

Colorado Supreme Court 2 East 14th Avenue Denver, Colorado 80203	DATE FILED March 30, 2026 1:58 PM FILING ID: ADE1A58CABC94 CASE NUMBER: 2026SA106
District Court, Adams County Case No. 2025CV31717 Div. A; Judge Patricia Loew	
In Re: Petitioners/Plaintiffs: E.L. and D.L., by and through their parent and next friend SCARLET RAMIREZ; J.B., by and through his parent and next friend AUTUMN RAY; ASHLEE TRUJILLO; and CASSONDRA REEVES, individually on their own behalf and on behalf of those similarly situated, v. Respondents/Defendants: ADAMS COUNTY SHERIFF GENE CLAPS, in his individual and official capacities; BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY; ADAMS COUNTY JAIL DIVISION CHIEF WILLIAM DUNNING, in his individual and official capacities; and HOMEWAV, LLC.	
Attorneys for <i>Amici Curiae</i>: Timothy R. Macdonald, No. 29180 Sara R. Neel, No. 36904 ACLU Foundation of Colorado 303 E. 17th Ave., Suite 350 Denver, Colorado 80203 tmacdonald@aclu-co.org sneel@aclu-co.org P: (720) 402-3114 F: (303) 777-1773	▲ COURT USE ONLY ▲ Case Number: 2026 SA 106

Matthew Segal*
American Civil Liberties Union
Foundation
915 15th Street NW
Washington, DC 20005
msegal@aclu.org
(202) 715-0822

Lillian Moore-Eissenberg*
American Civil Liberties Union
Foundation
425 California Street, Suite 700
San Francisco, CA 94104
lmoore-eissenberg@aclu.org
(415) 343-0762

**Motion for pro hac vice entry of
appearance pending*

**BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION AND
AMERICAN CIVIL LIBERTIES UNION OF COLORADO
IN SUPPORT OF PETITIONERS/PLAINTIFFS**

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of C.A.R. 21(m), C.A.R. 29, and C.A.R. 32, including all formatting requirements set forth in these rules.

This amicus brief complies with the applicable word limit in C.A.R 29(d) (an amicus brief may be no more than one-half the length authorized for a party's principal brief). It contains 4,611 words (less than 4,750).

I acknowledge that the Court may strike this amicus brief if it flaunts the requirements of C.A.R. 29 and C.A.R. 32.

/s/ Timothy R. Macdonald
Timothy R. Macdonald, No. 29180

Attorney for Amici Curiae

TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE.....	i
TABLE OF AUTHORITIES	iii
IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. The Colorado Constitution authorizes individuals to sue to stop violations of their state constitutional rights.	4
A. The text, structure, and history of the Colorado Constitution make injunctive relief available for violations of individual rights.....	4
B. Case law in Colorado and other states confirms that individuals can obtain injunctive relief directly under the Colorado Constitution.	8
II. The district court’s reliance on <i>Sundheim</i> was misplaced.....	13
A. <i>Sundheim</i> does not apply to injunctive relief and in no way supports the decision below.	14
B. Existing statutory remedies do not restrict the relief available under the Colorado Constitution.	17
CONCLUSION	20
CERTIFICATE OF SERVICE	21

TABLE OF AUTHORITIES

Cases

<i>Ainscough v. Owens</i> , 90 P.3d 851 (Colo. 2004).....	11
<i>Am. Tierra Corp. v. City of Jordan</i> , 840 P.2d 757 (Utah 1992).....	15
<i>Armstrong v. Exceptional Child Ctr.</i> , 575 U.S. 320 (2015).....	16
<i>Bauserman v. Unemployment Ins. Agency</i> , 983 N.W.2d 855 (Mich. 2022).....	12, 13, 14
<i>Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics</i> , 403 U.S. 388 (1971).....	16
<i>Board of Cnty. Comm’rs of Douglas Cnty. v. Sundheim</i> , 926 P.2d 545 (Colo. 1996).....	passim
<i>Bock v. Westminster Mall Co.</i> , 819 P.2d 55 (Colo. 1991).....	8
<i>Brown v. Bd. of Ed. of Topeka</i> , 347 U.S. 483 (1954).....	12
<i>Brown v. Bd. of Ed. of Topeka</i> , 349 U.S. 294 (1955).....	12
<i>Buckley v. Chilcutt</i> , 968 P.2d 112 (Colo. 1998).....	9, 18
<i>Burnett v. Smith</i> , 990 N.W.2d 289 (Iowa 2023)	12
<i>Cisneros v. Elder</i> , 506 P.3d 828 (Colo. 2022).....	1

<i>City of Aurora v. Acosta</i> , 892 P.2d 264 (Colo. 1995).....	7
<i>City of Beaumont v. Bouillion</i> , 896 S.W.2d 143 (Tex. 1995)	12
<i>Colo. Anti-Discrimination Comm’n v. Case</i> , 380 P.2d 34 (Colo. 1962).....	6
<i>Conrad v. City & Cnty. of Denver</i> , 656 P.2d 662 (Colo. 1982).....	8
<i>Curious Theatre Co. v. Colo. Dep’t of Pub. Health & Env’t</i> , 220 P.3d 544 (Colo. 2009).....	19
<i>Davis v. Gray</i> , 83 U.S. 203 (1873).....	16
<i>Developmental Pathways v. Ritter</i> , 178 P.3d 524 (Colo. 2008).....	9
<i>Dorwart v. Caraway</i> , 58 P.3d 128 (Mont. 2002).....	14
<i>E. Mo. Coal. of Police v. City of Chesterfield</i> , 386 S.W.3d 755 (Mo. 2012)	10
<i>Ex parte Young</i> , 209 U.S. 123 (1908).....	16
<i>Godfrey v. State</i> , 898 N.W.2d 844 (Iowa 2017)	12
<i>Harris v. Hutchinson</i> , 591 S.W.3d 778 (Ark. 2020)	15
<i>Herrick’s Aero-Auto-Aqua Repair Serv. v. State, Dep’t of Transp. & Pub. Facilities</i> , 754 P.2d 1111 (Alaska 1988)	12
<i>Hodes & Nauser, MDs, P.A. v. Schmidt</i> , 440 P.3d 461 (Kan. 2019).....	5

<i>In re Great Outdoors Colo. Trust Fund,</i> 913 P.2d 533 (Colo. 1996).....	11
<i>In re Morgan,</i> 58 P. 1071 (Colo. 1899).....	5
<i>Katzberg v. Regents of Univ. of California,</i> 58 P.3d 339 (Cal. 2002).....	12
<i>Kelley Prop. Dev., Inc. v. Town of Lebanon,</i> 627 A.2d 909 (Conn. 1993).....	13, 16
<i>Lane v. Commonwealth,</i> 517 N.E.2d 1281 (Mass. 1988).....	15
<i>Larson v. State, Dep’t of Corrs.,</i> 284 P.3d 1 (Alaska 2012)	12, 17
<i>Lathrop v. Deal,</i> 801 S.E.2d 867 (Ga. 2017)	15
<i>Lobato v. State,</i> 218 P.3d 358 (Colo. 2009).....	10
<i>Mack v. Williams,</i> 522 P.3d 434 (Nev. 2022).....	11, 14
<i>Medina v. People,</i> 387 P.2d 733 (Colo. 1963).....	9
<i>Obergefell v. Hodges,</i> 576 U.S. 644 (2015).....	6
<i>Open Door Ministries v. Lipschuetz,</i> 373 P.3d 575 (Colo. 2016).....	15
<i>People in the Interest of J.M.,</i> 768 P.2d 219 (Colo. 1989).....	5
<i>People v. Bradley,</i> 179 P. 871 (Colo. 1919).....	9

<i>People v. Dunaway</i> , 88 P.3d 619 (Colo. 2004).....	6
<i>People v. Rodriguez</i> , 112 P.3d 693 (Colo. 2005).....	4, 10
<i>Perkins v. State of Montana</i> , No. DV-25-282 (Mont. Fourth Jud. Dist. Ct. filed Mar. 27, 2025).....	1
<i>Quinn v. Buchanan</i> , 298 S.W.2d 413 (Mo. 1957)	10
<i>Rathke v. MacFarlane</i> , 648 P.2d 648 (Colo. 1982).....	11
<i>Rocky Mountain Gun Owners v. Polis</i> , 467 P.3d 314 (Colo. 2020).....	8, 19
<i>Sinclair v. City of Gillette</i> , 270 P.3d 644 (Wyo. 2012).....	15
<i>Smith v. Miller</i> , 384 P.2d 738 (Colo. 1963).....	11
<i>State v. Schmid</i> , 423 A.2d 615 (N.J. 1980)	5
<i>Strickler v. Colorado Springs</i> , 26 P. 313 (Colo. 1891).....	5
<i>Taxpayers for Pub. Educ. v. Douglas Cnty. Sch. Dist.</i> , 351 P.3d 461 (Colo. 2015).....	9
<i>The Western Maid</i> , 257 U.S. 419 (1922).....	13
<i>Trinidad Sch. Dist. No. 1 v. Lopez</i> , 963 P.2d 1095 (Colo. 1998).....	9
<i>Univ. of Colo. v. Derdeyn</i> , 863 P.2d 929 (Colo. 1993).....	9

<i>Zaner v. City of Brighton</i> , 917 P.2d 280 (Colo. 1996).....	18
--	----

Statutes

42 U.S.C. § 1983	17, 19
42 U.S.C. § 1988.....	19
C.R.S. § 13-21-131	17, 18
C.R.S. § 24-10-102, 10A (1988).....	14

Other Authorities

Amicus Br., <i>Anderson v. City of Minneapolis</i> , No. A24-1082 (Minn. S. Ct. filed Sept. 18, 2025)	1
Amicus Br., <i>Atencio v. State of New Mexico</i> , No. S-1-SC-40980 (N.M. S. Ct. filed Jan. 30, 2026)	1
Amicus Br., <i>People v. Jennings</i> , No. 165764 (Mich. S. Ct. filed Mar. 2, 2026)	1
Anthony B. Sanders, <i>Social Contracts: The State Convention Drafting History of the Lockean Natural Rights Guarantees</i> , 93 UMKC L. Rev. 641, 658 (2025).....	5
Appellee’s Br., <i>Larson v. State, Dep’t of Corrs.</i> , No. S-14110 (Alaska 2011), 2011 WL 13390821	17
Julie A. Murray & Bridget Lavender, <i>Barriers to Vindicating State Constitutional Rights in Civil Litigation</i> , 60 Harv. C.R.-C.L. L. Rev. 887 (2025)	19
<i>Proceedings of the Constitutional Convention for the State of Colorado</i> (1907).....	8

Constitutional Provisions

Colo. Const. art. II, § 3.....	4, 5, 16
--------------------------------	----------

Colo. Const. art. II, § 4.....	8
Colo. Const. art. II, § 6.....	8, 10, 15
Colo. Const. art. II, § 7.....	9
Colo. Const. art. II, § 10.....	8
Colo. Const. art. II, § 13.....	8
Colo. Const. art. II, § 25.....	5, 6
Colo. Const. art. II, § 28.....	6
Colo. Const. art. III	7
Colo. Const. art. VI, § 1	7
Colo. Const. art. VI, § 3	7
Colo. Const. art. VI, § 9	7
Colo. Const. art. IX, § 7	9
Mo. Const. art. I, § 14	10
Mo. Const. art. I, § 29	10
U.S. Const. amend. IV	9
U.S. Const. amend. V.....	6
U.S. Const. amend. IX	6
U.S. Const. amend. XIV, § 1	6

IDENTITY AND INTEREST OF *AMICI CURIAE*

The American Civil Liberties Union (ACLU) is a nationwide, nonpartisan, nonprofit organization with more than six million members and supporters. The ACLU of Colorado, with over 45,000 members and supporters, is one of the ACLU's state affiliates. The ACLU is dedicated to the principles of liberty and equality embodied in the U.S. and state constitutions and our nation's civil rights laws. As relevant here, the ACLU litigates cases aimed at preserving state constitutional rights and regularly appears before courts throughout the country to vindicate them, including in *Cisneros v. Elder*, 506 P.3d 828 (Colo. 2022), and *Perkins v. State of Montana*, No. DV-25-282 (Mont. Fourth Jud. Dist. Ct. filed Mar. 27, 2025).

The ACLU has an interest in this case because injunctive relief is central to enforcing civil rights and civil liberties. *See, e.g.*, Amicus Br., *Anderson v. City of Minneapolis*, No. A24-1082 (Minn. S. Ct. filed Sept. 18, 2025). In addition, the ACLU seeks to preserve the power of state courts to safeguard individual rights under state constitutions. *See, e.g.*, Amicus Br., *People v. Jennings*, No. 165764 (Mich. S. Ct. filed Mar. 2, 2026); Amicus Br., *Atencio v. State of New Mexico*, No. S-1-SC-40980 (N.M. S. Ct. filed Jan. 30, 2026).

SUMMARY OF ARGUMENT

In this case, families of incarcerated individuals asked a Colorado court to stop county officials from enforcing a ban on family visits that they allege to be unconstitutional. The district court denied their motion for a preliminary injunction based in part on a ruling that no private cause of action for injunctive relief existed under the Colorado Constitution. That ruling flatly contradicts fundamental legal principles embraced in Colorado law and supported by a national consensus. This Court should grant review to correct it.

Colorado law makes clear that injunctive relief is available, regardless of what remedies the legislature has provided, for violations of fundamental individual rights protected by the Colorado Constitution. The relevant text, structure, and history, as well as this Court's precedents, demonstrate that Colorado's Bill of Rights is self-executing; it can be enforced by courts, regardless of the legislative landscape. Other state high courts universally agree that injunctive relief is directly available, under state constitutions themselves, for violations of the individual constitutional rights.

The district court's contrary conclusion rests on two errors of law. First, the district court incorrectly extended this Court's decision in *Board of County Commissioners of Douglas County v. Sundheim*, 926 P.2d 545 (Colo. 1996). In *Sundheim*, this Court held only that Colorado's Due Process Clause did not provide

an implied cause of action for *damages*; that holding said nothing about injunctive relief, and its underlying rationale does not carry over. Second, the district court reasoned that injunctive relief is unavailable for claims brought directly under the Colorado Constitution when other potential remedies exist under state or federal law. But the availability of other remedies is irrelevant. Whatever relief the Colorado Legislature might authorize, or a federal court might recognize, injunctive relief remains vital and available under the Colorado Constitution.

Accordingly, as explained below, this Court should grant the petition and clarify that the Colorado Constitution directly authorizes a private cause of action for injunctive relief to stop or prevent violations of individual state constitutional rights. When government officials engage in ongoing violations of Coloradans' fundamental rights, the Colorado Constitution does not leave the state judiciary at the mercy of whatever injunctive relief may or may not have been authorized by state statutes, Congress, or federal courts. Instead, the Colorado Constitution directly authorizes Colorado courts to order those violations to stop.

ARGUMENT

I. The Colorado Constitution authorizes individuals to sue to stop violations of their state constitutional rights.

When a state actor violates a person’s constitutional rights, that person can sue to stop the violation. Stated more technically, there is a private cause of action for injunctive relief for violations of individual constitutional rights. This bedrock principle of constitutional law holds true in Colorado, as in every other state, no matter the legislative landscape.

A. The text, structure, and history of the Colorado Constitution make injunctive relief available for violations of individual rights.

In interpreting the Colorado Constitution, this Court looks to the text’s “ordinary and common meaning” and presumes that “each phrase . . . was included for a purpose.” *People v. Rodriguez*, 112 P.3d 693, 696–97 (Colo. 2005) (citations omitted). Here, the text of multiple provisions—on inalienable rights, unenumerated rights, and due process—describes robust and *directly enforceable* individual rights. *Amici* address these provisions in turn.

The Inalienable Rights Clause, which has no federal counterpart, provides:

All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

Colo. Const. art. II, § 3. These “natural, essential and inalienable rights” are

specified in affirmative terms, reflecting especially powerful protection. *Compare*, e.g., Colo. Const. art. II, § 25 (prohibiting deprivations of “life, liberty or property” without due process); *cf. Hodes & Nauser, MDs, P.A. v. Schmidt*, 440 P.3d 461, 470 (Kan. 2019) (recognizing that Kansas’s inalienable rights clause “describes rights that are broader than and distinct from those in the Fourteenth Amendment”); *State v. Schmid*, 423 A.2d 615, 626 (N.J. 1980) (tracing the “exceptional vitality” of New Jersey’s speech protections in part to “affirmative[]” language). And like many other “natural rights” guarantees, article II, section 3 has long been judicially enforceable. *See, e.g., People in the Interest of J.M.*, 768 P.2d 219, 221 (Colo. 1989) (requiring the state to establish a compelling interest to infringe on fundamental liberty interests protected by article II, section 3); *Strickler v. Colorado Springs*, 26 P. 313, 317 (Colo. 1891) (rejecting construction of prior appropriation clause that would have conflicted with article II, section 3); *In re Morgan*, 58 P. 1071, 1073 (Colo. 1899) (striking down statute that violated article II, section 3).¹

Colorado’s Due Process Clause imposes a complementary constraint on government conduct. Like the federal clause, it provides: “No person shall be

¹ *See also* Anthony B. Sanders, *Social Contracts: The State Convention Drafting History of the Lockean Natural Rights Guarantees*, 93 UMKC L. Rev. 641, 658 (2025) (explaining that natural rights guarantees in state constitutions are generally enforceable).

deprived of life, liberty or property, without due process of law.” Colo. Const. art. II, § 25; *see* U.S. Const. amend. V (same language); U.S. Const. amend. XIV, § 1 (similar language). The word “shall” indicates this prohibition is mandatory, and thus enforceable. Moreover, federal courts can enjoin violations of the federal Due Process Clause, *see, e.g., Obergefell v. Hodges*, 576 U.S. 644, 681 (2015) (reversing denial of injunction), so the same should be possible under Colorado’s equal or greater due process protections. *Cf. People v. Dunaway*, 88 P.3d 619, 630 (Colo. 2004); Pls.’ Reply in Support of Mot. for PI at 2.

Colorado’s unenumerated rights provision likewise protects substantive rights that are “retained by the people.” Colo. Const. art. II, § 28; *see Colo. Anti-Discrimination Comm’n v. Case*, 380 P.2d 34, 39–40 (Colo. 1962). While the federal Ninth Amendment only prohibits construing enumerated rights “to deny or disparage” unenumerated rights, *see* U.S. Const. amend. IX, Colorado’s clause also prohibits construing them in a manner that would “impair” unenumerated rights, *see* Colo. Const. art. II, § 28, indicating stronger protection for retained rights, *see* Pls.’ Reply in Support of Mot. for PI at 2.

In sum, the Colorado Constitution establishes powerful, independent protections that must be capable of being enforced. The relevant language is strong and specific; each Colorado provision either resembles an enforceable federal

provision or diverges meaningfully from the U.S. Constitution in ways that indicate greater constitutional protection. Deeming these rights directly enforceable is the only way of doing justice to the constitutional text. *Cf. City of Aurora v. Acosta*, 892 P.2d 264, 267 (Colo. 1995) (stating that courts must “apply the [state] constitutional provision according to its clear terms” and “give effect” to every word (citations omitted)).

Structural elements of the Colorado Constitution confirm the availability of injunctive relief. Article III divides government power into “three distinct departments,—legislative, executive, and judicial,” and article VI vests the “judicial power” in Colorado courts. Colo. Const. art. III; *id.* art. VI, § 1. In articulating that power, article VI specifies that this Court “shall have power to issue writs of . . . injunction,” among others, in the exercise of its original jurisdiction. *Id.* art. VI, § 3; *see also id.* art. VI, § 9 (establishing district courts as “trial courts of record with general jurisdiction”). It would be odd for the Constitution to recognize that injunctive relief is part of the judicial power, but then forbid the judiciary to exercise that power to enforce the Constitution’s most fundamental guarantees if statutory alternatives—even restrictive ones—are available.

That outcome would directly undermine not only the specific provisions discussed above, but also the Colorado Constitution’s broader guarantee that

“[c]ourts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character.” Colo. Const. art. II, § 6. The Bill of Rights was designed to “restrict the powers of the Legislative Department” and reserve “more power” to the people than “the usual guaranties of national and civil rights.” *Proceedings of the Constitutional Convention for the State of Colorado* 723–24 (1907).² That design is incompatible with the conclusion that equitable remedies hinge on legislative, rather than judicial, decision-making.

B. Case law in Colorado and other states confirms that individuals can obtain injunctive relief directly under the Colorado Constitution.

Consistent with the constitutional text examined above, this Court’s precedent makes clear that a private cause of action for injunctive relief is available for violations of individual state constitutional rights. The county defendants have not cited a single case that holds otherwise. Nor could they: Colorado jurisprudence is full of cases that have proceeded on the bedrock principle that individuals can sue directly under the state constitution to enjoin violations of their rights.³ Further, no

² Available at: https://archives.colorado.gov/sites/archives/files/documents/PROCEEDINGS%20OF%20THE%20CONSTITUTIONAL%20CONVENTION-tagged_0.pdf.

³ See, e.g., *Rocky Mountain Gun Owners v. Polis*, 467 P.3d 314 (Colo. 2020) (art. II, § 13); *Bock v. Westminster Mall Co.*, 819 P.2d 55 (Colo. 1991) (art. II, § 10); *Conrad v. City & Cnty. of Denver*, 656 P.2d 662 (Colo. 1982) (art. II, § 4); see also

other state supreme court, to *amici*'s knowledge, has reached a different conclusion in circumstances similar to this case.

As an initial matter, Colorado case law recognizes “a presumption in favor of self-execution” for state constitutional provisions, *Developmental Pathways v. Ritter*, 178 P.3d 524, 531 (Colo. 2008), and this Court has held that the state Bill of Rights is self-executing, *Medina v. People*, 387 P.2d 733, 736 (Colo. 1963); *see* Pls.’ Reply in Support of Mot. for PI 1 n.1. The term “self-executing” generally means “the rights therein recognized” are automatically “operative.” *Id.* Such rights can be enforced “without the aid of any legislative enactment,” *People v. Bradley*, 179 P. 871, 188 (Colo. 1919), and cannot be impaired by legislation, *Buckley v. Chilcutt*, 968 P.2d 112, 116 (Colo. 1998). It follows that these rights are directly enforceable: Individuals may sue—and courts may issue injunctions—directly under the relevant state constitutional provision.

Thus, in *Medina*, when it held that the Colorado Bill of Rights is self-executing, this Court relied in part on a Missouri case granting injunctive relief under the Missouri Bill of Rights. 387 P.2d at 736 (citing *Quinn v. Buchanan*, 298 S.W.2d

Taxpayers for Pub. Educ. v. Douglas Cnty. Sch. Dist., 351 P.3d 461 (Colo. 2015) (art. IX, § 7), *vacated on other grounds*, 582 U.S. 950 (2017); *Trinidad Sch. Dist. No. 1 v. Lopez*, 963 P.2d 1095 (Colo. 1998) (art. II, § 7 and the Fourth Amendment); *Univ. of Colo. v. Derdeyn*, 863 P.2d 929 (Colo. 1993) (same).

413, 417–19 (Mo. 1957), *overruled on other grounds by E. Mo. Coal. of Police v. City of Chesterfield*, 386 S.W.3d 755, 760–61 (Mo. 2012)).⁴ There, the Missouri Supreme Court reasoned that the state Bill of Rights was self-executing as to “governmental action in violation of . . . declared rights,” since such a violation “surely is a legal wrong,” and so “there is available every appropriate remedy to redress or prevent violation of this right.” *Quinn*, 298 S.W.2d at 417–19. It also invoked Missouri’s state constitutional remedy right, *id.* at 417, which has a direct analogue in the Colorado Constitution. *Compare* Mo. Const. art. I, § 14, *with* Colo. Const. art. II, § 6. This Court’s reliance on a case granting injunctive relief underscores the availability of such relief in Colorado. *Cf. Rodriguez*, 112 P.3d at 699 (noting the Missouri Constitution served as a model for Colorado).

Separation-of-powers principles support that view. It is “the province and duty of the judiciary to interpret the Colorado Constitution,” *Lobato v. State*, 218 P.3d 358, 371–72 (Colo. 2009), and “constitutional provisions must be declared *and enforced* as written.” *Rodriguez*, 112 P.3d at 696 (emphasis added) (citing *In re*

⁴ In the overruling case, the Missouri Supreme Court recognized a non-self-executing affirmative duty under the state Bill of Rights—the duty to bargain collectively with a union. *See E. Mo. Coal. of Police*, 386 S.W.3d at 761–62; Mo. Const. art. I, § 29. But its holding did not alter the self-executing nature of provisions that protect fundamental rights from government infringement, such as the ones at issue here.

Great Outdoors Colo. Trust Fund, 913 P.2d 533, 538 (Colo. 1996). Consistent with this role, the judiciary “has judgment and the power to enforce its judgments and orders,” *Smith v. Miller*, 384 P.2d 738, 741 (Colo. 1963), including when state actors violate individual constitutional rights. Indeed, Colorado courts “will enjoin” the enforcement of state laws where “fundamental constitutional rights are being destroyed or threatened with destruction.” *Rathke v. MacFarlane*, 648 P.2d 648, 652 (Colo. 1982). In addition, this Court’s standing doctrine, which helps set the outer bounds of the judicial power, is quite broad. *See Ainscough v. Owens*, 90 P.3d 851, 855–56 (Colo. 2004) (requiring only an injury-in-fact and harm to a “legally protected interest,” such as “an interest in having a government that acts within the boundaries of our state constitution”). Because Colorado law is structured to facilitate judicial relief through private suits, it is hardly surprising that an individual’s ability to sue directly under the Colorado Constitution to enforce individual rights has historically been taken as given.

Other state high courts, seemingly without exception, have reached similar conclusions. The Nevada Supreme Court has held that self-executing provisions “give rise to a cause of action” by “nature.” *Mack v. Williams*, 522 P.3d 434, 442 (Nev. 2022). The Michigan Supreme Court has observed that, “[g]enerally, enforcing constitutional rights through injunctive relief is

uncontroversial, . . . despite the lack of an explicit constitutional authorization for such a cause of action.” *Bauserman v. Unemployment Ins. Agency*, 983 N.W.2d 855, 869 (Mich. 2022) (citing *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 486 n.1 (1954); *Brown v. Bd. of Ed. of Topeka*, 349 U.S. 294 (1955)). Even courts that have declined to recognize certain implied claims for damages have nonetheless recognized private causes of action *for injunctive relief*. The Alaska Supreme Court, for example, has determined that “injunctive relief is an ‘available and appropriate remedy’ for violations under the state constitution, even where a *Bivens*[-style] claim for damages is unavailable.” *Larson v. State, Dep’t of Corrs.*, 284 P.3d 1, 10 (Alaska 2012) (quoting *Herrick’s Aero-Auto-Aqua Repair Serv. v. State, Dep’t of Transp. & Pub. Facilities*, 754 P.2d 1111, 1116 (Alaska 1988)).⁵ That is because “the

⁵ See also, e.g., *Burnett v. Smith*, 990 N.W.2d 289, 306 (Iowa 2023) (“Historically the Iowa Constitution has been, and continues to be, a vital check on government encroachment of individual rights. Our courts enforce that check by invalidating and enjoining actions taken in violation of the constitution.” (quoting *Godfrey v. State*, 898 N.W.2d 844, 881 (Iowa 2017) (Mansfield, J., dissenting))); *Katzberg v. Regents of Univ. of California*, 58 P.3d 339, 342–43 (Cal. 2002) (“[I]t also is clear that, like many other constitutional provisions, this section [the state Due Process Clause] supports an action, brought by a private plaintiff against a proper defendant, for declaratory relief or for injunction.”); *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995) (allowing suits for equitable relief under the state constitution because “[t]he framers intended that a law contrary to a constitutional provision is void” and “[a] law that is declared void has no legal effect”); *Kelley Prop. Dev., Inc. v. Town of Lebanon*, 627 A.2d 909, 923 (Conn.

fundamental rights” in a state constitution “must be enforceable,” *Bauserman*, 983 N.W.2d at 865, not “ghosts that are seen in the law but that are elusive to the grasp,” *id.* (quoting *The Western Maid*, 257 U.S. 419, 433 (1922)). “The recognition and redress of constitutional violations are quintessentially judicial functions” and are “required” by the separation of powers. *Id.* at 862.

The same analysis applies here. This Court should confirm the availability of injunctive relief for violations of individual rights under the Colorado Constitution, consistent with Colorado constitutional text, structure, history, and precedent, as well as the broader consensus in state constitutional jurisprudence.

II. The district court’s reliance on *Sundheim* was misplaced.

In rejecting the plaintiffs’ claim for injunctive relief under the state constitution, the district court applied *Sundheim*’s framework for determining the availability of *damages* relief. First, the district court assumed (Dist. Ct. Op. at 18) that *Sundheim*’s rule for implied damages claims—that they generally should not be recognized if other adequate remedies exist—also pertains to implied equitable claims. Second, applying that damages rule, the district court determined (Dist. Ct. Op. at 19) that a private right of action for injunctive relief is unavailable here

1993) (noting that the plaintiff could have sought “equitable relief, such as an action for an injunction”).

because, in its view, the plaintiffs had an adequate remedy under state and federal statutes. Neither step of the court’s analysis was correct.⁶

A. *Sundheim* does not apply to injunctive relief and in no way supports the decision below.

In *Sundheim*, this Court declined to recognize an implied cause of action “in damages” under the state Due Process Clause for three main reasons. 926 P.2d at 549. None of them supports extending *Sundheim* to injunctive relief.

First, the Court in *Sundheim* expressed concern that an implied damages remedy would lead to unlimited governmental liability and excessive burdens on taxpayers. *Id.* at 549–50 (quoting C.R.S. § 24-10-102, 10A (1988)). But that rationale has little force when a court orders a government actor to stop violating the state constitution. Furthermore, in voicing these concerns, the Court relied heavily

⁶ Below, *amici* argue that *Sundheim* is distinguishable even assuming its holding as to the availability of damages was correct. But *amici* respectfully submit that, in an appropriate case, that holding should be reexamined. As other state supreme courts have recently held, a state constitution can directly authorize not only injunctive relief, but also damages, for violations of individual constitutional rights. *See, e.g., Mack v. Williams*, 522 P.3d at 451 (recognizing implied damages remedy under the state constitution’s search-and-seizure provision); *Bauserman*, 983 N.W.2d at 866–67, 875 (Mich. 2022) (recognizing implied damages remedy under the state constitution’s due process clause and collecting cases from other states); *see also Dorwart v. Caraway*, 58 P.3d 128, 133–38 (Mont. 2002) (canvassing law and scholarship, and recognizing implied damages remedy under self-executing provisions).

on the policies behind the Colorado Governmental Immunity Act. *Id.* But like other state immunity laws,⁷ the Act nowhere bars prospective injunctive relief. *See Open Door Ministries v. Lipschuetz*, 373 P.3d 575, 579 (Colo. 2016).

Second, the *Sundheim* Court reasoned that Colorado’s Equality of Justice Clause, Colo. Const. art. II, § 6, does not “obligate Colorado courts to create remedies where none currently exist,” and therefore does not mandate an implied damages remedy. 926 P.2d at 550. But in the same paragraph, the Court confirmed that this provision *does* require state courts to “recognize when a citizen’s rights are violated and effectuate those rights by applying legally established remedies.” *Id.* Even assuming that damages liability is not an “established” remedy, injunctive

⁷ *See, e.g., Lane v. Commonwealth*, 517 N.E.2d 1281, 1283 (Mass. 1988) (“We can think of no basis for recognizing some form of governmental immunity that would prevent issuance of an injunction against an ongoing wrong committed systematically and intentionally by a governmental agency for the continuing benefit of the Commonwealth.”); *Harris v. Hutchinson*, 591 S.W.3d 778, 781 (Ark. 2020) (“[T]he defense of sovereign immunity is inapplicable in a lawsuit seeking only declaratory or injunctive relief and alleging an illegal, unconstitutional, or ultra vires act.”); *Lathrop v. Deal*, 801 S.E.2d 867, 887, 891 (Ga. 2017) (recognizing that official immunity “does not limit the availability of prospective relief,” consistent with “the understanding in American law generally that the personal immunities of public officers typically do not extend to prospective relief”); *Am. Tierra Corp. v. City of Jordan*, 840 P.2d 757, 759 (Utah 1992) (noting that the Utah “long has recognized a common law exception to governmental immunity for equitable claims”); *Sinclair v. City of Gillette*, 270 P.3d 644, 648 (Wyo. 2012) (making clear that governmental immunity from damages claims does not deprive plaintiffs of “access to the courts to pursue their claim[s] for injunctive relief”).

relief is. Otherwise, the judiciary would in some cases be powerless to stop officials from continuing to violate the state constitution in perpetuity.

Third, the *Sundheim* Court applied federal implied damages doctrines, under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), to conclude that existing statutory remedies obviated the need for an implied damages remedy. *Sundheim*, 926 P.2d at 550–53. But *Bivens* involved federal damages claims, not state claims for injunctive relief. 403 U.S. at 389–90. Indeed, the U.S. Constitution lacks key protections on which the plaintiffs rely here, *e.g.*, Colo. Const. art. II, § 3; *see* Pls.’ Reply in Support of Mot. for PI at 2, and in any event, federal courts have long recognized that federal plaintiffs can “sue to enjoin unconstitutional actions.” *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 327 (2015); *see also Ex parte Young*, 209 U.S. 123, 150–51 (1908) (citing *Davis v. Gray*, 83 U.S. 203, 220 (1873)). In short, and as explained further in Part II.B, the federal *Bivens* doctrine in no way suggests that injunctive relief is unavailable under the Colorado Constitution. *Cf. Sundheim*, 926 P.2d at 552–53 (relying on *Kelley Prop. Dev., Inc. v. Town of Lebanon*, 627 A.2d 909 (Conn. 1993), which acknowledged the availability of “injunctive relief” in declining to recognize a state *Bivens* action).

For all those reasons, it makes little sense to extend the rule for implied damages remedies to injunctive relief. The Alaska Supreme Court recognized as

much in *Larson v. State, Department of Corrections*, where it rejected precisely the argument on which the district court relied here. In that case, the state argued that, because the Alaska Supreme Court had previously declined to recognize a private cause of action for damages under the Alaska Constitution, it should also decline to recognize a private cause of action for injunctive relief. 284 P.3d at 9–10; *see* Appellee’s Br. at *12, *Larson v. State, Dep’t of Corrs.*, No. S-14110 (Alaska 2011), 2011 WL 13390821. But the Alaska Supreme Court disagreed. The court explained that its precedent on damages simply “did not address or restrict claims for injunctive relief based on constitutional violations,” and it affirmed that injunctive relief is available under the state constitution. *Id.* at 10. To clear up confusion in the lower courts, this Court should do the same.

B. Existing statutory remedies do not restrict the relief available under the Colorado Constitution.

Applying *Sundheim*’s framework, the district court relied on two statutes—the Colorado Enhance Law Enforcement Integrity Act of 2020, *see* C.R.S. § 13-21-131, and to a lesser extent the federal Ku Klux Klan Act of 1871, *see* 42 U.S.C. § 1983—as grounds for holding that injunctive relief is not available under the Colorado Constitution itself. *See* Dist. Ct. Op. at 19 & n.7. But that reasoning cannot be right, since it makes the enforceability of state constitutional provisions contingent on multiple institutions that are not charged with interpreting the

Colorado Constitution, namely, the state legislature, Congress, and federal courts.

First, the availability of injunctive relief under a state constitution adopted in 1876 cannot depend on the state legislature's decision, in 2020, to enact a law prescribing legal and equitable remedies for certain constitutional violations. This is especially true because, as discussed above, this Court has already recognized that the Colorado Constitution is presumptively self-executing. State legislation cannot "directly or indirectly impair[] . . . rights granted by self-executing constitutional provisions." *Buckley*, 968 P.2d at 116 (quoting *Zaner v. City of Brighton*, 917 P.2d 280, 286 (Colo. 1996)). If the existence of a state statutory remedy could eliminate the availability of injunctive relief under the state constitution, then the legislature could effectively negate every state constitutional right by constricting the remedies available to enforce it. *Cf.* Dist. Ct. Op. at 18–19 ("The fact that a party may not ultimately prevail under such adequate remedies does not mean they are unavailable to them."). That would be an absurd contravention of the separation of powers.

Further, even setting aside constitutional principles, plain statutory interpretation counsels against the district court's use of C.R.S. § 13-21-131 to impair civil rights. The Enhance Law Enforcement Integrity Act created a new cause of action against peace officers when they violate the state Bill of Rights and eliminated qualified immunity in that context. *See* C.R.S. § 13-21-131(1). The Act

was designed to expand the relief available under the Bill of Rights. Yet, under the district court's approach, the Act had the effect of extinguishing the availability of injunctive relief in certain cases, including this one. Again, that cannot be right.

Second, any reliance on remedies available under the increasingly restrictive 42 U.S.C. § 1983⁸ would likewise be misplaced. Congress's decision to create a statutory remedy for federal rights does not eliminate the injunctive relief available directly under the Colorado Constitution, especially since this Court need not follow federal courts in defining the contours of state constitutional rights and remedies. *See Rocky Mountain Gun Owners v. Polis*, 467 P.3d 314, 324 (Colo. 2020) (quoting *Curious Theatre Co. v. Colo. Dep't of Pub. Health & Env't*, 220 P.3d 544, 551 (Colo. 2009)) (noting this Court is the "final arbiter of the meaning of the Colorado Constitution" and has a "responsibility to engage in an independent analysis").

The district court was therefore wrong to conclude that an individual's rights under the state constitution can depend on the vicissitudes of legislative will or federal jurisprudence. The Colorado judiciary has not only the power, but also the

⁸ *See* Julie A. Murray & Bridget Lavender, *Barriers to Vindicating State Constitutional Rights in Civil Litigation*, 60 Harv. C.R.-C.L. L. Rev. 887, 896 (2025) ("U.S. Supreme Court decisions on the scope of §§ 1983 and 1988 have over the years increasingly impaired a plaintiff's ability to vindicate federal constitutional rights.").

responsibility, to ensure that the guarantees set out in the constitutional text have meaning—and to enjoin government action that violates their terms.

CONCLUSION

Amici respectfully urge the Court to grant the plaintiffs’ petition and make explicit what Colorado law has always implicitly recognized: that individuals can sue directly under the Colorado Constitution to halt violations of their state constitutional rights.

Dated: March 30, 2026

Respectfully submitted,

/s/ Timothy R. Macdonald

Timothy R. Macdonald, No. 29180

Sara R. Neel, No. 36904

ACLU Foundation of Colorado

303 E. 17th Ave., Suite 350

Denver, Colorado 80203

tmacdonald@aclu-co.org

sneel@aclu-co.org

P: (720) 402-3114 | F: (303) 777-1773

Matthew Segal*

American Civil Liberties Union

Foundation

915 15th Street NW

Washington, DC 20005

msegal@aclu.org

(202) 715-0822

Lillian Moore-Eissenberg*
American Civil Liberties Union
Foundation
425 California Street, Suite 700
San Francisco, CA 94104
lmoore-eissenberg@aclu.org
(415) 343-0762

**Motion for pro hac vice entry of
appearance pending*

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on March 30, 2026, a copy of the above **BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF COLORADO IN SUPPORT OF PETITIONERS/PLAINTIFFS** was filed with the Court and served via the Colorado Courts E-Filing System, which notifies all counsel of record.

Respectfully Submitted,

/s/ Kara S. Narberes
Kara S. Narberes

Paralegal for Amici Curiae