IN THE UTAH COURT OF APPEALS

DAVID AMMON JAKEMAN, Appellant, v. **SPENCER J. COX, JESS L. ANDERSON, DEREK BROWN, STEVE EARL, JEFFREY S. GRAY MIKE SCHULTZ, J. STUART ADAMS, DEPARTMENT OF PUBLIC SAFETY, UTAH HOUSE OF REPRESENTATIVES, UTAH STATE SENATE, UTAH JUDICIAL COUNCIL, ADMINISTRATIVE OFFICE OF THE COURTS, AND UTAH COUNTY ATTORNEY'S OFFICE, STATE OF UTAH**, Appellees.	**BRIEF OF APPELLEES STEVE EARL AND JEFFREY S. GRAY** Appellate Case No. 20260371-CA Trial Court Case No. 250401696

On appeal from the Fourth Judicial District Court, Utah County, Honorable Shawn R. Howell, Case No. 250401696

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Former Parties:

State of Utah, Department of Public Safety, Mike Schultz, J. Stuart Adams, Utah House of Representatives, Utah State Senate, Utah Judicial Council, Administrative Office of the Courts, and Utah County Attorney's Office

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INTRODUCTION

While subject to a protective order prohibiting David Ammon Jakeman from harming or threatening to harm any member of his family in his household, Jakeman threatened his then-minor daughter that he would hit her if she did not leave and stop telling him that he was "being manipulative." Jakeman then went up the stairs to where that minor daughter was standing, cornered her, dragged her down the hallway, and put pressure on her leg with his knee until she screamed and dropped to the floor. This interaction resulted in a conviction for domestic violence and violation of a protective order. As part of his sentence, Jakeman served post-conviction incarceration and the criminal court imposed a continuous protective order under Utah Code section 78B-7-804(3), at the request of the Orem City prosecutor.

In this collateral action, Jakeman now challenges the constitutionality of Utah Code section 78B-7-804, that requires a continuous protective order that is imposed on offenders who are convicted and sentenced to a term of post-conviction incarceration unless certain criteria are met. He argues that the statute is unconstitutional in all of its applications—not as applied to him—because it effectively terminates parental rights when the victim is the child of the offender and the victim has siblings.

This Court does not have jurisdiction to address Jakeman's collateral civil attack of his criminal sentence. But even if it did, Jakeman has not established that Utah Code section 78B-7-804 facially violates substantive due process under the State or Federal Constitutions, nor that it facially violates the State or Federal equal protection clauses.

For these reasons, Steve Earl and Jeffrey S. Gray request that the Court affirm.

STATEMENT OF THE ISSUES

Issue 1: Does this Court have jurisdiction to decide Jakeman's constitutional challenges in a collateral civil proceeding where Jakeman did not raise the constitutionality of the CPO Statute in his criminal proceedings?

Standard of Review: Whether this Court has jurisdiction is a question of law and "[c]hallenges to subject matter jurisdiction may be raised at any time, even for the first time on appeal." Sonntag v. Ward, 2011 UT App 122, ¶ 2, 253 P.3d 1120.

Issue 2: Did the district court correctly reject Jakeman's facial substantive due process claim under the Utah Constitution?

Standard of Review: This Court "review[s] summary judgments under the correctness standard, affording the trial court's legal conclusions no deference."

Palmer v. Hayes, 892 P.2d 1059, 1061 (Utah Ct. App. 1995). When a constitutional challenge to a statute is made, "the statute is presumed valid, and we resolve any reasonable doubts in favor of constitutionality." Durbano Props., LC v. Utah State Tax Comm'n, 2023 UT 6, ¶ 15, 529 P.3d 348 (cleaned up).

Issue 3: Did the district court correctly reject Jakeman's facial substantive due process claim under the United States Constitution?

Standard of Review: "The propriety of a [Rule] 12(b)(6) dismissal is a question of law" that this Court reviews for correctness. Helf v. Chevron U.S.A., Inc., 2009 UT 11, ¶ 14, 203 P.3d 962. When a constitutional challenge to a statute is made, "the statute is presumed valid, and we resolve any reasonable doubts in favor of constitutionality." Durbano Props., LC v. Utah State Tax Comm'n, 2023 UT 6, ¶ 15, 529 P.3d 348 (cleaned up).

Issue 4: Did the district court correctly reject Jakeman's facial equal protection violation under the Fourteenth Amendment to the United States Constitution?

Standard of Review: This Court "review[s] summary judgments under the correctness standard, affording the trial court's legal conclusions no deference." *Palmer v. Hayes*, 892 P.2d 1059, 1061 (Utah Ct. App. 1995). When a constitutional

challenge to a statute is made, "the statute is presumed valid, and we resolve any reasonable doubts in favor of constitutionality." Durbano Props., LC v. Utah State Tax Comm'n, 2023 UT 6, ¶ 15, 529 P.3d 348 (cleaned up).

STATEMENT OF THE CASE

Jakeman's Criminal Cases, Convictions, and Sentences.

In August 2023, Jakeman was convicted of eight domestic violence and violation-of-protective-order charges in five cases prosecuted by Orem City. *Orem City v. Jakeman*, 2025 UT App 187, ¶ 2, 583 P.3d 1090.[1] (R.3253, 3299.) One of those convictions arose from an incident in which Jakeman threatened to hit his seventeen-year-old daughter because she told him he was being manipulative, cornered her against a wall, and then kneed her in the thigh, leaving a bruise. *Orem City v. Jakeman*, 2025 UT App 107, ¶¶ 1, 4, 7. At the time, Jakeman was already

[1] Pursuant to Rule 201(b) of the Utah Rules of Evidence, this Court can take judicial notice of the two opinions it issued regarding on the direct appeals of Jakeman's criminal convictions and sentences. *Orem City v. Jakeman*, 2025 UT App 107, 575 P.3d 257 and *Orem City v. Jakeman*, 2025 UT App 187, 583 P.3d 1090 "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned," Utah R. Evid 201(b)(2), and Mr. Earl and Mr. Gray do not cite these cases "to get around the rule precluding raising issues for the first time on appeal," *Finlayson v. Finlayson*, 874 P.2d 843, 847 (Utah Ct. App. 1994) (cleaned up). Instead, Mr. Earl and Mr. Gray cite to these cases to provide context related to the facts resulting in Jakeman's conviction and sentence. Mr. Earl and Mr. Gray therefore request that the Court take judicial notice of these two opinions.

subject to a protective order that prohibited him from committing or threatening violence against his wife or any of their seven children. *Id.* ¶ 2. The "convictions … were upheld on appeal due to ample evidence of intent and resulting injury to his daughter." (R.3253; *see also Jakeman*, 2025 UT App 107, ¶¶ 2–11, 30–32, 54.)

On November 3, 2023, the criminal court imposed sentences that required Jakeman to serve a period of incarceration after conviction. (R.187–88, 182.) The criminal court also entered sentencing protective orders and Jakeman "was notified of his right to request a hearing." (R.3250; *Jakeman*, 2025 UT App 187, ¶ 2.) "Jakeman requested and received a hearing regarding the protective order." (R.3250.) At the hearing, the criminal court "heard evidence and arguments from both sides, including testimony from Jakeman's spouse that the family needed peace and the children needed time to heal without fearing Jakeman's return." (*Id.*) The criminal court "found it clear under the evidence, including Jakeman's own admissions, that his family had good reason to be afraid of him." (*Id.*) At that same hearing, Orem City moved for continuous protective orders under Utah Code section 78B-7-804(3)(b), which provides that "if a perpetrator is convicted of a domestic violence offense resulting in a sentence of imprisonment, including jail, that is to be served after conviction, the court shall issue a continuous protective

order at the time of the conviction or sentencing." (R.189.) Utah Code § 78B-7-804(3)(b).

Jakeman did not challenge the constitutionality of the statute in his criminal cases. *See Jakeman*, 2025 UT App 187, ¶¶ 13–15; *see generally Jakeman*, 2025 UT App 107 (raising claims challenging the sufficiency of the evidence, structural error regarding his delayed transport to the courthouse, and ineffective assistance of counsel unrelated to his sentencing). To the contrary, he told the court that continuous protective orders were already in place when it sentenced him because the court "had no choice but to issue a continuous protective order." *Jakeman*, 2025 UT App 187, ¶ 9 (cleaned up). And although he raised on appeal a facial challenge to section 78B-7-804(5), this Court concluded that the issue was unpreserved and was not subject to plain error review. *Id.* ¶¶ 13–15.

Jakeman's Civil Cases

While his appeal of the continuous protective orders was pending, Jakeman filed three civil actions in the Fourth District Court challenging the same statute. On April 14, 2025, he filed this action, "individually and on behalf of all others similarly situated," against the State of Utah, the Legislature and its leaders, the Judicial Council, the Administrative Office of the Courts, various state officials,

and the Utah County Attorney's Office. (R.1–21.) Jakeman alleged in the complaint that the issuance of continuous protective orders under Utah Code section 78B-7-804 violated his substantive due process rights and equal protection rights under both the state and federal constitutions. (R.18–20.) He claimed that the statute was facially unconstitutional because continuous protective orders "may include non-victim minor children as protected parties" and therefore "allow[ing] for the permanent termination of parental rights without the procedural safeguards required by the nation's and Utah's constitutions." (R.19.)

Jakeman ultimately agreed to the dismissal of the Utah County Attorney's Office, the Judicial Council, the Administrative Office of the Courts, and the members of the legislature. (R.439–442, 483–486.) The State Defendants (State of Utah, Utah Attorney General's Office, Derek Brown, Spencer Cox, and Jess L. Anderson) filed a motion to dismiss. (R.295–305.) The State Defendants argued that the statute was not facially unconstitutional because the statute does not "require that continuous protective orders affect the parental rights of persons against whom such orders are issued," and that Jakeman could not meet "the burden of showing that there is no set of circumstances under which the statute's application is valid." (R.295, 297–98.) The State Defendants also argued that

Jakeman's substantive due process claim failed because the statute expressly provides due process. (R.300 (citing Utah Code § 78B-7-804(3) that provides that the "court shall notify the perpetrator of the right to request a hearing").) With respect to Jakeman's equal protection claim, the State Defendants argued that the statute "easily survive[d] scrutiny under the 'rational basis review' standard." (R.302.) Jakeman had identified two different classes of people: "(1) domestic violence perpetrators who are not sentenced to a period of incarceration to be served after conviction, and (2) those perpetrators that receive sentences requiring them to serve a period of incarceration after conviction." (R.302–03 (citing Utah Code § 78B-7-804(1)–(3)).) But the Legislature expressly stated its intention for treating the two categories differently:

> Because of the serious, unique, and highly traumatic nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of a perpetrator who is convicted of or adjudicated for domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the issuance of continuous protective orders under this Subsection (3) because of the need to provide ongoing protection for the victim and to be consistent with the purposes of protecting victims' rights under Title 77, Chapter 38, Crime Victims, and Article I, Section 28 of the Utah Constitution.

(R.304 (citing Utah Code § 78B-7-804(3)(a)).) The State Defendants argued that, "[b]uilding on th[at] rationale … the Legislature enacted subsection 804(3)(b)

which provides that 'if a perpetrator is convicted of a domestic violence offense, resulting in a sentence of imprisonment, including jail, that is to be served *after conviction*, the court shall issue a continuous protective order at the time of the conviction or sentencing limiting the contact between the perpetrator and the victim.'" (R.304 (quoting Utah Code § 78B-7-804(3)(b)).) Thus, argued the State Defendants, the "Legislature clearly made a policy decision to treat more seriously perpetrators whose convictions resulted in the courts issuing more harsh sentences involving post-conviction incarcerations than those perpetrators where courts did not impose post-conviction incarceration." (R.304.) They further argued: "There is clearly a rational distinction in that perpetrators receiving post-conviction sentences of incarceration are viewed as more dangerous than perpetrators not receiving such post-conviction sentences, justifying the mandatory issuance of continuous protective orders, which do not expire automatically, as opposed to sentencing protective orders, which are in force for finite periods." (R.304.)

After full briefing, the district court heard oral argument on the motion and dismissed the federal due process claim with prejudice. (R.687–88.) The district

court denied the motion to dismiss with respect to the equal protection claim. (R.687–88.)

Jakeman's Operative Complaint and Related Motions

While the district court considered the State Defendants' motion to dismiss, Jakeman moved to amend the complaint. (R.308–334, 358–387.) That amendment was granted and Jakeman filed the operative complaint—the Amended Complaint for Declaratory and Injunctive Relief—on August 22, 2025, which included Jeffrey Gray as a defendant. (R.690–93, 843–862.) In August 2025, Jakeman filed two more actions—case numbers 250403944 and 250403945—against Steve Earl, in his official capacity as Orem City Attorney, and the Attorney General. The district court consolidated the three actions. (R.923–24, 927–29.)

In the operative complaint, Jakeman brought facial challenges to the constitutionality of Utah Code section 78B-7-804 ("CPO Statute"). He alleged that subsections (3), (4), and (5) are facially unconstitutional under (1) the Due Process Clauses of the Utah Constitution and the Fourteenth Amendment to the United States Constitution, and (2) the Equal Protection Clause in the Fourteenth Amendment to the United States Constitution. (R.858–60.)

Mr. Gray and Mr. Earl moved to dismiss the operative complaint, arguing that they were not proper defendants because they neither enacted nor had any

power to change the statute, that the statute has constitutional applications, and that the federal due process claim had already been dismissed with prejudice. (R.1107–19.) Although the motion to dismiss was fully briefed (R.1107–19, 2546–2566, 2666–2674, 2744–2746), the district court did not separately rule on that motion before resolving Jakeman's claims on summary judgment and entering final judgment. (*See* R.3277–79.)

While the parties were briefing Mr. Gray's and Mr. Earl's motion to dismiss, Jakeman filed a motion for summary judgment on his equal protection claim. (R.2521–2539.) In their opposition, Mr. Gray and Mr. Earl again argued that they were not proper defendants because they neither enacted nor had any power to change the statute, and they joined in the State Defendants' motion for summary judgment and their opposition to Jakeman's motion for summary judgment. (R.2663–2665 (citing *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014)), 2607–2637, 2638–2662.) In the State Defendants' motion and opposition, they argued that rational basis review applies to Jakeman's facial constitutional challenge, because "the CPO Statute does not directly or substantially facially burden a fundamental right: domestic violence abusers imprisoned post-conviction do not have a fundamental right to avoid a continuous protective order." (R.2625, 2650.) Further,

"[t]o the extent any fundamental parental rights are implicated (if at all), they are subject to a court's discretion on whether and how to protect children." (R.2625, 2650.) The State Defendants also argued that Jakeman could not meet the heavy burden of showing that a continuous protective order against convicted domestic violence offenders who served time post-conviction lacked a rational connection to protecting abuse victims. (R.2607–2637, 2638–2662.)

The district court held oral argument and ruled from the bench,[2] agreeing with the State Defendants, Mr. Gray, and Mr. Earl. (R.2827–2828, 3051.) The court applied rational basis review to Jakeman's facial challenge under the Equal Protection clause, concluding that "the CPO Statute neither facially burdens a fundamental right nor facially classifies on a suspect class." (R.3053.) The court then concluded that a "rational basis exists for the CPO Statute's classification." (R.3053.) The court explained that "[t]here's no dispute that protecting domestic abuse victims from further abuse is a legitimate government end" and "appreciate[d] the Legislature's concern that immediately after someone has been released from incarceration, that period of time can be especially fraught and be a

[2] Jakeman did not request the transcripts to be part of this appeal. *See* Appellate Court Docket Entry on April 7, 2026.

risk point where victims feel increased danger. While an offender is incarcerated, the victim feels safe. But as soon as an offender is released from incarceration, the victim's fear is magnified because the offender may retaliate." (R.3053.) The court recognized that "prior to sentencing, the alleged offender has an incentive to maintain good behavior and avoid threatening or harming the alleged victim. But after sentencing, that incentive diminishes." Further, "the CPO Statute's rationality is supported by allowing for hearings to contest a continuous protective order." (R.3054.) *See* Utah Code § 78B-7-804(4). "These hearings occur at the request of the victim or the domestic abuser and allow a court to evaluate whether the victim has a real fear of harm[,] … [which] diminish[es] the mandatory nature of a continuous protective order and strengthen[s] the CPO Statute's rationality." (R.3054.) The court concluded that "the CPO Statute's classification bears a rational relationship to furthering the safety of domestic abuse victims." (*Id.*) Finally, "because Mr. Jakeman brings a facial equal protection challenge, the statute is entitled to deference and presumed constitutional." (*Id.*) Accordingly, "Mr. Jakeman [did] not m[eet] his burden in showing that the CPO Statute operates unconstitutionally in all its applications." (*Id.*)

The parties then briefed cross-motions for summary judgment regarding the Utah substantive due process claim. (R.2791–2826, 2851–2872, 2873–2904, 2913–2920, 2922–2936, 3057–3064.) Mr. Gray and Mr. Earl joined in the State Defendants' motion for summary judgment and opposition to Jakeman's motion for summary judgment. (R.2905–2910.) The State Defendants argued that Jakeman's facial challenge to the CPO Statute failed as a matter of law with respect to his state substantive due process claim because (1) the court had already concluded that the CPO Statute was constitutional as applied to him under the federal constitution's substantive due process clause, (2) he could not show that the statute was unconstitutional as applied to him (a necessary requirement for facial challenges) because he received due process under the CPO Statute, and (3) the CPO Statute does not facially burden parental rights. (R.2851, 2864–2870, 2873, 2890–2902.)

The district court entered an order granting the State Defendants' motion for summary judgment on the substantive due process claim without oral argument. (R.3249.) Relying on well-established Utah case law, the district court concluded that, "to prevail" on his facial challenge, Jakeman "must establish that the CPO statute is unconstitutional in all its applications." (R.3251–52.) Jakeman's

"primary argument [was] that the CPO statute violates substantive due process because it allows a court to sever a parent's relationship with non-victim minor children without the stringent findings normally required for the termination of parental rights." (R.3253.) The court found that:

- "Jakeman was convicted of child abuse and violation of a protective order."
- "Utah Code § 78B-7-804(3) requires a court to issue a continuous protective order (CPO) against a perpetrator convicted of domestic violence who is sentenced to a period of post-conviction incarceration."
- Jakeman "was notified of his right to request a hearing" regarding his CPO.
- "Jakeman requested and received a hearing regarding the protective order."
- At that hearing, "the judge heard evidence and argument from both sides, including testimony from Jakeman's spouse that the family needed peace and the children needed time to heal without fearing Jakeman's return."
- "The judge found it clear under the evidence, including Jakeman's own admissions, that his family had good reason to be afraid of him."

(R.3250.)

The district court concluded that Jakeman's "facial challenge fails as a matter of law." (R.3253.) His "primary argument is that the CPO statute violates

substantive due process because it allows a court to sever a parent's relationship with non-victim minor children without the stringent findings normally required for the termination of parental rights." (R.3253.) But "the CPO statute broadly applies to perpetrators of domestic violence, many of whom do not have children, or whose children were the direct victim of the abuse." (R.3253.) Thus, "[i]n situations where a domestic violence offender has no children, the issuance of a CPO in no way burdens fundamental parental rights." (R.3253.) "Because the statute undoubtedly operates constitutionally in at least some circumstances, it is not facially invalid." (R.3253.)

The district court further concluded that "a facial challenge must fail a fortiori if the challenged statute is constitutional as applied to the plaintiff," and in Jakeman's criminal proceedings, "the judge issued a CPO after providing [Jakeman] with a hearing." (R.3253.) "Because the statute provided [Jakeman] with procedural safeguards and the resulting order was supported by objective evidence of danger, the statute was constitutionally applied to him." (R.3253.)

Jakeman moved to reconsider the district court's entry of judgment in favor of State Defendants, Mr. Gray, and Mr. Earl with respect to his Equal Protection claims, arguing that the decision was "clearly erroneous" because the court

"upheld the statute under rational-basis review on a specific theory of fit: that the period 'immediately after' release from incarceration is a heightened-risk moment and that the Legislature could rationally ensure victim safety at that moment by mandating a continuous protective order ('CPO') when a defendant serves incarceration after conviction." (R.3115.) After full briefing, the district court denied the motion to reconsider, explaining that Jakeman "fundamentally misapprehends the nature of rational basis review," which is "a 'most forgiving' standard." (R.3269 (quoting Tischmak v. Utah State Tax Comm'n, 2025 UT 24, ¶ 39, 574 P.3d 63).) Contrary to Jakeman's arguments, rational basis "does not require the legislature to adopt the most precise, the most logically elegant, or the least restrictive means of achieving its policy goals." (R.3270.) Citing Heller v. Doe, 509 U.S. 312, 321 (1993), the district court explained that "courts are compelled under rational basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends." (R.3270 (cleaned up).) "A classification does not fail rational basis review simply because 'it is not made with mathematical nicety or because in practice it results in some inequality.'" (R.3270 (quoting *Heller*, 509 U.S. at 321).) Therefore, Jakeman's demand that the court "compare the CPO Statute against the entire architecture of Utah's protective-

order statutes to find a more precise 'fit' for victim protection" is "functionally asking the Court to apply intermediate or strict scrutiny," which the court declined to do. (R.3270.)

The court further reaffirmed its decision that the "CPO Statute's classification is rationally related to a legitimate government interest":

- "It is entirely rational for the legislature to conclude that domestic abusers who commit offenses serious enough to warrant post-conviction incarceration pose a distinct, elevated threat to their victims upon release."
- "It is similarly rational to conclude that the period of incarceration, followed by release into the community, severs the typical pre-trial incentives and the offender has to behave well to secure a favorable sentence."

(R.3271.) Therefore, because there was a "reasonably conceivable state of facts that provides a rational basis for distinguishing between those who serve post-conviction incarceration and those who do not, the CPO Statute survives rational basis review." (R.3271 (cleaned up).)

Jakeman timely appealed the August 4, 2025 Order granting the Motion to Dismiss the Federal Substantive Due Process Claim, the January 14, 2026 Order granting the State Defendants' Motion for Summary Judgment on the Equal Protection Claim, and the March 16, 2026 Order granting the State Defendants' Motion for Summary Judgment on the State Substantive Due Process Claim.

SUMMARY OF THE ARGUMENT

Issue 1: This Court lacks jurisdiction to decide Jakeman's constitutional challenges because they are a collateral attack on his criminal sentence. A collateral attack "may not be utilized as a substitute for, or a duplication of, a direct appeal," and issues that were raised, or could have been raised, on direct appeal are barred. *Andrews v. Morris*, 607 P.2d 816, 820 (Utah 1980); *see also Brown v. Turner*, 440 P.2d 968, 969 (Utah 1968). The continuous protective orders Jakeman challenges were entered by the criminal court as part of his sentence, and he had every opportunity to raise his constitutional arguments there. Instead, he told the criminal court that it "had no choice but to issue a continuous protective order." *Orem City v. Jakeman*, 2025 UT App 187, ¶ 9, 583 P.3d 1090. On direct appeal, this Court held that his challenges were unpreserved, that he invited any error, that he could not show plain error, and that his facial challenge—raised for the first time in his reply brief—was waived. *Id.* ¶¶ 8–15 & n.3. Jakeman filed this action while that appeal was pending, expecting the appeal to correct the claimed error (R.230 n.2), and he now asks this Court to decide in a civil case what he failed to preserve in his criminal case. Labeling the claims "facial" does not change their character. His standing theories rest entirely on his criminal proceedings, the relief he seeks would render his own orders unenforceable, and whether a continuous protective

order extends to non-victim children is a case-specific determination the sentencing court makes under Utah Code section 78B-7-804(3)(d)(v). Because Jakeman has shown no extraordinary circumstance that would justify a collateral attack, the Court should decline to reach the merits.

Issue 2: Even if the Court reaches the merits, the district court correctly rejected Jakeman's facial substantive due process claim under the Utah Constitution. A facial challenge requires the challenger to show that "no set of circumstances exists under which the statute would be valid." Gillmor v. Summit County, 2010 UT 69, ¶ 27, 246 P.3d 102 (cleaned up). Contrary to Jakeman's argument, that standard is the test, not merely a description of the result. *See State v. Herrera*, 1999 UT 64, ¶ 50, 993 P.2d 854. Jakeman cannot meet it. The CPO Statute applies to every domestic violence offender sentenced to post-conviction incarceration, including offenders who have no children and offenders whose children were the victims of the abuse—applications that implicate no parental right at all. (R.3253.) Jakeman's own amended complaint concedes that rational basis review applies when an order does not reach non-victim minor children. (R.860.) And the statute does not require that any order extend to non-victim children; it leaves that determination to the sentencing court after notice and an

opportunity for a hearing, and it permits later modification. Utah Code § 78B-7-804(3)(c)–(d), (4). Finally, the district court's observation that the statute was constitutionally applied to Jakeman is not a basis for reversal: Jakeman put his own orders at issue, the court relied on undisputed facts in the summary judgment record, and where a statute is constitutional as applied to the challenger, a facial challenge "fails a fortiori." *Herrera*, 1999 UT 64, ¶ 50.

Issue 3: The district court correctly dismissed Jakeman's federal substantive due process claim for the same reasons. Under federal law, a facial challenge is "the most difficult challenge to mount successfully," because the challenger must "establish that no set of circumstances exists under which the Act would be valid," and the government "need only demonstrate that [the statute] is constitutional in some of its applications." *United States v. Rahimi*, 602 U.S. 680, 693 (2024) (cleaned up); *see also United States v. Gordon*, 137 F.4th 1153, 1155–58 (10th Cir. 2025). Jakeman's reliance on *Rahimi* and *Gordon* is misplaced; both confirm that the statute's many valid applications defeat his facial claim.

Issue 4: The district court correctly granted summary judgment on Jakeman's federal equal protection claim. Because the CPO Statute neither burdens a fundamental right on its face nor classifies on the basis of a suspect trait,

rational basis review applies, and the classification must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 313 (1993); (R.3053, 3269). The district court identified several rational bases for treating offenders who serve post-conviction incarceration differently: the period immediately after release is especially dangerous for victims, an offender's incentive to behave diminishes after sentencing, and the statute's hearing and modification procedures allow the court to evaluate whether a victim's fear remains reasonable. (R.3053–54.) Offenders who serve post-conviction incarceration are also likely to have committed more serious offenses. (R.2629–31.) Jakeman does not meaningfully address these rationales, and his argument that the same risks exist for offenders outside the class is, at most, an argument that the statute is underinclusive—which does not negate "every conceivable basis" for the classification. (R.3270–71.) Nor does the district court's preliminary statement at the pleading stage control; that interlocutory ruling was made under the liberal rule 12(b)(6) standard and was "subject to revision at any time" before final judgment. Utah R. Civ. P. 54(b); (R.688, 3268). And like his due process claims,

Jakeman's equal protection claim is one he raised too late in his criminal appeal. *Jakeman*, 2025 UT App 187, ¶ 13 n.3.

Issue 5: Finally, the Court may affirm the judgment in favor of Mr. Gray and Mr. Earl on the alternative ground raised below that they are not proper parties to this lawsuit. *See Bailey v. Bayles*, 2002 UT 58, ¶ 13, 52 P.3d 1158. Mr. Gray and Mr. Earl did not enact the CPO Statute and have no power to change it, and Jakeman's only allegation against them is that their offices prosecute him under a state statute they are required to enforce. (R.848–49, 1107–20, 2663–65.) That allegation does not state a claim against them.

ARGUMENT

I. THE COURT DOES NOT HAVE JURISDICTION TO DECIDE JAKEMAN'S CONSTITUTIONAL CHALLENGES TO HIS CRIMINAL SENTENCE IN A COLLATERAL CIVIL CASE.

Jakeman alleges that the CPO Statute—which is the mechanism the criminal court used to enter the continuous protective order against Jakeman as part of his criminal sentence—is facially unconstitutional and violates the Utah and United States Constitution Substantive Due Process clauses and the Fourteenth Amendment's and Article I, § 7's Equal Protection clauses. (R.843, 858–60.) This Court does not have jurisdiction to decide the constitutionality of the CPO Statute,

because Jakeman erroneously raised these issues in a collateral civil attack after waiving them in his criminal proceedings.

a. Utah law bars a collateral proceeding that substitutes for or duplicates a direct appeal.

The Utah Supreme Court "has consistently held that a collateral attack . . . may not be utilized as a substitute for, or a duplication of, a direct appeal." *Andrews v. Morris*, 607 P.2d 816, 820 (Utah 1980). A collateral attack of a criminal conviction or sentence "is an extraordinary remedy which is properly invocable only when the court had no jurisdiction over the person or offense, or where the requirements of law have been so disregarded that the party is substantially and effectively denied due process of law, or where some such fact is shown that it would be unconscionable not to re-examine the conviction." *Brown v. Turner*, 440 P.2d 968, 969 (Utah 1968). "If the contention of error is something which is known or should be known to the party at the time the judgment was entered, it must be reviewed in the manner and within the time permitted by regular prescribed procedure, or the judgment becomes final and is not subject to further attack, except in some such unusual circumstance . . . mentioned above." *Id.*

The policy behind this is sound: "Were it otherwise, the regular rules of procedure . . . and the limitations of time specified therein would be rendered

impotent." *Id.*; *see also State v. Baize*, 2019 UT App 202, ¶¶ 9–14, 456 P.3d 770 (holding that a criminal defendant could not raise constitutional challenges in his criminal proceedings to his protective order entered in a prior civil case); *see also id.* ¶ 11 ("The proper forum for a defendant to challenge a protective order's terms is in the original action, not in a subsequent criminal case resulting from its violation."). As this Court has explain, there is "nothing fundamentally unfair in not allowing a litigant to challenge collaterally a judgment he could have challenged directly had he chosen to do so." *State v. Hegbloom*, 2014 UT App 213, ¶ 22, 362 P.3d 921.

In *Andrews*, the Court affirmed the dismissal of a post-conviction petition based on the district court's conclusions that "[c]onstitutional issues identical to those raised and decided on direct appeal cannot be raised again in collateral proceedings," and "[c]onstitutional challenges to the pattern of application of a criminal statute or the excessiveness of a criminal sentence which were not but could have been raised on direct appeal cannot be raised through collateral proceedings." 607 P.2d at 819–20. The Court explained that, in applying this rule, the district court was "clearly and simply called upon to determine whether the issues raised in the petition were or could have been raised on appeal," a

determination that required no look "beyond the pleadings and the documents of record." *Id.* at 822.

Here, Jakeman's claims in this action are the claims he could have raised in his criminal case, and did raise in his criminal appeal, though ineffectively. *See Orem City v. Jakeman*, 2025 UT App 187, ¶¶ 5–15, 583 P.3d 1090. There, he argued that the criminal court's issuance of the continuous protective orders "resulted in the de facto termination of his parental rights without due process"—the same argument he raises in this civil case. *Id.* ¶ 6. And the relief Jakeman seeks here is for the district court to declare the CPO Statute unconstitutional to require the criminal court to remove the CPOs—relief he could have sought, and attempted to seek, in his criminal proceedings.

Jakeman pursued this civil action while his criminal appeals were pending. Indeed, he asserted in his "Memorandum in Support of Complaint" that the "continuous protective order was issued without complying with 78B-7-804(5)" and that he "expects this flagrant error will be corrected via appeal No. 20241042-CA." (R.230 n.2.) Now that the appeal has been decided against him, his brief asserts that neither of his criminal appeals "adjudicated—or forecloses—the facial questions presented here, which are litigated for the first time in this civil

declaratory action on a record built for that purpose." (Aplt. Br. 12.) And he repeatedly invokes this Court's observation in his criminal appeal that "the law in this matter is far from settled," *Jakeman*, 2025 UT App 187, ¶ 14, as a reason for this Court to decide now what it declined to reach then. (Aplt. Br. 2, 38.) But this Court did not reach the merits in the criminal appeal because of Jakeman's own failure to raise his arguments in the criminal court and his invitation of the claimed error. *Jakeman*, 2025 UT App 187, ¶¶ 8–15. A party who fails to preserve an issue in his criminal case cannot cure that failure by filing a new civil lawsuit "on a record built for that purpose." That is precisely the substitution for, and duplication of, a direct appeal that *Andrews* forbids. 607 P.2d at 820. Further, this civil action did not build the record for Jakeman's constitutional challenges. Indeed, all the motions filed and the findings of fact made by the district court relied on the criminal cases to develop the factual record.

This Court's prior rulings applying the collateral attack doctrine are supported by strong public policy considerations. Requiring criminal defendants to assert their constitutional challenges in the underlying criminal proceeding preserves judicial resources by allowing any alleged irregularities to be resolved in a single case. Perhaps more importantly, it also protects criminal victims and

the public interests behind the criminal process by allowing the criminal court and prosecution to address and resolve any error in the first instance. For example, even if Jakeman's arguments are correct, the issues for which he now complains were not insurmountable. If Jakeman had raised the question during his criminal proceedings and the criminal court had found that Section 78B-7-804 was unconstitutional, either a different sentence would have been imposed and/or the City of Orem would have appealed that decision. Jakeman has presented no basis for this Court to determine that he was unable to raise his constitutional challenges before the criminal court. Failure to meet this burden prevents this Court from reviewing his collateral attack. *See Brown*, 440 P.2d at 969 ("It is an extraordinary remedy which is properly invocable only when the court had no jurisdiction over the person or the offense, or where the requirements of law have been so disregarded that the party is substantially and effectively denied due process of law, or where some such fact is shown that it would be unconscionable not to re-examine the conviction.").

b. Labeling the claims "facial" does not change their character.

Jakeman will likely respond that he brings only facial challenges to the statute, not challenges to his own orders. (R.3052 n.4.) But his claims are tethered to his criminal cases at every turn. His standing theories rested entirely on criminal

proceedings: the felony prosecution by Mr. Gray's office (R.845–48); his pending request in the criminal cases to modify the existing orders, which Orem City opposed (R.770, 772, 779); and the possibility that his former wife would petition for new orders in connection with those cases (R.786–87, 789). Mr. Earl and Mr. Gray are parties to this case only because their offices prosecute Jakeman (R.848, 772, 789)—as they pointed out below in seeking dismissal (R.1108–11, 2664–65). The relief Jakeman sought would render the orders entered in his criminal cases unenforceable as to his children. (R.861.) And on appeal, Jakeman relies on "[t]he orders entered against Jakeman" to "show the defect operating on the statute's own terms." (Aplt. Br. 36.) A litigant cannot avoid the bar on collateral attacks by recasting a challenge to his own sentence as a facial challenge to the statute under which the sentence was imposed.

Moreover, the feature of the statute that Jakeman attacks—orders that extend to a defendant's non-victim minor children—is not something section 78B-7-804 requires. The statute authorizes the sentencing court to include in a continuous protective order "any other order the court considers necessary to fully protect the victim and members of the victim's family or other household member." Utah Code § 78B-7-804(3)(d)(v). Whether a particular order should

extend to a particular child is a judgment the sentencing court makes in the criminal case, on the record before it. Jakeman's real complaint is with how that judgment was exercised in his criminal cases. That is an as-applied challenge, and its home is the criminal case and the direct appeal from it.

Because Jakeman's claims are an impermissible collateral attack on his criminal sentences, the Court does not have jurisdiction to decide the merits of the constitutional challenges.

II. THE DISTRICT COURT CORRECTLY REJECTED JAKEMAN'S FACIAL SUBSTANTIVE DUE PROCESS CLAIMS UNDER THE UTAH CONSTITUTION.

Even if the Court reaches the merits, the district court correctly disposed of Jakeman's substantive due process claims. Mr. Earl and Mr. Gray joined the State Defendants' motion for summary judgment on the Utah claim and their opposition to Jakeman's cross-motion below (R.2905–10, 3052), and they adopt by reference the substantive due process arguments of the State Defendants on appeal. *See* Utah R. App. P. 24(c). Mr. Gray and Mr. Earl write separately to emphasize the following points.

a. A facial challenge fails if the statute can be validly applied in any circumstance.

When interpreting "constitutional provisions, [this Court's] starting point is the textual language itself." Durbano Props., LC v. Utah State Tax Comm'n, 2023 UT 6, ¶ 15, 529 P.3d 348 (cleaned up). There is a "heavy burden placed on a party challenging the constitutionality of a statute." *Id.* (cleaned up). "When such a challenge is made, the statute is presumed valid, and we resolve any reasonable doubts in favor of constitutionality." *Id.* (cleaned up).

The Utah Supreme Court has explained that a statute "may be unconstitutional either on its face or as applied to the facts of a given case." Gillmor v. Summit County, 2010 UT 69, ¶ 27, 246 P.3d 102. "In an as-applied challenge, a party concedes that the challenged statute may be facially constitutional, but argues that under the particular facts of the party's case, the statute was applied in an unconstitutional manner." *Id.* (cleaned up). "By contrast, in asserting a facial challenge, a party avers that the statute is so constitutionally flawed that no set of circumstances exists under which the statute would be valid." *Id.* (cleaned up). Jakeman adamantly argues that he has not brought an as-applied challenge—likely in an attempt to overcome the collateral attack issue—and asserts that he is bringing a facial challenge to the constitutionality of the CPO Statute. Accordingly,

he must show that there is no set of circumstances in which the CPO Statute can be applied constitutionally. He cannot.

b. Jakeman misunderstands the standard of review for a facial challenge.

Jakeman does not directly ask this Court to disregard *Gillmor*. He contends instead that the "no set of circumstances" formulation "describes the result" of a facial analysis rather than the test.[3] (Aplt. Br. 17–18, 23–24.) But Jakeman misunderstands the standard of review for a facial challenge. Long-standing Utah precedent recognizes that a facial challenge can succeed only if there is no valid application. *See State v. Herrera*, 1999 UT 64, ¶ 50, 993 P.2d 854. In *Herrera*, the defendant challenged the constitutionality of the insanity-defense statute, asserting that the "statutory scheme on its face and as applied, violates (1) federal due process, (2) federal equal protection, and (3) federal and state guarantees against cruel and unusual punishment." *Id.* ¶ 17. The Utah Supreme Court first engaged in the as-applied analysis and concluded that the insanity statute was constitutionally applied as to Herrera. *Id.* ¶¶ 19–49. The Supreme Court reiterated

[3] Jakeman "preserves for further review" the argument that any contrary rule "should be expressly disavowed." (Aplt. Br. 23–24.) Accordingly, Mr. Gray and Mr. Earl do not address whether this Court should overturn *Gillmor* and the cases apply the "no set of circumstances" standard to facial challenges, especially considering Jakeman did not address the *Eldridge* factors for the Court to so engage. *See Eldridge v. Johndrow*, 2015 UT 21, ¶22, 345 P.3d 553.

that "[f]acial challenges succeed, however, only if the statutes at issue are incapable of any valid application." *Id.* ¶ 50. Because the Supreme Court "already upheld the challenged statutes as applied to Herrera . . . his facial challenge fails a fortiori." *Id.* ¶ 50.

Contrary to Jakeman's argument, the "no set of circumstances" standard is not the result, it is the test. Accordingly, Jakeman can only succeed if there is no set of circumstances in which the CPO Statute can be constitutionally applied.

c. There are many circumstances in which the CPO Statute is applied constitutionally.

Section 78B-7-804(3) applies to every perpetrator convicted of a domestic violence offense and sentenced to post-conviction incarceration. Utah Code § 78B-7-804(3)(b). As the district court explained, many of those perpetrators have no children, and in other cases the children were themselves the victims of the abuse. (R.3253.) In those applications the statute does exactly what the Legislature intended—provide "ongoing protection for the victim" in light of "the serious, unique, and highly traumatic nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of a perpetrator," Utah Code § 78B-7-804(3)(a)—without implicating any parental right.

Jakeman's own pleading concedes as much. His amended complaint alleges that when continuous protective orders do not include a defendant's non-victim minor children, "or otherwise implicate a constitutional right, rational basis review applies." (R.860.) And on appeal he describes his challenge as "directed at the statute's operation where it permanently severs a parent's relationship with non-victim minor children." (Aplt. Br. 22.) By Jakeman's own description, then, his challenge targets only a subset of the statute's applications. That is not a facial challenge.

Nor does the statute require that any continuous protective order extend to a defendant's non-victim minor children. Instead, it authorizes the sentencing court to include "any other order the court considers necessary to fully protect the victim and members of the victim's family or other household member." Utah Code § 78B-7-804(3)(d)(v).

d. The CPO Statute affords perpetrators due process.

To determine whether a CPO should extend to non-victim family or household members, the perpetrator is expressly afforded due process under the CPO Statute. When the criminal court issues a CPO, the "court shall notify the perpetrator of the right to request a hearing," and if the "perpetrator requests a hearing under this Subsection (3)(c), the court shall hold the hearing." *Id.* § 78B-7-

804(3)(c). At the hearing, the court hears evidence with respect to whether "the victim does not have a reasonable fear of future harm or abuse." *Id.* § 78B-7-804(3)(b). But if there is evidence of such fear, the court is given discretion to issue a CPO to include restrictions enumerated in Subsection 78B-7-804(3)(d). Further, "[a] continuous protective order may be modified or dismissed" where a court "determines by clear and convincing evidence that all requirements of Subsection (3) have been met and the victim does not have a reasonable fear of future harm or abuse." *Id.* § 78B-7-804(4).

Here, Jakeman availed himself of the right to a hearing to determine whether his sentencing protective order was warranted, at which hearing the prosecutor moved for CPOs. *Orem City v. Jakeman*, 2025 UT App 187, ¶¶ 2–3, 583 P.3d 1090. The criminal court heard "evidence and argument from both sides, including testimony from Jakeman's spouse that the family needed peace and the children needed time to heal without fearing Jakeman's return." (R.3250.) "The judge found it clear under the evidence, including Jakeman's own admissions, that his family had good reason to be afraid of him." (R.3250.)

Whether an order reaches non-victim children thus depends on the sentencing court's case-specific determination regarding reasonable fear of future

harm. Utah Code § 78B-7-804(3)(c), (3)(d). The constitutional concern Jakeman identifies arises, if at all, only from how the statute is applied in a particular case—which Jakeman expressly disclaimed in this action (R.3052 n.4), and which, as explained in Part I, must be raised in the criminal case.

e. The district court's alternative observation about Jakeman's own orders is not a basis for reversal.

Jakeman argues that the district court improperly resolved an unpleaded as-applied claim when it observed that the statute had been constitutionally applied to him. (Aplt. Br. 24–32.) He appears to challenge the district court's review and reliance on the criminal court's findings regarding the CPO. (*Id.*) Jakeman put his own orders at issue. He alleged that those orders effected a "de facto termination of his parental rights" (R.848, 855–57), and he relies on them on appeal to illustrate the alleged constitutional defect (Aplt. Br. 6–8, 35–36). The district court's recitation of the undisputed facts about the September 2024 hearing was drawn from the summary judgment record (*See, e.g.*, R. 2861–63, 3250, 3298–99), and is consistent with this Court's decisions in Jakeman's criminal appeals. *See* 2025 UT App 107, ¶¶ 1–11; 2025 UT App 187, ¶¶ 2–4, 9.

Further, it is irrelevant whether Jakeman pleaded an as-applied challenge. Because the standard for a facial challenge requires that the statute cannot be

applied constitutionally in any circumstance, where it applies constitutionally to the challenger, the facial challenge "fails a fortiori." *Herrera*, 1999 UT 64, ¶ 50. The district court correctly concluded the statute "undoubtedly operates constitutionally in at least some circumstances" and therefore "is not facially invalid." (R.3253.)

III. THE DISTRICT COURT CORRECTLY REJECTED JAKEMAN'S FACIAL SUBSTANTIVE DUE PROCESS CLAIMS UNDER THE FEDERAL CONSTITUTION.

Jakeman's federal substantive due process claim fails for the same reasons as his state substantive due process claim. The State Defendants sought dismissal on the ground that Jakeman could not show that no set of circumstances exists under which the statute would be valid (R.295–307), and, as explained above, that ground is correct as a matter of law. *See supra* Section II. Jakeman's reliance on *United State v. Rahimi*, 602 U.S. 680 (2024) and *United States v. Gordon*, 137 F.4th 1153 (10th Cir. 2025) is misplaced because the cases stand for the same proposition as *Herrara*, as argued above. In *Rahimi*, the defendant was "indicted on one count of possessing a firearm while subject to a domestic violence restraining order." 602 U.S. at 688. He moved to dismiss the indictment, arguing that the statute "violated on its face the Second Amendment right to keep and bear arms." *Id.* at 689. On appeal, the United States Supreme Court explained that it has "held that the right

to keep and bear arms is among the fundamental rights necessary to our system of ordered liberty." *Id.* at 690 (cleaned up). But it also explained that when a defendant challenges a statute "on its face," it is "the most difficult challenge to mount successfully, because it requires a defendant to establish that no set of circumstances exists under which the Act would be valid." *Id.* at 693. "That means that to prevail the Government need only demonstrate that [the statute] is constitutional in some of its application." *Id.* And the United States Supreme Court held that the statute was "constitutional as applied to the facts of Rahimi's own case." *Id.* The facts and holding of *Gordon* are nearly identical to *Rahimi*. 137 F.4th at 1155–58.

Jakeman's case is no different. He challenged the CPO Statute on its face, which required him under federal precedent to "establish that no set of circumstances exists under which the Act would be valid." *Rahimi*, 602 U.S. at 693 (cleaned up). As with *Rahimi*, Jakeman's criminal case shows that the statute was "constitutional as applied to the facts of [his] own case." *See id.*

That the August 4, 2025 order did not include a written explanation does not matter, because the claim fails as a matter of law on the face of the complaint. (R.860 (conceding that rational basis review governs applications that do not

involve non-victim minor children).) Further, it was Jakeman's obligation to request the transcript of the hearing on the motion to dismiss the federal due process claim, which he did not do. *See* Utah R. App. P. 11(c); *see* Appellate Docket on April 7, 2026 ("Appellant hereby certifies that no transcript of proceedings will be ordered for this appeal."). The district court gave an oral ruling from the bench during the motion-to-dismiss hearing and then instructed the State Defendants to prepare the proposed order. The additional grounds provided by the district court at that hearing are not, but could have been, presented to this Court through that transcript.

Accordingly, this Court should affirm the dismissal of the federal due process claim for the same reasons articulated for affirmance of the dismissal of the state due process claim.

IV. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT ON JAKEMAN'S EQUAL PROTECTION CLAIM.

The district court also correctly granted summary judgment on Jakeman's facial equal protection claim. (R.3051–56, 3266–73.) Mr. Earl and Mr. Gray opposed Jakeman's cross-motion below and joined the State Defendants' opposition and affirmative motion for summary judgment (R.2663–65, 3052), and they adopt by

reference the State Defendants' arguments on this issue on appeal. *See* Utah R. App. P. 24(c). They write separately to add the following points.

a. Rational basis review applies.

Because Jakeman brought a facial federal equal protection challenge against the CPO Statute, he was required to "first make the threshold showing that [he] was treated differently from others who were similarly situated." *Brown v. Montoya*, 662 F.3d 1152, 1173 (10th Cir. 2011). Upon this showing, if a law neither burdens a fundamental right nor targets a suspect class, then the "legislative classification must be upheld 'if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" (R.3269 (quoting FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 313 (1993)).)

The district court correctly concluded that rational basis review applies, because Utah Code section 78B-7-804 "neither facially burdens a fundamental right nor facially classifies on a suspect class." (R.3053.) The statute classifies domestic violence offenders by whether they are sentenced to post-conviction incarceration—not by any suspect trait. *See* Utah Code § 78B-7-804(3)(b). Under these circumstances, the district court was required to find (and did find) that the classification between offenders who did or did not serve post-conviction

incarceration bore "a rational relation to some legitimate end." *United States v. Skrmetti*, 605 U.S. 495, 509–10 (2025) (cleaned up).

Although Jakeman argues that the CPO Statute effectively terminates his fundamental parental rights of his non-victim minor children, the CPO Statute does not directly do so, and instead the statute's express purpose is to protect victims of domestic violence who are at greater risk of post-incarceration threats of harm. If, and when, Jakeman's non-victim minor children no longer have a reasonable fear of harm from Jakeman, the criminal court can modify the CPOs. *See* Utah Code § 78B-7-804(4), -804(3)(d). Therefore, Jakeman cannot establish that heightened scrutiny was warranted.

b. The district court identified several rational relations to the legitimate end of protecting victims of domestic violence from offenders who serve post-conviction incarceration.

On appeal, Jakeman does not meaningfully address the district court's findings of rational relations to the classification between offenders who did and did not serve post-conviction incarceration. (Aplt. Br. 44–52.) Instead, he focuses his argument on his position that there are two classes that are treated differently and therefore there can never be a rational basis for the different treatment. (*Id.*) That is not the case.

Here, the court explained that "[t]here's no dispute that protecting domestic abuse victims from further abuse is a legitimate government end." (R.3053.) The court:

> appreciate[d] the Legislature's concern that immediately after someone has been released from incarceration, that period of time can be especially fraught and be a risk point where victims feel increased danger. While an offender is incarcerated, the victim feels safe. But as soon as an offender is released from incarceration, the victim's fear is magnified because the offender may retaliate.

(R.3053.)

The court also recognized that "prior to sentencing, the alleged offender has an incentive to maintain good behavior and avoid threatening or harming the alleged victim. But after sentencing, that incentive diminishes." (R.3053.) Further, "the CPO Statute's rationality is supported by allowing for hearings to contest a continuous protective order." (R.3054.) *See* Utah Code § 78B-7-804(4). "These hearings occur at the request of the victim or the domestic abuser and allow a court to evaluate whether the victim has a real fear of harm[,] … [which] diminish[es] the mandatory nature of a continuous protective order and strengthen[s] the CPO Statute's rationality." (R.3054 § 78B-7-804(3)(b)–(3)(c). The court concluded that "the CPO Statute's classification bears a rational relationship to furthering the safety of domestic abuse victims." (R.3054.)

Rather than address these points specifically, Jakeman merely posits that this is a "timing" issue—"whether the period of incarceration falls before or after conviction." (Aplt. Br. 45–47.) But this argument ignores the rational basis that the district court provided: those who are sentenced to post-conviction incarceration are less incentivized to "maintain good behavior and avoid threatening or harming the alleged victim." (R.3054.) Further, as explained in the State Defendants' motions, those who serve post-conviction incarceration are likely to have committed more violent crimes and are more dangerous domestic abusers. (R.2629–2631.) Jakeman may personally disagree with the Legislature's reasoning that an offender who serves time post-conviction is not more dangerous after release than an offender who did not serve post-conviction incarceration. But the Legislature appears to recognize—through the purpose of the CPO Statute—that "as soon as an offender is released from incarceration, the victim's fear is magnified because the offender may retaliate," (R.3053), and requiring CPOs for those serving post-conviction incarceration is rationally related to protecting victims from those types of offenders.

Jakeman's arguments that the same risks exist for offenders outside the class are arguments that the statute is underinclusive. (Aplt. Br. 46–49.) As the district

court recognized, rational basis review "does not require the legislature to adopt the most precise, the most logically elegant, or the least restrictive means of achieving its policy goals," and a legislature may address a problem "one step at a time." (R.3270–71.) Jakeman bore the burden to negate "every conceivable basis which might support" the classification. (R.3270.) He did not do so.

c. The district court's pleading-stage ruling does not control.

Jakeman relies heavily on the district court's August 4, 2025 statement, made in denying the motion to dismiss, that there was "not a rational tie to the legitimate state interest that warrants the disparate treatment of individuals within the same class." (R.688–89; Aplt. Br. 51.) But that statement was made under "the liberal pleading standards" of rule 12(b)(6) (R.688), in an interlocutory order that was "subject to revision at any time" before final judgment. *See* Utah R. Civ. P. 54(b) (R.3268.) The district court reconsidered the question on full cross-motions for summary judgment and correctly concluded that the classification is rational. (R.3051–56, 3266–73.) Because the question is one of law, this Court reviews the final ruling for correctness, and the earlier pleading-stage statement provides no basis for reversal.

Finally, like his due process claims, Jakeman's equal protection claim is one he attempted to raise—too late—in his criminal appeal. *Orem City v. Jakeman*, 2025

UT App 187, ¶ 13 n.3. For the reasons explained in Part I, he may not relitigate it here.

V. MR. GRAY'S AND MR. EARL'S ARGUMENTS THAT THEY WERE IMPROPER PARTIES CREATE AN ALTERNATIVE GROUND FOR AFFIRMANCE.

After Jakeman filed the amended complaint to include Mr. Gray and after the district court consolidated the independent case against Mr. Earl, Mr. Gray and Mr. Earl moved to dismiss the amended complaint on the basis that they were improper parties. (R.1107–1120.) They reiterated this argument in their opposition to Jakeman's equal-protection summary judgment motion. (R.2663–2665.)

Jakeman alleged that Utah Code section 78B-7-804(3) is unconstitutional because it violates "the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Article I, Section 7 of the Utah Constitution, and Article IV, Section 1 of the Utah Constitution, on both substantive due process and equal protection grounds." (R.1109.) Mr. Gray and Mr. Earl argued that Jakeman's "claimed violations of due process and equal protection cannot be remedied through" them because "the law at issue is a state law" and they "have no power to draft and pass . . . state statutes." (R.1109, 2664–2665 (citing *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014)).) Mr. Gray and Mr. Earl further argued that their enforcement of a state statute was not "of a degree

of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking" and that Jakeman pled no such facts. (R.1110.) Instead, Jakeman merely alleged that they were responsible for prosecuting his criminal case. (R.1110, 848–49.) This is insufficient to require Mr. Gray and Mr. Earl to defend themselves in a lawsuit challenging the constitutionality of a statute they are required to enforce and are incapable of changing.

Because the motion-to-dismiss briefing and summary-judgment briefing occurred simultaneously, the district court did not reach Mr. Gray's and Mr. Earl's independent arguments, instead ruling on the merits that Mr. Jakeman could not establish a constitutional violation. This Court can affirm the dismissal of the claims against Mr. Gray and Mr. Earl based on their erroneous inclusion as improper parties to this lawsuit. *Bailey v. Bayles*, 2002 UT 58, ¶ 13, 52 P.3d 1158 (explaining that "an appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record" (cleaned up).

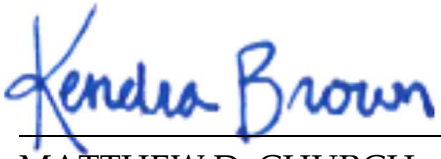
CONCLUSION

The Court should affirm the entry of judgment in favor of Mr. Earl and Mr. Gray for at least five different reasons. First, this Court should conclude that it does not have jurisdiction to decide this appeal because Jakeman waived his right to challenge the constitutionality of his sentence—disguised as a facial challenge

to the CPO Statute—when he failed to raise the issues in his criminal proceedings. Second, the district court correctly rejected Jakeman's state substantive due process claim because he failed to demonstrate that the CPO Statute is unconstitutional in all its applications. Third, the district court correctly rejected Jakeman's federal substantive due process claim because he failed to demonstrate that the CPO Statute is unconstitutional in all its applications. Fourth, the district court correctly identified a rational relationship for sentencing distinctions between offenders who do or do not serve post-conviction incarceration and protection of domestic violence victims. Finally, this Court can affirm on the alternative basis apparent in the record that Mr. Gray and Mr. Earl are improper parties to this appeal.

DATED November 3, 2026

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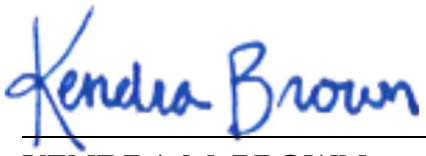
CERTIFICATE OF COMPLIANCE

I certify that:

1. This brief complies with the word limitations contained in Rule 24(g) of the Utah Rules of Appellate Procedure as it contains 10,093 words, excluding those portions exempted by Rule 24(g)(2).

2. This brief complies with Rule 21 of the Utah Rules of Appellate Procedure.

DATED November 3, 2026



KENDRA M. BROWN

CERTIFICATE OF SERVICE

I certify that on November 3, 2026, the foregoing document was e-filed and served on the following via the Court's e-filing system to the following parties, with hard copies to follow via First Class Mail within seven days of this date:

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