COLORADO COURT OF APPEALS
2 East 14th Avenue
Denver, CO 80203

Boulder County District Court
Honorable Robert R. Gunning
Case No. 2022CV30341

Plaintiffs-Appellants:

FEET FORWARD – PEER SUPPORTIVE SERVICES AND OUTREACH d/b/a FEET FORWARD, a nonprofit corporation; JENNIFER SHURLEY, JORDAN WHITTEN, SHAWN RHOADES, MARY FALTYNSKI, ERIC BUDD, and JOHN CARLSON;

v.

Defendants-Appellees:

CITY OF BOULDER and MARIS HEROLD, Chief of Police for the City of Boulder.

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Case No: 2025CA110

DEFENDANTS-APPELLEES' ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 8,250 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

HALL & EVANS, L.L.C.

By: *s/ Andrew D. Ringel*
Andrew D. Ringel, No. 24762

Attorney for Defendants-Appellees

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2. Whether Appellants stated claims under Colo. Const. art. II, § 3 for violation of an alleged right to occupy public lands, seeking damages for past enforcement of the Camping Ban and/or the Tent Ban on behalf of the individual formerly homeless plaintiffs, and enjoining future enforcement of the Camping Ban and the Tent Ban.

3. Whether Appellants stated claims under Colo. Const. art. II, § 25 under the "state-created danger doctrine," seeking damages for past enforcement of the Camping Ban and/or the Tent Ban on behalf of the individual formerly homeless plaintiffs, and enjoining future enforcement of the Camping Ban and the Tent Ban under undefined circumstances allegedly threatening homeless persons.

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[1] Appellants used the terms "houseless" and "homeless" interchangeably. CF at 395 (Amended Complaint ("AC") at ¶ 9 n.4.) Appellees likewise do so.

4. Whether the individual formerly homeless Appellants stated claims for relief against former Boulder Police Chief Maris Herold under C.R.S. § 13-21-131 for failing to instruct Boulder Police officers not to enforce the Camping or Tent Bans under the circumstances those Appellants claim those ordinances cannot be constitutionally applied, leading to alleged violations of their rights under the Colorado Constitution.

STATEMENT OF THE CASE

Three formerly homeless residents of Boulder, a now-defunct nonprofit,[2] and three Boulder taxpayers appeal two orders of the Boulder County District Court dismissing their Complaint, and later their Amended Complaint, which challenged the City of Boulder's ("City" or "Boulder") enforcement of B.R.C. § 5-6-10 and B.R.C. § 8-3-21(a) under three provisions of the Colorado Constitution as applied against homeless persons when they claim inability to access shelter. [*See* CF at 395 (AC, ¶ 5)].[3]

B.R.C. § 5-6-10 ("Camping Ban") provides as follows:

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[2] Appellant Feet Forward-Peer Supported Services and Outreach ("Feet Forward") filed Articles of Dissolution with the Colorado Secretary of State effective December 31, 2024.

[3] Appellees cite to the AC as the operative and factually more up-to-date pleading, except as to allegations pertinent to the claims dismissed before the AC was filed.

(a) No person shall camp within any park, parkway, recreation area, open space, or other city property.

(b) No person shall camp within any public property other than city property or any private property without first having obtained:

(1) Permission of the authorized officer of such public property; or

(2) Permission of the owner of private property.

(c) This section does not apply to any dwelling in the city, as defined by Section 5-1.1, "Definitions," B.R.C. 1981.

(d) For purposes of this section, *camp* means to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living such as eating or sleeping in such place. But the term does not include napping during day or picnicking. The term *shelter* includes, without limitation, any cover or protection from the elements other than clothing. The phrase *during the day* means from one hour after sunrise until sunset, as those terms are defined in Chapter 7-1, "Definitions," B.R.C. § 1981. *Camp* does not include temporary residence associated with the performance of governmental service by emergency responders or relief workers during a Disaster Emergency as defined in Section § 2-2.5-2, "Definitions," B.R.C. 1981.

(e) Testimony by an agent of the persons specified in Subsection (b) of this section that such agent is the person who grants permission to camp or lodge upon such property, or that in the course of such agent's duties such agent would be aware of permission and that no such permission was given, is prima facie evidence of that fact.

B.R.C. § 5-6-10.

In turn, B.R.C. § 8-3-21(a) ("Tent Ban") provides as follows:

(a) No person shall erect or use any tent, net, or other temporary structure of the purpose of shelter or storage of property in a

> park or recreation area, on any open space land, or on any other public property, unless done pursuant to a written permit or contract from the city manager. The prohibitions of this section do not apply to temporary shade structures in any part or recreation area within the limits of the city. A temporary shade structure is a structure such as an umbrella or awning that provides overhead covering or weather protection, but is not designed for overnight use or privacy and cannot be fully enclosed. No temporary shade structure shall remain in a park between sundown and sunrise.

B.R.C. § 8-3-21(a).

Appellants Feet Forward, Jennifer Shurley, Jordan Whitten, Shawn Rhoads, along with two Boulder taxpayers no longer in the case, sued the City and its then-police chief Maris Herold on May 26, 2022. [CF at 1-26]. Appellants sought declaratory and injunctive relief barring Defendants from enforcing the Ordinances against the then-homeless plaintiffs "when they cannot access indoor shelter," along with nominal damages and an award of attorneys' fees against Chief Herold[4] pursuant to C.R.S. § 13-21-131(1). [CF at 25-26].

[4] C.R.S. § 13-21-131 authorizes suit only by persons whose rights under the Colorado Constitution have been deprived, and only against peace officers, not their employers. ***DiTirro v. Sando***, 2022 COA 94. Thus, the C.R.S. § 13-21-131 claims could be asserted only by the formerly homeless plaintiffs, and only against Chief Herold. Notably, Plaintiff Jordan Whitten was ticketed by a Boulder Department of Open Space and Mountain Parks ("OSMP") ranger, not a Boulder police officer. [CF at 19 (Complaint, ¶ 154)]. Therefore, he could have no claim against Chief Herold based on her supervision of Boulder police officers since she does not supervise OSMP rangers. [CF. at 13 (Complaint, ¶¶ 90-96)].

On February 23, 2023, the District Court granted Defendants' C.R.C.P. 12(b)(5) motion to dismiss all claims, except for the portion of the First Claim for Relief for violation of the prohibition of cruel and unusual punishment in Colo. Const. art. II, § 20, related to only the Camping Ban. [CF, pp. 210-244]. Respecting that claim, the District Court accepted Appellants' invitation to follow precedent regarding the Eighth Amendment's Cruel and Unusual Punishment Clause [CF at 82-88], and denied the Motion relying principally on the Ninth Circuit's decision in ***Johnson v. City of Grants Pass***, 50 F.4th 787, 808 (9th Cir. 2022), before it was reversed by the Supreme Court of the United States. [CF at 234].

The two original taxpayer plaintiffs separately dropped out of the case, and three new Boulder taxpayers intervened as plaintiffs. [CF at 201-03 & 249-55]. The new set of plaintiffs filed the AC, which was accepted by the District Court on October 16, 2023. [CF at 415].

On January 12, 2024, the United States Supreme Court granted a petition for certiorari in ***Grants Pass***. The District Court granted Appellees' motion to stay proceedings pending the Supreme Court's decision. [CF at 536-44]. On June 28, 2024, the Supreme Court reversed the Ninth Circuit. ***City of Grants Pass v. Johnson***, 603 U.S. 520 (2024. With leave of the District Court, Appellees filed a Motion to

Dismiss Appellants' remaining claim, which was granted on December 6, 2024. [CF at 709-729]. This appeal followed.

SUMMARY OF ARGUMENT

The District Court did not err in dismissing Appellants' claims. The District Court issued two lengthy, comprehensive Orders concluding Appellants failed to state cognizable claims. Nothing contained in the Opening Brief undermines either the District Court's analysis or conclusions. First, the District Court did not err in dismissing the Colo. Const. art. II, § 20 claims. The Colorado Supreme Court has never interpreted this provision as being broader than the Eighth Amendment and based on the identical language of the two provisions, and the lack of any compelling basis to distinguish them, there is no legitimate basis for this Court to do so. Second, the District Court appropriately dismissed Appellants' Colo. Const. art. II, § 3 claims. The Colorado Supreme Court has not recognized as a fundamental right protected by this provision the right to sleep or camp on public lands. Doing so would be fundamentally inconsistent with both applicable precedent but also how government land is treated under Colorado law. Third, the District Court properly dismissed Appellants' Colo. Const. art. II, § 25 claims. The District Court recognized the state-created danger doctrine applies only when the government

creates the conditions for private violence. No private violence has been alleged here, and Colorado's state-created danger doctrine is simply inapplicable.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN DISMISSING APPELLANTS' COLO. CONST. ART. II, § 20 CLAIMS.

A. *C.A.R. 28(k) Standard of Review and Preservation of Issue:* Appellees agree Appellants preserved this issue. Appellees also agree *de novo* review applies to the District Court's legal determination. However, ordinances are presumed to be constitutional and Appellants bear the burden of proving the City's ordinances are unconstitutional beyond a reasonable doubt. *Mosgrove v. Federal Heights,* 543 P.2d 715, 717 (Colo. 1975); ***McCarville v. City of Colo. Springs****,* 2013 COA 169, ¶ 16.

B. *The District Court's Ruling*: The *District* Court dismissed the Colo. Const. art. II, § 20 ("Section 20") Tent Ban claims by its *Order* Re Defendants' Motion to Dismiss Plaintiffs' Complaint dated February 23, 2023 ("Order 2/23/23"). [CF. at 210-244]. Applying Ninth Circuit precedent prior to the Supreme Court's *Grants Pass* decision, the District Court still dismissed the Tent Ban claim; the District Court concluded: "In the absence of any Colorado or federal authority striking down a city's tent ban under the Eighth Amendment or comparable state constitutional provision, the Court concludes that Plaintiffs have not stated a claim upon which relief can be granted regarding the Tent Ban." [CF at 233].

The District Court dismissed the Section 20 Camping Ban claims by its Order Re Defendants' Motion to Dismiss Plaintiffs' Amended Complaint dated December 4, 2024. [CF at 709-729]. First, the District Court recognized the language of Section 20 is identical to the Eighth Amendment. [CF at 717]. Second, the District Court analyzed ***Grants Pass*** and concluded the City's ordinances did not violate the Eighth Amendment under ***Grants Pass*.** [CF at 716-720]. Third, the District Court analyzed jurisprudence interpreting Section 20 [CF 721-725] and concluded:

> To be sure, ***Grants Pass*** is not controlling authority for this Colorado Constitutional claim. Indeed, Plaintiffs do not contend that the Blanket Ban challenge states a plausible claim for relief under the ***Grants Pass*** majority opinion. Rather, Plaintiffs argue that their claim remains plausible because Art. II, § 20 is more protective than the Eighth Amendment. Because Colorado appellate authority has thus far relied on Eighth Amendment case law to interpret Art. II, § 20 claims and because the Colorado Supreme Court has not yet interpreted Art. II, § 20 to afford broader protection than its federal counterpart, the Court disagrees.

[CF at 721]. Fourth, the District Court rejected the argument the Camping Ban criminalizes the status of being homeless. [CF at 725-727]. Fifth, the District Court rejected Appellants' invitation to interpret Section 20 based on policy considerations. [CF 728].

C. *The District Court was Correct:* The District Court *comprehensively* analyzed the Appellants' Section 20 claims and correctly concluded they failed as a

matter of law. Nothing in the Opening Brief alters the propriety of this Court affirming the District Court.

First, Appellants argue the Colorado Constitution is more protective than the United States Constitution. [Opening Brief ("OB"), at 10-12]. While true in some contexts, this is not true in others. The language of Section 20 is identical to the Eighth Amendment. Because of the identical language used, none of the bases identified for divergent interpretation of the Colorado Constitution apply. Most recently in ***Rocky Mt. Gun Owners v. Polis,*** 2020 CO 66, the Colorado Supreme Court analyzed how provisions of the Colorado Constitution should be interpreted in relation to provisions of the United States Constitution, explaining:

> We acknowledge in some contexts, we have borrowed from federal analysis of the U.S. Constitution in construing our own constitutional text, particularly where a party has asserted dual constitutional claims under both a federal provision and its Colorado counterpart. We have leaned on federal analysis primarily where the text of the two provisions is identical or substantially similar, *see, e.g.,* ***Young,*** 814 P.2d at 845 ("Although [U.S. Supreme Court] cases cannot control our decision because the issue is one of Colorado constitutional law, we are attentive to the Supreme Court's reasoning, especially because the text of the cruel and unusual punishment clauses of the two constitutions are the same"), and where consistency between federal and state law has been a goal of our own precedent, *see, e.g.,* ***Nicholls v. People,*** 2017 CO 71, ¶ 19, 396 P.3d 675, 679 (looking to federal Confrontation Clause analysis for guidance where our decisions "evidence[d] a reasoned attempt to 'maintain consistency between Colorado law and federal law" in that area (quoting ***Compan v. People,*** 121 P.3d 876, 886 (Colo. 2005))). That said, even parallel text does not mandate a parallel interpretation. *See, e.g.,* ***People v. McKnight,*** 2019

> CO 36, ¶¶ 38-43, 446 P.3d 397, 406-08 (departing from Fourth Amendment jurisprudence to determine a dog sniff was a search under article II, section 7 of the Colorado Constitution where distinctive state-specific factors overcame the provisions' substantially similar wording).
>
> We have also tended to follow federal jurisprudence where, based on our own independent analysis, we find the U.S. Supreme Court's reasoning to be sound, *see, e.g.,* ***Nicholls,*** ¶ 32, 396 P.3d at 681-82 (following new development in federal Confrontation Clause jurisprudence because "the Supreme Court's reasoning . . . is sound"), and where no party has argued that the Colorado provisions calls for a distinct analysis, *see, e.g.,* ***Garner v. People,*** 2019 CO 19, ¶ 67 n. 8, 436 P.3d 1107, 1120 n. 8 ("We do not separately analyze our state constitutional due process guarantee because [defendant] has not argued that it should be interpreted any more broadly than its federal counterpart."), *cert. denied,* 140 S.Ct. 448, 205 L.Ed.2d 253 (2019).

Id. at ¶¶ 37-38; *see also* ***Curious Theater Co. v. Colo. Dep't of Pub. Health & Env't,*** 220 P.3d 544, 551 (Colo. 2009) ("[W]e have, however, generally declined to construe the state constitution as imposing such greater restrictions in the absence of textual differences or some local circumstance or historical justification for doing so. Simply disagreeing with the United States Supreme Court about the meaning of the same or similar constitutional provisions, even though we may have the power to do so, risks undermining confidence in the judicial process and the objective interpretation of constitutional and legislative enactments").

Application of the Colorado Supreme Court's guideposts for determining when to interpret the Colorado Constitution differently from the United States

Constitution demonstrates no legitimate basis to do so here. First, the text of Section 20 and the Eighth Amendment are identical. Second, no Colorado appellate decision has interpreted Section 20 inconsistently with the Supreme Court's interpretation of the Eighth Amendment in ***Grants Pass***. Indeed, the Colorado Supreme Court has interpreted the Cruel and Unusual Punishment Clause of Section 20 consistently with the Eighth Amendment. *See* ***People v. Young,*** 814 P.2d 834, 842-46 (Colo. 1991); ***People v. Shaver,*** 630 P.2d 600, 604-5 (Colo. 1981); ***Normad v. People,*** 440 P.2d 282, 284 (Colo. 1968); ***Walker v. People,*** 248 P.2d 287, 302-3 (Colo. 1952). Other provisions of Section 20 have also been interpreted consistently with the Eighth Amendment. *See, e.g,* ***People v. Jones,*** 489 P.2d 596, 599 (Colo. 1971) (interpreting the excessive bail clause of Section 20 the same as the Eighth Amendment); ***Pueblo Sch. Dist. No. 70 v. Toth,*** 924 P.2d 1094, 1099 (Colo. App. 1996) (interpreting the excessive fines clause of Section 20 the same as the Eighth Amendment). Third, no local circumstances in Colorado related to municipal regulations of homelessness or otherwise warrant a different interpretation of the Colorado Constitution. Fourth, there are no historical justifications for interpreting Section 20 differently than the Eighth Amendment in this context. The absence of any of the identified bases to interpret the Colorado Constitution differently

demonstrates this Court should follow the Supreme Court's interpretation of the Eighth Amendment in ***Grants Pass***.

Second, Plaintiffs rely on decisions from other courts interpreting other states' constitutions and complaints filed in other states. [OB, at 12-13]. Other states have interpreted their own constitutions as more protective than the United States Constitution. However, nothing about this unremarkable proposition establishes a basis for this Court to interpret Section 20 differently than the Eighth Amendment. The issue here is the proper interpretation of Section 20, not how another state court has interpreted its own constitution.

Third, Plaintiffs offer two Colorado cases supposedly standing for the proposition Section 20 has been interpreted to provide greater protection than the Eighth Amendment. [OB, at 13-14]. Initially, the District Court rejected Appellants' interpretation of these cases. [CF at 722-724]. As the District Court recognized, review of the two cases relied upon demonstrates they do not stand for the proposition Appellants advance. In ***Close v. People,*** 48 P.3d 528 (Colo. 2002), the Colorado Supreme Court analyzed the Eighth Amendment's requirement for proportionality in sentences. ***Id.*** at 532-40. Nowhere in ***Close*** is Section 20 mentioned and nothing suggests there is any difference between federal and Colorado law on the proportionality issue. *See, e.g.,* ***id.*** at 538 ("In sum, our

precedent establishes the following. We have closely followed the United States Supreme Court in developing our own principles to guide proportionality reviews."). In ***Wells-Yates v. People,*** 2019 CO 90M, the Colorado Supreme Court also addressed the Eighth Amendment's proportionality requirement for sentences. Section 20 is discussed in ***Wells-Yates,*** but the discussion does not include any analysis of it being more protective than the Eighth Amendment. ***Id.*** at ¶¶ 10-18. Rather, the tenor of the discussion demonstrates an effort to interpret the two constitutional provisions consistently. *See, e.g.,* ***id.*** at ¶ 17 ("We now clarify that, in conformity with federal precedent, Colorado courts conducting an extended proportionality review should compare the sentence at issue to (1) sentences for other crimes in the same jurisdiction and (2) sentences for the same crime in other jurisdictions. To the extent our prior cases have provided contrary instructions, they have done so incorrectly.").

More importantly, in the same part of its analysis distinguishing ***Close*** and ***Wells-Yates,*** the District Court also relied on the Colorado Supreme Court's decision in ***Wayne TC Sellers IV v. People,*** 2024 CO 64, specifically concluding "***Sellers*** appears to resolve any doubts that the Colorado Supreme Court has interpreted Art. II, § 20 to afford more protection against cruel and unusual punishment than does the Eighth Amendment." [CF at 724]. Nowhere do Appellants address ***Sellers*** in

their argument. [OB, at 13-14]. In ***Sellers,*** the Colorado Supreme Court was unequivocal in announcing it had not interpreted Section 20 differently than the Eighth Amendment, as follows:

> To be sure, we are free to construe the Colorado Constitution to afford greater protections than those recognized by the United States Constitution. ***To date, however, we have not interpreted article II, section 20 of our constitution to provide greater protection than the Eighth Amendment.*** Nor have we interpreted article II, section 20 to conclude that an adult's LWOP sentence for felony murder is categorically unconstitutional.

Sellers, 2024 CO 64, ¶ 36 (citations and internal quotation marks omitted and emphasis added). ***Sellers*** forecloses Appellants' argument the Colorado Supreme Court has ever interpreted Section 20 differently than the Eighth Amendment; it has not.[5] Indeed, earlier this year, citing ***Sellers***, this Court concluded:

> Although state courts are free to interpret state constitutional provisions more expansively than identical provisions of the United States Constitution, our supreme court has declined to interpret article II, section 20, of the Colorado Constitution to provider greater protection than the Eighth Amendment.

People v. Hazard, 2025 Colo. App. LEXIS 662, ¶ 36 (Colo. App. Jan. 30, 2025) (citations omitted).

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[5] ***Sellers*** is, of course, fully consistent with the earlier cases cited by Appellees similarly concluding Section 20 is interpreted consistently with the Eighth Amendment cited above. *See* ***Young,*** 814 P.2d at 842-46; ***Shaver,*** 630 P.2d at 604-5; ***Normad,*** 440 P.2d at 284; ***Walker,*** 248 P.2d at 302-03 ; ***Jones,*** 489 P.2d at 599; ***Toth,*** 924 P.2d at 1099.

Fourth, Appellants suggest Colorado's history includes people living outside and this history should be used to interpret Section 20. [OB, at 14-18]. This argument fails for multiple reasons. The District Court rejected it. [CF at 724-725]. None of the allegations concerning history now relied upon are facts included in the Amended Complaint and Appellants offer no procedural mechanism for these allegations to be considered in the context of review under C.R.C.P. 12(b)(5). *See* ***Hernandez v. Industrial Comm'n***, 659 P.2d 58, 60 (Colo. App. 1983) ("[f]acts asserted in briefs but not contained in the record will not be considered on review.") Using history to reach the conclusion Section 20 has greater protections than the Eighth Amendment is also fundamentally inconsistent with the holding of ***Sellers***. Finally, Appellants invoke ***People v. Schafer,*** 946 P.2d 938 (Colo. 1997), suggesting the Colorado Supreme Court found a reasonable expectation of privacy in a tent under the Colorado Constitution. [OB, at 15]. In so arguing, Appellants ignore the reality ***Schafer*** interpreted the Fourth Amendment and Colo. Const. art. II, § 7 identically. ***Id.*** at 941 ("We determine under the Fourth Amendment of the United States Constitution and its Colorado counterpart, Colo. Const. art. II, § 7, that a person camping in Colorado on unimproved and apparently unused land that is not fenced or posted against trespassing, and in the absence of personal notice against trespass, has a reasonable expectation of privacy in a tent used for habitation and

personal effects therein."). Thus, nothing in ***Schafer*** actually holds the purported history of Colorado as an outdoors state leads to a different interpretation of the Colorado Constitution. Critically, Appellants offer no citation to any Colorado court using history to interpret the meaning of Section 20 differently or more broadly than the Eighth Amendment. [6]

Fifth, Plaintiffs argue the Colorado Supreme Court has interpreted the Colorado Constitution to preclude punishment based on status. [OB, at 18-21]. Again, the District Court rejected this argument and readily distinguished the precedent Appellants continue to rely upon. [CF at 725-727]. After reviewing Appellants' cases, the District Court concluded "these cases do not outline any clear principles to distinguish conduct from status in the context of camping bans or provide a sufficient basis to support Plaintiffs' claim in light of ***Grants Pass***. As such, the Court concludes there is no persuasive authority to support the conclusion that the Blanket Ban unconstitutionally criminalizes status." [CF at 727].

[6] The District Court also distinguished ***Schafer***. [CF at 725-726 ("Plaintiffs cite ***People v. Schafer*** to support their contention, suggesting that the Court may, like the ***Schafer*** court, reply on evidence of 'typical and prudent' outdoor living in Colorado to analyze rights under the Colorado Constitution. 946 P.2d 938, 942-43 (Colo. 1997). However, ***Schafer*** protects not the right to camp in general but the right to privacy in tents under Art. II, § 7, which ***Schafer*** interprets using Fourth Amendment jurisprudence. *Id*. Nor does ***Schafer*** address Art. II, § 20."

Review of the precedent demonstrates not only was the District Court correct in its analysis, but also that Appellants misinterpret the law. In ***Arnold v. City & Cnty. of Denver,*** 464 P.2d 515 (Colo. 1970), the Colorado Supreme Court expressly determined the ordinance at issue involved both status and behavior. *See* ***id.*** at 517 ("It will be observed, however, that the ordinance involves ***behavior*** as well as ***status***."; emphases in original). Plaintiffs next cite cases following ***Robinson v. California***, 370 U.S. 660 (1962), and its distinction between status and behavior. [OB, at 18-19 (citing ***People v. Gibbs,*** 662 P.2d 1073 (Colo. 1983), ***People v. Taylor,*** 618 P.2d 1127 (Colo. 1980), ***People v. Feltch,*** 483 P.2d 1335 (Colo. 1971), and ***People v. McKnight,*** 446 P.3d at 397 (Colo. 2019]. Crucially, none of these decisions interprets or applies Section 20 and none of them suggest the Colorado Constitution should have a different interpretation than the Eighth Amendment. *See* ***Gibbs,*** 662 P.2d at 1077 (interpreting the Eighth Amendment); ***Taylor,*** 618 P.2d at 1139 (unclear whether any specific constitutional provision is being discussed but only discussing decisions from the Supreme Court of the United States); ***Feltch,*** 483 P.2d at 1335-37 (analyzing whether there was probable cause for arrest); ***McKnight,*** 446 P.3d at 412-13 (analyzing whether there was probable cause for a K-9 search). As the District Court found, these cases are therefore distinguishable.

Sixth, Plaintiffs criticize the analysis in ***Grants Pass*** of ***Robinson***, suggest it was wrongly decided, and argue this Court should follow the dissent's reasoning. [OB, at 20-22 & n. 8]. Again, no precedent interpreting Section 20 makes a status vs. behavior distinction or offers any interpretation of the Colorado Constitution as more protective than the Eighth Amendment based on an alleged criminalization of status. Appellants are certainly free to argue ***Grants Pass*** was wrongly decided, but absent any precedent supporting their interpretation of the Colorado Constitution no basis exists for this Court to adopt their preferred policy outcome. *Compare* ***Lochner v. New York,*** 198 U.S. 45, 75 (1905) (Holmes, J. dissenting) ("This case is decided upon an economic theory which a large majority of the country does not entertain. If it were a question whether I agreed with that theory I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law.").

Seventh, Appellants argue the Ordinances impose a significant fine or a jail sentence disproportionate punishment for their actions. [OB, at 22-24]. The District Court rejected this argument. [CF at 719-720]. To begin, the District Court concluded Appellants "allege no facts in their Amended Complaint to advance an argument that the punishments are disproportionate. Indeed, the Amended

Complaint does not allege that any of the named Plaintiffs have paid fines or been incarcerated as punishment for violations of the Camping or Tent Bans. As such, the Court has no basis for addressing the issue of proportionality." [CF at 719-720]. The District Court is correct. The Amended Complaint does not allege any of the individual Plaintiffs have been punished by jail or a fine. [*See* CF at 407-408 (AC, ¶¶ 124-137 Jennifer Shurley)]; CF at 409 (AC, ¶¶ 138-149 Jordan Whitten)]; CF at 409-411, AC ¶¶ 150-164 Shawn Rhoades)]. Nothing in the AC alleges any violation of Section 20 based on any punishment potentially or actually imposed. [*See* CF at 412-413 (AC, ¶¶ 169-180)]. The relief sought also does not include any request for relief related to any potential or actual punishment for violation of the Ordinances. [*See* CF at 413 (AC, at 21, Prayer for Relief, ¶ A ("To declare that, as applied to homeless individuals in Boulder when they cannot access indoor shelter, the Blanket Ban, B.R.C. § 5-6-10, amounts to cruel and unusual punishment prohibited by article II, section 20 of the Colorado Constitution")]. Accordingly, this issue was not properly before the District Court and is not properly before this Court.[7]

Moreover, it is axiomatic no court can review the constitutionality of a punishment for a crime until someone has actually suffered the punishment. Here,

[7] Appellants cite CF 9-10, 17-21 and 22. [OB, at 22]. However, none of the allegations in the Complaint on these pages even allege any named Plaintiff was actually punished for violation of either Ordinance.

factually, none of the Plaintiffs have been jailed or fined for any violation of the Ordinances. Absent actual punishment occurring, any challenge to the punishment under Section 20 is simply not ripe. Courts analyzing such issues do so after the punishment has been imposed, not in the abstract. *Compare* ***Specht v. People,*** 396 P.2d 838, 839 (Colo. 1964); ***People v. Coolidge,*** 953 P.2d 949, 950 (Colo. App. 1997). Here, the absence of any punishment means no basis whatsoever exists for this Court to review the issue of whether the punishments in the Ordinance are proportional under Section 20.

II. APPELLANTS' COLO. CONST. ART. II, § 3 CLAIMS WERE PROPERLY DISMISSED BY THE DISTRICT COURT

A. *C.A.R. 28(k) Standard of Review and Preservation of Issue:* Appellees agree Appellants preserved this issue. Appellees also agree *de novo* review applies to the District Court's legal determination. However, ordinances are presumed to be constitutional and Appellants bear the burden of proving the City's ordinances are unconstitutional beyond a reasonable doubt. ***Mosgrove,*** 543 P.2d at 717; ***McCarville,*** 2013 COA 169, ¶ 16.

B. *The District Court's Ruling*: The District Court's Order 2/23/23 dismissed Appellants' Colo. Const. art. II, § 3 ("Section 3") claims. [CF at 241-244]. In dismissing this claim, the District Court explained:

> Plaintiffs' third claim for relief asserts that the City's Blanket and Tent Bans curtail unhoused individuals' fundamental rights to freedom of movement and to use the public streets and facilities by denying them the necessity of a safe place "to sleep, rest, and recuperate." Complaint, ¶¶ 204-05. Relying on article II, section 3 of the Colorado Constitution, Plaintiffs ask the Court to recognize a right to use public land for camping and/or sleeping with covers. . . .
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> . . . .
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> In short, neither Tenth Circuit nor Colorado precedent creates a fundamental right to settle down and occupy public lands "to sleep, rest, and recuperate" under Colorado Constitution article II, section 3. The right to freedom of movement and right to travel are not synonymous with the right to camp on or indefinitely occupy public land, as Plaintiffs seek through their third claim for relief. In the absence of a fundamental constitutional right, Defendants need not demonstrate a compelling state interest supporting the Ordinances. The enactment of the Ordinances is a reasonable exercise of the City's police power to regulate the use of public lands and public health. Accordingly, Plaintiffs fail to state a plausible claim for infringement of a right to use of public space under the Colorado Constitution's inalienable rights clause.

[CF. at 241 -244].

C. *The District Court was Correct:* None of Appellants' arguments undermine the District Court's reasoning or conclusion Section 3 does not create a right for Plaintiffs to sleep, rest and recuperate on public lands.

First, relying on ***People in the Interest of J.M.,*** 768 P.2d 219 (Colo. 1989), Appellants argue the right to use the public streets and facilities inclusive of the right to sleep, rest and recuperate on public lands is a fundamental right protected by

Section 3. [OB, at 24-26]. Appellants fundamentally overread ***J.M.*** The District Court appropriately interpreted ***J.M.*,** as follows:

> The Court does not read ***J.M.*** to provide for a constitutional or fundamental right to settle down and occupy public lands. As argued by the Defendants, the Pueblo ordinance in question prohibited loitering, defined as "remaining idle in essentially one location, to be dilatory, to dawdle, and shall include but not be limited to standing around, hanging out, sitting, kneeling, sauntering or prowling." ***Id.*** at 21 (citing Pueblo Municipal Code § 11-1-703). The ***J.M.*** Court considered cases that dealt with "the freedom of movement and the right to travel" in its analysis. ***Id.*** Movement, travel, and loitering are different than laying down and camping on public property, the type of actions that the Blanket Ban and the Tent Ban prohibit.

[CF at 242]. The District Court's interpretation of ***J.M.*** is correct. Initially, the Colorado Supreme Court framed the issue in ***J.M.*** as the Pueblo ordinance violating Section 3 (as well as the Fifth and Fourteenth Amendments) based on the claim "the right to stroll, loiter, loaf, and use the public streets and facilities in a way that does not interfere with the personal liberties of others is a fundamental right which may not be infringed by the state absent a compelling interest." ***J.M.,*** 768 P.2d at 221. Next, as the District Court correctly recognized, the Colorado Supreme Court then analyzed precedent involving local ordinances related to vagrancy, loitering, the right to movement, and the right to travel. ***Id.*** at 221. The context of ***J.M.*** is critical to understanding its scope. Nothing in the decision holds Section 3 creates a

fundamental right to sleep, rest or recuperate on public lands let alone erect a tent and reside on public lands.

Instead, ***J.M.*** must be understood in the context of other applicable law. Initially, as Appellees argued below and the District Court determined, the Tenth Circuit has concluded there is no right to occupy public land without a colorable claim of title, reasoning:

> To allow a trespasser on public lands to estop the government from remedying the trespass would be contrary to the policy underlying the Supreme Court's [***United States v. California***, 332 U.S. 19 (1947)] decision, the laws against trespass on public lands, and Congress' clearly expressed policy to dispose of interests in public lands only through statutory procedures.

Double J. Land & Cattle Co. v. United States Dep't of Interior, 91 F.3d 1378, 1382 (10th Cir. 1996). Placing a tent and camping on public lands seeks to establish a residence, create dominion over the residence, and is the equivalent of at least an implied license to reside on the property. Appellants never argue their use of public lands is only temporary and experience teaches the types of living arrangements contemplated here become at least semi-permanent. However, adverse possession of public lands is not allowed under Colorado law and never has been. *See* C.R.S. § 38-41-101(2); ***Palmer Ranch, Ltd. v. Suwansawasdi,*** 920 P.2d 870, 874 (Colo. App. 1996); ***Gilpin Inv. v. Blake,*** 712 P.2d 1051, 1054 (Colo. App. 1985). The reality camping on public lands cannot legally create any right to live their adverse to the

government must necessarily inform any interpretation of both ***J.M.*** and Section 3. Moreover, Appellants' proposed interpretation of Section 3 as creating a right to camp on public land would not be limited to situations when access to shelter is arguably unavailable; the claimed right would exist under all circumstances and conditions.

Based on the above analysis, it is clear there cannot be the fundamental right under Section 3 claimed by Appellants. Accordingly, no compelling interest exists and only rational basis review applies. Application of rational basis review here demonstrates the City has legitimate reasons to regulate the use of public land so it can be enjoyed by all Boulder residents and visitors and not simply those living on public land. Such regulations are a reasonable exercise of the City's police power and not violative of any Section 3 protected rights. *Compare* ***People v. Brown,*** 485 P.2d 500, 518-19 (Colo. 1971) (recognize the Section 3 right to access public highways may be limited by the appropriate exercise of the police power); ***Wright v. Littleton,*** 483 P.2d 953, 955-56 (Colo. 1971) (Section 3 rights can be limited by exercise of police power reasonably related to public health, safety, morals or the general welfare). Allowing everyone to access and use the City's public lands is unmistakably a legitimate exercise of the City's police power.

Second, Appellants suggest ***J.M.*** has been "repeatedly reaffirmed." [OB, at 26]. However, in none of the cases Appellants rely on did any court construe Section 3 as encompassing a right to camp on public lands. In ***City of Longmont Colo. v. Colo. Oil & Gas Ass'n,*** 2016 CO 29, the Colorado Supreme Court addressed "whether the City of Longmont's bans on fracking and the storage and disposal of fracking waste within its city limits are preempted by state law." ***Id.*** at ¶ 2. In that context, the Court concluded Section 3 was inapplicable to the preemption analysis. ***Id.*** at ¶ 58. While the Court cites ***J.M.,*** nothing in the decision supports Appellants' argument. ***State Farm Mut. Auto Ins. Co. v. Broadnax,*** 827 P.2d 531 (Colo. 1992), concerned the constitutionality of C.R.S. § 10-4-708(1.5) requiring binding arbitration of disputes in no fault insurance contracts. ***Id.*** at 532. Appellants reference the dissent which concluded Section 3 rendered the statute unconstitutional. *See* ***id.*** at 543 (Kirshbaum, J. dissenting).

Third, Appellants argue the District Court did not address precedent interpreting the Fourteenth Amendment which purportedly hold laws similar to the Ordinances violate homeless individuals' right to freedom of movement. [OB, at 26-27]. None of these decisions, however, interpret Section 3 and all involve the rights of movement or travel distinguishing them from the right to camp advocated for by Appellants. In ***City of Chicago v. Morales,*** 527 U.S. 41 (1999), the Supreme Court

addressed whether Chicago's Gang Congregation Ordinance, an anti-loitering ordinance, was constitutional under the Fourteenth Amendment. ***Id.*** at 46. The Supreme Court held the ordinance was unconstitutionally vague. ***Id.*** at 51. While the Supreme Court mentioned the right to travel at the page cited by Appellants, the holding turns on vagueness not the right to travel. ***Id.*** at 55. Regardless, however, there is nothing in ***Morales*** supporting any conclusion the Fourteenth Amendment includes a right to camp and nothing in the decision offers any interpretative guidance to this Court in construing Section 3.

Dunn v. Blumstein, 405 U.S. 330 (1972), concerned whether "Tennessee's durational residence requirements for voting violate the Equal Protection Clause of the United States Constitution." ***Id.*** at 331. The Supreme Court also analyzed whether Tennessee's durational residence requirement also violated the right to travel. The sentence partially quoted by Appellants states: "And it is clear that the freedom to travel includes the 'freedom to abide in any State in the Union.'" ***Id.*** at 338 (quoting ***Oregon v. Mitchell,*** 400 U.S. 112, 285 (1970) (Separate Opinion of Brennan, White, and Marshall, JJ.). Again, the right Appellants want to be included in Section 3 is not a right of movement or travel on the City's public lands, it is the right to camp on them. Nothing in ***Dunn*** supports any such right under Section 3.

In ***Phillips v. City of Cincinnati,*** 479 F.Supp.3d 611 (W.D. Ohio Aug. 13, 2020), ***Pottinger v. Miami,*** 810 F.Supp. 1551 (S.D. Fla. 1992), ***Johnson v. Bd. of Police Comm'rs,*** 351 F.Supp.2d 929 (E.D. Mo. 2004), and ***Catron v. City of St. Petersburg,*** 658 F.3d 1260 (11th Cir. 2011), the federal courts addressed the federal right to travel. ***Phillips,*** 479 F.Supp.3d at 657; ***Pottinger,*** 810 F.Supp. 1578-83; ***Johnson,*** 351 F.Supp.2d at 949-50; ***Catron,*** 658 F.3d at 1270-71. Nothing in these decisions interpret Section 3 and Appellants' proposed analogy between the federal right to travel and Section 3 fails. Section 3 is only appropriately interpreted based on Colorado law which provides, as discussed above, reasonable restrictions on Section 3 rights consistent with the police power are appropriate. Also, Section 3 is only reasonably interpreted to avoid allowing adverse possession of public lands by persons camping there. Nothing in any of these decisions analyze these aspects of Colorado law.

Fourth, Appellants argue the Appellees did not argue before the District Court any compelling governmental interest supports the ordinances. [OB, at 28-30]. True, but as argued above, the District Court found there was no fundamental right under Section 3 implicated and therefore no compelling interest was needed. This determination by the District Court was correct and the City was not required to establish any compelling interest exists.

Fifth, similarly, Appellants argue the District misapplied what Appellants label the "reasonable exercise" test. [OB, at 30-32]. However, this test presupposes the existence of a fundamental right. *See, e.g.,* ***Rocky Mtn. Gun Owners,*** 2020 CO 66, ¶¶ 54-56 (interpreting Colo. Const. art. II, § 13 as creating a fundamental right and offering analysis of requirements for regulation of a fundamental right under that constitutional provision). Even assuming *arguendo,* the same analysis applies under Section 3, which no case cited by Appellants or otherwise supports, there is no fundamental right protected by Section 3 implicated here. The City's need to ensure access to its public lands by all residents of Boulder provides all the justification necessary for the Ordinances in the absence of a fundamental right protected by Section 3 which simply does not exist here.

III. THE DISTRICT COURT APPROPRIATELY DISMISSED APPELLANTS' COLO. CONST. ART. II, § 25 CLAIMS

A. *C.A.R. 28(k) Standard of Review and Preservation of Issue:* Appellees agree Appellants preserved this issue. Appellees also agree the District Court's legal determination is subject to *de novo* review. However, ordinances are presumed to be constitutional and Appellants bear the burden of proving the City's ordinances are unconstitutional beyond a reasonable doubt. ***Mosgrove,*** 543 P.2d at 717; ***McCarville,*** 2013 COA 169, ¶ 16.

B. *The District Court's Ruling*: The District Court's Order 2/23/23 dismissed Appellants' Colo. Const. art. II, § 25 ("Section 25") claims. [CF at 234-240]. In pertinent part, the District Court reasoned:

> Plaintiffs disagree with the application of *Henderson* to their state constitutional claim because ***Henderson*** interprets the U.S. Constitution's substantive due process clause, rather than article II section 25 of the state constitution. The Court agrees with Defendants, however, that *Henderson* is highly persuasive as to how the Colorado Supreme Court would evaluate the state-created danger claim under the state constitutional provision. In ***Henderson,*** the Court noted that the constitutional guarantee of due process is meant to protect persons from the arbitrary exercise of governmental power, but that due process "does not convert all common law duties owed by government actors into constitutional torts." ***Henderson,*** 931 P.2d at 1155. Based on the foregoing analysis, this Court concludes it is appropriate to evaluate Plaintiffs' state-created danger claim under existing Colorado and Tenth Circuit caselaw that has applied the state-created danger doctrine to federal substantive due process claims, rather than applying conventional tort law principles.
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> . . . .
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> Thus, Plaintiffs' claim that enforcement of the Ordinances amounts to a state-created danger fails, even if all the allegations are accepted as true, and all inferences are drawn in Plaintiffs' favor. Under binding precedent, a state-created danger occurs when a plaintiff suffers a harm by private violence made possible by the affirmative actions of the government. Here, there are no factual allegations that the City's passage of the Ordinances or the City Defendants' enforcement of the Ordinances results in Plaintiffs' exposure to private violence.

[CF at 238-240 (footnote omitted)].

C. *The District Court was Correct:* Again, the District Court carefully and thoroughly analyzed *the* Appellants' claim and concluded it failed legally. None of the arguments or authorities presented in the Opening Brief change the propriety of this Court affirming the District Court.

First, Appellants argue Section 25 is more protective than its federal counterpart, the Due Process Clause of the Fourteenth Amendment. [OB, at 33]. Appellees agree. However, the level of protection provided by Section 25 as a general matter presents an altogether different question than stating a state-created danger claim under Section 25.

Second, Appellants argue the District Court should have analyzed their Section 25 claim "using conventional tort principles." [OB, at 34]. In so arguing, Appellants completely ignore the District Court's express reliance on ***Henderson v. Gunther,*** 931 P.2d 1150 (Colo. 1997). [CF at 238]. Indeed, Appellants fail to address ***Henderson*** at all. [OB, at 32-38]. The District Court concluded ***Henderson***, while interpreting the Fourteenth Amendment, was highly persuasive as to the Colorado Supreme Court's likely interpretation of a state-created danger doctrine under Section 25. No Colorado decision applies the state-created danger doctrine under Section 25. The only state-created danger decision of the Colorado Supreme Court in any context is ***Henderson***. While ***Henderson*** interpreted the Fourteenth

Amendment, its logic and analysis strongly suggests the Colorado Supreme Court would interpret a state-created danger claim under Section 25 in the same manner. Most fundamentally, in ***Henderson*** the Colorado Supreme Court recognized:

> As we venture into this area of the law, we are mindful of the Supreme Court's admonition that guideposts for responsible decisionmaking in this unchartered area are scarce and open ended . . . The doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field.

Id. at 1157 (citation and internal quotation marks omitted); *see also* ***id.*** at 1155 ("The constitutional guarantee of due process does not convert all common law duties owed by government actors into constitutional torts."). These aspects of the Colorado Supreme Court's analysis in ***Henderson*** are equally applicable to a state-created danger theory under Section 25.

Third, Appellants rely on ***Leake v. Cain,*** 720 P.2d 152 (Colo. 1986), to assert conventional tort principles should be applied to Section 25 state-created danger claims. [OB, at 34]. No Colorado precedent so holds. ***Leake*** concerns common law torts, not constitutional violations, and its holding that government duties should be determined in the same manner as those of a private person was superseded by C.R.S. § 24-10-106.5. *See* ***Aztec Minerals Corp. v. Romer,*** 940 P.2d 1025, 1031 (Colo. App. 1996). Moreover, ***Leake***, as a case about common law torts, not violations of the Colorado Constitution, cannot inform the analysis of whether the

state-created danger test requires proof the state placed the person in harm's way from private violence or if mere foreseeability some harm could befall the person is sufficient. Fundamentally, interpreting a Section 25 claim with only a foreseeability analysis from tort law would convert ordinary torts into potential constitutional violations and therefore greatly expand liability against all Colorado public entities.[8]

Instead, as the District Court found, the only means to appropriately limit the state-created danger doctrine under Section 25 as something different than simply the equivalent of tort law is to require the plaintiff to allege her injury occurred due to private actions made possible by the government. The Tenth Circuit's formulation in ***Gray v. Univ. of Colo. Hos. Auth.,*** 672 F.3d 909 (10th Cir. 2012), appropriately summarizes the doctrine under federal law, as follows:

> The state-created danger theory is a means by which a state actor might be held liable for an act of private violence absent a custodial relationship between the victim and the State, under narrowly prescribed circumstances bearing upon conduct, causation, and state of mind, provided the danger the state actor created, or rendered the victim more vulnerable to, precipitated a deprivation of life, liberty, or property in the constitutional sense.

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[8] Appellants' reliance on C.R.S. § 13-21-131(2)(a) [OB, at 34 n. 9] is inapposite because such claims are only available against peace officers, not public entities. ***DiTirro***, 2022 COA 94; *see also* Section IV below. Importing foreseeability into a state-created danger claim under Section 25 would apply to claims against public entities as well.

Id. at 922. This approach must inform Section 25 state-created danger claims as well, as the District Court correctly recognized. Otherwise, Section 25 claims will be nothing more than duplicative of tort claims without the protections afforded public entities and public employees by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq*.

Tellingly, Appellants ignore the profound implications of their proposed rule. If only foreseeability applied, not only would a Section 25 state-created danger doctrine require government to provide adequate shelter, but under Appellants' rule nothing would prevent a state-created danger claim based on the failure to provide adequate health care, drug treatment, food, water, and general safety. While ensuring everyone in Colorado has all of their basic human needs met represents a worthwhile public policy goal, utilizing state-created danger claims under Section 25 is an inappropriate means to do so. As the Colorado Supreme Court recognized in ***Henderson,*** using the ill-defined concept of due process to create public policy is fraught with danger. ***Henderson,*** 931 P.2d at 1157. Appellants' invitation for this Court to create public policy under the guise of interpreting Section 25 must be rejected.

IV. THE DISTRICT COURT CORRECTLY DISMISSED APPELLANTS C.R.S. § 13-21-131 CLAIMS AGAINST CHIEF MARIS HEROLD

The District Court did not separately address the claims against former Chief of Police Maris Herold pursuant to C.R.S. § 13-21-131. Instead, the District Court dismissed Appellants' claims of violation of the Colorado Constitution on their merits. [CF. at 210-244 & 709-729]. Appellants' C.R.S. § 13-21-131 claims against Chief Herold also therefore fail because an underlying violation of the Colorado Constitution is required to state a claim under C.R.S. § 13-21-131. This Court has determined "to prove a claim under section 13-21-131, a plaintiff must establish that there was a violation of a right embodied in the bill of rights of the Colorado Constitution." ***Johnson v. Staab,*** 2025 COA 45, ¶ 21; ***Puerta v. Newman***, 2023 COA 100, ¶ 2.

Moreover, "peace officers 'are charged to enforce laws until and unless they are declared unconstitutional.'" ***Bullock v. Brooks***, 2025 COA 6, ¶ 21 (*quoting* ***Michigan v. DiFillippo***, 443 U.S. 31, 38, 40 (1979)). "A police officer is not charged with predicting the future course of constitutional law." ***Id.*** (*quoting* ***Pierson v. Ray***, 386 U.S. 547, 557 (1967)). Yet Appellants named Chief Herold as a defendant precisely because her guidance regarding enforcement of the Camping and Tent Bans did not instruct officers not to write tickets for violations of the Camping and Tent Bans under the circumstances Appellants claim enforcement would violate the

Colorado Constitution. [CF, 13.] Accordingly, the District Court properly dismissed Appellants' C.R.S. § 13-21-131 claims against Chief Herold.

CONCLUSION

In conclusion, for the foregoing reasons, Defendants-Appellees City of Boulder and Maris Herold respectfully request this Court affirm the District Court, and grant all other and further relief as this Court deems just and appropriate.

Respectfully submitted this 7th day of August 2025.

HALL & EVANS, L.L.C.

By: */s/ Andrew D. Ringel*
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2025, a true and correct copy of the foregoing **DEFENDANTS-APPELLEES' ANSWER BRIEF** was filed and served via the Colorado Courts E-Filing System to counsel of record appearing herein.

/s/ Lisa R. Thompson
Lisa R. Thompson