SUPREME COURT OF ARIZONA

STATE OF ARIZONA, *ex rel.* MARK BRNOVICH, Attorney General, Petitioner, v. CITY OF TUCSON, Arizona, Respondent.	Case No.: CV–20–0244–SA

RESPONSE TO AMICUS BRIEFS

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INTRODUCTION

The State respectfully submits this brief in response to the *Amici Curiae* briefs filed by the League of Arizona Cities and Towns ("League") and three Arizona charter cities—Phoenix, Prescott, and Tempe (collectively, "Charter Cities"). As discussed in the State's Petition for Special Action ("Petition") and Reply, the Arizona Constitution requires a charter city to exercise its powers "consistent with, *and subject to*, the Constitution and laws of the state." ARIZ. CONST. art. XIII, § 2 (emphasis added). *See* Petition at 14-16. Indeed, Arizona courts "have consistently recognized this significant constitutional restraint on charter cities' powers." *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 602, ¶55 (2017) ("*Tucson IV*") (collecting cases).

"Under this state's well-established jurisprudence, whether [a city charter provision] controls over the conflicting state laws essentially hinges 'on whether the subject matter is characterized as of statewide or purely local interest.'" *Id*. at 599, ¶42 (citation omitted). The League asks this Court to adopt a different test that instead focuses on "whether the State's legislation deprives the charter city's citizens of control over a matter that materially affects only them." League Brief at 7. The League's proposed test is not only inconsistent with the Arizona Constitution's text and this Court's precedent; it is strikingly similar to a test the League previously proposed—unsuccessfully—just three years ago in *Tucson IV*.

See 242 Ariz. at 603, ¶59 (rejecting League's argument proposing that whenever real or personal property is owned by a charter city, use or disposition of that property is categorically "a matter in which the Legislature is constitutionally proscribed from interfering"). As in *Tucson IV*, the League's argument "skirts the pivotal inquiry in cases like this: 'whether the subject matter is characterized as of statewide or purely local interest.'" *Id*. at 603, ¶60 (citing *City of Tucson v. State*, 229 Ariz. 172, 176, ¶20 (2012) ("*Tucson II*")).

The law the Legislature enacted here simply regulates the dates of candidate elections in charter cities. Specifically, when a candidate election "on a nonstatewide election date" produces a "significant decrease in voter turnout," A.R.S. § 16-204.01 requires charter cities to conduct local elections on statewide election dates. Section 16-204.01 supersedes the City of Tucson's conflicting Ordinance that establishes off-cycle election dates because the subject matter—election administration—implicates the statewide interests of increasing voter turnout, protecting the fundamental right to vote, and promoting election integrity. *See* Petition at 24-30. Contrary to the Charter Cities' arguments, the dates of local elections cannot be characterized as a matter of purely local interest. *See* A.R.S. § 16-204.01(A) (legislative declaration that "it is a matter of statewide concern to increase voter participation in elections," including elections for charter cities); *City of Tucson v. State*, 191 Ariz. 436, 440 (App. 1997) ("*Tucson I*") (holding the

State's interest in "the consolidated election schedule" established by former A.R.S. § 16-204 "is paramount" and that the statute "takes precedence" over a conflicting charter provision); *Tedards v. Ducey*, 398 F. Supp. 3d 529, 539 (D. Ariz. 2019) ("voter turnout [is] an important State interest").[1]

The Charter Cities also speculate that if they are required to comply with A.R.S. § 16-204.01 in the future, they will encounter a myriad of other issues while conducting local elections as they see fit. But the Charter Cities' arguments fall flat because § 16-204.01 regulates only election dates—nothing more. Section 16-204.01 does *not* impact any charter city's ability to conduct partisan or non-partisan local elections, administer all-mail ballot elections, or engage in other election-related activities that are permitted under Arizona's election laws. Arizona's statutory election scheme demonstrates that the Legislature has exercised its constitutional authority to regulate local elections while providing charter cities with significant flexibility to legislate in the absence of state authorization. Indeed, this Court has long recognized that "[i]n the absence of a constitutional or lawful restriction, the legislature has full power to act, and the same is true of the people under a home rule city charter, *within limitations*

[1] The League and the Charter Cities who now appear as *Amici* all signed-in against H.B. 2604—which added the provision at issue here, A.R.S. § 16-204.01. *See* https://apps.azleg.gov/BillStatus/BillOverview/70843 (click on "RTS Current Bill Positions"). Nonetheless, the Legislature considered this opposition when it voted to enact the bill.

imposed by the constitution and the law." *Maxwell v. Fleming*, 64 Ariz. 125, 128 (1946) (emphasis added).

And although *Amici* attempt to challenge the constitutionality of A.R.S. § 16-204.01 on other grounds, this Court should reject those arguments because the City has not raised them (to the contrary, the City has conceded the statute has a rational basis), and *Amici*'s arguments are meritless in any event. *Amici* do not give this Court any reason to reconsider its previous acknowledgment that mere "election dates … involve matters qualitatively different from determining how a city will constitute its governing council." *Tucson II*, 229 Ariz. at 178, ¶35 (citing *Tucson I*, 191 Ariz. at 439, and A.R.S. § 9-821.01(A)).

ARGUMENT

I. The League's Proposed Test To Resolve The Question Presented Is Irreconcilable With The Constitution's Text And Would Require Overruling Arizona's Extensive Case Law In This Area

In *Tucson IV*, this Court expressly declined to "overhaul [its] longstanding analytical approach to resolving conflicts between state and local laws." 242 Ariz. at 600, ¶46. Because the parties here have not asked the Court to overrule any case or create a new test to resolve the conflict between the Ordinance and A.R.S. § 16-204.01, this Court should refuse the League's invitation to do so. *See id*. at 599, ¶45 ("We generally do not reach out … to upset established precedent when no party has raised or argued such issues.").

Even if the Court were inclined to consider the League's arguments, the League's test suffers from two glaring problems. The League proposes that this Court should begin its analysis by conducting "[a]n initial examination of whether an action of a charter city will really have any impact outside of the city[.]" League Brief at 10. Then "[i]f such an impact cannot be discerned then that should resolve the matter in favor of the charter city unless there is a real and substantial reason the Legislature should be able to override the wishes of the local citizens and their elected representatives." *Id*. at 10-11.

First, this test is inconsistent with the plain language of article XIII, § 2 of the Arizona Constitution. A charter city must exercise its powers "consistent with, *and subject to*, the Constitution and laws of the state." ARIZ. CONST. art. XIII, § 2 (emphasis added). *See* Petition at 14-16. This provision operates as a "significant constitutional restraint on charter cities' powers." *Tucson IV*, 242 Ariz. at 602, ¶55. Unlike other states' constitutions that were in effect at the time of our Constitution's framing, our Constitution does *not* grant charter cities any presumptive power to override state law. *See* Petition at 15-16; *Strode v. Sullivan*, 72 Ariz. 360, 364 (1951) (charter city does not have "carte blanche authority or plenary power to adopt any legislation that it might desire") (citation omitted).

Under the League's formulation, the Legislature would be required to demonstrate "a real and substantial reason" to override the "wishes" of a charter

city. This demands far too much of the Legislature, which has broad authority to regulate local elections and does not need to produce any concrete evidence of its statewide interests. *See Tucson IV*, 242 Ariz. at 601, ¶52 (rejecting the City's argument that there was a lack of evidence that the ordinance at issue "impacts anyone or anything outside of Tucson" and that this consideration allegedly favored the City). And the League's proposal would give unprecedented judicial deference to the "wishes" of a charter city—even if those wishes impacted statewide concerns, and despite the constitutional restriction on a charter city's ability to override state law (with the exception of two recognized areas that involve a purely municipal concern). *See* Petition at 14-18; *Tucson IV*, 242 Ariz. at 602, ¶56 ("the concept of 'purely municipal affairs,' or 'local interest or concern,'" is "narrowly limited" and "restrict[s] the extent to which charter city ordinances can prevail over state law").

Lacking textual support for its novel approach, the League argues that the "syntax and history" of the city charter provision in article XIII, § 2 "show that it was meant as a protection of charter cities against interference in their internal affairs by the Legislature." League Brief at 7. This Court should not look beyond the text of article XIII, § 2, however, because the Constitution clearly reflects the framers' intent. *See Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994) (in interpreting the Arizona Constitution, courts look first to the "plain language" of

the provision, and if the language is clear, courts "generally must follow the text of the provision as written"). Plain language aside, this argument still does not support the League's test that essentially asks courts to disregard statewide interests where they exist. Although the purpose of article XIII, § 2 "was to render the cities adopting such charter provisions as nearly independent of state legislation as was possible[,]" Arizona courts articulated the statewide/purely-local concern rule "for the courts [to apply] when a conflict of authority rises." *Tucson IV*, 242 Ariz. at 598, ¶40 (citing *City of Tucson v. Walker*, 60 Ariz. 232, 239 (1943)). Arizona's long-standing approach is "[c]onsistent with th[e] purpose" of article XIII, § 2. *Tucson IV*, 242 Ariz. at 598, ¶40.

Second, the League's test would upend the "well-established" and "extensive Arizona case law in this area" that resolves a conflict between a local law and state law by determining "whether the subject matter is characterized as of statewide or purely local interest." *Tucson IV*, 242 Ariz. at 599, ¶42. Notably, the League asked this Court to adopt an approach in *Tucson IV* that similarly omitted consideration of any statewide interests. *See id*. at 603, ¶59 ("the League asserts that 'whether the property is at issue is real or personal, guns or butter, if it is owned by a charter city, its use or disposition is a matter in which the Legislature is constitutionally proscribed from interfering'"). This Court found the League's argument "unpersuasive" because it "skirts the pivotal inquiry," i.e., whether the

nature of the "subject matter" at issue is characterized as one of "statewide or purely local interest." *Id*. at 603, ¶60.

The League's argument here is likewise unpersuasive. As discussed in the Petition and Reply, the State's interests in election administration (including dates) is well-established in the Arizona Constitution, Arizona's statutory election framework (through which the Legislature has long regulated the administration of local elections), and case law. This Court should apply its established analytical framework, which leads to one conclusion: Section 16-204.01 embraces a topic of statewide concern, not purely local concern. *See id*. at 601, ¶54.

II. Because § 16-204.01 Governs Election Dates, It Does Not Interfere With A Charter City's Authority To Administer Local Elections As Authorized Under Other Arizona Election Laws

The Legislature enacted A.R.S. § 16-204.01 two years ago based on *City of Tucson v. State*, 235 Ariz. 434 (App. 2014) ("*Tucson III*"), in which the Court of Appeals held—in tension with *Tucson I* and *Tucson II*—that a city's charter prevailed over the candidate election dates prescribed by A.R.S. § 16-204(E). *See* Petition at 8-11. Given *Tucson III*'s reasoning, the Legislature provided that § 16-204.01 is only triggered when a charter city has "a significant decrease in voter turnout" as defined by § 16-204.01(D)(2). It is undisputed here that the City experienced a significant decrease in voter turnout because turnout in the City's

off-cycle 2019 election (39.26%) was at least 25% less than the voter turnout in the 2018 statewide election (67%). *See* Petition at 11-13.

Anticipating that A.R.S. § 16-204.01 may also apply to them in the future, and perhaps recognizing that election dates do not affect the method and manner of holding elections, the Charter Cities speculate about other perceived consequences of having to align the dates of their candidate elections with statewide consolidated election dates. But the Charter Cities' perceptions do not match reality. Under Arizona's election laws, charter cities retain significant flexibility to continue conducting all-mail ballot elections and administering their municipal candidate elections on a partisan or non-partisan basis—even if they are required to comply with A.R.S. § 16-204.01 in the future. Accordingly, the Charter Cities' unjustified concerns are an insufficient reason for this Court to depart from *Tucson II* by finding, for the first time, that local election dates involve a matter of purely local concern.

A. Section 16-204.01 Does Not Prohibit A Charter City From Conducting All-Mail Ballot Candidate Elections

The Charter Cities incorrectly conflate the requirements of A.R.S. § 16-204.01 with other issues that have no application in this case. To start, Prescott and Tempe suggest that if they are required to comply with A.R.S. § 16-204.01, they could no longer administer all-mail ballot candidate elections. *See* Prescott Brief at 6; Tempe Brief at 27. This argument is wrong as a matter of law because

A.R.S. § 16-409 expressly authorizes charter cities to conduct mail-ballot elections. *See* A.R.S. § 16-409(A) ("Notwithstanding § 16-558, a city, town or school district may conduct a mail ballot election.").[2]

Moreover, § 16-204.01 does not modify a charter city's ability to conduct a mail ballot election for its local elections; the statute simply requires charter cities to hold their municipal candidate elections on statutorily-designated dates upon evidence of a significant decrease in voter turnout. Thus, § 16-204.01 does not require Prescott and Tempe to cease all-mail ballot candidate elections. Likewise, § 16-204.01 does not deprive Phoenix or Tempe of their ability to provide early ballots for local elections to voters in their cities who are registered as independent or unaffiliated with any political party. *See* Phoenix Brief at 5; Tempe Brief at 20. Tempe asserts that its voters who are registered as Other or No Party Preference "will be required [to] formally request either a partisan or non-partisan ballot." Tempe Brief at 20. To the extent Tempe intends to create this requirement if Tempe is required to comply with A.R.S. § 16-204.01, that is a requirement

[2] The State in no way concedes the Legislature lacks authority to regulate all-mail ballot elections as part of the administrative aspects of elections that are "qualitatively different from determining how a city will constitute its governing council." *Tucson II*, 229 Ariz. at 178, ¶35 (citing *Tucson I*, 191 Ariz. at 439, and A.R.S. § 9-821.01(A)). Indeed, cities that conduct all-mail ballot elections are required to report specific data and statistics—including costs and "[c]hanges in voter turnout"—to legislative leadership "each year immediately following a mail ballot election." A.R.S. § 16-409(B). But the Court need not reach that issue in this case.

imposed by Tempe, not Arizona law. Because A.R.S. § 16-409 authorizes cities to conduct mail-ballot elections, there is no reason why eligible voters could not receive two ballots—one for the city's municipal candidate election and one for the other federal, state, and/or county elections occurring on that date.

B. Section 16-204.01 Does Not Require A Charter City To Contract With A County To Administer City Elections Or To Provide One Unified Ballot To Voters

The Charter Cities further speculate that compliance with A.R.S. § 16-204.01 would alter the format of their ballots for municipal elections or cause administrative issues for charter cities that have chosen to contract with a county to administer their local elections. Again, these arguments are premised on a flawed understanding of Arizona's election laws and misinterpretation of A.R.S. § 16-204.01.

For example, Prescott argues that § 16-204.01 would cause Prescott to "incur additional fees from Yavapai County" for the county to "facilitat[e] in-person voting as well as mail-in voting." Prescott Brief at 5. Although Prescott does not fully explain the basis for this assertion, Prescott appears to suggest that a charter city is required to contract with its respective county to administer the city's elections. But Arizona law does not require a charter city to contract with a county to administer city elections. *See* A.R.S. § 16-205(C) ("The board of supervisors *may* enter into an intergovernmental agreement pursuant to title 11,

chapter 7, article 3[] with each political subdivision that participates in a consolidated election in that county in order to administer those elections.") (emphasis added); *see also Tucson I*, 191 Ariz. at 439-40 (observing that § 16-205(C) "allows, but does not require, cities to enter into intergovernmental agreements with the county for the administration of elections" and reasoning, "the consolidated election schedule does not deprive the City of control of the elections board or its Voting Rights Act responsibilities").

Charter cities remain free to administer their own local elections if they choose to do so. For example, Phoenix currently contracts with Maricopa County for the county to administer general elections for the Phoenix Mayor and City Council, but Phoenix administers its own runoff candidate elections.[3] Therefore, any perceived difficulties associated with charter cities' respective intergovernmental contracts with counties are *not* caused by A.R.S. § 16-204.01—or any other Arizona law for that matter.

In a related argument, Prescott and Phoenix also appear to presume, mistakenly, that compliance with A.R.S. § 16-204.01 necessarily requires charter cities to issue a single ballot containing both municipal non-partisan candidates and statewide partisan candidates during the August Primary Election. *See* Phoenix

[3] *See* City of Phoenix, Election Information, *available at*: https://www.phoenix.gov/cityclerk/elections.

Brief at 5 (suggesting § 16-204.01 would "mandate[] that Phoenix completely realign its local non-partisan candidate primary/general elections with the partisan Federal, State, and County elections"); Prescott Brief at 4-5 ("[a]dding in all other municipal, county, state and federal elections to the ballot serves only to cause voter fatigue and confusion").[4] But § 16-204.01 contains no such requirement.

Nor does any other Arizona law require consolidated ballots under these circumstances. To the contrary, the law provides that "the county recorder or other officer in charge of elections *may* use a unified ballot format that combines all of the issues applicable to the voters in the city … requesting the all mail ballot election." A.R.S. § 16-204(G) (emphasis added). To the extent that charter city officials may later disagree with county officials about whether it makes good policy sense to "use a unified ballot format" as § 16-204(G) allows, such disagreement would not be a product of A.R.S. § 16-204.01. Instead, any disagreements about unified ballots would flow from a city's voluntary decision to contract with its county to administer city elections.

[4] Tempe does not perceive this problem. *See* Tempe Brief at 20 (contemplating that voters could request a partisan or non-partisan ballot, although failing to recognize that Arizona law would not prohibit voters from receiving two ballots).

C. Section 16-204.01 Does Not Affect A Charter City's Ability To Conduct Local Elections On A Non-Partisan Or Partisan Basis

As discussed in the Petition, a charter city has power under article XIII, § 2 to supersede state law on matters regarding the city's "governmental structure[,]" i.e., "who shall be its governing officers and how they shall be selected." Petition at 17 (citing *Strode*, 72 Ariz. at 368). As this Court held in *Tucson II*, "electors in charter cities may determine under their charters whether to constitute their councils on an at-large or district basis and whether to conduct their elections on a partisan basis" notwithstanding a conflicting state law. 229 Ariz. at 180, ¶47.

Despite this settled law, the Charter Cities worry that if they must move their candidate elections to on-cycle consolidated dates, this shift will somehow introduce "partisanship" into their non-partisan elections. *See* Phoenix Brief at 6 (arguing off-cycle elections allow a city to "insulate its electoral process from the influence of partisan issues" (citing *Tucson III*, 235 Ariz. at 438, ¶14)); Prescott Brief at 4 (suggesting § 16-204.01 will cause local election issues to "be confused with partisan issues"); Tempe Brief at 21 (asserting consolidated election dates "will inspire more partisanship" in non-partisan municipal elections). The Charter Cities' fears are unfounded, and certainly do not demonstrate that A.R.S. § 16-204.01 is unconstitutional. As discussed above, the Legislature has allowed charter cities to retain control over various aspects of local elections. And nothing

in § 16-204.01 affects the core holdings of *Strode* and *Tucson II*, which recognize a charter city's ability to conduct partisan or non-partisan elections.

Insisting that charter cities should be able to continue conducting off-cycle elections notwithstanding A.R.S. § 16-204.01, the Charter Cities further allege that a city's ability to "structure" its local government includes the ability to specify local election dates. *See, e.g.*, Phoenix Brief at 4; Tempe Brief at 3-4. But this Court has correctly determined otherwise, stating that "election dates … involve matters qualitatively different from determining how a city will constitute its governing council." *Tucson II*, 229 Ariz. at 178, ¶35 (citing *Tucson I*, 191 Ariz. at 439, and A.R.S. § 9-821.01(A)). Under the Charter Cities' expansive and unsupported view of their powers, *any* subject touching on election administration could be characterized as a matter of purely local concern. But this proposition is untenable because the Arizona Constitution vests broad authority in the Legislature to regulate local elections. *See* Petition at 19-22; A.R.S. § 9-821.01 ("Arizona Courts have recognized that the Constitution of Arizona requires the legislature's involvement in issues relating to elections conducted by charter cities …"). The City does not dispute this (*see* Reply at 6-8), and neither does *Amici*.

In sum, the Charter Cities have failed to show that compliance with A.R.S. § 16-204.01 would result in any cognizable detriment to the Charter Cities or to

their voters—let alone a detriment that would compel this Court to hold, for the first time, that local election dates are *per se* matters of purely local concern.

III. *Amici*'s Arguments Challenging the Constitutionality of A.R.S. § 16-204.01 On Other Grounds Are Not Properly Before The Court And Are Utlimately Meritless

Amici also attempt to introduce other issues in this case that the City has either conceded or declined to raise. It is well-settled, however, that *Amici* "are not permitted to create, extend, or enlarge issues beyond those raised and argued by the parties[.]" *Ruiz v. Hull*, 191 Ariz. 441, 446, ¶15 (1998) (citation omitted); *see also City of Tempe v. Prudential Ins. Co. of Am.*, 109 Ariz. 429, 432 (1973) (finding "no constitutional infirmities in the statute based on the issues presented by the parties" and declining to consider an issue that amicus curiae "attempted to raise" to challenge the statute's constitutionality). "This rule applies to constitutional questions as well." *City of Tempe*, 109 Ariz. at 432; *see also Tucson IV*, 242 Ariz. at 599, ¶45 ("We generally do not reach out to decide important constitutional issues or to upset established precedent when no party has raised or argued such issues."). Therefore, "in accordance with [this Court's] practice," the Court should "base [its] opinion solely on legal issues advanced by the parties themselves." *Ruiz*, 191 Ariz. at 446, ¶15.

In any event, *Amici*'s arguments lack merit. The League argues "there is absolutely no reason for there to be any presumption in favor of the Legislature's

exercise of power." League Brief at 11. But this Court begins its analysis with the presumption that A.R.S. § 16-204.01 is constitutional. *See* Reply at 2 (arguing the City has "a high burden" to satisfy to show that A.R.S. § 16-204.01 is unconstitutional because "[a]n act of the legislature is presumed constitutional, and where there is a reasonable, even though debatable, basis for enactment of the statute, the act will be upheld unless it is clearly unconstitutional") (quoting *State v. Arevalo*, 249 Ariz. 370, 373, ¶9 (2020)). The League's argument against the presumption of constitutionality is based on the League's erroneous assertion that "the grant of power to the charter cities was intended as a check on the power of the Legislature so that local citizens could control local matters" without the Legislature's interference. *See* League Brief at 11. The opposite is true: the constitutional provision requiring charter cities to comply with state law is a "significant constitutional restraint on charter cities' powers." *Tucson IV*, 242 Ariz. at 602, ¶55. The League's proposed test finds no support in the Arizona Constitution or in Arizona's extensive case law in this area. *See supra*, Section I.

The City also effectively conceded in its Response that A.R.S. § 16-204.01 has a rational basis. *See* Response at 39 (arguing the statute is an unconstitutional special law but only under the third prong of the special-law test); Reply at 17 (emphasizing the City does not dispute prong one (whether the statute has a rational basis) or prong two (whether statute's classification is legitimate) of the

special-law test). Given the City's concessions, this Court should refuse to entertain the city of Tempe's complaint that "[t]here was no study or rational basis behind the state arbitrarily choosing a 25% lower voter turnout as the trigger for requiring consolidated election dates." Tempe Brief at 25. *See Tucson IV*, 242 Ariz. at 599, ¶45; *Ruiz*, 191 Ariz. at 446, ¶15.

Setting aside Tempe's inability to introduce this new issue into the case, the statute is rational. Section 16-204.01 is facially even-handed, uniform, and quantitative. *See* Petition at 34. It is entirely permissible for the Legislature to pass statutes that classify cities based "upon the number of votes cast from time to time[.]" *Luhrs v. City of Phoenix*, 52 Ariz. 438, 451 (1938). Tempe argues that the Legislature should have structured the statute a different way, such as comparing voter turnout "in prior local municipal elections" instead of measuring local elections against the previous gubernatorial election. Tempe Brief at 26. This comparison, of course, would not further the State's compelling interests of increasing voter participation and protecting Arizonans' right to vote. And even taking Tempe's argument at face value, "a law's imprecision does not preclude a rational basis finding." *Gallardo v. State*, 236 Ariz. 84, 89, ¶15 (2014); *see also Big D Constr. Corp. v. Ct. of App.*, 163 Ariz. 560, 566 (1990) ("[a] perfect fit is not required"). "As long as the law conceivably furthers a legitimate governmental purpose, a rational basis exists." *Gallardo*, 236 Ariz. at 89, ¶17.

Section 16-204.01 unquestionably furthers a legitimate governmental purpose. The Legislature declared in A.R.S. § 16-204.01(A) that "it is a matter of statewide concern to increase voter participation in elections, including elections for cities, including charter cities," and that "low voter turnout constitutes sufficient factual support for requiring candidate and other elections to be held on certain specific consolidated dates." As discussed in the State's Petition, the Legislature's broad declarations, while not dispositive of the question presented, are significant in identifying the statewide interests at stake in this case. *See* Petition at 26-28; *see also Gallardo*, 236 Ariz. at 88, ¶14 (considering whether the Legislature "state[d] its purpose" in deciding whether a statute had a rational basis). Because consolidated election dates have "the potential to lower the barriers to ballot access, allowing more Arizona voters the chance to exercise their right to vote," the State's interest in consolidated dates is "an important regulatory interest." *Tedards*, 398 F. Supp. 3d at 540.

Accordingly, the Legislature could have rationally concluded that requiring charter cities with a "significant decrease in voter turnout" in the city's most recent candidate election (defined as at least 25% less than turnout in the same city for the most recent gubernatorial election) to align their candidate elections with consolidated statewide election dates would further the State's important interests. As in *Gallardo*, the Legislature has "determined that only when a higher threshold

is reached do these problems manifest to such a degree that they must be remedied." 236 Ariz. at 90, ¶24. In any rational basis analysis, this Court should "defer to the legislature's assessment that there is a problem to be solved and its policy choice as to how to resolve it." *Id*. Tempe's arguments—even if considered by this Court—do not show that A.R.S. § 16-204.01 is unconstitutional. *See id*.

CONCLUSION

Amici's arguments do not support a conclusion that election administration, including election dates, involves a matter of purely local concern. For the reasons above, and those set forth in the State's Petition and Reply, this Court should declare that the Ordinance violates state law on a matter of statewide concern and is therefore null and void.

RESPECTFULLY SUBMITTED this 23rd day of November, 2020.

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