

COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, CO 80203 Chaffee County District Court Case No. 2025CV2 ADAM C. GRIFFITH, Plaintiff-Appellant, v. EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF CORRECTIONS AND WARDEN OF BUENA VISTA CORRECTIONAL FACILITY, Defendants-Appellees. PHILIP J. WEISER, Attorney General REBEKAH RYAN, Senior Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 T: 720.508.6000 F: 720.508.6032 E-Mail: rebekah.ryan@coag.gov Registration Number: 51239 *Counsel of Record		▲ COURT USE ONLY ▲ Case No. 2025CA2233
ANSWER BRIEF		

TABLE OF CONTENTS

	PAGE
CERTIFICATE OF COMPLIANCE	v
STATEMENT OF THE ISSUES	1
I. Did the district court properly dismiss Griffith’s Complaint for lack of subject-matter jurisdiction where Griffith initiated the case one month after and filed his Complaint almost two months after the filing deadline?	1
II. Is the twenty-eight-day jurisdictional deadline properly applied to Griffith’s Complaint?	1
STATEMENT OF THE CASE	1
I. Nature of the Case	1
II. Statement of Facts and Course of Proceedings	2
SUMMARY OF ARGUMENT	5
ARGUMENT	7
I. The trial court properly dismissed Griffith’s Complaint because it lacked subject-matter jurisdiction over the action when Griffith filed the Complaint more than two months after the jurisdictional filing deadline.	7
A. Preservation and Standard of Review	7
B. The trial court correctly determined that it lacked jurisdiction over Griffith’s Complaint and could not toll or waive the filing deadline.	8
II. The twenty-eight-day jurisdictional deadline set forth in C.R.C.P. 106(b) is properly applied to Griffith’s Complaint	17
A. Preservation and Standard of Review	17

TABLE OF CONTENTS

	PAGE
B. Court rules may limit the subject matter jurisdiction of the court-created Rule 106.5 review process.	18
CONCLUSION.....	21
CERTIFICATE OF SERVICE	23

TABLE OF AUTHORITIES

PAGE

CASES

<i>Auxier v. McDonald</i> , 2015 COA 50	9, 11
<i>Baker v. City of Dacono</i> , 928 P.2d 826 (Colo. App. 1996).....	12, 14, 16
<i>Brooks v. Raemisch</i> , 371 P.3d 738 (Colo. App. 2016)	10
<i>Brown v. Walker Com., Inc.</i> , 2022 CO 57	passim
<i>Farrow v. Exec. Dir. of Colorado Dep’t of Corr.</i> , No. 22CA1244, 2023 WL 12052516 (Colo. App. Aug. 31, 2023)	14
<i>Garcia v. Harms</i> , 410 P.3d 561 (Colo. App. 2014).....	8, 9
<i>Gold Star Sausage Co. v. Kempf</i> , 653 P.2d 397 (Colo. 1982)	9
<i>Grant Brothers Ranch, LLC v. Antero Res. Piceance Corp.</i> , 409 P.3d 637 (Colo. App. 2016).....	7
<i>Grimaldo v. Exec. Dir. of Colorado Dep’t of Corr.</i> , No. 18CA2175, 2020 WL 14045549 (Colo. App. June 4, 2020).....	14
<i>Kodama v. Johnson</i> , 786 P.2d 417, (Colo. 1990)	8, 12
<i>Negron v. Golder</i> , 111 P.3d 538 (Colo. App. 2004)	13
<i>Patterson v. James</i> , 2018 COA 173.....	14
<i>Rocha v. Exec. Dir. of Colorado Dep’t of Corr.</i> , No. 21CA0368, 2021 WL 12338477 (Colo. App. Nov. 18, 2021)	14
<i>Shetskie v. Exec. Dir. of Colorado Dep’t of Corr.</i> , No. 20CA1132, 2021 WL 12344614 (Colo. App. Sept. 9, 2021)	14
<i>Slaughter v. County Court</i> , 712 P.2d 1105 (Colo. App. 1985).9, 11, 14, 16	
<i>Thomas v. Colorado Dep’t of Corrs.</i> , 117 P.3d 7 (Colo. App. 2004)	13

TABLE OF AUTHORITIES

	PAGE
<i>Wallin v. Cosner</i> , 210 P.3d 479 (Colo. App. 2009)	9, 11
<i>Witcher v. Canon City</i> , 716 P.2d 445 (Colo. 1986)	15

STATUTES

§ 13-21-131, C.R.S.	13
42 U.S.C. § 1983	13

RULES

C.R.C.P. 12(b)(1)	3
C.R.C.P. 12(h)(3)	7
C.R.C.P. 106(a)(4)(I)	12
C.R.C.P. 106(b)	4, 9, 10
C.R.C.P. 106.5	1, 18, 20, 21
C.R.C.P. 106.5(a)	8, 12
C.R.C.P. 106.5(j)	passim

CERTIFICATE OF COMPLIANCE

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

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

☒ It contains 3,862 words (principal brief does not exceed 9500 words; reply brief does not exceed 5700 words).

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

☐ For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

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

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

/s/ Rebekah Ryan

Defendants-Appellees, Executive Director of the Colorado Department of Corrections and Warden of Buena Vista Correctional Facility, through the Colorado Attorney General, submit the following Answer Brief.

STATEMENT OF THE ISSUES

- I. Did the district court properly dismiss Griffith's Complaint for lack of subject-matter jurisdiction where Griffith initiated the case one month after and filed his Complaint almost two months after the filing deadline?
- II. Is the twenty-eight-day jurisdictional deadline properly applied to Griffith's Complaint?

STATEMENT OF THE CASE

I. Nature of the Case

Plaintiff-Appellant Adam Griffith appeals the order dismissing his C.R.C.P. 106.5 Complaint for lack of subject matter jurisdiction because the Complaint was untimely filed. On appeal, Griffith and interested parties Spero Justice Center and Legislation Inside via a Brief of Amici Curiae argue that the twenty-eight-day deadline to file an appeal pursuant to C.R.C.P. 106.5 is not jurisdictional and may be extended for equitable considerations, challenging existing Colorado Supreme Court

precedent to the contrary. Because binding precedent clearly supports the district court's decision and the arguments to overturn or otherwise work around such precedent are unavailing, this Court should affirm the district court's order of dismissal.

II. Statement of Facts and Course of Proceedings

Griffith is an inmate incarcerated in the custody of CDOC. CF, pp. 1, 13. On December 30, 2024, while housed at Buena Vista Correctional Facility (BVCF), Griffith was convicted of Escape Without Force (Attempt), a Class I, Rule 8 violation of the Code of Penal Discipline (COPD). CF, p. 13. Griffith appealed his disciplinary conviction to the Administrative Head of BVCF, who upheld the conviction on January 8, 2025. CF, p. 13.

This cause of action began when Griffith filed a Motion [to] Allow Filing of Rule 106.5 Complaint for Review of Quasi-Judicial Action of the CDOC out of Time ("Motion to Allow") on or about March 7, 2025, requesting the Court grant him an extension of time to file a Rule 106.5 complaint. CF, pp. 1-2. In the Motion to Allow, Griffith alleged that he had no physical access to the law library, that he sent a paper request

for legal assistance on January 22, 2025, and that he did not receive any response on that request until February 24, 2025, after the deadline to file had already passed. CF, p. 1. He further stated that he received the required forms on March 6, 2025, and was waiting on a certified account statement to attach to his request to proceed in forma pauperis. CF, pp. 1-2.

The district court asked Griffith to provide documentation showing the date of final agency action. CF, p. 5. On March 31, 2025, Griffith provided a copy of the Offender Appeal showing January 8, 2025, as the date of final agency action. CF, p. 7. On April 6, 2025, the district court granted Griffith's Motion to Allow, citing C.R.C.P. 106.5(j) as authority allowing the Court to alter the time for filing of the complaint. CF, pp. 9-10. Griffith filed his Complaint on April 25, 2025, by way of placing it in the inmate legal mail at his facility. CF, p. 63.

Defendants-Appellees moved to dismiss the complaint for lack of subject matter jurisdiction pursuant to C.R.C.P. 12(b)(1), asking the district court to reconsider its prior ruling on the Motion to Allow. CF, pp. 116-21. Defendants-Appellees argued that dismissal was required

under C.R.C.P. 106(b) because Griffith did not file either the Motion to Allow or the Complaint within the twenty-eight-day deadline and that C.R.C.P. 106.5(j) does not allow the court to alter that jurisdictional deadline. CF, pp. 116-21.

Griffith filed a Brief in Response to Defendants' Motion to Dismiss ("Response"). CF, pp. 133-36. In his Response, Griffith argued that there is not precedent for a case such as his where CDOC allegedly impeded his ability to timely file his Complaint. CF, p. 133. He argued that CDOC's delay in responding to his request for documents posed an "insurmountable obstacle, a severe conflict of interest, and an unprecedented violation of [his] due process right under the 14th Amendment." CF, p. 133. He argued that if his Complaint was not accepted, he would never get review of CDOC's unconstitutional actions in delaying his filing. CF, pp. 133-34. He further argued that his delay in filing the Complaint was due to circumstances beyond his control and that the Motion to Dismiss was filed out of time. CF, pp. 134-35.

On October 2, 2025, the district court granted the Motion to Dismiss, finding that binding authority indeed held that the twenty-

eight-day deadline is jurisdictional and not subject to equitable tolling or extension for excusable neglect. CF, pp. 143-46. The district court further held that C.R.C.P. 106.5(j) does not allow for extension of the twenty-eight-day deadline for filing of the Complaint, even if good cause is shown. CF, pp. 146-49.

SUMMARY OF ARGUMENT

Dismissal of Griffith's Complaint should be affirmed because the district court lacked subject-matter jurisdiction over the Complaint when Griffith filed it beyond the filing deadline set out in Rule 106(b), which applies to COPD appeals under Rule 106.5. Colorado appellate courts have repeatedly affirmed that the twenty-eight-day filing deadline in Rule 106(b) is jurisdictional and cannot be tolled or waived. The district court therefore lacked discretion or authority to toll that deadline.

Griffith's Complaint was filed on April 25, 2025, more than twenty-eight days after the final agency action on his COPD conviction on January 8, 2025. The alleged actions of CDOC in impeding Griffith's ability to file a timely complaint are immaterial to the determination of

jurisdiction because the twenty-eight-day is not subject to equitable tolling or excusable neglect. Because Griffith's Complaint was filed beyond the twenty-eight-day jurisdictional limitation, the dismissal of his Complaint for lack of subject matter jurisdiction should be affirmed.

Neither Griffith nor the other interested parties have shown that the twenty-eight-day jurisdictional deadline is not properly applied to him. Actions under both Rule 106(a)(4) and Rule 106.5 are court-created, and court rules can properly limit the jurisdiction of courts to hear such court-created actions. Griffith's and amici's attempts to either overturn or limit the application of existing precedent fail because they ultimately rely on separation of powers principles. But the separation of powers is not violated when the court places jurisdictional limitations on substantive rights that the court created in the first place.

ARGUMENT

I. The trial court properly dismissed Griffith's Complaint because it lacked subject-matter jurisdiction over the action when Griffith filed the Complaint more than two months after the jurisdictional filing deadline.

A. Preservation and Standard of Review

Defendants-Appellees agree that Griffith preserved for review his argument that the district court should exercise jurisdiction over the Complaint, even though it was filed beyond the twenty-eight-day deadline. Op. Br., p. 13. Defendants-Appellees also agree that subject matter jurisdiction is a question of law reviewed de novo. Op. Br. at 13. When reviewing a dismissal under Rule 12(b)(1) for lack of subject-matter jurisdiction, this Court reviews factual findings for clear error and legal conclusions de novo. *Grant Brothers Ranch, LLC v. Antero Res. Piceance Corp.*, 409 P.3d 637, 641 (Colo. App. 2016). Factual findings “will be upheld unless they have no support in the record.” *Id.* “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” C.R.C.P. 12(h)(3).

B. The trial court correctly determined that it lacked jurisdiction over Griffith's Complaint and could not toll or waive the filing deadline.

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 [CDOC.]” C.R.C.P. 106.5(a). This includes review of disciplinary convictions under the COPD. “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.” *Garcia v. Harms*, 410 P.3d 561, 565 (Colo. App. 2014). Accordingly, any such claims “must be brought in a Rule 106.5 action.” *Id.*

Certain provisions of Rule 106, which formerly governed judicial review of prison disciplinary actions, *see Kodama v. Johnson*, 786 P.2d 417, 419-20 (Colo. 1990), still apply to proceedings under Rule 106.5. In particular, “[t]he provisions of C.R.C.P. 106(b) and C.R.C.P. 5 shall govern all cases brought under this Rule 106.5.” *Id.* Rule 106(b) sets out time limitations applicable to these proceedings. The Rule requires

that a complaint for judicial review be filed within twenty-eight days of the final agency action:

If no time within which review may be sought is provided by any statute, a complaint seeking review under subsection (a)(4) of this Rule *shall* be filed in the district court not later than 28 days after the final decision of the body or officer.

C.R.C.P. 106(b) (emphasis added).

Failure to file a Rule 106 or 106.5 action within twenty-eight days is a jurisdictional defect. *Gold Star Sausage Co. v. Kempf*, 653 P.2d 397, 400 (Colo. 1982). This twenty-eight-day time limit cannot be tolled or waived. *Brown v. Walker Com., Inc.*, 2022 CO 57, ¶ 38; *Auxier v. McDonald*, 2015 COA 50, ¶ 12; *Slaughter v. County Court*, 712 P.2d 1105, 1106 (Colo. App. 1985). Accordingly, as this Court has repeatedly held, a complaint challenging a prison disciplinary proceeding filed more than twenty-eight days after the final agency action “must be dismissed for lack of subject matter jurisdiction.” *Wallin v. Cosner*, 210 P.3d 479, 480 (Colo. App. 2009); *see also Garcia*, 410 P.3d at 565 (claims concerning COPD charge were not filed within the limitation period and therefore were time barred); *Brooks v. Raemisch*, 371 P.3d 738, 742

(Colo. App. 2016) (court lacked jurisdiction over Rule 106.5 complaint filed over three months after deadline set out in Rule 106(b)).

Here, it is undisputed that the final agency decision took place on January 8, 2025, when the Administrative Head upheld Griffith's disciplinary conviction. Op. Br. at 4; CF, pp. 142, 170. Accordingly, Griffith's deadline to file his Rule 106.5 action expired twenty-eight days later, on February 5, 2025. *See* C.R.C.P. 106(b).

In the district court, Griffith raised two main challenges to the Motion to Dismiss. First, Griffith argued that the deadline should be extended because his late filing was only due to matters beyond his control, particularly CDOC's actions in failing to respond to his requests for legal assistance, and not due to his lack of diligence. CF, pp. 133-35. Second, he argued that the CDOC's alleged actions in impeding his ability to timely file his Complaint amounted to a violation of his due process right under the Fourteenth Amendment. CF, p. 133.

Though Griffith argues his "is not a simple case of 'excusable neglect'" and that CDOC's actions created "an incredibly insurmountable obstacle, a severe conflict of interest, and an

unprecedented violation of [his] due process right under the 14th Amendment,” his argument is ultimately one for equitable tolling. CF, pp. 133-35. That is, he thinks the reasons why he missed the deadline and fairness of holding him to the twenty-eight-day deadline should be considered. CF, pp. 133-35. In the Opening Brief, Griffith notes that “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.” Op Br. at 10. But, for CDOC’s alleged actions in impeding his ability to file his Complaint to be material, the twenty-eight-day deadline must be able to be tolled by equitable considerations.

This Court has repeatedly held that district courts cannot toll the filing deadline. *See Auxier*, 2015 COA 50, ¶ 12; *Wallin*, 210 P.3d at 480; *Slaughter*, 712 P.2d at 1106. And, the Colorado Supreme Court has recently considered that jurisprudence and held 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.” *Brown v. Walker Com., Inc.*, 2022 CO 57, ¶ 46. Accordingly, any complaint filed after the twenty-eighth day must be dismissed for lack of subject-matter jurisdiction. *See Baker v. City of Dacono*, 928 P.2d 826, 827 (Colo. App. 1996).

Because the district court lacked subject matter jurisdiction over Griffith’s claim, it similarly lacked jurisdiction to consider Griffith’s argument that CDOC’s actions in impeding his ability to file his Complaint were unconstitutional or violative of his Fourteenth Amendment rights. Moreover, the constitutionality of CDOC’s alleged actions outside of the COPD hearing and appeal process are beyond the scope of review in a C.R.C.P. 106.5 action. The scope of judicial review with respect to prison disciplinary proceedings is very limited. *Kodama v. Johnson*, 786 P.2d 417, 420 (Colo. 1990). Review is limited to whether the official who made the decision exceeded their jurisdiction or abused their discretion, based upon the evidence in the record before that official. *See* C.R.C.P. 106(a)(4)(I); C.R.C.P. 106.5(a); *Garcia v.*

Harms, 410 P.3d 561, 564 (Colo. App. 2014); *see also Thomas v.*

Colorado Dep't of Corrs., 117 P.3d 7, 10 (Colo. App. 2004).

To the extent Griffith argues that upholding the twenty-eight-day deadline would unfairly allow CDOC to impede inmates, whether intentionally or otherwise, from timely filing 106.5 actions without recourse, he is mistaken. CF, pp. 133-35; Op. Br. at 27-30. The law provides other mechanisms for inmates to bring challenges against CDOC for violating their right to access the courts. “The United States and Colorado Constitutions guarantee every person the right of access to the courts.” *Negron v. Golder*, 111 P.3d 538, 543 (Colo. App. 2004). If CDOC officials take action that violates this right, both state and federal causes of action exist to provide relief to offended prisoners. *See, e.g.*, 42 U.S.C. § 1983; *see also* § 13-21-131, C.R.S.

Rule 106.5(j) also does not allow the district court to extend the filing deadline. The plain language of Rule 106.5(j) indicates that only the briefing deadlines “set forth above,” i.e. set forth in Rule 106.5, may be extended by the court. The twenty-eight-day deadline to file the complaint is not set forth in Rule 106.5 but rather in Rule 106 and

incorporated by Rule 106.5. The deadlines “set forth above” in Rule 106.5 are the briefing deadlines applicable after a timely Complaint has properly initiated the case and brought the case under the subject-matter jurisdiction of the court.

This reading of Rule 106.5(j) has been affirmed by this Court in four unpublished cases. *See Farrow v. Exec. Dir. of Colorado 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); *Rocha v. Exec. Dir. of Colorado Dep’t of Corr.*, No. 21CA0368, 2021 WL 12338477, at *2 (Colo. App. Nov. 18, 2021); *Shetskie v. Exec. Dir. of Colorado Dep’t of Corr.*, No. 20CA1132, 2021 WL 12344614, at *2 (Colo. App. Sept. 9, 2021); *Grimaldo v. Exec. Dir. of Colorado Dep’t of Corr.*, No. 18CA2175, 2020 WL 14045549, at *2 (Colo. App. June 4, 2020). CF, pp. 103-13. While such cases are not binding legal precedent, they are nonetheless persuasive here. *Patterson v. James*, 2018 COA 173, ¶ 40. This interpretation of the rule is also supported by *Slaughter*, *Baker*, and *Brown*, which are all binding precedent on the district court.

Griffith argues for the first time on appeal¹ that “[b]ecause 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).” Op. Br. at 22. He argues that because Rule 106(b) is incorporated, in part, by reference, it is therefore reasonable to construe “set forth above” in Rule 106.5(j) as including Rule 106(b). This claim is contradicted not only by the persuasive authority cited above but also by the plain reading of the rule.

As noted by Griffith, “[t]he default rule is that the provisions of Rule 106(a)(4) apply to Rule 106.5 actions ‘except where modified by . . . Rule 106.5.’” Op. Br. at 24. Rule 106.5 expressly modifies various filing deadlines that would otherwise be governed by Rule 106, but it leaves

¹ Unless a district court was given an opportunity to correct the alleged error, it should not be considered on appeal. *Witcher v. Canon City*, 716 P.2d 445, 456 (Colo. 1986). Though the district court made findings about how to interpret Rule 106.5(j), CF, pp. 144-46, Griffith did not present his arguments regarding the incorporation by reference interpretation or constitutional doubt doctrine in the district court, CF, pp. 133-36. Griffith’s challenge to the court’s jurisdiction was exclusively based upon fairness considerations. CF, pp. 1-4. Accordingly, he did not give the district court sufficient opportunity to correct these alleged errors, and this Court should not consider such.

untouched the twenty-eight-day deadline to file the initial complaint as set forth in Rule 106(b). Precedent such as *Slaughter* and *Baker* which held that Rule 106(b)'s filing deadline is jurisdictional and not subject to tolling or waiver, existed long before Rule 106.5 was first drafted in 2008. If the drafters of Rule 106.5 wished to change or clarify that precedent, they could have done so but did not.

The plain reading of Rule 106.5(j) is clear and unambiguous—it allows for modification of the time periods set forth in Rule 106.5 to be changed upon a showing of good cause. The twenty-eight-day deadline for filing the complaint is not set forth in Rule 106.5 and is not modified by Rule 106.5 in any way. Because the language of Rule 106.5(j) is not reasonably subject to more than one interpretation, the doctrine of constitutional doubt, which is raised for the first time on appeal and should not be considered, is also not applicable.

Accordingly, based on the legal authority binding it and the arguments before it, the district court properly dismissed the Complaint for lack of subject matter jurisdiction because the twenty-eight-day

deadline set forth in Rule 106(b) is a jurisdictional, non-excusable, non-extendable deadline.

II. The twenty-eight-day jurisdictional deadline set forth in C.R.C.P. 106(b) is properly applied to Griffith's Complaint.

A. Preservation and Standard of Review

While Griffith generally argued that the district court should accept his late-filed Complaint on fairness considerations, he now raises several specific arguments about the application of the twenty-eight-day deadline that were not raised in the court below. CF, pp. 133-35.

Griffith did not present the district court with the argument that a court-authored rule of procedure cannot be jurisdictional. Griffith also did not present the argument that *Brown* was wrongly decided or not applicable to his claim. Griffith therefore did not preserve these claims for review by this Court. Notwithstanding the lack of preservation, Defendants-Appellees agree that, if properly preserved for appeal, the legal questions being argued by Griffith would be reviewed de novo.

Op. Br. at 13.

B. Court rules may limit the subject matter jurisdiction of the court-created Rule 106.5 review process.

Griffith and amici argue that *Brown v. Walker Commercial, Inc.*, 2022 CO 57, was error, either in its decision or in its application to Griffith's case, because no court-authored rule of procedure can affect the jurisdiction of the court. Op. Br. at 13-17; Amicus Brief, pp. 4-20. This argument relies on separation of powers principles and cases where court-imposed rules sought to limit the jurisdiction of legislatively or constitutionally imbued substantive rights. Op. Br. at 15; Amicus Brief at 4-8.

But there is no separation of powers issue in reviews pursuant to C.R.C.P. 106.5 because such review is available only pursuant to court-imposed rule and not pursuant to any legislative or constitutional substantive right. That is, the right to review under 106(a)(4), and now 106.5, was created by the Colorado Rules of Civil Procedure for the narrow purpose of reviewing the lower body or officer's decision for exceeding jurisdiction or abusing discretion "when there is no plain, speedy and adequate remedy otherwise provided by law." *Brown*, 2022

CO 57, ¶ 27 (internal quotations omitted). Rules 106(a)(4) and 106.5 create special forms of review by standalone suit that are subject to specific procedures different from ordinary civil suits that arise pursuant to other legislative or constitutional causes of action. *Id.* at ¶¶ 31-33.

Because Rules 106 and 106.5 are promulgated by the Colorado Supreme Court, the Colorado Supreme Court's intent governs the interpretation of whether the time limitation set forth is jurisdictional. *Id.* at ¶ 37. The Colorado Supreme Court has consistently considered Rule 106(b)'s deadline as jurisdictional since 1973. *Id.* at ¶ 39. There is an unbroken line of case law over more than half a century wherein the Colorado Supreme Court has conveyed its intent to treat Rule 106(b)'s deadline as a non-claim limitation period that is strict, jurisdictional, and therefore not subject to equitable tolling. *Id.* at ¶¶ 42-46. Such constructions serves the important practical purposes of promoting government efficiency, balancing a citizen's right to have his case heard, and removing uncertainty after the deadline passes, especially

“considering the number and breadth of lower government decisions that are reviewable under Rule 106(a)(4).” *Id.* at ¶ 43.

Griffith acknowledges that Rule 106.5 is the “exclusive remedy Colorado provides for a prisoner who seeks to challenge the constitutionality of their COPD conviction.” Op. Br. at 28. That fact is the fatal flaw to the separation of powers argument put forth by Griffith and amici. Because 106.5 review is a court-created substantive right, the court can limit its own jurisdiction to hear such cases. *Brown*, 2022 CO 57, ¶ 37. The Colorado Supreme Court has consistently and clearly stated its intent that the deadline set forth in Rule 106(b) be jurisdictional, therefore, the district court did not err in applying it as such.

Griffith also argues that the district court erred in applying *Brown* to his case because *Brown* related to actions under Rule 106(a)(4) not actions under Rule 106.5. Op. Br. at 32. Such argument is unavailing because *Brown* held that the *deadline set forth in 106(b)* is jurisdictional and not subject to equitable tolling, and it is undisputed that the deadline set forth in 106(b) is applicable to Griffith’s

Complaint. *Brown*, 2022 CO 57, ¶ 47. The argument that, unlike Rule 106, Rule 106.5(j) specifically allows for extension of the deadline, and therefore actions under 106.5 are not comparable to *Brown*, fails given the plain language of Rule 106.5 as discussed above. Moreover, given that the deadline set forth in 106(b) had been consistently interpreted as jurisdictional for decades before the drafting of Rule 106.5, if the Colorado Supreme Court intended to allow that deadline to be able to be extended specifically in the context of prisoner cases, it could have easily and clearly said so within Rule 106.5 but did not.

CONCLUSION

The final agency action in this case was on January 8, 2025, and Griffith's Complaint was not filed until April 25, 2025, more than two months after his filing deadline expired. His Complaint therefore was untimely filed, and the district court lacked subject-matter jurisdiction to review his claims. Griffith has failed to set forth any basis under which to overturn or to limit application of decades of precedent holding that this deadline is jurisdictional. Accordingly, Defendants-Appellees respectfully request that the dismissal of the Complaint be affirmed.

Respectfully submitted this 8th day of July, 2026.

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CERTIFICATE OF SERVICE

I certify that I have served the foregoing **ANSWER BRIEF** upon all parties by electronically filing through CCES on July 8, 2026, as follows:

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