

COLORADO COURT OF APPEALS 2 East 14th Ave., Denver, CO 80203		DATE FILED June 30, 2026 4:42 PM FILING ID: E8693F65E3DDC CASE NUMBER: 2026CA570
District Court, Adams County Case No. 2025CV31717, Hon. Patricia Loew		
Appellants/Plaintiffs: E.L. and D.L., by and through their parent and next friend SCARLET RAMIREZ; and ASHLEE TRUJILLO, individually on their own behalf and on behalf of those similarly situated, v. Appellees/Defendants: ADAMS COUNTY SHERIFF GENE CLAPS, in his individual and official capacities; BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY; and ADAMS COUNTY JAIL DIVISION CHIEF WILLIAM DUNNING, in his individual and official capacities.		
		▲ Court Use Only ▲
		Case Number: 26CA570
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Opening Brief		

CERTIFICATE OF COMPLIANCE

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

The brief contains 9,321 words (not more than 9,500), excluding the case caption, certificate of compliance, tables of contents and authorities, signature block, and certificate of service. I acknowledge the Petition may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

The brief complies with C.A.R. 28(a)(7)(A) and (B), as it contains under a separate heading preceding each argument discussion a statement of the standard of review and a statement of where the issue is preserved in the record.

/s/ Nelson Boyle

Nelson Boyle (#39525)

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ISSUES PRESENTED

1. Whether the Colorado Constitution protects a fundamental right to family association and under what circumstances this right can be overcome by the State's interests.
2. Whether Colorado courts can issue equitable remedies, including injunctions, for violations of the Colorado Bill of Rights.
3. Whether relief under the Enhance Law Enforcement Integrity Act, C.R.S. § 13-21-131 (ELEIA), is limited to just those rights courts have previously recognized when ELEIA expressly applies to all rights under Article II of the Colorado Constitution.
4. Whether the trial court abused its discretion by denying an opportunity for discovery and significantly reducing Appellants' ability to contest certain unsupported factual assertions offered by Appellees.
5. Whether the trial court clearly erred in its factual findings regarding Appellees' ban on family visits where they lack any basis in the record or contradict the only available evidence.

STATEMENT OF THE CASE

A. Nature of the Case

This case is about the rights of children and parents to hug each other, hold each other's hands, and look into each other's eyes. Nearly 50 years ago, the Colorado Supreme Court ordered the Adams County Sheriff to provide visits offering the basic right of human contact. Though Adams County never sought relief from that court order, the Sheriff at some point began enforcing a permanent, total ban on in-person family visits (the "Family Visit Ban" or "Ban"). Instead, Appellees generate income by charging families for phone and video calls and taking a percentage of the revenues generated by a private, for-profit vendor.

The trial court found that children and parents in Adams County are suffering irreparable harm. Yet it denied a preliminary injunction prohibiting enforcement of the ban on child-parent visits. The court refused to answer the central legal question: whether Colorado's constitution protects the rights of children and parents to form and maintain familial relationships. To avoid that question, the court went to great lengths—erroneously holding that Colorado's Constitution is not enforceable in equity, reading a qualified-immunity standard into a statute that *eliminates* qualified immunity, making clear errors of fact, and not permitting the child and parent plaintiffs basic forms of discovery. Not only did the court reflexively apply a

permissive federal standard that no Colorado court has ever applied to violations of state constitutional rights, but it also misapplied that federal standard and mangled Colorado law in the process. The trial court abdicated its duty to rule on questions of Colorado constitutional law. As a result, it failed to enjoin a for-profit family-separation policy enacted without *any* evidence that it serves a compelling state interest and in contravention of a prior court order, the violation of which has never been explained.

Appellants ask this Court to reverse the trial court's order and remand with instructions to enter a preliminary injunction.

B. Relevant Facts and Procedural History

In 1978, the Colorado Supreme Court concluded that the Adams County Sheriff violated the federal constitution by denying contact visits and remanded with instruction "to order the respondent to permit contact visitations." *Wesson v. Johnson*, 579 P.2d 1165, 1167–68 (Colo. 1978) (*Wesson*). The district court entered an order requiring contact visits. *Wesson v. Bowling*, 604 P.2d 23, 24 (Colo. 1979); *see also* CF, pp.97-99. Appellees never sought relief from this order, but testified they have been violating it for decades. TR-12/5/25, pp.55-56, 121-122, 127.

Appellees' Family Visit Ban is a permanent, total ban on in-person, human contact, including for parents and children. CF, pp.1771, 1237. Appellees instead

offer paid phone and video calls through an agreement with the HomeWAV corporation, which, as Appellants allege in a conspiracy claim not part of this appeal, generates profits by funneling all human contact to monopoly-priced calls. CF, pp.1238, 69-70. Appellants filed this action and moved for a preliminary injunction on October 28, 2025, seeking an order prohibiting Appellees from enforcing the Family Visit Ban. CF, pp.1770-1771. The trial court held an evidentiary hearing from December 3–5, 2025. Appellants testified and presented four experts; Appellees called a jail employee, Chief Dunning, and Sheriff Claps. *See generally* TR-12/3/25; TR-12/4/25; TR-12/5/25; TR-12/9/25. Before the hearing, and again during the hearing, Appellants moved for limited discovery to enable them to contest unsupported factual assertions in Appellees’ briefing. CF, pp.1094-1104; TR-12/5/25, pp.159-160. The trial court denied Appellants’ motions. CF, pp.1149-1151; TR-12/5/25, pp.161-162.

Due to Appellees’ Ban, Appellants E.L. and D.L., who are six and four years old, could not hug their father for nearly a year while he was presumed innocent but detained prior to trial because he could not afford cash bail. CF, p.1772. The separation “was challenging for both E.L. and D.L., who had trouble interacting with their father only over the phone or video calls due to their young ages.” *Id.* Dr. Julie Poehlmann, “an expert on child well-being in the context of parental incarceration,”

testified that “video calls and phone calls” can never “substitute” for physical contact. TR-12/4/25, pp.199, 218. Babies and “very young children” like Appellants “don’t have the cognitive capacity to understand what’s happening” on phone or video calls. TR-12/4/25, p.222:5-13. Appellants “developed separation anxiety, struggled with school, and felt unsafe outside of home due to the separation [C]ontinued separation w[ill] result in further emotional and developmental harm.” CF, pp.1772-1773.

Appellant Ashlee Trujillo could not hug or look into the eyes of her 18-year-old son, who was first incarcerated pretrial in July 2025 and detained because the family was unable to pay the cash bond required for release. CF, pp.1773, 2686. The separation feels “like somebody is just pulling out your heart and just stomping on it non-stop.” TR-12/3/25, p.48:22-23. The Family Visit Ban caused her “financial hardships from trying to maintain a relationship with her son” through HomeWAV. CF, p.1773.

The court found that the “emotional and developmental harm,” and “financial hardships,” “experienced by representative Plaintiffs is shared by the putative Subclass members.” CF, pp.1772-1773. “Physical touch between parents and children is necessary to maintain healthy relationships, and to the mental and emotional development of children.” CF, p.1773.

The court also found that “bans on in-person visits can undermine the safety and wellbeing of people incarcerated in a jail, the staff, and the public. . . . [I]n-person, contact visits are associated with less violence and fewer infractions in jails, and with greater success for incarcerated people reentering society.” CF, p.1774. Correctional associations do not endorse visit bans as good policy. TR-12/3/25, pp.176-181; Pls.EX, pp.515-537. Former Executive Director of the Colorado Department of Corrections, Dean Williams, testified that jails across the country, and all Colorado prisons, allow contact visits. TR-12/4/25, pp.178, 183; *see also* TR-12/3/25, pp.172, 189-192, 199-209 (expert Schiraldi detailing jails with contact visits across the country); TR-12/5/25, p.20:3-20 (Denver jail allows contact visits); Pls.EX, pp.558-646.¹

The jail “was designed to accommodate contact visitation,” CF, p.1774, with seven contact rooms accommodating 18–25 people each, TR-12/5/25, pp.47-48. Nevertheless, Appellees claim to have never offered, and to have no experience with, contact visits. TR-12/4/25, p.79:12-15; TR-12/5/25, pp.55-56, 66-67, 120-122, 127. Appellees testified that they have never reviewed studies, policies, or procedures

¹ The trial court did not discredit or find incorrect a single fact or opinion offered by Appellants’ experts or fact witnesses.

regarding the costs, benefits, and practical implementation of child-parent contact visits. TR-12/4/25, pp.105, 108, 111; TR-12/5/25, pp.20-21, 64-67, 84, 148.

The trial court found that the subclass—children and parents of people jailed in Adams County—are experiencing “irreparable harm” due to the Family Visit Ban. CF, p.1789. “Even short periods of separation between children and their incarcerated parents are documented to cause significant emotional harm.” *Id.*

C. Order Presented for Review

Appellants challenge the order denying Appellants’ motion for preliminary injunction. CF, pp.1769-1794.

ARGUMENT SUMMARY

At the core of this case is whether the Colorado Constitution protects the fundamental rights of children and parents to form and maintain familial relationships and, if so, what showing the State must make to justify constraints on those rights. Appellants ask this Court to hold that the Colorado Constitution protects the fundamental right to familial association and announce the legal standard for evaluating infringements of that right: a policy which infringes a fundamental right must closely fit the government’s compelling interests and not unnecessarily infringe on the right. Appellants request that this Court reverse the trial court’s order and

remand with instructions to issue a preliminary injunction prohibiting enforcement of the Family Visit Ban following further proceedings.

A. The Colorado Constitution Protects a Fundamental Right to Family Association.

The trial court did not independently analyze the Colorado Constitution nor apply the heightened standard of review used by Colorado courts for fundamental rights. *See* CF, pp.1782-1783, 1786. The court abdicated its “responsibility to consider whether our own state constitution requires more extensive protections than those mandated by the Fourteenth Amendment.” *Millis v. Bd. of Cnty. Comm’rs of Larimer Cnty.*, 626 P.2d 652, 657 (Colo. 1981). The court instead applied a federal standard that is inapplicable to state constitutional claims.

The parent-child relationship is among the oldest recognized fundamental liberty interests. *E.g., Salah v. People*, 2024 CO 54, ¶ 22. When a fundamental constitutional right is burdened, there must be a close fit between the infringement and the government’s interest. *People v. Young*, 859 P.2d 814, 818 (Colo. 1993). The Family Visit Ban fails that standard under any conceivable reading of the record.

B. The Trial Court Erred by Inserting Qualified Immunity into ELEIA.

The trial court interpreted a remedial statute, the Enhance Law Enforcement Integrity Act (“ELEIA”), C.R.S. § 13-21-131, contrary to its text and legislative intent. ELEIA creates a right of action against officers who violate the Colorado Bill

of Rights and eliminates statutory, qualified, and governmental immunity for ELEIA claims. C.R.S. § 13-21-131(1)–(2)(b). Though ELEIA is designed to *expand* access to remedies, the trial court interpreted the statute to bar relief unless a plaintiff “establish[es]” that “Colorado’s courts have recognized” constitutional rights *in the specific context* raised by plaintiffs. CF, pp.1783-1784. That incorrect standard is functionally equivalent to qualified immunity in contravention of the statute. Separately, it flatly contradicts longstanding precedent that such immunities are inapplicable to injunctive relief.

C. Colorado Courts Have Authority to Enjoin Constitutional Violations.

The trial court erred in holding that plaintiffs may not seek equitable relief to enforce the Colorado Constitution. CF, pp.1786-1787. This holding undermines: established precedent that the Bill of Rights is self-executing, *see, e.g., Medina v. People*, 387 P.2d 733, 736 (Colo. 1963); the broad equity powers of Colorado courts, *see, e.g., Matter of A.W.*, 637 P.2d 366, 373–74 (Colo. 1981); and numerous opinions enforcing the Colorado Constitution in equity, *e.g., Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (Colo. 2002), *as modified on denial of reh’g* (Apr. 29, 2002).

D. The Trial Court Improperly Denied an Opportunity for Discovery.

The court abused its discretion by denying discovery before the preliminary injunction hearing. Appellees’ opposition brief relied on unsupported factual claims

about jail security, contraband, and the purported feasibility of reinstating visits. Appellants sought targeted discovery regarding those assertions. The court denied that discovery yet credited Appellees' factual claims. CF, p.1774. Colorado's discovery rules exist to prevent this kind of gamesmanship in which a party denies the opportunity to test its factual claims yet secures a ruling based on those assertions. *In re Dist. Ct.*, 256 P.3d 687, 690 (Colo. 2011) (courts must construe rules "liberally . . . to effectuate . . . their truth-seeking purpose."). By denying Appellants an opportunity to develop the record on issues the court found dispositive, the ruling was manifestly unreasonable and significantly prejudiced Appellants' ability to prosecute their case.

E. The Trial Court Made Clearly Erroneous Factual Findings

The trial court's finding that the Family Visit Ban was implemented primarily to mitigate contraband is unsupported by the record and contradicts the available evidence. The record demonstrates the primary purpose of the ban is profit.

F. Appellants Ask This Court to Remand with Instructions to Enter a Preliminary Injunction

It is clear on the present record that the Family Visit Ban violates Appellants' rights, that it is not grounded in evidence or reasoned decision making, and that Appellees never considered any alternative. Appellants ask this Court to reverse the trial court's order and remand with instructions to issue a preliminary injunction.

Appellants ask this Court to order the crafting of relief with input from the parties and consistent with this Court’s opinion. Because the details of an injunction will require addressing matters such as the hours, duration, and frequency of visits, *see* CF, pp.98-99, the trial court should hold further proceedings and allow the parties to confer regarding the nature and scope of appropriate relief.

ARGUMENT

I. Appellees’ Family Visit Ban Violates Colorado’s Fundamental Constitutional Right to Familial Association.

A. Standard of Review and Issue Preservation.

Where the issues raised on appeal from the denial of a preliminary injunction “concern[] only legal, as opposed to factual, questions . . . , the lower court’s judgment is subject to independent review,” *Evans v. Romer*, 854 P.2d 1270, 1274 (Colo. 1993) (citation omitted), that is “de novo,” *Gessler v. Colorado Common Cause*, 2014 CO 44, ¶ 7 (citations omitted).

Appellants argued that the Colorado Constitution protects a fundamental right to family association subject to infringement only upon a showing of a compelling state interest and necessity. CF, pp.824-833, 1163-1167, 2567-2568. The trial court declined to address whether the Colorado Constitution protects that right and failed to apply the appropriate constitutional standard. *See* CF, pp.1781-1783.

B. The Trial Court Failed to Undertake an Independent State Constitutional Analysis.

Appellants asked the trial court to recognize a fundamental right to family association under Colorado Constitution Article II, Sections 25 (Due Process), 3 (Inalienable Rights), and 28 (Unenumerated Rights). CF, pp.1164-1665. Colorado precedent defines such a right as fundamental. *See infra* Part I.C.

The court erred by not deciding whether the Colorado Constitution protects family relationships *at all*. Rather than independently analyzing the state constitution, the court just rejected Appellants’ due process authorities, stating they “did not acknowledge the existence of a separate or more-extensive state constitutional basis for familial association claims.” CF, p.1785. But the court was obligated to undertake that *state constitutional* inquiry itself.

Meanwhile, the court failed to address Appellants’ arguments that the Inalienable Rights Clause (Article II, Section 3) and the Unenumerated Rights Clause (Article II, Section 28) also protect a fundamental right to familial association. *See* CF, pp.825-826, 1164. Both clauses enshrine substantive rights, and neither has an enforceable federal analog. *Compare Colorado hoDiscrimination Comm’n v. Case*, 380 P.2d 34, 40 (Colo. 1962) (Section 28 is a source of substantive rights), *with Holmes v. Town of Silver City*, 826 F. App’x 678, 681–82 (10th Cir. 2020) (holding the federal Ninth Amendment does not confer individual rights); *see*

City of Longmont v. Colorado Oil & Gas Ass’n, 2016 CO 29, ¶ 58 (Section 3 confers “fundamental” rights). The trial court erred by functionally holding that Sections 3 and 28 provide *no protections*, and by interpreting the state constitution in lockstep with the federal constitution despite Appellants’ claims under “state constitutional provisions that provide rights not guaranteed by the federal constitution,” *People v. McKnight*, 2019 CO 36, ¶ 40.

By failing to interpret the Colorado Constitution, the court abdicated its “duty ‘to say what the law is’” *Lobato v. State*, 2013 CO 30, ¶ 46 (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)).

C. The Colorado Constitution Protects a Fundamental Right to Family Association.

Colorado precedent compels the conclusion that the Colorado Constitution protects the fundamental right to family association.

Recognizing the separate and important nature of Colorado’s constitutional protections in the event the federal constitution is interpreted to restrict basic rights, Colorado courts have held that Article II, Section 25 is *at least* as protective as the federal Due Process Clause. *Air Pollution Variance Bd. v. W. Alfalfa Corp.*, 553 P.2d 811, 816 (Colo. 1976). Cases interpreting the federal analog are therefore instructive. However, Colorado courts are not constrained to interpret state rights in lockstep with federal rights. *Vega v. People*, 893 P.2d 107, 110 n.5 (Colo. 1995).

The federal constitution affords parents and children “a fundamental liberty interest,” *In re D.I.S.*, 249 P.3d 775, 780 (Colo. 2011) (citations omitted), in forming and “maintain[ing] family relationships free from governmental interference,” *L.L. v. People*, 10 P.3d 1271, 1275 (Colo. 2000) (citation omitted). This relationship is “far more precious than any property right,” *In re D.I.S.*, 249 P.3d at 785 (citations omitted), and “one of the ‘basic civil rights of man,’” *Watso v. Colorado Dep’t of Soc. Servs.*, 841 P.2d 299, 307 (Colo. 1992) (citations omitted). Because the Colorado Constitution is at least as protective as the federal constitution, this Court should make clear that the Colorado Constitution also protects the fundamental liberty interest in the child-parent relationship.

D. The Trial Court Erred in Applying a Deferential Federal Standard to Infringement of Appellants’ Fundamental State Constitutional Rights.

Because the Colorado Constitution independently protects the child-parent relationship, the task is determining what legal standard applies to infringements on that right. Here, the trial court simply applied a newer *federal* standard that evolved as federal courts became less protective of *federal* civil rights claims for prisoners and after the Colorado Supreme Court’s landmark decision in *Wesson* requiring family visits. But under Colorado precedent, infringement of a fundamental right must be narrowly tailored to meet a compelling interest, regardless of the evolution of federal cases.

1. Colorado Applies Heightened Scrutiny to Fundamental Rights.

Under Section 25,² courts “ask whether the challenged rule infringes upon a fundamental constitutional right.” *City & Cnty. of Broomfield v. Farmers Reservoir & Irrigation Co.*, 239 P.3d 1270, 1277 (Colo. 2010). If the right is fundamental, courts must “strictly scrutinize the offending restriction.” *Lorenz v. State*, 928 P.2d 1274, 1277 (Colo. 1996). “[T]he state must prove that the challenged legislation is necessary to promote some compelling governmental interest.” *People v. Young*, 859 P.2d 814, 818 (Colo. 1993).

Colorado courts apply such scrutiny when state action interferes with the child-parent relationship in a variety of contexts. *E.g.*, *People v. Zoller*, 2023 COA 117, ¶ 20 (A protective order burdening the “fundamental right to parental association” is permissible only if “(1) it is justified by compelling circumstances, and (2) the purpose of the order cannot be accomplished by less restrictive means.”); *In re Marriage of McSoud*, 131 P.3d 1208, 1216 (Colo. App. 2006) (“[S]tate action . . . that infringes on such a constitutional right is permissible only [when] necessary to promote a compelling state interest . . . in the least restrictive manner possible.”);

² Under Section 3, which also protects Appellants’ rights, heightened scrutiny is the appropriate standard. *See City of Longmont*, ¶ 58. The trial court failed to mention this constitutional provision.

In re E.L.M.C., 100 P.3d 546, 552 (Colo. App. 2004) (“strict scrutiny test applies to statutes which infringe on the parent-child relationship.”).

Neither the trial court nor Appellees explained why the context of having an incarcerated family member should change the Colorado Constitution’s *legal standard* rather than affect the tailoring analysis under that standard. The mere fact that a family member is detained pretrial because they cannot pay cash bail does not alter the fundamental importance of the child-parent relationship or the need to scrutinize infringements. It merely affects the relevant state interests. But even where the state has compelling interests in jail administration, it must still show that any burden on that right is narrowly tailored to accomplish those interests. This case is about a simple point: the jail must have good reasons for constitutional infringements grounded in evidence, and the jail cannot constitutionally burden fundamental rights more than necessary.

There is no basis for concluding that Colorado courts lower protections for family relationships depending on the *context* of the state intrusion. For example, the last time the Colorado Supreme Court addressed protections of “family relationships” in a carceral setting (in a case calling for application of then-existing *federal* constitutional law)—the Adams County jail—it held that “restrictions upon [contact visits for] pretrial detainees must be narrowly drawn so as to minimally

interfere with such a relationship.” *Wesson*, 579 P.2d at 1167. It did not conclude that the *context* of the jail rendered the fundamental constitutional rights inapplicable. The Court required the same protection for the fundamental family association right as it would have required in other contexts. Similarly, the Court held that probation conditions infringing a “probationer’s right to familial association with their own children must be supported by specific findings regarding the compelling circumstances that justify the limitation.” *Salah v. People*, 2024 CO 54, ¶ 30. This Court should apply the same standard.

2. Federal Courts Now Apply a Lesser Standard, Which Colorado Courts Have Never Adopted for State Constitutional Rights.

After *Wesson*, federal courts began applying a new, more lenient balancing test for many claims challenging prison policies as part of a shift away from close federal scrutiny in certain civil rights cases. *See Overton v. Bazzetta*, 539 U.S. 126, 132 (2003) (applying the balancing test from *Turner v. Safley*, 482 U.S. 78 (1987)). Before *Turner*, federal courts applied more searching scrutiny to cases involving fundamental rights in jails or prisons. *E.g.*, *Procunier v. Martinez*, 416 U.S. 396, 413 (1974) (holding that a prison regulation burdening a fundamental right must “further an important or substantial governmental interest[]” and the restriction must “be no greater than is necessary”), *overruled in part by Thornburgh v. Abbott*, 490 U.S. 401 (1989). Oddly, here, the court did not apply the current federal standard. Instead, it

cited *Block v. Rutherford*, 468 U.S. 576 (1984), *see* CF, pp.1782-1783, which predates *Turner*. *Block* is factually distinguishable, does not apply the current federal standard, and issued no holding about fundamental rights.³ Nevertheless, the court relied on *Block* to conclude, “Plaintiffs have not established a reasonable probability of success on the merits *under U.S. Constitutional law*,” CF, p.1783 (emphasis added). The court apparently extended that holding to Appellants’ claims under the Colorado Constitution. CF, p.1786.

The court applied *Block* in error. The Colorado Supreme Court has *never* embraced such lesser federal standards in *any case*, let alone for fundamental state constitutional rights of unincarcerated children and parents.⁴ The court was not

³ First, *Block* did not uphold a policy as extreme as Appellees’ Family Visit Ban: the challenged policy permitted “unmonitored” family and friend through-glass visits for twelve hours a day. 468 U.S. at 578 n.1. Second, *Block* did not address the substantive due process right to family association of unincarcerated children and parents; instead, the detained plaintiffs raised a procedural due process claim. 468 U.S. at 583. Because the Court issued no holding on any fundamental right, *Block* cannot be precedent on such a claim. Finally, the record in *Block* is materially different from the evidence presented to the trial court here: decades of post-*Block* research show the importance of human contact for children and parents, jail security, and community safety. *E.g.*, CF, pp.1774-1789 (finding irreparable harm to children and parents and concluding that visit bans “can undermine the safety and wellbeing of people incarcerated in a jail, the staff, and the public”).

⁴ The Court of Appeals has only applied *Block* and *Turner* in a small number of published cases, all involving claims of *incarcerated* people brought under the *federal* constitution. *See Alward v. Golder*, 148 P.3d 424, 426–27 (Colo. App. 2006) (First Amendment claim); *Green v. Nadeau*, 70 P.3d 574, 578 (Colo. App. 2003)

compelled by any precedent to adopt a federal standard, let alone the wrong federal standard. Colorado courts should apply their precedent and require compelling reasons and narrow tailoring to policies that infringe fundamental rights, acknowledging, as in *Wesson*, that the jail context will necessitate some curtailment of fundamental rights.

The trial court erred even under current federal law. The court's reasoning defies recent uncontradicted federal cases holding that total, permanent bans on family visits would be unconstitutional. Since *Block*, the U.S. Supreme Court has held that limits on family jail visits (even for individuals convicted of felonies) may violate the Constitution if they extend to immediate family, including "children, grandchildren, and siblings," are "permanent or for a [long] period," or are "applied in an arbitrary manner." *Overton*, 539 U.S. at 133, 137. Though "[s]ome curtailment" of the right to familial association may be required in the jail context, the Court has never "impl[ied] that any right to intimate association is altogether terminated by incarceration." *Id.* at 131. After *Overton*, federal courts have held that "officials who permanently or arbitrarily deny an inmate visits with family members" violate the Constitution. *E.g., Manning v. Ryan*, 13 F.4th 705, 708 (8th

(Eighth Amendment claim); *People v. Whalin*, 885 P.2d 293, 296 (Colo. App. 1994) (First Amendment claim).

Cir. 2021); *see also Easterling v. Thurmer*, 880 F.3d 319, 323 n.6 (7th Cir. 2018); *Tyson v. Tanner*, No. 08-CV-4445, 2010 WL 2216507, at *8–9 (E.D. La. May 7, 2010); *Ryerse v. Caruso*, No. 1:08-CV-516, 2009 WL 2982756, at *8 (W.D. Mich. Sept. 11, 2009).

No federal appellate court has upheld a total ban on family visits at a prison, let alone at a jail where people are detained *pretrial*. And no federal court has upheld any visitation policy enforced to generate profit, as the record demonstrates here. Even if this Court concludes that federal rather than state constitutional standards apply, remand would still be required for the trial court to apply the current federal standard to the evidence in this case.⁵

3. The Federal Standard Should Not Apply to Evaluate Colorado Constitutional Rights.

The court provided no rationale for ignoring Colorado precedent regarding fundamental rights and applying a newer, less protective federal standard. *CF*, pp.1782-1783. It never explained why Colorado *should* follow the federal retreat from scrutiny of jail policies. Nor is there any legal support for such a decision, which undermines Colorado’s constitutional independence and ignores key differences between the federal and Colorado constitutional schemes.

⁵ In *Turner*, the Supreme Court outlined a four-factor balancing test for evaluating prison regulations. 482 U.S. at 89–90. The trial court did not perform that analysis.

First, there is no compelling reason for Colorado courts to abandon their precedent and adopt a lower federal standard where “the protections afforded” by the state and federal constitutions “are ‘highly generalized’”—as in due process cases. *People v. McKnight*, 2019 CO 36, ¶¶ 38–40 (citation omitted). Even where the texts are similar or identical, state constitutional provisions can provide more robust protections. *See People v. Young*, 814 P.2d 834, 842 (Colo. 1991) (collecting cases). “There is no reason . . . that constitutional guarantees of independent sovereigns, even guarantees with the same or similar words, must be construed in the same way.” *McKnight*, ¶¶ 38–40 (citation omitted). Colorado courts have a “responsibility to consider whether our own state constitution requires more extensive protections than” the federal constitution.” *Millis*, 626 P.2d at 657.

Second, the Colorado Supreme Court has declined “to follow the twists and turns of th[e] federal road” where a federal constitutional provision has “a rather tortuous history” with expansion and retrenchment of rights. *Bock v. Westminster Mall Co.*, 819 P.2d 55, 58 (Colo. 1991). Colorado is not forever bound to shift interpretations of its Constitution in lockstep with federal courts. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 34. As *Wesson* demonstrates, applying careful scrutiny to infringements of the right to familial association in Colorado jails is both workable and imperative to protect families’ constitutional rights. The trial court,

however, assumed that *Wesson*'s meaningful scrutiny is no longer good law in Colorado because of the later "twists and turns" in federal courts. *See* CF, pp.1784-1785. This was error. *See Bock*, 819 P.2d at 58.

Third, part of the federal courts' retreat from protection of fundamental rights of individuals incarcerated by states—and, here, of their children and parents — reflects an ostensible concern that is inapplicable to Colorado: federalism. *See Turner*, 482 U.S. at 85 ("Where a state penal system is involved, federal courts have . . . additional reason to accord deference . . .").

Finally, no federal precedent requires adoption of *Block*'s fact-dependent standardless review, or the more recent federal balancing test, *Turner*. The U.S. Supreme Court has never applied *Turner* to evaluate an infringement of the fundamental right to maintain the parent-child relationship, let alone to claims brought by non-incarcerated family members. And as the court's findings demonstrate, much has changed in the forty years since *Turner*. Empirical evidence now confirms that "contact visits are associated with less violence and fewer infractions in jails, and with greater success for incarcerated people reentering society." CF, p.1774. Scientific studies have proven that "[p]hysical touch between parents and children is *necessary* to maintain healthy relationships, and to the mental and emotional development of children." CF, p.1773 (emphasis added). "Denial of

physical contact between parents and children,” as imposed by Appellees, “increases the risk of ‘health and mental health concerns, rearrest for [an incarcerated] parent, trauma, and other negative consequences for the individual, family, and society.’” CF, pp.1773-1774. “These harms are mitigated by contact visits between parents and children.” CF, p.1774. The evidence supports Colorado’s tradition of protecting parent-child relationships.

E. The Family Visit Ban Fails Meaningful Scrutiny.

Restrictions on parent-child visits “must be narrowly drawn so as to minimally interfere with such a relationship.” *Wesson*, 579 P.2d at 1167. Restrictions “must be supported by specific findings regarding the compelling circumstances that justify the limitation.” *Salah*, ¶ 30. It is clear that Appellees’ contumacious Family Visit Ban is extreme and that Appellees never considered any alternatives to a total, permanent ban. The policy cannot stand.

A ban on physical contact between children and parents interferes with their constitutionally protected relationship. *See, e.g., Salah*, ¶ 21 (“The importance of the familial relationship . . . stems from the emotional attachments that derive from the intimacy of daily association” (emphasis in original) (citation omitted)). The separation of a parent and child combined with the denial of visits is as injurious to the relationship as is the termination of parental rights. *See Overturf v. Dist. Ct. of*

20th Jud. Dist., 602 P.2d 850, 851 (Colo. 1979) (“[I]naction is tantamount to termination when children are in foster homes and no visitation by the mother is allowed.”). Because “[p]hysical touch between parents and children is necessary to maintain healthy relationships, and to the mental and emotional development of children,” CF, p.1773, there is no substitute for in-person visits. *Accord, People ex rel. D.G.*, 140 P.3d 299, 305 (Colo. App. 2006) (“The term visitation contemplates face-to-face encounters between parents and children.”); TR-12/4/25, p.218:11-13 (Dr. Poehlmann testifying that “video calls and phone calls” cannot “substitute” for physical contact).

The trial court’s factual findings show the Ban is not “necessitated by a compelling state interest.” *Wesson*, 579 P.2d at 1167. Appellees’ interest is “protecting the health and safety of detainees, staff, and visitors.” CF, pp.1774, 1783. But the court itself found that “bans on in-person visits can undermine the safety and wellbeing of people incarcerated in a jail, the staff, and the public. . . . [I]n-person, contact visits are associated with less violence and fewer infractions in jails, and with greater success for incarcerated people reentering society.” CF, p.1774 (citations omitted); *see also Flores v. Colorado Dep’t of Corr.*, 3 P.3d 464, 466 (Colo. App. 1999) (“Visitation assists in safe and effective confinement by contributing to offender stability.”).

Further, the court did not find, and Appellees did not provide evidence, that the Ban furthers safety. Appellees “don’t know the basis” for the decision to stop offering contact visits, as they do not recall the jail *ever* offering them, despite having been ordered to do so. TR-12/5/25, p.130:1-10. Appellees have never analyzed any visit policies to determine whether one presents more or less risk than the Ban. *See* TR-12/4/25, pp.105, 108, 111; TR-12/5/25, pp.20-21, 64-67, 84, 148; *cf.* TR-12/5/25, pp.140-144 (Claps testifying he had not considered whether a parent-child contact program would be beneficial). Indeed, Appellees could describe *no experience* with contact visits. Pls.EX, p.210; TR-12/4/25, p.79; TR-12/5/25, pp.55, 66-67, 120-121.

The court did not conclude that banning human contact is the “le[ast] restrictive means” of ensuring security. *See Salah*, ¶ 29. Many jails and all of Colorado’s prisons do not enforce such a ban, *see* TR-12/3/25, pp.172, 189-192, 199-209; TR-12/4/25, pp.178, 183; TR-12/5/25, p.20, and correctional associations endorse visit programs as good policy, *see* TR-12/3/25, pp.176-181; Pls.EX, pp.515-520. Adams County has numerous options to ensure safety, including limiting visitors’ personal items and using searches, pat downs, metal detectors, and body scanners. TR-12/4/25, p.152; TR-12/5/25, pp.96-97. And the Colorado Supreme Court has explained that jails can maintain security without “den[y]ing” all contact

visitation” by limiting visits “in certain emergency situations” or based on an individualized determination that a detainee “present[s] a threat.” *Wesson*, 579 P.2d at 1168. Even if circumstances justify reasonable restrictions, such policies must be grounded in reasoned decision making, and “narrowly drawn” to meet the state’s compelling interests, *id.* at 1167.

Though the trial court found that a visit program would require changes at the jail, the court did not find such changes were impossible or difficult. CF, p.1774. Instead, the court found the jail “was designed to accommodate contact visitation.” CF, p.1774; *see also* Defs.EX, p.37. The jail has seven contact rooms that each accommodate 18–25 people. TR-12/5/25, pp.47-48; *see also* Pls.EX, pp.647-649 (photographs). And Appellees provided no evidence regarding costs. TR-12/4/25, pp.105, 108, 111; TR-12/5/25, pp.20-21, 64-67, 84, 148. Appellees cannot meet their burden where “some areas in the jail could be used for contact visitation” or “if with reasonable expenditures physical aspects of the building could be altered or additional personnel could be hired so as to enable the facility to operate a contact visitation program without impairing security.” *Wesson*, 579 P.2d at 1167–68. On this record, Appellees cannot meet their burden.

II. The Court Improperly Interpreted ELEIA.

A. Standard of Review and Issue Preservation.

Questions of statutory interpretation are reviewed de novo. *Gessler*, ¶ 7. Courts “seek to discern and effectuate the legislature’s intent” by applying “words and phrases in accordance with their plain and ordinary meanings.” *People v. Soron*, 2026 CO 3, ¶ 22.

Appellants brought a claim under ELEIA and argued that the proper inquiry for such claims is not whether a right has been clearly established in a prior case, but whether Article II protects the right and whether a violation passes constitutional scrutiny. CF, pp.824-833, 1163. The court erroneously required Appellants to “establish[]” that “Colorado’s courts have recognized” a state constitutional right to in-person visits. CF, pp.1783-86.

B. The Court Interpreted ELEIA Contrary to Its Text and Legislative Intent.

In evaluating whether Appellants had a reasonable probability of success under ELEIA, the court articulated the issue as “whether Colorado’s courts *have recognized* a state constitutional right under Article II to in-person visits.” CF, p.1784 (emphasis added). The court concluded the right was not previously established. CF, p.1786. But neither ELEIA nor the preliminary injunction standard require plaintiffs to show that a court previously decided a similar case.

The trial court provided no reasoning for its adoption of Appellees’ argument that lack of prior cases clearly establishing “a state constitutional right under Article II to in-person visits based on familial association” defeats Appellants’ claim. *See* CF, pp.1783-1786. Neither ELEIA’s text nor legislative purpose support that interpretation.

Qualified immunity was created by federal courts to protect government officials from *damages* in federal actions if a violated right was not clearly established. *See Cnty. of Adams v. Hibbard*, 918 P.2d 212, 220 (Colo. 1996). The trial court grafted a qualified immunity defense back into ELEIA, requiring precedent recognizing a general constitutional right—the right of familial association—in the specific context—in-person jail visits. But ELEIA explicitly *eliminates* qualified immunity. C.R.S. § 13-21-131(2)(b). “If the plain language is unambiguous and does not conflict with other statutory provisions, we look no further.” *People In Interest of W.P.*, 2013 CO 11, ¶ 11. Further, as a *damages* doctrine, qualified immunity is never applicable to injunctive relief: violations of the constitution can be enjoined even in cases of *absolute* immunity from damages. *Churchill v. Univ. of Colorado at Boulder*, 2012 CO 54, ¶ 40.

The court also failed to properly assess Appellants’ probability of success under *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). A plaintiff need not show

that another court has established the right asserted in an identical context to obtain an injunction. *See, e.g., Evans*, 854 P.2d at 1274, 1278–83 (rejecting “contention” that a preliminary injunction must rely on “direct precedent . . . rather [than] extrapolated” from decisions discussing different applications of the right (quotation marks omitted)). In evaluating the merits, the court had “a responsibility to engage in an independent analysis of our own state constitutional provision in resolving a state constitutional question.” *Rocky Mountain*, ¶ 34. The court sidestepped that responsibility. CF, p.1786.

III. The Court Erred in Concluding that Colorado Courts Cannot Grant Equitable Relief to Enforce the Colorado Bill of Rights.

A. Standard of Review and Issue Preservation.

Whether plaintiffs may seek injunctive relief under Article II of the Colorado Constitution “is a question of law subject to de novo review.” *See Evans*, 854 P.2d at 1275 (citation omitted).

Appellants requested an injunction under Article II and argued that Colorado law permits such equitable relief, CF, pp.68-69, 1163. The court held that Appellants lack a cause of action. CF, pp.1786-87.

B. Colorado Courts Can Grant Equitable Relief to Enforce the Colorado Bill of Rights.

The trial court held that Appellants' claim under Article II was "unlikely to succeed" because there is no "implied cause of action under the Colorado Constitution" for injunctive relief. CF, pp.18-19. This holding was wrong as a matter of longstanding Colorado law.

The Colorado "Bill of Rights is self-executing," *Medina*, 387 P.2d at 736, and "*ipso facto* affords the means of protecting the right given and of enforcing the duty imposed." *Colorado State Civ. Serv. Emp. Ass'n v. Love*, 448 P.2d 624, 627 (Colo. 1968). Where a plaintiff claims violations of "self-executing" constitutional provisions, they "state a justiciable controversy." *Id.*; accord *Developmental Pathways v. Ritter*, 178 P.3d 524, 530–31 (Colo. 2008).

Colorado courts have "unrestricted and sweeping jurisdictional powers" under the Colorado Constitution. *Matter of A.W.*, 637 P.2d at 373. Specifically, courts have "the power to issue orders 'directing public officials to carry out their lawful obligations.'" *Goebel v. Colorado Dep't of Institutions*, 764 P.2d 785, 800 (Colo. 1988) (citation omitted).

The trial court ignored numerous cases where courts have adjudicated claims for equitable relief directly under the Colorado Constitution. *See, e.g., Tattered Cover*, 44 P.3d 1044; *Winston v. Polis*, 2021 COA 90. The availability of equitable

relief to enforce constitutional rights is blackletter law in federal and state courts. *See, e.g., Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 300 (1955); *Bauserman v. Unemployment Ins. Agency*, 983 N.W.2d 855, 869 (Mich. 2022); *Mack v. Williams*, 522 P.3d 434, 450 (Nev. 2022).

The sole case relied on by the court to ignore decades of constitutional tradition, *Sundheim v. Douglas Cnty. Bd. of Cnty. Comm'rs*, is inapplicable to injunctive relief. *See* CF, pp.18-19. *Sundheim* is cabined to damages remedies, 926 P.2d 545, 547 (Colo. 1996) (discussing whether “this court has the authority to recognize an implied damages action”), and its narrow conclusion that “an implied damages remedy [is] unnecessary in this case,” *id.* at 553. No appellate court has ever applied *Sundheim* to a claim where the plaintiff was not seeking damages, *e.g., Giuliani v. Jefferson Cnty. Bd. of Cnty. Comm'rs*, 2012 COA 190, ¶ 34, and, as Plaintiffs will show with respect to claims not at issue in this appeal, *Sundheim* does not bar damages in circumstances like the ones alleged in this conspiracy.

IV. The Court Applied Incorrect Legal Standards to the Third, Fourth, Fifth, and Sixth *Rathke* Factors.

A. Standard of Review and Issue Preservation.

Whether the district court properly analyzed the *Rathke* factors is a question of law subject to de novo review. *See Boe v. Children's Hosp. Colorado*, 2026 CO 32, ¶ 17. Appellants preserved their arguments regarding the proper analysis under

Rathke and that each factor favors a preliminary injunction. CF, pp.833-834; CF, pp.1168-1169 (third factor); CF, pp.834-835; CF, pp.1169-1170 (fourth factor); CF, pp.835-836; CF, pp.1170-1172 (fifth factor); CF, pp.836; CF, pp.1172 (sixth factor). The trial court denied the preliminary injunction. CF, pp.1790 (third factor); *id.* (fourth factor); CF, pp. 1792 (fifth factor); CF, p.1793 (sixth factor).

B. The Third, Fourth, Fifth, and Sixth *Rathke* Factors Favor Appellants.

Where there is an ongoing constitutional violation, the *Rathke* factors favor a preliminary injunction. *See Rathke v. MacFarlane*, 648 P.2d 648, 652 (Colo. 1982) (“State equity courts will enjoin the enforcement of a state statute or law [when] . . . fundamental constitutional rights are being destroyed”) (collecting cases). Constitutional violations cause irreparable injury, *see People v. Kilgore*, 2020 CO 6, ¶¶ 9–12, which cannot be adequately compensated through damages, *e.g.*, *Cisneros v. Elder*, No. 2018CV030549, 2018 WL 5284263, at *6 (El Paso Dist. Ct. Mar. 19, 2018). Constitutional violations are never in the public interest, *id.*, and the equities favor injunctions to prevent constitutional violations as a matter of law, *see Landmark Towers Ass’n, Inc. by EWG-GV, LLC v. UMB Bank, N.A.*, 2018 COA 100, ¶¶ 35, 38, *as corrected* (July 26, 2018). Finally, where a suit challenges a constitutional violation, the “status quo” is the time *before* the violation. *Sanger v. Dennis*, 148 P.3d 404, 419 (Colo. App. 2006).

1. The Court Erred in Finding an Adequate Remedy at Law.

The correct inquiry under *Rathke*'s third factor is whether Appellants' injuries are "compensable by adequate damages," *Macleod v. Miller*, 612 P.2d 1158, 1160 (Colo. App. 1980), not whether Appellants could pursue different claims based on different legal violations. The ongoing violation of a constitutional right cannot be adequately compensated by damages. *See, e.g., Terrace v. Thompson*, 263 U.S. 197, 215 (1923) ("If . . . the state act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment, then . . . [there is] no remedy at law which is as practical, efficient or adequate as the remedy in equity."). Thus, the court's statement that Appellants could pursue federal claims under 42 U.S.C. § 1983, CF, p.1790, is irrelevant. Moreover, Appellants cannot challenge violations of Colorado's constitution under Section 1983. *See Young v. Larimer Cnty. Sheriff's Off.*, 2014 COA 119, ¶ 9 & n.2. Where injuries are not compensable by damages, "an action at law is an inadequate remedy." *Macleod*, 612 P.2d at 1160 (citing *Am. Invs. Life Ins. Co. v. Green Shield Plan, Inc.*, 358 P.2d 473, 476 (Colo. 1960)); *Gitlitz v. Bellock*, 171 P.3d 1274, 1279 (Colo. App. 2007) (question is whether damages "provides full, complete, and adequate relief").

Setting aside the ongoing constitutional violations, the court itself found that ongoing "emotional harm" experienced by parents and children due to the Family

Visit Ban “is not measurable and compensable in money damages.” CF, p.1789; *see also Cisneros*, 2018 WL 5284263 at *6. The court erred in holding that Appellants did not satisfy the third *Rathke* factor. CF, pp.1790.

2. The Public Interest Favors Ceasing Ongoing Constitutional Violations and Irreparable Harm to Children and Parents.

The court erred in holding Appellees’ Family Visit Ban likely does not violate the Colorado Constitution. Had the court found a violation, it would have been compelled to find that an injunction would serve the public interest. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad v. Ziriox*, 670 F.3d 1111, 1132 (10th Cir. 2012) (citations and quotation marks omitted). Appellants have found *no case* in which any Colorado court found a constitutional violation, yet held the public interest weighed *against* an injunction.

The court did find the putative class—including “minor children” of the “majority” of the jail’s population, CF, p.1772—is suffering ongoing, irreparable harm. CF, p.1789. The Colorado legislature has “declare[d] that measures are necessary to reduce the trauma of family separation caused by incarceration.” CF, p.762. Preventing significant harm to children is a compelling public interest. *See, e.g., In re Marriage of McSoud*, 131 P.3d at 1216.

3. The Court Erred in Holding That Equity Favored Speculative Harm Suggested by Appellees Over Real, Ongoing Harm to Appellants.

The court erred in holding that the equities do not favor an injunction because “a preliminary injunction would not further any statutory purpose or prevent a recognized constitutional violation.” CF, pp.1791-1792 23–24. Because the Family Visit Ban violates the Colorado Constitution, the equities favor an injunction as a matter of law. *See Landmark Towers*, 2018 COA 100, ¶¶ 35, 38. Because the Family Visit Ban also violates the Colorado Supreme Court’s order in *Wesson*, an injunction would prevent the ongoing violation of a valid court order. As a matter of law, the equities cannot favor a party who is violating a judicial order and has taken no steps to seek relief from that order. *See Landmark Towers*, 2018 COA 100, ¶ 38; CF, p.1041 (conceding Appellees never sought relief from *Wesson*).

Moreover, the court erred in giving more weight to speculative harm to Appellees than to its unequivocal finding that families are suffering irreparable harm every day. The fifth *Rathke* factor supports an injunction when “the moving party has demonstrated actual harm,” and the “alleged harm to the nonmoving party is too speculative.” *Boe*, ¶ 34.

The court found Appellants “*have demonstrated that irreparable harm exists.*” CF, p.1789 (emphasis added). In contrast, the court found (without basis in the

record) that an injunction would pose “*some risk* that the facility *may* experience an increase in dangerous contraband or violent confrontations.” CF, p.1791 (emphasis added). Speculative harm to Appellees cannot outweigh “actual immediate and irreparable harm” to Appellants. *See Boe*, ¶ 44.

4. The Court Erred in Determining That the Relevant Status Quo Was Appellees’ Unconstitutional Policy.

“The status quo [ante] is the last uncontested status between the parties before the dispute developed.” *Boe*, ¶ 45. Before Appellees’ violation of the *Wesson* order, families could maintain child-parent relationships through contact visits. Therefore, Appellants seek a “preliminary injunction [that] restores the most recent peaceable status quo [ante] because it merely . . . prohibits additional unconstitutional actions.” *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1255 (10th Cir. 2024).

Contrary to the trial court’s conclusion, the “19 to 20 years” that Appellants have violated *Wesson* is irrelevant to determining the status quo ante—the status quo *before* the violation. *See* CF, p.1792. Allowing constitutional violations to continue because they have gone uncontested insulates unconstitutional conduct so long as the offending party gets away with it long enough. “Such a ruling would not be consistent with fundamental equity.” *Cisneros*, 2018 WL 5284263 at *6 (“Were I to interpret ‘last uncontested status’ the way the Sheriff urges—namely, to preserve his longstanding policy of honoring ICE holds—then it is hard to imagine how any

plaintiff in this context could obtain relief.”). The court erred by finding Appellees’ decades of violating constitutional rights and the *Wesson* order changed the “status quo” from its settled legal meaning.

V. The Trial Court Improperly Denied an Opportunity for Discovery.

If this Court agrees the trial court erred on the merits and the *Rathke* analysis on the present record, Appellants ask this Court to remand with instructions to enter a preliminary injunction. Alternatively, the denial of discovery and the court’s erroneous factual findings requires remand for a hearing at which Appellants have a more fulsome opportunity to contest Appellees’ claims.

A. Standard of Review and Issue Preservation.

This Court reviews the denial of discovery for abuse of discretion. *Norton v. Ruebel*, 2024 COA 108, ¶ 25. “A district court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair.” *In re Marriage of Gromicko*, 2017 CO 1, ¶ 18. Abuse of discretion may occur if the court’s denial of discovery “significantly reduced the [Plaintiffs’] ability to prosecute their lawsuit.” *Smith v. Dist. Ct.*, 797 P.2d 1244, 1248 (Colo. 1990).

Appellants requested limited discovery regarding unsupported factual assertions in Appellees’ brief. CF, pp.1094-1104. The trial court denied Appellants’ motion. CF, p.1149-1151. Appellants again requested limited discovery during the

hearing to enable the presentation of a rebuttal witness. TR-12/5/25, pp.159-160.

The court denied the request. *Id.*, p.161-162.

B. The Denial of Discovery Was Manifestly Unreasonable, Unfair, and Significantly Reduced Appellants' Ability to Prosecute Their Lawsuit.

Basic principles of fairness and truth-seeking in the adversary system required minimal discovery before the preliminary injunction hearing. Appellees made unsupported factual claims in their brief and blocked any effort to test them, even with their own records.

In their brief, Appellees made unsupported assertions regarding staffing, contraband, and the purported feasibility of reinstating visits. CF, pp. 1031-1032, 1043-1045. Because Appellees' own records would best address these issues, Appellants sought an accord with Appellees for a narrow set of documents concerning contraband and staffing, and the jail's written visit policies. CF. pp.1105-1116. Because Appellees claimed contact visits are "mathematically impossible" due to space, CF, pp.1044, Appellants requested a minimally intrusive expert inspection of the facility, CF, pp.1105-1116. Appellees refused. *Id.* Appellants made the same request to the court. CF, pp.1094-1104. The trial court denied Appellants' motion. CF, pp.1149-1151.

Rule 26(d) expressly authorizes early discovery. C.R.C.P. 26(d). As the court recognized, expedited discovery is proper prior to a preliminary injunction hearing. TR-11/6/25, p.21:1-3. Such orders are regularly recognized, especially for preliminary injunction motions where the parties present evidence on important questions *involving assertions of disputed fact*. See, e.g., *USIC Locating Servs. LLC v. Project Res. Grp. Inc.*, 2023 COA 33, ¶ 26 (recognizing a trial court’s discretion to permit discovery); *Joseph v. Green*, No. 09CV10504, 2009 WL 6471027 (Denver Cty. Dist. Ct. Nov. 10, 2009) (ordering expedited discovery “prior to conduct and completion of the preliminary injunction hearing”).

Appellants requested discovery regarding the very issues the trial court later found dispositive. The evaluation of the *Rathke* factors is fact-intensive. *Bill Barrett Corp. v. Lembke*, 2018 COA 134, ¶ 126 (trial courts must “make findings of fact on each of [the] factors”). Appellee’s briefing and the court’s order relied in part on factual issues that discovery would have directly addressed, including contraband, jail staffing, and available space at the facility. CF, p.1774. Denial of limited discovery created a severe disadvantage, leaving Appellants unable to fully contest the very factual assertions the court credited.

Colorado’s discovery rules are designed to prevent “gamesmanship that rewards parties for hiding or obscuring potentially significant facts.” *Hawkins v.*

Dist. Ct., 638 P.2d 1372, 1378 (Colo. 1982) (en banc) (quoting *Thomas Organ Co. v. Jadranska Slobodna Plovidba*, 54 F.R.D. 367, 373 (N.D. Ill. 1972)). “[T]he range of discovery available . . . is wide” to “eliminate surprise” and “simplify issues.” *Cardenas v. Jerath*, 180 P.3d 415, 420–21 (Colo. 2008) (en banc). “In close cases, the balance must be struck in favor of allowing discovery.” *Direct Sales Tire Co. v. Dist. Ct.*, 686 P.2d 1316, 1321 (Colo. 1984). The court’s order flouted these principles.

VI. Several Factual Findings Were Clearly Erroneous

A. Standard of Review and Issue Preservation.

Courts review findings of fact for clear error. C.R.C.P. 52; *French v. Centura Health Corp.*, 2022 CO 20, ¶ 24. A factual finding is clearly erroneous if there is “no support for it in the record” or if there is “evidence to support it, but [the court is] left, after a review of the entire evidence, with the firm and definite conviction that a mistake has been made.” *Indian Mountain Corp. v. Indian Mountain Metro. Dist.*, 2016 COA 118M, ¶ 31.

The court clearly erred when it concluded that “the current visitation policy was implemented primarily to mitigate the influx of contraband.” CF, p.1774. Appellants preserved this issue through their briefing, witness testimony, and argument. *See, e.g.*, TR-12/9/26, pp.10-11.

B. Several of the Court's Factual Findings Lack Support in the Record.

The *Rathke* factors favor a preliminary injunction even under the court's factual findings once its errors of law are corrected. Nonetheless, the court's finding that the Family Visit Ban "was implemented primarily to mitigate the influx of contraband," CF, p.1774, is clearly erroneous because it has no support in the record. Instead, the record demonstrates that the Ban is motivated by profit, further tipping the public interest and equities under *Rathke* in Appellants' favor.

Appellee Chief Dunning did not work at the jail when contact visits were eliminated and does not know the reasons for the policy's implementation. TR-12/5/26, pp.58-59, 121-122. During Dunning's tenure, the jail "never had contact visitation." TR-12/5/26, p.48:12-15. He has never witnessed a family contact visit and has no knowledge regarding whether or not such visits impact jail safety. *Id.*, p.55:19-21, 66-67. Similarly, Sheriff Claps has never reviewed the policies of jails that offer contact visits and thus has no knowledge of whether such policies are consistent with maintaining security. *Id.*, p.148:8-19. Sheriff Claps was not involved in the decision to eliminate visits but believes the decision was reached because the jail had difficulties with scheduling. *Id.*, p.123-135. He did not testify that contraband motivated the ban. Indeed, Chief Dunning testified there was zero chance of contraband coming into the jail from through-glass visits. *Id.*, pp.59-60, 121:5-

22. Thus, eliminating such visits would have no impact on contraband. The record does not suggest the jail eliminated visits due to contraband.⁶ The court “may not create a version [of the facts] which is not supported by the testimony of any witness.” *People in Int. of R.A.*, 937 P.2d 731, 737 (Colo. 1997).

Instead, the record shows that facilities offering visits have no more contraband than facilities banning visits. TR-12/3/25, pp.158-159. Reports from numerous facilities, including Knox County, Tennessee, New York City, and the Texas prison system, show that contact visits do not appreciably increase contraband. *Id.*, pp.223-226. Appellees offered no evidence to the contrary.

The record also demonstrates that Appellees maintain the Family Visit Ban to generate profit. In 2013, the County negotiated a contract with iWebVisit designed “to decrease on-site visitations” and maximize paid calls by “eliminat[ing] face-to-face visitation” for non-professional visitors. CF, pp.120, 124. Adams County made at least \$1.7 million from phone and video contracts between 2010 and 2020. CF, p.102.

⁶ The trial court also erred when it concluded that “[g]ranting the injunction contains some risk that the facility may experience an increase in dangerous contraband.” CF, p.1791. Appellees provided no evidence to support this statement, and the record contains none.

In 2019, the Board issued a new RFP demanding profit “from the first day of operation.” CF, p.163. In response, HomeWAV promised “maximum revenue.” CF, p.360. The County received \$0.80 of every dollar spent on phone calls and \$0.40 of every dollar spent on video calls. TR-12/4/26, pp.128-129. Between September 2020 and April 2025, Appellees generated at least \$4.8 million in revenue, including \$3.1 million in kickbacks for the County. CF, pp.46, 102.

Briefly in 2025, Appellees stopped receiving kickbacks under federal regulations. TR-12/4/26, pp.52-53, 131-132. When the FCC paused those regulations, Appellees quickly reimplemented their profitmaking scheme. *Id.* No County employee ever considered or discussed the possibility of foregoing profits to reduce the burden imposed on families. CF, pp.132-134. The County’s lucrative scheme came at the cost of Appellants’ fundamental rights.

VII. Appellants Request Appellate Attorney Fees

Under ELEIA, a prevailing claimant “shall” recover reasonable attorney fees. C.R.S. § 13-21-131(3). A claimant prevails if the suit is “a substantial factor or significant catalyst in obtaining the results sought.” *Id.* Should the Court reverse the trial court, Appellants request attorney fees incurred in this appeal. *See Mosley v. Daves*, 2025 COA 80, ¶ 56.

CONCLUSION

Appellants request this Court reverse and remand with instructions to enter a preliminary injunction following further proceedings regarding the nature and scope of appropriate relief.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2026, a true and correct copy of the foregoing
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