

<p>COLORADO SUPREME COURT 2 EAST 14TH AVENUE DENVER, COLORADO 80203</p> <p>Rule to Show Cause Issued October 17, 2024 Westminster Municipal Court Honorable Rebekah B. Watada 3030 Turnpike Drive Westminster, Colorado 80030</p>	<p>DATE FILED November 7, 2024 6:57 PM FILING ID: 535BC6927D09C CASE NUMBER: 2024SA276</p>
<p>In Re:</p> <p>Plaintiff:</p> <p>People of the State of Colorado by through the People of the City of Westminster</p> <p>v.</p> <p>Defendant:</p> <p>Aleah Michelle Camp</p>	<p>COURT USE ONLY</p>
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**AMICI CURIAE BRIEF OF ACLU OF COLORADO AND COLORADO
FREEDOM FUND IN SUPPORT OF PETITIONER**

CERTIFICATE OF COMPLIANCE

I hereby certify that this Amicus Curiae brief complies with all requirements of C.A.R. 28(a)(2), 28(a)(3), 29(c), and 32. The undersigned specifically certifies that:

This brief complies with the applicable word limit set forth in C.A.R. 29(d). It contains 3071 words. I acknowledge this brief may be stricken if it fails to comply with any requirement of the foregoing rules.

/s/ Emma Mclean-Riggs

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IDENTITY AND INTEREST OF AMICI CURIAE

The ACLU is a nationwide, non-partisan, non-profit organization with almost 2 million members, dedicated to safeguarding the principles of civil liberties enshrined in the federal and state constitutions for all Americans. The ACLU of Colorado, with over 45,000 members and supporters, is a state affiliate of the ACLU. Because the ACLU of Colorado is dedicated to the constitutional rights and civil liberties of all Coloradans, the organization has a unique interest in ensuring that the state constitutional promise of equal protection of the law is upheld in Colorado municipal court proceedings.

Colorado Freedom Fund is a non-partisan, non-profit organization founded in 2018 to pay cash bail for people incarcerated across Colorado. The organization continues to pay bail while advocating for the rights of people charged with criminal offenses and researching allegations of abuses and rights violations in the criminal legal system. Colorado Freedom Fund prioritizes advocacy on behalf of Colorado's most vulnerable community members who are incarcerated pretrial, and thus has a unique interest in ensuring municipal courts across the state uphold the Constitutional guarantee of equal protection in proceedings.

INTRODUCTION

When Petitioner Aleah Michelle Camp was accused of theft of goods worth less than \$300, Westminster police could have charged her under either section 18-4-401 of the Colorado Revised Statutes or under section 6-3-1 of the Westminster Municipal Code. Because they chose to charge her under the Westminster Municipal Code, she was subject to a possible jail sentence thirty-six times longer and fines more than nine times higher than allowed by state law. This sentencing disparity violates the equal protection guarantee of the Colorado Constitution and the preemption laws of the state of Colorado.

Ms. Camp's experience is emblematic of accused people across Colorado who face criminal charges in municipal courts. The unique structure of municipal courts, including their incomplete separation from the prosecuting entity before them, simplified procedures, lack of external oversight, and paucity of well-resourced and fully independent defense counsel, makes them a risk to the rights of the accused people who appear before them. That risk is compounded by the fact that those accused people tend to be society's most vulnerable: unhoused, mentally ill, extremely poor, racially marginalized, and disabled. To allow the arbitrary decision of

a police officer alone to determine whether a person will appear in state court, where they will have greater procedural protections and face lower penalties, or in municipal court, where they will have fewer procedural protections and be subject to dramatically higher potential penalties is unconstitutional under Colorado's equal protection guarantee.

The ACLU of Colorado and Colorado Freedom Fund (CFF), who investigate allegations of violations of people's rights in the municipal courts as part of their organizational missions, have observed that extremely disparate sentencing is not a mere threat. In many jurisdictions, it is a painful reality, and one that intersects with the deprivation of other constitutional protections with devastating results. This Court should act to protect fair and even-handed application of the law, affirm Colorado's well-settled equal protection doctrine, reverse the municipal court, and make the rule to show cause absolute.

ARGUMENT

I. Municipal Courts are Uniquely Structured to Present Risk to the Rights of the Most Vulnerable People in Colorado.

Because municipal courts have structural vulnerabilities that state courts do not and adjudicate some of the most vulnerable people in Colorado, this Court must ensure that equal protection guarantees and state law preemption are applied assiduously. Here, that means this Court should conclude that the City of Westminster's disproportionate sentencing scheme for petty theft is preempted by state law and that the City violated the Colorado Constitution's equal protection guarantee when it charged Petitioner Aleah Michelle Camp with a petty theft that subjects her to a possible jail sentence thirty-six times longer and fines more than nine times higher than allowed by state law to punish identical conduct.

Colorado's municipal criminal courts are unique hybrid institutions, with vulnerability to political pressure that impacts the Constitutional rights of those who appear before them.¹ This is because municipal courts are judicial entities ultimately structured, funded, and supervised by the

¹ Alexandra Natapoff, *Criminal Municipal Courts*, 134 Harv. L. Rev. 964, 968, (2021).

city, which is also the entity that brings municipal prosecutions.² Municipal judges are vulnerable to political pressure from the municipalities who employ and supervise them.³ For example, the Denver Post has reported on the City of Pueblo's use of contempt of court to sentence people to long jail terms for missing court dates for offenses like loitering, trespass, and standing in the median.⁴ The unique political pressure faced by municipal judges is not merely theoretical. The Post reported that shortly after a visiting judge in Pueblo set a briefing schedule questioning the constitutionality of these types of sentences for missing court, he was told by the mayor and city attorney that his employment contract was not being renewed.⁵

Municipal judges in Colorado also are not subject to independent oversight, creating further risk to accused people and civil liberties. They are not subject to the Commission on Judicial Discipline, the independent

² *Id.*

³ *Id.*

⁴ Sam Tabachnik & Shelly Bradbury, *How Pueblo Weaponizes Contempt of Court to Inflate Jail Time for Minor Crimes*, THE DENVER POST, July 24, 2024, at <https://www.denverpost.com/2024/07/21/pueblo-municipal-contempt-of-court-charges-jail-time/>.

⁵ *Id.*

legislatively created body which investigates and adjudicates complaints of judicial misconduct against state court judges. Colo. Rev. Stat. §§ 13-5.3-102(3)(a); 13-5.3-101(9)(c). Any complaints about the conduct of municipal court judges must be directed to their employer - the city that also acts as the prosecuting municipality in front of the court - or theoretically to the Office of Attorney Regulation. But the ability to report the actions of a municipal judge to the OARC is tempered by the reality that a lawyer practicing in the municipal court risks retaliation against her clients.

Another structural concern is that Colorado municipal courts, like their counterparts across the country, operate mainly in obscurity.⁶ Few municipal courts have an e-filing system or a reliable public-facing electronic record system. Five of sixteen Colorado municipal courts recently surveyed by CFF do not allow public observation of in-custody dockets, and one additional court restricts public observation of in-custody weekend dockets. Because municipal courts largely lack electronic records

⁶ Natapoff, *supra* note 1, at 967.

systems and only sporadically permit observation, examining the actions of municipal courts is extremely time-consuming and expensive.⁷

In addition, only two municipalities in the state have dedicated public defenders' offices: the Office of the Municipal Public Defender for the City of Denver and the Aurora Public Defender's Office. Other municipalities contract attorneys for their indigent defense, a practice empirically shown to result in worse outcomes for defendants.⁸ Appointed municipal defense attorneys also are not typically contracted through the Office of the Alternate Defense Counsel (OADC), the state agency that manages indigent defense in the state courts when the Office of the State Public Defender has an ethical conflict of interest. Colo. Rev. Stat. § 21-2-101(1). Therefore, as a general matter, municipal defense attorneys do not benefit from OADC's oversight, training, and support staff. The absence of

⁷ The Denver Post, seeking records of basic sentencing information for unconstitutional municipal contempt charges was quoted \$13,000 for a list of affected defendants, case dispositions, and sentencing judges, at least in part due to the Pueblo Municipal Court's filing system. Tabachnik & Bradbury, *supra* note 2. faced similar barriers in Grand Junction, where in-custody dockets are, as a matter of practice, closed to the public. CFF's investigation was only possible through time-consuming and expensive records requests.

⁸ Eve Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 Mich. L. Rev. 205, 204 (2023).

a centralized, adequately resourced, independent indigent defense agency results in greater risk to constitutional deprivations being unremedied.

This risk is compounded by city and judicial control over selection of contract municipal indigent defense counsel. Robust advocacy for defendants that slows down the court process, decreases guilty pleas and challenges the legality of court practices pose a risk that the attorney may lose their municipal contract.

Municipal courts are often empowered to impose significant periods of incarceration; yet they are subject only to relaxed procedural requirements that diminish protections for defendants. Colorado's municipal courts are bound by the Colorado Rules of Municipal Court Procedure, which provide expedited procedural rules for municipal criminal cases. Colo. Mun. Ct. R. P. 202. Compared to the Colorado Rules of Criminal Procedure, which bind misdemeanor courts that adjudicate some identical conduct, they provide defendants with fewer formal protections.

In addition, appellate review is extremely limited, due to the predominance of negotiated pleas, the short timelines imposed by the Colorado Municipal Court Rules of Procedure, and the lack of state-

appointed postconviction counsel. *Compare* Colo. Mun. Ct. R. P. 235 (imposing a 91-day deadline for requesting reconsideration of a sentence and a six-month deadline for most other postconviction motions) *with* Colo. R. Crim. Proc. 35 (imposing a 126-day deadline for requesting reconsideration of sentence and an eighteen-month deadline for most other postconviction motions in misdemeanor cases).

Colorado's municipal courts primarily adjudicate low-level offenses like traffic offenses, sleeping in parks or on medians, loitering, trespass, and petty theft.⁹ Because municipal courts adjudicate crimes of poverty and homelessness, they impact primarily poor and unhoused accused people.¹⁰ Not everyone is equally likely to live in poverty and thus be subject to municipal charges. Black, Latine, and Indigenous Coloradoans are more likely to live in poverty than white Coloradans and are overrepresented in Colorado's unhoused population.¹¹ Disability also

⁹ BECCA CURRY & REBECCA WALLACE, JUSTICE DERAILED: A CASE STUDY OF ABUSIVE AND UNCONSTITUTIONAL PRACTICES IN COLORADO CITY COURTS, 4 (2017), at <https://www.aclu-co.org/sites/default/files/JUSTICE-DERAILED-web.pdf>.

¹⁰ *Id.*

¹¹ U.S. DEP'T OF HEALTH AND HUM. SERV., COLO. POVERTY TABLE 2018-2022, last accessed November 4, 2024, available at <https://hdpulse.nimhd.nih.gov/data->

significantly impacts the likelihood a person will live in poverty. The poverty rate for disabled adults is more than twice that of people with disabilities, and more than 30% of unhoused people in Colorado are disabled.¹²

In short, Colorado municipal courts have a structure uniquely vulnerable to abuses and the weakest procedural safeguards for defendants in Colorado's criminal courts. Municipal defendants are also made up of the most vulnerable people in the state: the unhoused, the racially marginalized, the disabled, and the extremely poor. These qualities of Colorado municipal courts make state preemption and the equal protection safeguard against arbitrary differences in sentencing for the same conduct crucial in this context.

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https://www.coloradocoalition.org/sites/default/files/2020-10/Issue%20Brief-Race%20Ethnicity%20and%20Homelessness_final.pdf

¹² COLO. COAL. FOR THE HOMELESS DISABILITY AND HOMELESSNESS ISSUE BRIEF, 2, (2022), at https://www.coloradocoalition.org/sites/default/files/2022-10/Disability_Issue_Brief_Digital_FINAL_2022.pdf.

II. The Availability of Basic Constitutional Protections is Uneven Across Colorado Municipal Courts.

Compliance with the requirements of the United States and Colorado Constitutions is uneven across the state's municipal courts. The ACLU of Colorado and CFF, as part of their respective organizational missions, regularly investigate violations of civil rights and civil liberties in municipal courts. These investigations highlight the myriad ways in which municipal defendants are especially vulnerable to violations of their constitutional rights and underscore the importance of protecting against the abuse of municipal authority.

Below are details of two recent municipal court investigations that exemplify the ongoing rights violations in some Colorado municipal courts. Importantly, they reflect only two of many such violations discovered over the past decade. Because of the structural weaknesses in municipal courts discussed above, their targeted prosecutions of the most vulnerable defendants, and the absence of meaningful oversight or

transparency, most municipal court violations go unreported and unnoticed often for years without public redress.¹³

A. Grand Junction’s Municipal Court Routinely Denies Poor Incarcerated People Access to Lawyers

CFF began investigating Grand Junction Municipal Court practices after receiving multiple complaints of the court denying indigent people appointed counsel. During this ongoing investigation, CFF staff reviewed the audio of the municipal court’s August 2024 in-custody arraignments

¹³ See Sam Tabachnik, *Lone Tree Judge Improperly Warns Defendant He’ll Be Reported to ICE for Deportation, Raising Abuse-of-Power Concerns*, THE DENVER POST, October 26, 2024; Sam Tabachnik & Shelly Bradbury, *How Colorado’s Municipal Courts Became the State’s Most Punitive Forum for Minor Crimes*, THE DENVER POST, September 24, 2024, at <https://www.denverpost.com/2024/09/22/colorado-municipal-courts-sentences-minor-crime/>; Allison Sherry, *Alamosa Municipal Judge Resigns in Wake of Rights Violations Allegations*, CPR NEWS, October 18, 2017, at <https://www.cpr.org/2017/10/18/alamosa-municipal-judge-resigns-in-wake-of-rights-violations-allegations/>; Joseph Shapiro, *Colorado Springs Will Stop Jailing People Too Poor to Pay Court Fines*, CPR NEWS, May 5, 2016, at <https://www.npr.org/sections/thetwo-way/2016/05/05/476874262/colorado-springs-will-stop-jailing-people-too-poor-to-pay-court-fines>; Christopher Osher, *Colorado Cities Jail Poor Who Can’t Pay Fines for Minor Offenses*, THE DENVER POST, April 29, 2016, at <https://www.denverpost.com/2013/12/14/colorado-cities-jail-poor-who-cant-pay-fines-for-minor-offenses/>; Christopher Osher, *Colorado ACLU: Wheat Ridge Judge Jailed Indigent Man Who Could Not Pay*, THE DENVER POST, August 25, 2015, at <https://www.denverpost.com/2015/08/25/colorado-aclu-wheat-ridge-judge-jailed-indigent-man-who-could-not-pay/>;

and conducted a dozen interviews with people with direct experience of Grand Junction Municipal Court's practices. CFF's investigation uncovered that the municipal court runs its in-custody docket without lawyers, explicitly dissuades defendants from asserting their right to counsel, and coerces uncounseled guilty pleas from people facing jail sentences.¹⁴

In Colorado state courts, indigent defense counsel are automatically appointed to represent all in-custody defendants at and during every in-custody court appearance.¹⁵ This practice comports with constitutional principles and serves as a bulwark against plea coercion and other constitutional violations, such as those evident in Grand Junction Municipal Court. Few in-custody defendants waive their right to counsel in state court, and when they do, it is only after advisement by indigent defense counsel of their right to counsel and the wisdom of waiving that

¹⁴ See Sam Tabachnik, *They're in Custody and Facing Jail. Why Isn't Grant Junction's Municipal Court Providing Them Attorneys?* THE DENVER POST, October 17, 2024, at <https://www.denverpost.com/2024/10/17/grand-junction-municipal-court-public-defenders-right-to-counsel/>.

¹⁵ See CJD 04-04, at: <https://www.coloradojudicial.gov/sites/default/files/2024-06/CJD%2004-04%20Amended%20effective%20July%201%202024%20Attach%20A%20%20and%20Attach%20B%20Amended%204.%202024%20WEB%202.pdf>

right in the defendant's particular matter. Crucially, in state court, defendants who wish to exercise their constitutionally guaranteed right to appointed counsel do not have to risk sitting in jail longer for the privilege. The defendant can see that there is an attorney available to them, in that moment, to provide advice and argue on their behalf regarding bond, a matter of utmost urgency and concern to most people in county jail.

Not so in the Grand Junction Municipal Court. During in-custody docket days, there is no City Attorney nor defense counsel present. When defendants ask for a lawyer, which happened frequently in the court audio obtained by CFF, the court most often responded that there are no public defenders in the courtroom, and informed the defendant that if they wanted a lawyer, the court would set another court date so they could apply for counsel.¹⁶ The court also did not set bond before accepting waivers, leaving defendants to worry that if they insisted on being represented by counsel, they would be held until the next date the court had available.¹⁷

¹⁶ Tabachnik, *supra* n. 11.

¹⁷ *Id.*

Perhaps this would have been enough pressure to extract waiver from most municipal defendants, but the court's coercion went further. In case after case, the court negotiated with municipal defendants, offering them certain sentences if they would plead guilty immediately, without an attorney.¹⁸ This kind of negotiation was very effective in convincing defendants to reconsider their interest in representation.¹⁹ Despite the profound Sixth Amendment problems presented by the Grand Junction municipal court's uncounseled, coerced pleas, and a state statute passed specifically to ensure the availability of counsel in municipal courts,²⁰ C.R.S. § 13-10-114.5, the City of Grand Junction is continuing its practice of denying counsel and coercing pleas.²¹

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ ACLU OF COLORADO, FACT SHEET: HB1309 – A BILL TO SAFEGUARD THE RIGHT TO COUNSEL IN MUNICIPAL COURT, April 13, 2016, at <https://www.aclu-co.org/en/news/fact-sheet-hb-1309-bill-safeguard-right-counsel-municipal-court>.

²¹ Tabachnik, *supra* n. 11.

B. Pueblo’s Municipal Court Illegally Sentenced Extremely Vulnerable People to Hundreds of Days in Jail for Missed Court Dates, Without Constitutionally Required Charging Documents

In April 2024, the ACLU of Colorado began an investigation of the Pueblo’s Municipal Court’s practice of convicting defendants of the crime of “Contempt of Court,” for missed court dates without adequate charging documents. During that investigation, the ACLU of Colorado interviewed 47 people sentenced to jail on the “Contempt of Court” charges, interviewed attorneys who practiced regularly before the Municipal Court, and reviewed 25 municipal court files. Ultimately, the ACLU of Colorado filed four Petitions for Writ of Habeas Corpus on behalf of individuals held on these unconstitutional charges. Three have been granted and one is still pending.²²

Pueblo’s Municipal Code identifies Contempt of Court as a substantive offense. P.M.C. §1-6-12(a). Municipal Contempt is a Class 1 municipal offense, P.M.C. § 1-6-12(e), punishable by up to 364 days in

²² Shelly Bradbury & Sam Tabachnik, Judge Finds Pueblo Illegally Jailed 3 Defendants for Contempt of Court, Voids Convictions and Sentences, THE DENVER POST, Nov.1, 2024, at <https://www.denverpost.com/2024/11/01/pueblo-contempt-of-court-illegal-convictions-sentences/>.

county jail and up to a \$1000 fine. The Pueblo Municipal Court, as a matter of policy, created new cases under P.M.C. § 1-6-12(a), whenever a defendant missed a court date.²³ If a defendant had multiple citations, set for the same date and time, multiple Contempt of Court cases appeared, each carrying a potential penalty of 364 days in jail. *Id.* As a result, some defendants faced up to a decade of jail time for a single missed court date. Defendants were not issued charging documents for any charges of this specific municipal crime.

The duration and frequency of Pueblo's unconstitutional practice demonstrates how municipal courts can operate without any meaningful check on their activities. The ordinance that created P.M.C. § 1-6-12 was passed in 2017, seven years before the ACLU of Colorado and the Denver Post investigated the practice.²⁴ This practice was used frequently. The Pueblo municipal court created more than 1,700 cases under P.M.C. § 1-6-12 between September 2023 and May 2024.²⁵ On a single day in July 2024,

²³ Tabachnik & Bradbury, *supra* note 2.

²⁴ Pueblo Municipal Ordinance, No. 9169, at https://library.municode.com/co/pueblo/ordinances/code_of_ordinances?nodeId=849340

²⁵ Tabachnik & Bradbury, *supra* note 2.

nearly one in five people in the Pueblo County Jail were held on municipal court charges or convictions of contempt under P.M.C. § 1-6-12. *Id.*

The consequences of the municipal court's routine violations of people's rights were devastating. People facing these uncharged cases pled guilty to jail terms that were longer than would have been available for a low-level felony; one woman was sentenced to 675 days.²⁶ Three other ACLU of Colorado clients were sentenced to hundreds of days in jail without charging documents.²⁷ All three petitioners' sentences were permanently discharged after the Pueblo District Court concluded that the municipal court's use of contempt without charging documents deprived the court of jurisdiction over the resulting convictions.²⁸

Municipal defendants often face a court system much less protective of their procedural rights than the state court system, as CFF's investigation in Grand Junction and the ACLU of Colorado's investigation in Pueblo reveal. Ensuring that whether a person happens to be charged in municipal or state court is not the determining factor in their punishment,

²⁶ Tabachnik & Bradbury, *supra* note 2.

²⁷ Bradbury & Tabachnik, *supra* note. 16.

²⁸ *Id.*

is all the more crucial when that decision is often what determines the procedural protections available to them.

CONCLUSION

Municipal courts adjudicate Colorado's most vulnerable people in a context rife with the potential for abuses of their rights. State law preemption and Colorado's equal protection guarantee that a person may not be subject to the harsher of two criminal statutes proscribing identical conduct, demand fair and even-handed application of the law in all its criminal courts. This demand is all the more urgent where other constitutional rights are weakened. The Court should reaffirm the well-settled equal protection guarantee, reverse, and make the order to show cause absolute.

Respectfully submitted this 7th day of November, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that, on November 7, 2024, a true and correct copy of the foregoing **AMICI CURIAE BRIEF OF ACLU OF COLORADO AND COLORADO FREEDOM FUND IN SUPPORT OF PETITIONER** was served via the Colorado Courts E-Filing system, which notifies all counsel of record.

/s/Emma Mclean-Riggs