COLORADO SUPREME COURT 2 East 14th Avenue, 4th Floor Denver, CO 80203 Westminster Municipal Court 3030 Turnpike Drive Westminster, Colorado 80030 Case No. 2022-002574 Honorable Rebekah B. Watada	DATE FILED December 5, 2024 9:05 PM FILING ID: 8A4CCF35C54CC CASE NUMBER: 2024SA276
In Re: People of the State of Colorado by and through the People of the City of Westminster, v. Aleah Michelle Camp	**▲COURT USE ONLY▲**
Attorneys for the People of the State of Colorado By and Through the People of the City of Westminster and Westminster Municipal Court: Josh A. Marks, Atty. Reg. # 16953 Chris G. Seldin, Atty. Reg. # 31928 BERG HILL GREENLEAF RUSCITTI LLP 1712 Pearl Street Boulder, CO 80302 Tel: (303) 402-1600 Fax: (303) 402-1601 jam@bhgrlaw.com chris.seldin@bhgrlaw.com	Supreme Court Case Number: 2024SA276

RESPONSE BRIEF PURSUANT TO C.A.R. 21 OF CITY OF WESTMINSTER AND WESTMINSTER MUNICIPAL COURT

CERTIFICATE OF COMPLIANCE

I hereby certify that the Plaintiff's Response Brief complies with all requirements of C.A.R. 28 and 32, including all formatting requirements set forth in these rules. Specifically, I certify that:

This document complies with the applicable word limits set forth in C.A.R. 28(g). In total, it contains 9,488 words (not to exceed 9,500 words pursuant to C.A.R. 28(g)).

I acknowledge that my document may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 32.

s/ Josh A. Marks
Josh A. Marks
Christopher G. Seldin

Counsel for People of the State of Colorado
By and Through the People of the
City of Westminster and
Westminster Municipal Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Other Authorities

Charter and Laws of the City of Westminster

Rules

Books

I. STATEMENT OF THE ISSUE

1. Does a rational basis support the General Assembly's, and this Court's, decisions to authorize higher criminal penalties in home-rule cities?

II. NATURE OF THE CASE

This case is before the Court pursuant to C.A.R. 21. It arises out of a criminal prosecution in Westminster Municipal Court. On September 19, 2024, a jury convicted Petitioner Aleah M. Camp of theft under the Westminster Municipal Code. This Court issued its Order to Show Cause after conviction, but prior to sentencing.

A. Municipal Court Background.

Article XX, § 6(b)-(c) of the Colorado Constitution authorizes home-rule municipalities to create police and municipal courts. Article XX, § 6(h) authorizes imposition and enforcement of fines and penalties for municipal ordinance violations.

The City of Westminster is a home-rule municipality that straddles Jefferson and Adams Counties, and thus the 1st and 17th Judicial Districts. The City adopted a Home Rule Charter pursuant to Article XX, § 6 of the Colorado Constitution on November 7, 1957. Section 16.1 of the Charter provides for a Municipal Court,

"which shall have jurisdiction to hear and determine all cases arising under this Charter or the ordinances of the City . . . ." App., Ex. A at 39 (Westminster Home Rule Charter) at § 16.1.[1] The Charter specifies that the Westminster Municipal Court is a court of record, and that "its judgments shall be subject to appeal in the method established by Colorado statutes for courts of record." *Id.* It also requires the court's judges to be licensed attorneys. *See id.* at § 16.2. The Municipal Court hears both criminal and civil matters.

Supplementing the constitutional authority for municipal courts are legislative commands contained in Article 10 of Title 13, C.R.S. (2024). Section 13-10-104 directs that each municipality "shall create a municipal court to hear and try all alleged violations of ordinance provisions of such city or town." Section 13-10-113(1)(a) addresses municipal court fines and penalties. The authorized fines and penalties for courts of record substantially mirror those permitted by § 31-16-101, C.R.S. (2024): up to 364 days in jail, a fine up to $2,650, or both. Penalties in municipal courts not of record are limited to ninety days of jail, a fine up to $300, or both. *See* § 13-10-113(1.5).

[1] Appendix cites are to the continuously paginated number in the lower right corner of each page.

Section 13-10-114.5 requires municipalities to provide counsel to indigent defendants, and to establish a nonpartisan entity independent of the municipal court to oversee or evaluate indigent defense counsel. Section 13-10-115 directs that fines and costs be deposited in the municipality's general fund. Several sections govern rights of appeal from municipal court judgments, and § 13-10-120 provides for a stay on appeal, with bond set at double the amount of fines and costs, and at two dollars per day of jail imposed.

The Westminster Municipal Court has two full-time judges. *See* App., Ex. B (2024 Westminster Municipal Court Report) at 70. Between January and August of 2024, it resolved over 5,900 cases. Of these, 1,580 involved criminal ordinance violations, 1,445 involved criminal traffic violations, 2,505 involved traffic infractions, and 386 involved failure to present proof of insurance. In addition to this 5,900-case docket, the Court also resolved 220 contested parking violations. *See id.* at 60. The Court's caseload continues to grow. *See id.* at 59.

The Westminster Municipal Court operates its own recovery court, staffs its own probation department, and provides its own facilities, administration and security. *See* App., Ex. G at 164 (Affidavit of Brian Poggenklass), ¶ 6. The City also provides vouchers to municipal probationers for treatment services. Through October 31, 2024, the City authorized $63,437 of such vouchers. *See id.*, ¶ 7. The

City funds municipal prosecutors, and public defenders contracted through the Office of Alternate Defense Counsel. *See* App., Ex. C (intergovernmental agreement between City of Westminster and Office of Alternate Defense Counsel). In 2024, Westminster budgeted up to $700,000 for indigent defense through ADC. *See id.* at 144. The City finances all of these services; the 2023 Municipal Court budget was $2,932,476. *See* App. Ex. D (Westminster Municipal Budget excerpt) at 150.

The Court does not turn a profit for the City. While the Court does impose costs, fines and fees that offset some of the expenses the City incurs to operate the Court, the net shortfall to the City is some $2 million annually. *See* App. Ex. G at 164, ¶ 10.

B. Westminster's Interest in Curbing Theft.

The State of Colorado derives 9.73% of its annual revenue from sales and use taxes. *See* App. Ex. E at 158 (State Controller's Calculation based on Audited State of Colorado Comprehensive Annual Financial Report). Westminster, by contrast, derives 38% of its total annual revenues—and over 60% of its General Fund revenues—from sales and use taxes, easily making it the City's largest source of revenue. *See* App. Ex. D at 154. Property taxes contribute only 2% of the City's annual revenues, and the City has no income tax. *See id*. Ensuring a vibrant

and secure retail sector is therefore vital to Westminster's interests as both a community and a governmental entity. *See Greenwood Village v. Pet. for Proposed City of Centennial,* 3 P.3d 427, 437 (Colo. 2000) (recognizing that cities have a substantial interest in expanding their tax bases).

The General Assembly and this Court have both long recognized the particular threat theft poses to the retail sector. *See* § 18-4-413, C.R.S. (2024) (providing for mandatory prison when defendant convicted of felony theft from a store three times in four years); *Quintana v. Edgewater Municipal Court*, 498 P.2d 931, 932 (Colo. 1972) (recognizing shoplifting poses a "great problem").

Westminster's citizens place a premium on public safety. In the November 2003 general election, Westminster voters approved a designated sales tax to support public safety services. Some 56.6% of the electorate voted in favor, with 43.4% against. *See* App. Ex. F at 160 (official election results). Revenue from this tax is designated "exclusively to improve and enhance the safety and security of Westminster residents," with specific reference to additional police and fire protection resources. *See id*. at 161.

Westminster's Municipal Code prohibits theft. Section 6-3-1 of the Code sets forth the elements of theft, which substantially reflect the elements of theft

under § 18-4-401, C.R.S. (2024). Section 1-8-1 sets forth the Code's penalty provisions; the range of penalties is consistent with those authorized in § 31-16-101 and § 13-10-113, C.R.S. (2024).

III. SUMMARY OF THE ARGUMENT

There is no preemption case to be made here, as this Court has authorized different state and municipal penalties for over sixty years under Article XX, § 6. *See, e.g., Woolverton v. Denver*, 361 P.2d 982 (Colo. 1961) (overruled on other grounds by *Vela v. People*, 484 P.2d 1204, 1206 (Colo. 1971)); *City of Aurora v. Martin*, 507 P.2d 868, 869 (Colo. 1973); *People v. Wade*, 757 P.2d 1074, 1076 (Colo. 1988). S.B. 21-271 does not abrogate these holdings endorsing different state and municipal penalties, either expressly or by clear implication. *See, e.g.*, *In re Mercy Hous. Mgmt. Grp. Inc. v. Bermudez*, 2024 CO 68, ¶¶ 61-62.

Moreover, the General Assembly itself authorized both Westminster's theft ordinance and the penalties it imposes. Section 18-4-401(8), C.R.S. (2024), states: "A municipality shall have concurrent power to prohibit theft, by ordinance, where the value of the thing involved is less than one thousand dollars." Section 31-16-101(1)(a) sets penalty ranges for municipal ordinance violations: a fine up to $2,650, a year of jail, or both. S.B. 21-271 revised § 18-4-401, and a great many other state criminal statutes and penalties. But it left untouched both § 18-4-401(8)

and § 31-16-101(1)(a). Reconciling these sections with S.B. 21-271's revisions to § 18-1.3-501, C.R.S. (2024), involves basic statutory interpretation—not preemption.

S.B. 21-271's legislative history manifests no intent to alter municipal ordinance penalties. Even if it did, however, the plain text of §§ 18-4-401(8) and 31-16-101(1)(a) would control. *See, e.g., Skillett v. Allstate Fire & Cas. Ins. Co.*, 505 P.3d 664, 666 (Colo. 2022).

Ms. Camp's equal protection argument falters on a false premise. The equal protection rule adopted in *Trueblood v. Tinsley*, 366 P.2d 655, 659 (Colo. 1961), has never been extended between the state and municipal court systems as she advocates here. Instead, the rule has been applied only where a state court prosecutor has a choice between available and parallel criminal statutes that carry different penalties. Blurring the jurisdictional boundaries between municipal and state criminal systems for purposes of the *Trueblood* analysis perverts the principal requirement that a criminal defendant should be charged with an available and largely identical criminal prohibition that contains a lesser penalty. This structural reality mitigates the *Trueblood* rule's concern that individual prosecutors may impermissibly discriminate against specific criminal defendants.

Rational basis review has been a feature of the *Trueblood* rule from its beginning to the present day. The Court's decisions authorizing different state and municipal penalties are rational and effectuate Article XX, § 6's grant of leeway to municipalities to make limited departures from state sentencing ranges to meet their own needs. *See, e.g.*, *Wade*, 757 P.2d at 1077. Their reasoning demonstrates that Article XX, § 6 of the Constitution itself provides a rational basis to satisfy *Trueblood* rule review.

The General Assembly's different penalty classifications in § 31-16-101 and § 18-1.3-501 distinguish urban from non-urban crimes. This Court recognized as early as 1918 that urban areas often require "the enforcement of very different and usually much more stringent police regulations . . . than are necessary in a state taken as a whole." *Woolverton*, 361 P.2d at 986 (quoting *Provident Loan Society v. City and County of Denver*, 172 P. 10, 12 (1918)). Take theft, for example. Urban areas contain a high concentration of dwellings, retailers, and other businesses for thieves to target. Imposing greater deterrents in these environments is rational. And courts have long held equal protection does not forbid geographical classifications. *See, e.g.*, *Francis v. County Court*, 487 P.2d 375, 379 (Colo. 1971); *Salsburg v. Maryland,* 346 U.S. 545, 551-52 (1954).

Applying the *Trueblood* rule to defeat recognized powers under Article XX, § 6 collides with Article XX, § 8, which states: "Anything in the constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for." Ms. Camp's attempt to expand the *Trueblood* rule would "strip all of the home rule cities of the state of every last vestige of local rule and local control with the possible exception of a few regulatory and licensing ordinances." *Martin*, 507 P.2d at 870. This is "inconsistent" with Article XX, § 6's express grant of municipal home rule and express authorization for municipal courts. Thus, Article XX, § 8 bars it.

As an alternative, the Court may choose to abandon the *Trueblood* rule to align Colorado's constitutional jurisprudence with its federal counterpart as articulated by Justice Thurgood Marshall's opinion for a unanimous Court in *United States v. Batchelder,* 442 U.S. 114 (1979). That also provides a basis for affirming the Municipal Court's refusal to dismiss Ms. Camp's prosecution.

IV. ARGUMENT

Municipal home rule powers under Article XX, § 6 provide the underlying framework for analysis of both challenges Ms. Camp raises to her prosecution. Westminster accordingly begins there.

A. Municipal Home Rule.

"Article XX, Section 6, adopted by the voters in 1912, granted 'home rule' powers to municipalities choosing to operate under its provisions and, in doing so, altered the basic relationship of such municipalities to the state." *Fraternal Order of Police v. City & Cty. of Denver*, 926 P.2d 582, 586 (Colo. 1996). "[T]he overall effect of the amendment was to grant to home rule municipalities the power the legislature previously had and to limit the authority of the legislature with respect to local and municipal affairs in home rule cities. Although the legislature continues to exercise authority over matters of statewide concern, a home rule city pursuant to Article XX is not necessarily inferior to the General Assembly with respect to local and municipal matters." *Id.* at 587 (citation omitted); *see also Webb v. City of Black Hawk,* 295 P.3d 480, 486 (Colo. 2013) (observing that "a home-rule city is not inferior to the General Assembly with respect to local and municipal matters" within its home rule authority, and that "[o]ur case law pertaining to a home-rule municipality's authority is well-settled.").

As noted above, Article XX, § 6(b)-(c) specifically authorizes the creation of police and municipal courts. The Constitution corroborates this authority in Article VI, § 1, which, after vesting power in state courts, provides that "nothing herein

contained shall be construed to restrict or diminish the powers of home rule cities and towns granted under article XX, section 6 of this constitution to create municipal and police courts."

Article XX, § 8 reinforces the significance of home-rule powers in Colorado's constitutional framework. Entitled "Conflicting Constitutional Provisions Declared Inapplicable," it provides "[a]nything in the constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for."

B. Both the General Assembly and this Court Have Foreclosed Preemption by Expressly Authorizing Westminster's Regulation of Theft.

Relying on S.B. 21-271's legislative history, Ms. Camp argues that it sweepingly preempted municipal ordinances authorizing punishments harsher than their misdemeanor counterparts. No statutory text supports this argument. Ample statutory text refutes it.

1. Standard of Review.

De novo review governs the statutory construction and preemption issues here. *See, e.g.*, *City of Longmont Colo. v. Colorado Oil & Gas Assoc.*, 369 P.3d 573, 578 (Colo. 2016).

2. § 18-4-401(8) Expressly Authorizes Municipal Theft Ordinances.

This case involves no preemption issue at all. The "conflict" Ms. Camp relies upon merely amounts to differences drawn by the General Assembly's own statutes. Begin with the theft statute itself. Section 18-4-401(8) states: "A municipality shall have concurrent power to prohibit theft, by ordinance, where the value of the thing involved is less than one thousand dollars." Westminster's theft ordinance respects this boundary, thereby also avoiding any intrusion into felony theft under § 18-4-401(2).

The General Assembly provides a specific, independent penalty structure for municipal ordinance violations. *See* § 31-16-101(1)(a). As noted above, that section authorizes a fine up to $2650, a year of jail, or both. If, as Ms. Camp claims, the General Assembly intended S.B. 21-271 to broadly preempt municipal ordinances it would have changed both § 18-4-401(8) and § 31-16-101(1)(a). It changed neither. Ms. Camp does not argue § 18-1.3-501 preempts § 31-16-101. Nor could she, as they are co-equal provisions addressing different subjects. The governing doctrine at issue here, therefore, is statutory construction—not preemption.

3. Other Statutes Confirm No Intent to Preempt.

S.B. 21-271 also left untouched a variety of other statutes specifically authorizing differential municipal regulation of lower-level crime. The most obvious example concerns traffic-related offenses. Section 42-4-110(2) states that "[t]he municipal courts have jurisdiction over violations of traffic regulations enacted or adopted by municipalities. *However, the provisions of sections 42-4-1701, 42-4-1705, and 42-4-1707 shall not be applicable to municipalities*." (Emphasis added.)

Section 42-4-1701 is the state traffic code's penalty section. It sets forth penalties that, according to Ms. Camp's theory of the law, preempt Westminster's penalty structure. As we can see from § 110(2), however, the General Assembly disagrees with Ms. Camp. It directs that state penalties "shall not be applicable" to cities like Westminster. Instead, as § 110(1)(b) makes clear, the basis for municipal penalties resides in Article 16 of Title 31: specifically, in § 31-16-101(1)(a), with which Westminster complies. Again, if the General Assembly intended S.B. 21-271 to displace municipal penalties, it most certainly would have needed to change this language. It did not. *See also* §§ 25-15-211, 30-20-114, C.R.S. (2024) (statutes that S.B. 21-271 amended without disturbing language stating that

nothing therein "shall preclude or preempt" local governments from enforcing local ordinances).

Ms. Camp's theory requires the Court to ignore ample express statutory text authorizing municipal regulation and establishing municipal penalties and rely instead only on S.B. 21-271's legislative history. This approach violates any number of basic rules of statutory construction. *See, e.g.*, *Skillett v. Allstate Fire & Cas. Ins. Co.*, 505 P.3d 664, 666 (Colo. 2022) (quotations omitted) ("we consider the statute in context and in its entirety; give consistent, harmonious, and sensible effect to all of its parts; and avoid constructions that would render any words or phrases superfluous or lead to illogical or absurd results. If the statutory language is clear, we need look no further."); *R.E.N. v. Colorado Springs*, 823 P.2d 1359, 1364 n.5 (Colo. 1992) (applying foregoing rule of *in pari materia* to preemption case). Sections 18-1.3-501 and 31-16-101 address separate subjects and readily coexist, as § 42-4-110(1)(b) illustrates.

4. S.B. 21-271's Legislative History Contains No Indication of an Intent to Preempt.

Because the statutory language is clear and did not address municipal penalties, the Court should not delve into S.B. 21-271's legislative history. Were it to do so, however, it will not find support for Ms. Camp's expansive theory.

The Colorado Commission on Criminal and Juvenile Justice ("CCJJ") drafted S.B. 21-271 and limited its scope to revising misdemeanors, not municipal offenses. As Ms. Camp's Exhibits 4 and 5 show, S.B. 21-271 responded to Governor Polis's request that the CCJJ address sentencing recalibration. The substantive proceedings before the legislature on S.B. 21-271 took place in the Senate and House Judiciary Committees. Three CCJJ members testified before each of those committees: Sentencing Reform Task Force ("SRTF") Co-Chairs Richard Kornfeld and Michael Dougherty, and SRTF member Jessica Jones.

Their testimony reinforces several themes: (1) the SRTF was thorough, individually examining some 1,100 misdemeanor offenses; (2) S.B. 21-271 was only a first step and would serve as a foundation for the SRTF's work going forward; and (3) the SRTF used the theft statute as a baseline for establishing uniform penalties for property-based crimes. *See, e.g.*, Senate Judiciary Committee Hearing May 19, 2021, at 3:52:07 (Kornfeld stating "this is the first bill in hopefully a longer process to make the system easier to understand, more transparent, more definitive, more meaningful and more effective."); *id.* at 3:53:40 (Kornfeld stating "we're hoping to do the same thing with the felonies."); *id.* at 3:57:07 (Dougherty stating they looked at 1,100 offenses); *id.* at 3:57:32 (Dougherty stating they started with misdemeanors, and that this is a first step); *id.*

at 4:18:40 (Jones stating that achieving consistency with the theft statute was a significant theme); *id.* at 4:21:00 (Jones stating that their work was thorough and detailed); *id.* at 4:20:13 (Judiciary Committee Vice Chair Gonzales praising the "nuance and specificity" of CCJJ's work on "each and every one" of the offenses).[2] The record before the House Judiciary Committee is to the same effect. *See, e.g.*, House Judiciary Committee Hearing, June 3, 2024, at 5:01:39; *id.* at 5:04:30; *id.* at 5:04:53; *id.* at 5:06:25; *id*. at 5:30:40.

The legislative history contains no mention at all of a desire to preempt, or even address, municipal ordinances. To the contrary, the CCJJ's records indicate it specifically *did not* undertake revising municipal penalties. *See* App., Ex. H. This should leave the Court comfortable that the legislative history supports what the plain statutory language shows: the CCJJ limited its work to revising misdemeanors, and generally did not consider felony or municipal offenses.

5. This Court's Precedent Authorizes Different Penalties.

Over the course of many decades, this Court repeatedly has concluded that different state and municipal criminal penalties do not trigger preemption. Had the legislature wished to overturn that precedent in S.B. 21-271, it needed to speak

[2] As the Court knows, audio recordings of the General Assembly's hearings are available on its website at https://sg001-harmony.sliq.net/00327/Harmony/en/View/Calendar/20210519/-1.

either expressly or by clear implication. *See, e.g.*, *In re Mercy Hous. Mgmt. Grp. Inc. v. Bermudez*, 2024 CO 68, ¶¶ 61-62. It did neither. Accordingly, all of the cases discussed below remain good law.

Since this is a theft case, the obvious place to start is with *Quintana*. Unless a municipality defines theft to include amounts in controversy entrusted to the felony jurisdiction of the district courts: (1) a theft ordinance "involves a matter of 'concurrent and mixed concern' which can be regulated by both the state and home rule cities;" (2) "the ordinance does not conflict with the theft statute;" and (3) "[t]he Colorado General Assembly has not expressly preempted the subject." *Quintana*, 498 P.2d at 932. In fact, the Court observed, "[m]unicipal courts are particularly adaptable to the handling of the crime of shoplifting of articles of relatively small value. This type of theft constitutes a great problem and should be combated not only by our state authorities in state courts, but by our police departments in municipal courts." *Id.*

A year after *Quintana*, the Court addressed state and local sentencing schemes for assault, concluding that "[t]here is nothing basically invalid about legislation on the same subject by both a home rule city and the state, absent some conflict between the two regulations." *Martin*, 507 P.2d at 869. There, the state statute provided for higher penalties than the municipal ordinance. The Court held,

"[i]f a statute provides for a substantially greater penalty than does a similar municipal ordinance, this fact may be considered in ruling whether the General Assembly intended, by enactment of the statute, to pre-empt that field of regulation." *Id.* at 870. Except in felony categories, however, "mere difference in penalty provisions in a statute and ordinance does not necessarily establish a conflict in the sense discussed here." *Id.*

The court "rejected the idea that the mere enactment of a state statute constituted a pre-emption by the state of the matter regulated:"

> To accept the contention of the petitioner would be to adopt a doctrine of virtual pre-emption by the state in all matters upon which the legislature has taken cognizance through enactment of a state statute. It would also strip all of the home rule cities of the state of every last vestige of local rule and local control with the possible exception of a few regulatory and licensing ordinances.

Id. (citing *Retallick v. Colorado Springs*, 351 P.2d 884 (1960)).

Unlike the theft statute at issue here, the state assault statutes at issue in *Martin* did not expressly empower municipalities to regulate assault. The Court concluded that "[a] statute specifically delegating the power of regulation to cities or towns would be useful in deciding that the state did not intend to pre-empt that field of regulation." *Id.* at 76-77. Its absence, however, was not an impediment to Aurora's ordinance, because "the authority for the city's assault and battery ordinance emanates from *Colo. Const.* Art. XX, Sec. 6." *Id.* at 77.

Martin addressed higher state penalties than local. The opposite was true in *Woolverton*, 361 P.2d 982. The ordinance there, like a state statute, criminalized gambling, but set a more severe sentencing range. The Court assayed its existing decisions on state and local legislation and concluded that, in matters of mixed state and local concern, both sources of law could coexist unless they conflicted. Notably, the Court quoted *Provident Loan Society v. City and County of Denver*, 172 P. 10, 12 (1918), for the proposition that "[t]he preservation of the health, safety, welfare and comfort of dwellers in urban centers of population requires the enforcement of very different and usually much more stringent police regulations in such districts than are necessary in a state taken as a whole." *Woolverton*, 361 P.2d at 986.

The state gambling statute in *Woolverton* authorized only relatively minor penalties between $50 and $150. *See id.* at 989. Woolverton and the other defendants were convicted of violating the municipal ordinance, and the municipal court sentenced them to 90 days in jail and a fine of $300. *See id.* at 983. The disparity in available sentences did not trouble the Court, and it affirmed the convictions. *Id.* at 990.

Later, in *Wade*, 757 P.2d at 1076, the Court observed that *Woolverton*'s state "statute provided markedly less severe sanctions than Denver's ordinance." *Wade* cites and follows *Woolverton*, sustaining a municipal court sentence that exceeded the authorized sentencing range under a comparable state statute. At the time, the legislature had not yet authorized misdemeanor probationary sentences that exceeded the maximum jail sentence corresponding with a misdemeanor conviction. The municipal court sentenced Wade to a period of probation exceeding the maximum permissible jail time for the comparable misdemeanor offense.[3]

This Court rejected the Court of Appeals' conclusion that "'uniformity in the treatment and disposition of an offense' requires that penalties mandated by city ordinances and state statutes be based on similar sentencing principles." *Wade*, 757 P.2d at 1076. "Neither our previous decisions nor relevant legislation supports such a limitation on a home rule city's power to select appropriate punishments for violations of the city's laws." *Id.*

Citing *Woolverton*, the Court held that "a city's choice of a sentencing scheme different from the state's is well within the city's constitutional power as a

[3] The Court later held what *Wade* assumed: that the sentence in *Wade* exceeded anything authorized under the state statute. *See People v. Kennaugh*, 80 P.3d 315, 316 (Colo. 2003).

home rule city." *Id.* at 1077. "Indeed, 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." *Id.* Assuming state law prohibited probationary sentences longer than the maximum jail time authorized for a particular offense, the Court nonetheless held such a "limitation serves as no constraint on a home rule city's right to impose its own system of punishments for violations of its ordinances." *Id.*; *see also R.E.N.,* 823 P.2d at 1363 (quoting *Wade* for these propositions, and concluding prosecution of juveniles for shoplifting in municipal court presented issue of mixed state and local concern).

6. No Preemption Under Governing Test.

The Court's more recent pronouncements concerning home rule municipalities and the governing preemption test align with these holdings. In *City of Longmont Colo. v. Colo. Oil & Gas Ass'n*, 369 P.3d 573, 579 (Colo. 2016), the Court held that "the question of whether a matter is one of statewide, local, or mixed state and local concern is separate and distinct from the question of whether a conflict between state and local law exists." As before, *Longmont*'s test continues to recognize that "in matters of statewide concern, as well as in matters

of mixed state and local concern, local ordinances may coexist with state statutes as long as the local ordinances do not conflict with the state statutes." *Id*.[4]

Longmont recognized express, implied, and operational conflict preemption. *See id.* at 582. "Express preemption applies when the legislature clearly and unequivocally states its intent to prohibit a local government from exercising its authority over the subject matter at issue." *Id.* The legislature has done the opposite here; § 18-4-401(8) clearly and unequivocally *allows* municipalities to regulate theft.

Implied preemption arises out of a legislative intent to completely occupy a given field. *See id. Longmont* cites *Martin* for the proposition that "[a] legislative intent to preempt local control over certain activities cannot be inferred, however, merely from the enactment of a state statute addressing certain aspects of those activities." *Id.* Ms. Camp does not explain how the legislature impliedly could have occupied the field of theft regulation when § 18-4-401 expressly states the opposite, and the many cases cited above—including *Quintana* and *Martin* itself—hold otherwise. *See Martin*, 507 P.2d at 76-77 ("[a] statute specifically delegating

[4] As discussed earlier, Westminster maintains the Court need not address preemption at all, since its ordinances comply with § 18-4-401 and § 31-16-101.

the power of regulation to cities or towns would be useful in deciding that the state did not intend to pre-empt that field of regulation.").

The final species of preemption *Longmont* describes, operational, arises when: (1) a local interest materially impedes or destroys a state interest; or (2) authorizes what state statute forbids, or forbids what state statute authorizes. Operational preemption "requires us to assess the interplay between the state and local regulatory schemes. In virtually all cases, this analysis will involve a facial evaluation of the respective statutory and regulatory schemes, not a factual inquiry as to the effect of those schemes 'on the ground.'" *Id.* at 583.

Although the Court "may consider any factors we deem relevant, we have consistently consulted four factors in making this determination: (1) the need for statewide uniformity; (2) the extraterritorial impact of the regulation at issue; (3) whether the matter has traditionally been regulated at the state or local level; and (4) whether the Colorado Constitution commits the matter to state or local regulation." *Ryals v. City of Englewood*, 364 P.3d 900, 905 (Colo. 2016).

Quintana, Martin, *Woolverton*, and *Wade* do not themselves articulate and apply this four-part test. But they do address its factors, and find no conflict:

- As to all factors, "[m]unicipal courts are particularly adaptable to the handling of the crime of shoplifting of articles of relatively small value. This type of theft constitutes a great problem and should be combated not only by our state authorities in state courts, but by our police departments in municipal courts." *Quintana*, 179 Colo. at 92.
- As to factors 1 and 3, "[w]e cannot say that the difference in penalty provisions between the statute and the ordinance is so great that the state's interest will not be protected by a proceeding under the municipal ordinance." *Martin*, 181 Colo. at 75-76.
- As to factors 1-3, "[a] statute specifically delegating the power of regulation to cities or towns would be useful in deciding that the state did not intend to pre-empt that field of regulation." *Id.* at 76-77; *see also Ryals v. City of Englewood,* 364 P.3d 900, 907 (Colo. 2016) (state statute recognized a local ordinance could provide a valid basis for declining to approve sex offender registration; this weighed against a conflict under the uniformity prong of operational preemption).
- As to all factors, "[t]he preservation of the health, safety, welfare and comfort of dwellers in urban centers of population requires the enforcement of very different and usually much more stringent police regulations in such districts than are necessary in a state taken as a whole." *Woolverton*, 146 Colo. at 256 (quoting *Provident Loan Society v. City and County of Denver*, 64 Colo. 400, 172 Pac. 10 (1918)).
- As to factors 3 and 4, "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." *Wade*, 757 P.2d at 1076; *see also R.E.N.,* 823 P.2d at 1363.
- As to factors 3 and 4, any state limitation on length of sentence "serves as no constraint on a home rule city's right to impose its own system of punishments for violations of its ordinances." *Id.*

Quintana makes clear that any extraterritorial impact from local regulation of theft *advances* the larger state interest in combating theft. Equally clear is the General Assembly's view that functioning municipal courts materially advance the

state's interests: it requires every municipality in the state to have one. *See* § 13-10-104. Apparently recognizing the financial burden this imposes on local jurisdictions, the General Assembly has further provided in the municipal court statutes themselves for permissible penalties, and for remitting such penalties to the local jurisdiction rather than the state. *See* §§ 13-10-113(1)(a); 13-10-115. One can readily conclude it did so to relieve docket pressures on the state trial court system. Relieving trial court docket pressures advances a state interest.

7. Commerce City.

Minimizing *Quintana, Martin* and *Wade*, Ms. Camp argues *City of Commerce City v. State*, 40 P.3d 1273, 1277 (Colo. 2002), justifies preemption here. The facts and law applied in *Commerce City* are very different from the case before the Court. First, in contrast to § 18-4-401, the state statute at issue in *Commerce City* expressly designated the operation of photo-radar systems known as "AVIS" a matter of statewide concern. There, it was the local governments claiming preemption, on grounds that regulating traffic was strictly a matter of local interest under Article XX, § 6. Second, both the cities and the state agreed that the ordinances and state law conflicted. *See id.* at 1278 (Colo. 2002). The key preemption issue in this case—whether a conflict exists—was stipulated in *Commerce City*.

One area of conflict did involve punishment; the ordinances imposed higher fines than the statute. But the differences extended well beyond punishment: they included basic principles of notice, both in terms of signage and mailings; differences in treatment of first-time offenders; differences in permitted relationships with the companies providing AVIS services; and differences in access to state records needed to mail tickets. *See id.*

Commerce City, therefore, was a case involving far more than a "mere difference in penalty provisions in a statute and ordinance." *Martin*, 507 P.2d at 870. And, in stark contrast to §§ 42-4-110, 18-4-401 and 31-16-101, the AVIS statute's penalty language specifically constrained fines issued by local governments. The language governing speeding, for example, stated "the maximum penalty that the state, county, *city and county, or municipality* may impose for such violation, including any surcharge, is forty dollars." § 42-4-110.5(4)(b)(I), C.R.S. (2001) (emphasis added). The statute used similar penalty language for other offenses, like running a red light. There is no such language here.

Commerce City does not even cite—much less overrule—*Quintana*, *Martin*, *Woolverton* and *Wade*. The Court should decline Ms. Camp's invitation to view it as *sub silentio* overturning precedents directly applicable to this case.

C. Equal Protection: A Rational Basis Supports Westminster's Penalty Structure.

Ms. Camp's next attack on the municipal court system contends that the Article II, § 25 equal protection rule first applied in *Trueblood v. Tinsley*, 366 P.2d 655 (Colo. 1961) prevents Westminster from prosecuting her in municipal court.

1. Standard of Review.

Judicial review of statutes for compliance with the Constitution presents an issue of law. *De novo* review applies. *See Dean v. People*, 366 P.3d 593, 596 (Colo. 2016).

2. The Court has Never Applied the Trueblood Rule Between the State and Municipal Court Systems.

The *Trueblood* rule prevents a prosecutor from charging a more serious offense when a lesser offense punishes identical conduct. *See, e.g.*, *People v. Lee,* 476 P.3d 351, 354 (Colo. 2020) (quoting *Dean*, 366 P.3d at 597) ("Colorado's guarantee of equal protection is violated where two criminal statutes proscribe identical conduct, yet one punishes that conduct more harshly."). The Court has never applied this rule between the state and municipal court systems. Instead, the Court applies the rule when a single legislative body—the General Assembly—enacted relevant overlapping criminal legislation and a single executive officer—the District Attorney—enforces it.

In this context, "the lack of any rational basis for distinguishing the substantive elements of the offenses gives rise to problems not merely in prosecutorial choice of penalty but also in prosecutorial selection between substantive crimes not legislatively intended to be interchangeable." *People v. Marcy*, 628 P.2d 69, 74 n.5 (1981). The *Trueblood* rule limits "complete unrestrained discretion in the charging decision." *Campbell v. People*, 73 P.3d 11, 14 (Colo. 2003). Equal protection principles, the Court explained, restrain the General Assembly "from allowing the prosecutor to choose between provisions that punish identical conduct by different penalties," because doing so would not be reasonably related to a legitimate governmental purpose. *Id.*

Where concurrent jurisdiction exists to prosecute theft in either municipal or state court systems, *see e.g. R.E.N.*, 823 P.2d at 1363, the prosecutorial restraint that underlies the *Trueblood* rule is naturally confined to the scope of parallel criminal provisions available to the prosecutor within that jurisdiction. Ms. Camp's attempt to suggest that her municipal court theft prosecution violates *Trueblood* subverts both the letter of and rationale behind the *Trueblood* rule because the state theft charge is unavailable to a municipal court prosecutor. For this reason alone, this Court should find no equal protection violation due to the lack of a second criminal prohibition that is crucial to a *Trueblood* scenario.

Ms. Camp may assert that, as a practical matter, law enforcement officers decide whether to charge into either municipal or state court, and that placing such power in their hands should concern the Court even more. But law enforcement officers do not ultimately file charges or prosecute cases—prosecutors do, and they owe special ethical duties under the law. *See, e.g.,* C.R.P.C. 3.8. There is no basis to conclude that city attorneys who prosecute in municipal courts take those ethical duties any less seriously than their counterparts in state court.

To the extent that Ms. Camp objects to general police practices favoring charges in municipal rather than state court, the issue is one of jurisdictional classification rather than individually-based discrimination. A wealth of equal protection doctrine guides that analysis. Westminster discusses it at length in the next section.

Before addressing that doctrine, however, it is worth pausing to consider an implication of Ms. Camp's argument. Prior to the enactment of S.B. 21-271 in 2021, a great many municipal penalties were lower than state misdemeanor penalties. If Ms. Camp's view of the law were correct, county courts and district attorneys across the state regularly violated the *Trueblood* rule when a misdemeanor prosecution could have been brought with a lower penalty range in municipal court. The number of violations likely numbered in the hundreds of

thousands under Ms. Camp's theory of the law.[5] How could such a pervasive and enduring violation of civil rights have escaped the criminal bar, this Court, and the Court of Appeals?

3. The Trueblood Rule is a Form of Rational Basis Review.

This obviously rhetorical question has an equally obvious answer in the structure of equal protection review. The *Trueblood* rule does not rest on any suspect classification such as race or gender; thus, it does not trigger heightened scrutiny. Instead, it falls within the larger class of rational basis review. As the court explained in *Dean*:

> Where a party raises an equal protection challenge, the level of judicial scrutiny varies with the type of classification used and the nature of the right affected. We apply rational basis review where, as here, the challenged law does not impact a traditionally suspect class or implicate a fundamental right. Under rational basis review, the challenging party must prove that the statute's classification bears no rational relationship to a legitimate legislative purpose or government objective, or that the classification is otherwise unreasonable, arbitrary, or capricious.

[5] And continues growing to this day under current law in cities with municipal courts not of record, where the maximum penalties remain below those authorized for many misdemeanors.

Dean, 366 P.3d at 597 (citations omitted). "If any state of facts reasonably can be conceived that justify the classification, the courts will assume the existence of such facts in order to uphold the legislation." *Id*.

The doctrinal history of Article II, § 25 demonstrates that Ms. Camp's theory oversimplifies the Court's equal protection doctrine. *Trueblood* held: "Generally, statutes which prescribe different punishments for the same violations committed under the same circumstances by persons in like situations are void as violative of the equal protection of the laws." 366 P.2d at 659. *Trueblood* indicates that the defendant there committed a sex offense against a child and could have been charged under either a statute carrying an indeterminate life sentence or a statute carrying a maximum of ten years. He received the former. The Court found no equal protection violation, observing that the state had the right "to classify persons based upon reasonable and natural distinctions, to accomplish the legitimate purposes of its police power, in fixing the differing penalties." *Id.*

Trueblood relies upon, *inter alia*, *Minnesota ex rel. Pearson v. Probate Court*, 309 U.S. 270, 274 (1940). *Pearson* rejected an equal protection challenge to a mental health statute, holding that the "question, however, is whether the legislature could constitutionally make a class of the group it did select. That is, whether there is any rational basis for such a selection." *Id.*

Subsequent decisions carry forward this rational basis lexicon. In *People v. Calvaresi*, 534 P.2d 316, 318 (1975), the Court held "[c]lassification of persons under the criminal law must be under legislation that is reasonable and not arbitrary. There must be substantial differences having a reasonable relationship to the persons involved and the public purpose to be achieved."

In reaching this holding, *Calvaresi* relied on *State of Oregon v. Pirkey*, 281 P.2d 698 (Or. 1955), and *People v. McKenzie*, 458 P.2d 232, 234 (Colo. 1969). *Pirkey* explained: "If there is no rational basis for classifying one person or group of persons as being subject to one statutory regulation, while subjecting others to a different regulation, then the legislation must fall under the constitutional provision." *Id.* at 701-02. Similarly, in *McKenzie* this Court held that "the legislature is free to adopt any classification it deems appropriate to promote the general welfare, so long as the classification bears a reasonable relation to a proper legislative purpose and is neither arbitrary nor discriminatory and operates equally on all persons within the classification." *McKenzie*, 458 P.2d 232, 234. *McKenzie* is the first of several cases in which this Court upheld harsher punishment of drug possession than drug use, despite recognizing that one must first possess in order to use.

After deciding *Calvaresi* in 1975, the Court in *Marcy*, 628 P.2d at 73, distinguished *Batchelder*, noting that the Fourteenth Amendment was not the limit of equal protection in Colorado and that "we cannot disregard our responsibility to the rational and evenhanded application of the law under our state system of criminal justice."

Significantly, *Marcy* explored from a rational basis perspective the differences between *Batchelder* and the facts before it, noting that "the lack of any rational basis for distinguishing the substantive elements of the offenses gives rise to problems not merely in prosecutorial choice of penalty but also in prosecutorial selection between substantive crimes not legislatively intended to be interchangeable." *Id.* at 74 n.5.

In 2003, the Court revisited a question first addressed in *McKenzie*. In *Campbell*, 73 P.3d at 13, the defendant raised a *Trueblood* challenge to a drug possession statute. The Court acknowledged that a person must necessarily possess a drug before using it. Still, *Campbell* held that "[t]he General Assembly's choice to classify possession as a graver offense than use is reasonably related to the general purposes of the criminal legislation." *Id.*

Campbell confirms *Marcy*'s explanation of the reasons for the rule, holding that equal protection prohibits "providing the prosecution with complete

unrestrained discretion in the charging decision." *Id.* at 14. Disparate classification and punishment of drug possession and use, however, "are based on differences that are real in fact and reasonably related to the general purposes of the legislation." *Id.* at 15. "Punishment of possession more harshly than use is justified by the fact that, as long as one is in possession of a controlled substance, he or she has the capability to distribute or dispense it, whether or not the defendant actually does so or has the intent to do so. This distinction is not arbitrary." *Id.*

In 2016, the Court decided *Dean*. It thoroughly explores the doctrinal framework governing equal protection claims in criminal cases and situates *Trueblood* within that traditional doctrinal framework. *Dean* cites, *inter alia*, *McKenzie,* 458 P.2d at 234, for the proposition that "[i]f any state of facts reasonably can be conceived that justify the classification, the courts will assume the existence of such facts in order to uphold the legislation." *Id*.

As the foregoing journey from *Trueblood* to *Dean* shows, rational basis review has been a part of the *Trueblood* rule for over sixty years, and the Court has never deviated from it. Thus, "[w]hen the legislature defines criminal offenses and establishes corresponding penalties, equal protection is not violated so long as the legislative classification is not arbitrary or unreasonable, and the differences in the

provisions bear a reasonable relationship to the public policy to be achieved." *Dean*, 366 P.3d at 596. "In other words, equal protection is not violated where differences in treatment are rationally justified." *Id.*

4. The Constitution and Common Sense Rationally Justify Westminster's Regulation of Theft.

Applying this framework here yields a result already visible in this Court's preemption decisions: the Colorado Constitution itself provides the rational basis necessary to sustain Westminster's criminal ordinances and municipal court. Article XX, § 6(b)-(c) of the Constitution expressly provides for municipal and police courts. As this Court has repeatedly held and as both Article XX, § 6 and Article VI, § 1 plainly state, municipal criminal laws and municipal criminal courts coexist with state criminal laws and state criminal courts. The General Assembly has expressly endorsed this coexistence in the realm of theft regulation. *See* § 18-4-401(8). And, as Westminster explained in the factual discussion above, Westminster has a particularized interest in combating theft due to its heavy reliance on sales tax revenue. *See Centennial*, 3 P.3d at 437 (recognizing that cities have a substantial interest in their tax bases).

The coexistence of the two systems advances numerous public policy goals. First, it advances the constitutional objective of vesting local legislatures and citizens with control over affairs unique to their community. Second, municipal

courts remove caseload from the state courts, augmenting the overall availability of scarce judicial resources. Third, municipal courts in jurisdictions like Westminster promote consistency of treatment for low-level offenses within the municipality, avoiding differences that might arise out of differing prosecutorial philosophies in the 1st and 17th judicial districts. Fourth, municipal courts provide a convenient local forum for citizens to resolve legal issues, mitigating challenges for those lacking ready access to transportation. Fifth, jurisdictions like Westminster staff their own probation departments and operate their own treatment courts, increasing the overall public investment in services that address behaviors giving rise to contact with the criminal justice system. In total, Westminster's Municipal Court adds some $3 million in public funds to Colorado's overall judicial system.

This Court itself has endorsed these benefits in the realm of theft regulation. *See, e.g.*, *Quintana*, 498 P.2d at 932 ("theft constitutes a great problem and should be combated not only by our state authorities in state courts, but by our police departments in municipal courts.").

The Court's decisions also recognize a common-sense basis for classifying urban crimes differently from non-urban crimes. *See Woolverton*, 361 P.2d at 986 (quoting *Provident Loan Society*, 172 P. 10, for proposition that "[t]he preservation of the health, safety, welfare and comfort of dwellers in urban centers of population

requires the enforcement of very different and usually much more stringent police regulations in such districts than are necessary in a state taken as a whole.").

Take theft, for example. Urban areas contain a high concentration of dwellings, retailers, and other businesses for thieves to target. Urban areas also contain more buildings for cover and concealment, and larger populations into which thieves can blend after committing crimes. Imposing greater deterrents in these environments is rational and in line with a long tradition of equal protection precedent sustaining geographical classifications. *See, e.g.*, *Francis*, 487 P.2d at 379 (geographic classification does not offend equal protection); *Salsburg,* 346 U.S. at 551-52 (same); *Missouri v. Lewis,* 101 U.S. 22, 30 (1879) (same); *State v. Chrisicos*, 960 A.2d 345, 351 (N.H. 2008) (same); *Whittaker v. Superior Ct. of Shasta Cnty.,* 438 P.2d 358, 368 (Cal. 1968) (same).

The difference in available penalties between the two systems that this Court has endorsed again and again advances the constitutional objective of allowing local communities some measure of local control over lower-level offenses. The General Assembly specifically authorizes this outcome in § 31-16-101(1)(a), and decades of this Court's caselaw show that differential penalties bear a reasonable relationship to public policies embodied in Article XX, § 6. This suffices to clear rational basis review.

5. Ms. Camp's Theory Conflicts with Article XX, § 8.

Applying the *Trueblood* rule as Ms. Camp and her amici advocate places Article II, § 25 on a collision course with Article II, § 8, which provides that "[a]nything in the constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for."

Ms. Camp's version of the *Trueblood* rule would, as *Martin* and *Retallick* realized, "strip all of the home rule cities of the state of every last vestige of local rule and local control with the possible exception of a few regulatory and licensing ordinances." *See Martin*, 507 P.2d at 870 (citing *Retallick*, 351 P.2d 884). This outcome is "inconsistent" with Article XX, § 6's express grant of municipal home rule and express authorization for municipal courts.

It also violates basic rules of constitutional interpretation. As the Court recently explained:

> If the language of a constitutional provision is clear and unambiguous, we will enforce it as written. But where ambiguities exist, we interpret constitutional provisions as a whole and attempt to harmonize all of the contained provisions. Our responsibility is to ascertain and give effect to the intent of the electorate adopting the amendment.

Ritchie v. Polis, 467 P.3d 339, 342 (Colo. 2020) (internal quotations omitted).

Article XX is clear: § 6 authorizes municipal home rule, municipal ordinances, and municipal courts. Section 8 forbids other constitutional provisions from conflicting with those powers.

Article II, § 25 is ambiguous. Like the United States Constitution's Fifth Amendment but unlike the Fourteenth, Colorado's Due Process Clause contains no express equal protection counterpart. This Court has, instead, judicially incorporated equal protection guarantees into Article II, § 25 just as the United States Supreme Court has judicially incorporated them into the Fifth Amendment's Due Process Clause. *See, e.g.*, *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954) (applying equal protection principles against the federal government through Fifth Amendment incorporation principles). Thus, basic principles of constitutional interpretation also support reading Article II, § 25 in harmony with Article XX. The Court's existing preemption decisions do just that. Ms. Camp's theory does the opposite.

6. Westminster's Ordinance Incorporates an Additional Element.

If the Court finds the constitutionally-drawn differences between the state and municipal systems insufficient to satisfy rational basis review, Westminster's ordinance survives the *Trueblood* rule because it incorporates an additional element the prosecution must establish to prevail. Virtually every substantive

criminal offense set forth in Colorado's criminal jury instructions begin with: (1) That the defendant; (2) in the State of Colorado, at or about the date and place charged. Elements addressing *mens rea* and *actus reus* then follow. The second of these elements addresses jurisdiction and place of trial. *See* § 18-1-202(1), C.R.S. (2024) (defendant must be tried in county where offense committed).

Prosecuting someone in Westminster Municipal Court requires establishing an additional element: that the offense took place within Westminster's city limits. Statutory offenses proscribe conduct throughout the state; the District Attorney need prove only that the offense occurred in Colorado and that the relevant county or district court has jurisdiction. To prosecute in Westminster Municipal Court, the People must also show that the ordinance applies in the first place. To do this, they must show the crime occurred within the jurisdictional boundaries of the City of Westminster, an urban area. *See, e.g.*, Westminster Code § 10-1-5 (applying traffic code to areas over which the City has jurisdiction and authority to regulate). Westminster does not purport to apply its laws to areas beyond its jurisdiction.

This additional element is enough to satisfy the *Trueblood* rule, which will not invalidate a charge so long as it contains a different element. *See, e.g., Campbell*, 73 P.3d at 14.

7. Applying the Trueblood Rule Here Carries Untoward Consequences.

Suppose, borrowing loosely from the facts of *Martin*, that in a jurisdiction with a municipal court not of record the People wish to charge a defendant with both second and third degree assault. The first charge is a class 4 felony. The second is a class one misdemeanor with an identical municipal ordinance counterpart. The misdemeanor punishes third degree assault more severely than the ordinance.

If the *Trueblood* rule applies, the People cannot charge the felony in municipal court, and they cannot charge the misdemeanor in state court because the municipal ordinance carries lower penalties. The charges must be tried together pursuant to § 18-1-408(2), C.R.S. (2024). Must the People simply dismiss the misdemeanor? Does the *Trueblood* rule preclude the felony jury from convicting on a lesser included misdemeanor offense of third-degree assault?

Take the hypothetical a step further back in time, to the police officer writing a summons or conducting an arrest. Does the officer violate the *Trueblood* rule if, perceiving only grounds for third degree assault, he or she writes a summons into state court rather than municipal court? Are officers required to compare in the field the different penalties available under all of the various state and municipal criminal offenses before issuing a summons? If they do arrest or summons

someone for an offense precluded by the *Trueblood* rule, are they civilly liable under § 13-21-131, C.R.S. (2024), which rules out qualified immunity? Ms. Camp's counsel certainly believe so: they are currently pursuing just such a lawsuit against two Westminster police officers in Adams County District Court.[6]

Criminal statutes have a tendency to change with the ebb and flow of politics. *See generally* William J. Stuntz*, The Collapse of American Criminal Justice* at 244-81 (Harvard Univ. Press 2011). Prior to 2021, many misdemeanor penalties exceeded those available under municipal ordinances. For now, that relationship has reversed with respect to at least some offenses. In the near future, if Ms. Camp's amici are correct, large jurisdictions like Denver may once again offer lower penalty ranges in municipal court. Does the *Trueblood* rule empower municipalities who prefer lower penalty ranges to effectively divest state courts of jurisdiction over lower-level offenses? If the General Assembly attempted to reverse that outcome by making all crimes exclusively a matter of statewide concern, would that violate the equal protection clause?

[6] *Lozano v. Westminster, McDonald & McKechnie*, 2024CV31572.

8. Federal Jurisprudence Provides an Alternative Basis to Affirm the Municipal Court.

The Court's existing *Trueblood* precedent may not always provide the clearest guide to litigants and trial courts. On the one hand are cases like *Lee*, which apply the rule broadly even when offense elements are nominally different. On the other are cases like *McKenzie* and *Campbell* which apply the rule narrowly even when the rationale of *Lee* would seem clearly to apply. Ms. Camp argues that the approach Justice Thurgood Marshall and a unanimous United States Supreme Court adopted in *Batchelder* is inferior to the *Trueblood* rule.

This Court's general jurisprudential approach provides litigants and trial courts with a good degree of confidence that the appellate bench will apply well-established rules when issues of first impression in this jurisdiction ultimately reach it. For example, litigants and trial courts comfortably rely on Restatements of the Law in common-law cases, and on federal authorities addressing most constitutional and procedural questions. *See, e.g., Warne v. Hall*, 373 P.3d 588, 590 (Colo. 2016) ("our case law interpreting the Colorado Rules of Civil Procedure in general, and C.R.C.P. 8 and 12(b)(5) in particular, reflects first and foremost a preference to maintain uniformity in the interpretation of the federal and state rules of civil procedure").

Ms. Camp grounds her argument for a different jurisprudential approach here on the language of Article II, § 25's Due Process Clause, which she contends distinguishes it from the Fourteenth Amendment. *Batchelder*, however, addressed federal offenses. It involved Fifth Amendment equal protection incorporation, *see Bolling*, *supra*, just as this Court incorporates equal protection rules into Article II, § 25. Incorporation doctrine occupies a significant place in constitutional jurisprudence. The Court may wish to avoid potential unintended consequences from relying on a nonexistent textual distinction.

It is this Court's prerogative to interpret the Colorado Constitution independently. The Court may wish to consider following *Batchelder*, or it may not. Westminster is comfortable that the *Trueblood* rule provides for rational basis review, and accordingly sees no need to rely upon *Batchelder*. Nor does Westminster believe it understands the *Trueblood-Batchelder* dichotomy better than the Court's own members. *See Lee*, 476 P.3d 351 (majority and dissenting opinions); *People v. Griego*, 409 P.3d 338 (Colo. 2018) (same).

That being said, *Batchelder* does provide an equally sound basis for sustaining Westminster's ordinances and Municipal Court, and adopting it will eliminate uncertainties litigants face under the *Trueblood* rule. To dispel any limits

the party presentation principle may impose, Westminster therefore argues in the alternative that the Court rely on *Batchelder*.

V. CONCLUSION

The Court should discharge the Order to Show Cause. Westminster joins in Ms. Camp's request for oral argument.

Respectfully submitted this 5th day of December, 2024.

BERG HILL GREENLEAF RUSCITTI LLP

[Pursuant to Rule 121, the signed original is on file at Berg Hill Greenleaf Ruscitti LLP]

s/ Josh A. Marks
Josh A. Marks

s/ Christopher G. Seldin
Christopher G. Seldin

Counsel for People of the State of Colorado
By and Through the People of the
City of Westminster and
Westminster Municipal Court

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2024, a true and correct copy of the foregoing **RESPONSE BRIEF PURSUANT TO C.A.R. 21 OF CITY OF WESTMINSTER AND WESTMINSTER MUNICIPAL COURT** was served electronically via CES and/or by depositing same in the U.S. Mail, postage prepaid, addressed to the following:

Robert C. Blume
Al Kelly
NoahLani Litwinsella
Gibson, Dunn & Crutcher LLP
1801 California Street, Suite 4200
Denver, CO 80202

Yun Wang
Britt, Tshering & Wang, LLC
999 18th Street, Suite 3000
Denver, CO 80202

William D. Hauptman
Carolyn M. Welter
Elizabeth Poche
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street, Suite 4500
Denver, CO 80202

Timothy R. Macdonald
Emma McClean-Riggs
Laura Moraff
ACLU Foundation of Colorado
303 E. 17th Avenue, Suite 350
Denver, CO 80203

Mark Brostrum
Westminster City Attorney's Office
3030 Turnpike Drive
Westminster, CO 80030

John T. Lee
Attorney General's Office
State of Colorado
Ralph L. Carr Colorado
Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

Elizabeth D. Cadiz
Dustin J. Klein
Aurora Public Defender's Office
14999 E. Alameda Pkwy
Aurora, CO 80012

Rachel K. Mercer
Municipal Public Defender's Office
710 West Colfax Avenue
Denver, CO 80204

s/ Cheryl Stasiak
Cheryl Stasiak