

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED November 22, 2024 4:21 PM FILING ID: C5D9986AB541A CASE NUMBER: 2024SA308
Original Proceeding City of Aurora Municipal Court Case Number J316178 Honorable Shelby L. Fyles, Judge	
<b>In Re:</b>  <b>People of the State of Colorado,</b> <i>by and through the</i> <b>City of Aurora,</b> Respondent,  v. <b>Danielle Ashley Simons,</b> Petitioner.	▲ COURT USE ONLY ▲
Amy D. Trenary, # 46148 Appeal to Justice LLC P.O. Box 7593 Broomfield, CO 80021 (720) 235-8125 amy@appealtojustice.com  Ashley Cordero, # 56329 Power Law LLC 1133 N. Pennsylvania Street Denver, CO 80203 (720) 724-7691 ashley@apowerlaw.com  <i>Attorneys for Petitioner Danielle Simons</i> <i>Appointed as Alternate Defense Counsel</i>	Case No: 24SA____
<b>PETITION FOR ORDER TO SHOW CAUSE PURSUANT TO C.A.R. 21</b>	

## CERTIFICATE OF COMPLIANCE

I certify that this petition complies with all applicable requirements of C.A.R. 21 and C.A.R. 32, including all formatting requirements set forth in these rules. In addition, this brief complies with the word limit for principal briefs under C.A.R. 28(g)(1). It contains 2,647 words.

I acknowledge that this brief may be stricken if it fails to comply with any of the requirements of the Rules of Appellate Procedure.

s/ Amy D. Trenary  
Amy D. Trenary  
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**TABLE OF CONTENTS**

PETITIONER AND PROPOSED RESPONDENT.....2

UNDERLYING PROCEEDINGS.....3

RELATED PROCEEDING.....3

RULING COMPLAINED OF AND RELIEF SOUGHT.....3

NO OTHER ADEQUATE REMEDY IS AVAILABLE.....3

STATEMENT OF THE FACTS .....5

ARGUMENT .....6

    A.    Section 94-83 of the Aurora City Code is preempted by  
          state law because it punishes motor vehicle trespass more  
          harshly than the Colorado Revised Statutes. ....7

    B.    Ms. Simons’ equal protection rights were violated when  
          the City of Aurora charged her under section 94-83 of the  
          Aurora City Code.....10

CONCLUSION .....12

## TABLE OF AUTHORITIES

### Cases

<i>City of Commerce City v. State</i> , 40 P.3d 1273 (Colo. 2002) .....	7
<i>City of Longmont v. Colo. Oil &amp; Gas Ass’n</i> , 2016 CO 29 .....	7, 9
<i>City of Northglenn v. Ibarra</i> , 62 P.3d 151 (Colo. 2003) .....	7
<i>Hardamon v. Mun. Ct.</i> , 497 P.2d 100 (Colo. 1972) .....	10
<i>In re People v. Camp</i> , 24SA276 .....	passim
<i>People v. Howell</i> , 2024 CO 42 .....	4
<i>People v. Lee</i> , 2020 CO 81 .....	11, 12
<i>People v. Seymour</i> , 2023 CO 53 .....	4
<i>Trueblood v. Tinsley</i> , 366 P.2d 655 (Colo. 1961) .....	11

### Statutes

§ 18-1.3-501(1)(a.5), C.R.S. (2024) .....	8, 9, 12
§ 18-1.3-503(1.5), C.R.S. (2024) .....	8
§ 18-4-503(1)(c), C.R.S. (2024) .....	8, 9, 11

### Municipal Ordinances

Aurora City Code § 1-13 (2024) .....	8, 12
Aurora City Code § 94-71(a)(6) (2024) .....	5

Aurora City Code § 94-83 (2024) .....	passim
---------------------------------------	--------

## **Rules**

C.A.R. 21 .....	3, 5
-----------------	------

## **Constitutional Provisions**

Colo. Const. art. II, § 25.....	10
Colo. Const. art. XX, § 6 .....	7

## **Legislative Materials**

Ch. 462, sec. 186, 2021 Colo. Sess. Laws .....	8
Ch. 462, sec. 187, 2021 Colo. Sess. Laws .....	8
Senate Bill 21-271.....	7, 10

Petitioner Danielle Simons was charged by summons with motor-vehicle trespass. Law enforcement had the discretion to charge Ms. Simons under either the Colorado Revised Statutes or the Aurora City Code. Both offenses require the prosecution to prove the same essential elements. However, the Aurora City Code permits a much longer jail sentence and a much higher fine than the maximum penalty under the Colorado Revised Statutes. A sentencing discrepancy of this magnitude violates Colorado's preemption doctrine and infringes Ms. Simons' right to equal protection under the Colorado Constitution.

This Court recently issued an order to show cause in *In re People v. Camp*, 24SA276, to address identical issues. See Exhibit A. In view of the imminent threat to her constitutional rights, Ms. Simons asks this Court to issue an order to show cause and, ultimately, to clarify that it is unconstitutional for a municipality to punish identical conduct more harshly than is permitted under state law. At a minimum, Ms. Simons asks this Court to stay the proceedings below until it issues its ruling in *Camp*.

Trial is set to begin on Tuesday, November 26, 2024.

## **ISSUES PRESENTED**

The issues presented here are identical to the issues subject to this Court's show-cause order in *Camp*:

1. Whether state law preempts enforcement of a municipal code provision to the extent that it punishes an offense more harshly than the state statute that criminalizes identical conduct.
2. Whether a municipality violates the Colorado Constitution's equal protection guarantee by charging a defendant under a municipal code that punishes an offense more harshly than the state statute that criminalizes identical conduct.

## **PETITIONER AND PROPOSED RESPONDENT**

The petitioner is Danielle Ashley Simons, who is the defendant in the underlying municipal court proceeding. The proposed respondent against whom relief is sought is the People of the State of Colorado, the plaintiff in the underlying proceeding, represented by the Aurora City Attorney's Office, 14999 East Alameda Parkway, Aurora, Colorado 80012, (303) 739-7810.

### **UNDERLYING PROCEEDINGS**

This original proceeding arises from the prosecution pending in the Aurora Municipal Court, summons numbers J316178. Ms. Simons is charged with violation of the municipal trespass ordinance.

### **RELATED PROCEEDING**

This Court issued an order to show cause on identical issues in *In re People v. Camp*, 24SA276, on October 17, 2024. Exhibit A.

### **RULING COMPLAINED OF AND RELIEF SOUGHT**

On October 3, 2024, the Aurora Municipal Court entered an order denying Ms. Simons' motion to dismiss the charges on both preemption and equal protection grounds. Exhibit B. Ms. Simons seeks relief in the form of a writ of mandamus directing the municipal court to dismiss the counts charged by each summons.

### **NO OTHER ADEQUATE REMEDY IS AVAILABLE**

Jurisdiction under C.A.R. 21 "is proper when 'an appellate remedy would be inadequate, a party may suffer irreparable harm, or a petition raises an issue of first impression that has significant public importance.'"



*People v. Howell*, 2024 CO 42, ¶ 5 (quoting *People v. Seymour*, 2023 CO 53, ¶ 16). Here, both criteria are met.

Ms. Simons lacks an adequate appellate remedy because, if convicted, she faces unconstitutional penalties that exceed what's permissible under state law. An original proceeding is merited because a challenge to the sentence raised on direct appeal would almost certainly be resolved only after Ms. Simons has already served the prohibited sentence. In other words, the only other avenue for relief is incapable of providing a meaningful remedy. And Ms. Simons would be irreparably harmed if forced to unconstitutionally serve time in jail that she can never reclaim.

Further, this case raises an issue of first impression that implicates matters of statewide importance. An order to show cause has been issued in *Camp* to address identical issues. In the meantime, this Court has yet to clarify whether a municipal sentencing scheme that penalizes conduct more harshly than what's permitted under state law is either preempted by state law or an equal protection violation. Because the Court has yet to address these consequential issues, it should issue an order to show cause in this

case. In the alternative, Ms. Simons asks that the Court stay the proceedings in the municipal court until it issues an opinion in *Camp*.

### **STATEMENT OF THE FACTS**

On November 3, 2023, an officer of the Aurora Police Department issued summons and complaint J316178, Exhibit C, charging Ms. Simons with motor vehicle trespass in violation of section 94-83 of the Aurora City Code. See Exhibit D. On May 5, 2024, an Aurora officer issued summons and complaint J317516, Exhibit E, charging Ms. Simons with trespass in violation of section 94-71(a)(6) of the Aurora City Code. See Exhibit F.<sup>1</sup>

On July 22, 2024, Ms. Simons moved to dismiss both cases on equal protections grounds. Exhibit G (J316178); Exhibit H (J317516). The court denied these motions in an oral ruling but stated a written order would follow. Exhibit I, TR 09/04/24, pp. 5–6. Because the court’s ruling referenced “the law surrounding Home City Rules,” see *id.* at p. 6:2-3, 6:19-20, Ms. Simons’ trial counsel informed the court that she intended to supplement the motions to dismiss to address the preemption doctrine. *Id.* at p. 14:8–17.

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<sup>1</sup> Petitions under C.A.R. 21 are being contemporaneously filed in relation to both municipal cases.

On September 10, 2024, Ms. Simons moved to dismiss both cases on the supplemental grounds of preemption. Exhibit J (J316178); Exhibit K (J317516). The court maintained and supplemented its oral ruling denying dismissal with a written order addressing both preemption and equal protection. Exhibit B.

Importantly, both of Ms. Simons' cases are set for trial on Tuesday, November 26, 2024. The municipal court summarily denied her motion for a stay of the proceedings based on this Court's issuance of the order to show cause on the same issues in *Camp*. See Exhibit L (motion for stay); Exhibit M (request for ruling); Exhibit N (ruling). Without this Court's intervention, the court will likely proceed to immediate sentencing in the event Ms. Simons is convicted of either of the charged trespass offenses.

### **ARGUMENT**

For the same reasons cited in *Camp*, see Exhibit O, pp. 8-33, which are incorporated by reference, Aurora's enforcement of its sentencing scheme against Ms. Simons is preempted and violates her right to equal protection.

**A. Section 94-83 of the Aurora City Code is preempted by state law because it punishes motor vehicle trespass more harshly than the Colorado Revised Statutes.**

Although Aurora is a home-rule jurisdiction and, as such, enjoys limited powers to legislate, *see* Colo. Const. art. XX, § 6, the City is preempted from legislating on (1) issues of “overriding statewide concern,” and (2) issues that present a matter of both statewide and local concern, but where the state statute conflicts with the municipal ordinance. *City of Northglenn v. Ibarra*, 62 P.3d 151, 155 (Colo. 2003); *City of Longmont v. Colo. Oil & Gas Ass’n*, 2016 CO 29, ¶ 13. Both conditions are met here. *See Exhibit O*, pp. 8-17.

*First*, the state has an overriding interest in eliminating sentencing disparities. To determine whether the state’s interest is overriding, the Court can look at “changing conditions,” *City of Commerce City v. State*, 40 P.3d 1273, 1281 (Colo. 2002), as well as the need for statewide uniformity that “achieves and maintains specific state goals.” *Ibarra*, 62 P.3d at 160.

As evidenced by the General Assembly’s push in 2021 to combat disparities in sentencing statewide, interests in racial justice in sentencing are an overriding state interest. The enactment of Senate Bill 21-271, titled

“as Act Concerning the Adoption of the 2021 Recommendations of the Colorado Criminal and Juvenile Justice Commission Regarding Sentencing for Offenses, and, in Connection Therewith, Making an Appropriation,” overhauled the classification of low-level crimes and created a sentencing grid prescribing maximum punishments for misdemeanors and petty offenses, including trespass crimes. Ch. 462, secs. 186 & 187, 2021 Colo. Sess. Laws 3170–71; *see* §§ 18-1.3-501(1)(a.5), 18-1.3-503(1.5), C.R.S. (2024). The bill was intended to reduce discretion of individual actors in the criminal justice system and thereby reduce sentencing disparities. *See* Exhibit O, pp. 10–13.

This overriding statewide goal of reduction in discretion is undermined by the Aurora City Code. Here, for example: the Aurora officer had the discretion to charge Ms. Simons with motor vehicle trespass as either a class 2 misdemeanor or a municipal violation. *Compare* § 18-4-503(1)(c), C.R.S. (2024), *with* Aurora City Code § 94-83 (2024) [Exhibit D]. Both offenses proscribe the same conduct and share the same essential elements. The officer exercised his discretion and charged Ms. Simons with the municipal violation. As a result, Ms. Simons may be sentenced to as much as 364 days in jail and a \$2,650 fine. Aurora City Code § 1-13 (2024) [Exhibit P]. If she had

instead been charged with second-degree criminal trespass under section 18-4-503(1)(c), the maximum penalty would be 120 days in jail and a \$750 fine. § 18-1.3-501(1)(a.5), C.R.S. (2024). In other words, Ms. Simons faces more than three times as much imprisonment and three-and-a-half times the maximum fine a similarly situated defendant could receive under state law.

Allowing a municipality to sentence a defendant to a harsher sentence than is permitted under state law would hinder the state's goal of ensuring fair and uniform sentences. Accordingly, the Court should recognize that these provisions of the Aurora City Code are preempted by state law.

*Second*, even if the Court were to determine that sentencing is a matter of both state and local concern, Aurora's enforcement of its sentencing scheme is preempted because it conflicts with state law. When a municipal "ordinance conflicts with state law in a matter of . . . mixed state and local concern, the state law supersedes that conflicting ordinance." *City of Longmont*, ¶ 18. An ordinance conflicts with state law when it "would materially impede or destroy a state interest." *Id.* at ¶ 42.

The state's interest in eliminating sentencing disparities is materially impeded by Aurora's enforcement of its sentencing ordinance. As noted,

Senate Bill 21-271 was enacted to ensure fair and uniform criminal sentencing by establishing new comprehensive sentencing guidelines and removing charging discretion from individual actors within the system. Because (1) Aurora allows local officers to elect whether to charge a defendant under state or local law, and (2) the enforcement of section 94-83 allows for sentences that are higher than the maximum set by state law, the Aurora City Code conflicts with and, should thus be recognized as preempted by state law.

**B. Ms. Simons' equal protection rights were violated when the City of Aurora charged her under section 94-83 of the Aurora City Code.**

The Colorado Constitution does not allow "home rule cities to deny substantive rights conferred upon all citizens on the state." *Hardamon v. Mun. Ct.*, 497 P.2d 100, 102 (Colo. 1972). By charging Ms. Simons under an ordinance that punishes trespass offenses more harshly than state law, the City of Aurora violated Ms. Simons' constitutional right to equal protection. See Exhibit O, pp. 17-33.

Section § 25 of article II of the Colorado Constitution serves to assure "the like treatment of all persons who are similarly situated." This guarantee prohibits the enforcement of laws "which prescribe different punishments

for the same violations committed under the same circumstances by persons in like situations.” *Trueblood v. Tinsley*, 366 P.2d 655, 659 (Colo. 1961). When, as here, “two criminal statutes proscribe identical conduct, yet one punishes that conduct more harshly,” the guarantee of equal protection is violated. *People v. Lee*, 2020 CO 81, ¶ 14.

To determine whether an equal protection violation has occurred, the Court first asks whether the two laws at issue, either by their plain language or as applied, concern conduct that is “identical” or so similar that “a person of average intelligence” could not distinguish between the two offenses.” *Id.* at ¶¶ 14, 15. If the conduct is distinguishable, the analysis ends. If, however, the laws proscribe indistinguishable conduct, a defendant may be charged only under the law that is more lenient. *Id.* at ¶¶ 26, 37.

At issue here are state and municipal laws that both punish Ms. Simons’ alleged motor vehicle trespass offense. The state statute is section 18-4-503(1)(c), and the municipal ordinance is Aurora City Code section 94-83. The plain language of these two laws criminalizes identical conduct. Both prohibit knowingly and unlawfully entering or remaining in a motor vehicle of another. The only difference between these two laws is the severity



of the punishment imposed. Under the more lenient state statute, second-degree criminal trespass is punishable by no more than 120 days imprisonment, \$750 fine, or both. § 18-1.3-501(1)(a.5). Under the municipal code, the same conduct is punishable by as much as 364 days imprisonment, \$2,650 fine, or both. Aurora City Code § 1-13.

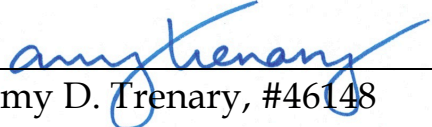
Because the state statute and Aurora City Code proscribe identical conduct, the City of Aurora was required to charge Ms. Simons under the more lenient provision: here, the state statute. *See Lee*, ¶ 26. Because she was instead charged with municipal violations under the Aurora City Code, Ms. Simons faces a drastically harsher punishment in violation of her constitutional right to equal protection. Remedying this violation will require the Court to recognize that Ms. Simons cannot be charged with trespass under Aurora City Code section 94-83.

### **CONCLUSION**

Considering these arguments and the recent order to show cause in *Camp*, the Court should issue an order to show cause why the Aurora Municipal Court did not err in denying Ms. Simons' motion to dismiss and, by implication, holding that Aurora can punish motor vehicle trespass more

harshly than is authorized under state law for identical conduct. In the alternative, Ms. Simons respectfully requests that this Court issue a stay in the proceedings in the municipal court until it clarifies the issues presented in *Camp*.

DATED: November 22, 2024.

  
\_\_\_\_\_  
Amy D. Trenary, #46148  
*Counsel for Petitioner*  
*Danielle Simons*

## LIST OF SUPPORTING DOCUMENTS

- Exhibit A:** Order to Show Cause  
*In re People v. Camp, 24SA276*
- Exhibit B:** Order Denying Motions to Dismiss
- Exhibit C:** Summons and Complaint J316178
- Exhibit D:** Aurora City Code § 94-83
- Exhibit E:** Summons and Complaint J317516
- Exhibit F:** Aurora City Code § 94-71
- Exhibit G:** Motion to Dismiss – Equal Protection (J316178)
- Exhibit H:** Motion to Dismiss – Equal Protection (J317516)
- Exhibit I:** Transcript – September 4, 2024
- Exhibit J:** Motion to Dismiss – Preemption (J316178)
- Exhibit K:** Motion to Dismiss – Preemption (J317516)
- Exhibit L:** Motion for Stay
- Exhibit M:** Motion for Stay – Request for Ruling
- Exhibit N:** Ruling Denying Motion for Stay
- Exhibit O:** Petition for Rule to Show Cause  
*In re People v. Camp, 24SA276*
- Exhibit P:** Aurora City Code § 1-13

## **CERTIFICATE OF SERVICE**

I certify that on November 22, 2024, this **PETITION FOR RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21** was filed with the Colorado Supreme Court and served by the Colorado Courts E-Filing System (CCE) and/or by email on:

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