ADVANCE SHEET HEADNOTE
June 15, 2026

2026 CO 46

No. 25SA134, *Moreno v. Circle K Stores*—Wrongful Termination—Public-Policy Exception—Employment Law.

The supreme court answers the following question of law certified to the court by the United States District Court for the District of Colorado:

> Does Colorado law recognize a public-policy exception to the at-will employment doctrine that allows an employee to bring a wrongful termination claim in the event the employee is terminated for actions taken in self-defense?

Applying the test established in *Martin Marietta Corp. v. Lorenz*, 823 P.2d 100, 109 (Colo. 1992), the supreme court concludes that the right to self-defense, established by section 18-1-704, C.R.S. (2025), and article II, section 3 of the Colorado Constitution, supports a public-policy exception to the at-will employment doctrine. The court determines that (1) both the statute and the constitutional provision clearly express the boundaries and extent of the right; (2) self-defense is inherently a public right, rather than an individual proprietary right; and (3) the right is work-related insofar as the need to defend oneself from an unprovoked attack can occur anywhere, including at work.

The supreme court thus answers the question in the affirmative and returns this case to the district court for further proceedings.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 46

Supreme Court Case No. 25SA134
Certification of Question of Law
United States District Court for the District of Colorado Case No. 22-cv-02327-NYW-STV

Plaintiff:

Mary Ann Moreno,

v.

Defendant:

Circle K Stores, Inc.

Certified Question Answered
en banc
June 15, 2026

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT**, **JUSTICE GABRIEL, JUSTICE SAMOUR**, and **JUSTICE BLANCO** joined.
CHIEF JUSTICE MÁRQUEZ, joined by **JUSTICE HOOD** dissented**.**

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 Seventy-two-year-old Mary Ann Moreno ("Moreno") sued her employer, Circle K Stores, Inc. ("Circle K"), for wrongful termination. She asserted that she was fired for lawfully exercising her right to self-defense after she was cornered by an armed robber during one of her shifts and that her termination violated Colorado public policy. We accepted jurisdiction under C.A.R. 21.1 to answer the following question of law certified to us by the United States District Court for the District of Colorado:

> Does Colorado law recognize a public-policy exception to the at-will employment doctrine that allows an employee to bring a wrongful termination claim in the event the employee is terminated for actions taken in self-defense?

¶2 This court first recognized a public-policy exception to the at-will employment doctrine in *Martin Marietta Corp. v. Lorenz*, 823 P.2d 100, 109 (Colo. 1992). There, we identified a number of circumstances under which an at-will employee may bring a claim for wrongful discharge: if the employee was terminated for (1) refusing to engage in an illegal act, (2) performing a public duty, or (3) exercising an important job-related right or privilege. *Id.* To serve as the basis for such a claim, the right must be clearly expressed, sufficiently public, and granted to workers. *Id.*; *Crawford Rehab. Servs., Inc. v. Weissman*, 938 P.2d 540, 552 (Colo. 1997) (citing *Rocky Mountain Hosp. & Med. Serv. v. Mariani*, 916 P.2d 519, 525 (Colo. 1996)).

¶3 We have previously recognized, however, that "public-policy wrongful discharge is not subject to precise definition," *Weissman*, 938 P.2d at 552, and that the exception is rooted in the long-standing rule that "a contract violative of public policy should not be enforced," *Martin Marietta*, 823 P.2d at 108 (citing *Russell v. Courier Printing & Publ'g Co.*, 95 P. 936, 938 (Colo. 1908)). Based on that long-standing rule, we have concluded that it is "axiomatic that a contractual condition, such as the terminability condition of an at-will employment contract, should also be deemed unenforceable when violative of public policy." *Id.* at 109.

¶4 This case requires us to decide if the right to self-defense, established either by section 18-1-704, C.R.S. (2025) ("section 704"), or by article II, section 3 of the Colorado Constitution ("article II, section 3"), meets the test we articulated in *Martin Marietta*. In answering the certified question, we first determine that both the statute and the constitutional provision clearly express the boundaries and extent of the right to self-defense based on their explicit language and the extensive and well-defined body of case law regarding self-defense. Next, we decide that the right to self-defense is inherently a public right, rather than an individual proprietary right, because it is an essential, inalienable right guaranteed to all people. Finally, we conclude that the right to self-defense, as expressed by both the statute and the constitutional provision, is a right that is job-related insofar as

the need to exercise the right to defend oneself from an unprovoked attack can occur anywhere, including at work.

¶5 While we conclude that this is a right granted to all people that is not left at the door simply because a person enters the workplace, we emphasize that the scope of the exception that we recognize today is narrow. It is limited, importantly, to self-defense as an essential, inalienable right. And, critically, the exception applies only when an employee lawfully exercises the right in response to an unprovoked attack at work.

¶6 It is also important to understand what this case is not about. The certified question asks us only to answer if an exception exists. We are not called on to decide whether Circle K's policy bars its employees from acting in self-defense—as Moreno claims—or whether the policy simply prohibits employees from confronting shoplifters—as Circle K claims. We also need not decide if Moreno acted in self-defense or if Circle K fired Moreno for defending herself. We offer no opinion on any of those matters.

¶7 Instead, we answer only the certified question. For the reasons detailed below, we answer the question in the affirmative and return this case to the district court for further proceedings.

I. Facts and Procedural History[1]

¶8 Moreno was working at Circle K one evening when Tyler Wimmer approached the register holding several items, including two hunting knives. He placed the knives on the U-shaped counter that separated him from Moreno. After Wimmer told Moreno to get him a pack of cigarettes, Moreno asked what brand he wanted and retrieved them from the display case behind her. When Moreno began to ring up the cigarettes, Wimmer said something to the effect of, "[J]ust give them to me for free." Moreno refused.

¶9 Wimmer then picked up the knives and began to walk around the counter. Moreno twice told Wimmer, "[D]on't come back here." Undeterred, and with knives in hand, Wimmer continued to approach. When Moreno was within Wimmer's reach, Moreno extended her arms. In Moreno's telling, she instinctively did this to defend herself and to prevent Wimmer from coming closer to her.

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[1] Circle K's description of these events differs significantly from Moreno's. It contends that Moreno was trying to stop Tyler Wimmer from stealing cigarettes. While we accept the facts as set out in the complaint and the opinions of the federal court(s) below to provide some background on the way to answering the certified question, we note that the issue presented is one of law. Our decision does not turn on either party's version of the facts. *See In re Phillips*, 139 P.3d 639, 642 (Colo. 2006) ("We recite these facts [from the district court] to give context for the certified question."); *Klabon v. Travelers Prop. Cas. Co. of Am.*, 2024 CO 66, ¶ 3 n.1, 556 P.3d 793, 798 n.1 ("We derive the following facts from Klabon's complaint and the district court's certification order."). And, as we have already explained, we express no opinion as to whether Moreno acted to defend herself or the cigarettes.

Wimmer grabbed a pack of cigarettes, left the store, and was subsequently arrested for armed robbery.[2]

¶10 Circle K terminated Moreno for violating its "Don't Chase or Confront" policy.[3] The policy instructs employees not to "confront[,] follow, pursue, track, chase, fight[,] or follow" any customer suspected of shoplifting. Moreno sued Circle K in state court, claiming, in pertinent part, that she was wrongfully discharged in violation of Colorado public policy because she was exercising her right to self-defense and trying to protect herself from being attacked.

¶11 Circle K removed the case to the United States District Court for the District of Colorado and moved for summary judgment. It argued that (1) Moreno was not acting in self-defense; (2) Circle K's decision to fire Moreno was based on an honest belief that she had not acted in self-defense; and (3) Colorado law does not recognize self-defense as a public-policy exception to the at-will employment doctrine. Moreno countered that (1) she was acting in self-defense and (2) the

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[2] Later, Wimmer pleaded guilty to menacing with a deadly weapon.

[3] As previously noted, the only issue before us is the purely legal one set forth in the certified question. Moreno contends that Circle K's "Don't Chase or Confront" policy prohibits its employees from exercising their right to self-defense. Circle K contends it does not. It asserts that the company's policy aims to prevent employees from *provoking* encounters with shoplifters and placing themselves in situations where self-defense is necessary. For the reasons we have already explained, we express no opinion on this dispute.

court should recognize self-defense as a public-policy exception to the at-will employment doctrine.

¶12 The district court granted Circle K's summary judgment motion. It concluded that Colorado's statutory and constitutional right to self-defense does not give rise to a public-policy exception to the at-will employment doctrine. These provisions, the court explained, do not set forth a sufficiently clear job-related right or privilege. In so ruling, the district court highlighted its cautious approach, noting that, as a federal court, it was "simply not in the position to recognize, in the first instance, a new type of public-policy exception to Colorado's at-will employment doctrine."

¶13 Moreno appealed to the Tenth Circuit. It reversed the district court's order, concluding that factual issues—regarding (1) whether Moreno had used self-defense and (2) whether Circle K had fired her for doing so—remained unresolved and were potentially dispositive. The Tenth Circuit, accordingly, remanded the case to the district court for further factual findings.

¶14 On remand, the district court found that genuine disputed issues of material fact existed as to both questions. Specifically, the district court determined that questions regarding Moreno's credibility, interpretation of the surveillance video, and Circle K's motivation in terminating Moreno all presented genuine issues of

material fact for a jury to decide. In light of these disputed issues of fact, the court denied the motion for summary judgment.

¶15 Moreno then filed a motion to certify to this court the legal question of whether Colorado recognizes self-defense as a public-policy exception to the at-will employment doctrine. The district court granted the motion, reasoning that the question (1) is likely determinative of the action, (2) presents a novel question of public policy requiring guidance, and (3) is an important issue. The district court noted that, because this case originated in state court, the question was well-suited for review by this court.

¶16 We accepted review of the certified question. Applying the factors we articulated in *Martin Marietta*, we now hold that the statutory and constitutional right to self-defense in Colorado is a clearly articulated right that belongs to all people, including employees.

¶17 We accordingly recognize a self-defense public-policy exception to the at-will employment doctrine.

II. Analysis

¶18 We begin by setting forth the applicable standard of review and the relevant case law. We then consider the language of section 704 and article II, section 3, each of which sets out the right to self-defense. Next, we answer the certified

question, addressing in turn each prong of the test we established in *Martin Marietta*.

¶19 We hold that both section 704 and article II, section 3 establish a public policy in favor of self-defense. First, both clearly express the extent of a person's right to act in reasonable self-defense when they have reasonable grounds to believe they are in imminent danger of death or great bodily injury, or of becoming the victim of certain other crimes. Second, because self-defense is an essential, inalienable right possessed by all Coloradans, it is a public, rather than a proprietary, right. Third, we conclude that the right to self-defense is a right guaranteed to all people, including people in the workplace. It is a job-related right insofar as the need to exercise the right to lawfully defend oneself from an unprovoked attack can occur in the workplace.

¶20 Therefore, we conclude that applying the public-policy exception to this specific inalienable right is entirely consistent with the rationale underlying the exception to the at-will employment doctrine.

A. Jurisdiction

¶21 Rule 21.1(a) grants us jurisdiction to resolve questions of law certified by a federal court. We exercise our jurisdiction when a question "may be determinative of the cause then pending in the certifying court and as to which it appears . . . that there is no controlling precedent in the decisions of the supreme court." *Skillett v.*

Allstate Fire & Cas. Ins. Co., 2022 CO 12, ¶ 8, 505 P.3d 664, 666 (quoting C.A.R. 21.1(a)). We review such questions de novo. *Id.* Similarly, we review de novo whether a constitutional, statutory, or other source provides a sufficiently clear expression of public policy. *Jaynes v. Centura Health Corp.*, 148 P.3d 241, 244 (Colo. App. 2006) (citing *Mariani*, 916 P.2d at 526).

B. The Public-Policy Exception to the At-Will Employment Doctrine

¶22 The public-policy exception generally allows an at-will employee to pursue a claim for wrongful termination if their employer fires them for violating a clearly expressed public policy. *Martin Marietta*, 823 P.2d at 109. The exception constrains employers from terminating employees when the termination would have "a tendency to be injurious to the public or against the public good." *Id.* at 105 (quoting *Petermann v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., Loc. 396*, 344 P.2d 25, 27 (Cal. Dist. Ct. App. 1959)). When a party claims a public-policy exception to the at-will employment doctrine, we consider if "the discharge of the employee contravenes a clear mandate of public policy." *Mariani*, 916 P.2d at 523–24 (quoting *Martin Marietta*, 823 P.2d at 107). Although "public-policy wrongful discharge is not subject to precise definition," *Weissman*, 938 P.2d at 552, the essence of the exception is that an employee will have a cognizable claim for wrongful discharge if the discharge of the employee would

be "detrimental to the public good," *Martin Marietta*, 823 P.2d at 108 (quoting *Russell*, 95 P. at 938).

¶23 We set forth a four-part test in *Martin Marietta* to determine whether the termination of an at-will employee violates public policy. An at-will employee establishes that they were wrongfully discharged under the public-policy exception by showing:

> (1) that the employer directed the employee to perform an illegal act as part of the employee's work related duties or prohibited the employee from performing a public duty or exercising an important job-related right or privilege;
>
> (2) that the action directed by the employer would violate a specific statute relating to the public health, safety, or welfare, or would undermine a clearly expressed public policy relating to the employee's basic responsibility as a citizen or the employee's right or privilege as a worker; . . .
>
> (3) that the employee was terminated as the result of refusing to perform the act directed by the employer[; and] . . .
>
> (4) that the employer was aware, or reasonably should have been aware, that the employee's refusal to comply with the employer's order or directive was based on the employee's reasonable belief that the action ordered by the employer was illegal, contrary to clearly expressed statutory policy relating to the employee's duty as a citizen, or violative of the employee's legal right or privilege as a worker.

Id. at 109.

¶24 Here, the first part of the test depends on the second part, while the third and fourth parts are questions of fact beyond the scope of the certified question.

We thus focus on the second: whether self-defense is a clearly expressed right or privilege that an employee holds as a worker.

¶25 Colorado courts must be cautious in recognizing exceptions to the at-will employment doctrine. The power to create public policy sits squarely with the General Assembly, not the courts. *Weissman*, 938 P.2d at 553 ("The General Assembly is the branch of government charged with creating public policies, and the courts may only recognize and enforce such policies."). As such, we only recognize a public-policy exception to the at-will employment doctrine if the policy has been clearly expressed. *Martin Marietta*, 823 P.2d at 109. Importantly, that expression of public policy must also affect the public, not just an individual. *Weissman*, 938 P.2d at 552–53.

¶26 Constitutional provisions, professional ethical codes, and administrative regulations may also serve as a basis for a public-policy exception. *Mariani*, 916 P.2d at 524–25; *Weissman*, 938 P.2d at 553; *Kearl v. Portage Env't, Inc.*, 205 P.3d 496, 499 (Colo. App. 2008) (deriving a public-policy exception from existing case law).

¶27 We have explained that to be "clearly expressed," a source of public policy must (1) provide a concrete, rather than hortatory or general, statement of policy; (2) provide employees with a clear mandate as to what constitutes appropriate conduct; and (3) provide employers sufficient notice of the policy. *Mariani*,

916 P.2d at 525–26; *Lampe v. Presbyterian Med. Ctr.*, 590 P.2d 513, 515 (Colo. App. 1978); *see also Calvert v. Mayberry*, 2019 CO 23, ¶ 26, 440 P.3d 424, 431 (holding that professional rules, which prohibit certain actions, provide a clear mandate).

¶28 Because the General Assembly is typically the ultimate source of public policy, the clearest expressions of a particular policy occur when a statute (1) explicitly prohibits a behavior, *see Martin Marietta*, 823 P.2d at 108, 111; (2) establishes a right, *see Lathrop v. Entenmann's, Inc.*, 770 P.2d 1367, 1372 (Colo. App. 1989); or (3) creates a statutory scheme, *id*. Thus, if a statute prohibits certain acts in conjunction with other indicia of legislative intent, it may give rise to a public-policy exception to the at-will employment doctrine. *See Jones v. Stevinson's Golden Ford*, 36 P.3d 129, 133 (Colo. App. 2001) (concluding that a public-policy exception to the at-will employment doctrine exists based on "[t]he broad legislative purpose of the Colorado Consumer Protection Act").

¶29 A statute or comparable provision, however, need not proscribe or prescribe specific actions to give rise to a public-policy exception. Provisions that encourage a particular beneficial behavior without establishing specific obligations related to employment may also be sufficient to create a public-policy exception. *See Flores v. Am. Pharm. Servs., Inc.*, 994 P.2d 455, 459 (Colo. App. 1999) ("Also, while [section] 10-1-127(1.5)(a)[, C.R.S. (2025),] does not explicitly require employees or

citizens to take an active part in ferreting out insurance fraud, the act encourages its exposure and detection.").

¶30 To clearly express public policy, the statute or comparable provision must also implicate public safety, health, or welfare rather than an issue involving a primarily personal or proprietary interest of an individual. *Weissman*, 938 P.2d at 552–53 (citing *Gantt v. Sentry Ins.*, 824 P.2d 680, 684 (Cal. 1992)). The right must touch upon a public health, safety, or welfare concern, or an employee's basic rights or duties. *Id.* at 553; *see also Mariani*, 916 P.2d at 524. And the right must broadly implicate the public as a whole to outweigh the at-will employment doctrine. *Weissman*, 938 P.2d at 553.

¶31 Finally, for a plaintiff to claim that one of their rights or privileges was undermined, that right or privilege must be granted to them as a worker or be related to their job. *Martin Marietta*, 823 P.2d at 109. Examples include: a privilege or right that is connected to conduct that occurs at work, like taking a lunch break; conduct arising from work, such as seeking compensation for a job-related injury; or obligations owed by the employer, such as proper compensation. *Bonidy v. Vail Valley Ctr. for Aesthetic Dentistry, P.C.*, 186 P.3d 80, 84–85 (Colo. App. 2008); *Herrera v. San Luis Cent. R.R. Co.*, 997 P.2d 1238, 1240 (Colo. App. 1999); *Hoyt v. Target Stores*, 981 P.2d 188, 192 (Colo. App. 1998); *see also Frampton v. Cent. Ind. Gas*

Co., 297 N.E.2d 425, 428 (Ind. 1973) (holding that firing a worker for filing a workers' compensation claim violated public policy).

¶32 Circle K acknowledges that the right to self-defense is a Colorado public policy but asserts that it is not clearly expressed by either section 704 or article II, section 3; is not a right that affects the public; and does not relate to employment. We briefly describe each provision, then discuss these issues.

C. Section 704

¶33 The General Assembly has statutorily recognized the right to self-defense since the days of the Colorado territory. *An Act Concerning Criminal Jurisprudence: Division IV, Offenses Against the Persons of Individuals*, Secs. 28, 30, 1861 Colo. Territorial Sess. Laws 290, 294 ("1861 Self-Defense Law") (establishing "[j]ustifiable homicide" as "the killing of a human being in necessary self-defense"). In its modern form, a person may justifiably use force against another to defend themselves "from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose." § 18-1-704(1).

¶34 Self-defense, like other legal justifications, is an affirmative defense. § 18-1-710, C.R.S. (2025). This court has repeatedly characterized section 704 as expressing a right to self-defense. *See, e.g.*, *Castillo v. People*, 2018 CO 62, ¶ 58,

421 P.3d 1141, 1150; *People v. Toler*, 9 P.3d 341, 352 (Colo. 2000); *Beckett v. People*, 800 P.2d 74, 77–78 (Colo. 1990); *see also Galvan v. People*, 2020 CO 82, ¶ 57, 476 P.3d 746, 759 (Márquez, J., dissenting).

¶35 The statute specifically limits the right to self-defense. First, a person must reasonably believe that they will imminently be subject to unlawful physical force. § 18-1-704(1). Second, the use of force must be reasonably necessary. *Id.* Third, deadly force is only permissible under certain circumstances. § 18-1-704(2). Finally, subject to limited exceptions, self-defense is unjustified if the person asserting the defense was the initial aggressor or if the use of force is based on the victim's gender identity or sexual orientation. § 18-1-704(3).

D. Article II, Section 3

¶36 Article II, section 3 sets out "natural, essential[,] and inalienable" rights. Colo. Const. art. II, § 3; *see also Colo. Anti-Discrimination Comm'n v. Case*, 380 P.2d 34, 39–40 (Colo. 1962). These rights include "the right of enjoying and *defending* [one's life]." Colo. Const. art. II, § 3 (emphasis added).

¶37 Constitutional rights are not absolute and are subject to reasonable limitations. *See*, *e.g.*, *People v. Brown*, 485 P.2d 500, 503 (Colo. 1971) ("[T]his case clearly and explicitly recognizes that limitations may be placed upon an inalienable or inherent right . . . ."). They are also defined, interpreted, and bound by the jurisprudence of this court. *See In re Legis. Reapportionment*, 374 P.2d 66, 68

(Colo. 1962) ("The judicial branch of the government has imposed upon it the obligation of interpreting the [c]onstitution and of safeguarding the basic rights granted thereby to the people." (quoting *Asbury Park Press, Inc. v. Woolley*, 161 A.2d 705, 710 (N.J. 1960))).

¶38 With both the statutory and constitutional text in mind, we now consider whether either provision is sufficient to establish self-defense as a public-policy exception to the at-will employment doctrine.

E. Section 704 and Article II, Section 3 Evince Public Policy Favoring Self-Defense that Encompasses Self-Defense by Employees

1. Section 704 and Article II, Section 3 Clearly Express Public Policy in Favor of the Right to Self-Defense

¶39 First, we consider if section 704 and article II, section 3 clearly express a public policy in favor of the right to self-defense. Section 704 sets out by whom, when, and how the right to self-defense may be exercised. § 18-1-704(1)–(4). Any person, including any employee, may justifiably use force when they reasonably believe they face the "use or imminent use of unlawful physical force by [another] person." § 18-1-704(1). They may not use excessive force. § 18-1-704(2)–(3). And with limited exceptions, they are not justified in using force if they were the initial aggressor. § 18-1-704(3)(b). In short, the statute mandates how a person may defend themselves. Thus, an employee would know that they could use force to defend themself, but that using force to confront a shoplifter, for example, would

be unlawful. An employer would similarly be on notice about the lawful exercise of this right.

¶40 Additionally, a statute setting out a criminal right or defense is as much an expression of the General Assembly's intent as a statute setting out criminal or civil liability and is no less a source of public policy. As we observed in *Martin Marietta*, an employee should not have to "choose between losing their job[] or engaging in criminal conduct." 823 P.2d at 111. So too with the right to self-defense: An employee should never have to choose between their job and their safety. Thus, section 704 is strong evidence of Colorado's public policy in favor of self-defense.

¶41 Article II, section 3 similarly provides a clear mandate. It concisely and unambiguously recognizes that "[a]ll persons have . . . the right of enjoying and defending their lives." Colo. Const. art. II, § 3. Despite its brevity, it provides a common understanding of when it's appropriate to exercise the right of self-defense. Our jurisprudence lays out the boundaries of the constitutional right to self-defense, as we discussed in Part II.C.

¶42 The constitutional right to self-defense is further understood through its evolution alongside Colorado's statutory right to self-defense. The territorial statute, first enacted in 1861, predates the constitutional right, which was ratified in 1876, nearly a decade and a half later. *See* 1861 Self-Defense Law. The judicial

understanding of the inalienable right to self-defense identified in article II, section 3 developed alongside Colorado's self-defense statute. *See*, *e.g.*, *Idrogo v. People*, 818 P.2d 752, 754 (Colo. 1991) (describing the evolution of § 18-1-704(2)); § 18-1-704. Because the statute codifies elements of the common law, its evolution provides guidance as to the extent of the constitutional right. *People ex rel. Graves v. Dist. Ct.*, 86 P. 87, 89 (Colo. 1906) ("The [c]onstitution of a state is not the beginning of the law for a state. Under our system of jurisprudence it assumes the existence of the common law from which we must draw in interpreting its provisions."). Accordingly, the expression of the right to self-defense set out in the Colorado Constitution draws on the expression of the right set out by statute.

¶43 The combination of precedent and statutory language clearly defines the permissible boundaries of the constitutional right to self-defense in Colorado. Thus, though the language of article II, section 3 extends broadly—as it must to protect the inalienable rights of Coloradans—it is not a purely hortatory provision. *See Mariani*, 916 P.2d at 525. It identifies a "clear mandate," *id.* at 526, bound by our case law, giving notice to employees and employers as to what conduct is permissible and what is not. Accordingly, we conclude that it too presents a clear public policy in favor of self-defense.

2. Self-Defense Impacts the Public and Is a Public Right

¶44 Next, we consider whether the right to self-defense is a public right. We first explained the distinction between public rights and rights that do not "truly impact[] the public" in *Weissman*. 938 P.2d at 552. There, a typist claimed that she was wrongfully discharged for taking rest breaks she had a right to take pursuant to Colorado Minimum Wage Order No. 19, Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-3 (1983). *Weissman*, 938 P.2d at 552–53. We held that the rights she relied on were not significant enough to implicate a "fundamental, substantial public policy." *Id.*[4]

¶45 Here, by contrast, the right to self-defense is an essential, inalienable right expressed in this state's constitution—one that has been statutorily recognized for longer than Colorado has been a state. *See* 1861 Self-Defense Law. Though this essential, inalienable right is possessed and exercised by individuals, its impact is necessarily public. *See Semore v. Pool*, 266 Cal. Rptr. 280, 285 (Cal. Ct. App. 1990) ("While rights are won and lost by the individual actions of people, the assertion

[4] However, a division applying a similar wage order in slightly different circumstances concluded that the order did create "clearly expressed public policy." *Bonidy*, 186 P.3d at 85. The division distinguished the case from *Weissman*, noting that Bonidy had presented evidence that, as a dental assistant, a lack of rest and lunch breaks could adversely affect the safety of patients, and thus, the public. *Id.* So, a source may express a public policy "relating to *certain* employees' basic rights," *id.*, so long as denying an employee those rights would increase the risk of their customers and, by extension, the public.

of the right establishes it and benefits all [people] . . . ."). Furthermore, consideration of a right's public impact should not be examined through too narrow a lens. Otherwise, this element would swallow the entire public-policy exception, as any right guaranteed to the public could also be characterized as an individual matter. For instance, the right to file for workers' compensation could be cast as the right of an individual worker, not the general public; the right to be paid for work is the right of the individual worker who performed the work, not the general public; and the right to take lunch breaks is the right of an individual worker, not the general public. Yet all these rights have given rise to public-policy exceptions.

¶46 Cases from other jurisdictions have similarly concluded that self-defense is a public right. *See, e.g.*, *State v. Merk*, 164 P. 655, 657 (Mont. 1917) ("[T]he possession and exercise of the right of self-defense by the individual are still deemed to be necessary to personal safety and security and not incompatible with the public good."). As the Utah Supreme Court noted in a case similar to this one, "A policy favoring the right of self-defense preserves and protects human life . . . . [Such a policy] protects individuals from serious injuries and deters the completion of crime." *Ray v. Wal-Mart Stores, Inc.*, 359 P.3d 614, 627 (Utah 2015) (footnotes omitted). Similarly, the West Virgina Supreme Court has recognized that the right to self-defense affects the safety of the public. *Feliciano v. 7-Eleven,*

Inc., 559 S.E.2d 713, 750 (W. Va. 2001). These cases support our conclusion that section 704 and article II, section 3 both set forth a sufficiently public right affecting the safety of the broader public.

¶47 Circle K relies on *Hoven v. Walgreen Co.*, 751 F.3d 778 (6th Cir. 2014), to advance its position that self-defense is not a public right. There, the Sixth Circuit considered a pharmacist's claim that he was terminated for exercising his right to self-defense. *Id.* at 784. The court analyzed multiple potential sources of public policy: the United States and Michigan Constitutions, Michigan's self-defense and concealed-carry statutes, and a jury instruction. *Id.* at 785–86. It concluded that these sources were insufficient under Michigan law to create an exception to at-will employment because only statutes that directly "confer[red] a right on the public" could support a claim of termination in violation of public policy. *Id.*

¶48 Analogizing to *Hoven*, Circle K argues that section 704 creates only an individually applicable exemption from liability. This reliance is misplaced. Notably, the statute interpreted in *Hoven* provides that

> it is a *rebuttable presumption* in a civil or criminal case that an individual who uses deadly force or force other than deadly force under section 2 of the self-defense act has an honest and reasonable belief that imminent death of, sexual assault of, or great bodily harm to himself or herself or another individual will occur . . . .

Mich. Comp. Laws Ann. § 780.951(1) (West 2026) (emphasis added) (footnote omitted).

¶49 The holding in *Hoven* is inapplicable here, however, given the limited extent of the Michigan statute and Michigan's prohibition on using constitutional provisions as a source of public policy. 751 F.3d at 784–85 ("The right, if any, that is conferred is simply the right to present a defense in a criminal case."). Even if our court's repeated references to the "right of self-defense," *see* Part II.C, *supra*, were set aside, the plain language of section 704 sets out a legal *justification* for the use of force, not simply a right to present a defense, *see* § 18-1-704(1). In sum, the statutory and constitutional right to self-defense is a generally applicable public right.

3. The Public-Policy Exception Protects Employees from Being Forced to Choose Between Their Safety and Their Employment

¶50 Finally, we consider whether an employer's firing of an at-will employee for exercising their right to self-defense constitutes termination based on the employee's exercise of a job-related right. In *Martin Marietta*, we explained that one of the elements to consider in determining if the termination of an at-will employee violates public policy is whether the action directed by the employer would undermine a clearly expressed public policy relating to the employee's right or privilege as a worker. 823 P.2d at 109. Historically, the rights and privileges that Colorado courts have found to fit this description largely concerned worker conditions and compensation. *See Bonidy*, 186 P.3d at 85. Courts have

deemed these rights and privileges to be job-related insofar as they occur at work or arise from work. *Id.*

¶51 But a provision need not specifically regulate or even mention employment to give rise to an employee's rights or privileges as a worker. *See Martin Marietta*, 823 P.2d at 110–11 (concluding that 18 U.S.C. § 1001, which broadly prohibits making false representations to the federal government, was related to a plaintiff's job). As we have recognized, "public-policy wrongful discharge is not subject to precise definition." *Weissman*, 938 P.2d at 552. The exception itself is rooted in a broader principle: the long-standing rule that "a contract violative of public policy should not be enforced." *Martin Marietta*, 823 P.2d at 108 (citing *Russell*, 95 P. at 938). Based on that fundamental concept, we have recognized that the essence of the exception is that an employee will have a cognizable claim for wrongful discharge if their discharge would be "detrimental to the public good." *Id.* (quoting *Russell*, 95 P. at 938).

¶52 To be sure, at-will employment gives employers broad discretion over the terms of employment. It does not, however, allow employers to require employees to commit illegal acts. *Id.* at 108, 113. Nor does it allow employers to prevent employees from reporting legal violations or from performing legal duties, *Mariani*, 916 P.2d at 526, or from exercising important job-related rights, *Lathrop*, 770 P.2d at 1375. One broad, unifying principle in cases analyzing the

public-policy exception—here and across the country—is that an employer may not use termination to penalize an employee for exercising a constitutional or statutory right that reflects an important, clearly expressed public policy that affects the public. *See id.*; *Bonidy*, 186 P.3d at 84–85; *Herrera*, 997 P.2d at 1240; *see also Frampton*, 297 N.E.2d at 427 (holding that a worker was wrongfully terminated for filing a workers' compensation claim authorized by Indiana statute). Applying these principles here, we conclude that an employer may not lawfully terminate an employee for properly exercising their essential, inalienable right to self-defense if the employee suffers an unprovoked attack at work.

¶53 The employment relationship should not be used to strip workers of the ordinary legal privileges *every* person possesses. The right to self-defense has never been cabined by role or location. *See* Colo. Const. art. II, § 3. It is a unique, essential, and inalienable right that exists for workers, students, retirees, and the unemployed alike. It allows people to protect themselves in their homes, schools, houses of worship, and workplaces under very specifically defined circumstances. Here, it is the very breadth of the right—of the policy—that informs the analysis. It makes no sense to suggest that everyone has an inalienable right to defend themselves if faced with imminent danger, unless they are at work. Rather, the right follows the employee from home to work and back and everywhere in between.

¶54 Put another way, the right to self-defense is job-related insofar as the need to lawfully defend oneself from an unprovoked attack can occur at work. Thus, even though the right to self-defense—constitutional and statutory—does not explicitly mention workers, it is nonetheless a right guaranteed to workers within the meaning of *Martin Marietta*. Under the law, it is an essential, inalienable right guaranteed to everyone, including people at work. It is not a right that is left at the door when a person enters the workplace.

¶55 A central question in the public-policy-exception analysis is whether an employee is "put to the choice of either obeying an employer's order [in contravention of public policy] or losing his or her job." *Martin Marietta*, 823 P.2d at 109. The exception aims to prevent an employer from leveraging the threat of retaliatory discharge to compel employees into either illegal conduct or into giving up their rights or privileges. *See id.* at 110; *see also Frampton*, 297 N.E.2d at 427–28 (analogizing wrongful termination in violation of public policy to retaliatory eviction).

¶56 Self-defense is certainly no less important a right to a worker than workers' compensation, which is not a "right" at all but which our court of appeals and other jurisdictions have recognized as giving rise to a public-policy exception to the at-will employment doctrine. Just as permitting employers to discharge employees for filing workers' compensation claims would undermine the

workers' compensation system, so too would permitting discharge on the basis of self-defense undermine the right to self-defense. The choice between a loss of income—a rippling instability that in some cases may upend a person's entire life—or enduring a physical attack is exactly the choice of evils the public-policy exception was meant to prevent. Plus, it is illogical to conclude that an employee may not be fired for seeking workers' compensation benefits if physically attacked and injured at work, but the same employee may be fired for defending themselves from being punched, stabbed, or sexually assaulted. Notably, however, this does not mean that an employer may not place reasonable limitations on these broader, societal rights to maintain the efficiency, safety, and stability of a workplace.

4. Colorado Recognizes Constitutional Provisions as a Source of Public-Policy Exceptions to At-Will Employment

¶57 Finally, we address Circle K's argument that article II, section 3 cannot be a source of a public-policy exception because the section only protects against *governmental*, rather than private, actions. We disagree.

¶58 Circle K's logic suggests that no provision in Colorado's bill of rights, or perhaps in the whole constitution, can ever give rise to a public-policy exception to at-will employment. True, constitutions are, by definition, restraints on governmental, rather than private, power. *People v. Rodriguez*, 112 P.3d 693, 695

(Colo. 2005) ("Colorado's Constitution . . . 'does not comprise a grant of but rather, a limitation on power.'" (quoting *Reale v. Bd. of Real Est. Appraisers*, 880 P.2d 1205, 1208 (Colo. 1994))); *People ex rel. Elder v. Sours*, 74 P. 167, 186 (Colo. 1903) ("The [c]onstitution of a state is an instrument of restraints or limitations on legislative power."); *see also United States v. Nicholls*, 4 Yeates 251, 260 (Pa. 1805) (Brackenridge, J., concurring); *Baker v. City of Fairbanks*, 471 P.2d 386, 394 (Alaska 1970). But this conclusion—i.e., limiting sources of public policy in this specific context to only those that restrain private, rather than public, action—would effectively abrogate long-established precedent. *See Mariani*, 916 P.2d at 524 (identifying sources of public policy including constitutional provisions, ethical codes, statutes, and administrative regulations).

¶59 We also decline to follow the analysis in *Slaughter v. John Elway Dodge Southwest/AutoNation*, 107 P.3d 1165, 1170 (Colo. App. 2005), where a division of the court of appeals noted that the plain text of article II, section 3 does not clearly express a right to refuse drug testing—or indeed even a right to privacy. The question in *Slaughter* is a far cry from the question here, particularly given that the plain text of article II, section 3 explicitly grants "the right of enjoying and defending [one's life]." Colo. Const. art. II, § 3. And while *Slaughter* holds that the Fourth Amendment binds only governmental actors, it draws no analogy between the Fourth Amendment and article II, section 3. 107 P.3d at 1169–70.

¶60 As we have already observed, the Sixth Circuit's decision in *Hoven* does not change our analysis. Michigan law does not recognize *any* constitutional provision as the source of a public-policy exception to the at-will employment doctrine. *Hoven*, 751 F.3d at 784 ("[U]nder Michigan law, constitutional provisions may not be the source of a claim for termination in violation of public policy against a private employer."). Because Colorado law recognizes that constitutional provisions may serve as the basis of public-policy exceptions to the at-will employment doctrine, the Sixth Circuit's analysis is inapplicable here.

III. Conclusion

¶61 For these reasons, we answer the certified question by concluding that yes, both section 704 and article II, section 3 can serve as the basis for a claim of wrongful termination contrary to public policy.[5] To hold otherwise would fatally undermine that right.

[5] We cabin our holding today to exercises of *self*-defense, as the Colorado Constitution only establishes *self*-defense as an inalienable right. *See* Colo. Const. art. II, § 3.

CHIEF JUSTICE MÁRQUEZ, joined by JUSTICE HOOD, dissenting.

¶62 Today the majority establishes a new public-policy exception to the at-will employment doctrine grounded in the right to self-defense found in article II, section 3 of the Colorado Constitution and the justification of self-defense found in Colorado's Criminal Code in section 18-1-704, C.R.S. (2025). In doing so, the majority misapplies (and effectively rewrites) our test for public-policy exceptions established in *Martin Marietta Corp. v. Lorenz*, 823 P.2d 100, 109 (Colo. 1992).

¶63 First, by answering the certified question in the abstract, the majority's analysis is largely divorced from the underlying facts of this case. The majority's holding appears to be grounded in its concern that no person should be forced to choose between their job and their personal safety. Maj. op. ¶ 40. Yet Circle K Stores, Inc.'s "Don't Chase or Confront Policy" demands no such choice. Because the majority answers the legal question without wrestling with important underlying facts, including the purpose and narrow scope of the employer policy at issue here, the majority's opinion makes broad pronouncements with implications for the at-will employment doctrine that reach well beyond this case.

¶64 The majority reasons that any individual constitutional right is a "public" right merely because it is an "essential, inalienable right" held by all individuals. *Id.* at ¶¶ 4, 45. Moreover, it concludes that a constitutional right held by all

individuals meets the job-related requirement of our *Martin Marietta* test simply because a right guaranteed to "everyone" includes "people at work." *Id.* at ¶ 54.

¶65 Taken together, the majority's reasoning has startling implications. Although the majority acknowledges that rights conferred by the constitution constrain only *state* action, *id.* at ¶ 58, its reasoning means that after today, a *private employer* may not lawfully terminate an at-will employee for conduct related to the exercise of any inalienable constitutional right—even if the employee's conduct plainly violates the employer's policies.

¶66 I not only disagree with the majority's reasoning that a constitutional provision can be the source of a claim for termination in violation of public policy against a *private employer*, but I also fear that the practical implications of today's ruling will tie employers' hands and ultimately undermine workplace safety. Accordingly, I respectfully dissent.

I. Summary of the Facts

¶67 Although we have been asked to address an issue of law, the factual context giving rise to the certified question here remains important. *See In re Phillips*, 139 P.3d 639, 647 (Colo. 2006) (Eid, J., dissenting) (emphasizing that a full picture of the facts can be important context, even when answering a certified question, because "[f]acts enable the [c]ourt to consider how the doctrine works in context, rather than in isolation"). On its face, Circle K's "Don't Chase or Confront Policy"

does *not* prohibit an employee from acting in self-defense in response to an assault or the imminent use of unlawful physical force against that employee. Rather, as its title makes clear, the policy prohibits employees from actively pursuing or confronting suspected shoplifters. Specifically, the policy instructs employees not to "confront[,] follow, pursue, track, chase, [or] fight" persons suspected of theft, but instead to "maintain[] a safe position behind the sales counter" or "go to a safer area in the back of the store":

CONFRONT & CHASE POLICY

We want you to always have a safe and enjoyable working experience with Circle K and especially during any special events and holiday weekends.

So please remember the

"Don't Chase or Confront Policy"

Do not confront follow, pursue, track, chase, fight or follow [inside and/or outside] any person[s] suspected of shoplifting products and/or cash from the site, beer runs or any other confrontational situation.

If you observe theft at the site, wait until the person(s) leave the site and call the police immediately. Remember to try to obtain as much information about the person(s) as possible while maintaining a safe position behind the sales counter. Do not go outside after the person(s), if there is any reason you need to go outside for you are to wait at least 5 minutes and have called the police department and verbally spoke to the Store Manager or Market Manager.

At no time do you come from behind the counter, go to or out the doors to attempt to get additional information. If you can safely obtain information from where you are standing that will be sufficient. Stay where you are or go to a safer area in the back of the store. Do not approach the front doors or go out them. Call 9-1-1 immediately.

At no time do you stop, question or accuse a person(s) of theft.

At no time do you get into a verbal altercation with any customer and/or person(s) you suspect of theft. At no time are you to go outside after dark! Sun down to sun up!

This policy is for your protection and for the safety of everyone!

If you have any questions or issues, please refer to the 5-Minute Rule of communication or your MM. **Never talk to the media** or answer any questions on the immediate situation or any others.

FAILURE TO FOLLOW THE "DON'T CHASE or CONFRONT POLICY" WILL RESULT IN IMMEDIATE TERMINATION

¶68 In sum, the policy aims to prevent employees from provoking encounters or escalating situations with would-be thieves that might increase the risk of harm to both employees and customers. As Circle K points out, the Occupational Safety and Health Administration ("OSHA") specifically recommends that employers maintain de-escalation policies such as this to guard against workplace violence. OSHA, *OSHA FactSheet: Workplace Violence* (2024), https://www.osha.gov/sites/default/files/publications/FACTSHEET-WORKPLACE-VIOLENCE.pdf [https://perma.cc/44SZ-XK3D]. Nothing about Circle K's policy suggests that an employee would be "fired for defending themselves from being punched, stabbed, or sexually assaulted." Maj. op. ¶ 56.

¶69 Although the majority sets forth Mary Ann Moreno's version of events, *id.* at ¶¶ 8-9, Circle K views the surveillance video of the incident differently. Circle K contends it did not terminate Moreno for acting in self-defense but rather, because she violated the "Don't Chase or Confront Policy" by unnecessarily confronting Tyler Wimmer, the shoplifter, to try to prevent him from stealing cigarettes.

¶70 According to Circle K, as Wimmer walked toward the cigarette display case, Moreno did not move out of the way, but stood her ground, and in violation of the policy, confronted Wimmer, saying, "Don't come back here." As Wimmer came around the counter to take the cigarettes, he moved a knife he was carrying into

his right hand, away from Moreno. At that point, Moreno took a step *toward* Wimmer and positioned herself between him and the cigarettes, while extending her left arm toward him. Wimmer turned his back to Moreno to reach past her with his left hand to get to the cigarettes. Moreno then grabbed Wimmer by the back of the shirt and pulled on his left sleeve and left elbow, trying to pull him away from the cigarettes and telling him she would call the cops. Wimmer was quickly able to grab the cigarettes and pull free of Moreno before walking away from her and leaving the store.

¶71 In Circle K's view, Moreno had the opportunity to cooperate and limit the possibility of violence. Instead, in violation of the "Don't Chase or Confront Policy," Moreno chose to verbally confront and physically engage Wimmer, elevating the risk of harm to herself and others.

¶72 These disputed facts will ultimately have to be resolved by a jury, but I note them because they reveal important context overlooked by the majority when answering the certified question in the abstract. It is possible that a jury could find that Moreno was not acting in self-defense during her encounter with Wimmer. And yet, the majority's decision today broadly nullifies policies like Circle K's by preventing employers from terminating employees who choose to confront would-be shoplifters—arguably even when doing so only to defend property and

not themselves. I fear that employers' inability to enforce such de-escalation policies will undermine workplace safety.

II. Analysis

¶73 In general, employment contracts in Colorado are at-will, meaning that either the employer or the employee may terminate the relationship at any time. *Cont'l Air Lines, Inc. v. Keenan*, 731 P.2d 708, 711 (Colo. 1987). In *Martin Marietta*, we recognized an exception to this general rule in situations where an employer terminates an employment contract in violation of public policy. 823 P.2d at 109. Under the public-policy exception to the at-will employment doctrine, an employee has a cognizable claim for wrongful discharge if the discharge contravenes a "clear mandate of public policy." *Id.* at 107 (quoting *Thompson v. St. Regis Paper Co.*, 685 P.2d 1081, 1089 (Wash. 1984)).

¶74 We have traditionally taken a cautious approach to announcing public-policy exceptions to at-will employment because "expansive definition[s] of public policy would be both unwieldy and unpredictable leaving employers and employees alike without direction as to the contours of the public policy exception." *Rocky Mountain Hosp. & Med. Serv. v. Mariani*, 916 P.2d 519, 524 (Colo. 1996). We have emphasized that "[w]e must develop the common law in this area with care." *Crawford Rehab. Servs., Inc. v. Weissman*, 938 P.2d 540, 553 (Colo. 1997).

Accordingly, we require parties seeking a public-policy exception to meet four requirements. *Martin Marietta*, 823 P.2d at 109; *Mariani*, 916 P.2d at 527.

¶75 Specifically, an at-will employee has a prima facie case for wrongful discharge under the public-policy exception if the employee presents evidence that the employer's action interfered with or undermined the employee's *job-related right or privilege as a worker* by establishing the following four elements:

> (1) the employer directed the employee to perform an illegal act as part of the employee's *work related duties* or prohibited the employee from performing a public duty or exercising *an important job-related right or privilege*; . . .
>
> (2) the action directed by the employer would violate a specific statute relating to the public health, safety, or welfare, or would undermine a clearly expressed public policy relating to the employee's basic responsibility as a citizen or the employee's *right or privilege as a worker*; . . .
>
> (3) the employee was terminated as the result of refusing to perform the act directed by the employer[; and] . . .
>
> (4) the employee present[s] evidence showing that the employer was aware, or reasonably should have been aware, that the employee's refusal to comply with the employer's order or directive was based on the employee's reasonable belief that the action ordered by the employer was illegal, contrary to clearly expressed statutory policy relating to the employee's duty as a citizen, or violative of the employee's *legal right or privilege as a worker*.

Martin Marietta, 823 P.2d at 109 (emphases added).

¶76 Our test plainly focuses on the infringement of an employee's *job-related right or privilege as a worker*. Our case law applying the test confirms this. *Id.* at

111; *Mariani*, 916 P.2d at 526. Moreover, the public policy must be clearly expressed so it provides "employers and employees" sufficient notice of "the behavior it requires." *Mariani*, 916 P.2d at 524–25; *see also Calvert v. Mayberry*, 2019 CO 23, ¶¶ 20–27, 440 P.3d 424, 430–32 (requiring the public policy to offer a "clear mandate to act (or not act) in a certain way").

¶77 In addition, the clearly expressed policy must "concern behavior that truly impacts the public," *Mariani*, 916 P.2d at 525, rather than an individual's "purely personal or proprietary interest," *Weissman*, 938 P.2d at 552. *See also* Maj. op. ¶ 30.

¶78 In sum, to find a public-policy exception to at-will employment, our test requires a clearly expressed public policy that (1) relates to the employee's rights or privileges as a worker, and (2) truly impacts the public.

¶79 The majority correctly recites the test and its factors, *id.* at ¶¶ 22–23, but then proceeds to misapply the test to this case, and in doing so, effectively rewrites part of it. Specifically, the majority holds that article II, section 3 of the Colorado Constitution and section 18-1-704 clearly express a general right to self-defense that is sufficiently public and related to an employee's rights or privileges as a worker. Maj. op. ¶¶ 16–17, 44–56. I disagree.

A. Colorado's Right to Self-Defense Is Not Related to an Employee's Rights or Privileges as a Worker

¶80 Even assuming for the sake of argument that article II, section 3 of the Colorado Constitution and section 18-1-704 "clearly express" a right to self-

defense, neither provision relates to an employee's rights or privileges as a worker. Article II, section 3 provides that "[a]ll persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness." These broad, general rights, which have been part of our constitution since statehood, have no specific connection to employment. Like other individual constitutional rights, these rights reflect limitations on *government* power, not restrictions on private employers. *City of Longmont v. Colo. Oil & Gas Ass'n*, 2016 CO 29, ¶ 58, 369 P.3d 573, 585–86 ("[Article II, section 3] protects fundamental rights from abridgment by the state absent a compelling government interest.").

¶81 In turn, section 18-1-704 codifies the right to defend one's life against government intrusion by prohibiting the state from holding a person criminally liable for acting in self-defense.[1] Similarly, section 18-1-706, C.R.S. (2025), creates a defense to criminal liability for using force in defense of property "to prevent what [an individual] reasonably believes to be an attempt by the other person to commit theft, criminal mischief, or criminal tampering involving property." And

[1] Section 18-1-704 is codified in article 1, part 7 of the Colorado Criminal Code, entitled "Justification and Exemptions from Criminal Responsibility."

section 18-1-704.5(4), C.R.S. (2025), shields "occupant[s] of a dwelling" from civil liability for acting in self-defense under certain circumstances.

¶82 Our previous cases finding public-policy exceptions to at-will employment concerned clearly expressed public policies directly related to rights or privileges associated with the employee's work. In *Martin Marietta*, the employee "had a duty as principal investigator of several NASA projects" to report and control deficiencies, and the employer's insistence that the employee contravene this duty was directly related to the employee's job duties. 823 P.2d at 111. The same was true in *Mariani*. There, the employer allegedly pressured the employee to violate a professional ethics rule requiring the employee to "report financial information fairly and accurately"—a duty directly connected to the employee's work as an accountant. *Mariani*, 916 P.2d at 526.

¶83 Here, the right to be free from criminal liability for acting in self-defense has no inherent connection to work, and the majority's attempt to argue that it does has dangerously broad implications.

¶84 Per the majority, the right to self-defense is job-related because the need to defend oneself "can occur at work." Maj. op. ¶ 54. The majority reasons that the right "has never been cabined by role or location" and "allows people to protect themselves in their homes, schools, houses of worship, and workplaces." *Id.* at

¶ 53. Therefore, the majority argues, the right is necessarily job-related. *Id.* at ¶¶ 53–54.

¶85 I agree that the right to be free from criminal liability for actions taken in self-defense does apply to everyone, everywhere in Colorado. But a constraint on governmental prosecutorial power does not make the right to self-defense *job*-related, nor does it somehow impose constraints on employers in the context of an at-will employment relationship. The majority argues that it would be illogical to allow a public-policy exception for seeking workers' compensation benefits but not to allow one for acting in self-defense at work. *Id.* at ¶ 56. Yet workers' compensation benefits are inherently connected to work and are directly job-related. Indeed, such benefits arise only in the context of employment.

¶86 Nothing about a general right applicable to everyone everywhere renders that right inherently job-related. In concluding otherwise, the majority misapplies our test and our precedent.

B. Article II, Section 3 of the Colorado Constitution and Section 18-1-704 Do Not Establish a "Public" Right

¶87 Contrary to the majority's insistence, an individual right is not a "public" right simply because the constitution labels it "inalienable." *Id.* at ¶ 45. Our previous cases on public-policy exceptions to at-will employment have emphasized that "public" rights are those that "affect[] society at large" and "truly

impact[] the public." *Weissman*, 938 P.2d at 552. Rights that affect only "purely personal" interests cannot justify a public-policy exception. *Id.*

¶88 We have recognized public-policy exceptions where employers have allegedly pressured employees to violate the law and thereby endanger the public. As mentioned above, in *Martin Marietta*, a government contractor allegedly asked an employee to commit fraud on NASA in direct violation of a federal statute. 823 P.2d at 102–04, 110–11. The public impact was plain because lying to government agencies like NASA could endanger the public and cost taxpayer dollars. Similarly, in *Mariani*, a health insurance company allegedly fired one of its accountants for refusing to make knowing misrepresentations in violation of professional ethics rules. 916 P.2d at 521–23. There again, the public policy at issue was both clear and sufficiently public because the ethics rule "ensure[d] the accurate reporting of financial information to the public" and thereby "allow[ed] the public and the business community to rely . . . on financial reporting." *Id.* at 526. In contrast, we rejected the employee's claim in *Weissman* that a public-policy exception existed based on the right to take a certain number of rest breaks from her job as a typist, reasoning that such rest breaks amounted to a personal interest and did not "truly impact[] the public." 938 P.2d at 552–53.

¶89 Here, the right to self-defense is similarly personal in that it absolves an individual from criminal liability in certain circumstances for using force against

another to defend themselves. This protection against criminal liability solely benefits the individual; it does not impact the public at large.

¶90 The majority asserts that the right to self-defense in the Colorado Constitution is a public right because it is an "inalienable" right. Maj. op. ¶ 45. It insists that while an "inalienable right is possessed and exercised by individuals, its impact is necessarily public." *Id.* But it fails to explain how. An "inalienable" right is simply an inherent right that "cannot be transferred or surrendered." *Right*, Black's Law Dictionary (12th ed. 2024). That such rights are guaranteed to all individuals does not, *ipso facto*, make them "public" rights. Again, our constitution preserves certain fundamental rights from infringement by the government, not private actors.

¶91 According to the majority, examining whether a right is public "through too narrow a lens" would "swallow the entire public-policy exception" because any right can be "characterized as an individual matter." Maj. op. ¶ 45. But the majority has it backwards. It is the majority's new broad rule that not only rewrites our test but effectively swallows the public-policy exception entirely.

¶92 If a right need only be held by everyone to qualify as a "public" right, then virtually all rights under the law, not just "inalienable" constitutional rights, would qualify. Perhaps the majority's reasoning rests on some other special quality of inalienable rights. But without further explanation, we are left to guess.

¶93 Finally, although the majority states that "Colorado law recognizes that constitutional provisions may serve as the basis of public-policy exceptions," *id.* at ¶ 60, none of our cases have expressly held this, *id.* at ¶ 26 (first citing *Mariani*, 916 P.2d at 524–25; then citing *Weissman*, 938 P.2d at 553). In *Mariani*, we discussed other jurisdictions that rely on constitutional provisions, but we did not adopt any rule indicating that constitutional provisions may serve as sources of public-policy exceptions. 916 P.2d at 524–26. In our other two cases on this subject, we never even discussed constitutional provisions. *See Martin Marietta*, 823 P.2d at 104–11; *Weissman*, 938 P.2d at 551–53. I cannot agree that a right stemming from the constitution that limits state action necessarily constrains *private employers* to the degree that it may serve as an exception to our doctrine of at-will employment.

C. The Majority's Reasoning Raises Troubling Legal and Practical Questions

¶94 Per the majority, section 18-1-704 and our case law collectively define the contours of the majority's newly recognized public-policy exception to at-will employment. Maj. op. ¶¶ 35, 39. But despite the majority's insistence that its holding is narrow, *id.* at ¶ 5, it cannot escape the breadth of its reasoning, which gives rise to a number of troubling legal and practical questions.

¶95 Does the public-policy exception protect employees who act in defense of third parties? *See* § 18-1-704(1) ("[A] person is justified in using physical force

upon another person in order to defend himself *or a third person* . . . ." (emphasis added)). Presumably so.

¶96 Does it include a "no duty to retreat" doctrine like that recognized in our case law? *See People v. Toler*, 9 P.3d 341, 348 (Colo. 2000). Presumably so.

¶97 Does it encompass the similarly "inalienable" right to "protect[] property" also found in article II, section 3 of the Colorado Constitution and codified at section 18-1-706? Presumably so. After all, it shares all the same qualities the majority relies on to justify importing section 18-1-704's criminal right to self-defense, with both an expansive constitutional provision and a more detailed criminal statute supporting it.

¶98 Taken together, after today, a private employer may no longer terminate an employee who violates a "Don't Chase or Confront Policy" like Circle K's. And despite the majority's suggestion that its opinion does not address the ongoing viability of such de-escalation policies, *see* Maj. op. ¶ 10 n.3, today's opinion effectively nullifies them. The consequence, I fear, will be workplaces that are less safe. Equally concerning is how the majority's reformulation of the *Martin Marietta* test will impact future cases.

¶99 For example, after today, an employee who is fired for sharing sensitive business information online about their private employer would presumably have

a basis for a wrongful termination suit on grounds that the employee was exercising an "essential, inalienable" right to free speech.

¶100 Similarly, an employee who is fired for pulling a concealed weapon on a suspected shoplifter in the workplace would presumably have a basis for a wrongful termination suit on grounds that the employee was exercising their right to bear arms under article II, section 13 of the Colorado Constitution and Colorado's Concealed Carry Act, §§ 18-12-201 to -214, C.R.S. (2025).

¶101 At a minimum, an employee who confronts and tackles a suspected shoplifter to prevent them from stealing (risking injuries to the shoplifter, the employee, and other customers) may not be fired for such behavior. Under the majority's reasoning, the employee now has a plausible argument that the "inalienable" right to "protect[] property," Colo. Const. art. II, § 3, coupled with the right to act in defense of property under section 18-1-706, establishes a public-policy exception to the doctrine of at-will employment.

¶102 Before today, our case law would have indicated that the right to defend property is a purely personal interest and not one that "affect[s] society at large." *Weissman*, 938 P.2d at 552. It would have made clear that public-policy exceptions must have some direct connection to "right[s] or privilege[s] as a worker." *Martin Marietta*, 823 P.2d at 109. But after today, a right need only be "inalienable" to impact the public and need only be able to "occur at work" to be related to rights

and privileges as a worker. Maj. op. ¶¶ 45, 54. I worry where this new version of the public-policy exception doctrine will lead us.

III. Conclusion

¶103 Today the majority departs from our previously cautious approach to public-policy exceptions to at-will employment. Along the way, it dismantles the important guardrails we placed on this doctrine in *Martin Marietta* and opens the door to far more public-policy exceptions, many of which could leave workplaces less safe. In short, the majority has left the doctrine in precisely the "unwieldy and unpredictable" place we warned against thirty years ago in *Mariani*. 916 P.2d at 524. For all these reasons, I respectfully dissent.