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| Original Proceeding<br>Aurora Municipal Court, City of Aurora<br>Case Nos. J316178, J317516 | |
| **In Re:**<br><br>**Plaintiff:**<br><br>The People of the State of Colorado by and through the City of Aurora<br><br>**v.**<br><br>**Defendant:**<br><br>Ashley Simons. | **▲COURT USE ONLY▲** |
| **Attorneys for Colorado Municipal League:**<br>Robert D. Sheesley, #47150<br>Rachel Bender, #46228<br>1144 Sherman Street<br>Denver, CO 80203-2207<br>Phone: 303-831-6411<br>Fax: 303-860-8175<br>Emails: rsheesley@cml.org; rbender@cml.org | Case No. 2024SA308;<br>Case No. 2024SA309. |

# BRIEF OF *AMICUS CURIAE* COLORADO MUNICIPAL LEAGUE IN SUPPORT OF THE CITY OF AURORA

## CERTIFICATION

I hereby certify that this brief complies with C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The amicus brief complies with the applicable word limit set forth in C.A.R. 29(d).

It contains 4,747 words (does not exceed 4,750 words).

The brief complies with the content and form requirements set forth in C.A.R. 29.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

*/s/ Robert Sheesley*
Robert Sheesley, #47150

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The Colorado Municipal League ("CML") respectfully submits the following *amicus curiae* brief in support of the City of Aurora ("Aurora").

## IDENTITY OF CML AND ITS INTEREST IN THE CASE

CML, formed in 1923, is a non-profit, voluntary association of 271 of the 273 cities and towns located throughout the state of Colorado, comprising nearly 99 percent of the total incorporated state population. CML's members include all 108 home rule municipalities, 162 of the 164 statutory municipalities, and the lone territorial charter city. This membership includes all municipalities with a population greater than 2,000. CML has regularly appeared in the courts as an *amicus curiae* to advocate on behalf of the interests of municipalities statewide.

CML's participation will provide a background on municipal courts, their role in and benefits to Colorado's criminal justice system, and the express constitutional authority of home rule municipalities regarding municipal courts and penalties for municipal ordinance violations. COLO. CONST. Art. XX, § 6 ("Article XX, Section 6").

To protect their residents, businesses, and public places against crime, municipalities establish ordinances with maximum penalties for crimes committed within the municipality that vary from the maximum penalties for similar statutory offenses that can be committed elsewhere in the state. Aurora's court correctly found

that the city's ordinances neither violate Colorado's equal protection provisions nor conflict with statute. Reversing that decision would negate longstanding precedent construing Article XX and improperly extend Colorado's equal protection doctrine.

## ARGUMENT

CML's brief is similar to its brief filed in *In re People v. Camp*, 24SA276, with additional discussion of the home rule analysis, particularly the consideration of uniformity (pages 14-16), and the equal protection arguments raised by Petitioner's *amici* (pages 21-22). CML has compiled a list of municipal general trespass and trespass to motor vehicle offenses and their potential penalties for all home rule municipalities, attached as Exhibit A

CML urges the Court to refrain from endorsing an extreme application of Article II, Section 25 of the Colorado Constitution or finding that the General Assembly silently preempted home rule authority to define municipal ordinances and penalties. Even assuming *arguendo* that penalties for municipal ordinance violations are a matter of mixed state and local concern, the Petition presents no credible preemption argument because the statutory penalties for state crimes do not conflict with and were not intended to override municipal penalties for ordinance violations. This Court should not extend its minority view of equal protection to state offenses and municipal violations.

## I. Overview of municipal courts and their unique role.

Petitioner and their *amici* misconstrue Colorado's criminal justice system as a monolith in which no variation from state norms can be tolerated and home rule municipalities are directly controlled by the General Assembly. In reality, as defined by the Colorado Constitution, the Colorado Revised Statutes, and this Court's precedent, municipal courts and the municipal laws within their jurisdiction are an integral yet separate part of the criminal justice system.

### A. Municipal Authority.

Municipal courts have existed since the state's creation, but the current statutory framework was created in 1969. *See* Barbara Bintliff, *A Jurisdictional History of the Colorado Courts*, 65 U. Colo. L. Rev. 577, 609 (1994) (citing Act of July 1, 1969, ch. 107, § 1, 1969 Colo. Sess. Laws 273). Since 1902, the Colorado Constitution has given clear authority to home rule municipalities over the creation of their municipal courts and the imposition of penalties for ordinance violations. Article XX, Section 6 states that home rule municipalities:

> [S]hall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:
> ***

> c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;
> ***
> h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

Municipal court jurisdiction is defined by a municipal charter or ordinances and are limited to matters of local concern. C.R.S. § 31-10-104; *see also Town of Frisco v. Baum*, 90 P.3d 845 (Colo. 2004). Municipal courts handle a range of matters, from traffic and minor criminal matters to more complex issues like "domestic violence, assault, prostitution, theft (including motor vehicle), zoning, land use, building code, juvenile, restraining order, real property nuisance and abatement, animal, and sales tax matters." Christopher D. Randall, *Municipal Courts in Colorado: Practice and Procedure*, 38 Colo. Law. 39 (Dec. 2009).

Title 13 of the Colorado Revised Statutes, which guides municipal court operations in statutory and, to an extent, home rule municipalities, explicitly provides that it may be superseded by municipal charter or ordinance of a home rule city or town, except for specified provisions. C.R.S. § 13-10-103 (asserting statewide interests in judge salaries, juvenile incarceration, appearances of minors' parents, jury trials for petty offenses, improperly entered guilty pleas, domestic violence prosecution, open court proceedings, and rules of procedure). The constitutionality

of the General Assembly's assertion of control over the operation of municipal courts regarding most of the limited matters identified in C.R.S. § 13-10-103 has not been evaluated against Article XX, Section 6.

Despite the express constitutional authority of home rule municipalities to regulate municipal courts and local penalties, municipal courts are constrained by constitutional and statutory limits in a few key areas not involved here:

- Conduct criminalized by state law cannot be treated as a civil proceeding. *City of Canon City v. Merris*, 323 P.2d 614, 620 (Colo. 1958), *overruled on other grounds by Vela v. People*, 484 P.2d 1204 (Colo. 1971).
- Constitutional norms regarding proceedings in state courts apply in municipal courts, like the right to a jury trial. C.R.S. § 13-10-114(1); *Hardamon v. Mun. Ct. In & For City of Boulder*, 497 P.2d 1000, 1002-03 (Colo. 1972).
- Felony offenses and particular subject matters, like DUI/DWAI laws or red-light cameras, exceed municipal jurisdiction. *Quintana v. Edgewater Mun. Ct.*, 498 P.2d 931, 932 (Colo. 1972); *City of Commerce City v. State*, 40 P.3d 1273 (Colo. 2002).

These limits do not constrain the constitutional power to impose and enforce municipal penalties for ordinance violations.

While state statute provides that municipal sentencing authority is based on "the sentence or fine limitations established by ordinance," municipal penalties are not tied to statutory limitations for similar state crimes. *See* C.R.S. § 13-10-113(2). Most recently modified in 2019, state law authorizes, for convictions of municipal ordinances in a municipal court of record, incarceration for up to 364 days (as of 2019) or a fine of $2,650 (adjusted for inflation) (as of 2013), or both. C.R.S. § 13-10-113(1); *see also* C.R.S. § 31-16-101(1) (authorizing a similar fine or period of incarceration of up to one year, or both); § 31-1-102(1) (providing that Title 31's provisions generally can be superseded by home rule charters and ordinances). Limits for courts not of record are 90 days or $300, or both. C.R.S. § 13-10-113(1.5).

Municipalities vary in the range of potential punishments and vest the municipal court with discretion to impose an appropriate sentence. *See* Exhibit A. Many rely on a general penalty provision based on the maximum penalties allowed under state law, but others impose a lower maximum, rely on schedules that provide for discretion in sentencing, or allow only fines.

### B. Municipal courts and the offenses they adjudicate benefit Colorado's justice system.

Colorado's municipal courts benefit their communities as well as the state. Municipal courts are created to implement laws that were designed to address the specific needs and problems of a municipality. Colorado Municipal League, *Municipal Courts*, 9 (2019). Municipal courts relieve the state court system of a significant burden. This Court has recognized that municipal courts are a valid and necessary adjunct to the state court system and some offenses are best prosecuted in municipal court. *Quintana*, 498 P.2d at 932; *Blackman v. Cnty. Ct.*, 455 P.2d 885 (Colo. 1969); *Schooley v. Cain*, 351 P.2d 389 (Colo. 1960).

Municipal courts offer accessibility to victims, defendants, and witnesses that the state court system cannot provide. They are in the community where most of those people are likely to live, reducing the need for travel, time off work, and the distraction of witnesses (like police officers) from their duties. Municipal courts "have an advantage over other courts because of their simplicity in procedure and the reduction of expense and delay," making them user-friendly for defendants and attorneys and expedient, benefiting all involved. Randall, 38 Colo. Law. 39; *see also* C.M.C.R. Rule 202 (recognizing that the rules should be "construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay"). Municipal courts also provide justice-involved

persons unique opportunities, such as creative sentencing, restorative justice programs, and diversion options. *See Problem Solving Courts and Services*, Colorado Municipal Judges Association, https://www.coloradomunicipalcourts.org/problem-solving-courts/.

Criminal case filings have increased in many municipal courts. Randall, 38 Colo. Law. 39. By taking these cases, municipalities allow state courts to handle more serious offenses while also addressing their communities' most pressing public safety issues. These cases would otherwise have been filed in state court, resulting in an increased caseload for judges, prosecutors, and defense counsel. By example, when the General Assembly recently considered eliminating domestic violence prosecution in municipal courts, Legislative Council estimated that about 3,884 cases annually would shift to state courts or Denver county court from only five municipal courts. The cost to the state: an estimated $2.6 million in 2023-24 and $5.5 million in 2024-25, dozens of new state employees, and millions of dollars to fund district attorneys offices (excluding Denver). Fiscal Note, HB23-1222, March 31, 2024, available at https://tinyurl.com/HB23-1222-Fiscal-Note.

## II. The state has not preempted municipal penalties, which are strictly a matter of local concern.

Municipal home rule is based upon the theory that a municipality's citizens should have the right to decide how their local government is organized and how

local problems are solved. Coloradans overwhelmingly adopted Article XX of the Colorado Constitution in 1902 and, in 1912, amendment of Article XX, Section 6, to broadly express home rule powers. Since 1970, municipalities of any size can adopt a home rule charter. *See* Colorado Municipal League, *Home Rule Handbook: An Introduction to the Establishment and Exercise of Home Rule*, 3-5 (2022) (excerpt attached as Exhibit B).

Where a constitutional provision conflicts or is inconsistent with the provisions of Article XX, the conflicting other provision is "inapplicable to the matters and things by [the home rule] amendment covered and provided for." COLO. CONST. Art. XX, § 8. Article XX, Section 6 expressly grants authority to create municipal courts and to impose fines and penalties for the violations of any charter provision or ordinance.

**A. Municipal penalties do not conflict with state law.**

Home rule municipalities have plenary authority to regulate issues of local concern, but state law supersedes conflicting ordinances in a matter of statewide or mixed concern. *See City of Longmont v. Colo. Oil and Gas Ass'n*, 369 P.3d 573, 579 (Colo. 2016). The Court need not conduct this analysis here because no conflict exists between state law, as amended by Senate Bill 21-271, and any municipal ordinances imposing penalties for violations of municipal ordinances. *See Vela*, 484

P.2d at 1206 (declining to address whether crime of disturbance was strictly a local matter because there was no conflict). Without a conflict, a home rule ordinance can coexist with a state ordinance even on a matter of mixed concern. *Longmont*, 369 P.3d at 579.

Conflicts are recognized in three forms of preemption – express, implied, or operational conflict preemption. *Id.* at 582. Here, there is no "clear and unequivocal" statement of intent or any implicit intent to occupy the field of criminal penalties for both municipal and state offenses. *See id*. Whether an operational conflict exists depends on whether effectuating the local interest materially impedes or destroys a state interest, which can include authorizing what a state law forbids or forbidding what a state law allows. *Id*. Showing an operational conflict preemption of express home rule authority should be a heavy burden especially when there is no evidence that the General Assembly intended such preemption. Courts should endeavor to avoid finding conflict between state and local legislative acts and should attempt to harmonize and give effect to both. *Bd. of Cnty. Commr's La Plata Cnty. v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1058 (Colo. 1992).

As detailed above, the independence of municipal courts and the broad authority of home rule municipalities to define local crimes (even where the state addresses the same crime) and establish unique local penalties are not novel concepts

in Colorado. The General Assembly is aware municipalities have general statutory authority to impose penalties for ordinance violations that can exceed state penalties and adjusted those as recently as 2019. *See* C.R.S. §§ 13-10-113(1), 31-16-101(1). The General Assembly is also aware that sentencing authority is limited to "the sentence or fine limitations established by ordinance," unlimited by statutory penalties for similar state crimes. *See* C.R.S. § 13-10-113(2).

In 2021, the General Assembly expressly confined SB21-271 to state crimes and penalties and showed no intent to mandate uniform penalties across municipal and state courts. Nothing in SB21-271 prohibits home rule municipalities from imposing more stringent penalties for crimes committed in their jurisdiction than that imposed by the state for violations of a corresponding state law. The task force from which SB21-271 grew, specifically acknowledged it was not addressing municipal charges in its recommendations. Colorado Commission on Criminal and Juvenile Justice Sentencing Reform Task Force, Sentence Structure Working Group, Minutes of Q&A Session #2: Misdemeanor Sentencing/Offenses (March 5, 2021), https://cdpsdocs.state.co.us/ccjj/meetings/2021/2021-03-05_CCJJ-SRTF-SentStructWG-Q&A-Minutes.pdf.

"Except in felony categories, mere difference in penalty provisions in a statute and ordinance does not necessarily establish a conflict in the sense discussed here."

*City of Aurora v. Martin*, 507 P.2d 868, 870 (Colo. 1973). There is no state interest in uniform penalties that can be impeded when: state law permits concurrent jurisdiction for similar offenses; a separate and distinct system exists to define and adjudicate municipal offenses; and this Court's precedent recognizes that different penalties can apply at the municipal and state levels. Unlike in *Longmont*, there is no exhaustive set of statewide regulations for municipal penalties and the General Assembly effectively disclaimed any interest in ensuring uniformity between municipal and state penalties. No state interest in preempting municipal ordinance penalties should be inferred under these circumstances. *See Ryals v. City of Englewood*, 364 P.3d 900, 910 (Colo. 2016) (rejecting view that preemptive state interest could be inferred from a state preference). Notwithstanding Petitioner's claim that "times have changed," nothing has "changed" with respect to the seriousness of crime and the impact it has on a community. The state presumably retains an interest in combating crime, which is enhanced by municipal prosecution instead of prosecution in state court.

Ordinances define potential penalties for violations of ordinances that prohibit a particular action in the municipality. No municipality impedes criminal sentencing in state courts for state crimes. No municipality imposes a penalty for the violation of the state trespass statutes. If anything, municipal penalties and ordinances further

the state's interest in combating crime and reducing the burden on the state court system.

### B. Municipal penalties remain a matter of local concern.

This Court may choose not to undertake a constitutional evaluation based on the possibility that the General Assembly, by silence, intended to preempt home rule authority and disrupt longstanding practice in this area. If the Court wishes to consider whether this case involves an issue of local or mixed concern pursuant to the factors detailed in *City and County of Denver v. State*, 369 P.3d 573 (Colo. 1990), CML urges the Court to hold that municipal penalties are a matter of strictly local concern, consistent with this Court's precedent and Article XX, Section 6's express language concerning municipal penalties.

This Court previously confirmed that the penalty for a municipal ordinance violation should be viewed as a matter of local concern and that a home rule municipality has the "right to impose its own system of punishments for violations of its ordinances," distinct from the state's sentencing scheme. *People v. Wade*, 757 P.2d 1074, 1076-77 (Colo. 1988). In *Wade*, this Court corrected a misapplication of *Merris* and rejected the view that uniformity of the "treatment and disposition of an offense" required municipal penalties to align with the state's sentencing principles, even if state law restricted a probation term longer than the maximum authorized

imprisonment. 757 P.2d at 1077 ("To find that a home rule city's penal ordinances must share the state's so-called "philosophy in sentencing" would diminish, to a large degree, the independence and self-determination vested in those cities by the constitution."); *see also Martin*, 507 P.2d at 871 (holding municipal penalty could be lower than state penalty for similar assault and battery offense).

Under the *Denver v. State* factors, local interests should be viewed as superseding any state interest in the nature and extent of penalties for municipal ordinance violations, if not for the offense itself. CML offers the following to provide further context for the Court in addition to the analysis of the *Denver v. State* factors by Aurora and other supporting *amici*. If the mere passage of time and changed policy sentiments of the General Assembly (real or suggested) control the home rule analysis, then Article XX ceases to have any meaning.

**Uniformity**

There is no state interest in the uniformity of municipal penalties and state penalties for similar offenses. Uniformity itself is not a virtue and the General Assembly has made no declaration that it has any interest in such uniformity. In fact, the Code of Criminal Procedure is "the legislature's affirmative expression of its intent that state penalties for offenses not be understood as preempting home rule city laws." *Wade*, 757 P.2d at 1076 (discussing C.R.S. § 16-1-102, which does not

apply "to violations of municipal charters or municipal ordinances" except in specified circumstances). Colorado's criminal justice system contemplates a separate municipal court system that adjudicates municipal charges and imposes penalties defined by municipal ordinance to address specific, localized needs. *See* C.R.S. §§ 13-10-101 *et seq*. The statutory limits on municipal penalties have never been required to conform to state penalties for state crimes.

No person should expect uniformity of penalties or any factor that influences penalties, including maximum penalties, sentencing guidelines, probation, alternative sentencing, and other variations that exist between court systems. Such a conclusion would be inconsistent with statute and this Court's precedent recognizing that home rule municipalities can impose their own punishments for violations of ordinances. *See* C.R.S. § 13-10-113; *Wade*, 757 P.2d at 1076; *Martin*, 507 P.2d at 871. Every person is deemed to know the law and may be subject to different penalties or commit different offenses depending on where they are in the state. This could be a specific municipality or a sensitive area in which a criminal act is punished more than the same act committed elsewhere. *See, e.g.*, C.R.S. § 18-4-503(1)(b) (punishing trespass in common areas of hotels or apartments more severely than simple trespass).

The Court's decision in *Commerce City* must be understood in context. The Court's holdings in *Wade* and *Martin* were not overturned. The statute at issue limited the use of a new technology on highways that affected drivers committing non-criminal offenses in transit through a municipality. Unlike traditional traffic stops, drivers would receive notice of the offense weeks later. The statute also limited sharing revenue with vendors. In contrast, criminal trespass does not involve new technology and persons criminally trespassing in a particular jurisdiction is in no way like the drivers passing through numerous jurisdictions, having no notice that a violation occurred. *See Commerce City*, 40 P.3d at 1280-81. The defendant in this case should not have been surprised that they were committing trespass in Aurora and should expect that Aurora could punish the crime more severely.

**Extraterritoriality**

The only extraterritorial effects of ordinances like Aurora's are to deter criminal acts in the city, perhaps pushing them elsewhere, and to reduce the burden on the state's court system. Locally defined penalties for ordinance violations do not affect persons outside of the municipal boundary unless they choose to enter the municipality and intentionally engage in criminal activities prohibited by municipal ordinance. There is no showing that, like the ordinances in *Commerce City*, Aurora's ordinances disproportionately affect non-residents or that individuals will be subject

to a patchwork of penalties when committing crimes in many jurisdictions. *See* 40 P.3d at 1284. No extraterritorial effect of significance has been identified to show a state interest. *See Denver v. State*, 788 P.2d at 769 (extraterritorial impact must be significant and more than *de minimis*).

**Tradition**

As discussed above, Colorado law has long envisioned a criminal justice system that permits both the state and municipalities to regulate misdemeanors and petty offenses, even regarding the same conduct, and allows municipalities to determine their own penalties. This reflects the understanding that municipal courts are particularly adept at handling low level prosecutions. Colorado's statutes have consistently granted municipalities broad discretion to define the applicable penalty; this did not change with SB21-271.

Other authority that distinguishes between municipal and state court authority further support a finding of predominant local interest with respect to history and tradition. Municipal courts are governed by separate statutes, which generally may be superseded by home rule municipalities. *See* C.R.S. §§ 13-10-101 *et seq*. The Code of Criminal Procedure generally does not apply to prosecution of municipal violations. *See Wade*, 757 P.2d at 1076; C.R.S. § 16-1-102. The sentencing authority of municipal courts is governed by municipal ordinance, not state law for statutory

offenses. *Compare* C.R.S. § 13-10-113(2), *with* C.R.S. § 18-1-103 (stating Title 18 governs "punishment for any offense defined in any statute of this state, whether in this title or elsewhere . . .").

**Constitution**

As detailed above, Article XX, Section 6 expressly grants home rule municipalities the power to create and define municipal court authority and to impose, enforce, and collect penalties for charter and ordinance violations. The clear delegation of home rule authority and the long tradition of permitting municipal penalties to be defined locally, even when varying from state penalties, should be controlling in this case. The textual commitment of authority to home rule municipalities is significant and strongly weighs in favor of finding penalties for municipal ordinance violations are strictly a matter of local concern. *See Denver v. State*, 369 P.3d at 770 (holding the local interest was substantial, primarily due to direct textual support in the constitution); *see also Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161, 170 (Colo. 2008) (holding the legislature could not deny express condemnation authority in Article XX even where its use could implicate statewide concerns).

Article XX, Section 6 alone establishes that municipal penalties for ordinance violations are a matter of substantial local concern. The remaining *Denver v. State*

factors buttress that finding and make clear that the state has no demonstrable or significant interest necessitating a different result.

## III. Municipal ordinance penalties that vary from statutory penalties do not deny equal protection.

CML supports arguments by Aurora regarding the application of Article II, Section 25 of the Colorado Constitution. CML also urges the Court to refuse to extend *Trueblood v. Tinsley*, 366 P.2d 655 (Colo. 1961) to require uniformity between statutory and municipal ordinance penalties, if it does not choose to recede from *Trueblood* and its progeny entirely and follow the reasoning of *United States v. Batchelder*, 442 U.S. 114 (1979).

This Court has never held that equal protection is implicated when a municipal ordinance and a state criminal statute involving the same conduct could result in different penalties. *Trueblood* and its progeny relate to comparative penalties of state statutes; none concern municipal ordinances that differ from state statutes. Given the Court's decisions in *Wade* and *Martin*, which were issued during the same period with no reference to equal protection concerns, it is unlikely such precedent would exist.

There are compelling reasons for maintaining the narrow application of *Trueblood*, in addition to those identified by Aurora. Home rule municipalities have substantial and compelling grounds for linking stricter penalties to crime that occurs

in their jurisdictions. These municipalities have adopted different penalties for trespass and trespass to motor vehicles. *See* Exhibit A. A municipal court may maintain a fine schedule that is below the statutory penalty for a corresponding offense. These choices are neither arbitrary nor irrational nor are they hidden from public view. As the authority to do so is grounded in the express text of Article XX of the Colorado Constitution, any conflicts between constitutional provisions should be avoided.

Given the differences in court systems, it is an oversimplification to state that a potentially harsher penalty alone in a municipal court violates equal protection when the maximum penalty alone is only part of a case. A prosecution in one forum can result in a variety of differences affecting a possible sentence beyond the potential maximum penalty. For example, a district attorney may have lenient plea-bargaining policies, whereas a municipal prosecutor may insist on taking more cases to trial; the same may be true even in state court, with differences between district attorney's offices across the state.

Conversely, there are permutations in which prosecution in state court could be more severe than in municipal court. While state law may appear to be more lenient given SB21-271, prosecution in state court could result in a less favorable outcome for a defendant depending on aggravating factors, prior offenses, or other

circumstances. For example, state trespass offenses are subject to an eighteen-month statute of limitations for a misdemeanor or six months for a petty offense but prosecutions for municipal violations are limited to a one-year statute of limitations, both running from the commission of the offense. *Compare* C.R.S. § 16-5-401(1)(a), *with* C.R.S. § 31-16-111.

Extending Article II, Section 25 as suggested by Petitioner would result in a situation where any difference between penalties or potential outcomes could lead to an equal protection claim in either state or municipal court. Such a result would undermine otherwise viable prosecutions. Already, Petitioner's theory has resulted in lawsuits against municipal peace officers for the alleged deprivation of constitutional rights pursuant to C.R.S. § 13-21-131 on the theory that citation into municipal court violates Article II, § 25. *See Lozano v. Westminster, McDonald & McKechnie*, 2024CV31572.

The Court's decision to align with federal jurisprudence to abandon the "dual sovereignty" concept as it relates to the double jeopardy clause has no bearing on the ability of municipalities to impose different punishments as long as the person is not tried twice for the same offense. *See People v. Horvat*, 527 P.2d 47, 49 (Colo. 1974) (citing *Waller v. Florida*, 397 U.S. 387 (1970). Despite being superseded as to double jeopardy issues, decisions contemporary with the Colorado Constitution's

adoption reflect no concern that equal protection would be offended by the state and municipalities establishing different penalty schemes for the same acts. *See Hughes v. People*, 9 P. 50, 52 (1885) ("the single act, being made punishable both by the general law of the state and by the ordinances of the town wherein it was committed, constitutes two distinct and several offenses, subject to punishment by the proper tribunals of the state and the municipality respectively"); *Deitz v. City of Central*, 1 Colo. 323, 328 (Colo. 1871).

Ultimately, if home rule municipalities cannot effectively address crimes because the General Assembly has dictated a lower penalty for an offense statewide, municipalities may decide, for fiscal, policy, or other reasons, to no longer prosecute such matters. Each case would then need to be filed in state court, substantially increasing the burden on the court system. Victims, defendants, and witnesses would likely experience additional costs and travel because the state court is not likely to be in their municipality. Police officers would be taken away from their jurisdiction for trials and hearings. Alternatively, these cases may never be prosecuted, leaving victims without justice and communities without remedy. The concerns underlying Colorado's minority view of equal protection surely do not merit these results.

## CONCLUSION

Home rule municipalities are endowed with constitutional authority in Article XX, Section 6 to establish local penalties for the violations of municipal ordinances to address impacts of crime on their communities. These penalties are neither preempted by state law nor unconstitutional under Article II, Section 25.

Dated January 13, 2025.

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## CERTIFICATE OF SERVICE

I hereby certify that on this January 13, 2025, I filed the foregoing **BRIEF OF *AMICUS CURIAE* COLORADO MUNICIPAL LEAGUE IN SUPPORT OF THE CITY OF AURORA** via Colorado Courts E-Filing, which will send a true and correct copy to the following:

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