COLORADO SUPREME COURT 2 EAST 14TH AVENUE DENVER, COLORADO 80203 Rule to Show Cause Issued November 9, 2023 Rifle Municipal Court Honorable Victor Zerbi 201 East 18th Street, Rifle, CO 81650	DATE FILED: November 30, 2023 2:44 PM FILING ID: 236402B3F90B9 CASE NUMBER: 2023SA289
IN RE: **JEREMIAH MOBLEY & MICHELLE MOBLEY** Petitioners v. **CITY OF RIFLE, by and behalf of THE PEOPLE OF THE STATE OF COLORADO** Respondent	COURT USE ONLY
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AMICUS BRIEF IN SUPPORT OF PETITIONERS JEREMIAH MOBLEY AND MICHELLE MOBLEY

CERTIFICATE OF COMPLIANCE

I hereby certify that this amicus brief complies with all requirements of C.A.R. 21, 28(a)(2), 28(a)(3), 29(c), and 32. The undersigned specifically certifies that:

This brief complies with the applicable word limit set forth in C.A.R. 28(g) and 29(d). It contains 3,936 words. I acknowledge this brief may be stricken if it fails to comply with any requirement of the foregoing rules.

/s/ *Al Kelly*
Al Kelly

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IDENTITY AND INTEREST OF AMICI CURIAE

The Office of the Alternate Defense Counsel ("OADC") is the legislatively created entity responsible for providing legal services to indigent defendants when the Office of the State Public Defender has a conflict of interest. *See* § 21-2-103, C.R.S. (2023). OADC has a significant interest in the issue presented in this case because OADC is tasked with evaluating attorneys in municipal courts across the state and providing competent, independent representation for defendants in municipal court—many of whom are charged with municipal-code violations that punish identical conduct more harshly than corresponding state statutes. *See* §§ 13-10-114.5(3)(b)(I), 21-2-103(5), 21-2-108, C.R.S. (2023). Clarifying the application of Colorado's equal-protection doctrine to these duplicative offenses is thus in the interests of both OADC and its clients.

The ACLU is a nationwide, non-partisan, non-profit organization with almost 2 million members, dedicated to safeguarding the principles of civil liberties enshrined in the federal and state constitutions for all Americans. The ACLU of Colorado, with over 45,000 members and supporters, is a state affiliate of the ACLU. As the largest and oldest civil rights organization in the state, the ACLU of Colorado is committed to safeguarding the

independent individual-liberty guarantees in the Colorado Constitution. Because it is dedicated to the constitutional rights and civil liberties of all Coloradans, the ACLU of Colorado has a unique interest in ensuring that the state constitutional promise of equal protection of the law is upheld in Colorado criminal legal proceedings.

INTRODUCTION

For more than sixty years, this Court has time and again reaffirmed that Colorado's constitutional guarantee of equal protection is violated when two laws prohibit identical conduct but punish that conduct differently. That is exactly the case here. The officer charging Jeremiah Mobley and Michelle Mobley for allegedly shoplifting $30 worth of shirts had complete discretion whether to charge under a state statute or a provision of the Rifle Municipal Code—two functionally identical laws that prohibit petty theft. The officer chose the municipal code. As a result, the Mobleys now face up to *eighteen times* as long of a jail sentence and *three times* the financial penalty as they would under state law.

Rather than address this issue using Colorado's well-settled rubric for equal-protection challenges, the municipal court focused on preemption and Rifle's authority to legislate in this area. That analysis is beside the point. Even if Rifle has the authority to punish shoplifting, it cannot legislate away Coloradans' constitutional right to equal protection under the law.

The Court should reaffirm Colorado's longstanding equal-protection doctrine, reverse the municipal court's misinterpretation and erroneous application of that doctrine, and make the rule to show cause absolute.

ARGUMENT

I. The Mobleys cannot be charged under Rifle's municipal code because it punishes petty theft more harshly than Colorado's theft statute.

The due-process clause of the Colorado Constitution "assures the like treatment of all persons who are similarly situated." *Dean v. People*, 2016 CO 14, ¶ 11; Colo. Const. art. II, § 25. For more than sixty years, and across more than two-dozen opinions,[1] this Court consistently has held that the equal-protection guarantee embedded within the due-process clause prohibits enforcement of laws "which prescribe different punishments for the same violations committed under the same circumstances by persons in like

[1] *See, e.g.*, *People v. Lee*, 2020 CO 81, ¶ 14; *People v. Griego*, 2018 CO 5, ¶ 35; *Dean v. People*, 2016 CO 14, ¶ 14; *Campbell v. People*, 73 P.3d 11, 12 (Colo. 2003); *People v. Stewart*, 55 P.3d 107, 114 (Colo. 2002); *People v. Richardson*, 983 P.2d 5, 7 (Colo. 1999); *People v. Dist. Ct.*, 964 P.2d 498, 500 (Colo. 1998); *People v. Rickstrew*, 775 P.2d 570, 574 (Colo. 1989); *People v. Cagle*, 751 P.2d 614, 619 (Colo. 1988); *People v. Onesimo Romero*, 746 P.2d 534, 536–37 (Colo. 1987); *People v. Oliver*, 745 P.2d 222, 227 (Colo. 1987); *People v. Mozee*, 723 P.2d 117, 126 (Colo. 1986); *People v. Bossert*, 722 P.2d 998, 1003 (Colo. 1986); *People v. Armstrong*, 720 P.2d 165, 168 (Colo. 1986); *People v. Wilhelm*, 676 P.2d 702, 704 (Colo. 1984); *People v. Owens*, 670 P.2d 1233, 1238 (Colo. 1983); *People v. Mumaugh*, 644 P.2d 299, 301 (Colo. 1982); *People v. Marcy*, 628 P.2d 69, 74–75 (Colo. 1981); *People v. Westrum*, 624 P.2d 1302, 1303 (Colo. 1981); *People v. Estrada*, 601 P.2d 619, 621 (Colo. 1979); *People v. Dominguez*, 568 P.2d 54, 55 (Colo. 1977); *People v. Hulse*, 557 P.2d 1205, 1206 (Colo. 1976); *People v. Calvaresi*, 534 P.2d 316, 318 (Colo. 1975); *People v. Bowers*, 530 P.2d 1282, 1283 (Colo. 1974); *Trueblood v. Tinsley*, 366 P.2d 655, 659 (Colo. 1961).

situations." *Trueblood v. Tinsley*, 366 P.2d 655, 659 (Colo. 1961); *People v. Estrada*, 601 P.2d 619, 621 (Colo. 1979). In other words, "Colorado's guarantee of equal protection is violated where two criminal statutes proscribe identical conduct, yet one punishes that conduct more harshly." *People v. Lee*, 2020 CO 81, ¶ 14.

The equal-protection analysis is straightforward: A court must first determine whether the two laws at issue proscribe conduct that is either "identical" or so similar that "a person of average intelligence" could not distinguish between the two offenses. *Lee*, ¶ 14. This determination can be made based on the plain language of the laws or by reference to how the laws at issue operate "as-applied" in a given case. *Id.* at ¶ 15. If the laws prohibit distinguishable conduct, there is no equal-protection violation. But if the laws proscribe the same conduct, a defendant can be charged only under the law that punishes the conduct more leniently. *Id.* at ¶¶ 26, 37.

This case involves two laws that penalize the Mobleys' alleged theft of $30 worth of clothes. The first is a state statute: section 18-4-401, C.R.S. (2023). The second is a provision of the Rifle Municipal Code: section 10-4-10.

As the municipal court correctly held, these two provisions are "nearly identical" and there is "no . . . substantive difference between" the two

offenses in the context of theft of $30 worth of goods. Order, ¶ 13. Both offenses prohibit "knowingly" stealing goods and use almost identical language to describe the prohibited act—the only difference being the addition of "retains" to the acts listed under the state statute: "obtains, *retains*, or exercises control over" goods belonging to someone else. Indeed, with the elements of the two provisions side by side, they are a near-mirror image:

	R.M.C. § 10-4-10(a)(1)	**C.R.S. § 18-4-401(1)(a)**
Mens rea	Knowingly	Knowingly
Actus reus	Obtains or exercises control over	Obtains, *retains,* or exercises control over
Thing Stolen	Anything of another	Anything of another
Authorization	Without authorization or by threat or deception	Without authorization or by threat or deception
Intent	Intends to deprive the other person permanently of the use or benefit of the thing of value	Intends to deprive the other person permanently of the use or benefit of the thing of value
Punishment	*For goods worth less than $100: Class B municipal offense (up to $1,000 fine or 6 months in jail, or both).* *See* R.M.C. § 10-4-10(b); § 10-1-40(a).	*For goods worth less than $300: Petty offense (up to $300 fine or 10 days in jail, or both).* *See* § 18-4-401(2)(b); § 18-1.3-503(1.5), C.R.S. (2023).

As reflected above, the only material difference between the two laws is how they punish theft. Under the state statute, stealing an item valued at less than $100 constitutes a petty offense, § 18-4-401(2)(b), punishable by "a fine of not more than three hundred dollars, imprisonment for not more than ten days in a county jail, or both," § 18-1.3-503(1.5), C.R.S. (2023). By contrast, under the Rifle ordinance, theft of an item valued at less than $100 qualifies as a class B municipal offense, punishable by a fine of up to $1,000 and imprisonment up to six months. R.M.C. § 10-4-10(b); § 10-1-40(a). Both laws punish the same act (petty theft), but the Rifle ordinance does so in a much harsher fashion, with more than *triple* the maximum fine and *eighteen times* the maximum jail term.

These widely differing punishments violate equal protection as applied to the Mobleys. The Mobleys could have been charged under either law: Michelle Mobley's summons form shows both the state statute and municipal code as charging options for "theft." Pet. Ex. B. But the charging officer, in an exercise of unfettered and unreviewable discretion, decided to charge the Mobleys under the Rifle municipal code and issue a summons for appearance in municipal court. As a result, the Mobleys now face drastically harsher punishment. The decision to charge the Mobleys under the harsher

Rifle ordinance squarely contravenes this Court's mandate that a defendant "must" be charged under the more lenient of two laws that prohibit identical conduct. *Lee*, ¶ 26. Accordingly, this Court should reverse and order that the Mobleys be charged under the more lenient state statute covering petty theft.

II. The equal-protection doctrine applies with the same force in the context of municipal ordinances.

The municipal court appears to have analyzed the Mobleys' equal-protection challenge by asking whether state law preempts local law in this area. By asking the wrong question, the municipal court got the wrong answer. Even assuming that Rifle had the authority to legislate with regard to theft, it cannot legislate away defendants' constitutional right to equal protection under the law.

The Colorado Constitution "empowers home rule cities to legislate," but "does not empower home rule cities to deny substantive rights conferred upon all of the citizens of the state." *Hardamon v. Mun. Ct.*, 497 P.2d 1000, 1002 (Colo. 1972). So, for example, although a municipality may be able to legislate with regard to procedures officers must follow when conducting a search of a home, it cannot legislate away individuals' constitutionally vested right to be free of warrantless searches and seizures. *See City of*

Greenwood Village v. Fleming, 643 P.2d 511, 516 (Colo. 1982). Likewise, a municipality cannot issue ordinances that would abrogate individuals' right to equal protection. The "vitality of [that] substantive right . . . should not depend upon the court in which the citizen attempts to exercise it." *Hardamon*, 498 P.2d at 1002–03.

Nor does the municipal-state distinction do anything to change the rationales underlying Colorado's equal-protection doctrine. The doctrine is intended to "enhance[] the evenhanded application of the law in the process of judicial adjudication" and give "fair warning" to individuals who may be charged for an offense. *People v. Marcy*, 628 P.2d 69, 73–74 (Colo. 1981). The doctrine is thus meant to prevent exactly the kind of unfettered discretion that the officers charging the Mobleys were able to exercise here—and the attendant risk of discrimination that comes along with that discretion. *See id.*

If anything, the guardrails provided by equal protection are even more vital in the context of municipal infractions. Cases tried in municipal courts are governed by "simplified procedures" and are typically subject to less oversight. Colo. Mun. Ct. Rule 204. Moreover, indigent defendants in municipal courts often have more limited access to competent and independent counsel—an ongoing problem OADC is working to address.

See § 21-2-108; *see also* ACLU of Colorado, *Justice Derailed* 19 (2017), https://www.aclu-co.org/sites/default/files/JUSTICE-DERAILED-web.pdf. Equal protection is all the more necessary given these unique characteristics of Colorado municipal courts.

Finally, the municipal court's attempt to sidestep equal protection by ruling that local theft ordinances supersede state law runs directly contrary to this Court's precedent. *See* Order ¶¶ 61–65. This Court has already made clear that petty theft is an issue "of both statewide and municipal concern." *Quintana v. Edgewater Mun. Ct.*, 498 P.2d 931, 932 (Colo. 1972); *R.E.N. v. City of Colorado Springs*, 823 P.2d 1359, 1362 (Colo. 1992) (same). Thus, under this Court's clear rubric for overlapping state and local laws, only two outcomes are possible: (1) the Rifle ordinance "conflicts with state law" and is superseded entirely, or (2) the Rifle ordinance can "coexist with state statutes" governing theft, which subjects the Mobleys to disparate punishment for identical conduct in violation of equal protection. *See City of Longmont v. Colo. Oil & Gas Ass'n*, 2016 CO 29, ¶ 18. In either event, the result is the same—the Mobleys cannot be charged under the Rifle ordinance.

Equal protection is a right afforded to all Coloradans. That constitutional guarantee does not disappear at a city's borders just because

local legislators try to exert harsher punishment for offenses treated more leniently by the state.

III. The Court should reaffirm the viability of Colorado's longstanding equal-protection doctrine.

Under the doctrine of stare decisis, the Court "will depart from [its] existing law only if [it is] clearly convinced that (1) the rule was originally erroneous or is no longer sound because of changing conditions and (2) more good than harm will come from departing from precedent." *Love v. Klosky*, 2018 CO 20, ¶ 15. In other words, the Court's precedent remains good law absent a "sound reason for rejecting it." *People v. Quimby*, 381 P.2d 275, 277 (Colo. 1963). There is no reason to depart from this Court's established equal-protection case law here. Instead, the facts of this case reaffirm the vital role that Colorado's equal-protection doctrine serves.

A. Colorado's longstanding equal-protection doctrine remains sound.

In more than two-dozen opinions spanning more than sixty years, this Court has repeatedly reaffirmed the validity of Colorado's equal-protection doctrine. *Supra* note 1. Those cases make clear that the doctrine is the "prevailing" law of the state and a "long held" principle of our state Constitution. *Lee*, ¶¶ 3, 14; *see also People v. Wilhelm*, 676 P.2d 702, 704 (Colo.

1984) (noting the doctrine's "well-settled" status nearly forty years ago); *People v. Bowers*, 530 P.2d 1282, 1283 (Colo. 1974) (calling the doctrine a "basic principle of constitutional law"). Even dissenting members of this Court have noted "that the equal protection tenets underpinning" the doctrine "are entrenched in the Colorado Constitution." *Lee*, ¶ 43 (Samour, J., dissenting).

That is so for good reason. Colorado's equal-protection doctrine is a well-reasoned, independent interpretation of the state Constitution, and no circumstances have changed in a way that would undermine the doctrine's ongoing validity.

1. Colorado's equal-protection doctrine is based on the Court's well-founded independent interpretation of Colorado's due-process clause.

This Court's numerous equal-protection cases were not "originally erroneous" because they were based on a sound exercise of this Court's duty to interpret the Colorado Constitution independent from similar guarantees in the United States Constitution. *Love*, ¶ 15.

This Court's early opinions described the prohibition on "different punishments for the same violations" as stemming from the Fourteenth Amendment's equal-protection guarantee. *Trueblood*, 366 P.2d at 659; *People v. Bramlett*, 573 P.2d 94, 96 (Colo. 1977). But in *United States v. Batchelder*, 442

U.S. 114, 123 (1979), the United States Supreme Court held that was no longer the rule for purposes of federal law.

Shortly after *Batchelder*, this Court decided to chart an independent course. In *Estrada*, the Court reviewed *Batchelder* and concluded that it was "not persuaded by the Supreme Court's reasoning on this issue and expressly decline[d] to apply it to our own State Constitution's due process equal protection guarantee." 601 P.2d at 621. *Estrada* explained that the independent guarantee of due process found in the Colorado Constitution, Article II, Section 25 establishes that "a penalty scheme that provides widely divergent sentences for similar conduct and intent" violates equal protection. *Id.* And since *Estrada*, this Court has consistently recognized that Colorado's equal-protection doctrine is a creature of state—not federal—constitutional law. *See, e.g.*, *Dean*, ¶ 14 ("Shortly after *Batchelder*, this court declined to apply the reasoning of that decision to the Colorado Constitution's due process equal protection guarantee."); *Wilhelm*, 676 P.2d at 704 ("It is well-settled that separate statutes proscribing the same criminal conduct with different penalties violate the guaranties of equal protection of the laws contained in Article II, Section 25 of the Colorado Constitution."); *Lee*, ¶¶ 12–14.

This Court's decision to give independent meaning to the Colorado Constitution's due-process clause was sound. "[T]he Colorado Constitution may afford greater due process protections to a criminal defendant than the U.S. Constitution." *People v. Dunaway*, 88 P.3d 619, 630 (Colo. 2004); *see also Vega v. People*, 893 P.2d 107, 110 n.5 (Colo. 1995) (noting that the Colorado due-process clause "requires *at a minimum* the same guarantees" as federal due process (emphasis added)). Similarly, "[e]qual protection of the laws under the Fourteenth Amendment . . . is not necessarily the limit of" this Court's "responsibility to the rational and evenhanded application of the law under our state system of criminal justice." *Marcy*, 628 P.2d at 73.

When this Court has interpreted provisions in the Colorado Constitution differently from federal analogues, it has done so in circumstances similar to those here. In particular, where the text of the Colorado Constitution does not align with its equivalent provision in the United States Constitution, this Court is more likely to depart from federal jurisprudence. For example, "the significant textual differences between" the Second Amendment and Article II, Section 13 of the Colorado Constitution mean that the Second Amendment framework is not controlling in the context of the state Constitution. *Rocky Mountain Gun Owners v. Polis*

("RMGO"), 2020 CO 66, ¶¶ 42, 40–47. Similarly, that "the text of article II, section 10 actually differs from that of the First Amendment" means that "the state constitution . . . provid[es] greater protection for individual freedom of expression than the Federal Constitution." *Curious Theatre Co. v. Colo. Dep't of Pub. Health & Env't*, 220 P.3d 544, 551 (Colo. 2009).

That is exactly the case here. The "Colorado Constitution does not contain a direct corollary to the Equal Protection Clause of the Fourteenth Amendment." *Central Colo. Water Conservancy Dist. v. Simpson*, 877 P.2d 335, 340–41 (Colo. 1994). Instead, that guarantee is implicit in Colorado's due-process clause. *People v. Max*, 198 P. 150, 156 (Colo. 1921). Given that there is *no* textual overlap between the Fourteenth Amendment's express equal-protection guarantee and Colorado's equal-protection guarantee, there is no reason to think those guarantees need be identical. Indeed, this Court has eschewed identical interpretation of Colorado's equal-protection guarantees in other instances, "reject[ing]" a federal test for deciding "whether rights are fundamental" under the Colorado Constitution. *Colo. Dep't of Soc. Servs. v. Bd. of Cnty. Comm'rs of the Cnty. of Pueblo*, 697 P.2d 1, 14 (Colo. 1985), *superseded on other grounds by statute*. That same independent treatment is warranted here.

Even were Colorado's equal-protection guarantee based on language similar to the federal Constitution, that would not mean this Court has to follow *Batchelder*: "parallel text does not mandate parallel interpretation." *RMGO*, ¶ 37. This Court has "recognized and exercised [its] independent role on a number of occasions and on several have determined that the Colorado Constitution provides more protection for our citizens than do similarly or identically worded provisions of the United States Constitution." *People v. Young*, 814 P.2d 834, 842 (Colo. 1991), *superseded on other grounds by statute*. Departure from case law interpreting a similar federal constitutional provision is especially appropriate in cases like this where the relevant constitutional text is "highly generalized" and involves "[c]riminal law," a domain that "has traditionally been considered best left to the expertise of the state courts." *People v. McKnight*, 2019 CO 36, ¶ 39.

Ultimately, this Court has "a responsibility to engage in an independent analysis of our own state constitutional provision in resolving a state constitutional question." *RMGO*, ¶ 34. For over forty years, the Court has done just that by interpreting Colorado's due-process and equal-protection guarantees to provide relief for defendants like the Mobleys. This line of cases was not "erroneous," and should be upheld. *Love*, ¶ 15.

2. There are no changed conditions that would warrant abandoning this Court's long-held precedent.

Colorado's independent equal-protection doctrine is the "prevailing" and "long held" rule in this state. *Lee*, ¶¶ 3, 14. It is thus not sufficient to show the Court's opinions reaffirming the doctrine are "so-called 'wrong' decision[s]" because the Court "would not be justified in overruling those cases unless there be compelling reasons for so doing." *City & Cnty. of Denver v. Duffy Moving & Storage Co.*, 450 P.2d 339, 342 (Colo. 1969). That typically requires showing that the doctrine "is no longer sound because of changing conditions." *Love*, ¶ 15. Here, no conditions have changed that would undermine this Court's independent interpretation of the Colorado Constitution.

When this Court has overruled its own precedent to align with federal precedent, it has been because the Court has "long interpreted" the equivalent provision in Colorado's Constitution "as commensurate with the [analogous] federal" constitutional provision. *Nicholls v. People*, 2017 CO 71, ¶ 31; *see also People v. Dist. Court*, 834 P.2d 181, 194 (Colo. 1992) ("[W]e will not depart from our past decisions in which we agreed with the United States Supreme Court's seminal definition of an ex post facto law."). By

contrast, when the Court has already "long ago charted a different course" than the United State Supreme Court, it typically continues to do so absent compelling reasons to return to the federal standard. *RMGO*, ¶ 42; *accord, e.g.*, *People v. Seymour*, 2023 CO 53, ¶ 30 (declining to "to change course" where the Court has "long rejected" certain aspects of Fourth Amendment law); *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1054 (Colo. 2002) (upholding "expansive" constitutional protections in light of Colorado's "extensive history of affording broader protection under the Colorado Constitution for expressive rights").

In the forty years since *Batchelder*, this Court has charted a different course than the United States Supreme Court by providing greater guarantees for criminal defendants under equal protection. Although other states may have followed *Batchelder* in the intervening time, this Court has consistently reaffirmed the validity of Colorado's equal-protection doctrine. *See Lee*, ¶ 45 & n.2 (Samour, J., dissenting) (collecting other states' decisions). There are thus no changed conditions that would justify departing from this Court's valid, independent interpretation of the Colorado Constitution since *Estrada*. *See Love*, ¶ 15.

B. Abandoning Colorado's equal-protection doctrine would do more harm than good.

Under the doctrine of stare decisis, this Court typically abandons established law only if "more good than harm will come from departing from precedent." *Love*, ¶ 15. The inverse is true here: If this Court abandons its longstanding equal-protection rule, it would upset expectations and prejudice defendants in exchange for no clear benefit.

First, parties have relied on the Court's equal-protection doctrine for over sixty years. Given that this Court has upheld the validity of the doctrine in over two-dozen opinions, *supra* note 1, it has helped provide certainty as to how conduct will be charged and punished. In light of this well-settled reliance, "retreating from" the equal-protection doctrine would "unfairly upset settled expectations." *Vigil v. People*, 2019 CO 105, ¶ 22. That is particularly so given that the Court has never wavered from its independent interpretation of the Colorado Constitution's equal-protection guarantee. *Compare with McKnight*, ¶ 28 (explaining the Court's less-consistent "interpretive independence" in the context of constitutional protections for searches and seizures).

Second, the Court does not overrule precedent "where such departure would promote injustice or defeat justice." *In re Title, Ballot Title, Submission Clause, Summary for 1999-2000 No. 29*, 972 P.2d 257, 263 (Colo. 1999). This Court has typically taken away an existing, independent constitutional protection only when new "constitutional doctrines now exist to protect defendants." *People v. LaRosa*, 2013 CO 2, ¶ 30. Here, by contrast, abandoning Colorado's equal-protection doctrine would result in a complete loss of an important protection against arbitrary charging decisions that provides defendants with "fundamental fairness essential to the very concept of justice." *McGuire v. People*, 749 P.2d 960, 961 (Colo. 1988).

Third, abandoning precedent is appropriate when the previous "rule works to bar convictions in cases involving the most vulnerable victims, such as infants [or] young children." *LaRosa*, ¶ 31. But continued application of Colorado's equal-protection doctrine does not bar a conviction or negatively affect the most vulnerable victims. If the Court adheres to its precedent, the prosecution will not be barred from charging the Mobleys with a crime; the crime charged will simply have to track the more lenient penalties set by the General Assembly.

* * *

This Court was justified in interpreting the Colorado Constitution to provide greater due-process protections than the federal Constitution. No circumstances have changed that would undermine this conclusion. And changing course now would upset settled expectations, prejudice defendants across our state, and provide no countervailing benefit for victims. By contrast, adherence to the Court's equal-protection doctrine "promotes uniformity, certainty, and stability of the law." *LaRosa*, ¶ 28. The Court should reaffirm the validity of Colorado's equal-protection doctrine.

CONCLUSION

The drastically disparate sentences the Mobleys face under state and municipal law underline the continued role of Colorado's equal-protection doctrine in ensuring evenhanded and fair application of the law. The Court should reaffirm the viability of that well-settled doctrine, reverse, and make the rule to show cause absolute.

Respectfully submitted this 30th day of November, 2023.

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I hereby certify that, on November 30, 2023, a true and correct copy of this pleading was served via the Colorado Courts E-Filing system upon:

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