COLORADO COURT OF APPEALS 2 East 14th Ave., Denver, CO 80203	DATE FILED October 26, 2026 6:53 PM FILING ID: 3094F8F12E922 CASE NUMBER: 2026CA570
District Court, Adams County Case No. 2025CV31717, Hon. Priscilla 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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Reply 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 5,685 words (not more than 5,700), excluding the case caption, certificate of compliance, tables of contents and authorities, signature block, and certificate of service. I acknowledge the brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

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INTRODUCTION

This case is about the County's deprivation of basic human contact between children and parents without sufficient reasons. Under the County's profit-driven Family Visit Ban, Plaintiffs cannot touch, hug, or look into the eyes of their parent or child. Even with the trial court's erroneous discovery rulings that unreasonably constrained Plaintiffs' ability to present their case, the record on every relevant factor shows that a preliminary injunction should issue. Every day that passes, Plaintiffs suffer grievous harm with lifelong consequences. Overwhelming record evidence shows that banning child-parent contact makes jails less safe. Instead of confronting this evidence, the County's appellate brief ignores the record where convenient and contradicts the testimony of its own witnesses. The County is unable to demonstrate that its unprecedented, permanent ban on family contact furthers a government interest, let alone show that the Ban is the least restrictive option to serve any identified interest.

The County's further attempts to contradict the plain language of the Enhance Law Enforcement Integrity Act and undermine decades of precedent holding that courts may enforce constitutional rights in equity are equally unavailing.

Therefore, Plaintiffs are likely to succeed on the merits of their constitutional claims. The County does not contest that, if the Court finds Plaintiffs have a

reasonable probability of proving a violation of the Colorado Constitution, the remainder of the preliminary injunction factors are satisfied here. Plaintiffs ask the Court to protect their fundamental right to family association under the Colorado Constitution, announce the correct legal standard for evaluating government infringements of that right, and remand to the trial court to apply the proper standard and craft appropriate relief.

ARGUMENT

I. The Family Visit Ban Violates the Fundamental State Constitutional Right to Family Association.

Plaintiffs' claims turn on four propositions of law, all of which Plaintiffs have established and none of which the County meaningfully contests. First, the Colorado Constitution protects the fundamental right to family association. Second, Defendants infringe this right by forbidding contact between parents and children. Third, the government must demonstrate that the infringement is necessary to serve a compelling interest. Fourth, the County's total, permanent Family Visit Ban does not further a compelling state interest, is not necessary to achieve one, and is so extreme that it would fail to satisfy any less exacting legal standard. No authority, state or federal, supports Defendants' complete ban on family visits, which the County enacted in direct violation of a binding court order.

A. The Colorado Constitution Protects the Right to Family Association.

Since the state's founding, Colorado courts have affirmed the importance of family association. *E.g.*, *Williams v. Williams*, 37 P. 614, 619 (Colo. 1894) ("[T]he family relation . . . is the very foundation of civilized society, and the only sure support of good government."). Nevertheless, the County suggests that this Court should find no right to family association under the Colorado Constitution. Answer at 11–18. No court has ever rejected the existence of this right under *any* American constitution, and the County provides no authority to justify such an extreme conclusion.

Instead, the County defends its position by asserting that the cases cited by Plaintiffs do not "establish a fundamental right to association under the Colorado constitution." Answer at 16. Colorado courts have repeatedly and unequivocally held that "[t]he due process clause of our state constitution, Article II, Section 25, requires at a minimum the same guarantees as those protected by the due process clause of the federal constitution." *Air Pollution Variance Bd. v. W. Alfalfa Corp.*, 553 P.2d 811, 816 (Colo. 1976). The federal due process clause unquestionably protects the right of parents and children to maintain their relationship. *Salah v. People*, 2024 CO 54, ¶ 27 ("[T]he parent-child relationship is afforded the greatest constitutional protection within the context of the right to familial association."). Because the

Colorado Constitution is at least as protective as the federal constitution, the Colorado Constitution also protects the fundamental right to maintain the child-parent relationship.

Because it is obvious that the Colorado Constitution protects the right to family association at least as forcefully as the federal constitution, the salient question is whether it provides greater protection. The County agrees that, under *Millis v. Board of County Commissioners*, 626 P.2d 652, 657 (Colo. 1981), Colorado courts must ask whether the state constitution offers greater protection than the federal one. Answer at 11. The district court was obligated to conduct this analysis, and it abandoned this duty because there is no prior decision directly on point. If the court's role entailed only reviewing factually and legally identical precedent, no state constitutional right could ever be recognized for the first time, and the wisdom of the evolving common law would cease. When presented with state constitutional claims, Colorado courts independently apply the Colorado Constitution to novel facts and claims, and often recognize protections not squarely addressed by precedent. *See*, *e.g.*, *Moreno v. Circle K Stores, Inc.*, 2026 CO 46, ¶¶ 19, 43, 61 (holding article II, section 3 "establish[es] a public policy in favor of self-defense" that "can serve as the basis for a claim of wrongful termination contrary to public policy"); *People v. Seymour*, 2023 CO 53, ¶¶ 17, 32 (concluding defendant had "a

reasonable expectation of privacy in his Google search history" protected by the Colorado Constitution, which was "an issue of first impression").

Plaintiffs ask this Court to engage in the analysis the trial court ignored and define the right of family association under the Colorado Constitution.

B. The Family Visit Ban Infringes on Plaintiffs' Constitutional Rights.

The separation of a parent and child combined with the denial of contact is an extreme infringement on the child-parent relationship, "tantamount to termination." *See Overturf v. Dist. Ct. of 20th Jud. Dist.*, 602 P.2d 850, 851 (Colo. 1979). "The importance of the familial relationship, to the individuals involved and to the society, *stems from the emotional attachments that derive from the intimacy of daily association . . . .*" *Salah*, ¶ 21 (quoting *Smith v. Org. of Foster Families For Equal. & Reform*, 431 U.S. 816, 844 (1977)). The ban on physical contact strikes at the very core of this constitutionally protected relationship.

C. Heightened Scrutiny Applies to Plaintiffs' Fundamental Right to Family Association.

Under the Colorado constitution, when the government infringes on a fundamental liberty interest, it must prove the infringement "is necessary to promote some compelling governmental interest." *People v. Young*, 859 P.2d 814, 818 (Colo. 1993). The right to family association is plainly "fundamental" under the Colorado Constitution. *See Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1014–1015

& n.7 (Colo. 1982) (listing as "fundamental rights" that the Court "ha[s] come to recognize" under the Colorado Constitution, *inter alia*, the right "to bear or beget children" and the "right of parents to direct the upbringing of their children"); Opening at 13–14.

The County points to no Colorado case applying a lower level of scrutiny when the government burdens the parent-child relationship. Instead, the County cites two cases from other contexts to argue that "Colorado Courts often, but not always, apply a heightened standard." Answer at 18. Both cases support the application of heightened scrutiny here.

First, *Lorenz v. State* considered Colorado's Limited Gaming Act of 1991, which barred certain elected officials from holding an interest in a gaming license. 928 P.2d 1274, 1276 (Colo. 1996). As the Court noted, ballot access cases have a unique history inapplicable to other "substantive due process claims." *Id.* at 1277; *see also* Edward B. Foley, *Voting Rules and Constitutional Law*, 81 Geo. Wash. L. Rev. 1836, 1854 (2013). Still, even in that context, "[i]f the restriction is severe in impact or in character, then the state must put forth counterbalancing interests of greater weight in order to sustain the restriction." *Lorenz*, 928 P.2d at 1278. Second, the County points to *Craig v. Masterpiece Cakeshop, Inc.*, which applied rational basis review to claims under the Free Exercise Clause involving "neutral laws of

general applicability," 2015 COA 115, ¶¶ 96–100, *rev'd on other grounds sub nom. Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 584 U.S. 617 (2018). Answer at 18–19. The constitutional standard for religious freedom claims is not relevant to determining the standard for the violation of "a fundamental *liberty* interest" under article II, section 25, which Colorado courts have repeatedly held must be "narrowly tailored to serve a compelling state interest." *Carroll Partners LLC v. Bd. of Comm'rs of Pitkin Cnty.*, 2026 COA 34, ¶ 28 (emphasis added); *accord In re Marriage of McSoud*, 131 P.3d 1208, 1216 (Colo. App. 2006) (The test in *Craig* is not applicable to "other constitutional protections." When a case involves "a parent's fundamental right to the care, custody, and control of a child," Colorado courts "adhere to the strict scrutiny test.").

The Colorado Supreme Court has repeatedly affirmed that government intrusions on fundamental liberty rights must be minimal and supported by good reasons. With regard to probation conditions imposed after conviction, the Court explained that restrictions on a defendant's contact with their own children are subject to strict scrutiny, because the parent-child relationship receives "the greatest constitutional protection." *Salah*, ¶¶ 22, 27. Limits on that relationship "must be supported by specific findings regarding compelling circumstances and the lack of less restrictive means." *Salah*, ¶ 29. *People v. Zoller* applied the same heightened

standard when a father entered an *Alford* plea to assault and child abuse charges. 2023 COA 117, ¶ 7. The trial court entered a mandatory protective order "prohibiting Zoller from contacting . . . his wife or daughter—the victims of his charged crimes." *Zoller*, ¶ 6. The division held the order "infringe[d] on Zoller's fundamental right to parental association." *Zoller*, ¶ 20. The County dismisses *Zoller* as being decided "on formal procedural grounds." Answer at 20. But *Zoller* reversed on *constitutional* grounds, explicitly announced the "constitutionally required findings," and remanded to the trial court because it failed to make "a determination that no less restrictive order would suffice." *Zoller*, ¶ 27.

Salah and *Zoller* considered post-conviction challenges brought by individuals serving sentences on supervision that restricted their liberty. In both cases, the court considered restrictions on family relationships that the government argued were meant to further safety and security. *Salah*, ¶ 25; *Zoller*, ¶ 21. Still, both cases held that compelling circumstances and the absence of less restrictive means are required to limit a parent's contact with their child. The County offered no reason that the parent-child relationship should receive less constitutional protection *before* a conviction than *after* one. And nowhere in the County's briefs either below or in this Court does it offer any reason why the government can infringe on an

unincarcerated family member's relationship with a *presumptively innocent* parent or child on a lesser showing.

D. The Family Visit Ban Fails Meaningful Scrutiny.

Under the heightened scrutiny applied by the Colorado Supreme Court to deprivations of fundamental rights, it is the County's burden to "prove that the security of the institution precludes" family contact visits. *Wesson v. Johnson*, 579 P.2d 1165, 1167 (Colo. 1978) [hereinafter *Wesson*]. The County "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.* at 1167–1168.

The evidence relied on by the County is threadbare. The County asserts that the Ban meets heightened scrutiny due to decades old, anecdotal security concerns that it claims arose under a "prior in-person visitation model." Answer at 27–28. But the County does not explain what that model was or why a different model could not be implemented. Nor does the County explain why readily available, less restrictive options to ensure security are inadequate. *See* Opening at 25–26. Indeed, its own witnesses testified that they had not studied or considered the question, because the County has been in violation of court-ordered contact visits for longer than they could remember. TR-12/4/25, pp.105:5–21, 108:9–12, 111:7–15; TR-12/5/25,

pp.20–21, 64–67, 148:12–19; *infra* Section IV.A. Moreover, the County's assertions are belied by the testimony it presented below: Sheriff Claps stated he could implement a visit program if ordered to do so, and Chief Dunning testified he was working to implement a contact visit program. TR-12/5/2025, pp.19:13–20:2, 145:14–24.

Next, citing nothing, the County now asserts "it would be *physically impossible* to grant all inmates the right to in-person family contact visits in a secure environment." Answer at 27–28. This conflicts with testimony from the County's witnesses. When asked about available space, Dunning stated, "Will it be possible? Yes, it will be possible." TR-12/5/2025, pp.35:13–36:8. Further, the County provided no evidence that permitting family contact would be cost-prohibitive, because they have never offered such visits or studied the cost of doing so. *See* TR-12/5/2025, p.150:1–10.

As in *Wesson*, "some areas in the jail could be used for contact visitation without impairment of security." 579 P.2d at 1168; TR-12/4/2025, pp.80:2–89:8. And as in *Wesson*, there is "no evidence to show [that] additional personnel would create an unreasonable financial burden upon the county." 579 P.2d at 1168. "[R]easonable expenditures must be made" to protect constitutional rights. *Id.*

Under Colorado law, the County must offer proof that security *necessitates* the ban, *Young*, 859 P.2d at 818, and the record must make clear there are no less restrictive means, *Zoller*, ¶ 32. Even under a more lenient standard inapplicable to fundamental rights like child-parent association, the County would need to "show more than a formalistic logical connection between a regulation and a penological objective." *Beard v. Banks*, 548 U.S. 521, 535 (2006) (applying standard from *Turner v. Safley*, 482 U.S. 78 (1987)). A ban on all family contact, maintained without consideration of its harms and without evidence regarding the feasibility of less restrictive alternatives, fails any conceivable legal standard.

E. No Federal or Colorado Authority Supports a Total Ban on Family Visits.

Neither federal nor Colorado precedent has ever endorsed permanent, across-the-board family visit bans. The U.S. Supreme Court has held that limits on family visits in prisons (even for individuals convicted of felonies) may violate the Constitution if the policy operates "as a *de facto* permanent ban on all visitation for certain inmates." *Overton v. Bazzetta*, 539 U.S. 126, 134 (2003).

The County leans heavily on federal cases, including *Block v. Rutherford*, 468 U.S. 576 (1984), to justify its Ban. Answer at 21–22. But *Block* is not applicable to claims under the Colorado Constitution, did not apply the heightened scrutiny that Colorado courts apply to infringements of fundamental rights, did not even apply

the *current* federal standard, did not uphold a policy as extreme as the Family Visit Ban (because the policy in *Block* permitted through-glass visits for 12 hours a day), did not address a policy enacted for profit, and predates the evidence produced in this case regarding the importance of human contact and the security risks presented by banning visits. *See* Opening at 17–19. *Block* does not resolve the present case.

Even under current deferential standards applied under federal law, total, permanent bans on family visits would be unconstitutional.[1] *E.g.*, *Manning v. Ryan*, 13 F.4th 705, 708 (8th Cir. 2021) (concluding that "officials who permanently or arbitrarily deny an inmate visits with family members" violate the Constitution). Three years after *Block*, the Supreme Court reviewed a prison policy restricting another family relationship, marriage, that the State asserted was necessary due to security concerns. *Turner*, 482 U.S. at 97. The Court invalidated the prison policy and protected the right to intimate association. *Id.* at 99–100.

None of the Colorado cases cited by the County, Answer at 22–23, upheld a total family visit ban. In *Buenabenta v. Neet*, the court found no due process violation where an inmate was denied visitation after an "opportunity for an administrative

[1] Even federal courts apply strict scrutiny to prison policies that infringe on certain federal rights. *E.g.*, *Johnson v. California*, 543 U.S. 499, 509–11 (2005) (rejecting *Turner* and applying strict scrutiny to racial discrimination because "society as a whole suffers").

hearing" and a finding that he presented a particularized threat to prison security. 160 P.3d 290, 294–95 (Colo. App. 2007). But the court acknowledged that "a different conclusion might be warranted if a regulation permanently banned all visitation for certain inmates," as does the County's Ban. *Id.* at 294. In *Green v. Nadeau*, the court considered an individual challenge to conditions of administrative segregation under the Eighth Amendment—not a total ban on contact visits between parents and children. 70 P.3d 574, 578 (Colo. App. 2003). The County offers no legal authority, state or federal, that supports a permanent, blanket ban on family visits.

II. ELEIA Does Not Require a Clearly Established Right and Qualified Immunity Is Inapplicable.

To prove a claim under the Enhance Law Enforcement Integrity Act (ELEIA), "a plaintiff must establish that there was a violation of a right embodied in the bill of rights of the Colorado Constitution." *Johnson v. Staab*, 2025 COA 45, ¶ 21, *cert. denied*, No. 25SC348, 2026 WL 125124 (Colo. Jan. 12, 2026). ELEIA does *not*, as the County suggests, require that Plaintiffs cite a specific case on all fours with the present one. Answer at 30–32.

The County cites *Puerta v. Newman*, 2023 COA 100, for the proposition that "a constitutional right or standard has to have been previously created to be enforceable under ELEIA." Answer at 32. But *Puerta* issued no such holding. *Puerta*

ruled against the plaintiff because he had not alleged a constitutionally protected property interest *at all*, regardless of whether the issue had been previously decided in a prior case. *Puerta*, ¶ 27. Indeed, the court determined for itself whether the plaintiff held a protected property interest. *Puerta*, ¶¶ 18–24. *Puerta* undermines rather than supports the County's position.

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

The Colorado Supreme Court's holding in *Sundheim* is limited to the question of when to recognize "an implied *damages* remedy." *Bd. of Cnty. Comm'rs of Douglas Cnty. v. Sundheim*, 926 P.2d 545, 553 (Colo. 1996) (emphasis added).[2] Even the cases cited by the County agree on this point. *Brooks v. City & County of Denver* affirms the dismissal of the plaintiff's claims for equitable relief on *standing* grounds, applying *Sundheim* only to plaintiff's request "to recognize a damages remedy under the state constitution." 2026 COA 42M, ¶¶ 31–36, 71–74. *Sundheim* does not disturb blackletter law that Colorado courts have inherent authority 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).

[2] The County's quibble with the organization of Plaintiffs' complaint, Answer at 34–35, is irrelevant to the denial of the preliminary injunction at issue here.

Since *Sundheim*, Colorado courts have adjudicated numerous claims for equitable relief brought directly under the Colorado Constitution. *E.g.*, *Brooks*, ¶¶ 31–36; *Rocky Mountain Gun Owners v. Hickenlooper*, 2016 COA 45 (reversing in part order dismissing challenge to state laws under article II, section 13), *as modified* (Apr. 21, 2016). None of these cases required the plaintiffs to pursue alternative remedies—an entirely novel requirement the County seeks to impose here, Answer at 36–37.

IV. Reconsideration of the *Rathke* Factors Is Necessary.

Once a plaintiff establishes that there is a reasonable probability of success on the merits due to an ongoing constitutional violation, the five remaining factors weigh in favor of granting a preliminary injunction. *Rathke v. MacFarlane*, 648 P.2d 648, 652 (Colo. 1982). The County does not challenge this proposition. Answer at 38–39. Therefore, if this Court agrees that the trial court applied the wrong legal standard to Plaintiffs' state constitutional claims and that Plaintiffs are likely to succeed on those claims, the remaining factors follow. The County's two independent arguments, on the public interest and the status quo, fail.

A. The County Is Violating a Court Order.

The Supreme Court of Colorado already struck down, on federal substantive due process grounds, a similar attempt by the County to withhold contact visits.

Wesson, 579 P.2d 1165. The County concedes the *Wesson* record shows it has never been relieved of the order and that it knows of no "separate case" in which the County sought relief. Answer at 25. And, as the County acknowledges, "only the Colorado Supreme Court can overrule its own precedent." *Id.* at 33. Nevertheless, the County cites *its own interpretation* of subsequent *federal* law to justify its *sua sponte* violations of the *Wesson* order. Because the Sheriff has never been relieved of the "'written order' binding the county authorities," *Wesson v. Bowling*, 604 P.2d 23, 24 (Colo. 1979), this is the relevant status quo. *See* CF, pp.97–99. And, of course, it is never in the public interest for a defendant to commit contempt rather than seeking relief from the court.

The County asserts that "the then-Sheriff was justified in changing the policy at the jail and the current Sheriff is justified in maintaining that change" based on its own view of the facts. Answer at 26. Setting aside the testimony establishing that the County did *not* in fact study the relevant facts, *see* TR-12/4/25, pp.105:5–21, 108:9–12, 111:7–15; TR-12/5/25, pp.20–21, 64–67, 148:12–19, neither Colorado law nor the fundamental rule of law allow such brazen contempt of judicial orders. "[A]ll supreme court decisions" are binding. *Caylao-Do v. Logue*, 2025 COA 42, ¶ 64, *cert. denied*, No. 25SC354, 2025 WL 2649219 (Colo. Sept. 15, 2025). "[T]he orderly and efficient administration of justice would be jeopardized if parties could

determine for themselves when and how to obey a court order." *People In Int. of K.P.*, 2022 COA 60, ¶ 2.

The County also asserts that "an intervening [U.S.] Supreme Court decision vitiated the sole legal basis for the Colorado Supreme Court's ruling in *Wesson*." Answer at 24. As explained above, however, that is a contested and dubious proposition of law.[3] *See supra* Sections I.D–E. Federal courts have held that jail officials violate "constitutional rights by enforcing [a] blanket prohibition on visitation with minor children." *Manning*, 13 F.4th at 707. Furthermore, no court has ever overruled *Wesson*.

And even if the County had a colorable argument that *Wesson* should be overruled, "[i]t is well settled that a judgment is not void simply because it is erroneous or is based upon precedent which is later deemed incorrect." *E.J.R. v. Dist.*

[3] In 1976, the Colorado Supreme Court held that the state due process clause "requires at a minimum the same guarantees as those protected by the due process clause of the federal constitution." *Alfalfa*, 553 P.2d at 816. Two years later, in *Wesson*, the court held that people jailed in Adams County have a due process right to maintain "family relationships" and required the sheriff "to permit contact visitations." 579 P.2d at 1167–68. Because of the rule set forth in *Alfalfa*, *Wesson* set a minimum standard under the Colorado Constitution as well. No Colorado decision has lowered it. The County argues that federal law has changed. But *Alfalfa* and *Wesson* set a state constitutional floor. And, for good reasons, *Alfalfa* does not say that state constitutional protections follow federal decisions downward. *See* Opening at 21–22. Only the Colorado Supreme Court can overrule *Wesson* or *Alfalfa*. *People v. Bonde*, 2023 COA 75M, ¶ 12, *aff'd*, 2025 CO 24.

Court, Cnty. of Boulder, 892 P.2d 222, 225 (Colo. 1995) (citing cases). The County may not unilaterally ignore the Colorado Supreme Court and a standing trial court order by applying its own interpretation of federal law. *People In Int. of K.P.*, ¶ 2 ("[A] party must obey a court order—even an unconstitutional order—unless and until that order is stayed, set aside, or reversed on appeal.").

B. An Injunction Would Not Offend the Separation of Powers.

"[I]nterpretation of the constitution" is "a function at the very core of the judicial role." *Colorado Gen. Assembly v. Lamm*, 704 P.2d 1371, 1379 (Colo. 1985). Nevertheless, the County argues that because the Colorado Legislative Oversight Committee issued jail standards that, the County asserts, "did not require in-person contact family visitation,"[4] the judicial branch is forbidden from reviewing the constitutionality of jail officials' decisions. Answer at 40–41. Therefore, the argument goes, "the public interest would not be served by the requested injunction because it would violate separation of powers principles." *Id.* at 40.

No precedent supports this mangling of the separation of powers. It is the role of courts to articulate constitutional standards and apply them to cases and controversies. Insulating jail policies from judicial scrutiny every time a legislative

[4] Chief Dunning testified that the jail standards "require[]" the County "to have in-person and contact visit policies in place." TR-12/5/2025, p.19:13–19.

committee acts, as the County proposes, would disserve that interest and create, rather than prevent, a violation of the separation of powers. Courts have a "duty 'to say what the law is . . . .'" *Lobato v. State*, 2013 CO 30, ¶ 46 (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). And "because the power to define the standard applicable to a constitutional claim is vested in the courts, *see* Colo. Const. art. VI, § 1, the General Assembly may not constitutionally exercise that power, Colo. Const. art. III." *In re Interrogatories on Senate Bill 21-247 Submitted by Colorado Gen. Assembly*, 2021 CO 37, ¶ 52. A legislative committee's decision not to mandate contact visits cannot foreclose constitutional review.

C. The Relevant Status Quo Was Before Enactment of the County's Unconstitutional Policy.

"A preliminary injunction is designed to preserve the status quo or protect rights pending the final determination of a cause." *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). The County argues that status quo is the time immediately before "the Family Members filed their lawsuit." Answer at 43. But the filing of the action is not the relevant landmark. *See Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001) (The "contention that the status quo was defined immediately before the action is unavailing."). When a controversy concerns a policy or rule, "status quo" means "the status quo before the rule was enacted." *Sanger v. Dennis*, 148 P.3d 404, 419 (Colo. App. 2006); *Boe v. Children's*

Hosp. Colorado, 2026 CO 32, ¶ 46 (same). The controversy here arose when the jail banned family contact. An injunction prohibiting enforcement of the ban would preserve the status quo.

V. The Trial Court Abused Its Discretion by Denying Discovery.

"[B]ecause the court's discovery order related to and could have substantively affected the [preliminary injunction] order," this Court has "jurisdiction to consider it." *Am. Fam. Mut. Ins. Co. v. Am. Nat'l Prop. & Cas. Co.*, 2015 COA 135, ¶ 44. The trial court's denial of Plaintiffs' pre-hearing discovery requests—which were propounded solely for the preliminary injunction hearing, CF, pp.1094–1116—are clearly "related to" the present appeal and could have "substantively affected" the outcome, "because admissible evidence obtained by plaintiffs through discovery might have enabled them to meet their burden" on the *Rathke* factors, *Leland v. Travelers Indem. Co. of Illinois*, 712 P.2d 1060, 1067 (Colo. App. 1985) (reversing judgment due to discovery error). The case cited by the County, *Affiniti Colorado, LLC v. Kissinger & Fellman, P.C.*, 2019 COA 147, Answer at 44, is irrelevant here: this is not an interlocutory appeal under C.A.R. 4.2 but an appeal as of right under C.A.R. 1(a)(3). Furthermore, the denial of discovery prior to the preliminary injunction hearing is not relevant to the Rule 12(b) judgment in Appeal No. 2026CA1490.

The County argues that Plaintiffs waived any objection to the trial court's discovery orders. Answer at 44. But Plaintiffs made repeated requests for reasonable discovery and could not have been more diligent in preserving their rights. Plaintiffs requested limited discovery during a hearing on Plaintiffs' request for a temporary restraining order. TR-11/6/2025, pp.18–21. Then, in a written motion in advance of the preliminary injunction hearing, Plaintiffs made limited, reasonable discovery requests to the court tailored to specific factual allegations made by the County. CF, pp.1094–1116. On the first day of the preliminary injunction hearing, counsel argued that Plaintiffs were "prejudiced in not having been able to obtain all of the information" necessary to meaningfully challenge some of the County's evidence. TR-12/3/2025, pp.196–97. Plaintiffs renewed their motion prior to closing arguments. TR-12/5/2025, pp.159–162. At each stage, the trial court denied Plaintiffs' requests. *Id.* at p.162:2–5; CF, pp.1149–1151.

As noted in the opening brief, Plaintiffs were prejudiced by the trial court's permitting the County to offer testimony on staffing, contraband, and available space at the jail while denying Plaintiffs basic documentary and tangible information necessary to test the County's assertions. Opening at 38–39. Even now, the County makes entirely unsupported assertions that family visits "would be physically impossible" and that the Ban is necessary due to "significant contraband smuggling,"

Answer at 28; *but see supra* Section I.D (space), *infra* Section VI (contraband), all while faulting Plaintiffs for failing to present "competing factual evidence," Answer at 48. But the County's assertions are based on quantifiable information in the County's possession, such as jail logs, which the trial court denied Plaintiffs access to. The purpose of discovery is to "eliminate surprise" and "simplify issues," which is why "the range of discovery available to each party is wide." *Cardenas v. Jerath*, 180 P.3d 415, 420 (Colo. 2008). Denying Plaintiffs' discovery requests on these claims "reward[ed] [the County] for hiding or obscuring potentially significant facts" and was an abuse of discretion. *Hawkins v. Dist. Ct. In & For Fourth Jud. Dist.*, 638 P.2d 1372, 1378 (Colo. 1982) (quoting *Thomas Organ Co. v. Jadranska Slobodna Plovidba*, 54 F.R.D. 367, 373 (N.D. Ill. 1972)).

VI. The Trial Court's Finding That the Ban Was Implemented to Mitigate Contraband Is Undermined by Defendants' Testimony.

The record demonstrates that the Family Visit Ban is motivated by profit. Opening at 42–43. The trial court inexplicably found that the Ban "was implemented primarily to mitigate the influx of contraband." CF, p.1774. The record does not support that finding.

To defend the trial court's order, the County argues that Sheriff Claps' testimony *does not exclude* the possibility that contraband concerns motivated the Ban. Answer at 49. But an unstated, theoretical motivation is not evidence. And

while Chief Dunning provided testimony regarding sources of contraband at the Adams County Jail, family contact visits were not among them. TR-12/5/25, p.22:1–12.

The County does not refute Plaintiffs' evidence that facilities offering visits have no more contraband than facilities banning visits. TR-12/3/25, pp.158–160. And the County has provided no evidence, through its witnesses or otherwise, to demonstrate that the risk of contraband from visitors is so great that a complete and permanent ban on family visits is necessary. Chief Dunning testified, for example, that contraband could come into the facility through the mail and that it has entered through jail staff and contractors. TR-12/5/25, p.22:1–12. That possibility would not justify (nor has it resulted in) a complete ban on mail or elimination of all personnel. Similarly, mere speculation—contradicted by the available empirical evidence—about contraband entering the jail due to family visits cannot justify the Ban. *Accord Boe*, ¶¶ 33, 34–38 (holding "speculative" harm to nonmoving party cannot outweigh legislative pronouncements of public interest or actual harm to moving party under fourth and fifth *Rathke* factors). The County's speculation is further undermined by jail staff admitting they have no experience with contact visits. TR-12/5/25, pp.55:19–21, 66–67, 120–122.

The County contends, without citation, that the profit generated from the Family Visit Ban is for "the benefit of inmates" and placed in a "commissary account." Answer at 49. Even if this were true, money is "inherently fungible." *Franklin Drilling & Blasting Inc. v. Lawrence Constr. Co.*, 2018 COA 59, ¶ 26. The jail's detention manager testified that if the County did not have money in the commissary fund to obtain religious books, for example, the County would look for other means of obtaining them. TR-12/4/2025, pp.143–144. Every dollar the fund receives is a dollar the County may spend elsewhere. No matter the label placed on the money, the County receives financial benefit.

VII. This Court Should Require the Entry of a Preliminary Injunction.

Plaintiffs request that this Court reverse the trial court's order, remand, and instruct the trial court to issue a preliminary injunction because the record is so overwhelming that such an injunction is warranted. Opening at 10–11. Colorado appellate courts regularly issue such orders. *E.g.*, *Boe*, ¶ 61 ("We . . . remand the case to the trial court to grant petitioners' motion and issue the requested injunction.").

The County objects to this request, but the authority cited is not to the contrary. Answer at 39. *May Department Stores Co. v. State ex rel. Woodard* concerned a trial court that *granted* an inadequate injunction. 863 P.2d 967, 978

(Colo. 1993). *May* bars an appellate court from dictating the *specifics* of relief, *id.*, not from remanding to enter an injunction where none was granted. Of course, the trial court can be ordered to craft the details of appropriate injunctive relief.

OBJECTION

Plaintiffs object to the County's violation of this Court's policy against citation of opinions that were "not selected for official publication" under C.A.R. 35(f). The County cited four such NSOP opinions, *Boyd v. Watkins*, 05CA0863 (May 25, 2006); *Casper v. Vallario*, 23CA0840 (June 27, 2024); *Robledo-Valdez v. Colo. Dep't of Corr.*, 20CA1613 (July 15, 2021); *State [ex rel. Weiser] v. Shryock*, 22CA2254 (Mar. 7, 2024). Plaintiffs request that the Court strike and not consider all of the County's arguments that are based on the NSOP opinions.

CONCLUSION

This Court should 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 October 26, 2026, a true and correct copy of the foregoing was duly filed and served through Colorado Courts e-filing:

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