Colorado Supreme Court 2 East 14th Avenue Denver, Colorado 80203	
Westminster Municipal Court Honorable Rebekah B. Watada 3030 Turnpike Drive Westminster, Colorado 80030	
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
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Reply Brief	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 21, 28, and 32. The undersigned specifically certifies that:

This brief complies with the applicable word limit set forth in C.A.R. 28(g). It contains 5,138 words. I acknowledge this brief may be stricken if it fails to comply with any requirement of the foregoing rules.

/s/ Al Kelly
Al Kelly

TABLE OF CONTENTS

Page

INTRODUCTION 1

ARGUMENT 4

I. Colorado law preempts Westminster Municipal Code section 6-3-1 to the extent that ordinance punishes theft more harshly than the state. 4

A. Eliminating disparities in sentencing is a matter of overriding statewide concern, or at a minimum, mixed state and local concern. 4

B. Westminster's sentencing scheme conflicts with state law. 9

II. Westminster violated equal protection by charging Ms. Camp under Westminster Municipal Code section 6-3-1. 12

A. Rational basis review does not provide the right test, and in any event is not satisfied here. 13

B. The equal-protection doctrine applies with the same force in the context of municipal ordinances. 16

C. Westminster provides no reason to overrule or otherwise limit Colorado's equal-protection doctrine. 24

CONCLUSION 25

TABLE OF AUTHORITIES

Cases

Campbell v. People,
73 P.3d 11 (Colo. 2003).....14, 16, 17, 18

City of Aurora v. Martin,
507 P.2d 868 (Colo. 1973).....21

City of Canon City v. Merris,
323 P.2d 614 (Colo. 1958).....20

City of Commerce City v. State,
40 P.3d 1273 (Colo. 2002).....5, 7

City of Greenwood Village v. Fleming,
643 P.2d 511 (Colo. 1982).....21

City of Longmont v. Colorado Oil & Gas Ass'n,
2016 CO 29.....4, 9, 10, 11

City of Northglenn v. Ibarra,
62 P.3d 151 (Colo. 2003).....5, 9

Dean v. People,
2016 CO 14.....14, 22, 24

Hardamon v. Mun. Ct.,
497 P.2d 1000 (Colo. 1972) 8, 21

Love v. Klosky,
2018 CO 20.....24, 25

Markwell v. Cooke,
2021 CO 17.....23

In re Mercy Hous. Mgmt. Grp. Inc. v. Bermudez,
2024 CO 68.....7

People v. Estrada,
601 P.2d 619 (Colo. 1979).....15, 25

People v. Lee,
2020 CO 81.....3, 12, 13, 22, 24

People v. Marcy,
628 P.2d 69 (Colo. 1981).....13, 14, 16, 18, 20

People v. Mumaugh,
644 P.2d 299 (Colo. 1982).....18

People v. Wade,
757 P.2d 1074 (Colo. 1988) 8

People v. Weeks,
2021 CO 75.....23

Quintana v. Edgewater Mun. Ct.,
498 P.2d 931 (Colo. 1972).....6, 7, 8

United States v. Batchelder,
442 U.S. 114 (1979).....24, 25

Waller v. Florida,
397 U.S. 387 (1970).....20

Statutes

§ 13-10-111, C.R.S. (2024).....17

§ 13-10-113, C.R.S. (2024).....11

§ 16-2-104, C.R.S. (2024).....17

§ 18-4-401, C.R.S. (2024).....16, 19

Rifle Mun. Code § 10-4-10.....16

Rules

Colo. Mun. Ct. Rule 237 22

Constitutional Provisions

Colo. Const. art. XX, § 6.....8, 21

Colo. Const. art. XX, § 8.....20, 21

INTRODUCTION

The City of Westminster has given its police force unrestrained discretion to subject people to vastly disparate sentences for identical conduct. In its response brief, Westminster claims this broad grant of standardless discretion is both constitutionally permissible and desirable. It is not. Petitioner Aleah Michelle Camp's case shows the need to reign in Westminster's patently unconstitutional practices.

Ms. Camp was accused of theft of less than $300 worth of goods. The officer leveling that accusation could have chosen to issue a summons to Ms. Camp in state court, raising state-law charges. Instead, in an exercise of unfettered discretion, the officer decided to issue a summons to Ms. Camp in Westminster Municipal Court, raising charges under a provision of the municipal code that, as Westminster concedes, mirrors "the elements of theft under" state law. Resp. at 5. The officer's decision subjected Ms. Camp to charges that permit *thirty-six times* the jail sentence and *nine times* the fines, when compared to state-law charges criminalizing identical conduct.

As explained in the petition, the municipal charges against Ms. Camp are unconstitutional both because (1) they are preempted by state law and (2) they violate equal protection. Westminster's response dodges the key

questions for both of these constitutional inquiries and instead asks the Court to re-write well-settled analytical frameworks. The Court should decline Westminster's invitation and instead hold that Westminster's more-punitive sentencing scheme violates the Colorado Constitution.

First, Westminster's sentencing scheme is preempted by state law. Colorado has an overriding interest in the elimination of sentencing disparities, especially based on race, as evinced by the General Assembly's sweeping sentencing reforms in response to the 2020 racial-justice protests. Pet. at 9–15. Neither Westminster nor its *amici* dispute that interest and this ground, alone, is sufficient to find preemption. Yet even if the Court does not find the state's interest overriding, at minimum, it presents a mixed matter of state and local concern. Westminster's response and every case it cites concede as much. Westminster's divergent approach to sentencing for low-level theft undermines, and thus operationally conflicts with, the state's interest, providing an additional basis for preemption. Pet. at 15–17.

Westminster tries to muddy the waters by raising irrelevant factors like legislative intent and statutory interpretation—which apply only to express or implied conflicts, rather than operational conflicts—and by asking the Court to ignore the state's evolving interests in criminal

sentencing in the fifty years since the Court last addressed this preemption issue. The Court should reject these arguments and hold that state law preempts Westminster's sentencing scheme for low-level theft.

Second, the officer's decision to charge Ms. Camp under a more-punitive municipal code provision violated her right to equal protection. *See* Pet. at 17–33. "Colorado's guarantee of equal protection is violated where two criminal statutes proscribe identical conduct, yet one punishes that conduct more harshly." *People v. Lee*, 2020 CO 81, ¶ 14. Westminster does not dispute that its municipal code criminalizes the same conduct as state law, but with higher penalties. Resp. at 5–6. Instead, Westminster's only response is to ask the Court to change or abandon its longstanding equal-protection doctrine. But Westminster does not and cannot provide any basis to overhaul well-settled precedent. The Court should thus hold that equal protection prohibits unequal punishments for charges covering identical conduct—whether arising under a state statute enacted by the General Assembly or under an ordinance enacted by a municipal arm of the state.

Ms. Camp respectfully requests that the Court make the order to show cause absolute and remand with orders to dismiss the unconstitutional charges against her.

ARGUMENT

I. Colorado law preempts Westminster Municipal Code section 6-3-1 to the extent that ordinance punishes theft more harshly than the state.

As explained in the petition, state law preempts Westminster's attempt to impose higher penalties for low-level offenses like theft for two independent reasons: (1) combatting disparities in sentencing is a matter of overriding statewide concern, and (2) at a minimum, it is an issue of mixed state and local concern and Westminster's higher punishments conflict with the state's interest. Pet. at 9–17. None of the arguments raised by Westminster or the Colorado Municipal League change that result.

A. Eliminating disparities in sentencing is a matter of overriding statewide concern, or at a minimum, mixed state and local concern.

To determine whether an issue "is one of statewide, local, or mixed statewide and local concern," the Court "weigh[s] the relative interest of the state and the municipality" by looking to a variety of "pertinent factors," including "the need for statewide uniformity." *City of Longmont v. Colorado Oil & Gas Ass'n*, 2016 CO 29, ¶ 20. "[C]hanging conditions may affect the analysis of whether an issue is one of local, state, or mixed concern," and the Court avoids "consider[ing] something 'state' or 'local' because it was so

denominated fifty years ago." *City of Commerce City v. State*, 40 P.3d 1273, 1281–83 (Colo. 2002) (internal citations omitted). A statewide concern can "override" any municipal concerns if the state interest is "sufficiently dominant." *City of Northglenn v. Ibarra*, 62 P.3d 151, 155 (Colo. 2003).

As explained in the petition, the state has overriding statewide interest in eliminating sentencing disparities, especially based on race, which emerged out of the racial justice protests of 2020. *See* Pet. 9–15. Neither Westminster nor the Municipal League dispute this statewide interest. For instance, they do not challenge the "legislative fact sheet" in which sponsors of legislation in the General Assembly reiterated how the state's new comprehensive sentencing rubric was aimed at "eliminating disparities based on race" through "[p]romot[ing] consistency," creating "a unified misdemeanor sentencing grid," and ensuring that "[p]etty offenses" receive, at most, a "short jail sentence." Pet., Ex. 5. Instead, Westminster and the Municipal League focus on distinct interests in "municipal theft" and "municipal penalties." Resp. at 12–25; Brief of Colo. Mun. League at 13–18. This argument misses the mark, however, because the "[i]nterest at [s]take" here is not theft, generally, but instead fairness in sentencing. *Ibarra*, 62 P.3d at 163. The Court should thus find preemption based on Colorado's post-

2020 interest in the elimination of sentencing disparities alone. At the very least, the state's concern cannot be ignored.

More than fifty years ago, this Court ruled that low-level theft "is of both statewide and municipal concern," but nevertheless struck down a municipal theft ordinance as preempted because it applied to felony theft, which was "exclusively within the jurisdiction of our district courts." *Quintana v. Edgewater Mun. Ct.*, 498 P.2d 931, 932 (Colo. 1972). *Quintana* did not expressly address whether the *level of punishment* for theft—rather than deterring theft, more generally—was a matter of mixed state and local concern. But to the extent *Quintana* or any other case could be read for that proposition in the 1970's, it no longer holds true today in light of the State's interest in sentencing fairness, as exemplified in part by the General Assembly's changes to criminal sentencing. *See* Pet. at 9–15. Given the changed nature of the state's interests in this area, the Court should hold that sentencing fairness and uniformity now constitutes an issue of overriding statewide concern.

Westminster and the Colorado Municipal League focus on distinct interests in "municipal theft" and "municipal penalties." Resp. at 12–25; Colo. Mun. League Br. at 13–18. But they never address the changes over the

last fifty years or the state's interest in ensuring sentencing fairness and uniformity. Instead, Westminster treats *Quintana* and other cases that it sees as "authoriz[ing] different state and municipal penalties" as rulings trapped in amber, which the General Assembly must "abrogate . . . expressly or by clear implication." Resp. at 6. But the case Westminster relies upon for that proposition (which has since been withdrawn on other grounds) discusses the test for "when the legislature decides to abrogate the *common law*," which is not at issue in this case. *In re Mercy Hous. Mgmt. Grp. Inc. v. Bermudez*, 2024 CO 68, ¶ 62 (alterations omitted, emphasis added).

Contrary to what Westminster suggests, the preemption inquiry *invites* the Court to revisit its prior holdings; the relevant analysis must take into account whether the "time [and] circumstances" have changed since the 1970's such that sentencing uniformity and fairness are now better understood as issues of statewide concern. *City of Com. City*, 40 P.3d at 1282. By asking the Court to follow *Quintana* and other decades-old cases without further scrutiny, Westminster invites the Court to do exactly what it has warned against in the past: "consider[ing] something 'state' or 'local' because it was so denominated fifty years ago." 40 P.3d at 1283.

The Colorado Municipal League goes even further, asking the Court to hold for the first time that "municipal theft" and "municipal penalties" are "matter[s] of strictly local concern." Colo. Mun. League Br. at 13–18. The Municipal League suggests this result is demanded by both "this Court's precedent" and Article XX, section 6 of the Colorado Constitution. *Id.* But the same cases the Municipal League cites make clear that Article XX, section 6 does not give municipalities unbridled discretion to set penalties that are otherwise preempted or unconstitutional. *E.g.*, *Quintana*, 498 P.2d at 933 (some penalties for "petty theft" go "beyond a local and municipal matter"); *Hardamon v. Mun. Ct.*, 497 P.2d 1000, 1002 (Colo. 1972) (the home-rule amendment "does not empower home rule cities to deny substantive rights conferred upon all of the citizens of the state"). And the primary case on which the Municipal League relies—*People v. Wade*, 757 P.2d 1074 (Colo. 1988)—did not have the opportunity to assess the statewide interest in sentencing fairness represented in SB 21-271. To the contrary, *Wade* dealt with a statute that (unlike SB 21-271) invited varying municipal ordinances dealing with the same topic. *See* Pet. at 16–17 (addressing *Wade*).

Moreover, the implications of the Municipal League's position are striking. If "municipal theft" really is a matter of pure local concern, any local

theft ordinance would "supersede[] a conflicting state statute." *Longmont*, ¶ 17. That result—which would effectively box the state out from any role in deciding how Coloradoans are punished for theft—is flatly contradictory to decades of this Court's precedent. *See Quintana*, 498 P.2d at 932 (holding that theft "is of both statewide and municipal concern"). The Municipal League points to nothing to suggest that municipalities' interests in more-punitive theft ordinances have become more compelling in recent decades. The Court should thus reject the Municipal League's argument and hold that the state has an overriding interest in sentencing fairness, or in the alternative, that sentencing presents a matter of mixed state and local concern.

B. Westminster's sentencing scheme conflicts with state law.

If the Court holds that the state has an overriding interest in sentencing fairness and uniformity, that ends the inquiry. Home-rule municipalities are "without power to act" on matters of overriding statewide concern. *Ibarra*, 62 P.3d at 155. Where, as here, the relevant interest implicates a "sufficiently dominant" statewide concern, that interest "override[s]" any interests municipalities may have in the same area. *Id.* So, if the Court agrees that the state's interest here overrides municipalities minimal interest in unequal punishment, the Court need not even reach the conflict inquiry. *See id.*

Yet even if the Court finds that sentencing for low-level theft presents a matter of mixed state and local concern, the Westminster ordinance is still preempted because it conflicts with Colorado law. When a local ordinance operationally "conflicts with state law"—that is, where the local ordinance "would materially impede or destroy a state interest"—the "state law supersedes that conflicting ordinance." *Longmont*, ¶¶ 18, 42.

Here, the state's interest in sentencing fairness is materially impeded by Westminster's divergent and more-punitive sentencing scheme. Whereas the state has sought to eliminate "unjustified disparity in sentences" and reduce the amount of "discretion" exercised "by system actors," Pet. Ex. 4 at 33, Westminster's sentencing scheme gives *more* discretion to system actors and would result in *more* disparities in sentencing. *See* Pet. at 15–17. Because Westminster's sentencing approach impedes and conflicts with the state's interest in this area, it is preempted. *See Longmont*, ¶ 18.

Westminster argues that there is no conflict because the state supposedly "authorized" higher fines for municipalities in another statute, which provides that "any person convicted of violating a municipal ordinance in a municipal court of record may be incarcerated for a period not to exceed three hundred sixty-four days or fined an amount not to exceed

two thousand six hundred fifty dollars, or both." § 13-10-113(1)(a), C.R.S. (2024); Resp. at 2. That argument misconstrues the relevant statutory scheme. Although it is true that section 113(1)(a) sets *one* ceiling for municipal ordinances—which applies to any municipal offense, whether or not it has a state-law analogue—that provision does not set the *only* ceiling for sentences. In fact, another subsection of the same statute makes clear that, in addition to not exceeding the 364-day and $2,650 maximum, sentences for municipal infractions "shall not exceed the sentence or fine limitations established by ordinance"—setting yet another limit on municipal-ordinance sentences. *Id.* § 13-10-113(2). Imposing another ceiling for offenses that have a state-law analogue is entirely consistent with these provisions.

Finally, Westminster argues there is no conflict because it believes SB 21-271 reflects insufficient legislative "intent to alter municipal ordinance penalties." Resp. at 7. This is a red herring; although "legislative intent" and "statutory interpretation" are relevant when evaluating *express* or *implied* preemption, they do not factor into the test for *operational-conflict* preemption. *See Longmont*, ¶¶ 34–35. Instead, that test looks more generally at "the state's interest" in the relevant area. *Id.* ¶ 37. And as described in the petition, Pet. at 10–15, the state has a clear interest in ensuring sentencing fairness and

uniformity—an interest Westminster never addresses nor rebuts. Because the state's interest is impeded by Westminster's theft ordinance to the extent it imposes higher penalties, the ordinance is preempted.

II. Westminster violated equal protection by charging Ms. Camp under Westminster Municipal Code section 6-3-1.

"Colorado's guarantee of equal protection is violated where two criminal statutes proscribe identical conduct, yet one punishes that conduct more harshly." *People v. Lee*, 2020 CO 81, ¶ 14; Pet. at 18–19 (collecting cases).

The equal-protection analysis here is straightforward. The officer issuing a summons to Ms. Camp could have chosen to charge her for alleged theft under provisions of either the Colorado Revised Statutes or the Westminster Municipal Code that punish identical conduct. Pet. at 20–21. In an exercise of unfettered discretion, the officer decided to charge Ms. Camp under the more-punitive municipal code provision. *Id.* at 4. By charging Ms. Camp under the provision that "punishes [identical] conduct more harshly," the officer violated Ms. Camp's right to equal protection. *Lee*, ¶ 14. The charges against her should thus be dismissed. *Id.* at ¶¶ 2–3.

To try to get around this straightforward analysis, Westminster asks the Court to re-write the test for equal protection by (1) recasting it as a

toothless version of rational basis review; (2) limiting the doctrine to cover only prosecutors operating in state court; or, failing all that, (3) abandoning the doctrine entirely in favor a federal-court test this Court has repeatedly rejected in the past. The Court should decline each of these invitations to overhaul well-settled doctrine and reaffirm defendants' constitutional right to equal protection—regardless of whether the charge arises under state law or under an ordinance of a municipal arm of the state.

A. Rational basis review does not provide the right test, and in any event is not satisfied here.

For decades, this Court has applied a simple, categorical rule to equal-protection challenges in the context of criminal charges: a violation occurs "where two criminal statutes proscribe identical conduct, yet one punishes that conduct more harshly"—full stop. *E.g.*, *Lee*, ¶ 14; *People v. Marcy*, 628 P.2d 69, 74–75 (Colo. 1981) ("[E]qual protection of the laws is violated if different statutes proscribe the same criminal conduct with disparate criminal sanctions."). Whereas federal equal-protection guarantees in the criminal context apply only to "selective enforcement based on a prohibited standard"—which is judged under the familiar tiers of classification-based scrutiny—Colorado has expressly "declined to apply [that] reasoning . . . to

the Colorado Constitution's due process equal protection guarantee." *Dean v. People*, 2016 CO 14, ¶ 14. Instead of applying traditional tiers of scrutiny, challenges under Colorado's equal-protection doctrine in criminal cases are judged under a more administrable categorical rule, which serves to limit "discretion in the charging decision" even where suspect classifications are not at issue. *Campbell v. People*, 73 P.3d 11, 14 (Colo. 2003); *see also* Colo. Crim. Defense Bar Br. at 6–12.

Westminster argues that, because this Court has used "rational basis lexicon" in some opinions in the past, the equal-protection test should be understood as a toothless "form of rational basis review," which is satisfied simply by showing that a municipality's goals in punishing theft are "rational." Resp. at 30, 32. But Westminster points to *no* case where the Court abandoned its categorical approach in favor of a loose rational basis review that relies on a prosecuting entity's professed "public purpose" for unequal sentences. *Id.* Instead, all of the cases Westminster cites make clear that Colorado's doctrine is judged under the categorical approach—not by using tiers of scrutiny. *E.g.*, *Dean*, ¶¶ 11–14 (describing general equal-protection law before specifically addressing Colorado's categorical rule); *Marcy*, 628 P.2d at 74–75 (same).

Even if rational basis review applied, however, it would not be satisfied here. Westminster offers a variety of policy rationales to justify why it may want to punish theft, ranging from the City's "reliance on sales tax revenue" to its desire of "[i]mposing greater deterrents" on "urban crime." Resp. at 35–37. Although those policy goals may justify criminalizing theft, generally, they do not provide a rational basis for handing police officers unrestrained and unreviewable discretion to issue summons to some people under more-punitive or less-punitive charges covering identical conduct. This Court has already rejected that argument, explaining that allowing "widely divergent sentences for similar conduct and intent [is] irrational." *People v. Estrada*, 601 P.2d 619, 621 (Colo. 1979). Westminster's "policy goals" cannot override this fundamental constitutional rule of fairness.

Nor would application of the equal-protection doctrine here get in the way of any of Westminster's professed policy goals. Westminster would remain free to penalize theft, "provide a convenient local forum" for defendants, and "increas[e] the overall public investment" in the criminal-justice system. Resp. at 36. It just cannot impose higher penalties than would be allowed under state laws that punish identical conduct. Other municipalities have complied with this constitutional mandate by aligning

their penalties with state law, while still continuing to charge offenses in municipal court and under their own municipal code. *Compare, e.g.*, Rifle Mun. Code § 10-4-10, *with* § 18-4-401, C.R.S. (2024) (identical sentences for state statute and municipal code provision). Unless Westminster does the same, it cannot justify its penalty scheme—whether under rational basis review or otherwise.

B. The equal-protection doctrine applies with the same force in the context of municipal ordinances.

Colorado's equal-protection doctrine is designed to "enhance[] the evenhanded application of the law in the process of judicial adjudication," *Marcy*, 628 P.2d at 74, give "fair warning" to individuals who may be charged with an offense, *id.* at 73, and limit "discretion in the charging decision," *Campbell*, 73 P.3d at 14.

As the parties agree, this case presents an issue of first impression, as the Court has never explained how the equal-protection doctrine applies to municipal ordinances. *See* Resp. at 29. It thus makes sense to look at the rationales underpinning the doctrine, each of which apply with equal or greater force in municipal court and in the context of a police officer's discretion when deciding whether to charge an offense under state law or a

municipal code criminalizing identical conduct. *See* Pet. at 22–24; *see also* ACLU of Colo. and Colo. Freedom Fund Br. at 9–16.

Westminster tries to re-write the test for equal protection, arguing that it applies only to statutes enacted by the General Assembly and charging decisions made by district attorneys in state court. *See* Resp. at 27–28. But Westminster does not and cannot cite any case to support either of those limitations. Instead, this Court has made clear that the goal of "equal protection jurisprudence under Colorado law" is to prevent "unrestrained discretion in the charging decision," more generally. *Campbell*, 73 P.3d at 14.

Although "discretion in the charging decision" sometimes rests with a district attorney, police officers like the one who charged Ms. Camp also have charging discretion—namely, the discretion as to whether to issue a summons to a defendant using municipal or state charges, in municipal or state court. *Compare* § 13-10-111(3), C.R.S. (2024) (officers may issue "summons, process, writ, or warrant" to be filed in municipal court for municipal-ordinance violations), *with* § 16-2-104, C.R.S. (2024) (officers may issue a "summons and complaint" for "an offense constituting a misdemeanor or a petty offense" under state law, which "must be filed . . . [in] county court"). It is that exercise of discretion that led to Ms. Camp being

charged with a more-punitive municipal ordinance rather than a less-punitive state statute criminalizing identical conduct, causing the equal-protection violation here.

Westminster provides no justification for its argument that prosecutors' "charging decisions" should be subject to constitutional scrutiny while police officers should be granted "complete unrestrained discretion" in deciding whether to bring charges under different laws that provide drastically different penalties for identical conduct. *Campbell*, 73 P.3d at 14. Although *Campbell* referred to the discretion of a "prosecutor" in passing, it never suggested that prosecutors are the *only* actors in the criminal justice system whose discretion is limited by equal protection. And other cases from this Court have applied the equal-protection doctrine to limit discretion by other decisionmakers in criminal cases. *See, e.g.*, *Marcy*, 628 P.2d at 80 (equal protection does not allow "*the jury* to create its own standard of adjudication in each case" involving charges for identical conduct (emphasis added)); *People v. Mumaugh*, 644 P.2d 299, 300–01 (Colo. 1982) (equal protection limits a trial court's discretion at the sentencing phase and on a motion under Rule of Criminal Procedure 35).

In sum, nothing in this Court's prior case law indicates that the equal-protection doctrine applies only to prosecutors or only in state court. And the rationales underlying the doctrine apply with equal force to a case like this, in which a police officer was given unfettered discretion in making a charging decision that led to higher penalties for identical conduct. The Court should thus hold that equal protection applies to charging decisions like the one taken by the police officer who issued a municipal-court summons to Ms. Camp in this case.

Westminster raises six main arguments in response; none are persuasive.

First, Westminster claims the General Assembly has "endorsed" differing penalties in state and municipal courts for identical conduct. Resp. at 35 (citing § 18-4-401(8), C.R.S. (2024)). But the statute on which Westminster relies provides only that a "municipality shall have concurrent power to prohibit theft" and says nothing about what *penalties* municipalities may impose for theft. Application of the equal-protection doctrine here would not interfere with municipalities' ability to "prohibit theft," but instead would affect only the permissible range of punishment for that prohibition. And in any event, the General Assembly's supposed

"endorsement" cannot override defendants' constitutional right to equal protection. *See Marcy*, 628 P.2d at 73 (deference to the legislature does not affect the Court's "responsibility to the rational and evenhanded application of the law under our state system of criminal justice").

Second, Westminster argues the equal-protection doctrine should not apply because state courts and municipal courts are two different "systems." Resp. at 27–28, 37. Not so: "municipal and state courts of a State are part of one sovereign judicial system." *Waller v. Florida*, 397 U.S. 387, 395–96 (1970) (Brennan, J., concurring); *see also City of Canon City v. Merris*, 323 P.2d 614, 620 (Colo. 1958), *overruled on other grounds by Vela v. People*, 484 P.2d 1204 (Colo. 1971) (holding it is "a fallacy" to call the state and municipalities "two sovereigns" because a "municipality is an agency of the state"). Westminster appears to recognize as much elsewhere in its brief, claiming that municipalities' ability to penalize theft stems from the fact that they are supposedly "authorized" to do so by the state. Resp. at 6. There is thus no basis to argue that the separate "systems" of state and municipal courts means the equal-protection doctrine does not apply.

Third, Westminster says the equal-protection doctrine is trumped by Article XX, section 8 of the Colorado Constitution, which provides that

anything "in conflict or inconsistent with the provisions of [the home-rule] amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for." *See* Resp. at 38–39. But there is nothing "inconsistent" between the constitutional provisions here; the home-rule amendment allows Westminster to create "municipal courts," Colo. Const. art. XX, § 6(c), but it does not give Westminster the authority to impose unconstitutional sentences in those courts. This Court has made clear cities cannot do that. *See Hardamon*, 497 P.2d at 1002 (home-rule amendment "does not empower home rule cities to deny substantive rights conferred upon all of the citizens of the state"); *City of Greenwood Village v. Fleming*, 643 P.2d 511, 516 (Colo. 1982) (the Colorado Constitution "prohibits a home rule city from removing . . . basic criminal safeguards"). Article XX, section 8 is inapplicable because there is no inconsistency between the equal-protection doctrine and anything "provided for" in the home-rule amendment.[1]

[1] Westminster's claim that respecting defendants' right to equal protection would "strip . . . every last vestige of local rule and local control" is overblown. Resp. at 38 (quoting *City of Aurora v. Martin*, 507 P.2d 868, 870 (Colo. 1973)). Again, Westminster remains free to penalize theft, it just must do so in a manner that is consistent with state law if an offense criminalizing identical conduct exists in the Colorado Revised Statutes.

Fourth, Westminster asserts that equal protection does not apply in this case because theft charges brought under the municipal code have an "additional element," requiring that "the offense took place within Westminster's city limits" rather than just "in the State of Colorado." Resp. at 39–40. But equal-protection challenges can be raised on an "as-applied" basis. *Lee*, ¶ 15; *Dean*, ¶ 2. Any offense committed within Westminster city limits is necessarily also an offense committed within the State of Colorado, such that the prohibited conduct would be identical as applied to anyone within city limits. The supposed "additional element" Westminster points to is a mirage in an as-applied challenge like this.

Fifth, Westminster suggests that, because the application of the equal-protection doctrine to municipal charges has "escaped" this Court's review until now, it must be wrong. Resp. at 29–30. But there may be any number of reasons why this issue has not yet reached this Court—including the fact that appeals from municipal court are heard in district court, Colo. Mun. Ct. Rule 237, and the fact that many defendants in municipal court lack adequate access to counsel who would raise and preserve an equal-protection argument, *see* ACLU of Colo. and Colo. Freedom Fund Br. at 17–20. This Court has not shied away from correcting "longstanding" trial-court errors

in the past. *See, e.g.*, *People v. Weeks*, 2021 CO 75, ¶ 2. The mere fact that this case presents the Court with its first opportunity to correct a longstanding and widespread error should not affect the outcome here.

Finally, Westminster argues the Court should create exceptions to the equal-protection doctrine in municipal court because its application would lead to supposedly "untoward" results in future cases. Resp. at 41–42. Westminster poses a variety of "hypothetical" situations in which it thinks application of the equal-protection doctrine would result in bad policy outcomes. *Id.* Addressing those situations on a hypothetical record is neither appropriate nor necessary to resolve this case, which instead presents a straightforward application of the equal-protection test. As this Court has explained, neither "speculation" nor "fear of what tomorrow may bring" should dictate the results when interpreting the Colorado Constitution. *Markwell v. Cooke*, 2021 CO 17, ¶ 46 n.9. The same holds true here; Westminster's hypotheticals and policy arguments do not justify re-writing the equal-protection doctrine.

C. Westminster provides no reason to overrule or otherwise limit Colorado's equal-protection doctrine.

This Court's precedent remains binding absent "sound reasons" to "depart from our existing law." *Love v. Klosky*, 2018 CO 20, ¶ 15. The Court typically will not overrule precedent where a party does not "ask [the Court] to do so." *E.g.*, *Lee*, ¶ 13. And even where a party expressly asks to overturn existing law, it still must show both that "(1) the rule was originally erroneous or is no longer sound because of changing conditions and (2) more good than harm will come from departing from precedent." *Love,* ¶ 15.

This Court has reaffirmed the viability of Colorado's equal-protection doctrine for more than sixty years and across more than two-dozen opinions. Pet. at 18 n.1 (collecting cases). Westminster does not squarely ask the Court to overrule all of this precedent. Instead, at most, it posits that the Court "may"—or "may not"—"wish to consider following" the approach to equal protection adopted in *United States v. Batchelder*, 442 U.S. 114 (1979). Resp. at 44. But as Westminster recognizes, this Court has repeatedly declined to adopt *Batchelder* in interpreting Colorado's distinct equal-protection guarantee under the state Constitution. *Id.* at 33; *see also Dean*, ¶ 14 (noting that the Court has "declined to apply the reasoning of [*Batchelder*] to the

Colorado Constitution's due process equal protection guarantee"); *Estrada*, 601 P.2d at 620–21 (same).

To the extent Westminster is actually asking the Court to depart from its decades-long equal-protection precedent, it does nothing to justify that request. Westminster does not argue that the equal-protection doctrine "was originally erroneous or is no longer sound because of changing conditions." *Love*, ¶ 15. To the contrary, Westminster professes that it "sees no need to rely upon *Batchelder*," and appears to agree that the federal constitution is "not the limit of equal protection in Colorado." Resp. at 33, 44. Nor does Westminster establish that "more good than harm will come from departing from precedent" relating to equal protection. *Love*, ¶ 15.

As explained in the petition, there is no good reason to depart from or otherwise limit Colorado's right to equal protection. *See* Pet. at 24–33. The Court should thus decline Westminster's half-hearted invitation to overturn well-established precedent and reaffirm the viability of Colorado's equal-protection doctrine.

CONCLUSION

Ms. Camp respectfully requests that the Court make the order to show cause absolute and remand with orders to dismiss the unconstitutional

charges against her. Undersigned counsel also respectfully renews the request—now joined by Westminster, Resp. at 45—that the Court set this case for oral argument.

Respectfully submitted this 9th day of January, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that, on January 9, 2025, a true and correct copy of this pleading was served via the Colorado Courts E-Filing system upon:

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