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SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

Original Proceeding
District Court, Denver County, 2019CV34492
Hon. Brian R. Whitney, District Court Judge

KANDACE RAVEN, JANE GALLENTINE, TALIYAH MURPHY, AMBER MILLER, MEGAN GULLEY, LAVENYA KARPIERZ and CUPCAKE RIVERS,

Plaintiffs, as representatives of themselves and all others similarly situated in this class action,

v.

JARED POLIS, Governor of Colorado, THE COLORADO DEPARTMENT OF CORRECTIONS, DEAN WILLIAMS, Executive Director of the Colorado Department of Corrections, individually and in his official capacity, TRAVIS TRANI, Director of Prisons, individually and in his official capacity, RANDOLPH MAUL, M.D., CDOC Chief Medical Officer, individually and in his official capacity, SARAH BUTLER, M.D., Chief of the Gender Dysphoria Committee and Chief of Psychiatry, individually and in her official capacity, WILLIAM FROST, M.D., former CDOC Chief Medical Officer, individually and in his official capacity, DARREN LISH, M.D., former Chief of Psychiatry, individually and in his official capacity,

Defendants.

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Case No: 2020SA321

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RESPONDENTS' RESPONSE TO THE COURT'S SHOW CAUSE ORDER	

CERTIFICATE OF COMPLIANCE

I hereby certify that this Response complies with all requirements of C.A.R. 21, C.A.R. 28(g), and C.A.R. 32. It contains 4,740 words.

I acknowledge that this brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28(g) and C.A.R. 32.

/s/ Suneeta Hazra
Suneeta Hazra, Reg. No. # 54284

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Plaintiffs below, Kandice Raven, Jane Gallentine, Taliyah Murphy, Amber Miller, Megan Gulley, Lavenya Karpierz, and Cupcake Rivers (collectively, "Respondents"), as representatives of themselves and all others similarly situated, by and through their attorneys, submit this Response to this Court's Order and Rule to Show Cause.

I. INTRODUCTION

Respondents in this case seek to end the severe mistreatment that they and other transgender women suffer while in the custody of the Colorado Department of Corrections ("CDOC"), one of the state's largest executive branch agencies. The State of Colorado and its agents, including Petitioner, Governor Jared Polis, perpetuate policies that expose Respondents to significant danger. They refuse to acknowledge Respondents as women and confine them in men's prisons. The women in these prisons are routinely subjected to extreme sexual harassment. They are strip-searched and groped by male corrections officers. They are raped by incarcerated men and male correctional officers. And they are subjected to sex trafficking, treated as property, and forced into sexual relationships to ensure their own safety. What is more, because of their gender identity, transgender women in CDOC custody are often denied critical care for their serious medical needs. These

intolerable conditions violate the Colorado Constitution and state statutory law, which Petitioner is constitutionally mandated to uphold. Accordingly, Respondents' suffering is a direct consequence of Petitioner's failure to carry out his constitutional mandate to "take care that the laws be faithfully executed." Colo. Const. art. IV, § 2.

Petitioner's instant petition does not meet this Court's criteria for C.A.R. 21 review. Petitioner's claim that he will suffer irreparable harm simply does not withstand scrutiny. His interests and legal counsel are aligned with the CDOC Defendants,[1] who do not dispute their presence in this litigation and have already filed an answer to Respondents' complaint. Accordingly, Petitioner and his counsel will not be unduly burdened because he is a defendant in this case. Moreover, Petitioner does not lack adequate alternative procedural remedies, including the ability to raise this issue again in district court. But most importantly, this Court has already decided the precise issue Petitioner raises. In *Ainscough v. Owens*, 90 P.3d 851 (Colo. 2004), this Court unambiguously held that the Governor is a proper

[1] Specifically, "CDOC Defendants" refers to Defendants below: CDOC and its Executive Director Dean Williams and other CDOC leadership, including Travis Trani, Randolph Maul, M.D., Sarah Butler, M.D., William Frost, M.D., and Darren Lish, M.D.

defendant in cases seeking enforcement of the law in order to redress unconstitutional and illegal practices within an executive branch agency.

Petitioner attempts to circumvent this Court's unambiguous and controlling precedent by distorting its previous holding in *Developmental Pathways v. Ritter*, 178 P.3d 524 (Colo. 2008). Contrary to Petitioner's claim, this Court did not depart from *Ainscough*'s holding in *Developmental Pathways* by announcing a "new test." Rather, as the district court noted, *Developmental Pathways* "cite[d] *Ainscough* with favor, and restate[d] *Ainscough*'s holding." App. 5 at 3; *see also* 178 P.3d at 529–30. Moreover, the dicta that Petitioner relies on to support his position is not applicable here, in a challenge to an executive agency's failure to enforce the laws. In sum, Petitioner offers no valid reason why this Court should depart from Colorado's longstanding practice of permitting the Governor to be named as a defendant in cases such as this one. Accordingly, Respondents respectfully request that this Court discharge the rule and affirm the district court's order.

II. ISSUE PRESENTED

Whether Colorado's longstanding and well-established practice of naming the Governor as a defendant applies when litigants challenge the

CDOC—an executive agency the Governor oversees—for failure to enforce laws the Governor is constitutionally required to uphold.

III. STATEMENT OF THE CASE

This class action lawsuit concerns the unconstitutional and unlawful treatment of transgender women held in the custody of CDOC. On November 22, 2019, Respondents filed a complaint against the CDOC and seven executive branch officials, including Petitioner, seeking declaratory and injunctive relief as well as monetary damages. In particular, Respondents seek enforcement of the Colorado Anti-Discrimination Act ("CADA") and claim violations of the Colorado Constitution. Respondents filed an amended complaint on December 23, 2019. App. 1.

On March 30, 2020, Petitioner filed a motion to dismiss the complaint, arguing that he was improperly named even though the lawsuit challenges the unconstitutional and unlawful practices of his own executive department. On July 7, 2020, the district court denied Petitioner's motion to dismiss and upheld "the long-standing Colorado tradition" of permitting suits against the Governor "due to his constitutional responsibility to uphold the laws of the state and to oversee Colorado's executive agencies." App. 5 at 6 (quoting *Ainscough*, 90 P.3d at 858).

Now, Petitioner seeks review of the district court's order under this Court's original jurisdiction.[2]

IV. STANDARD OF REVIEW

"Original relief pursuant to C.A.R. 21 is an extraordinary remedy that is limited both in purpose and availability." *People v. Kailey*, 333 P.3d 89, 92 (Colo. 2014). Such relief is appropriate only "when an appellate remedy would be inadequate, when a party may otherwise suffer irreparable harm, or when a petition raises issues of significant public importance that [the Court has] not yet considered." *People v. Huckabay*, 463 P.3d 283, 285 (Colo. 2020) (quoting *People v. Kilgore*, 455 P.3d 746, 748 (Colo. 2020)).

On appellate review, C.R.C.P. 12(b)(5) motions are reviewed de novo. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). "Motions to dismiss for failure to state a claim are disfavored and should not be granted if relief is available under any theory of law." *Colo. Ethics Watch v. Senate Majority Fund,*

[2] Petitioner's request for C.A.R. 21 review fits a pattern that has stalled the progress of the litigation. In a separate motion, filed contemporaneously with this Response, Respondents respectfully request that this Court exercise its authority under C.A.R. 21(f)(2) and lift the automatic stay on the litigation in whole or in part. The proceedings in this litigation should not be stayed while Respondents continue to suffer serious abuses in the custody of the CDOC.

LLC, 269 P.3d 1248, 1253 (Colo. 2012) (en banc). A motion to dismiss under Rule 12(b)(5) serves merely to "test the formal sufficiency of the complaint." *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911 (Colo. 1996). Dismissal is appropriate only where the factual allegations in the complaint, taken as true and viewed in the light most favorable to the plaintiff, do not present a right to relief above the speculative level or provide plausible grounds for relief. *See Warne v. Hall*, 373 P.3d 588, 591, 595 (Colo. 2016) (adopting the *Twombly/Iqbal* plausibility standard).

Further, the principle of stare decisis requires courts to follow their preexisting rules of law. "Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Love v. Klosky*, 413 P.3d 1267, 1270 (Colo. 2018) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). "Because of these virtues, courts are reluctant to undo settled law." *Id.* So too this Court adheres to precedent "absent 'sound reason for rejecting it.'" *Forest View Co. v. Town of Monument*, 464 P.3d 774, 777 (Colo. 2020) (quoting *People v. Blehm*, 983 P.2d 779, 788 (Colo. 1999)).

V. SUMMARY OF THE ARGUMENT

Respectfully, this Court should discharge the rule and affirm the district court's order denying Petitioner's motion to dismiss for two reasons. ***First***, nothing about the instant petition warrants the extraordinary remedy of C.A.R. 21 review. This Court has already reviewed the issue presented, and the law on that subject is clear. Moreover, Petitioner's claim of irreparable harm rings hollow—especially in light of the adequate alternative remedies he has at his disposal. ***Second***, the district court's conclusion is correct: It is proper for Respondents to sue the Governor when challenging unconstitutional practices perpetrated by the Governor's own executive branch and when Respondents seek enforcement of the laws the Governor is constitutionally required to enforce. Notably, Petitioner has not provided a valid reason for overturning the district court's ruling. Instead, Petitioner misrepresents this Court's prior decision in *Developmental Pathways* and relies on other spurious precedent. Accordingly, Respondents respectfully request that this Court reject Petitioner's appeal to depart from longstanding precedent and affirm the district court's order.

VI. ARGUMENT

A. This Issue Does Not Merit Review Under C.A.R. 21

The instant petition offers no valid reason why this Court should exercise its extraordinary remedy of C.A.R. 21 review.

First, Petitioner is mistaken that review of this issue is warranted because this case raises "issues of significant public importance that [this Court has] not yet considered." Pet. at 9. To the contrary, this Court reviewed this issue in *Ainscough* and again in *Developmental Pathways*. As articulated below, this Court's holdings in both cases are clear and require no further clarification. Petitioner further alleges that this case raises issues of public import because, absent a ruling in his favor, the Governor is likely "to be named as a defendant to *every* lawsuit claiming that [the government] violated the plaintiff's rights under Colorado law." *Id.* at 10 (emphasis in original). But it has been proper to name Colorado's Governor as a defendant in cases such as these for decades, *see, e.g., Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980), and no deluge of litigation has befallen the Governor's office. Accordingly, not only has the issue in this case been previously reviewed by this Court, but there is no pressing need to re-adjudicate it now. If anything, the opposite is true: The issues raised by Respondents in their First Amended Complaint are matters of

significant public importance meriting urgent attention from the Governor and Colorado's judiciary.[3]

Second, Petitioner alleges that he will "suffer irreparable harm" unless this Court reviews his petition. Pet. at 8–9. Specifically, Petitioner balks at being "forced to participate in class certification, disclosures, discovery, summary judgment, trial, and direct appeal." *Id.* at 8. But the Governor's individual participation in this case is not likely to "drain limited state resources." *Id.* at 10. As a practical matter, Petitioner's interests are completely aligned with the CDOC Defendants and there is no indication that his litigation responsibilities will be any different than those of the CDOC Defendants. Indeed, Petitioner and the CDOC Defendants share the same counsel, the Colorado Attorney General's Office, which obviates any concern that his presence will create unnecessary legal work. The only burden this case ***actually*** places on Petitioner is that his name—Governor Jared Polis—appears prominently in the caption. It may be politically inexpedient for

[3] The harm posed to Respondents by any delay in the litigation is more fully addressed in Respondents' separate motion requesting that this Court lift the automatic stay under C.A.R. 21.

Petitioner to be named as a defendant in this case, but that is no reason for him to be dismissed.

Third, Petitioner's ordinary procedural remedies are adequate. Petitioner may be correct that a denial of a motion to dismiss is not immediately reviewable on appeal, but that fact alone does not warrant this Court's exercise of original jurisdiction under C.A.R. 21. If it were, litigants would be incentivized to petition for C.A.R. 21 review as a matter of course upon denial of Rule 12(b) motions. Further, denial of Petitioner's motion to dismiss does not preclude him from raising the issue again at the district court level, including at summary judgment. Even if Petitioner's motion to dismiss cannot be reviewed after a trial, *Credit Serv. Co. v. Skivington*, 469 P.3d 531, 533–34 (Colo. App. 2020), there are alternative procedural vehicles, such as a judgment as a matter of law, through which Petitioner's claim can be heard on direct appeal. Indeed, the Governor is better situated than private litigants to cope with the denial of his motion insofar as he will not incur out-of-pocket legal expenses to continue the litigation.

B. The District Court Correctly Denied Petitioner's Motion

The district court correctly determined that *Ainscough*'s unambiguous holding controls here. App. 5 at 6. Specifically, "due to his constitutional responsibility to

uphold the laws of the state and to oversee Colorado's executive agencies," the Governor, in his official capacity, is a proper defendant "when a party sues to enjoin or mandate enforcement of a statute, regulation, ordinance, or policy" within the context of an executive agency. *Ainscough,* 90 P.3d at 858. Respondents have done just that here. Respondents are suing an executive agency, the CDOC, and seeking enforcement of laws that the Governor is constitutionally responsible to uphold. Colo. Const. art. IV, § 2. Hence, Petitioner's presence as a party in this case is not only justified as a matter of law, but also in keeping with Colorado's custom. *See Ainscough*, 90 P.3d at 858 (citing to Colo. Const. art. IV, § 2, finding that Governor's role as "the state's chief executive" is the basis for recognizing and upholding Colorado's "widespread and well-established . . . practice" of naming the Governor as a defendant in such suits).

There is no question that the Governor is "ultimately responsible for enforcing th[e] law" at issue here and that therefore Petitioner is an appropriate defendant. *Id.* Respondents seek relief in the form of enforcement of Colorado's laws—namely, CADA—and it is ultimately the Governor's job to see that such laws are enforced. Colo. Const. art. IV, § 2. Indeed, Respondents invoked this very authority in their First Amended Complaint by alleging that the Governor "is responsible for the

overall administration of the laws of the State." App. 1 at ¶ 14. This responsibility alone provides a sufficient basis to name the Governor as a defendant.

But the Governor's authority over issues pertaining to the CDOC goes well beyond what is minimally required to tie him to this case. As Colorado law provides, and as Respondents alleged in their First Amended Complaint, the Governor is "responsible for appointing the Executive Director" of the CDOC, who serves at the Governor's pleasure. § 17-1-101(1), C.R.S. (2020). Thus Colorado law establishes the CDOC as an agency that falls squarely within the Governor's control.[4] Additionally, "the Governor has final authority to order the executive directors of all state agencies to commence or cease any action on behalf of the state." *Sportsmen's Wildlife Def. Fund v. U.S. Dep't of the Interior*, 949 F. Supp. 1510, 1515 (D. Colo. 1996). Moreover, the Governor's connection to the penal system as a particular

[4] This is in stark contrast to the Ethics Commission at issue in *Developmental Pathways*, which was deliberately designed to avoid direct oversight from any one of Colorado's separate constitutional departments. 178 P.3d at 530. Commission members are appointed by various bodies—***not*** just by the Governor. *Id.* at 527 n.2 ("The first four members of the Commission are appointed in order by the Colorado Senate, the Colorado House of Representatives, the Governor, and the Chief Justice of the Colorado Supreme Court. Then, the fifth member, either a local government official or a local government employee, must be appointed by the affirmative vote of at least three of the four previously appointed members." (internal citation and quotations omitted)).

executive institution is constitutionally enshrined. *See, e.g.*, Colo. Const. art. IV, § 7 (describing the Governor's power to grant reprieves, commutations, and pardons). The district court recognized the Governor's authority over the CDOC by noting that "the Governor has exerted control over CDOC policy and personnel through executive orders." App. 5 at 5 (citing several recent executive orders demonstrating the Governor's authority over the CDOC). Similarly, the Governor has control over executive department budgets, including CDOC's budget, § 24-37-301, C.R.S. (2020), and it is indisputable that "executive budget control can effect [sic] substantial policy influence," Miriam Seifter, *Gubernatorial Administration*, 131 Harv. L. Rev. 483, 508 (2017).[5] But even despite these specific responsibilities, *Ainscough* is clear that the "propriety of naming the Governor as a defendant" holds

[5] Petitioner is mistaken that the district court erred by taking into consideration certain statutes and executive orders cited by Respondent's Opposition to the Governor's Motion to Dismiss. Pet. at 14–15. "[C]ertain matters of public record may . . . be taken into account, . . . are properly the subject of judicial notice [and] may be considered without converting the motion into one for summary judgment." *Walker v. Van Laningham*, 148 P.3d 391, 397 (Colo. App. 2006) (affirming the taking of judicial notice of an ordinance and prior convictions); *Celebrities Bowling, Inc. v. Shattuck*, 414 P.2d 657, 659 (Colo. 1966) ("The general rule is well established that courts may take judicial notice of the statutes of their own state."); *Peña v. Am. Family Mut. Ins. Co.*, 463 P.3d 879, 881 (Colo. App. 2018) (noting that in resolving a C.R.C.P. 12(b)(5) motion to dismiss, a "court may take judicial notice [of matters] such as public records").

even in cases where there is "neither an executive order involved nor any other specific action on the part of the Governor."[6] *Ainscough*, 90 P.3d at 858.

Further, the CDOC is unlike the agencies at issue in Petitioner's cases, *infra*, because the Governor lawfully exercises control over it. *Ainscough* itself recognized this by citing *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980)—a case challenging the constitutionality of living conditions within the CDOC—as an example of the "well-established" practice of naming the Governor as a defendant. 90 P.3d at 858. Indeed, the custom of naming the Governor in lawsuits seeking redress from CDOC practices has been enshrined in the State's jurisprudence for decades, including cases that pre-date *Ainscough*. *See, e.g.*, *Montez v. Romer*, No. 92-cv-00870-CMA-MEH (D. Colo. 1992) (lawsuit naming both the Governor and Colorado's correctional facilities in which Governor was not dismissed and filed answer); *Nasious v. Holst*,

[6] At minimum, the Governor in the instant case, "possesses ***sufficient*** authority to enforce (and control the enforcement of) the complained-of statute." *Cooke v. Hickenlooper*, No. 13-CV-01300-MSK-MJW, 2013 WL 6384218, at *8 (D. Colo. Nov. 27, 2013) (emphasis added); *People v. Kenehan*, 136 P. 1033, (Colo. 1913) ("[W]ho is more directly interested in seeing that the officers of the executive department, of which he is the supreme head, shall execute the duties imposed upon them by law . . . ?").

No. 09-cv-01051-REB-KMT (D. Colo. 2009) (same); *Briggs v. Colorado*, 19-cv-31616 (Colo. Dist. Ct. 2019) (same).

To avoid the straightforward application of *Ainscough*, Petitioner distorts the meaning and significance of *Developmental Pathways* and the other cases on which he erroneously relies. In *Developmental Pathways*, this Court found that "the Governor was properly named as a defendant." 178 P.3d at 529. In no way did this Court "announce[] a new test for determining whether the Governor is a proper party to a lawsuit" or depart from *Ainscough*'s unambiguous holding. Pet. at 1. To the contrary, *Developmental Pathways* "cite[d] *Ainscough* with favor, and restate[d] *Ainscough*'s holding." App. 5 at 3; *see also* 178 P.3d at 529–30.

Petitioner disregards this holding, and instead focuses on an observation that is merely dicta. Specifically, in dicta, this Court noted that it "***may*** have reached a different conclusion" under different circumstances, but it made no attempt to identify or elaborate on what would require an alternative ruling. 178 P.3d at 530 (emphasis added). Accordingly, no "new test" was created. And, regardless, it is clear that the circumstances at issue in *Developmental Pathways* are not present here.

Plaintiffs in *Developmental Pathways* sought to enjoin enforcement of Amendment 41's "gift ban." *Id.* at 526. The gift ban prohibited government officials

and employees, including executive branch employees, from receiving gifts or money without lawful consideration. *Id.* at 527. The gift ban was to be enforced by a newly-created Ethics Commission, *id.*, which itself was constitutionally designed to be "separate and distinct from the executive and legislative branches," *id.* at 530.[7] It was in this context that this Court noted that it "***may*** have reached a different conclusion" with regard to the propriety of naming the Governor as a defendant "[h]ad the Commission been in existence at the time the lawsuit was filed." *Id.* (emphasis added). In terms of the separation of powers, it would clearly be improper for the Governor to exert control or influence over an agency outside of the executive branch. Indeed, the Ethics Commission was constitutionally designed to avoid such oversight. But, unlike the circumstances of *Developmental Pathways*, the instant case concerns an agency that fits ***squarely*** within the executive branch. As such, the "Governor is an appropriate defendant due to his constitutional responsibility . . . to

[7] As indicated above, one of the indicia of the Ethic Commission's separate constitutional status is the fact that its members are appointed not by one branch of government, but rather by a plurality. *See Developmental Pathways*, 178 P.3d at 527 n.2. What is more, the Commission's plain purpose clearly runs counter to the notion that one branch—let alone the executive branch—should control its policies or decisions.

oversee Colorado's executive agencies." *Ainscough*, 90 P.3d at 858 (emphasis added).

The district court recognized as much when it emphasized that *Developmental Pathways* neither "signal[ed] an explicit departure from the analysis of *Ainscough*," nor even offered any "acknowledgement of such a departure" as would "certainly [be] expected when the Court breaks tradition." App. 5 at 3. Other district courts have agreed. *See, e.g.*, *Wildgrass Oil & Gas Comm. v. Colorado,* 447 F. Supp. 3d 1051, 1061–62 (D. Colo. 2020) (explicitly rejecting the argument that *Developmental Pathways* narrowed *Ainscough's* holding); *Cooke v. Hickenlooper*, No. 13-CV-01300-MSK-MJW, 2013 WL 6384218, at *8 (D. Colo. Nov. 27, 2013), *aff'd in part sub nom. Colo. Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537 (10th Cir. 2016) (citing *Developmental Pathways* for the very proposition that "the governor, in his official role as the state's chief executive, [is a] proper Defendant in cases where a party seeks to enjoin state enforcement of a statute, regulation, ordinance, or policy"). Indeed, this Court should apply stare decisis and abide by the precedent it set in *Ainscough.*

Moreover, there is a clear policy rationale for rejecting what Petitioner claims is the "new test" for determining whether the Governor is a proper party. If it were

improper to name the Governor as a defendant whenever "there exists another government official, body, or agency specifically charged with administering, enforcing, or complying" with the law, Pet. at 1–2, the Governor would almost ***never*** be an appropriate defendant because there is almost always a person or entity beneath the Governor who is charged with actually administering the law. This Court recognized as much when it found that "[f]or litigation purposes, the Governor is the embodiment of the state." *Ainscough*, 90 P.3d at 858. As such, the Governor should be named—despite the involvement of other individuals—when the chief of the executive branch, or the State itself, is responsible for the unlawful activity.

Petitioner's reliance on his other cases is similarly infirm, because these cases concern entities the Governor does not control. For instance, *Lucchesi v. State*, 807 P.2d 1185 (Colo. App. 1990), involved a *pro se* plaintiff's challenge to the constitutionality of a property tax assessment statute. *Id.* at 1187–88. As the district court recognized, such an action is easily distinguishable from the instant case because, while the Governor can and does exert influence over the CDOC, he cannot "unilaterally change property tax rates." App. 5 at 4. In fact, the district court outlined executive orders issued by Petitioner directly exerting control over CDOC policy. *See, e.g.*, App. 5 at 5 (collecting relevant executive orders exerting control

over CDOC policy). Moreover, *Lucchesi*—and the cases that cite it with approval, Pet. at 17–18—were decided prior to *Ainscough* and therefore did not have the benefit of *Ainscough*'s analysis.

As stated by the district court in this case, other district court opinions "are not precedent[,] . . . should not be cited as authority . . . [and] are rarely helpful to legal analysis unless the facts are nearly identical." App. 5 at 4. Indeed, the facts of Petitioner's cases are easily distinguishable. In *Franzoy v. State of Colorado*, No. 18-CV-33600 (Colo. Dist. Ct. Jan. 11, 2019), the Governor was dismissed as a defendant because he "did not have the power to enforce Title 18 because of its location within the criminal code." App. 5 at 4. It is clearly not the business of the Governor to direct criminal prosecutions through the District Attorney's office, whereas, here, the CDOC is squarely within the Governor's influence. The other case cited by Petitioner, *In re Lower N. Fork Fire Litig.*, No. 12-CV-2550, 2014 WL 642534, at *2 (Colo. Dist. Ct. Feb. 18, 2014), concerned a constitutional challenge to the tort cap statute as it applied to a homeowners' dispute. The Governor was dismissed because he "does not exercise control over legislative decisions." App. 5 at 5. Here, however, the Governor ***does*** have the ability to control CDOC policy, and Respondents seek ***enforcement*** of the law.

VII. CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court discharge its rule to show cause and affirm the district court's denial of the Governor's motion to dismiss.

DATED: October 16, 2020

Respectfully submitted,

By: */s/ Suneeta Hazra*

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2020, a true and correct copy of **RESPONDENTS' RESPONSE TO THE COURT'S SHOW CAUSE ORDER** was served via *Colorado Courts E-Filing System* on the following:

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