaratory and injunctive relief as asserted in the complaint may be resolved without the participation of the association's individual members, the third prong required for associational standing is satisfied. Resolution of the standing issue therefore necessarily requires a determination whether remedies such as declarative and/or injunctive relief are available in a takings case such as are asserted in this action.

The "takings clause" of Fifth Amendment of the United States Constitution provides, "[N]or shall private property be taken for public use, without just compensation." Similarly, the takings clause of Article II, Section 15 of the Colorado Constitution provides that "[P]rivate property shall be taken or damaged, for public use, without just compensation." Neither constitutional provision prohibits the government from taking its citizens' property; rather, the provisions prohibit the government from taking property without paying just compensation. *G & A Land, LLC v. City of Brighton,* 233 P.3d 701 (Colo. App. 2010). As recognized by the United States Supreme Court, the

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analysis in *Pennell* certainly adds credence to the argument. *See 108 S.Ct.* at 856 – 57 ("we have found it particularly important in takings cases to adhere to our admonition that 'the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary.'" However, in light of the Court's resolution of the associational standing issue, *infra,* the Court does not decide the applicability of *Pennell* to the plaintiff's complaint.

clause "is designed not to limit the governmental interference with property rights *per se,* but rather to secure *compensation* in the event of otherwise proper interference amounting to taking." *First English Evangelical Lutheran Church of Glendale v. Los Angles,* 107 S.Ct. 2378, 2381 (1987)(emphasis original). It necessarily follows that the appropriate remedy for a governmental taking of private property is not an action to invalidate or prevent the enforcement of such governmental action, but rather an action to obtain just compensation as the consequence of the governmental taking.

The United States Supreme Court has expressly recognized that, "as long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting a taking." *Knick v. Township of Scott, Pennsylvania,* 139 S.Ct. 2162, 2176 (2019). The Court reasoned that

> because the federal and nearly all state governments provide just compensation remedies to property owners who have suffered a taking, equitable relief is generally unavailable. As long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting a taking. But that is because, as the Court explained in *First English*, such a procedure is a remedy for a taking that violated the Constitution, not because the availability of the procedure somehow prevented the violation from occurring in the first place." *Id.,* 139 S.Ct. at 2176.

Additionally, the Court recognized that the government is not required to provide compensation in advance of a taking or risk having its action invalidated. "So long as the property owner has some way to obtain compensation after the fact, governments need not fear that courts will enjoin their activities." *Id.,* 139 S.Ct. as 2168.

Colorado courts have interpreted the Colorado takings clause as consistent with the federal clause and have likewise held that the proper remedy for a takings claim is compensation, and not injunctive or other equitable relief. *See City of Colo. Springs v. Crumb,* 364 P.2d 1053 (Colo. 1961); *see also Ambrosio v. Baker Meetro. Water & Sanitation Dist.,* 340 P.2d 872 (Colo. 1959); *Town of Glendale v. City & Cnty. Of Denver,* 322 P.2d 1053 (Colo. 1958). Accordingly, challenges to takings actions are properly raised in an eminent domain or inverse condemnation proceeding, and not by way of an independent injunction proceeding. [4]

[4] The plaintiff correctly points out that the language in Article II, § 15 of the Colorado Constitution states that "until [just compensation] shall be paid to the owner, or into court for the owner, the property shall

Dunham v. City of Golden, 504 P.2d 360 (Colo. 1972); *see Auraria Businessmen Against Confiscation, Inc., v. Denver Urb. Renewal Auth.,* 517 P.2d 845 (Colo. 1974).

Here, the plaintiff's Fifth and Sixth Claims for Relief expressly seek injunctive relief preventing enforcement of the KSP Access Provision as a remedy for its assertion that the statute's application constitutes a taking within the meaning of the United States and Colorado constitutions. Yet, based upon the authorities previously cited, such relief is not available where a claim for compensation may be asserted in an eminent domain or inverse condemnation action.[5]

Additionally, while the plaintiff's First, Second, Third, and Fourth Claims for Relief seek relief under Colorado's Uniform Declaratory Judgments statute, equitable remedies include not only injunctive relief, but also declaratory relief when the overall character of the relief sought is equitable. *State ex rel. Weiser v. Ctr. for Excellence in Higher Educ., Inc.*, 416 P.3d 599, 608 (Colo. 2023)(action seeking declaratory and injunctive relief had the overall character of an equitable action.) None of the declarations sought in the plaintiff's complaint seek monetary damages or compensation. Nor could the plaintiff herein assert such claims inasmuch as the valuation of "just compensation" occasioned by the application of the challenged access provision is necessarily a fact-intensive inquiry based upon the individualized circumstances of an aggrieved property owner. Instead, the overall character of the remedies sought in the complaint to declare the challenged provision a *per se* taking that, without compensation, is unconstitutional, invalid and ineffective, is entirely equitable in nature. Indeed, the effect of the declarations are inherently prohibitive and injunctive in nature inasmuch as the natural

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not be needlessly disturbed, or the proprietary rights of the owner therein divested." But Colorado courts have expressly held that a landowner cannot obtain an injunction against the government "merely because the damages to his premises . . . are not compensated in advance." *City of Colo. Springs,* 364 P.2d at 1055-56. The plaintiff has provided no local authority holding that equitable relief is permissible merely because a landowner is not compensated in advance of a taking, nor has the Court discerned any such authority.

[5] The plaintiff asserts in its Sixth Claim for Relief that an action at law for compensation would not adequately remedy the "continuous and repeated property intrusions that would occur" under the challenged provision in the absence of an injunction. However, as addressed by the parties during oral argument on the motion, parties and courts in other contexts are routinely tasked with assessing valuations for repeated intrusions onto private property, such as actions adjudicating easement and other such rights. The Court discerns no principled reason why an assessment of value or an amount of "just compensation" occasioned by repeated intrusions of key service workers onto private property to perform the services provided under the statute cannot be appropriately, should such intrusions occur, cannot be similarly considered and determined in an appropriate eminent domain or inverse condemnation proceeding.

and intended consequence of the declarations is to prevent and enjoin the enforcement of the law.

Accordingly, while declaratory and injunctive relief may, under certain circumstances, provide a uniform remedy that may benefit an association's members, such relief is unavailable under the circumstances alleged by the plaintiff in the complaint. Instead, a claim for compensation, which is the only remedy for the alleged takings claims asserted herein, necessarily requires individualized proof and, thus, individual participation of association members. *See United Union of Roofers, Waterproofers & Allied Trades No. 40 v. Is. Corp of Am.* 919 F.2d 1398 (9th Cir. 1990). As such, the plaintiff herein lacks a necessary prerequisite to establish its associational standing to pursue its claims asserted in this case.

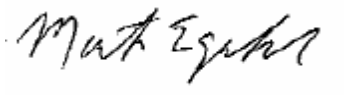
Nor may the complaint be amended in some fashion to cure the standing deficiency, inasmuch as the remedies sought (i.e. declarative and injunctive relief), whether sought by individual property owners or by an association action on their behalf, is simply unavailable. Relief in the form of just compensation, to the extent it is available, must be sought in an appropriate forum. Such is not the case here.

V. Conclusion

Based upon the foregoing, the defendants' motion for judgment on the pleadings is **granted**. The complaint in this case is therefore dismissed pursuant to C.R.C.P. 12(c).

Dated this 10th day of May 2024.

BY THE COURT:



Martin F. Egelhoff
District Court Judge