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Appeal from Chaffee County District Court  
The Honorable Dayna Vise  
No. 2025CV2

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**Plaintiff-Appellant:**

Adam C. Griffith

v.

**Defendants-Appellees:**

Executive Director of CDOC and Warden of the Buena Vista Correctional Facility.

-Court Use Only-

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Case No.  
2025CA2233

**BRIEF OF *AMICI CURIAE* SPERO JUSTICE CENTER AND THE  
LEGISLATION INSIDE, KOREY WISE INNOCENCE PROJECT IN  
SUPPORT OF APPELLANT**

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with C.A.R. 29, 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 limit set forth in C.A.R. 29(d) because it is 4,750 words. The brief complies with the content and form requirements set forth in C.A.R. 29(c). The undersigned acknowledges that the brief may be stricken if it fails to comply with any of the requirements C.A.R. 29, and C.A.R. 32.

s/ Isaac Green

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## **Interest of Amici**

Spero Justice Center is a non-profit law office dedicated to curbing excessive sentencing practices in Colorado. Spero provides direct legal representation to individuals serving extreme sentences in Colorado and advocates for the systemic reform of ineffective and overly harsh sentencing policies. Spero frequently represents clients who, prior to obtaining free legal counsel, had meritorious legal claims but were unable to access justice because of strict procedural barriers including the erroneous treatment of rules of procedure as jurisdictional.

Legislation Inside (“LI”) is housed in the Korey Wise Innocence Project at Colorado Law. LI aims to amplify the voices of incarcerated individuals in the legal and policy space before, during, and after legislation is created. LI is made up of democratically elected representatives from the state’s prisons. Several of these representatives have been hampered from pursuing relief in the courts due to the misinterpretation of Rule 106(b) as jurisdictional. LI has a strong interest in ensuring that incarcerated people can access the courts despite the constraints of poverty and imprisonment.

## Summary of Argument

It is fundamental that “[a] court with jurisdiction has a ‘virtually unflagging obligation’ to hear and resolve questions properly before it.” *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 240 (2024). For many years, the Colorado courts have wrongly refused to exercise jurisdiction where it has been vested. Colorado Rules of Civil Procedure 106(a)(4) and 106.5 allow plaintiffs to challenge government decision-makers that abuse their discretion. Rule 106(b) states that a petition for such review must be filed within 28 days of a government body’s final decision. The Colorado Supreme Court has long held that this deadline is jurisdictional and the Colorado courts, therefore, are unable to hear any case filed beyond the 28-day deadline regardless of the reason for the delay. *Brown v. Walker Com., Inc.*, 2022 CO 57, ¶ 39 (“[W]e have consistently interpreted Rule 106(b)'s deadline as a jurisdictional deadline.”).

But Rule 106(b)’s deadline cannot be jurisdictional. The Rules of Civil Procedure are issued by a body—the Colorado Supreme Court—that has no authority to expand or narrow jurisdiction. *See Bill Dreiling Motor Co. v. Ct. of Appeals*, 468 P.2d 37, 41 (Colo. 1970) (Colorado Supreme Court cannot expand courts’ jurisdiction through its rule-making function). Rather, vesting and divesting jurisdiction is an exclusive power of the Colorado legislature (subject to the Colorado Constitution). *See id.* For many years, Rule 106 did not include a

limitation period. When the Colorado Supreme Court exercised its rule-making authority and added a deadline, it had no authority to make that deadline jurisdictional and did not purport to do so. Countless cases recognize that court-made rules cannot affect jurisdiction. *See id.* The Colorado Rules of Civil Procedure themselves acknowledge this principle, providing: “These rules shall not be construed to extend or limit the jurisdiction of any court.” C.R.C.P. 82. Likewise, the statutory authority under which the Colorado Supreme Court promulgates the Rules of Civil Procedure makes clear that the Rules cannot affect substantive rights by, for example, limiting jurisdiction. *See Colo. Rev. Stat. § 13-2-108.*

As best as amici can discern, the bedrock principle that rules of procedure cannot be jurisdictional has never been raised in a Rule 106(a)(4) case. As a result, this Court and the Colorado Supreme Court have issued numerous opinions reflexively repeating that Rule 106(b) is a jurisdictional deadline. Although this Court is bound by the Colorado Supreme Court’s pronouncement, this case presents an opportunity to start cleaning up this messy state of affairs.

There are at least two ways to avoid repeating the error. Because this Court cannot overrule *Brown*, it could request transfer of the case to the Supreme Court pursuant to C.A.R. 50(b) to address this argument in the first instance.

Alternatively, this Court could conclude that *Brown* is not binding as to Rule 106.5

and then apply the canon of constitutional avoidance to the interpretive question posed by Mr. Griffith’s case. *People v. Ross*, 2021 CO 9, ¶ 35 n.6 (explaining that the canon “directs courts, where possible, to ‘interpret ambiguous statutes to avoid rendering them unconstitutional’”). Mr. Griffith makes a strong and compelling argument that, in the context of Rule 106.5 specifically, the 28-day deadline can be adjusted. *See* C.R.C.P. 106.5(j) (“The parties shall follow the time periods set forth above unless the Court, on motion and for good cause shown, enters an order altering those time periods.”). This express provision allows the Court to interpret Rule 106.5 as a valid procedural rule, not an overstep onto the legislature’s turf. Either way, this Court has the opportunity and responsibility to begin correcting a deeply entrenched mistake that is unconstitutionally cutting off judicial review of quasi-judicial government decisions.

## **Argument**

### **I. Rules 106 and 106.5, as court-made rules, cannot limit the subject matter jurisdiction of district courts**

“[I]t is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction.” *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978) (citing, inter alia, Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts”)). The same is true for the Colorado Rules of Civil Procedure. *See People in Int. of Clinton*, 762 P.2d 1381, 1388 (Colo. 1988); Colo. R. Civ. P. 82 (“These rules shall not be construed to

extend or limit the jurisdiction of any court.”).<sup>1</sup> When it comes to Rule 106 the Colorado courts have lost sight of this fundamental precept. *See Brown*, ¶ 46 (holding, without considering this argument, that “that Rule 106(b)’s twenty-eight-day filing deadline is a strict jurisdictional limitation on Rule 106(a)(4) actions, and so it is not subject to equitable tolling, let alone broader equitable considerations like excusable neglect.”).

The judiciary’s rulemaking power under the Colorado Constitution is strictly limited to issuing procedural rules. *People v. Wiedemer*, 852 P.2d 424, 436 (Colo. 1993) (citing Colo. Const. art. VI, § 21 and explaining that, under separation of powers principles, only the legislature and not the judiciary can make substantive law). The “Rules of Civil Procedure, are procedural, and under them there is no attempt to affect the substantive rights of litigants. This distinction is emphasized, if emphasis was necessary, by the legislative act under which our rules of civil procedure were promulgated.” *Crowley v. Hardman Bros.*, 223 P.2d 1045, 1049 (Colo. 1950) (quoting 1939 Act Authorizing the Supreme Court of Colorado by Rule to Prescribe the Procedure in Civil Actions In Courts of Record in Colorado, S.L. 1939, c. 80, p. 264 (“Such rules shall neither abridge, enlarge, nor modify the substantive rights of any litigants.” (codified at Colo. Rev. Stat. § 13-2-108))).

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<sup>1</sup> Where, as with Rule 82, the Colorado Rules of Civil Procedure are modeled on the Federal Rules of Civil Procedure, Colorado Courts look to federal jurisprudence in interpreting them. *See Warne v. Hall*, 2016 CO 50, ¶ 12.

A limit on subject matter jurisdiction is an archetypal change to the substantive rights of litigants, which the Colorado Supreme Court is prohibited from making by the state Constitution and Rules Enabling Act. District courts' subject matter jurisdiction derives in the first instance from the Colorado Constitution. *See* Colo. Const. art. VI, § 9; *Edge Telecom, Inc. v. Sterling Bank*, 143 P.3d 1155, 1159 (Colo. App. 2006). That “jurisdiction may be limited by the legislature,” through explicit legislation subject to constitutional limitations. *Matter of A. W.*, 637 P.2d 366, 374 (Colo. 1981) (emphasis added); *see also People v. Loveall*, 231 P.3d 408, 413–14 (Colo. 2010).

Unlike the legislature, courts have no power to enlarge or limit their own subject matter jurisdiction. “Jurisdictional deadlines typically limit a court’s power over a class of cases and therefore concern a court’s subject matter jurisdiction. If the legislature limits a court’s jurisdiction through a deadline, a court has no power to hear a case or enter a judgment after the deadline has passed.” *Babcock v. People*, 2025 CO 26, ¶ 17.

Rules 106 and 106.5, therefore, cannot be jurisdictional because neither was enacted by the Colorado legislature.<sup>2</sup> *See id.*; *see also People ex rel. N.D.V.*, 224

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<sup>2</sup> Additionally, no court has explained why Rule 106.5 is sufficiently “explicit” to constitute a jurisdictional limitation. On the contrary, Rule 106.5 contains an explicit mechanism for a court to excuse a party’s missing any of the deadlines in it, including those it incorporates by reference from Rule 106. *See* Rule 106.5(j). This, combined with the canon of constitutional avoidance and the related

P.3d 410, 414 (Colo. App. 2009) (“An error in procedure does not implicate the court’s jurisdiction unless it results in a court’s attempt to exercise power over a *class of cases* or over *persons* not within its constitutional or statutorily prescribed authority.” (emphasis in original)). Courts must decide whether they have been granted subject-matter jurisdiction to decide a case, but they may not, either through decisions or rule making, vest or divest themselves of jurisdiction. *See Bill Dreiling Motor Co. v. Ct. of Appeals*, 468 P.2d 37, 41 (Colo. 1970) (quoting *People ex rel. City of Aurora v. Smith*, 424 P.2d 772, 774 (Colo. 1967)) (“[O]ur jurisdiction, as initially spelled out in our Constitution, may be expanded by statute. But such is no authority for us to expand our jurisdiction by rule of court.”); *White v. Dist. Ct. In & For Fourth Jud. Dist.*, 695 P.2d 1133, 1135 (Colo. 1984) (“[T]he basis for the exercise of judicial authority is normally found in jurisdictional statutes, not in the language of procedural rules”); *People in Int. of Clinton*, 762 P.2d at 1388 (same).

The Colorado Supreme Court erred in *Brown*, when it lost sight of “the jurisdictional distinction between court-promulgated rules and limits enacted by [the legislature],” *Bowles v. Russell*, 551 U.S. 205, 211–12 (2007), and held that Rule 106(b) is jurisdictional. While “[s]tatutory deadlines can be jurisdictional or

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presumption “that filing deadlines are ordinarily not jurisdictional,” *Sebelius v. Auburn Reg’l Med. Ctr.*, 568 U.S. 145, 153–54 (2013), is alone enough to decide this appeal in Mr. Griffith’s favor.

directory,” *Babcock*, ¶ 17, court-made non-statutory deadlines like Rule 106 can only be directory and therefore are subject to waiver and equitable tolling.

## **II. The history of Rule 106(b) also shows it should not be given jurisdictional effect**

Two years after the legislature authorized their creation, the Colorado Civil Rules of Procedure were adopted by the Supreme Court in 1941, Rule 106 among them. *See* 1935 Colo. Stat. Ann. 335 (1941 Repl. Vol.). Rule 106 “abolished remedial writs and created new procedures for seeking the types of relief allowed by such writs.” *See* Hon. Jerry N. Jones, Memorandum re: Use of Rule 106(a)(4) (Sept. 28, 2018) at pg. 6.<sup>3</sup> The Rule’s purpose was not to make substantive changes to the scope of these writs but “to simplify pleadings and to eliminate delay.” *Berryman v. Berryman*, 172 P.2d 446, 447 (Colo. 1946). Prior to the adoption of the Rules, the common law writs were not subject to any uniform jurisdictional deadlines. At most, there were a handful of legislatively created limitations periods that applied to specific writs in narrow contexts. *See, e.g., Mayer v. Pub. Utilities Comm'n*, 620, 94 P.2d 125, 126 (Colo. 1939) (discussing statutory limitations period for certiorari writ to “review of the action of the Public Utilities Commission”); *U. S. ex rel. Arant v. Lane*, 249 U.S. 367, 371 (1919) (A writ of mandamus “is an extraordinary remedy which ... is generally regarded as

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<sup>3</sup> Available at: [https://www.coloradojudicial.gov/sites/default/files/2024-06/9\\_28\\_18%20Supplemental%20materials.pdf](https://www.coloradojudicial.gov/sites/default/files/2024-06/9_28_18%20Supplemental%20materials.pdf)

not embraced within statutes of limitation applicable to ordinary actions, but as subject to the equitable doctrine of laches.” (citations omitted)).

Consistent with this practice, prior to 1970, Rule 106(b) contained no time limit at all. *Walker*, ¶ 24. The 1970 amendment that added a 30-day filing deadline came with no fanfare nor any indication that the Court believed it was creating a new limit on the relief available under the common law writs. Likewise, when the time period was later shorted to 28 days in a 2011 rule change, the meeting minutes of the Civil Rules Committee do not suggest the committee members saw themselves as making a jurisdictional change. *See* Supreme Court Committee On Rules Of Civil Procedure, Minutes Of Meeting, January 28, 2011, at pg. 12. On the other hand, the Committee was clear that it had to treat statutory time intervals—which could carry jurisdictional implications—differently from court-made ones. *See* Supreme Court Committee On Rules Of Civil Procedure, Minutes Of Meeting, June 24, 2011, at pgs. 2–4.

### **III. The caselaw treating Rule 106(b) as jurisdictional is unreasoned and indefensible.**

The treatment of Rule 106(b) as “jurisdictional” traces back to a single case: *Hidden Lake Dev. Co. v. Dist. Ct. In & For Adams Cnty.*, 515 P.2d 632 (Colo. 1973). There, the Colorado Supreme Court, for the first time, applied the July 30, 1970 amendment adding the 30-day limitation period. *Id.* at 634. *Hidden Lake*, however, was not clear about why (or even whether) 106(b)’s time limit was

jurisdictional. The defendant in *Hidden Lake* argued that the complaint should be dismissed because it was filed outside the 30-day period and that was the basis of the Court’s conclusion that the complaint must be dismissed. *See id.* at 634. Since the defendant raised that objection, the court did not need to consider whether it was waivable or a jurisdictional limitation. *See People v. Shackelford*, 851 P.2d 218, 221 (Colo. App. 1992) (noting that a party must assert a time bar in the trial court unless it is jurisdictional).

The only indication that the 30-day time bar was jurisdictional came in the Court’s final sentence summarizing its conclusion as: “[t]he new complaint was filed too late, and the respondent court was without jurisdiction to proceed against the petitioner Development Company.” *Id.* at 635. The Court provided no rationale whatsoever for that sentence, which has all the hallmarks of decisions from that era making “drive-by jurisdictional statements” and “loosely stat[ing] that jurisdiction was lacking without considering whether the defect really concerned a limitation on the court’s capacity to decide as opposed to a threshold requirement that a party had to satisfy in order to go forward.” *Riley v. Bondi*, 606 U.S. 259, 275 (2025) (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 511 (2006)).

The Colorado Supreme Court is not the first court to mistakenly treat a court-made rule as jurisdictional. “Courts, including [the Supreme Court of the United States], it is true, have been less than meticulous in this regard; they have

more than occasionally used the term ‘jurisdictional’ to describe emphatic time prescriptions in rules of court.” *Kontrick v. Ryan*, 540 U.S. 443, 454 (2004) (holding that court-made filing deadline could not be jurisdictional).

In the past two decades, both the United States and the Colorado Supreme Courts “have tried ... to bring some discipline to the use of this term” and accordingly “have urged that a rule should not be referred to as jurisdictional unless it governs a court’s ... subject-matter or personal jurisdiction.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011); *see also, e.g., People v. McMurtry*, 122 P.3d 237, 241 (Colo. 2005) (explaining the “improper denial of a constitutional speedy trial claim does not involve subject matter jurisdiction,” despite prior precedent using the term “jurisdiction”); *Lewis v. Taylor*, 375 P.3d 1205, 1207 n.2 (Colo. 2016) (noting that lower court’s imprecise use of “jurisdictional” left it “mired in semantics”).

*Brown* represents a stark and unexamined aberration from this effort. While *Brown* relies on an “unbroken line of case law over nearly half a century” treating Rule 106(b) as jurisdictional, ¶¶ 38–42 (collecting cases),<sup>4</sup> it does not reckon with the decades of reasoned precedent holding that a court-made procedural rule

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<sup>4</sup> *Brown* appears to look to these cases primarily as evidence of the Court’s own intent in adopting Rule 106(b). Mystifyingly, the Court entirely ignores the predicate question: whether it stands in the same position as the legislature such that its intent to make a rule jurisdictional could or should be honored.

cannot affect substantive matters like jurisdiction. The mistake is understandable. This issue was not raised by the parties in *Brown*. See Petitioner’s Opening Brief, 2022 WL 3445506, at \*6–\*9 (Mar. 7, 2022) (arguing that Rule 106 is jurisdictional); Respondent’s Answer Brief, 2022 WL 3445500, at \*16–\*18 (Apr. 11, 2022) (conceding that Rule 106 is jurisdictional). And, as noted above, the mischaracterization of court-made rules as “jurisdictional”—though completely wrong—has a long history.

Indeed, it is this history that caused the error in the first place. *Hidden Lake*’s statement that the court “was without jurisdiction to proceed” was an anachronistic use of the term that should not today be interpreted as implying that Rule 106(b) placed a limit on “the classes of cases ... falling within a court’s adjudicatory authority.” *Kontrick*, 540 U.S. at 455.

Apart from *Hidden Lake* and subsequent precedent, the only other justification *Brown* provided for treating Rule 106(b) as jurisdictional was a discussion of policy considerations. According to the Court, affording Rule 106(b) jurisdictional dimensions “serve[d] important practical purposes” by balancing “the rights of aggrieved citizens with legitimate government interests in finality.” *Brown*, ¶ 43. But this just emphasizes the mistake: these sorts of considerations of “public policy” are the “appropriate subjects for legislation” not judicial rulemaking. *Wiedemer*, 852 P.2d at 436.

*Brown* provided no justification for its holding that overcomes its conflict with the Colorado Constitution and with the clear statement of the Colorado Rules of Civil Procedure themselves that they “not be construed to extend or limit the jurisdiction of any court,” Colo. R. Civ. P. 82.

**IV. Despite its mandatory language, the Rule 106(b) deadline can be extended for good cause, waived, and forfeited.**

Accepting that the 28-day deadline is not jurisdictional, it becomes clear that, notwithstanding Rule 106(b)’s mandatory language, the deadline may be extended in appropriate circumstances like any directory limit.

**A. A court may enlarge the deadline pursuant to Rule 6(b).**

Rule 6(b) authorizes courts to extend deadlines contained in the Rules of Civil Procedure for good cause or after a showing of excusable neglect. On its face, Rule 6(b) allows a district court to extend Rule 106(b)’s 28-day limit on a plaintiff’s well-founded motion. And without *Brown*’s original mistake of treating Rule 106(b) as a jurisdictional statute, there would be no obstacle to giving effect to the unambiguous import of Rule 6(b).

While *Brown* discussed at length whether Rule 6(b) applies to Rule 106(b), its discussion was muddled from the start. *Brown*’s analysis began by drawing a distinction between “two types of limitation periods: (1) *statutes* of limitations and (2) non-claim *statutes*.” *Brown*, ¶ 34 (emphasis added). The Court then set out to determine which type of limitation period Rule 106(b) belongs to. But this first

step was down the wrong path. Rules of procedure are fundamentally different than statutes and it would have been a mistake to cast Rule 106(b) as either a limitations or non-claim *statute*.

Because *Brown* overlooked that the Colorado Supreme Court lacked the power to establish a jurisdictional deadline in the first place, the question of whether Rule 6(b) applies to Rule 106 must be answered again with fresh eyes. Rule 6(b) provides (in relevant part):

When by these rules ... an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion ... upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rule 60(b) and may extend the time for taking any action under Rule 59 only as allowed by that rule.

The ordinary way to read the rule is that it applies to Rule 106(b). Rule 106(b) requires that a particular act, initiating a Rule 106(a)(4) proceeding, “be done... within a specified time.” It is facially within Rule 6(b)’s reach. Further, Rule 6(b) restricts its own application only to Rules 60(b) and 59. By naming the contexts where the rule does not apply, Rule 6(b) implies that extensions of other deadlines are permissible. *See Walker Com., Inc. v. Brown*, 2021 COA 60, ¶ 42, rev’d, 2022 CO 57 (“If the Colorado Supreme Court intended to exclude Rule 106(b) from Rule 6(b)(2)’s reach, it could have done so, just as it did with Rules 59 and 60(b).”).

Instead of following this plain meaning, *Brown* relied heavily on the history and purported intent of Rules 6 and 106. *See* ¶ 29 (“The history of Rule 6(b) sheds light on why Rule 106(b)’s deadline is not among the listed exclusions”). But “[w]hen the meaning of [text] is clear based on a plain reading of the language, we do not consult legislative history.” *Smith v. Executive Custom Homes, Inc.*, 230 P.3d 1186, 1191 (Colo. 2010). The plain language of Rule 6(b) clearly allows extensions of the Rule 106(b) deadline.

Nothing about this conclusion is changed by the fact that Rule 106(b) states that a complaint “shall be filed ... not later than 28 days after the final decision of the body or officer.” Rule 6(b) applies to other rules of procedures that use “shall” in a similar manner. *See, e.g., Farmers Ins. Grp. v. Dist. Ct. of Second Jud. Dist.*, 507 P.2d 865, 867 (Colo. 1973) (extension of the C.R.C.P. 25(a)(1) deadline, which states that an “action shall be dismissed” unless plaintiff files a timely motion, is allowable if plaintiff shows excusable neglect).

**B. A defendant may waive or forfeit a Rule 106(b) timeliness defense.**

More importantly for this case, a defendant’s conduct or equitable considerations may waive or toll 106(b)’s 28-day deadline. Non-jurisdictional rules are subject to waiver and forfeiture, regardless of whether they use mandatory language. *People v. Masamba*, 563 P.2d 382 (Colo. App. 1977). (“Where mandatory procedural requirements to not affect the jurisdiction to the court to act,

a party may waive those requirements.”). Just last year the Colorado Supreme Court reaffirmed this principle in *Babcock*, holding that because a restitution-setting deadline was not jurisdictional, “its provisions can be waived.” ¶ 27. That provision used the mandatory “shall,” but that did not stop the Court from holding that it was merely directory and could therefore be waived and forfeited. *See* ¶¶ 22–24.

The principle that directory procedural rules can be waived and forfeited serves an important purpose. Under “the normal operation of our adversarial system, ... courts are generally limited to addressing the claims and arguments advanced by parties.” *Henderson*, 562 U.S. at 434. “Courts do not usually raise claims or arguments on their own.” *Id.* Recognizing that mandatory procedural rules can be waived or forfeited ensures that courts will not be thrust into the awkward position of having to raise and resolve arguments never asserted by a defendant.

**V. Serious consequences result from mislabeling Rule 106(b) as jurisdictional.**

“[T]he consequences that attach to the jurisdictional label [are] drastic.” *Id.* Treating a rule as jurisdictional “may ... result in the waste of judicial resources and may unfairly prejudice litigants.” *Id.* Because “[o]bjections to subject-matter jurisdiction ... may be raised an any time,” a defendant may move to dismiss a case on subject-matter jurisdiction grounds after years of litigation, “even if the

party had previously acknowledged the trial court’s jurisdiction.” *Id.* The jurisdictional treatment of Rule 106(b) also requires courts to dismiss complaints that are filed too late for no fault of the plaintiff including where, as here, the defendant’s own delay or misconduct caused the late filing. Such circumstances would ordinarily amount to excusable neglect under Rule 6(b) or general equitable principles. This undermines access to justice, contributes to the perception that the legal system is unfair, and forces courts and litigants to devote their energy to addressing unnecessary procedural issues. *See also Antero Res. Corp. v. Strudley*, 2015 CO 26, ¶ 15 (reaffirming that the Rules must be construed “liberally to effectuate” “their truth-seeking purpose” and “to secure the just, speedy, and inexpensive determination of every case”).

All too often, treating Rule 106(b) as jurisdictional denies legal recourse to plaintiffs who make trivial errors. In *Baker v. City of Dacono*, 928 P.2d 826 (Colo. App. 1996), a police chief challenging a termination decision filed his Rule 106(a)(4) complaint thirty days after he received notice of the final agency decision, but thirty-one days after the notice was mailed. *Id.* at 826. *Baker* held that the clock began to tick when the notice was mailed and that the suit had to be dismissed. *Id.* at 827. In another recent case, the Fremont District Court concluded it had no choice but to dismiss an incarcerated plaintiff’s one-day-late complaint, even though he believed he had thirty days to file (which was true under the prior

version of Rule 106(b)) and had no assistance of counsel. *Yapoujian v. Exec. Dir. of Colorado Dep't of Corr.*, No. 23CA1018, 2024 WL 3935793 (Colo. App. Apr. 25, 2024) (unpublished).

Even when jurisdictional defenses do prevail, they force courts to spend resources and energy resolving hyper-technical disputes with no connection to the merits of a case. For instance, in *Maslak v. Town of Vail*, a district court dismissed a Rule 106(a)(4) action because the plaintiff accidentally filed a complaint in the wrong jurisdiction and only corrected the error after the 28-day deadline passed. 2015 COA 2, ¶ 3 (“The administrative assistant who filed it... selected the wrong district court (the Denver District Court) from the ICCES drop-down menu, rather than the Eagle County District Court that was noted on the caption.”). While the district court was ultimately reversed, the upshot of the jurisdictional view of Rule 106(b) was a needless appellate proceeding and published opinion that wasted valuable court time and expense for the parties.

The view that Rule 106(b) is jurisdictional also forces courts to acquiesce to sharp-elbowed behavior that prevents a defendant from filing on time.

“Characteristically, a court’s subject-matter jurisdiction cannot be expanded to account for the parties’ litigation conduct.” *Kontrick*, 540 U.S. at 456. The jurisdictional approach makes the doctrine of equitable tolling, which applies “where the defendant's wrongful conduct prevented the plaintiff from asserting his

or her claims in a timely manner,” unavailable regardless of the egregiousness of a defendant’s behavior. *Dean Witter Reynolds, Inc. v. Hartman*, 911 P.2d 1094, 1096 (Colo. 1996).

Mr. Griffith’s case illustrates the harsh consequences of treating the Rule 106(b) deadline as jurisdictional. The district court determined that Mr. Griffith’s request for an extension of time to file his complaint was well-founded because he had requested materials to prepare his complaint shortly after the date of final agency action but was prevented for filing on time by the Department of Correction’s month-late response. Nevertheless, the Department was able to raise a timeliness defense four months after the fact and the district court believed it had no choice but to dismiss the case. Thus, the Department was effectively rewarded for its delay in providing Mr. Griffith what he needed to access the courts. This is not the only time the Department’s own delay has stymied judicial review of its actions. *See, e.g., Wallin v. Cosner*, 210 P.3d 479, 481 (Colo. App. 2009) (reviewing sua sponte dismissal where prisoner deposited complaint in prison mail system on March 14, but the prison did not mail it until March 17 (the deadline under Rule 106(b) and it did not reach the court’s filing system until March 19); *Crawford v. Dep’t of Corr.*, 895 P.2d 1156, 1158 (Colo. App. 1995) (rejecting prisoner’s argument that delay in receiving the challenged decision entitled him to modest extension of time to file).

The practical consequences of treating Rule 106(b) as jurisdictional are, in a certain sense, beside the point. Courts lack the power to change their own jurisdiction in order to further policy goals. *See Wiedemer*, 852 P.2d at 436 (“[M]atters of public policy are substantive and are therefore appropriate subjects for legislation.”). Still, the harsh effects of treating Rule 106(b) as jurisdictional emphasize why it is high time to correct this entrenched error.

### **Conclusion**

For 50 years, the Colorado courts have gravely misinterpreted Rule 106(b) and declined to exercise properly vested jurisdiction. This case presents the first opportunity for Colorado appellate courts to reconsider this precedent in light of the bedrock principle that court-made rules cannot affect jurisdiction. This Court should either hold that the deadline may be extended pursuant to C.R.C.P. 106.5(j) or request that the Colorado Supreme Court accept transfer of the case.

**Dated: April 1, 2026**

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## **CERTIFICATE OF SERVICE**

The undersigned certifies that on this 1st day of April, 2026, a true and correct copy of the foregoing BRIEF OF AMICI CURIAE OF SPERO JUSTICE CENTER AND LEGISLATION INSIDE, KOREY WISE INNOCENCE PROJECT IN SUPPORT OF APPELLANT was electronically served via the Colorado Courts E-Filing System on all counsel of record.

s/ Isaac Green