

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Bernard Butts v. State of Colorado, and Jena Griswold, in her official capacity

Butts v. State of Colorado · No. 25-cv-00990-NYW-SBP · Decided March 31, 2026

SUMMARY

The United States District Court for the District of Colorado grants Defendants’ motion to dismiss claims arising from Colorado’s registration and public listing of an alleged cryptocurrency scam entity. The court concludes that Plaintiff lacks standing to seek prospective injunctive and declaratory relief, and dismisses his tort, Colorado Consumer Protection Act, and other claims on grounds including sovereign immunity and the Eleventh Amendment. The opinion addresses alleged negligent misrepresentation, negligence, consumer-protection violations, due process, administrative-law, declaratory, and Commodity Exchange Act claims.

CASE DETAILS

COURT	United States District Court for the District of Colorado
WRITING FOR THE COURT	Nina Y. Wang
JURISDICTION	United States District Court for the District of Colorado
DECIDED	March 31, 2026
DOCKET	25-cv-00990-NYW-SBP
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought a putative class action asserting seven claims arising from Colorado's alleged non-verification of corporate filings. Defendants moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).
STANDARD OF REVIEW	On a facial Rule 12(b)(1) challenge, the court accepts the complaint's jurisdictional allegations as true and determines whether they plausibly establish subject-matter jurisdiction. A Rule 12(b)(6) motion tests whether the complaint states a legally sufficient claim. The court also independently considered subject-matter jurisdiction.
PRECEDENTIAL VALUE	unpublished

TOPICS

motions to dismiss

standing

subject matter jurisdiction

sovereign immunity

civil procedure

PRACTICE AREAS

civil procedure

constitutional law

civil rights

administrative law

sovereign immunity

consumer protection

QUESTIONS PRESENTED

1. Whether Butts had Article III standing to seek prospective injunctive and declaratory relief.
2. Whether the Colorado Governmental Immunity Act barred the negligent misrepresentation, negligence, and Colorado Consumer Protection Act claims against the State of Colorado.
3. Whether Eleventh Amendment immunity barred the official-capacity Fourteenth Amendment and Commodity Exchange Act claims against the Secretary of State.
4. Whether the Colorado Administrative Procedure Act supplied a substantive right to challenge the Secretary of State's alleged internal non-verification policy.
5. Whether the Declaratory Judgment Act supplied an independent cause of action after the other claims were dismissed.

HOLDINGS

1. Plaintiff lacked standing to seek prospective injunctive and declaratory relief because he did not allege a sufficient likelihood of future injury or that he personally intended to rely again on the Secretary of State's database and suffer a similar loss.
2. The complaint adequately alleged traceability at the pleading stage for the past injury because it alleged that Colorado's database listing of PBGME implied legitimacy and created an opportunity for the fraud.
3. The negligent misrepresentation, negligence, and Colorado Consumer Protection Act claims against the State of Colorado were barred by the Colorado Governmental Immunity Act and were dismissed without prejudice.
4. The official-capacity claims seeking money damages under § 1983 and the Commodity Exchange Act were barred by Eleventh Amendment immunity.
5. The Colorado Administrative Procedure Act did not provide Plaintiff a substantive right to challenge the Secretary of State's alleged internal non-verification policy, and Plaintiff therefore lacked standing to assert the claim.
6. The Declaratory Judgment Act did not provide an independent federal cause of action, and the declaratory judgment claim failed because Plaintiff's other claims were dismissed and he lacked standing to seek prospective declaratory relief.

KEY QUOTATIONS

“standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek” (Analysis § I)

“To demonstrate standing, Plaintiff must allege facts establishing “a sufficient likelihood that he will again be wronged in a similar way.”” (Analysis § I)

“The State Administrative Procedure Act “does not create substantive legal rights on which a claim for relief can be based.”” (Analysis § V)

“the Declaratory Judgment Act does not provide an independent federal cause of action.” (Analysis § VII)

FACTUAL BACKGROUND

Bernard Butts invested \$20,963.96 in PBGME, a purported company later alleged to be part of a cryptocurrency “pig butchering” scam. When Butts attempted to withdraw his investment, PBGME demanded an additional \$10,500, and Butts refused, losing his investment. Butts alleged that Colorado's public corporate database and registration of PBGME implied that the entity was legitimate, and that Colorado's alleged policy of accepting corporate filings without verifying their accuracy induced his investment.

PROCEDURAL HISTORY

Plaintiff filed the action on March 27, 2025, alleging claims for negligent misrepresentation, negligence, violation of the Colorado Consumer Protection Act, a Fourteenth Amendment claim under 42 U.S.C. § 1983, a Colorado Administrative Procedure Act claim, declaratory relief, and a Commodity Exchange Act claim. The court granted the motion to dismiss and dismissed every claim without prejudice, entered judgment for defendants, awarded defendants costs under D.C.COLO.LCivR 54.1, and terminated the case.

DISPOSITION

dismissed

CASES CITED

- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Creek Red Nation, LLC v. Jeffco Midget Football Association, Inc., 175 F. Supp. 3d 1290, 1293 (D. Colo. 2016)
- Castaneda v. INS, 23 F.3d 1576, 1580 (10th Cir. 1994)
- Caballero v. Fuerzas Armadas Revolucionarias de Colombia, 945 F.3d 1270, 1273 (10th Cir. 2019)
- Baker v. USD 229 Blue Valley, Baker v. USD 229 Blue Valley, 979 F.3d 866, 872 (10th Cir. 2020)
- Bertels v. Farm Bureau Property & Casualty Insurance Co., 123 F.4th 1068, 1073-74 (10th Cir. 2024)
- Susan B. Anthony List v. Driehaus, 573 U.S. 149, 157-58 (2014)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- TransUnion LLC v. Ramirez, 594 U.S. 413, 430-31 (2021)
- Bronson v. Swensen, 500 F.3d 1099, 1109 (10th Cir. 2007)
- Nova Health Systems v. Gandy, 416 F.3d 1149, 1155-56 (10th Cir. 2005)
- Santa Fe Alliance for Public Health & Safety v. City of Santa Fe, 993 F.3d 802, 814 (10th Cir. 2021)
- Bennett v. Spear, 520 U.S. 154, 169 (1997)

- Winsness v. Yocom, 433 F.3d 727, 735 (10th Cir. 2006)
- Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016)
- FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367, 381 (2024)
- K.A. v. Barnes, 134 F.4th 1067, 1075-76 (10th Cir. 2025)
- Laufer v. Looper, 22 F.4th 871, 875-76 (10th Cir. 2022)
- Warth v. Seldin, 422 U.S. 490, 502 (1975)
- Clapper v. Amnesty International USA, 568 U.S. 398, 411 (2013)
- City of Los Angeles v. Lyons, 461 U.S. 95, 105, 111 (1983)
- Colorado Cross Disability Coalition v. Abercrombie & Fitch Co., 765 F.3d 1205, 1211-12 (10th Cir. 2014)
- Brereton v. Bountiful City Corp., 434 F.3d 1213, 1216 (10th Cir. 2006)
- Mann v. Boatright, 477 F.3d 1140, 1148 n.4 (10th Cir. 2007)
- Sudduth v. CitiMortgage, Inc., 79 F. Supp. 3d 1193, 1199 n.3 (D. Colo. 2015)
- City of Colorado Springs v. Powell, 48 P.3d 561, 563 (Colo. 2002)
- Examination Board of Professional Home Inspectors v. International Association of Certified Home Inspectors, 519 F. Supp. 3d 893, 919 (D. Colo. 2021), aff'd, 36 F.4th 1238 (10th Cir. 2022)
- Arabasz v. Schwartzberg, 943 P.2d 463, 465 (Colo. App. 1996)
- Elephant Butte Irrigation District of New Mexico v. Department of Interior, 160 F.3d 602, 607 (10th Cir. 1998)
- Muscogee (Creek) Nation v. Pruitt, 669 F.3d 1159, 1166 (10th Cir. 2012)
- Doe 1 v. Colorado Department of Public Health & Environment, 451 P.3d 851, 858-59 (Colo. 2019)
- Sinochem International Co. v. Malaysia International Shipping Corp., 549 U.S. 422, 431, 433, 436 (2007)
- Valenzuela v. Silversmith, 699 F.3d 1199, 1205 (10th Cir. 2012)
- Coop v. Colorado State Board of Registered Psychotherapists, No. 16CA1539, 2017 WL 11932362, at *2-3 (Colo. App. Aug. 24, 2017)
- Chittenden v. Colorado Board of Social Work Examiners, 292 P.3d 1138, 1144 (Colo. App. 2012)
- Neighbors Affected by Triple Creek v. Colorado Oil & Gas Conservation Commission, No. 18CA0116, 2021 WL 12341240, at *5-6 (Colo. App. Apr. 1, 2021)
- Adams v. FedEx Ground Package System, Inc., 546 F. App'x 772, 777 (10th Cir. 2013)
- Nero v. Oklahoma, No. 22-6121, 2022 WL 14423872, at *2 (10th Cir. Oct. 25, 2022)