

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez**

Civil Action No. 24-cv-3190-WJM-MDB  
*Consolidated with Civil Action No. 1:24-cv-3193-WJM-MDB*

ADRIANA VANCE,  
BARRETT HUDSON,  
TANYA BEAL,  
JULIA RUMP,  
JOHN ARCEDIANO,  
JANCARLOS DEL VALLE,  
ASHTIN GAMBLIN  
JERECHO LOVEALL,  
ANTHONY MALBURG,  
CHARLENE SLAUGH,  
JAMES SLAUGH,  
BRIANNA WASHINGTON

Plaintiffs,

v.

EL PASO COUNTY OF COMMISSIONERS,  
BILL ELDER,  
G.L.G., INC.,  
CLUB Q, LLC,  
3430 N. ACADEMY, LLC,  
MATTHEW HAYNES,  
KENNETH ROMINES,  
NICHOLAS GRZECKA

Defendants.

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**ORDER GRANTING IN PART AND DENYING IN PART  
LANDOWNERS' MOTION TO DISMISS**

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Before the Court is Defendants 3430 N. Academy, LLC, Matthew Haynes, G.I.G., Inc., Club Q, LLC, and Academy 3430, LLC's<sup>1</sup> ("Defendants" or "Landowners") motion

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<sup>1</sup> Defendants G.I.G., Inc., Club Q, LLC, and Academy 3430, LLC seek leave to join 3430

to dismiss (ECF Nos. 34, 58) certain claims asserted by Plaintiffs James Slaugh, Brianna Winningham, Adriana Vance, Tanya Beal, Julia Rump, John Arcediano, Jancarlos Del Valle, Ashtin Gamblin, Jerecho Loveall, Anthony Malburg, and Charlene Slaugh (“Plaintiffs”) in their Second Amended Complaint (“SAC”) (ECF No. 29). Plaintiffs filed a response, to which Defendants filed a reply. (ECF Nos. 74, 87.)

For the following reasons, the motion to dismiss is granted in part and denied in part.

### I. BACKGROUND<sup>2</sup>

On November 19, 2022, Anderson Aldrich committed a horrific mass shooting at Club Q, an LGBTQ+ nightclub in Colorado Springs, Colorado, killing five people and injuring at least 25 others. (ECF No. 29 at 14.) For these acts, Aldrich was sentenced to five consecutive life sentences in state court, and 55 concurrent life sentences to run consecutive to 190 years’ imprisonment in federal court. (*Id.* at 17.)

This civil lawsuit stems from that mass shooting. Plaintiffs—individuals who were injured and survivors of those who were killed by Aldrich—assert three claims against Defendants: (1) liability under the Colorado Premises Liability Act (“CPLA”), § 13-21-115, C.R.S. 2025, (2) negligence, and (3) wrongful death. (*Id.* at ¶¶ 269–303.) In short,

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N. Academy, LLC and Haynes’s motion to dismiss; alternatively, they independently move to dismiss Plaintiffs’ claims for largely the same reasons asserted in the motion to dismiss. (See *generally* ECF Nos. 35, 59.) Plaintiffs do not appear to oppose the motion for leave to join, as they refer to all these defendants collectively throughout their response. (ECF No. 74 at 4 n.1.) Hence, the Court grants the motion for leave (ECF Nos. 35, 59) insofar as it seeks to join 3430 N. Academy LLC and Haynes’s motion to dismiss.

<sup>2</sup> The following factual summary is drawn from the Plaintiffs’ Second Amended Complaint (ECF No. 29), except if otherwise noted. The Court assumes the allegations in the Second Amended Complaint to be true for the purposes of deciding the motion to dismiss. *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

Plaintiffs allege that Defendants “failed to take basic and reasonable precautions in the face of [well-documented and escalating threats facing LGBTQIA+ spaces across the country], despite advertising Club Q as a ‘safe space’ for the LGBTQIA+ community.”

(ECF No. 74 at 3.) More specifically, Plaintiffs allege that

Defendants reduced security staffing from five to one unarmed employee (SAC ¶¶ 9, 142, 144, and FAC ¶¶ 9, 114, 116), failed to implement active shooter protocols (SAC ¶¶ 151, 157, and FAC ¶¶ 123, 128), failed to use metal detectors they had in their possession (SAC ¶ 172, and FAC ¶ 143), ignored warnings and specific threats to the venue (SAC ¶¶ 182–184, and FAC ¶¶ 153–155), and left the premises with only one unencumbered means of exit. (SAC ¶¶ 158–160, and FAC ¶¶ 129–131).

(*Id.*)

Defendants move to dismiss the CPLA claim on the ground that “the alleged actions of [Defendants] cannot constitute the predominant proximate cause of Plaintiffs’ injuries.” (ECF No. 34 at 13.) Defendants additionally move to dismiss the negligence and wrongful death claims on the ground that the CPLA “is the exclusive remedy” to redress Plaintiffs’ injuries. (*Id.* at 18.)

## II. LEGAL STANDARD

In reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(6), courts “must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.” *In re Gold Res. Corp. Sec. Litig.*, 776 F.3d 1103, 1108 (10th Cir. 2015) (citation omitted). “To survive a motion to dismiss,” the complaint need not contain “detailed factual allegations,” but it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550

U.S. 544, 555, 570 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

### III. ANALYSIS

#### A. CPLA Claim

Defendants contend that Plaintiffs’ CPLA claim must be dismissed because, as a matter of law, the mass shooting committed by Aldrich was the “predominant cause” of Plaintiffs’ injuries. (ECF No. 34 at 13.) Because the pertinent caselaw and legislative authority supports this position, the Court is obliged to dismiss the CPLA claim.

The CPLA “provides the sole remedy against landowners for injuries on their property.” *Martinez v. Cast, LLC*, 2025 WL 865402, at \*1 (Colo. App. 2025); *see also Warembourg v. Excel Elec., Inc.*, 471 P.3d 1213, 1221 (Colo. App. 2020) (“The General Assembly enacted the [CPLA] to ‘establish a comprehensive and exclusive specification of the duties landowners owe to those injured on their property.’”) (citation omitted). It states as follows: “In any civil action brought against a landowner by a person who alleges injury occurring while on the real property of another and by reason of the condition of such property, or activities conducted or circumstances existing on such property, the landowner is liable only as provided in” section 13-21-115(4). § 13-21-115(2). The CPLA then “divides those persons to whom a landowner owes a duty of care into three categories—trespassers, invitees, and licensees.” *Id.* “A landowner owes the greatest duty of care to an invitee, a lesser duty to a licensee, and the least duty to a trespasser.” *Warembourg*, 471 P.3d at 1221 (citation omitted).

Defendants concede at this stage of litigation that they are landowners and that Plaintiffs are invitees under the CPLA. (ECF No. 34 at 9.) As a result, Plaintiffs “may

recover for damages caused by the [Defendants'] unreasonable failure to exercise reasonable care to protect against dangers the [Defendants] actually knew about or should have known about." § 13-21-115(4)(c)(I).

Still, to plead a CPLA claim, Plaintiffs must plausibly allege that Defendants caused their injuries. See *id.* (establishing liability where a plaintiff's injury is "caused by" a landowner's conduct or lack thereof). Specifically, Plaintiffs must plausibly allege, as relevant here, that Defendants' tortious conduct was a proximate cause of their injuries, *i.e.*, that their conduct "constitutes a 'substantial factor' in producing the injury." *Nowlan v. Cinemark Holdings, Inc.*, 2016 WL 4092468, at \*2 (D. Colo. June 24, 2016); see also *North Colo. Medical Ctr. v. Comm. on Anticompetitive Conduct*, 914 P.2d 902, 908 (Colo. 1996) ("Colorado's proximate cause [law] is intended to ensure that casual and unsubstantial causes do not become actionable."). "[T]here can be more than one proximate cause or, more specifically, substantial causative factor, of an injury." *Smith v. Terumo Cardiovascular Sys. Corp.*, 2017 WL 2985749, at \*4 (D. Utah July 12, 2017). Yet "[o]ne factor 'may have such a predominant effect' in causing the [harm] 'as to make the effect of [another factor] insignificant and, therefore, to prevent it from being a substantial factor.'" *Nowlan*, 2016 WL 4092468, at \*2 (quoting *Smith v. State Compensation Ins. Fund*, 749 P.2d 462, 464 (Colo. App. 1987)). While the existence of proximate cause ordinarily presents a fact question for a jury to decide, whether one cause predominates over all others may present a legal question for a court to decide in certain circumstances. *Id.*

The Colorado Supreme Court and General Assembly have somewhat recently weighed in on whether a landowner's tortious conduct can constitute a substantial factor

in proximately causing a victim's injuries in a mass shooting case. Their determinations have essentially foreclosed Plaintiffs' CPLA claim here.

The Court starts with *Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 467 P.3d 287 (Colo. 2020). That case arose from a 2015 mass shooting at Planned Parenthood of the Rocky Mountains ("PPRM") in Colorado Springs, "which left three people dead and nine seriously injured." *Id.* at 288. The trial court granted summary judgment in PPRM's favor on the plaintiffs' CPLA claim, concluding as a matter of law that the shooter's conduct was the predominant cause of the plaintiffs' injuries. *See id.* at 290 ("The district court agreed with PPRM's assertion that, to the extent it had contributed to the plaintiffs' injuries, [the shooter's] actions predominate by orders of magnitude on the issue of causation."). A bare majority of the Colorado Supreme Court rejected this summary judgment determination, "conclud[ing] that a genuine issue of material fact exists as to whether [the shooter] was the predominant cause of the plaintiffs' injuries." *Id.* at 291. The majority summarized its view as follows: "The narrow question before us is whether PPRM has shown that, as a matter of law, [the shooter] was the predominant cause of the plaintiffs' losses such that no reasonable jury could reach a different conclusion. On the evidence in the summary judgment record before us, we cannot say that PPRM has met this difficult standard." *Id.* at 293. In reaching this conclusion, the majority disavowed the proposition "that summary judgment is required in virtually every case involving a mass shooting because the shooter's actions will almost always be the predominant cause of the victims' injuries." *Id.* at 294.

Three justices dissented on the CPLA issue. Noting that "[t]he summary judgment action now before [the court] turns on proximate cause," the dissent opined

that “the premeditated and intentional actions of a mass shooter are the ‘predominant’ cause of the injuries he inflicts such that any negligence on the part of a property owner simply is not a ‘substantial factor’ in causing those injuries.” *Id.* at 300. The dissent urged that “we must acknowledge that the advent of the modern mass shooting like that committed at PPRM’s facilities truly tests the boundaries of the proximate cause inquiry (and, indeed, of premises liability law).” *Id.* Hence, in the dissent’s view, “because mass shooters are not animated by reason or cost/benefit analysis, it is irrational to ask businesses—or *jurors*—to engage in the cost/benefit analysis of determining what sorts of preventative measures are sufficient to prevent or mitigate the harm caused by a shooter’s senseless acts of violence.” *Id.* (emphasis added). Accordingly, the dissent would have held that the “maniacal determination of the shooter himself” is the “overwhelming—predominant—cause of harm to victims of mass shootings.”<sup>3</sup> *Id.* at 301.

*Wagner* prompted Colorado’s General Assembly to amend the CPLA. In 2022, the legislature clarified that

[t]he *Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 2020 CO 51, 467 P.3d 287, and *Wagner v. Planned Parenthood Federation of America, Inc.*, 2019 COA 26, 471 P.3d 1089, decisions do not accurately reflect the intent of the general assembly regarding landowner liability and must not be relied upon in applying this section to the extent that the majority opinions determined:

(A) The foreseeability of third-party criminal conduct based upon whether the goods or services offered by a landowner are controversial; and

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<sup>3</sup> Although the dissent suggested at the end of its analysis that its views were confined “to the PPRM-specific issue in this case,” its reasoning seems to apply broadly to “virtually every case involving a mass shooting” under the CPLA. *Wagner*, 467 P.3d at 294, 301.

(B) That a landowner could be held liable as a substantial factor in causing harm without considering<sup>4</sup> whether a third-party criminal act was the predominant cause of that harm, as noted by the dissenting justices and judge.

(II) In making this declaration, the general assembly does not intend to reject or otherwise disturb any judicial decision other than the *Wagner* decisions.

§ 13-21-115 (e)(I)–(II) (footnote added).

Applying *Wagner* and the amended portions of the CPLA reproduced above, the Court feels constrained to conclude as a matter of law that Aldrich’s conduct was the predominant cause of Plaintiffs’ injuries. To begin, the Court does not perceive a meaningful difference between Aldrich’s conduct and the conduct of the shooter in *Wagner* (or the other mass shooters discussed below). Nor does the Court see a way to materially distinguish the alleged nonfeasance of Defendants here with the alleged nonfeasance of PPRM in *Wagner*. Plaintiffs’ theory of liability under the CPLA is basically that Defendants failed to maintain adequate security and otherwise keep their premises safe from foreseeable harms to the LGBTQ+ community. (ECF No. 74 at 3.) These allegations are similar to the evidence the *Wagner* majority believed to be sufficient to survive summary judgment:

Here, the plaintiffs introduced substantial evidence showing that PPRM knew for many years that there was a risk of violence against its facilities. In fact, PPRM warned all new physicians that ‘there is an inherent risk associated with working [at PPRM],’ and it provided them with training on

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<sup>4</sup> By the Court’s reading of *Wagner*, the majority did not fail to consider “whether a third-party criminal act was the predominant cause of that harm,” as the legislative amendment suggests. Instead, the *Wagner* majority simply opined that this issue is generally for juries to consider, not courts.

The General Assembly’s amendment therefore indicates to the Court that it intends for courts to consider—or decide—the predominant causation issue as a matter of law, at least in mass shooting cases.

how to protect themselves. PPRM even offered to provide all of these physicians with custom-fitted bulletproof vests, free of charge.

The plaintiffs also presented evidence tending to demonstrate that PPRM knew that the level of threats of violence and criminal activity directed against Planned Parenthood facilities increased exponentially in the aftermath of the release of the inflammatory 'baby body parts' videos. In fact, after the videos were released, the Medical Director of PPRM personally reported the level of increased threats and more invasive actions to both the president and chief executive officer and the chief operating officer of PPRM, as well as to the president and chief executive officer of PPFA.

In addition to the foregoing, the plaintiffs presented evidence that, despite this awareness, PPRM did not take adequate precautions at the Colorado Springs facility. For example, the plaintiffs offered evidence to show that although PPRM had hired an armed security guard, that guard was on duty only three days per week and only for about four hours each day (until 11:00 a.m. or 12:00 noon), despite the fact that the facility remained open (and doctors were performing abortions there) after the guard had ended his shift. Indeed, the guard had been at work on the day of the shooting but left at 11:00 a.m., shortly before [the shooter] started his shooting rampage at approximately 11:35 a.m. Similarly, the plaintiffs offered evidence that PPRM did not erect a perimeter fence around the Colorado Springs facility, although it had done so at its Denver location, and it did not replace its tempered glass entry door with a steel or otherwise bullet-resistant door, which allowed [the shooter] to shoot through the door to gain entry and continue his rampage.

Finally, the plaintiffs presented a lengthy and detailed affidavit from Lance Foster, an expert in premises security. In his affidavit, Mr. Foster opined, in pertinent part, that (1) the lack of security at the PPRM Colorado Springs facility made it a more likely target and placed it at a much higher risk for an event like that which ensued; (2) fencing would likely have prevented [the shooter] from gaining entry onto the facility's property in the first place; (3) had the security guard been on duty, the shootings would likely have been prevented; and (4) had steel doors been installed and electronic lock down measures been employed, [the shooter]

would not likely have been able to enter the clinic itself. Based on the foregoing, Mr. Foster opined that the shootings at issue ‘were reasonably preventable and the injurious effects could have been mitigated.’

*Id.* at 293.

Nevertheless, in the face of all this evidence, the *Wagner* dissent concluded that the defendants were properly entitled to summary judgment—*i.e.*, judgment as a matter of law—because “the premeditated and intentional actions of a mass shooter are the ‘predominant’ cause of the injuries he inflicts such that any negligence on the part of a property owner simply is not a ‘substantial factor’ in causing those injuries.” *Id.* at 300. The General Assembly sided with the dissent, instructing courts to disregard the *Wagner* majority opinion insofar as it determined “[t]hat a landowner could be held liable as a substantial factor in causing harm without considering whether a third-party criminal act was the predominant cause of that harm.” § 13-21-115(e)(l)(b).

Given these factual similarities, as well as the General Assembly’s subsequent instruction, the Court must conclude that Aldrich’s conduct was the predominant cause of Plaintiffs’ injuries and, as a result, that Defendants’ alleged omissions were not a substantial factor in, and therefore not the proximate cause of, Plaintiffs’ injuries as a matter of law. *Smith*, 749 P.2d at 464.

To be sure, section 13-21-115 (e)(l)(B) does not unequivocally indicate whether juries or courts should decide the predominate cause issue in mass shooting cases. Instead, using passive voice, the statute vaguely instructs that a landowner cannot “be held liable as a substantial factor in causing harm *without considering* whether a third-party criminal act was the predominant cause of that harm . . . .” § 13-21-115 (e)(l)(B) (emphasis added). That is, the General Assembly did not specify whether the

predominant cause inquiry is a fact or legal question in the context of a mass shooter case.

If you ask the *Wagner* majority and Plaintiffs, juries should consider (or decide) the predominant causation issue. (ECF No. 74 at 13.) The *Wagner* majority explained that, “[o]n these facts, we cannot preclude, as a matter of law, the possibility that a reasonable jury could find PPRM’s allegedly insufficient security measures to have been a substantial factor in causing the plaintiffs’ injuries, even given the magnitude of [the shooter’s] premeditated efforts to cause mass casualties without regard for his own survival or capture.” *Id.* at 294. Putting a finer point on this, the *Wagner* majority declared that, “on the summary judgment record here, *we do not believe that a court can properly decide the predominant cause issue as a matter of law.*” *Id.* (emphasis added).

By contrast, the *Wagner* dissent all but confirmed that, in the context of a mass shooting case, predominant causation is a legal issue to be decided by courts. It first recognized that, “[w]hile proximate cause is typically a question of fact reserved to the jury, the Court may conclude, as a matter of law, that such a predominant cause exists, and that there can be no other substantial factors.” *Id.* at 299 (quoting *Nowlan*, 2016 WL 4092468, at \*2). The *Wagner* dissent then went on to treat the predominant cause issue as a legal matter, concluding that “a mass shooter . . . is the predominant cause such that any negligence by PPRM could not be a substantial factor in causing those injuries.” *Id.* at 300. Notably, the *Wagner* dissent expressly suggested that jurors should not be tasked with “engag[ing] in the cost/benefit analysis of determining what sorts of preventative measures are sufficient to prevent or mitigate the harm caused by

a shooter's senseless acts of violence." *Id.* (emphasis added). In other words, the *Wagner* dissent casted doubt on the notion that a jury could rationally decide whether a landowner's nonfeasance was a substantial factor in causing a victim's injuries where a mass shooter is involved.

To reiterate, the General Assembly appears to have adopted the *Wagner* dissent's view on the predominant cause issue. § 13-21-115 (e)(I)(B). Consistent with this view, and contrary to Plaintiffs' assertion,<sup>5</sup> federal trial courts in this District have resolved the predominant cause issue as a matter of law in mass shooting cases for decades. Judge R. Brooke Jackson succinctly summarized those decisions as follows:

Two of my colleagues have addressed the issue of proximate cause in mass-shooting cases where the defendant is an entity rather than the shooter. In two separate cases involving the Columbine High School shootings, Judge Babcock considered whether there could be another substantial factor in causing plaintiffs' injuries beyond the actions of the two assailants—Eric Harris and Dylan Klebold. First, in *Castaldo v. Stone*, plaintiffs sued the Jefferson County School District, the Jefferson County Sheriff's Department, and various individuals associated with those entities. 92 F.Supp.2d 1124, 1133 (D. Colo. 2001). *The court held that "Harris' and Klebold's actions on April 20, 1999 were the predominant, if not sole, cause of Plaintiffs' injuries."* *Id.* at 1171. Later, in *Ireland v. Jefferson County Sheriff's Department*, the court dismissed plaintiffs' negligence claim against the organizer of a gun show at which Harris and Klebold purchased a shotgun. 193 F.Supp.2d 1201, 1231–32 (D. Colo. 2002). Mirroring the analysis in *Castaldo*, the court reasoned that "[e]ven if [the

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<sup>5</sup> Plaintiffs argue that "Defendants are asking this Court to do what no Colorado court has done: declare, as a matter of law and without discovery, that a mass shooter's conduct was the 'predominant cause' of harm under the PLA—effectively erasing the landowner's own alleged failures from the equation." (ECF No. 74 at 11.) As explained below, however, several courts have decided the predominant causation issue as a matter of law, and at least one did so at the motion to dismiss stage. See *Castaldo v. Stone*, 92 F.Supp.2d 1124, 1171 (D. Colo. 2001) ("As a matter of law, Plaintiffs have failed to allege that the individual School Defendants' conduct was a legal cause of Plaintiffs' injuries.").

gun show organizer's] actions contributed in some way to Plaintiff's injuries," *the shooters' actions "were the predominant, if not sole cause" of the injuries.* *Id.* at 1232.

More recently, in *Phillips v. Lucky Gunner, LLC*, Judge Matsch addressed this issue in the context of the Holmes shootings. 84 F.Supp.3d 1216, 1228 (D. Colo. 2015). Plaintiffs sued various gun shops where Holmes had purchased ammunition and other equipment that he used in the mass shooting. *Id.* Plaintiffs' daughter died in the attack, and plaintiffs alleged, among other claims, that the gun-shop entities were liable on negligence grounds. *Id.* Judge Matsch dismissed the negligence claim, holding that, even if he were to find that defendants owed a duty of care, *defendants' sales of ammunition and other items to Holmes did not proximately cause the plaintiffs' daughter's death.* *Id.*

*Nowlan*, 2016 WL 4092468, at \*3 (emphases added).

Furthermore, in *Nowlan*, a case arising from the mass shooting at the Century Aurora 16 movie theater in Aurora, Colorado on July 20, 2012, Judge Jackson followed suit, reasoning that even if "defendants failed to provide certain safety measures such as placing an alarm on the exit door or employing security officers on the evening in question," the shooter's "premeditated and intentional actions were the predominant cause of plaintiffs' losses." *Id.* As such, Judge Jackson concluded "that a reasonable jury could not plausibly find that Cinemark's actions or inactions were a substantial factor in causing this tragedy," and "[t]herefore, as a matter of law, defendants' conduct was not a proximate cause of plaintiffs' injuries." *Id.*

Thus, in light of *Castaldo*, *Ireland*, *Phillips*, *Nowlan*, and the *Wagner* dissent—which was blessed by the General Assembly—the Court reluctantly concludes that the predominant cause issue is appropriate to decide as a matter of law in this mass shooting case. This means that the Court must further conclude that Aldrich's conduct was the predominant cause of Plaintiffs' injuries and dismiss their CPLA claim.

Plaintiffs do not persuasively explain why these analogous mass shooting cases do not compel dismissal here. (ECF No. 74 at 12–13.) Instead, they rely heavily on two other civil cases stemming from the mass shooting at the Century Aurora 16 movie theater in Aurora: *Traynom v. Cinemark USA, Inc.*, 940 F.Supp.2d 1339 (D. Colo. 2013), and *Axelrod v. Cinemark Holdings, Inc.*, 65 F.Supp.3d 1093 (D. Colo. 2014). (*Id.* at 10–11, 13–14.) But those cases do not advance Plaintiffs’ cause.

In *Traynom*, Judge Jackson declined to dispatch the plaintiffs’ CPLA claim at the dismissal stage, concluding that the plaintiffs had sufficiently alleged that the defendant (1) knew or should have known of the “danger latent in the construction and operation of the theater,” and (2) did not “exercise reasonable care to protect patrons against this danger.” *Id.* at 1344–45. *Traynom*’s analysis, however, hinged on duty, not causation. *Id.* Indeed, the term “predominant causation” does not appear anywhere throughout Judge Jackson’s<sup>6</sup> order. Likewise, *Axelrod* turned, again, only on duty, not causation. *See id.* at 1098 (“[T]he sole question posed by the motion can be stated simply: is there a genuine dispute of fact as to whether Cinemark knew or should have known of the danger faced by the patrons in Auditorium 9 on July 20, 2012?”). These decisions therefore do not refute the Court’s predominant cause analysis here.

Plaintiffs understandably resist this result and the Court’s reading of the law,

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<sup>6</sup> Magistrate Judge Michael E. Hegarty’s recommendation, appended to Judge Jackson’s *Traynom* order, did address causation, opining that it would “[c]ertainly” be “improper at this early stage of the litigation” “to find that the sole cause of Plaintiffs’ injuries was the mass shooting.” 940 F.Supp.2d at 1355–56. But Judge Jackson did not expressly adopt this portion of Judge Hegarty’s analysis, acknowledging that, while he accepted Judge Hegarty’s recommendation to deny the motion to dismiss, he “analyz[ed] the case a little differently in some respects . . . .” *Id.* at 1345. Tellingly, Judge Jackson later found that predominant causation could be decided as a matter of law in *Nowlan*. 2016 WL 4092468, at \*3.

which they say “create[s] blanket immunity for property owners whenever a mass shooting occurs—no matter how foreseeable the threat, how glaring the security lapses, or how directly those failures contributed to the harm.” (ECF No. 74 at 11.) The Court shares Plaintiffs’ concerns and bristles at the idea that utterly foreseeable mass shootings can continue to occur with little to no civil recourse for victims. By closing the courthouse doors to mass shooting victims under the CPLA, the General Assembly has essentially given landowners *carte blanche* to implement *zero* safety precautions against obvious—or even known—threats of violence by deranged individuals.

These same policy considerations, however, were before the General Assembly in the wake of *Wagner*. The *Wagner* dissent supplied reasons for why it believed permitting liability under the CPLA in a mass shooting case is unwise, explaining that, “by shifting the risk posed by mass shooters to landowners and increasing the potential for liability,” this, “in turn, makes women's health clinics”—and other businesses that serve minority communities or offer controversial services (in the eyes of some)—“both prohibitively expensive to operate and virtually impossible to insure.” *Id.* at 301. The General Assembly was evidently persuaded by this reasoning, despite the *Wagner* majority’s warning that the dissent’s view of the law could effectively mean “that summary judgment is required in virtually every case involving a mass shooting because the shooter’s actions will almost always be the predominant cause of the victims’ injuries.” *Id.* at 300.

Putting the prudence of this decision aside, “it is not up to courts to make or weigh policy.” *Kaiser v. Aurora Urb. Renewal Auth.*, 541 P.3d 1180, 1191 (Colo. 2024). Rather, the Court must respect the General Assembly’s policy judgment—

notwithstanding how strongly it disagrees with it—to “promote private property rights,” “foster the availability and affordability of insurance,” and “protect landowners from liability,” even if at the expense of Plaintiffs’ civil recovery in this most tragic case. § 13-21-115(1.5)(d), (e).

For all these reasons, the Court must dismiss the CPLA claim.

### **B. Negligence and Wrongful Death Claims**

Defendants move to dismiss the negligence and wrongful death claims on the ground that the CPLA “is the exclusive remedy” to redress Plaintiffs’ injuries. (ECF No. 34 at 18.) This is so, Defendants contend, because Plaintiffs allege that their injuries occurred on Defendants’ land. (*Id.*)

Recall that the CPLA “provides the sole remedy against landowners for injuries on their property.” *Martinez*, 2025 WL 865402, at \*1. Surely, most of Plaintiffs’ claimed injuries allegedly occurred as a result of the conditions, activities, or circumstances that existed at Club Q, thereby triggering the exclusive application of the CPLA. § 13-21-115(2).

Nevertheless, the Colorado Supreme Court has clarified that the CPLA does not apply “to any tort that happens to occur on another’s property.” *Larrieu v. Best Buy Stores, L.P.*, 303 P.3d 558, 559 (2013). “Instead,” the supreme court continued, “the premises liability statute applies to conditions, activities, and circumstances on the property that the landowner is liable for in its legal capacity as a landowner.” *Id.* The supreme court advised that determining whether the CPLA precludes common law relief “necessitates a fact-specific, case-by-case inquiry into whether: (a) the plaintiff’s alleged injury occurred while on the landowner’s real property; and (b) the alleged injury

occurred by reason of the property's condition or as a result of activities conducted or circumstances existing on the property." *Id.*

Plaintiffs maintain that they have "describe[d] a broader pattern of misconduct" beyond "allegations about the premises layout." (ECF No. 74 at 15.) Specifically, Plaintiffs complain about "targeted corporate decisions, training, and staffing" deficiencies, which allegedly caused their injuries. (*Id.* at 16.) In light of these allegations, the Court will not decide this fact-intensive inquiry to reflexively dismiss the negligence and wrongful death claims. Defendants are free to reassert these arguments, and any others, after discovery has run its course.

#### IV. CONCLUSION

For the foregoing reasons, the Court ORDERS as follows:

1. Defendants G.I.G., Inc., Club Q, LLC, and Academy 3430, LLC's motion for leave (ECF Nos. 35, 59) to join 3430 N. Academy, LLC and Haynes's motion to dismiss is GRANTED; and
2. Defendants' motion to dismiss (ECF Nos. 34, 58) is GRANTED as to the CPLA claim but DENIED as to the negligence and wrongful death claims.

Dated this 26<sup>th</sup> day of June, 2025.

BY THE COURT:



William J. Martinez  
Senior United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez**

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Defendants.

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**ORDER GRANTING GOVERNMENT DEFENDANTS' MOTION TO DISMISS**

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Before the Court is Defendants Board of County Commissioners of El Paso County, Colorado ("BoCC") and former El Paso County Sheriff Bill Elder's (collectively, "Government Defendants") motion to dismiss ("Motion") (ECF Nos. 32, 57) certain

claims asserted by Plaintiffs James Slaugh, Brianna Winningham, Adriana Vance, Tanya Beal, Julia Rump, John Arcediano, Jancarlos Del Valle, Ashtin Gamblin, Jerecho Loveall, Anthony Malburg, and Charlene Slaugh's ("Plaintiffs") in their Second Amended Complaint ("SAC") (ECF No. 29). The Motion is fully briefed. (ECF Nos. 75, 83.)

For the following reasons, the Motion is granted.

## I. BACKGROUND<sup>1</sup>

On November 19, 2022, Anderson Aldrich committed a horrific mass shooting at Club Q, an LGBTQ+ nightclub in Colorado Springs, Colorado, killing five people and injuring at least 25 others. (ECF No. 29 at 14.) For these acts, Aldrich was sentenced to five consecutive life sentences in state court, and 55 concurrent life sentences to run consecutive to 190 years' imprisonment in federal court. (*Id.* at 17.)

Plaintiffs' claims against Government Defendants are based on what happened in the years leading up to the mass shooting. In April 2019, Colorado's General Assembly passed the Colorado Violence Prevention Act, §§ 13-14.5-101 to -116, C.R.S. (2025), also known as Colorado's "Red Flag Law." (*Id.* at 60–70.) The Colorado Court of Appeals has summarized that Law as follows:

This statutory scheme concerns persons, called 'respondents,' who 'pose[] a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm.' § 13-14.5-104(3)(a), C.R.S. 2023. When it follows the procedures set out in the red flag law, such as holding an evidentiary hearing, as described in section 13-14.5-105, C.R.S. 2023, a court has the authority to issue an 'extreme risk protection order' requiring the

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<sup>1</sup> The following factual summary is drawn from the Plaintiffs' Second Amended Complaint ("SAC") (ECF No. 29), except if noted otherwise. The Court assumes the allegations in the SAC to be true for the purposes of deciding the Motion. *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

respondent to ‘surrender all firearms,’ § 13-14.5-108(1)(a),  
C.R.S. 2023.

*People v. Holmes*, 2024 WL 3873422, at \*1 (Colo. App. Aug. 8, 2024); see also *Sgaggio v. Polis*, 2023 WL 4364158, at \*1 (D. Colo. July 6, 2023) (“Section 13-14.5-103 authorizes the temporary removal of firearms from a person who a judge determines, based on sworn testimony after a hearing, poses significant risk of injury to self or others in the near future.”).

An extreme risk protection order (“ERPO”) “may be requested by the [respondent’s] family or household member, a community member, law enforcement officer or agency, licensed medical or mental health care provider, licensed educator, or district attorney.” *Sgaggio*, 2023 WL 4364158, at \*1 (citing §§ 13-14.5-103(1)(a–b)). The Red Flag Law “identifies two kinds of extreme risk protection orders.” *Holmes*, 2024 WL 3873422, at \*1. “One kind lasts for ‘a period of three hundred sixty-four days.” *Id.* (quoting § 13-14.5-105(2)).

The other kind is a temporary order that is issued ‘without notice to the respondent.’ § 13-14.5-103(1)(a), C.R.S. 2023. Whenever a temporary order is issued, the court must follow it up with an evidentiary hearing within fourteen days with notice to the respondent. § 13-14.5-103(5)(a). At the evidentiary hearing, the court will decide whether it will extend the temporary order into a three-hundred-sixty-four-day order. *Id.* The temporary order expires on the day of the evidentiary hearing. § 13-14.5-103(5)(b).

*Id.*

In March 2019, before the Red Flag Law had passed, the BoCC announced Resolution No. 19-76 (“Resolution”), which sharply criticized the pending Law; described itself as a “Second Amendment Preservation Resolution”; “pledge[d] not to appropriate funds, resources, employees, or agencies to initiate unconstitutional

seizures in unincorporated El Paso County”; and committed to “collaborate with the Sheriff to refuse to initiate unconstitutional actions against citizens.” (ECF No. 29-3 at 4.)

In 2020, after the Red Flag Law went into effect, Elder issued the “El Paso County Sheriff’s Office Red Flag Statement” (“Statement”), which instructed that “members of the El Paso County Sheriff’s Office” will “establish operational plans to safely serve” ERPOs as required by state courts, but it advised that no officer would petition for such an order “unless exigent circumstances exist, and probable cause can be established pursuant to 16-3-301 C.R.S that a crime is being or has been committed.” (ECF No. 29-4 at 2.) According to the SAC, “[b]y the time of the Club Q shooting in November 2022, the El Paso County Sheriff’s Office had not filed a single ERPO petition under the Red Flag Law, consistent with the policies of both the Sheriff’s Office and the Board of County Commissioners established three years earlier.” (ECF No. 29 ¶ 96.)

These formal policy pronouncements not to utilize the Red Flag Law extended to Aldrich as well, despite Government Defendants allegedly knowing that they<sup>2</sup> were “dangerous and intended to perpetrate a mass shooting.” (*Id.* ¶ 97.) In June 2021, Aldrich’s grandmother “called 9-1-1 and reported that her grandson was ‘making a bomb in the basement’ of their home.” (*Id.* ¶ 98.) She reported that Aldrich “told her they planned to be ‘the next mass killer’ and had been stockpiling ammunition, firearms, and bullet-proof body armor.” (*Id.*) After Aldrich’s grandparents told Aldrich of their intention to move to Florida, Aldrich aimed a firearm at them and said: “You guys die

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<sup>2</sup> Aldrich uses they/them pronouns. (ECF No. 29 at 14 n.1.)

today, and I'm taking you with me. I'm loaded and ready. You're not calling anyone.” (*Id.* ¶ 101.) Based on these events and others, Aldrich was charged in state court with first degree felony kidnapping and felony menacing, among other crimes. (*Id.* ¶ 108.) Ultimately, however, the state court dismissed the charges in July 2022 because the prosecution “fail[ed] to prosecute” after Aldrich’s grandparents moved to Florida. (*Id.* ¶¶ 118, 120.)

In August 2022, the state court “sealed the case records” over no objection from the “district attorney.” (*Id.* ¶ 121.) That same month, “[l]aw enforcement officials” denied Aldrich’s request to return their “seized firearms.” (*Id.* ¶ 122.) “By August 2022, [Aldrich] could legally possess or obtain firearms without restriction. Thus, in the months before the Club Q massacre, [Aldrich] accumulated firearms and ammunition to carry out their plan.” (*Id.* ¶ 123.)

In November 2024, Plaintiffs sued Government Defendants, alleging substantive due process violations of their rights to life, liberty, and personal security under the state-created danger doctrine. (ECF No. 1 at 46–56.) In March 2025, Government Defendants moved to dismiss the state-created danger claims. (ECF No. 57.)

## II. LEGAL STANDARD

In reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(6), courts “must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.” *In re Gold Res. Corp. Sec. Litig.*, 776 F.3d 1103, 1108 (10th Cir. 2015) (citation omitted). “To survive a motion to dismiss,” the complaint need not contain “detailed factual allegations,” but it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”

*Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* “An allegation is conclusory where it states an inference without stating underlying facts or is devoid of any factual enhancement.” *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021).

### III. ANALYSIS

Government Defendants contend that the SAC “fails to plausibly allege a state-created danger claim.” (ECF No. 57 at 8.) Perceiving no allegations establishing “affirmative conduct” by Government Defendants, the Court agrees that dismissal is required here.

It is well-settled that “[a] state actor generally may not be held liable under the Fourteenth Amendment for harm a private individual intentionally or recklessly inflicts upon a victim.” *Matthews v. Bergdorf*, 889 F.3d 1136, 1143 (10th Cir. 2018) (citing *DeShaney v. Winnebago Cty. Dept. of Soc. Servs.*, 489 U.S. 189, 197 (1989)). “The explanation is simple: Where private violence is responsible for the harm, the state actor has not deprived the victim of any constitutional right; rather the private individual has deprived the victim of life, liberty, or property.” *Matthews*, 889 F.3d at 1143; see also *Robbins v. Oklahoma*, 519 F.3d 1242, 1251 (10th Cir. 2008) (“*DeShaney* holds that the state has no affirmative obligation under the Due Process Clause to protect the interests of life, liberty, and property of its citizens against invasion by private actors.”) (internal quotation marks omitted).

The Tenth Circuit recognizes two exceptions to this general rule: “Where a

private party inflicts harm upon a victim, a state actor incurs an antecedent constitutional duty to protect the victim if the complainant demonstrates either (1) the existence of a special custodial relationship between the State and victim, or (2) the state actor intentionally or recklessly created the danger that precipitated the deprivation.” *Matthews*, 889 F.3d at 1143 (citing *Schwartz v. Booker*, 702 F.3d 573, 579–80 (10th Cir. 2012)). The state can also be liable under the danger-creation exception if it “increases a plaintiff’s vulnerability to danger from private violence.” *T.D. v. Patton*, 868 F.3d 1209, 1221 (10th Cir. 2017) (citation omitted). “Although the Supreme Court has not yet confirmed that a danger-creation exception exists under *DeShaney*, its statements in *DeShaney* “ha[ve] led every Circuit Court of Appeals . . . to recognize an exception to *DeShaney* for ‘state-created dangers.’” *Id.*

Plaintiffs rely only<sup>3</sup> on the state-created danger exception to *DeShaney*’s general rule, so the Court focuses its analysis accordingly. *Id.* “There are two preconditions to asserting a state-created danger claim: (1) the state actor must make an affirmative act and (2) the injury must result from private violence.” *Villanueva v. El Paso County*, 463 F.Supp.3d 1202, 1210 (D. Colo. 2020) (citing *Estate of B.I.C. v. Gillen*, 710 F.3d 1168, 1173 (10th Cir. 2013)). If the plaintiff clears both these hurdles, they must then satisfy a six-part test:

- (1) the charged state entity and the charged individual actors created the danger or increased plaintiff’s vulnerability to the danger in some way;
- (2) plaintiff was a member of a limited and specifically definable group;
- (3) defendants’ conduct put plaintiff at substantial risk of serious, immediate, and

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<sup>3</sup> Plaintiffs make passing reference to Government Defendants having “exercised custodial control” over Aldrich after he was arrested in June 2021, but the Court does not understand Plaintiffs to allege a special custodial relationship—*i.e.*, to invoke the first exception to *DeShaney*’s general rule—by this reference. (ECF No. 75 at 11.)

proximate harm; (4) the risk was obvious or known; (5) defendants acted recklessly in conscious disregard of that risk; and (6) such conduct, when viewed in total, is conscience shocking.

*Christiansen v. City of Tulsa*, 332 F.3d 1270, 1281 (10th Cir. 2003) (citation omitted).

The Tenth Circuit has made clear that the state-created danger doctrine is a “narrow” exception to *DeShaney*’s general rule insulating the state from liability where a private party causes injury. *Matthews*, 889 F.3d at 1150.

Applying these principles, the Court concludes that Plaintiffs’ danger-creation claims falter because they are not based on affirmative state conduct. “Affirmative conduct for purposes of § 1983 should typically involve conduct that imposes an immediate threat of harm, which by its nature has a limited range and duration.” *Ruiz v. McDonnell*, 299 F.3d 1173, 1183 (10th Cir. 2002). Such conduct “should be directed at a discrete plaintiff rather than at the public at large.” *Id.*

Plaintiffs attempt to satisfy this initial precondition by pointing to (1) the Resolution and the Statement, whereby Government Defendants formally announced policies “rejecting red-flag enforcement”; (2) Government Defendants’ alleged “minimal investigation” efforts; and (3) Government Defendants’ “actively enabling the shooter to reacquire weapons in the months leading up to the tragedy.” (ECF No. 75 at 7.) But none of these allegations constitute affirmative conduct under *DeShaney* and its progeny.<sup>4</sup>

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<sup>4</sup> Plaintiffs also suggest that Government Defendants violated state law, and thus acted affirmatively, by enacting formal policies not to enforce the Red Flag Law. But this argument does not make sense. The Red Flag Law is permissive: It provides that an ERPO “*may* be requested by,” among other petitioners, a “law enforcement officer or agency.” §§ 13-14.5-103(1)(a–b) (emphasis added). Government Defendants cannot violate a state law by failing to enforce a law it was never required to enforce in the first place.

Starting with the Resolution and the Statement, Plaintiffs argue that these formal policy pronouncements that Government Defendants would not enforce the Red Flag Law “placed the victims at Club Q at an obvious and proximate risk of serious harm,” thus constituting affirmative conduct. (ECF No. 75 at 9.) Plaintiffs are mistaken, however, because the Resolution and the Statement were commitments *to do nothing*, even assuming the Red Flag Law applied to a given respondent. That is, the Resolution and the Statement were not affirmative acts that created or enhanced a risk of private harm—*i.e.*, that Plaintiffs would be killed by a mass shooter—that did not otherwise exist. Regrettably, that risk of harm existed all along. Government Defendants instead declared they would not try to prevent that risk from becoming a reality via the Red Flag Law. In effect, then, Government Defendants simply maintained the status quo.<sup>5</sup> See *Armijo v. Wagon Mound Public Schools*, 159 F.3d 1253, 1263 (10th Cir. 1998) (allowing liability only if state actors “have used their authority to create an opportunity that would not otherwise have existed for the third party’s [acts] to occur”); see also *Scott v. Mid-Del Schools Board of Education*, 724 Fed. Appx. 650, 655 (10th Cir. 2018) (“Even if [the state employees] were aware of the danger Mr. McGuire presented, the complaint does not allege that they took any action that made B.P. more vulnerable to the alleged danger.”).

The SAC confirms the passive nature of Government Defendants’ alleged conduct. It alleges, for example, that Government Defendants “created or increased the danger to Plaintiffs by”

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<sup>5</sup> Although the Court does not separately analyze the six elements listed above, this conclusion demonstrates that Plaintiffs have not satisfied the first element regarding creating or enhancing a danger.

- “[r]efusing to enforce Colorado’s Red Flag Law”;
- “[f]ailing to take reasonable steps to prevent the shooter’s access to firearms”;
- “[m]aintaining a policy of non-enforcement of ERPOs”;
- “refusing to allocate resources to enforce the law”;
- “[a]llowing the shooter to retain or regain access to firearms, ammunition, bomb-making materials, despite the existence of statutory mechanisms to disarm individuals posing a significant threat”;
- “[i]gnoring warnings that the shooter intended to commit a mass shooting, including specific evidence that the shooter had petitioned to seal their criminal case records and sought the return of seized firearms”; and
- “[f]ailing to oversee or intervene in the Sheriff’s Office’s inaction despite credible evidence of escalating threats from the shooter.” (ECF No. 29 at 47, 52–53.)

These allegations plainly aver that Government Defendants did too little—not too much. “But inaction is not redressable under § 1983.” *Villanueva*, 463 F.Supp.3d at 1212 (citation omitted); see also *Gray v. Univ. of Colo. Hosp. Auth.*, 672 F.3d 909, 919 n.7 (10th Cir. 2012) (“[I]naction by the state in the face of a known danger is not enough to invoke the protections of the Due Process Clause.”) (internal quotation marks omitted).

And although Plaintiffs at times<sup>6</sup> try to recast these allegations of nonfeasance into allegations of malfeasance in their Response to the Motion—e.g., by accusing

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<sup>6</sup> The Court says “at times” because Plaintiffs mostly repeat the SAC’s allegations that Government Defendants “failed to act” throughout their Response to the Motion. (See generally ECF No. 75.)

Government Defendants of “enact[ing] official policies of non-intervention” and “promis[ing] to withhold County funding and resources for any ERPO-related proceedings” (ECF No. 75 at 9, 10)—these allegations are more properly construed as failures to prevent the mass shooting from occurring, not creations or enhancements of that risk of harm in the first place. See *Villanueva*, 463 F.Supp.3d at 1212 (“Defendants’ decision to let plaintiff walk through the perimeter—even after seeing him—is better characterized as a failure to prevent plaintiff from entering the operational perimeter. In other words, allowing plaintiff into the perimeter is inaction, not affirmative action.”); see also *Cohen as next friend of Cohen v. Cty. of Portland*, 110 F.4th 400, 405 (1st Cir. 2024) (“Ultimately, the estate’s counterargument depends entirely on recast[ing] inactions and omissions. We therefore affirm the district court’s dismissal of the state-created danger claim against Gervais.”) (citation and internal quotation marks omitted).

Even more to the point, the Resolution and the Statement did not create “an immediate threat of harm, which by its nature has a limited range and duration.” *Ruiz*, 299 F.3d at 1183. As mentioned, the BoCC issued the Resolution in March 2018 (ECF No. 29-3 at 4), and Elder issued the Statement at some point in 2020 (ECF No. 29-4 at 2). Yet the private harm at issue here—*i.e.*, the mass shooting<sup>7</sup>—did not occur until much later, in November 2021. Hence, the Resolution and the Statement cannot be said to have created an immediate threat of harm in the state-created danger context.<sup>8</sup>

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<sup>7</sup> To the extent Plaintiffs say the state action here was Government Defendants’ failure to prevent Aldrich from recovering his firearms after the kidnapping and menacing charges were dismissed, the Court is unpersuaded. (ECF No. 75 at 12.) As explained below, Government Defendants’ alleged failure to keep Aldrich from procuring firearms does not in these circumstances constitute affirmative action.

<sup>8</sup> Although the Court does not separately analyze the six elements listed above, this conclusion demonstrates that Plaintiffs have not satisfied the third element regarding immediacy

Nor can it be said that any risk of harm was durationally limited. Government Defendants' refusal to enforce the Red Flag Law indefinitely left their constituents vulnerable to a panoply of harms from the get-go. See *Gray*, 672 F.3d at 925 (rejecting danger-creation claim based on policies and customs that "were 'long-standing' and had been in effect 'for years'" (citation omitted); see also *Castaldo v. Stone*, 192 F.Supp.2d 1124, 1157 (D. Colo. 2001) (concluding that plaintiffs in mass shooting case had not satisfied the immediacy requirement under the state created danger doctrine where "[t]hirteen months elapsed between the Browns' initial complaint and the Columbine attack").

On this last point, it bears emphasizing that the Resolution and the Statement allegedly left *all* of Government Defendants' constituents in harm's way. Indeed, these policy pronouncements were not directed at any discrete plaintiff; rather, they were generally applicable to the public at large.<sup>9</sup> See *Gray*, 672 F.3d at 925 ("[A] State's adoption of generally-applicable policies and customs does not foist upon anyone an 'immediate threat of harm' having 'a limited range and duration.'" (citation omitted); see also *id.* ("[B]ecause the act of establishing such policies and customs does not pose a direct threat to any one particular individual but affects a broader populace, we deem such act too remote to establish the necessary causal link between the danger to the \_\_\_\_\_ and proximity.

<sup>9</sup> To the extent Plaintiffs argue that the policies specifically put the LGBTQ+ community at risk, that still isn't enough. See *Gray*, 672 F.3d at 925 ("To be sure, Defendants' policies and customs did not increase the danger to the public at large in any real sense, but rather to a defined group, namely, patients in the EMU. . . . But this does not undermine our analysis. The restrictive six-factor test we apply to danger creation claims requires not only that plaintiff be a 'member of a limited and specifically definable group,' but also that defendant's conduct specifically 'put plaintiff at substantial risk of serious, immediate, and proximate harm.'" (citation omitted).

victim and the resulting harm.”). In this way, too, the Resolution and the Statement do not meet the Tenth Circuit’s standards for pleading affirmative state conduct. *Ruiz*, 299 F.3d at 1183.

In reaching this conclusion, the Court has considered, but is ultimately unconvinced by, *Currier v. Doran*, 242 F.3d 905 (10th Cir. 2001), on which Plaintiffs principally rely. *Currier* involved a danger-creation claim that arose out of conduct by state social workers. *Id.* at 908. One social worker recommended to the juvenile court that it place two children in their father’s custody, despite knowing (but not disclosing) that he had previously allowed the children to live in “alarming conditions,” would “have a hard time taking care of the kids,” and had “made only eight child-support payments in the preceding three years.” *Id.* at 909. The juvenile court granted custody to the father based on the social worker’s recommendation. *Id.* Soon thereafter, the social worker learned that the father and his girlfriend had possibly been physically abusing the children but nonetheless did not investigate these matters further. *Id.* Tragically, one of the children died a few months later after the father poured boiling water on them. *Id.* at 910. Based on the social worker’s failure to investigate and her recommendation for the children to be placed in their father’s custody, the Tenth Circuit ultimately discerned a viable state created danger claim. *Id.* at 919.

Plaintiffs argue that *Currier* demonstrates that “deliberate inaction,” like that complained of here, can satisfy the affirmative action precondition of the state-created danger analysis. But Plaintiffs stretch *Currier* too far. That decision’s analysis was premised on *both* the social worker’s (1) failure to investigate credible information that the children were being abused at their father’s home *and* (2) the affirmative

recommendation that the kids be placed in his custody. By contrast, here, Plaintiffs do not have any affirmative state action to which they can tether their allegations of inaction. Plaintiffs instead rely solely on alleged omissions or failures to act on the part of Government Defendants.

*Currier* itself confirmed that its holding was not as far-reaching as Plaintiffs would have it:

It is true that the conduct Plaintiffs complain of is partially a failure by Doran to act on particular allegations of abuse. Doran's failure to investigate allegations of abuse while the children were in state legal custody should be distinguished, however, from a claim that the state failed to rescue the children once legal custody was given to Vargas. *Doran's failure to investigate allegations of abuse should be viewed in the general context of the state's affirmative conduct in removing the children from their mother and placing the children with their father.*

242 F.3d at 920 n.7 (emphasis added).

Furthermore, the Tenth Circuit has since dispelled any confusion regarding the breadth of *Currier*. See *Gonzales v. City of Castle Rock*, 307 F.3d 1258, 1263 (10th Cir. 2002) (“We concluded [in *Currier*] that a defendant social worker *had acted affirmatively by recommending that a parent be given legal custody of a child* despite the defendant's knowledge of evidence and allegations that the parent had previously abused the child.”) (emphasis added); see also *T.D.*, 868 F.3d at 1226 (“*Currier* supports that, because Ms. Patton recommended *T.D.'s placement with Mr. Duerson*, she engaged in affirmative pre-placement conduct.”) (emphasis added). Other district courts have recognized this as well. See, e.g., *Taylor v. Kan. Dep't of Corr.*, 2017 WL 1479375, at \*7 (D. Kan. Apr. 25, 2017) (“[P]laintiff contends that the Tenth Circuit, in [*Currier*], recognized that a state actor's failure-to-investigate can be considered an ‘affirmative’

act for purposes of the danger-creation theory. Plaintiff misconstrues the *Currier* decision.”).

Nor is this case akin to *Dwares v. City of New York*, 985 F.2d 84 (2nd Cir. 1993), as Plaintiffs posit. That court perceived a viable danger-creation claim where law enforcement had allegedly “conspired with the ‘skinheads’” and “assur[ed] the ‘skinheads’ that unless they got totally out of control they would not be impeded or arrested.” *Id.* at 99. Here, however, Government Defendants did not allegedly “conspire” with Aldrich or personally “assure” them that they essentially had a green light to commit the mass shooting. On the contrary, Government Defendants issued generally applicable policy statements proclaiming that they would not enforce Red Flag Laws across a broad range of circumstances, and as to any member of the public within their jurisdiction. No doubt, this was not “a prearranged official sanction of privately inflicted injury” like that in *Dwares*. *Id.*

The foregoing analysis illustrates why the Resolution and the Statement do not constitute affirmative conduct. That same analysis applies with equal force to Plaintiffs’ remaining allegations of affirmative action as well. As mentioned, Plaintiffs aver that Government Defendants expended “minimal investigation” efforts and “actively enable[d] the shooter to reacquire weapons in the months leading up to the tragedy.” (ECF No. 75 at 7.)

But allegations that Government Defendants conducted “minimal investigation” is, on its face, criticism that they *did not do enough* to prevent the private harm that befell Plaintiffs. *Villanueva*, 463 F.Supp.3d at 1212. It is not an allegation, for example, that Government Defendants’ investigations somehow created or increased the risk of a

danger that did not already threaten Plaintiffs (and the general public).

Plaintiffs' allegation that Government Defendants acted affirmatively by enabling Aldrich to procure firearms before the mass shooting does not pass muster either.<sup>10</sup> The Court understands Plaintiffs' argument to go like this: Because Government Defendants failed to object to the state court sealing their criminal records, other eligible petitioners under the Red Flag Law were precluded from "access[ing] the information in the court record to assess Aldrich's threat to the community and initiate a petition for an ERPO." (ECF No. 75 at 14.) Plaintiffs continue: "In effect, through their affirmative acts, [Government Defendants] created a closed circuit of inaction—refusing to act themselves while simultaneously ensuring that others lacked the information necessary to do so—functionally insulating Aldrich from the very protective mechanisms the State had enacted to prevent precisely this kind of tragedy." (*Id.*)

This particular theory of state action fails on multiple levels. First, it starts with the false premise that Government Defendants failed to object to the state court sealing the court records. But by the Court's reading of the SAC, Plaintiffs do not allege that this was Government Defendants' failure—instead, it was the *district attorney's* alleged failure. (ECF No. 29 ¶ 121.) Second, even assuming the SAC clearly alleges that Government Defendants failed to object, that allegation is self-defeating. Again,

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<sup>10</sup> To the extent Plaintiffs assert that Government Defendants "affirmatively facilitated [Aldrich's] path toward rearmament and, ultimately, to the Club Q shooting," the Court does not understand how this can be the case. (ECF No. 75 at 17–18.) For the reasons explained in the body of this analysis, Government Defendants' alleged failure to oppose the sealing of court records did not "affirmatively facilitate" Aldrich's rearmament. Same with Government Defendants' alleged refusal to return Aldrich's firearms to them after the kidnapping and menacing charges were dismissed. That refusal can only be construed as *inhibiting* Aldrich from committing the mass shooting. (See ECF No. 29 ¶ 122 (alleging that "[l]aw enforcement officials" denied Aldrich's request to return their "seized firearms").)

inaction cannot constitute affirmative conduct. Third and finally, Government Defendants point out that state law *requires* that a defendant's criminal justice record be sealed after their case is completely dismissed. See § 24-72-705(1)(a)(I), C.R.S. (2025) (“On its own motion, the court *shall* order the defendant's criminal justice records sealed when [a] case against the defendant is completely dismissed[.]”) (emphasis added). Thus, it is legally immaterial that Government Defendants (or the district attorney, for that matter) did not object to the sealing of Aldrich's records. The state court was mandated by statute to do that anyway.

All this being said, Plaintiffs' allegations in their SAC are profoundly and deeply troubling. As alleged, Government Defendants knew in no-uncertain-terms that Aldrich had proclaimed that “they planned to be the next mass killer and had been stockpiling ammunition, firearms, and bullet-proof body armor.” (ECF No. 29 ¶¶ 98.) Yet Government Defendants defiantly did nothing, contemptuously ignoring the will of the people, and refused to avail themselves of the critical tool the legislature had just equipped them with—*the* tool that might have prevented the monstrous and bloody act which cost the lives of and seriously wounded so many innocent Coloradans—to take Aldrich's firearms from them. To be sure, these allegations amount to much more than mere negligence—they represent a conscious and intentional disregard of a known and unjustifiable risk, something which in the Court's view amounts to an abdication of local officials' moral responsibility to protect the public.

Plaintiffs can take some slim solace in the fact that, while the individual county commissioners and Sheriff Elder are via this Order escaping legal liability for their inaction and omissions, their collective role in refusing to at least *try* to thwart what most

likely was a horrific but preventable tragedy should weigh heavily on their individual consciences, and most certainly will not be forgotten by the people of Colorado.

Nevertheless, the allegations are still premised only on inaction. And unfortunately for Plaintiffs, inaction cannot constitute a legal violation of Plaintiffs' substantive due process rights under *DeShaney* and its progeny.

For all these reasons, the Court has no choice but to dismiss the state-created danger claims.<sup>11</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Motion is GRANTED. (ECF Nos. 32, 57)

Dated this 7<sup>th</sup> day of July, 2025.

BY THE COURT:



William J. Martinez  
Senior United States District Judge

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<sup>11</sup> Because the Court discerns no affirmative state action, it need not address the aforementioned elements of a state-created danger claim, nor Government Defendants' governmental immunity defenses.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez**

Civil Action No. 24-cv-3190-WJM-MDB  
*Consolidated with Civil Action No. 1:24-cv-3193-WJM-MDB*

ADRIANA VANCE,  
BARRETT HUDSON,  
TANYA BEAL,  
JULIA RUMP,  
JOHN ARCEDIANO,  
JANCARLOS DEL VALLE,  
ASHTIN GAMBLIN  
JERECHO LOVEALL,  
ANTHONY MALBURG,  
CHARLENE SLAUGH,  
JAMES SLAUGH,  
BRIANNA WASHINGTON

Plaintiffs,

v.

EL PASO COUNTY OF COMMISSIONERS,  
BILL ELDER,  
G.I.G., INC.,  
CLUB Q, LLC,  
3430 N. ACADEMY, LLC,  
MATTHEW HAYNES,  
KENNETH ROMINES,  
NICHOLAS GRZECKA

Defendants.

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**ORDER DECLINING SUPPLEMENTAL JURISDICTION OVER  
REMAINING STATE LAW CLAIMS AND DISMISSING THE ACTION**

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Before the Court are Plaintiffs James Slaugh, Brianna Winningham, Adriana Vance, Tanya Beal, Julia Rump, John Arcediano, Jancarlos Del Valle, Ashtin Gamblin, Jerecho Loveall, Anthony Malburg, and Charlene Slaugh's ("Plaintiffs") motion to

decline supplemental jurisdiction over their remaining state law claims and Defendants G.I.G., Inc. d/b/a Club Q, Club Q, LLC d/b/a Club Q, 3430 N. Academy, LLC, Academy6430, LLC, and Matthew Haynes's (collectively, "Defendants") motion to dismiss for lack of supplemental jurisdiction ("Motion" or "Motions"). (ECF Nos. 107, 108.) For the following reasons, the Court grants the Motions to the extent they ask the Court to decline supplemental jurisdiction over the remaining state law claims.

In June 2025, the Court dismissed Plaintiffs' Colorado Premises Liability Act claim against Defendants, leaving intact their negligence and wrongful death claims. (ECF No. 97.) In July 2025, the Court dismissed Plaintiffs' state created danger claims against Defendants Board of County Commissioners of El Paso County, Colorado and former El Paso County Sheriff Bill Elder. (ECF No. 105.) Hence, all that remains in this lawsuit are Plaintiffs' negligence and wrongful death claims against Defendants.

The parties now ask the Court to dismiss those state law claims but under different legal theories. Plaintiffs "move the Court to exercise its discretion and decline supplemental jurisdiction over the remaining negligence and wrongful death claims remaining after the dismissal of all federal causes of action, and to dismiss those claims without prejudice so that they may be re-filed in the courts of Colorado." (ECF No. 107 at 1.) Defendants also move the Court to dismiss the state law claims but for a different reason: They submit that the Court never had supplemental jurisdiction over the negligence and wrongful death claims in the first place because they do not share a common nucleus of operative fact with the state created danger claims. (ECF No. 108.) Accordingly, Defendants ask the Court to dismiss the action with prejudice under Fed. R. Civ. P. 12(b)(1). (*Id.*) Defendants alternatively argue that "the Court should decline

to exercise supplemental jurisdiction now that it has dismissed the claims over which it had original jurisdiction.” (*Id.* at 13.)

Defendants’ argument regarding the lack of supplemental jurisdiction may have merit.<sup>1</sup> Yet the Court need not stake out a position on this issue to resolve the Motions. The parties agree that, even assuming that supplemental jurisdiction exists, the Court should nonetheless decline to exercise it given its dismissal of the federal claims in this case. The Court will therefore assume, for purposes of ruling on the Motions, that it has supplemental jurisdiction over the outstanding negligence and wrongful death claims, but it will decline to exercise it since no federal law claim remains. *See Koch v. City of Del City*, 660 F.3d 1228, 1248 (10th Cir. 2011) (“When all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims.”) (citation omitted).

Consequently, the Court ORDERS as follows:

1. Plaintiffs’ Motion is GRANTED (ECF No. 107);
2. Defendants’ Motion is GRANTED to the extent it asks the Court to decline supplemental jurisdiction but is DENIED in all other respects (ECF No. 108);
3. The operative complaints (ECF Nos. 29, 56) are DISMISSED without prejudice;
4. All parties shall bear their own costs and attorney’s fees; and
5. The Clerk shall TERMINATE these consolidated cases.

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<sup>1</sup> The Court questions why Defendants did not raise this argument in their original motion to dismiss.

Dated this 31<sup>st</sup> day of July, 2025.

BY THE COURT:



William J. Martínez  
Senior United States District Judge

Case No. 1:24-cv-03190-WJM-MDB Document 113 filed 07/31/25 USDC Colorado  
pg 1 of 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03190-WJM-MDB  
*Consolidated with Civil Action No. 1:24-cv-03193-WJM-MBD*

ADRIANA VANCE, for deceased on behalf of Raymond Green,  
TANYA BEAL, for deceased on behalf of Kelly Loving,  
JULIA RUMP, for deceased on behalf of Derrick Rump,  
JOHN ARCEDIANO,  
JANCARLOS DEL VALLE,  
ASHTIN GAMBLIN,  
JERECHO LOVEALL,  
ANTHONY MALBURG,  
CHARLENE SLAUGH,  
JAMES SLAUGH, and  
BRIANNA WINNINGHAM,

Plaintiffs,

v.

EL PASO COUNTY BOARD OF COMMISSIONERS,  
BILL ELDER, Sheriff of El Paso County Sheriff's Office,  
G.I.G, Inc. d/b/a Club Q,  
CLUB Q, LLC d/b/a Club Q,  
3430 N. ACADEMY, LLC,  
ACADEMY3430, LLC,  
MATTHEW HAYNES,  
KENNETH ROMINES, and  
NICHOLAS GRZECKA,

Defendants.

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**FINAL JUDGMENT**

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In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is hereby entered.

Case No. 1:24-cv-03190-WJM-MDB Document 113 filed 07/31/25 USDC Colorado  
pg 2 of 2

Pursuant to the [112] Order Declining Supplemental Jurisdiction Over Remaining State Law Claims and Dismissing the Action entered by United States District Judge William J. Martínez on July 31, 2025, it is

ORDERED that the [29] and [56] operative complaints are DISMISSED without prejudice. It is further

ORDERED that all part shall bear their own costs and attorney's fees. It is further

ORDERED that this action be terminated.

This case is closed.

DATED July 31, 2025, at Denver, Colorado.

FOR THE COURT:

Jeffrey P. Colwell, Clerk

By:   
H. Guerra, Deputy Clerk