COLORADO SUPREME COURT

2 East 14th Avenue
Denver, CO 80203

Original Proceeding:
City of Aurora Municipal Court
Case Numbers J316178, J317516
Honorable Shelby L. Fyles, Judge

IN RE:

THE PEOPLE OF THE STATE OF COLORADO,
by and through the
CITY OF AURORA,
Respondent.
v.

DANIELLE ASHLEY SIMONS,
Petitioner.

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Case Nos. 2024SA308,
2024SA309

Amicus Brief of the Denver District Attorney and Denver City Attorney (In Support of Respondent City of Aurora)

CERTIFICATE OF COMPLIANCE

I certify that this Amended Amicus Brief complies with the applicable parts of C.A.R. 28, 29, and 32. I further certify that the brief contains 4690 out of a possible 4750 words. I acknowledge that my brief may be stricken if it fails to comply with the governing rules.

Anya Havriliak
Deputy District Attorney

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INTEREST OF THE AMICUS

Beth McCann is the District Attorney for the Second Judicial District, which comprises the City and County of Denver. Her office prosecutes tens of thousands of cases a year in the district, county, and juvenile courts. In 2023, for example, her office was responsible for over 5,000 felony matters, 7,500 misdemeanor matters, and 500 juvenile matters. That same year, the Denver DA's office filed 89 cases involving third degree criminal trespass (under section 18-4-504, C.R.S.) and 128 cases involving trespass to a motor vehicle (under section 18-3-504(1)(c), C.R.S.).

The Denver City Attorney's Office Prosecution and Code Enforcement Section is a unit within the City Attorney's Office responsible for the prosecution of municipal crimes, traffic offenses, and code violations. In 2023, the City Attorney's Office prosecuted almost 12,000 municipal criminal cases and over 500 juvenile cases. In 2024, the number of municipal prosecutions increased by over 15% to almost 13,500 cases. Of these cases, in 2023, the City Attorney's Office prosecuted 2,845 cases involving municipal trespass (under 38-115, D.R.M.C.) and 49 cases involving municipal trespass to motor vehicles (under 38-51.12, D.R.M.C.). In 2024, the City Attorney's Office prosecuted 3,499 cases involving municipal trespass and 51 cases involving municipal trespass to motor vehicles.

Trespass is the City's most prosecuted offense. Reducing municipal trespass to a petty offense—from a maximum penalty of 300 days in jail and/or a $999 fine to a maximum of 10 days in jail and/or a $300 fine—would significantly limit the City's ability to effectively enforce its trespass ordinance and the area restrictions associated with these cases.

Several trespass cases prosecuted by the CAO directly impact victim safety, often involving a domestic violence factual basis.[1] Defendants in such cases are frequently placed on probation with conditions requiring treatment and adherence to protection orders. Moreover, prosecuting municipal trespass has a positive community impact, as area restrictions imposed through these cases help deter defendants from returning to high-crime areas. By reducing penalties for trespass, defendants would be greater incentivized to plead open to the court and accept a maximum plea of 10 days incarceration—resulting in the immediate closure of their cases—instead of accepting a plea of probation. This would hinder the City's ability to impose probation or enforce area restrictions as part of sentencing.

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[1] In 2023, 44 municipal trespass cases had a domestic violence factual basis. In 2024, 32 municipal trespass cases had a domestic violence factual basis.

Furthermore, individuals would be less inclined to comply with area restrictions, knowing they would expire after serving a short jail sentence.

In this case, both the Denver District Attorney's Office and the City Attorney's Office agree with Aurora's position. In particular, the Offices support Aurora's contention that the Court should abandon its current equal protection doctrine and, like a majority of other states, adopt an equal protection scheme consistent with the federal rule expressed in *United States v. Batchelder*, 442 U.S. 114 (1979). Further, the Offices believe that the extension of Colorado's equal protection rule proposed by Petitioner would negatively impact the balance of cases handled by, alternatively, the Denver DA's Office and the City Attorney's Office.

ARGUMENT

Colorado's equal protection doctrine is at a crossroads. It already stands apart from that of the federal system and most other states. If the Petitioner has her way, the doctrine would be further contorted to limit prosecutorial discretion without achieving the systematic or individual fairness Petitioner is concerned about.

The guarantee of equal protection does not require the Court to take Petitioner's proposed path. Rather, the Denver District and City Attorneys agree with Aurora that the Court should harmonize Colorado's special equal protection doctrine with that of most other states and embrace the reasoning of *Batchelder*. The District and City Attorneys also agree that, in the alternative, this Court should decline to apply Colorado's special doctrine to the jurisdictional border between states and municipalities.

I. This Court should abandon its special equal protection doctrine.

In 1979, the Supreme Court decided the case of *United States v. Batchelder*, 442 U.S. 114 (1979). The Court held that equal protection is not offended when statutes proscribe identical conduct but authorize different penalties. Writing for a unanimous Court, Justice Marshall stated: "[T]here is no appreciable difference between the discretion a prosecutor exercises when deciding to charge

under one of two statutes with different elements and the discretion he exercises when choosing one of two statutes with identical elements." 442 U.S. at 125.

When *Batchelder* was decided, Colorado was one of several states that had taken a different view of equal protection. Under that view, equal protection is violated whenever statutes prescribe different degrees of punishment for the same acts committed under like circumstances. *See People v. Calvaresi*, 534 P.2d 316 (Colo. 1975); *People v. Bramlett*, 573 P.2d 94 (Colo. 1977). *See also*, *State v. Pirkey*, 281 P.2d 698 (Or. 1955).

Thus, after *Batchelder*, it appeared that the Colorado Supreme Court would have to choose between rescinding its view of equal protection or articulate a reason why "due process and equal protection" in Colorado means something other than "due process and equal protection" under the United States Constitution.

However, the Colorado Supreme Court did neither. In *People v. Estrada*, 601 P.2d 619 (Colo. 1979), the court declined to follow *Batchelder* but offered no explanation for why Colorado's constitution is different. The court simply said, "We are not persuaded by the Supreme Court's reasoning on this issue and expressly decline to apply it to our own State Constitution's due process

equal protection guarantee." 601 P.2d at 621. Similarly, in *People v. Marcy,* 628 P.2d 69, 74 (Colo. 1981), the court merely observed that it had always used a different approach from the one announced in *Batchelder*.

Amici here believe that this Court should overrule that line of decisions. The jurisprudence surrounding Colorado's special equal protection rule is troubling for two reasons.

A. The decisions set a poor example for a method of constitutional analysis.

Quite apart from the merits of the equal protection question, *Estrada* and *Marcy* are troubling because they provide so little reason for the decision to reject *Batchelder*. Because Article II of the Colorado Constitution is based on the United States Constitution, its provisions generally should track the parallel provisions contained in the federal Bill of Rights. Absent a specific, identifiable reason (such as a difference in text), fundamental constitutional terms—such as freedom of speech, unreasonable searches and seizures, and due process—should mean the same thing in Colorado that they mean under the federal constitution.

Estrada and *Marcy* identify no specific reason for finding that Colorado's due process clause contains more "equal protection" than the Fifth and Fourteenth Amendments. Their conclusory explanations leave the impression that

fundamental constitutional questions depend primarily on the political views of sitting justices.

This Court should overrule this line of authority to establish that reasons are required before the Colorado Constitution will be held to differ from the United States Constitution.

B. Colorado's special equal protection rule is doctrinally unsound.

Since *Batchelder* was decided, the *Calvaresi* view of equal protection has fallen from favor. Gradually, states that had previously adopted this approach have joined the majority. This includes Oregon, whose decision in *Pirkey*, 281 P.2d at 698, was the leading case in support of the pre-*Batchelder* view. *See City of Klamath Falls v. Winters*, 619 P.2d 217 (Or. 1980).

There are good reasons for this development. First, the *Calvaresi* view makes sense only on first reading. Although the principle underlying *Calvaresi* is legitimate—"Equal protection of the law is a guarantee of like treatment of all those who are similarly situated." 534 P.2d at 318—it does not follow that the principle is violated when two statutes authorize different penalties for the same conduct. The two statutes do not create different classes of offenders. All offenders are treated the same, because all are subject to the same discretionary

charging decision. *See Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358, 1363–64 (Pa. 1986) (the statute does not create an arbitrary classification; any equal protection problem arises only upon charging, as an issue of "selective enforcement").

Second, the *Calvaresi* view is itself arbitrary, in that it "protects" defendants from only one kind of discretionary decision. Under *Calvaresi*, prosecutors cannot choose between statutes that govern the same conduct but provide different penalties. But why single out a prosecutor's choice between two statutes with different penalties? Prosecutors routinely make discretionary calls that are similar, equally important to the defendant, and equally capable of abuse: (1) whether to charge with an offense at all; (2) whether to charge a greater or lesser-included offense; (3) whether to charge sentence enhancers (such as habitual criminal counts); and (4) whether to grant immunity.

Today, Colorado stands with few jurisdictions in recognizing this type of equal protection claim. One other state—Hawai'i—has found a distinct equal protection right embedded in its state constitution. *State v. Sasai*, 429 P.3d 1214, 1224 n.12 (Haw. 2018) (citing *State v. Modica*, 567 P.2d 420, 421 (1977)).

By contrast, most jurisdictions follow *Batchelder* and have found no reason to adopt a separate rule based on state law.[2] A few states have based their approach on state law but have done so in a way that corresponds with *Batchelder*.[3]

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[2] *Hart v. State*, 702 P.2d 651, 661 (Alaska App. 1985); *Simpson v. State*, 837 S.W.2d 475 (Ark. 1992); *State v. Patton*, 665 P.2d 587, 589 (Ariz. App. 1983); *Davis v. Municipal Court*, 757 P.2d 11, 26 (Cal. 1988); *State v. Evans*, 511 A.2d 1006 (Conn. 1986); *Hunter v. State*, 420 A.2d 119 (Del. 1980); *State v. Cogswell*, 521 So.2d 1081, 1082 (Fla. 1988); *State v. Larsen*, 24 P.3d 702, 706 (Idaho 2001); *Skinner v. State*, 732 N.E.2d 235 (Ind. App. 2000); *State v. Perry*, 440 N.W.2d 389 (Iowa 1989); *City of Baton Rouge v. Williams*, 661 So. 2d 445, 451 (La. 1995); *State v. Pickering*, 462 A.2d 1151, 1159 (Maine 1983); *Cicoria v. State*, 629 A.2d 742, 753 (Md. 1993); *Commonwealth v. Hudson*, 535 N.E.2d 208, 212 (Mass. 1989); *People v. Ford*, 331 N.W.2d 878, 891 (Mich. 1982); *State v. Williams*, 396 N.W.2d 840, 842 (Minn. 1986); *State v. Watts*, 601 S.W.2d 617, 619 (Mo. 1980); *State v. Miller*, 216 Neb. 72, 341 N.W.2d 915 (1983); *Sheriff, Clark County v. Killman*, 691 P.2d 434 (Nevada 1984); *State v. Peck*, 666 A.2d 962 (N.H. 1995); *State v. Kittrell*, 678 A.2d 209, 218 (N.J. 1996); *State v. Hatch*, 346 N.W.2d 268, 273 (N.D. 1984); *Hunt v. State*, 601 P.2d 464 (Ok. Crim. App. 1979), *cert. denied,* 446 U.S. 969 (1980); *Klamath Falls,* 619 P.2d at 217; *State v. Padula,* 551 A.2d 687 (R.I. 1988); *Strickland v. State,* 274 S.E.2d 430 (S.C. 1981); *State v. Secrest,* 331 N.W.2d 580 (S.D. 1983); *State v. Gilliam*, 901 S.W.2d 385, 389 (Tenn. Crim. App. 1995); *Texas Dept. of Public Safety v. Chavez*, 981 S.W.2d 449 (Tex. 1998); *State v. Tuttle*, 780 P.2d 1203, 1215 (Utah 1989), *cert. denied*, 494 U.S. 1018 (1999); *State v. Perry*, 563 A.2d 1007 (Vt. 1989); *City of Kennewick v. Fountain*, 802 P.2d 1371 (Wash. 1991); *State v. Cissell*, 378 N.W. 2d 691, 695 (1985); *cert. denied*, 475 U.S. 1126 (1986); *Nowack v. State*, 774 P.2d 561, 565 (Wyo. 1989).

Before *Batchelder*, Ohio also employed a *Calvaresi*-type rule. *State v. Wilson*, 388 N.E.2d 745, 746 (Ohio 1979). In the last decade, courts of appeals in Ohio have cast doubt on whether Ohio's pre-*Batchelder* rule, which was based on the U.S.

There is no doubt that, over the years, Colorado's appellate courts have often applied the *Calvaresi* view of equal protection. But a bad rule should not survive for the sake of continuity. Colorado's special equal protection doctrine is logically unsound, and it imposes significant costs, in the form of frequent litigation, with little corresponding benefit. Therefore, this court should overrule the *Calvaresi* line of cases and announce a new rule of constitutional law. *See Stroud v. City of Aspen*, 532 P.2d 720, 722 (Colo. 1975) (adopting a new constitutional rule to reflect majority view while acknowledging doctrine of stare decisis).

II. Assuming Colorado does not abandon its special equal protection doctrine, it should not extend the doctrine further in this case.

Petitioner provides no compelling reason for extending Colorado's special equal protection doctrine. And doing so would have significant adverse consequences.

Constitution, is still good law. *See, e.g.*, *State v. Ballard*, 2016 WL 524439 (Ohio Ct. App. 2016). The Ohio Supreme Court has yet to address the issue. *Cf. State v. Klembus*, 51 N.E.3d 641, 646 (Ohio 2016).

[3] *State v. Tiraboschi*, 504 S.E. 2d 689 (Ga. 1998); *People v. Barlow*, 317 N.E.2d 49 (Ill. 1974); *Cumbest v. State*, 456 So. 2d 209, 222 (Miss. 1984); *People v. Eboli*, 313 N.E.2d 746 (N.Y. 1974).

The Court has never applied the *Trueblood-Calvaresi* rule between the state and municipal court systems. And that makes sense. The doctrine seeks to control for arbitrary classifications of defendants within a single legislative scheme. *See, e.g.*, *Campbell v. People*, 73 P.3d 11, 14 (Colo. 2003) ("Our equal protection jurisprudence under Colorado law prohibits *the General Assembly* from providing the prosecution with complete unrestrained discretion in the charging decision." (emphasis added)); *Dean v. People*, 2016 CO 14, ¶ 16, 366 P.3d 593, 598 ("We have acknowledged, however, that *the General Assembly* . . . is entitled to establish more severe penalties for acts it believes have greater social impact and graver consequences." (emphasis added)). In other words, Colorado's equal protection doctrine is designed to compare two statutes generated by a single legislative body.

Here, though, the Petitioner seeks to stretch the doctrine so it straddles the boundaries between state and municipal law—across two different legislative schemes and two different law enforcement entities. The guarantee of equal protection does not require such an extension of the doctrine.

A. Extension of the doctrine here does not address fairness concerns.

The equal protection doctrine—under both *Batchelder* and *Calvaresi*—comes down to a question of fairness—from the perspective of both the prosecutor and the defendant. From the prosecutor's view: Can these statutes be applied

fairly? *See Marcy*, 628 P.2d at 80 ("We emphasize, however, that an evenhanded application of the law turns on reasonably intelligible standards of criminal culpability."); *Calvaresi*, 534 P.2d at 318; *United States v. Batchelder*, 442 U.S. 114 at 123–24 ("This Court has long recognized that when an act violates more than one criminal statute, the Government may prosecute under either so long as it does not discriminate against any class of defendants.").

And from the defendant's view: Does a criminal statute "give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden[?]" *Batchelder*, 442 U.S. at 123. If it does not, then the statute is invalid. *Id.*; *see also Marcy*, 628 P.2d at 73 (noting requirement of "adequate definition of the act and mental state of each offense so that fair warning is given to all persons concerning the nature of the proscribed conduct and the penalties therefor").

The existence of concurrent criminal jurisdictions does not stand in the way of fundamental fairness from either perspective. If it did, federal and state jurisdictions could not exist concurrently. *See, e.g.*, *Rinaldi v. United States*, 434 U.S. 22, 28 (1977) (discussing prior holdings that U.S. Constitution permits state and federal governments to prosecute the same act). Nor would the Colorado constitution expressly permit concurrent state and municipal jurisdiction and "the imposition, enforcement and collection of fines and penalties for the violation of

any . . . ordinance adopted in pursuance of the [municipal] charter." Colo. Const. art. XX, § 6.

In the federal/state context, where both federal and state law proscribe the same act, there is no rule that the jurisdiction with the lighter penalty must be the one to prosecute the case. But Petitioner asserts that, without such a rule applied cross the state/municipal boundary, regional disparity in penalties would violate the equal protection guarantee. *See Pet. for Rule to Show Cause* ("*Pet.*") at 11–12.

Petitioner ignores, however, that these "regional disparities" exist throughout our legal scheme. Where someone's residence is located matters to the amount of property tax owed. Where someone drives above the speed limit—whether in front of a school or not—matters to the size of the fine imposed. In other words, where something happens matters. Subjecting a defendant to a higher potential penalty because he committed a proscribed act within a municipality's borders—as opposed to somewhere else in the state—is not irrational discrimination.

Petitioner's primary complaint comes down to discretion: How could it ever be fair—rather than entirely arbitrary—to choose which defendants should be prosecuted under a state statute as opposed to a municipal ordinance if both could apply? It's fair for several reasons.

First, it's fair because it is a choice based on legitimate factors. Petitioner assumes that more discretion means more unfairness. But prosecutorial discretion is not synonymous with arbitrariness. To the contrary, a system that affords discretion allows a prosecutor to take into consideration all the circumstances surrounding the crime *and* the whole person committing that offense. More flexibility in charging decisions means more flexibility in crafting a resolution that balances the many considerations of a criminal justice scheme and the nuances of each case: community safety, deterrence, an individual's aggravating or mitigating personal history, and an individual's capacity for reform. Further, municipalities in particular have a greater understanding of specific areas in the city with different enforcement needs.

Second, it's fair when two different bodies prohibit the same conduct. The fairness concerns that might[4] be triggered when two statutes in a single scheme prohibit the same conduct with different penalties do not translate to the comparison between two statutes in two separate schemes. A difference in penalties assigned by two different law-making bodies (and enforced by two

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[4] Or might not. See *Batchelder* dispatching those concerns.

different agencies) isn't irrational. Rather, it's the product of the distinct rationales a municipality has underpinning its code: specific concerns related to the municipality's population, rates of certain crimes, and the input of citizens. *See People v. Wade*, 757 P.2d 1074, 1077 (Colo. 1988) ("[T]o find that a home rule city's penal ordinances must share the state's so-called 'philosophy in sentencing' would diminish . . . the independence and self-determination vested in those cities by the constitution.").

An urban municipality, like Denver or Aurora, might have a view of, say, shoplifting that is different from that of a smaller rural municipality, like Two Buttes, where shoplifting might be less of an issue. Conversely, that more rural municipality might be more concerned about issues like trespass than its more populous cousins. And the state, which must balance different considerations altogether, with input from lots of different stakeholders, might take yet a third view on each discreet issue. That's the reasonable or "rational" basis cases like *Marcy* and *Calvaresi* look for. *See, e.g.*, *Marcy*, 628 P.2d at 80; *Calvaresi*, 534 P.2d at 318. *Cf. Rinaldi*, 434 U.S. at 28 ("As these decisions recognize, in our federal system the State and Federal Governments have legitimate, but not necessarily identical, interests in the prosecution of a person for acts made criminal under the laws of both.").

B. Extension of the *Trueblood-Calvaresi* equal protection doctrine here would have adverse consequences.

As Aurora points out, extending Colorado's unique equal protection doctrine to apply across state/municipal lines would cause further issues.[5] As an initial matter, limiting prosecutorial discretion does not necessarily mean a more favorable or fair result for an individual defendant. Currently, when a single violation could be charged in either state or municipal court, the decision about where to prosecute often takes into consideration whether a defendant has existing cases on either the state or municipal docket. Keeping all of a defendant's cases in one courthouse, so to speak, makes good sense: Not only are court appearances logistically simpler for the defendant, a global resolution—usually in the form of a single conviction and the remaining cases and charges dismissed—is more likely.

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[5] Not to mention the legislation Colorado lawmakers are expected to propose in the 2025 session, including a bill that "would not allow cities to punish people beyond the maximum sentence outlined in state statute for the same crime." Sam Tabachnik, *Colorado Lawmakers to Address Municipal Court Sentencing Disparities*, DENV. POST, Dec. 24, 2024, at https://www.denverpost.com/2024/12/24/colorado-legislature-municipal-court-bills/amp/. Any legislative change—including any legal challenges to the proposed laws—could impact the Court's holding here.

On a broader scale, the conferral between a district attorney's office and a municipal prosecutor's office about which team will handle which cases leads to more efficient resolutions. Permitting that conferral allows the teams to account for factors like (1) the individual office's caseload and manpower at a given time; (2) the existence of other charges, including felonies; (3) the existence of co-defendants or related cases; (4) input of victims or victim families; and (5) the defendant's own background or criminal history. By contrast, demanding that the jurisdiction with the lower penalty handle the case could lead to hundreds or even thousands of cases being added to the already strained caseloads of one or the other office.

In addition, the lower-penalty requirement might also complicate the prosecution of cases involving multiple charges: If a felony case involves an additional misdemeanor charge for which there exists a municipal counterpart with a lesser penalty, must the single case be split between the state and municipal courts, in violation of 18-1-408(2), C.R.S.? Must the misdemeanor get dismissed altogether? The same questions exist if, in a single case involving multiple misdemeanors, some of the charges had less severe municipal counterparts but some did not. Would prosecutors then be incentivized to start with felony charges they might otherwise leave out just to ensure the case stays in one place? In an

effort to curb prosecutorial discretion, Petitioner's proposed universe perversely encourages prosecutorial gamesmanship and arbitrary outcomes.

III. Municipal penalties are strictly of local concern and are not preempted by State penalties.

The Colorado Constitution grants home rule municipalities power to legislate upon, provide, regulate, conduct, and control "[t]he imposition, enforcement and collection of fines and penalties for the violation of the provisions of the charter, or of any ordinance adopted in pursuance of the charter." Colo. Const. art. XX, §§ 6(h). There is no evidence that the General Assembly, when undertaking sentencing reform in Senate Bill 21-271, silently intended to preempt this century-old system.

Home rule municipalities have the plenary authority over matters of local concern. *City & Cnty. of Denver v. Qwest Corp.*, 18 P.3d 748, 754 (Colo. 2001). To determine whether a matter is of local concern, this Court looks to "(1) the need for statewide uniformity of regulation, (2) the extraterritorial impact of the local regulation, (3) whether the state or local governments have traditionally regulated the matter, and (4) whether the Colorado Constitution specifically commits the matter to either state or local regulation." *City of Longmont v. Colorado Oil & Gas Ass'n*, 2016 CO 29, ¶ 20.

A. Uniformity

As this Court has long recognized, "uniformity itself is no virtue," but rather the State's interest must "achieve[] and maintain[] specific state goals." *City of Northglenn v. Ibarra*, 62 P.3d 151, 160 (Colo. 2003). Petitioner alleges that the state interest at issue is "eliminating sentencing disparities." *Pet.* at 7. There is very little evidence that the General Assembly shares that view with respect to municipal sentencing, given that municipal courts are specifically empowered to depart from most other laws governing state criminal procedure and municipal court procedure. *See* §§ 13-10-103; 16-1-102, (C.R.S.). There is also no evidence that preempting maximum sentences set by local elected officials "eliminates" that disparity—here again, Petitioner conflates discretion with unfairness.

More importantly, the discretion to define unlawful conduct and penalize that conduct is central to Colorado's constitutional scheme. *See People v. Wade*, 757 P.2d 1074, 1077 (Colo. 1988). To have a system where criminal laws can differ across municipalities but the punishments for those crimes are beholden to the State's policy decisions on sentencing is nonsensical, and it is not what the

Colorado Constitution has created.[6] *See City of Aurora v. Martin*, 507 P.2d 868, 870 (Colo. 1973) ("[M]ere difference in penalty provisions in a statute and ordinance does not necessarily establish a conflict [between the city ordinance and state statute]."). Petitioner has failed to show any evidence of a statewide interest in uniform maximum sentences for criminal offenses with the same essential elements.

B. Extraterritorial Impacts

Extraterritorial impacts "must have serious consequences to residents outside the municipality and be more than incidental or de minimis." *Northglenn*, 62 P.3d at 160. Petitioner provides no evidence indicating that authorizing municipal courts to impose harsher sentences disproportionately impacts non-residents.

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[6] Relatedly, Petitioner urges a rule that would only apply when the "essential elements" are the same between the two offenses. *Pet.* at 8. Local officials often enact criminal laws that differ slightly from state offenses, and state offenses often contain sentencing enhancers that are likely to complicate the application of any such rule.

C. Tradition

Local jurisdictions have provided penalties for violations of their ordinances, even without constitutional authorization, prior to statehood. In *Deitz v. City of Central*, 1 Colo. 323, 328 (1871), the Supreme Court of the Colorado Territory upheld a municipal ordinance penalizing unlicensed alcohol sales where no general territory laws prohibited the same conduct.[7]

Likewise, for just as long, courts have recognized that penalties for ordinance violations were within the purview of the local jurisdiction, not the state. *See, e.g.*, *Hughes v. People,* 9 P. 50, 52 (Colo. 1885) ("The great weight of authority appears to uphold this view: that in a case like this before us, 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

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[7] In framing the issue, the territorial court in *Deitz* further recognized that the authority of the municipality was not to be determined by statutory law. *See* 1 Colo. at 327 ("[t]he reasonableness of the ordinance under which appellant was prosecuted is denied [by appellant] upon the ground that it imposes a penalty greater than that provided by the law of the territory. But . . . how can it reasonably be said, that the general law is, in any respect, the measure of the powers of the corporation? In no one of the cases relied upon by counsel has this been decided.").

punishment by the proper tribunals of the state and the municipality respectively.")

Since the passage of the home rule amendment in 1902, Denver has provided criminal penalties for a variety of conduct—and indeed, many of Denver's criminal ordinances pre-date state criminal penalties for the same conduct. *See, e.g.*, Ord. No. 0669, Series 1989 Prohibiting Sale and Possession of Assault Weapons. Colorado has long protected the specific, independent role that municipalities play in the criminal justice system.

D. Colorado Constitution

Colorado's constitutional scheme specifically protects home rule municipalities' independent power to set penalties for criminal conduct that occurs within its boundaries. Article VI, Section 1 of the Colorado Constitution vests judicial power in state and county courts, but explicitly reserves the powers of home rule jurisdictions with respect to municipal courts. Article XX, Section 6 grants home rule municipalities the power to create municipal courts and determine their powers and duties, and separately, to establish fines and penalties for ordinance violations. Colo. Const. art. XX, §§ 6(c), (h). Requiring municipalities to conform to the State's sentencing terms for ordinances the municipalities themselves have the authority to create would invert the

constitutional system. As this Court has recognized, "to find that a home rule city's penal ordinance 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." *Wade*, 757 P.2d at 1077.

Violations of municipal ordinances and the penalties they carry are a matter of local concern and are not preempted by sentences for state crimes with the same essential elements.

CONCLUSION

This Court should discharge the Order to Show Cause.

Date: January 13, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 13, 2025, I electronically filed this **Amicus Brief of the Denver District Attorney and Denver City Attorney (In Support of Respondent City of Aurora)** via the Colorado Courts E-Filing system, which will send notification to all persons registered in this case.

/s/ Dianne L. Johnson
Dianne L. Johnson
DA's Appellate Division