

COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, CO 80203	
PETITIONERS: 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. RESPONDENTS: 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 ▲
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**BRIEF OF *AMICI CURIAE*
MACARTHUR JUSTICE CENTER AND
THE STATE LAW RESEARCH INITIATIVE
IN SUPPORT OF PETITIONERS**

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of Colo. R. App. P. 29 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the brief complies with Colo. R. App. P. 29(d) and contains 4,750 words.

The amicus brief complies with the content and form requirements set forth in Colo. R. App. P. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colo. R. App. P. 29 and 32.

/s/ *Mari Newman*
Mari Newman

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IDENTITY AND INTEREST OF THE *AMICI CURIAE*¹

The Roderick & Solange MacArthur Justice Center (“RSMJC”) is a nonprofit civil rights organization founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC attorneys have played a key role in civil rights cases concerning important criminal justice issues like police misconduct, wrongful conviction, excessive sentencing, and the treatment of incarcerated people. RSMJC attorneys also have specific experience with amicus briefs on issues involving the Colorado Constitution. *See, e.g.*, Brief of *Amici Curiae* Colorado Criminal and Constitutional Law Scholars in Support of Petitioner, *Sellers v. Colorado*, 22SC73 (2023); Amicus Brief in Support of Plaintiffs, *Lilgerose v. Polis*, No. 2022CV30421 (Colo. Dist. Ct. 2022).

The State Law Research Initiative (“SLRI”), a fiscally sponsored project of the Proteus Fund, Inc., is a legal advocacy organization dedicated to reviving and strengthening state constitutional rights that

¹ Counsel for a party did not author this brief, in whole or in part, and did not make a monetary contribution intended to fund the preparation or submission of this brief. Nor did any person or organization other than the *amici curiae* make any monetary contributions towards writing this brief.

prevent extremes in our criminal systems, with a focus on excessive prison terms and inhumane conditions of confinement. SLRI has unique expertise in the development and application of state constitutional law, particularly in the context of criminal legal systems. SLRI's work includes, among other things, fostering and developing legal scholarship on the history and meaning of state constitutional rights, as well as working with legal scholars and criminologists to file amicus briefs in state courts of appeal.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Nearly fifty years ago, the Adams County Jail implemented a complete ban on “all contact visitation,” claiming that “such a program was precluded by the security requirements” of the facility. *Wesson v. Johnson*, 195 Colo. 521, 524 (1978). Interpreting the federal Constitution, the Colorado Supreme Court concluded the ban infringed on the federal Due Process Clause and was not necessary as the “least restrictive means” to serve substantial state interests. *Id.* at 523-24. The Court emphasized that, given the paramount importance of familial association in Colorado, restrictions on family relationships “must be narrowly drawn so as to minimally interfere with such a relationship.” *Id.* at 523.

In this case, Adams County has again enacted a complete ban on in-person visitation by family members, but Plaintiffs have raised a fundamentally different question. They do not ask whether the ban still violates federal constitutional law—indeed, they have not alleged a federal claim at all. Instead, Plaintiffs ask Colorado’s courts to interpret this state’s constitution and apply its own unique protections for familial association.

The district court never engaged in that analysis. Instead, it defaulted to federal constitutional law, treating that law as the “baseline for individual rights and liberties.” Order Re: Plaintiff’s Motion for Preliminary Injunction at 13, *E.L. v. Claps* (No. 2025CV31717). After concluding the ban does not violate federal law (in effect deciding a claim that was not raised), the district court then asked “whether Colorado’s courts have recognized a state constitutional right under Article II to in-person visits based on familial association.” *Id.* at 16. Finding no case from a state appellate court specifically recognizing such a right, the district court ended its inquiry, without ever interpreting the scope of Colorado’s due process protections for familial association.

That reasoning was flawed for two reasons. First, the court failed entirely to fulfill its core “responsibility” to independently analyze the state’s constitution when presented with a state constitutional claim. *See Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 34 (2020). Instead, the court’s narrow approach reflects the incorrect view that state constitutional rights apply only if a prior state appellate decision is precisely on point. This artificially high standard is inconsistent with precedent recognizing that the Colorado Constitution provides a unique

“font of individual liberties.” William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977). Treating state constitutional rights as equivalent to the “federal floor” absent a prior, specifically on-point precedent improperly denigrates state constitutional rights and precludes recognition of any right not already clearly established in the case law. Such treatment prevents state courts from building Colorado’s “own house” of constitutional rights. *Rocky Mountain Gun Owners*, ¶ 36.

Second, the district court failed to consider the case for recognizing the right to familial association—here, the right to visit one’s family in-person at the jail—is even stronger today under state constitutional law than it was at the time of *Wesson*. Just last year, the Colorado Legislature reaffirmed its commitment to families by passing a law protecting people’s right to visit their families in jails and prisons. That law built on decades of research demonstrating the importance of in-person contact to the integrity of families. And in the decades since *Wesson*, multiple sister state sovereigns have mirrored the Colorado Supreme Court’s reasoning in recognizing the right under their own state constitutions.

For these reasons, this Court should recognize in-person visitation is part of the right to familial association guaranteed by the Colorado Constitution and reverse the district court.

ARGUMENT

I. Colorado Courts Have An Independent Obligation To Interpret The Colorado Constitution’s Unique Protections.

This case solely concerns the right to familial association “under the Colorado Constitution.” Class Action Complaint and Jury Demand, at 65 ¶ 368, *E.L. v. Claps* (No. 2025CV31717). Invoking their state constitutional rights, Plaintiffs challenged Defendants’ ban of in-person and contact visits at the Adams County Jail, which “prevent[s] them from hugging, touching, making eye contact with, intimately communicating with, or spending time in the same room with their incarcerated parents and children.” *Id.* at 66, ¶ 370.

When asked to interpret rights guaranteed under the Colorado Constitution, the Colorado Supreme Court has repeatedly recognized state courts’ “responsibility to engage in an independent analysis of our own state constitutional provision[s].” *Rocky Mountain Gun Owners*, ¶ 34. “This responsibility,” the Court emphasized, “springs from the inherently separate and independent functions of the states in a system

of federalism.” *People v. Young*, 814 P.2d 834, 842 (Colo. 1991). Under our system of federalism, “the distinctive text of a separate sovereign” must be given its own “meaning independent of the federal provision.” *Rocky Mountain Gun Owners*, ¶ 35. (citing Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of the American Constitutional Law* 174 (2018)).

That obligation is particularly important for Colorado’s Constitution, which provides unique guarantees the federal Constitution does not. For example, the Colorado Constitution “guarantees to each person the right to bail except for capital offenses.” *Wesson*, 195 Colo. at 522 n.1 (citing COLO. CONST. art. II, § 19). The Colorado Constitution also guarantees the equality of the sexes. *See* COLO. CONST. art. II, § 29. And the Colorado Constitution guarantees the right to abortion, which Coloradans ratified even after the U.S. Supreme Court held that no such right exists under the federal Constitution. *See* COLO. CONST. art. II, § 32; *see also* Jennifer Brown, *Amendment 79 passes: Colorado will protect abortion in state constitution, allow public spending on procedure*, The COLORADO SUN (Nov. 5, 2024, 8:30 PM), <https://coloradosun.com/2024/11/05/colorado-amendment-79-results/>.

In these ways, the text of the Colorado Constitution makes clear it can be, and often is, more protective of fundamental liberties than the federal Constitution.

The difference between these constitutions matters even when interpreting clauses that mirror the language in the federal Constitution, like the Due Process Clause. “We recognize,” the Colorado Supreme Court has made clear, “our freedom to interpret our state constitutional provisions in a manner different from the United States Supreme Court’s interpretations of similar provisions in the United States Constitution.” *People v. Dist. Ct.*, 834 P.2d 181, 193 (Colo. 1992). And the Court has explained that “[t]here is no reason to think, as an interpretative matter, that constitutional guarantees of independent sovereigns, *even guarantees with the same or similar words*, must be construed in the same way.” *People v. McKnight*, 2019 CO 36, ¶ 38 (2019) (emphasis added) (quoting Sutton, *supra*, at 174). In other words, “even parallel text does not mandate parallel interpretation.” *Rocky Mountain Gun Owners*, ¶ 37.

Accordingly, the Colorado Supreme Court has recognized broader state constitutional rights regarding searches and seizures, double

jeopardy,² cruel and unusual punishment,³ and—most relevant here—due process. For example, in the search and seizure context, the Court interpreted the state Fourth Amendment analogue more broadly in light of Colorado’s state policies towards marijuana. *See McKnight*, ¶¶ 9-19, 35-48. Deviating from the federal interpretation, the Colorado Supreme Court held the dog sniff in question constituted a search under the Colorado Constitution, “because that sniff [could] detect lawful activity, namely the legal possession of up to one ounce of marijuana by adults at least twenty-one years old.” *Id.* at ¶ 62; *see also People v. Oates*, 698 P.2d 811, 815 (Colo. 1985) (recognizing that Colorado courts “are not bound by the decisions of the United States Supreme Court construing the federal constitution”); *People v. Sporleder*, 666 P.2d 135, 140 (Colo. 1983) (same); *Charnes v. DiGiacomo*, 200 Colo. 94, 98-99 (1980) (making clear that federal precedent “does not determine the scope of protection provided to individuals in Colorado by the constitution of this state”).

² *See People v. Paulsen*, 198 Colo. 458 (1979) (rejecting the federal analysis in *United States v. Scott*, 437 U.S. 82 (1978)).

³ *See Wells-Yates v. People*, 2019 CO 90M, ¶ 10, 454 P.3d 191, *as modified on denial of reh’g* (Dec. 16, 2019) (stating that although article II, section 20 of the Colorado Constitution is identical to the federal Eighth Amendment, “our analysis does not mirror the Supreme Court’s”).

The Colorado Supreme Court exercised the same independence in the context of the state Due Process Clause. In *People ex rel. Juhan v. District Ct. for Jefferson Cnty.*, 165 Colo. 253 (1968), the Court rejected federal precedent and struck down a Colorado statute under the Colorado Constitution because the law placed the burden on criminal defendants to prove insanity by a preponderance of the evidence. *See id.* at 257. “There is not the slightest requirement that the meaning of ‘due process of law’ shall be the same in each of the fifty states,” the Court wrote. *Id.* at 260-61. “Again, we say that there is no requirement,” the Court explained, “that due process of law shall operate as a ‘straight jacket’ forcing every sovereign state to give [n]o more, as well as no less, protection than that which would be recognized at the federal level.” *Id.* at 262.

Following federal law is especially inappropriate in cases, like this one, that concern criminal law and family law, which are core areas of state law. As the Colorado Supreme Court has explained, “Criminal law has traditionally been considered best left to the expertise of the state courts as the vast majority of criminal prosecutions take place in state, rather than federal, court.” *McKnight*, ¶ 39 (internal citation omitted).

The same is true for matters of family law, which are the “paradigmatic turf” of the states. Tamar Ezer, *A Positive Right to Protection of Children*, 7 YALE HUM. RTS. & DEV. L.J. 1, 11 (2004).

Contrary to the Colorado Supreme Court’s clear commands to conduct an independent state constitutional analysis, the district court completely failed to conduct any analysis as to whether the Colorado Constitution protects the fundamental right to familial association. With its failure, it ignored the many examples of more expansive state constitutional rights—some involving the very clause at issue in this case. And so, it never grappled with whether the Colorado Constitution prohibits Defendants’ complete ban on contact visits.

In its analysis, the district got the legal standard exactly backward. The starting point for state courts interpreting the state constitution is the “responsibility to engage in” independent article II, section 25 analysis. *Young*, 814 P.2d at 842. That analysis will often extend well beyond the scope of federal rights, as state constitutions “are a font of individual liberties, their protections often extending beyond those required by the Supreme Court’s interpretation of federal law.” Brennan, *supra*, at 491. The Colorado Constitution, in particular, was “written to

address the concerns of our own citizens and tailored to our unique regional location [and] is a source of protection for individual rights that is independent of and supplemental to the protections provided by the United States Constitution.” *Young*, 814 P.2d. at 843. “When interpreting our own constitution,” the Colorado Supreme Court emphasized, “we do not stand on the federal floor; we are in our own house.” *Rocky Mountain Gun Owners*, ¶ 36.

The district court’s approach would restrict any addition to that house beyond what state appellate courts have already recognized, while handcuffing state rights to federal precedents even when federal courts roll back protections for individual liberties. That is a wholly inadequate approach to state constitutional interpretation and is inconsistent with a century of state constitutional independence in Colorado.

II. Colorado’s Unique Protections For Familial Association Apply Even More Strongly To In-Person Visitation Today Than When The Colorado Supreme Court Decided *Wesson*.

The right to familial association—“the interest of parents in the care, custody, and control of their children”—is one of the oldest and most fundamental components of due process protected by both the Colorado Constitution and the federal Constitution. *L.L. v. People*, 10 P.3d 1271,

1275-76 (Colo. 2000). In *Wesson*, the Colorado Supreme Court recognized the federal due process right extended to parents and children visiting one another in jails. Because federal law was sufficient at the time to protect the plaintiffs' rights, the Court never addressed the protections provided by Colorado's Constitution. But fifty years later, federal protections for families have regressed, making the Colorado Constitution's unique protections critical.

The reasons for interpreting Colorado's due process protections broadly to protect in-person visitation are even stronger today than when the Colorado Supreme Court decided *Wesson*. As local developments show, Colorado's Constitution embodies a commitment to ensuring people in custody can maintain contact with their loved ones. Decades of scientific research confirm the importance of this right. And since *Wesson*, other states have similarly protected in-person visitation as a matter of state constitutional law. This Court should take this opportunity to enshrine the logic of *Wesson* under the Colorado Constitution and ensure protection for Colorado families.

A. *Wesson* Laid Out Enduring Reasons For Protecting Families' Right To Visit Their Loved Ones In Jail.

The reasons *Wesson* gave in interpreting the federal Constitution continue to have force for Colorado's Due Process Clause. In striking down the Adams County Jail's ban on in-person visitation, the Colorado Supreme Court first recognized unique features of Colorado law that showed the rights-expansive nature of the Colorado Constitution. Citing Colorado's special guarantee of the right to bail, the Court explained that people detained in jail "are persons who, under our American system of justice, are presumed to be innocent of any crime and who, if they have sufficient funds, would be free on bail enjoying freedom while awaiting trial." *Wesson*, 195 Colo. at 522. As a result, the Court recognized that a "least restrictive means test . . . must be applied to pretrial detainees." *Id.* at 523. "Any restrictions upon pretrial detainees must be narrowly drawn so as to minimally interfere" with their family relationships. *Id.* Both Colorado's guarantee of bail and its protections for visitation in jail ensure that people presumed innocent are not cut off from their loved ones.

The Court also cited the psychological impact of in-person visitation as a reason for protecting the right. "The right to touch, see and hear

visitors,” the Court explained, “has an important psychological impact upon persons who are confined.” *Id.* Given the irreplaceable role visiting loved ones plays in psychological and mental health, the Court emphasized that “a pretrial detainee should be able to visit with whomever he or she pleases in the most conducive setting possible for substantial periods each week.” *Id.*

In light of these enduring reasons for applying the right to familial association to in-person visitation, the Colorado Supreme Court concluded Adams County’s complete ban could not stand. The Court explained that “contact visitation can only be denied when mandated by a substantial state interest,” and “the burden is on the state to prove that the security of the institution precludes the operation of such a program.” *Id.* at 524. The Court emphasized the “state cannot meet this burden 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.” *Id.*

Wesson once rested on the “federal floor” of constitutional rights, but federal courts have since reduced those protections beyond

recognition. It is time to bring the reasoning of *Wesson* into Colorado’s “own [constitutional] house.” *Rocky Mountain Gun Owners*, ¶ 36.

B. The People Of Colorado Have Reaffirmed Their Strong Commitment To In-Person Visitation In State Law.

When interpreting the Colorado Constitution, the Colorado Supreme Court has recognized the importance of “local development[s]” within the state. *McKnight*, ¶ 40. In *People v. McKnight*, the Court noted it has “a freer hand in doing something the Supreme Court cannot: allowing local conditions and traditions to affect [its] interpretation of a constitutional guarantee and the remedies imposed to implement that guarantee.” *Id.* (quoting Sutton, *supra*, at 174). When accounting for local developments, “interpreting the state constitution in a manner that departs from federal courts’ interpretations of similar federal provisions not only makes the most sense,” the Court stressed, “it may be the most logical option.” *Id.* (citing *Developments in the Law: The Interpretation of State Constitutional Rights*, 95 HARV. L. REV. 1324, 1359-60 (1982)).

In 2025, the people of Colorado underscored the importance of the right to familial association in jails and prisons by enacting House Bill 25-1013, AN ACT CONCERNING SOCIAL VISITATION RIGHTS FOR A PERSON CONFINED IN A CORRECTIONAL FACILITY, HB25-1013, 2nd Sess. (Colo.

2025). The Act provides that the Colorado Department of Corrections shall not “deprive a person of visitation rights while the person is in restrictive housing or is subject to restricted privilege” or “deprive a visitor of the ability to visit a person confined in a correctional facility so long as the confined person agrees to the visit and the visitor and the confined person comply with all of the department’s policies.” HB25-1013, 2nd Sess., § 17-20-130(4)(a)(I), (II) (Colo. 2025). In doing so, the law echoes *Wesson*’s concern for people’s ability to maintain important relationships in custody, especially “where visitation with family members is involved.” *Wesson*, 195 Colo. at 523.

The Act also states video visits are no substitute for in-person visits. It clarifies that “[v]ideo visits are considered non-contact visits and may supplement, *but must not take the place of, in-person visits* when in-person visits are permitted.” HB25-1013, 2nd Sess. § 17-20-130 (4)(b)(II) (Colo. 2025) (emphasis added). While the Act limits visitation in particular scenarios, each limitation is subject to time limits or necessity determinations. *See id.* at (4)(a)(I), (4)(a)(II), (4)(c). In this way, too, the law mirrors *Wesson*’s emphasis on “the least restrictive means test,” which requires in-person visitation be permitted unless the state can

“prove that the security of the institution precludes the operation of such a program.” *Wesson*, 195 Colo. at 524.

Sponsors of House Bill 25-1013 also emphasized the importance of in-person visitation, reiterating and adding to the reasons given in *Wesson*. Representative Regina English stated: “Family support and connection have a powerful impact on the success of incarcerated Coloradans, with studies showing it can reduce recidivism by 26 percent so we can help them build a thriving future and keep our communities safer.” *Right to Visitation, Family Connection Passes Committee*, COLORADO HOUSE DEMOCRATS (Feb. 5, 2025), <https://www.cohousedems.com/news/right-to-visitation%2C-family-connection-passes-committee>. “Currently, withholding family connection is being used as a form of punishment for incarcerated Coloradans who choose not to work or as a tool to control their behavior,” Assistant Majority Leader Jennifer Bacon explained, “which not only exacerbates the mental health crisis in Colorado prisons but also violates the abolishment of slavery.” *Id.* And Senate President James Coleman stressed: “Families are where we find strength, healing, and support. But for too many families, the criminal justice system creates barriers that

fracture these bonds.” Lindsey Toomer, *Colorado Legislature approves measure to make family visitation a right for incarcerated people*, COLORADO NEWSLINE (May 5, 2025, 4:00 PM), <https://coloradonewsline.com/2025/05/05/colorado-legislature-family-visitation-right-for-incarcerated-people/>.

House Bill 25-1013 is precisely the kind of “local development that further suggests resolution under [the] state constitution is proper.” *McKnight*, ¶ 40. Federal law may have weakened, but this state’s commitment to in-person visitation has only grown stronger.

C. Social Science Research Shows That In-Person Visitation Supports Rehabilitation Efforts And Strengthens Familial Ties.

Wesson’s intuition about the psychological impact of in-person visitation has also been vindicated over decades of scientific research. The Colorado Supreme Court noted the “important psychological impact upon persons who are confined.” *Wesson*, 195 Colo. at 523. Studies have shown in-person visitation “improves social ties and improved social ties change post-release criminal behavior through employment [and] housing stability[.]” Yuki Otsu, *Does visitation in prison reduce recidivism?*, 43 J. POL’Y ANALYSIS & MGMT. 126, 130 (2024). As a result,

in-person visitation “reduces recidivism, increases employment probability, and improves housing stability through stronger social ties.” *Id.* at 130; *see also* Expert Rep. & Decl. of Professor Joshua C. Cochran, Ex. M, at 6, 8-10, *E.L. v. Claps* (No. 2025CV31717) (“There is strong evidence that incarcerated people who are visited as less likely to recidivate.”).

In addition, scientific research has found the same kinds of benefits for family members who visit loved ones. “[S]imilar to incarcerated people, loved ones on the outside experience ‘restricted rights, diminished resources, social marginalization, and other consequences of penal confinement.” Breanna Boppre et al., *“The Prison System Doesn’t Make it Comfortable to Visit”: Prison Visitation From the Perspectives of People Incarcerated and Family Members*, 49 CRIM. JUST. & BEHAV. 1474, 1476 (2022) (internal citation omitted). This experience has been referred to as “secondary prisonization,” or “the process through which the prison alters the routines, relationships, emotions, appearance, and worldview of those who visit.” *Id.* (internal citations omitted). Yet, in-person visitation changes the dynamic. In-person visitation improves parent-child relationship quality. *See* Danielle L. Haverkate & Kevin A. Wright,

The differential effects of prison contact on parent-child relationship quality and child behavioral changes, 5 CORR.: POL’Y, PRAC., & RSCH. 222, 237 (2020) (“[I]n-person visitation is uniquely important for positive changes in parent-child relationship quality”); *see also* Decl. Julie A. Poehlmann, Ex. L, *E.L. v. Claps* (No. 2025CV31717) (“Contact visits and visits that occur as part of interventions . . . are generally positive for children with incarcerated parents, on average, with more visits linked with fewer child behavior problems and more positive parent-child relationships.”). In effect, in-person visitation allows families to “engage in behaviors and communication . . . that simulate dynamics on the outside.” Boppre et al., *supra*, at 1487.

These studies once more reaffirm the Colorado Supreme Court’s recognition nearly fifty years ago in *Wesson* that “[t]he right to touch, see and hear visitors has an important psychological impact upon persons who are confined.” 195 Colo. at 523. And because of this critical impact, the right to familial association in jails and prisons must be treated as nothing less than a “constitutional right.” *Id.*

D. Sister Sovereign Courts Have Followed *Wesson* In Protecting In-Person Visitation Under Their Constitutions.

Even as federal law has retreated, sister sovereign courts have followed *Wesson*'s logic and extended the right to familial association under state constitutions to in-person visitation.⁴ For example, New York's highest court concluded contact visitation is required by the Due Process Clause of the New York Constitution. *Cooper v. Morin*, 49 N.Y.2d 69, 75-76 (1979). In doing so, the court specifically acknowledged that "neither as a matter of Federal due process nor Federal equal protection are plaintiffs entitled to an order requiring the allowance of contact visits." *Id.* at 78. "That conclusion," the court continued, "does not end the inquiry." *Id.* The court explained it has "not hesitated when [it] concluded that the Federal Constitution as interpreted by the Supreme Court fell short of adequate protection for our citizens." *Id.* at 79. Each state is "free to provide greater rights for its citizens through its Constitution." *Id.* The Court concluded that New York's Due Process Clause did so with respect

⁴ Correctional facilities have also "widely recognized that permitting and encouraging [prisoners] to have access to in-person contact visits is the standard for running a modern jail, prison, or juvenile facility." Expert Rep. & Decl. Vincent N. Schiraldi, Ex. N, at 4, *E.L. v. Claps* (No. 2025CV31717).

to in-person visitation. It emphasized the “fundamental right to marriage and family life on the one hand and to bear and rear children on the other,” recognized repeatedly in state precedent. *Id.* at 80. It also pointed to “[t]he detrimental effect upon spousal and parent-child relationship of the denial of contact,” as demonstrated by scientific research as well as statements from prison officials, “who candidly admitted that contact visits would be beneficial and a more humane method of detention.” *Id.* at 80-81.⁵

Echoing *Wesson*’s least restrictive means test, the court concluded that “when so fundamental a right as the maintenance by pretrial detainees of relationships with family and friends is involved,” any restriction “must be both reasonable and necessary to the maintenance of security,” as proven through “a strong showing of necessity.” *Id.* at 81. Simply claiming that “contact visitation would require additional expenditure for rearrangement of the facility and for added personnel” is insufficient. *Id.* “[T]o exalt economic considerations over the rights of our

⁵ See also *Wickham v. Fisher*, 629 P.2d 896, 901 (Utah 1981) (noting the serious constitutional concerns raised by the denial of visitation).

citizens is nothing more than abdication of this court's constitutional responsibility." *Id.* at 81-82.

At least two other state courts have guaranteed incarcerated parents the right to visitation in light of the numerous psychological benefits of in-person connection. In *Brandon v. State, Dep't of Corr.*, 938 P.2d 1029 (Alaska 1997), the Alaska Supreme Court noted "every national study (e.g., the NAC) and every major textbook on corrections stresses the critical nature of visitation both in terms of the reduction of tension inside the prison and the facilitation of the ultimate rehabilitation of the prisoner by strengthening his ties with the 'free world.'" *Id.* at 1032 n.2 (quoting ABA Standards for the Administration of Criminal Justice, 14 AM. CRIM. L. REV. 377, 502 (1977)).⁶ Similarly, in *In re Smith*, 169 Cal. Rptr. 564 (Ct. App. 1980), a California Court of Appeals determined "[s]eparating parent and child for long periods of time in the good faith claim of maintaining jail security is a denial of the rights between parent and child and a denial of the constitutional rights

⁶ Since the Alaska Supreme Court guaranteed the right under the Alaska Constitution, prison officials have opined that "providing for contact visitation was not unduly burdensome and did not disrupt other Department operations." Decl. Dean Williams, Ex. A, at 3, *E.L. v. Claps* (No. 2025CV31717).

of association and privacy.” *Id.* at 570. The court stated the “relationship between parent and child is so basic to the human equation as to be considered a fundamental right, and that relationship should be recognized and protected by all of society, no less jailers.” *Id.*⁷

As these decisions show, independent state constitutional protections have only become more important in the wake of changes in federal precedent. This Court should reinstate the reasoning of *Wesson* as a matter of state constitutional law and adopt the approach described in Plaintiffs’ briefing for applying a least-restrictive-means analysis to the ban on in-person visitation at issue here.

CONCLUSION

For the reasons above, *amici* respectfully ask this Court to reverse the lower court order.

Respectfully submitted this 2nd day of July 2026.

⁷ State courts have also recognized the importance of visits between parents and children in the child custody context. *See, e.g., Michael M. v. Ariz. Dep’t of Econ. Sec.*, 42 P.3d 1163, 1165 (Ariz. Ct. App. 2002) (recognizing that “a parent should be denied the right of visitation only under extraordinary circumstances”) (internal citation and quotations omitted); *Griffin v. Griffin*, 237 So.3d 743, 747 (Miss. 2018) (stating that “incarceration, in and of itself, was not sufficient to overcome the presumption that a noncustodial parent is entitled to visitation”).

/s/ Mari Newman

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