

<p>COLORADO SUPREME COURT 2 EAST 14TH AVENUE DENVER, COLORADO 80203 Case No. 2025SC676</p> <p>Colorado Court of Appeals Case No. 2024CA0079</p> <p>Arapahoe County District Court Case No. 2022CV31471 Div. 32, Judge Joseph Whitfield</p>	<p>DATE FILED October 26, 2026 6:26 PM FILING ID: AA40C3BCF85DF CASE NUMBER: 2025SC676</p> <p>▲ COURT USE ONLY ▲</p>
<p>Appellant:</p> <p>BRENDAN DAVES</p> <p>v.</p> <p>Appellee:</p> <p>CHRISTOPHER MOSLEY</p>	
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**Motion for pro hac vice entry of
appearance pending*

**BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION AND
AMERICAN CIVIL LIBERTIES UNION OF COLORADO
IN SUPPORT OF APPELLEE**

CERTIFICATE OF COMPLIANCE

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

This amicus brief complies with the applicable word limit in C.A.R. 29(d) (an amicus brief may be no more than one-half the length authorized for a party's principal brief). It contains 3,925 words (less than 4,750).

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

/s/ Sara R. Neel

Sara R. Neel, No. 36904

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TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT	6
I. Section 131 is textually distinct from Section 1983 and is not governed by federal jurisprudence.....	6
A. Through Section 131, the General Assembly sought to dismantle barriers faced by Colorado plaintiffs in vindicating their constitutional rights.....	7
B. The General Assembly chose not to tie Section 131 to federal court interpretations of Section 1983.....	12
II. The persuasive value of federal case law interpreting Section 1983 is not presumed, and Colorado courts must take care to avoid engrafting federal caselaw onto Section 131, a distinct state statutory scheme.	13
CONCLUSION	17
CERTIFICATE OF SERVICE.....	19

TABLE OF AUTHORITIES

Cases

<i>Arizona v. Grant</i> , 556 U.S. 332 (2009)	4
<i>Ashcroft v. al-Kidd</i> , 563 U.S. 731 (2011)	9
<i>Atencio v. State of New Mexico</i> , No. S-1-SC-40980 (N.M. S. Ct. filed Jan. 30, 2026)	1
<i>Baxter v. Bracey</i> , 751 Fed.Appx. 869 (6th Cir. 2018)	9
<i>Bd. of Cnty. Com’rs of Douglas Cnty. v. Sundheim</i> , 926 P.2d 545 (Colo. 1996)	3
<i>Bolen v. New Mexico Racing Comm’n</i> , 578 P.3d 1121 (N.M. 2025)	16
<i>Brannan Sand & Gravel Co. v. Indus. Claim Appeals Office</i> , 762 P.2d 771 (Colo. App. 1988)	15
<i>Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Serv.</i> , 532 U.S. 598 (2001)	12
<i>Chan v. HEI Res., Inc.</i> , 2022 CO 36, 512 P.3d 120	13

<i>Cisneros v. Elder</i> , 506 P.3d 828 (Colo. 2022)	1
<i>Cummings v. Dean</i> , 913 F.3d 1227 (10th Cir. 2019).....	9
<i>Curious Theatre Co. v. Colo. Dep’t of Pub. Health & Env’t</i> , 220 P.3d 544 (Colo. 2009)	7
<i>Federico v. Brannan Sand & Gravel Co.</i> , 788 P.2d 1268 (Colo. 1990)	15
<i>Fishbein v. City of Glenwood Springs</i> , 4 69 F.3d 957 (10th Cir. 2006).....	4
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982)	8
<i>Insul-Lite Window & Door Mfg. v. Indus. Comm’n</i> , 723 P.2d 151 (Colo. App. 1986)	15
<i>Katz v. United States</i> , 389 U.S. 347 (1967)	4
<i>Mosley v. Daves</i> , 2025 COA 80, 580 P.3d 584	14
<i>N. Colo. Med. Ctr., Inc. v. Comm. on Anticompetitive Conduct</i> , 914 P.2d 902 (Colo. 1996)	13, 14, 15

<i>N. Colo. Med. Ctr., Inc. v. Comm. on Anticompetitive Conduct</i> , No. 95SC256, Appellant’s Opening Brief, 1995 WL 17064660 (Colo. Oct. 21, 1995).....	14
<i>Nicholas v. N. Colo. Med. Ctr., Inc.</i> , 902 P.2d 462 (Colo. App. 1995)	14
<i>People v. Allen</i> , 2019 CO 88, 450 P.3d 724	4
<i>People v. Jennings</i> , No. 165764 (Mich. S. Ct. filed Mar. 2, 2026).....	1
<i>People v. Young</i> , 814 P.2d 834 (Colo. 1991)	8
<i>Perkins v. State of Montana</i> , No. DV-25-282 (Mont. Fourth Jud. Dist. Ct. filed Mar. 27, 2025)	1
<i>Pierson v. Ray</i> , 386 U.S. 547 (1967)	8
<i>Reichle v. Howards</i> , 566 U.S. 658 (2012)	9
<i>Rocky Mountain Gun Owners v. Polis</i> , 2020 CO 66, 467 P.3d 314	7
<i>Ryser v. Shelter Mut. Ins. Co.</i> , 2021 CO 11, 480 P.3d 1286	6

<i>United States v. Bagley</i> , 877 F.3d 1151 (10th Cir. 2017).....	4
<i>United States v. Delgado-Perez</i> , 867 F.3d 244 (1st Cir. 2017)	4
<i>United States v. Waters</i> , 883 F.3d 1022 (8th Cir. 2018).....	4
<i>Vigil v. Franklin</i> , 103 P.3d 322 (Colo. 2004)	6
 Statutes	
42 U.S.C. § 1983	5
42 U.S.C. § 1988	11
Ark. Code § 16-123-105(c)	13
C.R.S. § 11-51-101(3)	13
C.R.S. § 12-36.5-106.....	14
C.R.S. § 13-21-131	1, 3
C.R.S. § 13-21-131(2)(b)	8

C.R.S. § 13-21-131(3)	11
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Other Authorities

Alexander A. Reinert, Joanna C. Schwartz & James E. Pfander, <i>Watching the Sky Not Fall: A Study of State Qualified Immunity Reforms</i> (Mar. 3, 2026)	9
Amanda Pampuro, <i>Colorado Blocks Qualified Immunity for Police</i> , Courthouse News Service (June 19, 2020)	3
Bente Birkeland, <i>How protests over George Floyd’s death led Colorado to rewrite its rules for policing</i> , CPR News (May 29, 2025)	3
Cardozo Legal Studies Research Paper No. 2026-04.....	9
Colo. Legislative Council Staff, Final Fiscal Note for SB 20-217 (June 20, 2020).....	2
HB 21-1250, <i>Measures to Address Law Enforcement Accountability</i> , 2021 Reg. Session (Colo. 2021).....	3
<i>How George Floyd Died, and What Happened Next</i> , N.Y. Times (July 29, 2022).....	2
Isaac M. Green & Seth E. Montgomery, <i>All Cases Great and Small: Fulfilling the NMCRA’s Promise of Attorney Fees</i> , 54 N.M. L. Rev. 385, 398–401 (2024).....	12

Joanna C. Schwartz, <i>Civil Rights Without Representation</i> , 64 Wm. & Mary L. Rev. 641 (2023).....	11
Joanna C. Schwartz, <i>The Case Against Qualified Immunity</i> , 93 Notre Dame L. Rev. 1797 (2018).....	10
Kit Kinports, <i>The Supreme Court’s Quiet Expansion of Qualified Immunity</i> , 100 Minn. L. Rev. Headnotes 62 (2016).....	10
Northwestern Public Law Research Paper No. 26-09	9
Saja Hindi, <i>Colorado lawmakers introduce sweeping police reform bill</i> , Denver Post (June 3, 2020)	2
SB 20-217, <i>Enhance Law Enforcement Integrity</i> , Gen. Assemb., 2020 Reg. Session (Colo. 2020)	2

IDENTITY AND INTEREST OF *AMICI CURIAE*

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

The ACLU has an interest in this case because proper interpretation of C.R.S. § 13-21-131 is imperative to enforcement of civil rights and civil liberties in Colorado. In addition, the ACLU seeks to preserve the power of state courts to safeguard individual rights under state constitutions. *See, e.g.*, Amicus Br., *People v. Jennings*, No. 165764 (Mich. S. Ct. filed Mar. 2, 2026); Amicus Br., *Atencio v. State of New Mexico*, No. S-1-SC-40980 (N.M. S. Ct. filed Jan. 30, 2026).

SUMMARY OF ARGUMENT

On May 25, 2020, Minneapolis police officer Derek Chauvin knelt on George Floyd's neck and back for almost 10 minutes, ultimately killing him.¹ Video footage of the murder went viral, sparking protests and calls for police reform.² Nine days later, Colorado lawmakers introduced Senate Bill 20-217, the Enhance Law Enforcement Integrity Act ("ELEIA").³ The Act was signed into law on June 19, 2020.⁴

The ELEIA's core purpose was to advance police reform and accountability, including by offering protections beyond those already available under federal law.⁵

¹ *How George Floyd Died, and What Happened Next*, N.Y. Times (July 29, 2022), available at: <https://www.nytimes.com/article/george-floyd.html>.

² *Id.*

³ SB 20-217, *Enhance Law Enforcement Integrity*, Gen. Assemb., 2020 Reg. Session (Colo. 2020), available at: <https://leg.colorado.gov/bills/SB20-217> (hereinafter "S.B. 20-217").

⁴ *Id.*

⁵ See, e.g., Colo. Legislative Council Staff, Final Fiscal Note for SB 20-217 (June 20, 2020), available at: https://leg.colorado.gov/bill_files/56703/download (summarizing the bill's provisions); Saja Hindi, *Colorado lawmakers introduce sweeping police reform bill*, Denver Post (June 3, 2020), available at: <https://www.denverpost.com/2020/06/03/colorado-police-bill-colorado-george-floyd/> (quoting Representative Leslie Herod, a primary sponsor of S.B. 20-217, as saying that the Colorado Legislature "will take action to protect black lives, hold law enforcement accountable and ensure that police officers truly serve and protect all of us"); Amanda Pampuro, *Colorado Blocks Qualified Immunity for Police*,

To that end, the ELEIA created a civil cause of action against state police officers who violate the Bill of Rights of the Colorado Constitution, codified in C.R.S. § 13-21-131 (“Section 131”).⁶ Before Section 131, Coloradans had no cause of action whatsoever—either statutory or implied—to seek damages for violations of the Colorado Constitution.⁷

Now, in the first case involving this police-reform cause of action to reach this Court, Appellant-Defendant Brendan Daves (“defendant”) asks this Court to weaken it. In doing so, defendant points to neither the text nor purpose of Section 131. Instead, expressly relying on federal law, defendant asks this Court to hold that plaintiffs in Section 131 suits have the burden to disprove an officer’s alleged justification for a warrantless search or seizure. The crux of defendant’s argument is

Courthouse News Service (June 19, 2020), *available at*: <https://www.courthousenews.com/colorado-blocks-qualified-immunity-for-police/>; Bente Birkeland, *How protests over George Floyd’s death led Colorado to rewrite its rules for policing*, CPR News (May 29, 2025), *available at*: <https://www.cpr.org/2025/05/29/police-reform-since-george-floyd-death/>.

⁶ As originally enacted, Section 131 provided a cause of action only against local police officers. S.B. 20-217. The law was amended to include state officers in July 2021. HB 21-1250, *Measures to Address Law Enforcement Accountability*, 2021 Reg. Session (Colo. 2021), *available at*: <https://leg.colorado.gov/bills/hb21-1250>.

⁷ See *Bd. of Cnty. Com’rs of Douglas Cnty. v. Sundheim*, 926 P.2d 545, 553 (Colo. 1996) (en banc). Although this Court held in 1996 that “it may be appropriate to recognize an implied state constitutional cause of action when there is no other adequate remedy,” *id.*, to date no Colorado appellate court has recognized an implied action for damages.

that, under federal law, protective sweeps are not an exception to the Fourth Amendment’s warrant requirement and are instead *per se* reasonable. *See* Appellant’s Opening Brief at 11–12, 22–27.

As Appellee-Plaintiff Christopher Mosley (“plaintiff”) notes, defendant misapprehends federal law. Under the Fourth Amendment, warrantless searches are presumptively unreasonable, subject to certain well-delineated exceptions.⁸ The protective sweep is one such exception.⁹ Moreover, as plaintiff also notes, under Colorado law defendants in civil cases have the burden to prove affirmative

⁸ *See Katz v. United States*, 389 U.S. 347, 357 (1967) (“Over and again this Court has emphasized that the mandate of the Fourth Amendment requires adherence to judicial processes, and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” (cleaned up)); *Arizona v. Grant*, 556 U.S. 332, 338 (2009) (when “addressing the reasonableness of a warrantless search,” the Court’s analysis begins “with the basic rule” that warrantless searches “are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions” (quoting *Katz*, 389 U.S. at 357)).

⁹ *See, e.g., People v. Allen*, 2019 CO 88, ¶¶ 15–16, 450 P.3d 724 (explaining that the protective sweep doctrine is an exception to the “presumption that a warrantless search is unreasonable and thus unconstitutional” under the Fourth Amendment); *United States v. Bagley*, 877 F.3d 1151, 1153 (10th Cir. 2017) (noting that “the protective-sweep doctrine provides an exception to the Fourth Amendment’s warrant requirement” (citing *Fishbein v. City of Glenwood Springs*, 469 F.3d 957, 961 (10th Cir. 2006)); *United States v. Waters*, 883 F.3d 1022, 1026 (8th Cir. 2018) (“An exception to the general warrant requirement of the Fourth Amendment is the protective sweep.”); *United States v. Delgado-Perez*, 867 F.3d 244, 251 (1st Cir. 2017) (discussing “the exception for protective sweeps”).

defenses. Because defendant's argument that the protective sweep doctrine justified a warrantless search is an affirmative defense, it is up to defendant—not plaintiff—to prove its application to this case.

Amici write separately to emphasize one key point: Contrary to defendant's assertions, this Court's interpretation of Section 131 is not bound by federal law anyway. While Section 131 bears some resemblance to Section 1983, the statutes are distinguishable. That is no accident. The ELEIA's manifest purpose was to protect Coloradans, including by providing a robust remedy for Coloradans whose state constitutional rights are violated. Nowhere does the ELEIA indicate a desire on the part of the General Assembly to enact a law that merely copycats the federal remedy appearing in 42 U.S.C. § 1983.

In fact, a close read of Section 131 reveals just the opposite: that the General Assembly took great pains to differentiate the state statute from the federal. It did so in at least three ways: (1) creating a cause of action for state, rather than federal, constitutional violations; (2) explicitly rejecting the doctrine of qualified immunity; and (3) providing a distinct fee-shifting structure for attorney fee awards. Far from tracking the limitations of Section 1983, these distinctions reflect a purpose to protect Coloradans from various limitations that Section 1983, as construed by federal courts, imposes on plaintiffs.

Section 131 should therefore be construed independently of federal law, consistent with its text and purpose. Although this Court may consider federal caselaw for its persuasive value, persuasive value is not presumed. Instead, the Court should take care to ensure that any reliance on federal caselaw supports, rather than undermines, the statutory scheme that the General Assembly crafted.

ARGUMENT

Defendant’s brief proceeds from the premise that Section 131 “follows federal jurisprudence.” Appellant’s Opening Brief at 15. That premise is mistaken. This Court should clarify that the General Assembly’s intent in enacting Section 131, not Congress’s intent in enacting Section 1983, governs here. And the available evidence is that the General Assembly did not intend, at all, to enact federal jurisprudence into Colorado law.

I. Section 131 is textually distinct from Section 1983 and is not governed by federal jurisprudence.

In interpreting statutes, this Court “aim[s] to effectuate the legislature’s intent.” *Ryser v. Shelter Mut. Ins. Co.*, 2021 CO 11, ¶ 14, 480 P.3d 1286, 1289. To do so, the Court “consider[s] the entire statutory scheme to give consistent, harmonious, and sensible effect to all of its parts.” *Id.* Additionally, it is presumed that the General Assembly is aware of existing case law precedent when it enacts legislation. *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004). Here, as explained

below, a close read reveals that the General Assembly intentionally drafted Section 131 to ensure that it would *not* be interpreted the same as Section 1983.

A. Through Section 131, the General Assembly sought to dismantle barriers faced by Colorado plaintiffs in vindicating their constitutional rights.

Section 131's text, when compared to Section 1983 and federal court interpretations thereof, reveals that the General Assembly took great pains to differentiate the two statutes and to dismantle barriers that Colorado plaintiffs faced prior to the statute's enactment. Specifically, the General Assembly distinguished Section 131 from Section 1983 in at least three ways.

First, the General Assembly distinguished Section 131 from Section 1983 by premising Section 131 liability on the Colorado Constitution rather than the U.S. Constitution. That legislative choice ensures that this Court, not the U.S. Supreme Court, has the final say on the scope of the statute. This Court is the "final arbiter of the meaning of the Colorado Constitution," and has a "responsibility to engage in an independent analysis" of the state charter, unconstrained by federal court decisions interpreting the U.S. Constitution. *See Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 34, 467 P.3d 314, 324 (quoting *Curious Theatre Co. v. Colo. Dep't of Pub. Health & Env't*, 220 P.3d 544, 551 (Colo. 2009)). In fact, this Court has time and again interpreted the Colorado Constitution to provide Coloradans with greater

protection than the U.S. Constitution.¹⁰ Aware of the expansive protections of the Colorado Constitution, and seeking to provide plaintiffs with a meaningful opportunity for relief under the same, the Legislature’s choice to provide a cause of action under the state constitution is a meaningful one that distinguishes Section 131 from Section 1983 and demands independent interpretation.

Second, in enacting Section 131, the Colorado Legislature expressly rejected one of the most significant aspects of federal case law interpreting Section 1983: the defense of qualified immunity. *See* C.R.S. § 13-21-131(2)(b) (“Qualified immunity is not a defense to liability pursuant to this section.”). Although Section 1983’s text does not mention a qualified immunity defense, the U.S. Supreme Court has construed it to contain one. *Pierson v. Ray*, 386 U.S. 547, 554 (1967). Qualified immunity shields state officers from suit under Section 1983, even when they have violated the federal Constitution, so long as they have not violated “clearly established” law. *Harlow v. Fitzgerald*, 457 U.S. 800, 812 (1982). The Supreme

¹⁰ *See People v. Young*, 814 P.2d 834, 842–43 (Colo. 1991) (collecting cases in which the Colorado Supreme Court “determined that the Colorado Constitution provides more protection for our citizens than do similarly or identically worded provisions of the United States Constitution”). The Court in *Young* noted that the history of interpreting the Colorado Constitution more expansively than the federal reflects this Court’s “repeated recognition that the Colorado Constitution, written to address the concerns of our own citizens and tailored to our unique regional location, is a source of protection for individual rights that is independent of and supplemental to the protections provided by the United States Constitution.” *Id.* at 843.

Court has held that a right is clearly established when it is “sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (cleaned up); *Reichle v. Howards*, 566 U.S. 658, 664 (2012). In practice, this standard has meant that federal courts sometimes require plaintiffs to “show a prior controlling court decision with nearly identical facts to clearly establish the law.”¹¹ This can be hard to do, especially since federal courts regularly confer qualified immunity without any analysis of the constitutional right in question, meaning the law in that area is still not “clearly established” for the next plaintiff. *See, e.g., Ashcroft*, 563 U.S. at 735 (providing lower courts with discretion to do so); *Cummings v. Dean*, 913 F.3d 1227, 1239 (10th Cir. 2019) (holding that defendant was entitled to qualified immunity because “Plaintiffs have failed to demonstrate that [defendant] violated their clearly established rights,” and declining to “reach the first prong of the qualified-immunity standard—that is, whether” defendant’s conduct “actually violated Plaintiff’s

¹¹ Alexander A. Reinert, Joanna C. Schwartz & James E. Pfander, *Watching the Sky Not Fall: A Study of State Qualified Immunity Reforms*, at 10 (Mar. 3, 2026), Cardozo Legal Studies Research Paper No. 2026-04, Northwestern Public Law Research Paper No. 26-09, *available at*: <https://ssrn.com/abstract=6342579>. *See also, e.g., Baxter v. Bracey*, 751 Fed.Appx. 869 (6th Cir. 2018).

substantive due process rights”).¹²

The Colorado General Assembly charted a different course for Section 131. By expressly disclaiming a qualified immunity defense, the General Assembly preemptively instructed Colorado courts not to construe the absence of a qualified immunity defense in Section 131 as an invitation to construe the provision to contain one. That instruction has a direct bearing on other attempts to engraft federal doctrine onto Section 131. Here, defendant asks this Court to engraft a burden-of-proof requirement onto Section 131 not on the basis of any text in that provision but instead based on federal doctrine. The General Assembly could not have anticipated all the ways that litigants might try to impose requirements on Section 131 plaintiffs. But its treatment of qualified immunity suggests a default principle: Section 131 should not be presumed to have tacitly imported Section 1983 doctrine.¹³

Finally, through Section 131, the General Assembly explicitly sought to

¹² For more thorough discussions of the doctrine of qualified immunity, its flaws, and its expansion over the years, see, e.g., Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797 (2018), Kit Kinports, *The Supreme Court’s Quiet Expansion of Qualified Immunity*, 100 Minn. L. Rev. Headnotes 62 (2016), Reinert et al., *supra* note 11.

¹³ To be clear, amici agree with plaintiff that federal caselaw actually undermines defendant’s argument and supports affirmance of the court of appeals. But in deciding this case, amici urge the Court to explicitly reject defendant’s contention that Section 131 is interpreted based on federal court interpretations of Section 1983.

remedy another significant barrier to vindicating constitutional rights under Section 1983: “the lack of lawyers willing and able to represent” plaintiffs.¹⁴ To accomplish this goal, Section 131’s fee-shifting provision differs from 42 U.S.C. § 1988 (“Section 1988”), the federal fee-shifting provision for Section 1983 claims. As a threshold matter, whereas Section 1988 is permissive, Section 131 is mandatory for prevailing plaintiffs. *Compare* 42 U.S.C. § 1988 (providing that a trial court may order fees “in its discretion”), with C.R.S. § 13-21-131(3) (providing that courts “shall award reasonable attorney fees and costs to a prevailing plaintiff”). What is more, Section 131 defines “prevailing” plaintiff differently than Section 1988. Section 131(3) provides that “[i]n actions for injunctive relief, a court shall deem a plaintiff to have prevailed if the plaintiff’s suit was a substantial factor or significant catalyst in obtaining the results sought by the litigation.” C.R.S. § 13-21-131(3). That provision endorses a “catalyst” theory of who qualifies as a prevailing party, and thus departs from U.S. Supreme Court case law rejecting the “catalyst” theory. Under U.S. Supreme Court case law, Section 1983 plaintiffs are not considered to have “prevailed” if their lawsuit caused the defendant to change their behavior without any formal court order. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t*

¹⁴ Joanna C. Schwartz, *Civil Rights Without Representation*, 64 Wm. & Mary L. Rev. 641, 641 (2023).

of Health & Human Serv., 532 U.S. 598, 605 (2001).

Under *Buckhannon*, lawyers are disincentivized from bringing Section 1983 “cases seeking solely injunctive relief, for fear that defendants will make the changes sought by the plaintiff and plaintiff’s counsel will be denied any fees for their efforts.”¹⁵ This contributes to the lack of lawyers willing to represent Section 1983 plaintiffs, and a resulting underenforcement of constitutional rights at the federal level.¹⁶ Through Section 131, the General Assembly sought to avoid the same problem in Colorado.

Put together, these textual features of Section 131 affirmatively demonstrate that it was not intended to be, and should not be, construed to track Section 1983.

B. The General Assembly chose not to tie Section 131 to federal court interpretations of Section 1983.

Beyond the statutory differences between Section 131 and Section 1983, it is also important to note what the General Assembly did *not* include in Section 131: any indication that the General Assembly intended the statute’s interpretation to be bound by the federal courts.

¹⁵ *Id.* at 656.

¹⁶ *Id.* at 652–63; Isaac M. Green & Seth E. Montgomery, *All Cases Great and Small: Fulfilling the NMCRA’s Promise of Attorney Fees*, 54 N.M. L. Rev. 385, 398–401 (2024).

It is well-established that Colorado courts are “not bound to follow federal case law interpreting” federal statutes “when the state statute is distinguishable from the federal statute.” *N. Colo. Med. Ctr., Inc. v. Comm. on Anticompetitive Conduct*, 914 P.2d 902, 906 (Colo. 1996). But the General Assembly can change that presumption. For example, the General Assembly included within the Colorado Securities Act a provision instructing courts that the statute’s provisions should “be coordinated” with references to federal law “to the extent coordination is consistent with both the purposes and the provisions of” the state statute. C.R.S. § 11-51-101(3); *see Chan v. HEI Res., Inc.*, 2022 CO 36, ¶ 18, 512 P.3d 120, 127. If the General Assembly had similarly intended for Section 131 to follow federal jurisprudence, it could have said so explicitly.¹⁷ It did not, which further reinforces the General Assembly’s intent for the statute to operate independently.

II. The persuasive value of federal case law interpreting Section 1983 is not presumed, and Colorado courts must take care to avoid engrafting federal caselaw onto Section 131, a distinct state statutory scheme.

In this case, the Colorado Court of Appeals correctly relied on Colorado law to hold that (1) defendant’s claim that his actions were justified under the protective sweep doctrine was an affirmative defense that he had the burden to prove; and (2)

¹⁷ *Cf.* Ark. Code § 16-123-105(c) (Arkansas cause of action for violations of the Arkansas Constitution, providing explicitly that state courts “may look for guidance to state and federal decisions interpreting” Section 1983).

a protective sweep is a legal justification or exception to the state constitution’s warrant requirement that the government must prove. *Mosley v. Daves*, 2025 COA 80, ¶ 15–25, 580 P.3d 584, 589–91. The court also supported its conclusions through reference to federal law. *Id.* at ¶ 26–27. To avoid confusion in the lower courts, this Court should now clarify that, when interpreting Section 131, Colorado courts can *at most* consider federal decisions for their persuasive value. But the persuasive value of a federal court decision, particularly when it comes to Section 131, is not presumed. Instead, Colorado courts should critically evaluate federal decisions to determine whether they are actually persuasive in light of Colorado jurisprudence.

For example, in *North Colorado Medical Center*, this Court considered whether the term “unreasonable anticompetitive conduct,” as used in C.R.S. § 12-36.5-106, should be construed independently of federal law. *N. Colo. Med. Ctr., Inc.*, 914 P.2d at 906–07. The Appellant in that case argued that the term “should be defined by reference to” federal antitrust law and that the court of appeals had erred by “reject[ing] strict adherence to federal antitrust principles and” instead choosing “to use simple statutory analysis” to define the term. *N. Colo. Med. Ctr., Inc. v. Comm. on Anticompetitive Conduct*, No. 95SC256, Appellant’s Opening Brief, 1995 WL 17064660, *20–21 (Colo. Oct. 21, 1995); see *Nicholas v. N. Colo. Med. Ctr., Inc.*, 902 P.2d 462, 469 (Colo. App. 1995).

This Court rejected that argument and affirmed the court of appeals. “A state court is not bound to follow federal case law interpreting” federal statutes, this Court explained, especially “when the state statute is distinguishable from the federal statute.” *N. Colo. Med. Ctr., Inc.*, 914 P.2d at 906. In fact, absent “a compelling policy reason to do so,” Colorado courts “refuse to engraft [] federal statutory scheme[s],” which have “distinct definitions, policies, and concepts, onto [] related state statutory scheme[s].” *Id.* Because the legislative purpose behind the Colorado statute was broader and “distinguishable” from the federal, the court of appeals correctly concluded “that the term unreasonable anticompetitive conduct need not be interpreted in accordance with federal case law.” *Id.* at 906–07; *see also Insul-Lite Window & Door Mfg. v. Indus. Comm’n*, 723 P.2d 151 (Colo. App. 1986) (courts interpreting state statutes are not bound to follow federal case law interpreting similar federal statutes); *Brannan Sand & Gravel Co. v. Indus. Claim Appeals Office*, 762 P.2d 771 (Colo. App. 1988), *aff’d sub nom. Federico v. Brannan Sand & Gravel Co.*, 788 P.2d 1268 (Colo. 1990) (same).

Because Colorado’s cause of action under Section 131 was enacted recently, and the case law on it is relatively sparse, it is perhaps not out of the question that Colorado courts might consider certain federal court decisions interpreting Section 1983 for guidance. But in doing so, courts must be cognizant of the intentional

differences the General Assembly created between Section 131 and Section 1983 and ensure that any reliance on federal law does not undermine the purposes of Section 131.

For example, federal analyses that stem from the doctrine of qualified immunity are unlikely to be persuasive in Colorado, given the General Assembly's clear command that qualified immunity is not applicable to Section 131 actions. Similarly, as recognized by the Supreme Court of New Mexico, federal court decisions that rely on Section 1983's "distinction between personal-capacity and official-capacity suits reflects jurisdictional limitations placed on the federal courts arising from state sovereign immunity and the Eleventh Amendment to the United States Constitution." *Bolen v. New Mexico Racing Comm'n*, 578 P.3d 1121, 1130 (N.M. 2025). "These jurisdictional limitations do not pertain to claims asserted" under state statutes and thus are unlikely to be persuasive to this Court's analysis of Section 131. *Id.*¹⁸

In enacting Section 131, the General Assembly did not merely replicate Section 1983 at the state level. Instead, the General Assembly sought to provide a

¹⁸ In *Bolen*, the New Mexico Supreme Court reversed the district court's decision that "essentially equated" a claim brought under New Mexico's Civil Rights Act to a Section 1983 suit, holding that federal law construing Section 1983 does not "control[] the question presented here." *Bolen*, 578 P.3d at 1129.

robust remedy for Coloradans whose state constitutional rights are violated. Section 131 therefore must be construed independently of federal law, consistent with its text and purpose. Although this Court may, at times, choose to consider federal caselaw for its persuasive value, persuasive value is not presumed. Instead, the Court should ensure that any reliance on federal caselaw supports, rather than undermines, the broad remedial statutory scheme that the General Assembly crafted.

CONCLUSION

Amici urge this Court to affirm the court of appeals and, in doing so, reject defendant's contention that Section 131 is interpreted based on federal jurisprudence.

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Respectfully submitted,

/s/ Sara R. Neel

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CERTIFICATE OF SERVICE

I certify that on October 26, 2026, a copy of the above **BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF COLORADO IN SUPPORT OF APPELLEE** was filed with the Court and served via the Colorado Courts E-Filing System, which notifies all counsel of record.

Respectfully Submitted,

/s/ Kara Narberes

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