

<p>Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203</p> <p>Appeal from Chaffee County District Court The Honorable Dayna Vise No. 2025CV2</p>	<p>DATE FILED April 1, 2026 5:48 PM FILING ID: D5F419257098C CASE NUMBER: 2025CA2233</p>
<p>Plaintiff-Appellant: Adam C. Griffith</p> <p>v.</p> <p>Defendants-Appellees: Executive Director of CDOC and Warden of the Buena Vista Correctional Facility.</p>	<p>-Court Use Only-</p>
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<p style="text-align: center;">OPENING BRIEF</p>	

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I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

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



Anna I. Kurtz

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INTRODUCTION

Adam Griffith is a prisoner in the custody of the Colorado Department of Corrections who sought review of a prison disciplinary conviction under Rule 106.5 of the Colorado Rules of Civil Procedure. The disciplinary decision resulted in Mr. Griffith being rehoused under severe restrictions in a maximum-security facility, deprived of physical access to a law library, and forced to rely on forms to request legal assistance and materials. Mr. Griffith tried, well within the rule's 28-day filing deadline, to request the forms he was told by the prison were required to bring a Rule 106.5 action. But he received no response until more than a month later, long after the deadline had passed. When he finally received the materials, Mr. Griffith moved the court for permission to file late, and the court found good cause for an extension.

Mr. Griffith filed his complaint within the time allotted by the court. But defendants moved to dismiss, asserting that the 28-day deadline is a strict jurisdictional limit that the court had no power to extend—under the rules, as a matter of equity, or otherwise. The court was persuaded that its hands were tied. It concluded that even if “it was the actions of CDOC that led to the late filing,” it had no choice but to dismiss the complaint. That conclusion was wrong under the plain language of the Rule, Colorado precedent, and the dictates of the U.S. and Colorado Constitutions. It also worked a manifest injustice. This Court should reverse.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether Rule 106.5(j) of the Colorado Rules of Civil Procedure, which permits courts to alter the “time periods set forth above” in the rule on motion and for good cause shown, applies to the deadline for filing a Rule 106.5 complaint, which is set forth in Rule 106.5(a) by reference to another rule.
2. Whether the deadline for filing a Rule 106.5 complaint is a strict jurisdictional limitations period or a procedural rule subject to equitable considerations.
3. Whether Rule 106.5 can constitutionally be construed to require dismissal of a prisoner’s complaint as untimely where CDOC prevented him from filing on time.
4. Whether Rule 106.5, as construed by the trial court, is unconstitutional as applied to Mr. Griffith.
5. Whether the dismissal of Mr. Griffith’s complaint should be reversed.

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal of the district court’s order dismissing Plaintiff-Appellant Adam Griffith’s pro-se C.R.C.P. 106.5 complaint for lack of subject matter jurisdiction on the basis that it was untimely filed. CF, pp. 141-47.

Rule 106.5 sets forth the governing procedures for actions brought by a prisoner to review a decision resulting from a quasi-judicial hearing of any facility

of the Colorado Department of Corrections (CDOC). Subsection (a) of the rule incorporates by reference to Rule 106(b) a 28-day deadline for filing a Rule 106.5 complaint.

Mr. Griffith's complaint sought review of a CDOC Code of Penal Discipline (COPD) decision that resulted in significant curtailments of his liberty, including being transferred to a higher-security facility. CF, pp. 11-45. But Mr. Griffith's rehousing came with severe restrictions that made him reliant on CDOC officials to access law library materials, and though he submitted a request well in advance of the Rule's 28-day deadline, the prison did not respond until long after the deadline had passed. CDOC's actions prevented Mr. Griffith from timely filing his challenge to the COPD decision, despite his best efforts. CF, p. 10. Given that the late filing was out of Mr. Griffith's control, the district court found "good cause" under C.R.C.P. 106.5(j) to grant him additional time to file. CF, p. 10.

Mr. Griffith filed his complaint within the additional time allotted, but the district court then reversed course, concluding that the 28-day deadline was jurisdictional and that it lacked the power to extend it, even for "good cause" under C.R.C.P. 106.5(j). CF, pp. 141-47. The court dismissed Mr. Griffith's case, leaving him no path to challenge his disciplinary conviction or its significant ramifications. CF, p. 147. This appeal challenges that ruling.

B. Statement of Facts

Mr. Griffith is imprisoned in the Colorado Department of Corrections. CF, p. 141. While incarcerated at the Buena Vista Correctional Facility, a medium-to-high security prison, Mr. Griffith received a disciplinary conviction under the Code of Penal Discipline, the administrative regulations that govern discipline for violations of the prison’s rules.¹ CF, p. 142. Mr. Griffith appealed through CDOC’s internal administrative process, and the final agency action affirming the COPD decision was entered January 8, 2025. CF, p. 142, 170.

As a result of the decision, in addition to having a new disciplinary conviction on his CDOC record, Mr. Griffith was transferred to one of the state’s highest security facilities—the Colorado State Penitentiary (CSP)—pursuant to a progression of his custody designation to the highly restrictive “Management Control Unit” (“MCU”).² CF, p. 15; A.R. 600-01(IV)(E)(2)(g), Offender

¹ An appellate court may take judicial notice of public documents. *Robledo v. Williams*, 21CA1089, 2022 WL 22925144, at *5 (Colo. App. Oct. 27, 2022).

² The conditions in the MCU are extreme and atypical for Colorado’s prisons. For 20 out of 24 hours a day, Mr. Griffith was locked in a cell alone. A.R. 600-09(IV)(D)(12), Special Management and MCU Status, at 1 (June 1, 2025). Only about 3.5% of CDOC prisoners are in the same conditions. SB 11-176 and HB-1013 Annual Report: Administrative Segregation for Colorado Inmates, at 8 (Jan. 1, 2025), permalink: <https://perma.cc/8GW3-J6PL> (reporting 576 people placed in the MCU in 2024); CDOC, Monthly Population and Capacity Report (Dec. 31, 2024), permalink: <https://perma.cc/RAV6-THXQ> (reporting 16,046 people in CDOC custody in December of 2024).

Classification, at 7 (Oct. 1, 2024); A.R. 150-01, Form A, Code of Penal Discipline at 29 (Feb. 1, 2026); A.R. 600-09(III)(C), Special Management and MCU Status, at 1 (June 1, 2025).³ He was also placed in “restrictive housing”—solitary confinement—for the statutory maximum of 15 days, and lost thirty days of time credits he had earned toward earlier release, as well as property that he was not permitted to bring to CSP. CF, p. 15.

CSP is a maximum-security prison with limited access to legal resources for inmates.⁴ CF, p. 9. In particular, upon Mr. Griffith’s reclassification and reassignment to CSP, he was prohibited from physically accessing the law library. CF, p. 1, 5; *see also* A.R. 750-01(IV)(D)(2)-(3), Legal Access, at 2-3 (July 15, 2024) (noting that MCU designation “inhibits direct or personal access to the law library”); A.R. 600-09(IV)(A)(15) at 3.

Instead, Mr. Griffith was forced to rely solely on paper request forms to obtain legal materials or assistance. CF, pp. 1, 9-10; *see also* A.R. 750-01(IV)(A), Legal Access, at 1 (providing that court access for inmates may be limited to “loans of

³ Current CDOC Administrative Regulations are available at <https://cdoc.colorado.gov/about/departments-policies>.

⁴ CSP is a designated Level V/Administrative Segregation Facility. A.R. 600-01(IV)(B) at 4; CDOC, CSP (archived on Apr. 1, 2026), permalink: <https://perma.cc/NB54-BYP4>.

legal materials maintained by the Legal Access Program”); A.R. 750-01(IV)(D)(3) at 3 (describing legal assistance request forms). These forms are kept in the housing units, A.R. 750-01(IV)(D)(4) at 3, and require delivery by CDOC staff to the law library. CF, pp. 3-4. CDOC employees then, theoretically, deliver the necessary legal resources to the people locked in the MCU. CDOC employees are not supposed to impede or otherwise interfere with requests for legal services. AR 750-01(IV)(D)(4) at 3.

As soon as he got out of solitary, Mr. Griffith began trying to seek judicial review of his disciplinary conviction. He quickly submitted, on January 22, 2025 (14 days after the final decision was entered and 14 days before his complaint was due),⁵ A.R. Form 750-01A, entitled “Request for Legal Assistance.” Where the form said to “state the type of assistance you require,” Mr. Griffith wrote that he needed the “[a]ddress for Chaffee County District Court” and the “[d]ocuments needed to file CRCP Rule 106 Complaint Concerning Correctional Facility Quasi-Judicial Hearing Review.” CF, p. 4. He also checked “no” where the form asked whether he was represented by an attorney and whether the matter had been filed. CF, p. 4.

⁵ At the time, Mr. Griffith was not even aware of the filing deadline. He was simply being diligent in pursuing his claim. CF, p. 134. Although Colorado law requires that a copy of Rule 106.5 be made available in all prison law libraries, C.R.C.P. 106.5(k), Mr. Griffith could not have encountered the rule there because of his custody designation.

Although Mr. Griffith submitted the request on January 22, 2025, he did not receive a response until more than a month later, on February 24, 2025, long after Rule 106.5's filing deadline had passed. And rather than provide the information or materials Mr. Griffith had clearly asked for, the CDOC librarian denied his request. CF, p. 4. As reason for the denial, the librarian checked a line on the form that stated Mr. Griffith had "failed to submit the proper form" and directed him to "Please resubmit." CF, p. 4. Following that typed line, a hand-written note says "Loan Material Request-AR 750-01 Form 'C.'" CF, p. 4. There is also a barely scrutable note appended to the form that says:

You can submit a request for Loans in Legal Access Program Loan Material Request form in AR 750-01 Form C for a Self-help packet on 106 or if you are wanting the 106.5 form you would need to request a Request for Free Court forms. Attached Loan Material Request form in AR 750-01 Form C and Free Court Form required by the court.

CF, p. 4.⁶

The very next day, on February 25, 2025, Mr. Griffith submitted the form the librarian had sent entitled "Request for Forms Required by the Court." CF, p. 3.⁷

⁶ The legal access program guidelines instruct that Form C is to be used if a person is "requesting a loan of legal research material" and that loaned materials remain CDOC property. A.R. 750-01, Form F, at 15. Mr. Griffith had not requested a loan of any legal research materials, so it is unclear why Form C was the "proper form."

⁷ This "Request for Forms Required by the Court" document is not among the forms A.R. 750-01 requires to be made available in housing units, and was not in this case.

Under the section of the form titled “State Court,” Mr. Griffith marked his requests for JDF 638, which the form described as a “Rule 106.5 Motion” for “Review of DOC Action,” and JDF 201, a motion to file without fees. CF, p. 3. Mr. Griffith did not receive the requested materials or a self-help packet on filing until March 6, 2025.⁸ CF, pp. 1, 9. It was only then that Mr. Griffith learned that a deadline existed for Rule 106.5 complaints, and that in the time CDOC had taken to respond to him, the deadline had passed. CF, p. 134. Mr. Griffith immediately completed the JDF 638 Rule 106.5 form, CF, pp. 13-15, and the following day, on March 7, 2025, he filed a pro se motion in the Chaffee County District Court seeking permission to file his Rule 106.5 complaint out-of-time. CF, pp. 1-2. Mr. Griffith explained the delay in receiving documents from CDOC and noting that he was still awaiting a certified account statement so that he could file the complaint with a request to proceed *in forma pauperis*. CF, p. 1-2.

A.R. 750-01(IV)(D)(4). As the law librarian’s note stated, Mr. Griffith first had to submit a request for this form in order to then use it to submit a request for the actual documents he needed.

⁸ A note at the top of the form indicates it was produced by the law librarian on February 27, 2025. CF, p. 13. The record does not include an explanation for why the documents did not reach Mr. Griffith until March 6, 2025.

C. Course of Proceedings and Disposition Below

On April 6, 2025, the Chaffee County District Court (Dayna Vise, J.) granted Mr. Griffith's motion for an extension of time and allowed him 28 additional days to file his Rule 106.5 complaint. CF, pp. 9-10. In so ruling, the court noted that C.R.C.P. 106.5(j) allowed it to alter the time period for filing a complaint upon motion and for good cause shown. CF, p. 10. Reasoning that Mr. Griffith was in a high-security prison with limited access to a law library or other means of accessing the required forms; that he timely requested the forms but did not receive a response from CDOC until the deadline for filing had passed; and that once he received the forms he needed, he promptly filed his request for an extension, the court found good cause to extend his time for filing. CF, p. 10.

Mr. Griffith timely filed his complaint within the period allowed by the court, asserting violations of his due process rights during the disciplinary hearing and that there was insufficient evidence to sustain the decision.⁹ CF, pp. 11-64. *Id.* Defendants moved to dismiss the complaint for lack of subject matter jurisdiction. CF, p. 116. Defendants argued that dismissal was required under C.R.C.P. 106(b)

⁹ Mr. Griffith filed the complaint by placement in legal mail on April 25, 2025. CF, p. 119. *See* C.R.C.P. 5(f) (“[A] pleading or paper filed or served by an inmate confined to an institution is timely filed or served if deposited in the institution’s internal mailing system on or before the last day for filing or serving.”).

because Mr. Griffith did not file within 28 days of the final agency action and C.R.CP. 106.5(j) did not allow the court to alter that deadline, which they asserted was a strict jurisdictional limit. CF, p. 117. Defendants did not contest—or even acknowledge—the facts underlying the trial court’s good cause finding. Nor did they engage with the legal relevance of the circumstances that prevented Mr. Griffith from filing on time. CF, pp. 117-21.

Still proceeding *pro se*, Mr. Griffith filed a brief in response, arguing that the extension of time was proper because, in his words, “[t]he same agency I am seeking review of caused the delay that the Defendants claim renders my complaint time-barred and divests the Court of subject matter jurisdiction.” CF, pp. 133-36. He pointed out the systemically perverse incentive and unjust result that would follow under Defendants’ reasoning: “Unless I pursue this case through this complaint I will never get the review of the CDOC’s action I deserve and am guaranteed by the Constitution for the violation of my rights. If this isn’t addressed . . . the CDOC at [CSP] will be able to stall and prevent any proceedings under Rule 106.5 by not providing the required documents . . . thereby making it impossible for [prisoners] to challenge COPD convictions, as they have done in this case.” CF, pp. 133-34.

In the September 2, 2025, order presented for this Court’s review, the district court agreed with Defendants, adopting their view that the 28-day filing deadline is

jurisdictional and not subject to equitable tolling or extension for excusable neglect. CF, p. 143. It also reasoned that although C.R.C.P. 106.5(j) expressly permits courts, for good cause shown, to extend the time periods “set forth above” in the rule, those words apply to every deadline in Rule 106.5’s earlier provisions other than the one for filing the complaint. CF, pp. 144-46. The court thus concluded that regardless of whether Mr. Griffith “was diligent in initiating the action and it was the actions of CDOC that led to the late filing of the Complaint,” its earlier order granting the extension was in error because “there is no ‘good cause’ exception to the deadline for filing the Complaint.” CF, p. 146. The court held that because the final agency action occurred on January 8, 2025, and Mr. Griffith did not file his complaint by February 5, 2025 (twenty days before he could access the means to do so) his complaint had to be dismissed. CF, pp. 146-47. The court did not consider whether strict application of Rule 106.5(a)’s filing deadline was constitutional as applied to Mr. Griffith.

SUMMARY OF THE ARGUMENT

The deadline in C.R.C.P. 106.5 for filing a complaint cannot be jurisdictional because it is a court-authored procedural rule, and under the Colorado Constitution, the judiciary can neither vest nor divest district court jurisdiction. A decades-old Colorado Supreme Court opinion used jurisdictional language in describing a rule’s

filing deadline, and subsequent decisions, culminating in *Brown v. Walker Commercial*, 2022 CO 57, 521 P.3d 1014, repeated and entrenched the error. These cases all rest on a fundamentally unsound premise. While this Court is bound by this precedent, it need not perpetuate the mistake here. Even under *Brown*, because Rule 106.5 expressly allows courts to extend its filing deadline for good cause, this Court must reject the district court’s treatment of the deadline as an inflexible jurisdictional limit and reverse the dismissal of Mr. Griffith’s complaint.

The plain language of Rule 106.5(j) allows courts to extend the “time periods set forth above” in the rule for good cause. Rule 106.5(a) sets forth the deadline for filing a complaint—it simply does so by reference to another provision. Reading into that commonplace legal drafting choice an intent to exclude the deadline from Rule 106.5(j)’s coverage is contrary to basic rules of construction. And as the facts here showcase, the constitutional implications of that interpretation would resolve any doubt against it. Mr. Griffith missed the deadline only because CDOC withheld the necessary legal materials until after the time period had expired. Construing the rule to require a court to disregard such circumstances would violate the constitutional guarantees of due process and access to the courts. This Court must reverse.

ARGUMENT

I. As a Court-Authored Procedural Rule, the Deadline Set Forth in C.R.C.P. 106.5(a) for Filing a Complaint Cannot Be Jurisdictional.

A. Standard of Review and Preservation

A district court's interpretation of the Colorado Rules of Civil Procedure is reviewed *de novo*. *Schaden v. DIA Brewing Co., LLC*, 2021 CO 4M, ¶ 32, *as modified on denial of reh'g* (Feb. 1, 2021). Whether the court has subject matter jurisdiction is also a question of law reviewed *de novo*, *People v. Burdette*, 2024 COA 38, ¶ 12, 552 P.3d 1108, 1113. and an issue that can be raised at any time in a proceeding, *Zook v. El Paso Cnty.*, 2021 COA 72, ¶ 8, 494 P.3d 659, 662. In any event, Mr. Griffith preserved the issue of the court's jurisdiction to allow him to file out of time, CF, pp. 1-2, 133-36; *People v. Bergerud*, 223 P.3d 686, 696-97 (Colo. 2010) (courts must construe *pro se* arguments liberally), and the district court ruled on it, CF, pp. 143, 146-47.

B. A Court-Authored Rule of Procedure Can Never Be Jurisdictional.

As a matter of first principles, the deadline set forth in C.R.C.P. 106.5(a) cannot be jurisdictional because it is merely a court-authored rule of procedure. The Colorado Constitution establishes the jurisdiction of the district courts, and only the legislature, not the judiciary, has the power to vest or limit that jurisdiction.

The Colorado Constitution vests the judicial power in the “supreme court, district courts” and other inferior courts “as the general assembly may, from time to time establish.” Colo. Const. art. VI. § 1. The districts courts are “trial courts of record with general jurisdiction,” with “original jurisdiction in all civil, probate, and criminal cases, except as otherwise provided [in the Constitution],” and “such appellate jurisdiction as may be prescribed by law.” Colo. Const. art. VI, § 9. A district court has jurisdiction if “the case is one of the type of cases that the court has been empowered to entertain by the sovereign from which the court derives its authority.” *Paine, Webber, Jackson & Curtis, Inc. v. Adams*, 718 P.2d 508, 513 (Colo. 1986). The Colorado Supreme Court has recognized that the district courts’ otherwise “unrestricted and sweeping jurisdictional powers” are subject only to “legislative restraints and enactments” that impose “explicit” limitations. *People v. Loveall*, 231 P.3d 408, 412 (Colo. 2010); *Colorow Health Care, LLC v. Fischer*, 2018 CO 52M, ¶ 21, *as modified on denial of reh’g* (July 2, 2018); *Assoc. Gov’ts of Nw. Colo. v. Colo. Pub. Utilities Comm’n*, 2012 CO 28, ¶ 7, 275 P.3d 646, 648. “In the absence of legislative action, it is clear that courts are free to exercise their inherent powers.” *Matter of A.W.*, 637 P. 2d 366, 373–74 (Colo. 1981).

The Constitution provides the Colorado Supreme Court authority to “make and promulgate rules governing the administration of [the] courts” and “practice and

procedure in civil and criminal cases.” Colo. Const. art. VI, § 21. But as the Rules of Civil Procedure make clear, such “rules shall not be construed to extend or limit the jurisdiction of any court.” C.R.C.P. 82 (“Jurisdiction Unaffected”).

That is appropriate, because to do so would violate not only the vestment of jurisdiction but also the separation of the judicial and legislative powers. Colo. Const. art. III. *See Bowles v. Russell*, 551 U.S. 205, 210–14 (2007) (“Because only Congress may determine a lower federal court’s subject-matter jurisdiction, it was improper for courts to use the term jurisdictional to describe emphatic time prescriptions in the rules of court.” (internal citations omitted)); C. Wright, A. Miller, & R. Marcus, *Effect of Rules on Jurisdiction and Venue*, 12 Fed. Prac. & Proc. Civ. § 3141 (3d ed.) (“Rule 82 states [the] important principle” that “[t]he rules merely prescribe the method by which the jurisdiction granted the courts by Congress is to be exercised.”); *Schacht v. United States*, 398 U.S. 58, 64 (1970) (“The procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional....”); C.R.S. § 13-2-108 (providing that the Colorado Rules of Civil Procedure may prescribe “practice and procedure” but “shall neither abridge, enlarge, nor modify the substantive rights of any litigants”).

The district court cited *Brown v. Walker Commercial, Inc.* 2022 CO 57, 521 P.3d 1014, to hold that the deadline set forth in Rule 106.5(a) could not be tolled or

extended. That was error. In *Brown*, a case about a commercial developer’s storm drain fee dispute, the Colorado Supreme Court concluded that the filing deadline for Rule 106(a)(4) actions was a strict jurisdictional limitation that could not be extended for excusable neglect under Rule 6(b) and was not subject to equitable considerations. *Id.* at ¶ 4. As discussed further below, *Brown* does not require the same outcome here, and this Court can and should reverse the dismissal of Mr. Griffith’s complaint notwithstanding that decision.

However—understanding that this Court is bound by *Brown*—Plaintiff respectfully submits that *Brown* was wrongly decided, and that Mr. Griffith’s complaint should not have been dismissed under it for the more fundamental reason that *no* court-authored rule of procedure can be jurisdictional. *Brown* was the culmination of a line of cases, beginning with *Hidden Lake Dev. Co. v. Dist. Ct. In & For Adams Cnty.*, 515 P.2d 632 (Colo. 1973), that rested on the contrary, and incorrect, assumption. The Colorado Supreme Court was not presented with this argument in *Brown* (or before it) and had no occasion to consider it. The Court thus resolved the question before it—whether a particular deadline was jurisdictional—proceeding from a faulty premise. While Plaintiff cannot ask this Court to revisit *Brown*’s reasoning and holding, Plaintiff seeks to preserve the argument that that opinion, and the prior opinions it relied on, strayed from a foundational principle of

law, that it should be overturned, and that reliance on its misguided analysis resulted in the wrongful dismissal of his complaint, which must be reversed.¹⁰

II. The Trial Court Was Empowered to Extend Mr. Griffith's Deadline to File.

A. Standard of Review and Preservation

As noted above, the interpretation of the Colorado Rules of Civil Procedure and the court's subject matter jurisdiction are questions of law reviewed de novo. *Schaden*, ¶ 32; *Burdette*, ¶ 12. This Court also reviews challenges to the constitutionality of rules, including as-applied challenges, de novo. *Walker Commercial*, ¶ 31. Mr. Griffith preserved these issues. CF, pp. 1-2, 133-36.

B. The Deadline for Filing a Rule 106.5 Complaint Is Subject to Extension and Equitable Considerations.

The trial court concluded that even though the facts justified allowing Mr. Griffith to file late, it had to dismiss his complaint because the deadline for filing it was jurisdictional, not subject to equitable considerations, and not extendable under Rule 106.5(j). Those conclusions were wrong. Rule 106.5 expressly authorized the court to alter the time period for filing the complaint, and under the Colorado Supreme Court's decision in *Brown v. Walker Commercial*, that means the rule's

¹⁰ Because reversal is appropriate here even under *Brown*, Plaintiff has not petitioned under C.A.R. 50 for a writ of certiorari from the Colorado Supreme Court.

deadline is also subject to equitable considerations. This Court should construe Rule 106.5 according to its plain language and to avoid an interpretation that would raise grave constitutional concerns, encourage foul play by CDOC, and, as applied here, violate Mr. Griffith's rights to due process and to access the courts. As a matter of law and fundamental fairness, the dismissal of Mr. Griffith's complaint should be reversed.

1. The time period for filing a complaint can be altered for good cause under Rule 106.5(j).

It makes sense that the district court initially read Rule 106.5(j) to allow it to alter the time period for filing a complaint upon motion and for good cause. CF, p. 10. That is what the rule says.

C.R.C.P. 106.5(j) states that "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." There are eight provisions set forth in the rule above subsection (j): subsections (a) through (i). Subsection (a) contains the 28-day deadline for filing the complaint. It provides, in relevant part, that "C.R.C.P. 106(b) . . . shall govern all cases brought under this Rule 106.5." Rule 106(b), called "Limitations as to Time," in turn states that "[i]f no time within which review may be sought is provided by any statute, a complaint . . . shall be filed in the district court not later than 28 days after the final decision of the body or officer." Because the time period for filing a

complaint under Rule 106.5 is set forth in subsection (a), which is above subsection (j), the court was empowered to alter it for good cause.

The district court later reversed course, accepting Defendants’ argument that because the 28-day deadline is not literally spelled out in the text of C.R.C.P. 106.5(a), it is not “set forth above” C.R.C.P. 106.5(j). CF, pp. 143-46. The court did not engage in any independent interpretation of the rule to reach that result. Instead, it cited four unpublished decisions of divisions of this Court—all involving pro se appellants—that endorsed the government’s view.¹¹ The district court read these cases as “establish[ing] there is no ‘good cause’ exception to the deadline for filing the Complaint.” CF, p. 146. This was error.

¹¹ See *Farrow v. Exec. Dir. of Colo. Dep’t of Corr.*, No. 22CA1244, 2023 WL 12052516 at *3 (Colo. App. Aug. 31, 2023), *cert. denied*, No. 23SC738, 2024 WL 966259 (Colo. Mar. 4, 2024) (“The good cause extension does not apply to the deadline for filing a complaint, which is not even set forth in Rule 106.5 but is incorporated from Rule 106(b).”); *Rocha v. Exec. Dir. of Colo. Dep’t of Corr.*, No. 21CA0368, 2021 WL 12338477 at *2 (Colo. App. Nov. 18, 2021) (“[S]ubsection (j) refers to the deadlines “set forth” in Rule 106.5 itself. . . . Nothing in subsection (j) states that any time period outside Rule 106.5, such as the twenty-eight-day deadline in Rule 106(b), may be extended.”); *Shetskie v. Exec. Dir. of Colo. Dep’t of Corr.*, No. 20CA1132, 2021 WL 12344614 at *2 (Colo. App. Sept. 9, 2021) (same); *Grimaldo v. Exec. Dir. of Colo. Dep’t of Corr.*, No. 18CA2175, 2020 WL 14045549 at *2 (Colo. App. June 4, 2020) (same).

a. The time period for filing a complaint is “set forth above” Rule 106.5(j) in Rule 106.5(a).

Rules of civil procedure must be construed “liberally to effectuate their objective to secure the just, speedy, and inexpensive determination of every case and their truth-seeking purpose.” *Antero Res. Corp. v. Strudley*, 2015 CO 26, ¶ 15 (internal citations omitted). They must also be construed “according to [their] commonly understood and accepted meaning, otherwise known as [their] plain language.” *Curry v. Zag Built LLC*, 2018 COA 66, ¶ 23. Here, the district court’s first reading of the rule did both. The construction urged by Defendants does neither.

Nothing about the language in Rule 106.5 requires the illiberal exclusion of the complaint-filing deadline from the time periods eligible for extension for good cause under subsection (j). First, the phrase “set forth” does not have the restrictive meaning Defendants’ construction assigns it. Available online dictionaries define “set forth” to mean “to give an account or statement of,” Merriam-Webster, permalink: <https://perma.cc/Q6PT-P5BE> (archived on Apr. 1, 2026); “to explain ideas, or make rules or suggestions,” Cambridge Dictionary, permalink: <https://perma.cc/B8GS-L549> (archived on Apr. 1, 2026); and to “state, express, or utter,” Dictionary.com, permalink: <https://perma.cc/HS5M-VP4J> (archived on Apr. 1, 2026).

Rule 106.5(a) provides the deadline for filing a complaint under Rule 106.5. It states, expresses, explains, gives an account of, and makes the rule. The fact that it does so by reference to another provision doesn't change that.

After all, the very point of such a cross-reference is that “[t]he requirements of the referenced material are . . . ‘incorporated into’ or ‘adopted into’ the legislation that adopted them, without the necessity of printing the text verbatim.” F. Scott Boyd, *Looking Glass Law: Legislation by Reference in the States*, 68 La. L. Rev. 1201, 1210 (2008). The use of references has long been “recognized as a proper enactment of legislation to avoid encumbering the statute books by unnecessary repetition.” *Apple v. City & Cnty. of Denver*, 390 P.2d 91, 95 (Colo. 1964). Indeed, incorporating references are ubiquitous in statutes and court rules. Edward A. Hartnett, *Repairing the Reference Canon*, 27 N.Y.U.J. Legis. & Pub. Pol’y 679, 698 (2025) (noting that rules “are full of references, sometimes to other parts of the same rule, sometimes to other titles, articles, or parts of the same set of rules, and sometimes to different sets of rules”). When an incorporating reference is used, it “in effect ‘cuts and pastes’ the statute specifically referenced. . . . The result is as if the statute or the part adopted were written into the adopting statute for the purpose of carrying into execution the statute in which the reference is made.” 82 C.J.S. Statutes § 90; *see also* Norman Singer & Shambie Singer, 2B Sutherland Statutory

Construction § 51:8 (7th ed.) (“Those particular provisions become part of the adopting statute as though written therein, and are enforced by virtue of the adopting act.”); *Schwenke v. Union Depot & R. Co.*, 4 P. 905, 907 (Colo. 1884) (discussing the effect of an incorporating reference as “just the same, in our judgment, as though congress had copied into the latter act these provisions from the former”). Because Rule 106.5(a) incorporates Rule 106(b) by reference, Rule 106.5(a) must be construed as if it includes the text of Rule 106(b).

This is standard practice. It is commonplace for judicial opinions to refer to material as “set forth” in particular statutes or rules, even where some of that material is set forth by use of a cross-reference to another provision. For example, in *Roane v. Archuleta*, 2022 COA 143, *aff’d*, 2024 CO 74, the court of appeals explained that the case before it was “subject to the simplified procedures *set forth* in C.R.C.P. 16.1.” *Id.* at ¶ 3. It noted that those procedures “require the parties to make the disclosures specified in C.R.C.P. 16.1(k)(1) and allow the limited discovery described in C.R.C.P. 16.1(k)(4).” *Id.* C.R.C.P. 16.1(k)(1) and (k)(4), in turn, each reference other rules of procedure, which must be consulted in order to understand the meaning of the requirements of the provisions of C.R.C.P. 16.1. For example, C.R.C.P. 16.1(k)(1)(a) states that “[e]ach party shall make disclosures pursuant to C.R.C.P. 26(a)(1), 26(a)(4), 26(b)(5), 26(c), 26(e) and 26(g) no later than 28 days

after the case is at issue as defined in C.R.C.P. 16(b)(1). In addition to the requirements of C.R.C.P. 26(g), the disclosing party shall sign all disclosures under oath.” Yet there is no doubt the court intended to encompass these requirements when it described what the procedures “set forth” in C.R.C.P. 16.1 require. Indeed, the title of that subsection makes clear that it governs “Disclosures in All Cases” brought under Rule 16.1.

The point is simply that the “commonly understood and accepted meaning” of text “set forth” in a provision of law includes material incorporated therein by reference to a different rule. *Cf. Black v. Cent. Puget Sound Reg'l Transit Auth.*, 457 P.3d 453, 459-60 (Wash. 2020) (holding legislature complies with constitutional requirement to “set forth at full length” laws to be amended in new enactments when it adopts them by reference, because a contrary rule “would contradict the purpose of permitting reference statutes, which is to ‘avoid encumbering the statute books by unnecessary repetition’”). Fundamentally, the fact that Rule 106(b) must be consulted to understand Rule 106.5(a) does not alter the fact that Rule 106.5(a) is the source of, and thus “sets forth,” the requirement that a Rule 106.5 complaint be filed within 28 days.

It is true that some time limits in Rule 106.5 actions, such as for responding to the complaint, submitting the administrative record, and filing supporting briefs,

are spelled out within the confines of the rule. C.R.C.P. 106.5(e), (f), and (i). But there is an easy explanation for that distinction when reading the rule “as a whole, ‘giving consistent, harmonious, and sensible effect to all if [its] parts.’” *Schaden*, ¶ 32. The default rule is that the provisions of Rule 106(a)(4) apply to Rule 106.5 actions “except where modified by . . . Rule 106.5.” C.R.C.P. 106.5(a). And each subsection of Rule 106.5 with an enumerated deadline modifies the procedures that would otherwise apply under the terms of Rule 106(a)(4). *Compare, e.g.*, Rule 106(a)(4)(III)-(IV), *with* Rule 106.5(f) (procedures governing filing of record). In contrast, the complaint filing deadline in Rule 106.5(a) apparently needed no modification from what had already been laid out in Rule 106(b) other than to make it subject to modification for good cause under subsection (j). The choice to refer to Rule 106(b) “rather than copy the text of that referenced law” is therefore easily explained either because “the referenced law had exactly the language desired in the new law and it would be more efficient to refer to that language rather than reproduce it in full,” or because the drafters wanted to ensure “the new law would work together with the referenced law, both now and in the future.” Hartnett, *Repairing the Reference Canon*, at 715.

Given that Rule 106.5(a) incorporates Rule 106(b) by reference, it is unreasonable to impute to the drafters an intention of singling out the complaint-

filing deadline as a time period not “set forth” above Rule 106.5(j). Had the aim been to authorize courts to alter for good cause only those time periods in subsections (e), (f), and (i), the rule could have simply said so. Or it could have expressly excluded subsection (a) from its coverage. The drafters also could have amended Rule 106(b) itself to state that it applies to Rule 106.5 actions. That the drafters chose none of these options only highlights how much strain is required to read the text as Defendants urged below.

In sum, the plain language of Rule 106.5(j), read in the context of the rule as a whole and giving effect to all the rule’s parts, *People v. Subjack*, 2021 CO 10, ¶ 14, 480 P.3d 114, 117, means what the trial court initially understood: that it was empowered to alter the time period for filing a complaint upon motion and for good cause shown. That reading also comports with the requirement that the rules of civil procedure be construed liberally to fulfill their purpose of seeking truth and securing justice in every case. *Strudley*, ¶ 15.

b. The doctrine of constitutional doubt requires construing Rule 106.5(j) to allow an enlargement of time for filing the complaint in cases like Mr. Griffith’s.

Even if the language of Rule 106.5(j) were susceptible to the interpretation the trial court relied on to dismiss Mr. Griffith’s complaint, the canon of constitutional doubt would resolve any question about Rule 106.5(j)’s meaning and

require reversal. “That canon directs that when “competing interpretations . . . are textually supportable,” courts must reject the interpretation that “would raise serious doubts about the constitutionality of the [rule].” *People v. Iannicelli*, 2019 CO 80, ¶ 76, 449 P.3d 387, 401-02 (Samour, J., dissenting). The Colorado Supreme Court has endorsed this canon and directed Colorado courts to construe ambiguous rules “to avoid the need even to address serious questions about their constitutionality.” *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 74, 467 P.3d 314, 331 (construing a statute).

Here, the construction of the rule urged by the government and ultimately adopted by the trial court—strictly to require the dismissal of any late-filed complaint without regard for the circumstances that prevented the prisoner from filing on time, CF, p. 119-21, 146—must be rejected because it at the very least¹² raises serious constitutional questions.

First, for the reasons discussed in Part I, treating the filing deadline set forth in Rule 106.5(a) as jurisdictional renders it unconstitutional under the separation of powers and vestment clauses because court-made procedural rules cannot affect jurisdiction.

¹² As discussed in Part II(B)(3) below, as ultimately construed by the trial court, Rule 106.5’s filing deadline is unconstitutional as applied to Mr. Griffith because CDOC’s conduct prevented him from meeting it, despite his best efforts.

Second, Colorado courts have acknowledged that filing deadlines that lack exception implicate due process concerns. In *People v. Germany*, the Colorado Supreme Court struck down a strict limitations period for a statute that allowed collateral challenges to criminal convictions because its time bar operated “without regard to the cause or circumstance underlying the failure to raise an earlier challenge.” 674 P.2d 345, 352 (Colo. 1983). The Court held that “due process protections of the United States and Colorado Constitutions prevent the state from employing a system of forfeiture with respect to constitutional claims solely on the basis of a time bar, without affording an accused a meaningful opportunity to establish that the failure to make a timely challenge was the result of circumstances amounting to justifiable excuse or excusable neglect.” *Id.* at 353.

Article II, section 6 of the Colorado Constitution further provides that “[c]ourts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.” This provision ensures the availability of a judicial forum to effectuate a right if that right has accrued under the law. *Estate of Stevenson v. Hollywood Bar & Cafe, Inc.*, 832 P. 2d 718, 721 (Colo. 1992). A limitations period may “unduly restrict the right of access to the courts” where it “amount[s] to a denial of justice.” 832 P. 2d at 721.

Rule 106.5 “applies to every action brought by an inmate to review a decision resulting from a quasi-judicial hearing of any facility of the Colorado Department of Corrections.” C.R.C.P. 106.5(a). It is the exclusive remedy Colorado provides for a prisoner who seeks to challenge the constitutionality of their COPD conviction. *Harms*, ¶ 10, 410 P.3d at 565 (“[W]here an inmate challenges the CDOC’s quasi-judicial action, his claim falls within the scope of Rule 106.5, and he must bring his action in accordance with the rule. Due process challenges to the hearing procedure, challenges to the hearing officer’s factual findings, and as-applied constitutional challenges to the COPD or other administrative regulations all constitute challenges to CDOC’s quasi-judicial action.”). A prisoner may not even bring a constitutional challenge to a COPD proceeding under 42 U.S.C. § 1983 if the claim implies the invalidity of the disciplinary conviction. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997).

Rule 106.5 codifies, in the prison context, the longstanding common law right to judicial review of quasi-judicial state government decisions. *See Brown*, ¶ 23; *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (liberty interest protected by due process “may arise from an expectation or interest created by state laws or policies”); *Dep’t of Health v. Donahue*, 690 P.2d 243, 249 (Colo. 1984) (When the state creates rules that are more protective than the constitution requires, due process may require

the state to honor those protections). Even under the government’s view that such review must be sought within 28 days of the decision being challenged, the rule cannot require that a court turn its back where a prisoner does not receive the *opportunity* to seek judicial review within the allotted time. As a matter of due process, a limitations period cannot deprive a court of the ability to distinguish between “constitutional challenges which could and should have been asserted in a timely manner and those which, due to special circumstances or causes, could not have been.” *Germany*, 674 P.2d at 353. Because that is precisely what the government’s construction of the rule does, this Court must reject it.

Indeed, the trial court’s application of that construction of the rule to Mr. Griffith highlights the grave risk to individuals’ rights to access the courts and to due process that its interpretation invites. Mr. Griffith could not avail himself of the exclusive remedy Colorado afforded him to challenge the constitutionality of his disciplinary conviction because the prison prevented him from doing so before the 28-day period had already expired.¹³ Indeed, in Mr. Griffith’s case, the very

¹³ The CDOC conduct that prevented him from filing within the 28-day period is, itself, of constitutional magnitude. At minimum, under the federal standard, which is less protective of individual rights than the Colorado Constitution, Mr. Griffith was entitled to the legal materials necessary to “challenge the conditions of [his] confinement.” *Lewis v. Casey*, 518 U.S. 343, 355 (1996). Mr. Griffith sought the most basic of these: the address of the court and the correct form. Because he was in the MCU, Mr. Griffith was dependent on CDOC to provide materials to him in

deprivation of liberty he sought to challenge allowed the opposing party to prevent him from filing timely. Yet the court concluded that the rule required it to close its eyes to these facts. As demonstrated here, treating Rule 106.5's deadline as being entirely insensitive to the circumstances that prevented a prisoner from filing on time raises serious due process and access to court concerns. This Court should "decline to read into [the rule] the constitutional problem[s] that [the trial court's] construction invites." *Rocky Mountain Gun Owners*, ¶ 74.

2. Reversal is consistent with *Brown v. Walker Commercial*

As discussed above, the line of cases starting with *Hidden Lake* and culminating in *Brown* made a fundamental misstep: assuming the judiciary's procedural rules have the power to vest and divest district court jurisdiction. That historical error set Colorado courts on a long path in the wrong direction. While this Court cannot reverse course in this case, it can decide this appeal without further compounding the harm of prior courts' mistakes. Reversal here is appropriate, even under *Brown*.

The question before the Colorado Supreme Court in *Brown* was whether the 28-day filing deadline for Rule 106(a)(4) actions could be extended for excusable

time, which it did not. *Id.* (holding that a prisoner demonstrates a violation of his right to access the courts when the prison's shortcomings in providing legal materials hinder his efforts to pursue a nonfrivolous legal claim).

neglect under Rule 6(b). 2022 CO 57, ¶ 1. Walker Commercial was a developer that had an approved plan to develop commercial property into a self-storage facility and protested when the city invoiced it for part of a storm drain development fee. *Id.* at ¶ 5. After a hearing on the dispute, the director of the city’s water planning commission emailed the developer the final fee the city would accept. *Id.* Walker’s counsel confirmed the email was the director’s final decision. *Id.* The developer filed a Rule 106(a)(4) complaint 30 days later—2 days past the 28-day deadline in Rule 106(b). *Id.* at ¶ 2. It was apparently relying on an ordinance that said the director’s decision become effective after 30 days unless challenged in the district court. *Id.* at ¶ 7.

As relevant here, the city moved to dismiss the complaint as untimely, and Walker responded and moved for an extension under Rule 6(b), which generally allows extensions of time for acts parties must take under the Colorado Rules of Civil Procedure. *Id.* at ¶¶ 6–8. Walker also argued that the 30-day ordinance was the operative deadline, and that applying the shorter 28-day deadline would violate its due process rights. The district court dismissed Walker’s complaint. *Id.* at ¶¶ 9–10.

On appeal, agreeing that the 28-day deadline applied, the division acknowledged that it was required to “consider whether strictly applying that deadline under the circumstances of this case violates Walker’s right to due process.”

Walker Commercial Inc. v. Brown, 2021 COA 60, ¶ 29, *rev'd*, 2022 CO 57. It found no due process violation on the facts before it but reversed and remanded for the lower court to consider Walker’s excusable neglect motion under Rule 6(b). 2022 CO 57, ¶ 12.

The Colorado Supreme Court reversed. It held that “Rule 106(b) establishes a strict limitation period for invoking the court’s jurisdiction under Rule 106(a)(4),” and that “courts may not use Rule 6(b)’s excusable neglect standard to extend the filing deadline under Rule 106(b).” *Id.* at ¶ 4. It concluded the trial court properly dismissed Walker’s complaint as untimely. *Id.* at ¶ 50. For several reasons, *Brown* does not require the same outcome here.

First, *Brown* held that failure to meet the 28-day deadline in Rule 106(b) prevents a complainant from invoking the court’s jurisdiction under Rule 106(a)(4). *Id.* at ¶ 17. It did not address actions brought pursuant to Rule 106.5. The Colorado Supreme Court has never held that a prisoner is barred from invoking the district court’s jurisdiction under Rule 106.5 for missing a filing deadline. While divisions of this court have stated as much, they have done so on the assumption that precedent

considering Rule 106(a)(4) actions should govern¹⁴—just as the trial court did here. But under the analysis in *Brown*, that assumption does not hold.

Brown teaches that whether a deadline is subject to waiver, extension, tolling, and other equitable considerations turns on whether the limitation period comes from a “statute of limitations” or a “non-claim statute.”¹⁵ *Brown*, ¶ 34. Statutes of limitations “limit the time in which an action may be brought, but do not deprive a court of jurisdiction,” whereas non-claim statutes are jurisdictional “conditions on the existence of a right to seek redress.”¹⁶ *Id.* at ¶¶ 35-36 (citations omitted).

“Filing deadlines ordinarily are not jurisdictional,” and the U.S. Supreme Court has “cautioned [that] courts should treat the restriction as nonjurisdictional in

¹⁴ Only two published court of appeals decisions address the issue, and neither includes any analysis. See *Geerdes v. Dir., Colo. Dep’t of Corr.*, 226 P. 3d 1261, 1261 (Colo. App. 2010); *Garcia v. Harms*, 2014 COA 154, ¶ 12, 410 P.3d 561.

¹⁵ That the *Brown* Court’s analysis of the effect of a procedural rule relied on the distinction between two kinds of *statutes* reflects the throughline in Colorado case law on this subject confusing the power of the judiciary and the legislature. The Court was trying to distinguish between apples when what was before it was an orange. This section accepts *Brown*’s reasoning notwithstanding this more fundamental error, discussed in Part I, above.

¹⁶ Again, this section accepts the premise that a court-promulgated procedural rule can ever place a condition on the existence of a right, even though the legislation authorizing the Colorado Rules of Civil Procedure made clear “[s]uch rules shall neither abridge, enlarge, nor modify the substantive rights of any litigants.” An Act Authorizing the Supreme Court of Colorado by Rule to Prescribe the Procedure in Civil Actions in Courts of Record in Colorado, 1939 Colo. Sess. Laws 264.

character” absent some clear statement to the contrary. *Sebelius v. Auburn Reg’l Med. Ctr.*, 568 U.S. 145, 153 (2013). The Colorado Supreme Court stated in *Brown* that the test for distinguishing the two types of limitation periods looks to the language of the rule to discern the drafters’ intent:

language suggesting that a provision is a non-claim statute includes language stating that (1) the failure to file a claim within the statutory period bars the claim, (2) a timely filing is a condition to the existence of the claim itself, or (3) the failure to file within the statutory period “deprives courts of jurisdiction over such a claim.”

Brown, ¶ 37. No such language exists in Rule 106.5—nor, for that matter, Rule 106.¹⁷ The Court nonetheless concluded Rule 106(a)(4) claims are strictly barred by untimely filings because of “an unbroken line of case law over nearly half a century” saying so. *Id.* at ¶¶ 38-42. The same is not true for Rule 106.5, which was only passed in 2008 and which the Colorado Supreme Court has never construed.

Moreover, and crucially, Rule 106.5 contains what Rule 106 lacks: an explicit statement that courts can, on motion and for good cause shown, alter the time periods it prescribes. C.R.C.P. 106.5(j). That is enough to end the inquiry. Indeed, in *Brown*, the Court acknowledged that it had previously extended “jurisdictional” deadlines in the Colorado Appellate Rules—but it distinguished those rules because they

¹⁷ *Brown* did not explain how the language of Rule 106 supported the Court’s conclusion that it was a non-claim statute, instead relying on a line of cases that had treated it as such, also without analysis.

“expressly allow for an extension of time to their respective deadlines.” *Brown*, ¶ 45 n.7 (citing C.A.R. 4(a)(4), C.A.R. 4(b)(3), and C.A.R. 4.1(i)). The same is true in Rule 106.5. In fact, the language in Rule 106.5(j) is essentially identical to language the Colorado Supreme Court deemed sufficient in *Brown* to render an otherwise “jurisdictional” deadline extendable. *Compare*, 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”), *with* C.A.R. 4.1(i) (“The court may extend the time limits established in this rule for good cause shown . . .”). Under *Brown*, Rule 106.5’s complaint filing deadline is subject to extension because the rule “expressly allow[s]” it.

Finally—and fundamentally—this case is simply not *Brown*. The Court reasoned in *Brown* that construing Rule 106(a)(4) to provide a short jurisdictional deadline “serve[d] important practical purposes,” because it “promote[d] government efficiency and sound municipal planning.” *Brown*, ¶ 43. In particular, the Court concluded that its interpretation appropriately “balance[d] a citizen’s right to have their case heard against the need for efficient municipal planning.” *Id.* Those interests are not comparable to the ones at stake in this appeal.

This case does not concern municipal planning or the ordinary affairs of government. Mr. Griffith is not a commercial developer. He did not have an attorney

who filed papers late because of arguably excusable neglect. And he does not protest a storm drain development fee. Prison disciplinary convictions carry potentially tremendous consequence for a person’s life and liberty—including access to services, housing placements, risk classifications, good time credits, and the chance for parole and clemency.¹⁸ In Mr. Griffith’s case, he was placed in solitary confinement for the statutory maximum of 15 days—where he was restricted to a cell for 22 hours a day; reclassified to one of the most severe custody designations; and transferred to a maximum-security facility. Those restrictions, in turn, put him at the mercy of CDOC to seek access to the courts for judicial review of its decision. And CDOC’s own actions prevented Mr. Griffith from filing on time despite his best efforts.

As *Brown* explained, limitations periods function “to promote justice, discourage unnecessary delay, and forestall prosecution of stale claims.” *Brown*, ¶ 34 (quoting *Dean Witter Reynolds, Inc. v. Hartman*, 911 P.2d 1094, 1096 (Colo. 1996)). Dismissal here accomplished none of that. On the contrary, these are the paradigmatic circumstances that warrant equitable tolling. *See Brown* ¶ 35 & n. 5

¹⁸ *See, e.g.*, C.R.S. §§ 17-22.5-201(1), 404(4)(a)(V), 405(1.5)(a)(II); A.R. 150-01(IV)(F)(5); A.R. 250-84(IV), Executive Clemency (Dec. 15, 2025); A.R. 600-01(IV)(E)(2)(g); A.R. 625-02(IV)(C)(2)(b), Earned Time (Nov. 1, 2024); A.R. 650-01(IV)(A)(1), Incentive Living Program (Oct. 1, 2025).

(explaining that equitable tolling applies when “flexibility is required to accomplish the goals of justice,” particularly where “the defendant’s wrongful conduct prevented the plaintiff from asserting their claims in a timely manner” or other “extraordinary circumstances make it impossible for the plaintiff to file” on time (citations omitted)). Indeed, the prevention of Mr. Griffith’s timely filing in this case was a wrong of constitutional magnitude, *see* n. 13, *supra*. Construing Rule 106.5 to prevent courts from even *considering* the equities and to require the dismissal of cases like Mr. Griffith’s would invite CDOC to subvert the purpose of Rule 106.5 and insulate its conduct from judicial review.

Under *Brown*, and as a matter of fundamental fairness, Mr. Griffith must be afforded a meaningful opportunity to seek review of his disciplinary conviction in a Colorado district court. This Court should reverse the dismissal of his complaint.

3. Due Process Requires Reversal.

Even if this Court construes the deadline for filing a Rule 106.5 complaint as a jurisdictional bar subject to no equitable exceptions, it still must “consider whether strictly applying that deadline under the circumstances of this case violates [Mr. Griffith]’s right to due process.” *Walker Commercial Inc. v. Brown*, 2021 COA 60,

¶ 29.¹⁹ Either way, the trial court’s treatment of the rule below must be rejected as unconstitutional as applied to Mr. Griffith.

Divisions of this court have recognized that applying Rule 106(b)’s jurisdictional deadline could raise constitutional concern where a person does not have the opportunity to avail themselves of the rule’s procedures. *E.g.*, *Baker v. City of Dacono*, 928 P.2d 826, 827 (Colo. App. 1996) (noting due process issue could arise where a party did not receive timely notice of a final administrative decision); *see also* Part II(B)(1.b), *supra*. That is the case here.

Mr. Griffith was prevented from utilizing the exclusive remedy Colorado provides for challenging his disciplinary conviction. As a result of the disciplinary decision he is trying to challenge, he was placed in solitary confinement and his access to legal resources was drastically limited. Because of these restrictions, Mr. Griffith had to rely on CDOC to provide him with the materials he needed to secure judicial review. CDOC failed to provide him with those materials in a timely manner. The very deprivation of liberty he sought to challenge allowed the opposing party—the state prison—to prevent him from filing timely. Because had no access to a

¹⁹ Under the Colorado Constitution, that right is informed by article II, section 6, which guarantees access to the courts and has no federal parallel, reflecting the state’s policy of the “availability of [...] judicial forum[s]” to effectuate rights accrued under the law. *Huizar v. Allstate Ins. Co.*, 952 P. 2d 342, 346 (Colo. 1998).

judicial forum during the 28-day time period, applying it to bar his claim “unduly restrict[ed] the right of access to the courts” and “amount[s] to a denial of justice.” *Estate of Stevenson*, 832 P.2d at 721. That is exactly the implication of a jurisdictional time limit that *Germany* found would be intolerable. See 674 P.2d at 353. This Court must reverse.

CONCLUSION

Mr. Griffith respectfully requests that the Court reverse the order of dismissal and remand for further proceedings.

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Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2026, I served via the Colorado Court E-Filing System a copy of the foregoing Opening Brief on all parties of record.

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