

SUPREME COURT OF ARIZONA

STATE OF ARIZONA, *ex rel.*
MARK BRNOVICH, Attorney General,

Petitioner,

v.

CITY OF TUCSON, Arizona,

Respondent.

Case No.:

PETITION FOR SPECIAL ACTION

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INTRODUCTION

This mandatory action by the State of Arizona asks this Court to resolve whether a city ordinance violates state law. *See* A.R.S. 41–194.01(B)(2). The City of Tucson (“City”) enacted Ordinance No. 11731 (“Ordinance”), which calls for the next City Council election, and any special local elections, to be held “off-cycle” in 2021. *See* Exhibit (“Ex.”) A at 029-030.

The Ordinance conflicts with a recently enacted statute, A.R.S. § 16–204.01, which requires a city to “hold its elections on a statewide election date if its previous elections on a nonstatewide election date resulted in a significant decrease in voter turnout[.]” A.R.S. § 16–204.01(B); *see also* A.R.S. § 16–204.01(D)(3) (defining “statewide election date” as “the date of the regular statewide primary election and the regular statewide general election”). Here, the City admits that its election held on a nonstatewide election date in 2019 resulted in a “significant decrease in voter turnout” compared to the election held in 2018, as defined under A.R.S. § 16–204.01(D)(2). *See* Ex. A at 009–011. The City is thus required under § 16–204.01(C) to hold “its subsequent elections on the statewide election dates.”

This Court should not excuse the City from complying with this generally applicable state law because under Arizona Constitution article XIII, § 2, the dates of city elections are matters of statewide concern, not purely local concern. This Court has expressly recognized as much, stating that some aspects of local

elections—including “election dates” specifically—are matters of statewide concern. *City of Tucson v. State*, 229 Ariz. 172, 178, ¶35 (2012) (“*Tucson II*”) (citing *City of Tucson v. State*, 191 Ariz. 436, 439 (App. 1997) (“*Tucson I*”).

The City points to the Court of Appeals’ opinion in *Tucson III*, which concluded that a state law automatically moving charter city election dates to the statewide election dates did impact a matter of purely local concern. *See City of Tucson v. State*, 235 Ariz. 434, 440, ¶20 (App. 2014) (“*Tucson III*”). However, *Tucson III* was only able to distinguish this Court’s statement in *Tucson II* by concluding there that the Legislature did not make specific findings of a statewide concern in voter turnout. *Tucson III*, 235 Ariz. at 438-40, ¶¶12-19. In response to *Tucson III*, the Legislature enacted A.R.S. § 16–204.01, which only takes effect upon an actual, “significant decrease in voter turnout” in a particular city, thereby resolving the Court of Appeals’ concerns about a lack of specific findings.¹

Accordingly, pursuant to A.R.S. § 41–194.01(B)(2), Petitioner respectfully requests that this Court declare the Ordinance violates state law and is therefore null and void.

¹ Given *Tucson III*, however, “existing law does not “clearly and unambiguously compel[.]” that the decision of when to hold local elections is a matter of statewide, not local, concern. *See infra*, p. 4 (quoting *Tucson IV*, 242 Ariz. at 595, ¶25).

PARTIES

Petitioner State of Arizona *ex rel.* Mark Brnovich, Attorney General, is the proper party to bring actions under A.R.S. § 41–194.01(B)(2). Respondent City of Tucson is a charter city, organized under the Arizona Constitution and laws of the State of Arizona. *See State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 599, ¶41 (2017) (“*Tucson IV*”) (noting that “Tucson has been a charter city pursuant to article 13, section 2 [of the Arizona Constitution] since 1929”).

JURISDICTIONAL STATEMENT

This Court has mandatory jurisdiction over this petition under article VI, § 5(6) of the Arizona Constitution and A.R.S. § 41–194.01(B)(2). *See Tucson IV*, 242 Ariz. at 593–96, ¶¶12-29 (holding § 41–194.01(B)(2) “quite clearly makes [this Court’s] jurisdiction mandatory”).

Under § 41–194.01(A), a member of the Legislature may request that the Attorney General investigate “any ordinance, regulation, order or other official action adopted or taken by the governing body of a county, city or town that the member alleges violates state law or the Constitution of Arizona.” If the Attorney General determines that an ordinance “may violate” state law (as it concluded here), then the Attorney General is directed to file a special action in this Court “to resolve the issue,” and this Court is directed to “give the action precedence over all other cases.” A.R.S. § 41–194.01(B)(2); *see also Tucson IV*, 242 Ariz. at 594, ¶22.

On June 17, 2020, Senator J.D. Mesnard submitted a request to investigate the Ordinance pursuant to A.R.S. § 41–194.01, identifying it as potentially violating A.R.S. §§ 16–204, 16–204.01, and 16–204.02.² The Attorney General commenced an investigation, soliciting a written response on legal and factual issues from the City. On July 17, 2020, the Attorney General issued the statutorily-prescribed report, which concluded that “[t]he Ordinance irreconcilably conflicts with A.R.S. § 16–204.01 because—despite the low voter turnout in the City’s 2019 election, which triggers the statute’s requirement that candidate and other elections be held on statutorily-prescribed consolidated dates—the Ordinance calls for an off-cycle election in 2021.” *See* Report No. 20-002 at 2.

The Attorney General nonetheless recognized that “‘existing law’ does not ‘clearly and unambiguously compel[.]’ ... that the decision of when to hold local elections is a matter of statewide, not local, concern.” *Id.* at 3 (quoting *Tucson IV*, 242 Ariz. at 595, ¶25). This is because the Court of Appeals held in *Tucson III*—contrary to its earlier decision in *Tucson I* and contrary to this Court’s statement in *Tucson II*—that a charter city ordinance regarding election dates superseded a different state law. *See id.* (citing *Tucson III*, 235 Ariz. at 440, ¶¶12, 21).

² The Request (No. 20–002), the City’s response, and the Attorney General’s Report are available at <https://www.azag.gov/complaints/sb1487-investigations> (last visited Aug. 25, 2020). This Court may take judicial notice of these records that are publicly available on the Attorney General’s website. *See* Ariz. R. Evid. 201; *Pedersen v. Bennett*, 230 Ariz. 556, 559, ¶15 (2012).

Accordingly, the Attorney General formally determined that the Ordinance “may violate” state law under § 41–194.01(B). This action followed.³

STATEMENT OF THE ISSUE

Following a significant decrease in voter turnout at the 2019 Tucson City election compared to the 2018 statewide election, does Tucson City Ordinance 11731 violate A.R.S. § 16–204.01 by calling for elections for city council, as well as for city ballot measures, to continue to be held off cycle in 2021 rather than on the statewide election dates in 2022?

STATEMENT OF FACTS

I. Applicable Statutes And Case Law

This case requires the Court to resolve the conflict between the City’s Ordinance and A.R.S. § 16–204.01, which stems from prior litigation surrounding a related statute, A.R.S. § 16–204. Relevant background information is as follows.

A. The Legislature Declares In A.R.S. § 16–204(A) That Holding Elections On Consolidated Dates Is Of Statewide Concern

In 1996, the Legislature enacted A.R.S. § 16–204(A), declaring as follows:

While the [L]egislature recognizes that the method of conducting elections by political subdivisions including charter counties and cities may be a matter of local concern, the [L]egislature

³ This Court recently held that the bond provision of A.R.S. § 41–194.01(B)(2) is unenforceable; however, “[t]he defects in the bond provision do not impact the remaining provisions in § 41–194.01.” *State ex rel. Brnovich v. City of Phoenix*, No. CV-20-0019-SA, 2020 WL 4431892, at *8 ¶37 (Ariz. Aug. 3, 2020).

finds and determines that for the purposes of increasing voter participation and for decreasing the costs to the taxpayers it is a matter of statewide concern that all elections in this state be conducted on a limited number of days and, therefore, the [L]egislature finds and declares that the holding of all elections on certain specific consolidated days is a matter of statewide concern.

A.R.S. § 16–204(A) (1996). The Legislature also established certain election dates “[n]otwithstanding any other law or any charter or ordinance of any county, city or town to the contrary[.]” A.R.S. § 16–204(B) (1996).

B. The Court of Appeals Holds in *Tucson I* That A.R.S. § 16–204(A) Prevails Over A City’s Conflicting Charter

One year later, in *Tucson I*, the Court of Appeals considered the City’s challenge to A.R.S. § 16–204. 191 Ariz. at 437. The City argued that the statute was “invalid as applied to the City because it conflicts with Chapter XVI of the Tucson City Charter[.]” which authorized the City Council “to hold special elections on days other than those specified under the consolidated election schedule.” *Tucson I*, 191 Ariz. at 437. The court rejected the City’s challenge, reasoning that “[t]he language of § 16–204 and its legislative history both indicate a strong state interest.” *Id.* at 439. It concluded, “we agree [with the Legislature] that the statute pertains to matters of statewide concern and does not ‘relate to purely municipal affairs.’” *Id.* (quoting *Strode v. Sullivan*, 72 Ariz. 360, 365 (1951)). Accordingly, *Tucson I* held that “[t]he legislature has acted in an area of

statewide concern and its legislation takes precedence over the City’s Charter.” *Id.* at 440.

C. This Court Endorses *Tucson I* In *Tucson II* While The Legislature Amends A.R.S. § 16–204(A)

In 2012, the Legislature modified A.R.S. § 16–204(A) by (1) deleting the first clause of the sentence (thereby removing the Legislature’s previous recognition that “the method of conducting elections” by charter cities “may be a matter of local concern”); and (2) adding a second sentence, which states: “This section preempts all local laws, ordinances and charter provisions to the contrary.” A.R.S. § 16–204(A) (2012); *see* 2012 Ariz. Laws, ch. 353, § 1 (2d Reg. Sess.).

The same year, in *Tucson II*, this Court addressed a different statute, A.R.S. § 9–821.01, which implicated “a charter city’s authority to structure its own government.” 229 Ariz. at 175-77, ¶¶16-30. Specifically, this Court considered whether the City could decide whether council members would be elected from districts or citywide (or a hybrid of the two). *Id.* This Court ultimately held that “electors in charter cities may determine under their charters whether to constitute their councils on an at-large or district basis and whether to conduct their elections on a partisan basis” notwithstanding A.R.S. § 9–821.01. *Id.* at 180, ¶47. But it expressly stated, “[w]e do not question that some aspects of the conduct of local elections may be of statewide concern[.]” specifically recognizing “election dates” as “involv[ing] matters qualitatively different from determining how a city will

constitute its governing council.” *Id.* at 178, ¶35 (citing *Tucson I*, 191 Ariz. at 439 & A.R.S. § 9–821.01(A)).

D. In Tension With *Tucson I* and *Tucson II*, The Court Of Appeals Narrowly Holds In *Tucson III* That The City’s Charter Prevails Over A.R.S. § 16–204(E) Due To A Lack Of Legislative Findings

In the same 2012 revision to A.R.S. § 16–204, the Arizona Legislature added a provision requiring that, for elections held in 2014 and later, “a candidate election held for or on behalf of any political subdivision of this state other than a special election to fill a vacancy or a recall election may only be held on [certain] dates and only in even-numbered years.” A.R.S. § 16–204(E) (2012); *see also* 2012 Ariz. Laws, ch. 353, § 1 (2d Reg. Sess.). The City and the City of Phoenix challenged the new provision and ultimately obtained a permanent injunction from the trial court. *See Tucson III*, 235 Ariz. at 435-36, ¶¶1-5.

The Court of Appeals upheld that injunction in *Tucson III*, prohibiting the State from requiring Tucson and Phoenix to comply with A.R.S. § 16–204(E). *Tucson III*, 235 Ariz. at 440, ¶¶19-21. The court agreed with the State that this Court’s opinion in *Tucson II* “arguably places election dates outside of local autonomy and interest[.]” *Tucson III*, 235 Ariz. at 438, ¶12. Importantly, to distinguish *Tucson II*’s statement (referring to “election dates” as a “qualitatively different” matter than the structure of a city’s council), the Court of Appeals stated that there were “no legislative findings to support” the conclusion that aligning off-

cycle elections with statewide elections “increases voter participation[.]” *Id.* at 439, ¶17. The court held that Tucson and Phoenix could hold off-cycle elections notwithstanding A.R.S. § 16–204. *Id.* at 440, ¶20.

E. In Response To *Tucson III*, The Legislature Enacts A.R.S. §§ 16–204.01 & –204.02 In 2018

In response to *Tucson III*, the Legislature added A.R.S. § 16–204.01—the primary statute at issue here. *See* 2018 Ariz. Laws, ch. 247, § 1 (2d Reg. Sess.).

Section 16–204.01 provides as follows:

A. After consideration of the court’s opinion in City of Tucson v. State, 235 Ariz. 434 (Ct. App. 2014), the legislature finds and determines that it is a matter of statewide concern to increase voter participation in elections, including elections for cities, including charter cities, towns and other political subdivisions, and the legislature finds and declares that if cities, including charter cities, towns and other political subdivisions demonstrate low voter turnout in elections that are not held on the consolidated election dates prescribed in § 16-204, the low voter turnout constitutes sufficient factual support for requiring candidate and other elections to be held on certain specific consolidated dates. The legislature further finds and declares that after evidence of low voter turnout in city, including charter city, and town elections and in elections held for other political subdivisions, increasing voter turnout through the use of consolidated election dates for candidate and other elections as prescribed by this section is a matter of statewide concern. This section preempts all local laws, ordinances and charter provisions to the contrary.

B. A political subdivision shall hold its elections on a statewide election date if its previous elections on a nonstatewide election date resulted in a significant decrease in voter turnout in that political subdivision.

C. Beginning with elections in 2018, for each political subdivision's elections, other than special elections or recall elections,

if a significant decrease in voter turnout occurs as prescribed in subsection B of this section, the political subdivision shall hold its subsequent elections on the statewide election dates beginning three calendar years after the occurrence of the significant decrease in voter turnout.

D. For the purposes of this section:

1. “Political subdivision” means any governmental entity operating under the authority of this state and governed by an elected body, including a city, charter city, town, county, school district, community college district or other district organized under state law. Political subdivision does not include a special taxing district.

2. “Significant decrease in voter turnout” means the voter turnout for the office that received the highest number of votes in the most recent candidate election for a political subdivision in which candidates are elected at large, or portion of a political subdivision if candidates are not elected at large, is at least twenty-five percent less than the voter turnout in that same political subdivision or portion of a political subdivision for the most recent election in which the office of the governor appeared on the ballot.

3. “Statewide election date” means the date of the regular statewide primary election and the regular statewide general election.

4. “Voter turnout” means the number of ballots cast in a specific candidate race prescribed by this section divided by the total number of active registered voters in that political subdivision or portion of a political subdivision, as applicable, or if no specific candidate race is prescribed by this section, the number of ballots cast in that political subdivision or portion of a political subdivision, as applicable, divided by the total number of active registered voters in that political subdivision or portion of a political subdivision at the election prescribed by this section.

The Legislature also added A.R.S. § 16–204.02, *see* 2018 Ariz. Laws, ch. 247, § 1 (2d Reg. Sess.), which states that “[n]otwithstanding any other law, in

order to comply with the consolidation of election dates if required under § 16–204.01 ... the terms of office for elected officials of the political subdivision shall be lengthened at the time of consolidation to align with the consolidated election dates.”

II. The City’s 2019 Elections And The Ordinance

A. The City’s 2019 Elections Produce A “Significant Decrease In Voter Turnout” As Defined In A.R.S. § 16–204.01

The City did not amend its laws to hold its candidate elections during the statewide election dates in 2018 or 2020; instead, the City held its elections in 2019. And between the 2018 statewide general election and the 2019 local election, voter turnout within the City suffered a precipitous decline.

In a verified complaint, the City certified that voter turnout in the 2018 statewide general election, as measured within the City limits, was “**just over 67%**.” Ex. A at 010, ¶19 (emphasis added);⁴ *see* A.R.S. § 16–204.01(D)(2) (providing that “significant decrease in voter turnout” is calculated by measuring “voter turnout for the office that received the highest number of votes in the most

⁴ Section 16–205(E) directs the board of supervisors to “require the county recorder or other officer in charge of elections to calculate voter turnout for candidate races as prescribed by § 16–204.01, [] determine whether § 16–204.01 requires a political subdivision to consolidate its election dates[,] and [] announce its determination ... at a public meeting” within 90 days after issuance of the official county canvass.

recent candidate election for a political subdivision” against “voter turnout in that same political subdivision ... for the most recent election in which the office of the governor appeared on the ballot”); A.R.S. § 16–204.01(D)(4) (defining “voter turnout”).

In contrast, voter turnout in the City’s November 5, 2019 election was **39.26%**. See City of Tucson Official Canvass, 2019 General and Special Election.⁵ This decline is all the more striking because turnout in the City’s 2019 election was the *highest* reported of the City’s general elections in the past decade.⁶

B. Despite The Significant Decrease In Voter Turnout, The City Enacts The Ordinance, Which Calls For More Off-Cycle Elections In 2021

The significant decrease in voter turnout triggered the requirement in A.R.S. § 16–204.01 that the City hold its future elections on statewide election dates. The City, however, does not plan to heed that requirement. Instead, on February 19, 2020, the City enacted the Ordinance, which calls for: (1) “a City primary election, to be held on Tuesday, August 3, 2021, at which candidates for the offices of Council Members from Wards Three, Five, and Six shall be nominated for each

⁵ Available at: https://www.tucsonaz.gov/files/clerks/COT_2019_OfficialResults_General_11122_019.pdf (last visited Aug. 25, 2020).

⁶ See City of Tucson General Election Results, available at <https://www.tucsonaz.gov/clerks/elections> (reflecting the following voter turnout results: 39.26% in 2019, 35.8% in 2017, 36.61% in 2015, 30.38% in 2013, and 31.07% in 2011) (last visited Aug. 25, 2020).

properly and duly qualified political party”; and (2) “a City general election, to be held on Tuesday, November 2, 2021, at which three Council Members representing Wards Three, Five, and Six shall be elected” for a 4-year term spanning from December 6, 2021 until December 1, 2025. *See* Ex. A. at 030. The City enacted the Ordinance pursuant to Chapter XVI, § 6 and Chapter IV, § 1, ¶20 of the Tucson Charter, which authorize the “mayor and council” “by ordinance” to “provide for the holding of all municipal elections” and “provide for the manner in which and the times at which any municipal election shall be held[,]” respectively.

The Ordinance therefore squarely conflicts with A.R.S. §§ 16–204.01 and 16–204.02. The Ordinance calls for more off-cycle elections, even though voter turnout in the City’s 2019 election (39.26%) was “at least twenty-five percent less than the voter turnout in [the City] ... for the most recent election in which the office of the governor appeared on the ballot” (67%) under A.R.S. § 16–204.01(D)(2). *See also* Ex. A at 009-011, ¶¶16-27 (City’s concession that “voter turnout in the City’s 2019 election was ‘at least twenty five percent less’ than the state voter turnout in the 2018 Statewide election” and that the charter conflicts with A.R.S. §§ 16–204.01 and –204.02).

ARGUMENT

Because, as shown above, there is no dispute that the Ordinance squarely conflicts with A.R.S. §§ 16–204.01 and 16–204.02, this argument section makes two main points: 1) this Court has recognized only two areas of purely local concern, and 2) this case presents no reason to expand those narrow areas to allow the City to preempt state law here. Unless the Court affirmatively departs from its prior precedent (and even the lower court’s narrow reasoning in *Tucson III*) and holds that city election dates are *per se* matters of purely local concern, it must conclude that, following the City’s significant decrease in voter turnout in 2019, state law governs whether to hold consolidated election dates (with higher turnout), and the Ordinance is therefore null and void.

I. Consistent With The Requirement That Charter City Powers Are “Subject To” State Law, Charter Cities Have Limited Authority To Preempt State Law

A. As The Plain Language Of “Subject To” State Law Makes Clear, The Purpose of Charters Is To Permit Cities To Legislate Without Specific State Authorization, Not To Override State Law

The city charter provision in the Arizona Constitution provides that a city exceeding a minimum population threshold “may frame a charter for its own government consistent with, and subject to, the Constitution and the laws of the state[.]” ARIZ. CONST. art. XIII, § 2; *see also Tucson IV*, 242 Ariz. at 598, ¶39. The charter is “effectively, a local constitution.” *AFSCME Local 2384 v. City of*

Phoenix, ___ Ariz. ___, 466 P.3d 1158, 1161, ¶13 (Ariz. 2020) (citations omitted). The purpose of allowing cities to adopt charters is to enable them to legislate without requiring specific prior authorization from the State Legislature, as was the practice during the nineteenth century. See *The Records of the Arizona Constitutional Convention of 1910* 514-15 (John S. Goff ed., 1991) (recognizing the influence of other state constitutions, specifically “Missouri, Oklahoma and California as well as other states”); *State ex rel. Crow v. Lindell Ry. Co.*, 52 S.W. 248, 253 (Mo. 1899) (“[I]t is plain that it was the purpose of the constitution of 1875 to grant ... cities and localities the benefit of ‘home rule,’ so far as it was possible; but it was not intended to abdicate state sovereignty over them, nor to raise them higher in authority than the state of which they form a part.”).⁷

Allowing cities to legislate without prior state approval is not the same thing as allowing cities to override state law. Instead, as noted above, the Constitution expressly provides that the powers of the charter city are “subject to this

⁷ It is notable that unlike other states’ constitutions that were in effect at the time of our constitution’s framing, our constitution does not affirmatively grant charter cities the power to override state law. Compare CAL. CONST., art. XI, § 5(a) (giving charter cities the power to legislate “in respect to municipal affairs” over inconsistent state law); see Joseph R. Grodin et al., *The California State Constitution* 280–81 (2d ed. 2016) (noting the 1879 antecedents “allowed a city to adopt ‘a charter for its own government,’ but those charters remained ‘subject to and controlled by general laws’” and discussing 1896 amendment that “exempted ‘municipal affairs’ from control by the general laws” (citing *Ex parte Braun*, 74 P. 780 (Cal. 1903); *Fragley v. Phelan*, 58 P. 923 (1899))).

constitution and laws of the state.” ARIZ. CONST. art. XIII, § 2. And this Court recognized in *Tucson IV* this language is a “significant constitutional restraint on charter cities’ powers.” 242 Ariz. at 602, ¶55 (citing *Tucson II*, 229 Ariz. at 174, ¶9; *Strode*, 72 Ariz. at 364 (observing that a charter city does not have “‘carte blanche authority or plenary power to adopt any legislation that it might desire’”)).

Therefore, when a state law conflicts with a charter or a provision enacted pursuant a charter, Arizona courts determine whether the subject matter at issue “‘is of general statewide concern or of purely municipal concern’” to decide whether state law supersedes the local enactment. *See Tucson IV*, 242 Ariz. at 598, ¶¶37–40. Where “state statutes address matters of statewide interest, ... whatever powers the City seeks to exercise under its home-rule charter authority and related ordinances must be ‘consistent with, and subject to, the Constitution and laws of the state.’” *Id.* at 602, ¶55 (citing ARIZ. CONST. art. XIII, § 2 and A.R.S. § 9–284(B)).

B. This Court Has Recognized Only Two Areas Of Purely Municipal Concern, Neither Of Which Apply Here

As this Court recently observed, “the concept of ‘purely municipal affairs,’ or ‘local interest or concern,’” is “narrowly limited” and “restrict[s] the extent to which charter city ordinances can prevail over state law.” *Tucson IV*, 242 Ariz. at 602, ¶56. The Court has “upheld a municipal ordinance that directly conflicts with state law” in “only two areas[.]” *Id.* Neither of these areas is implicated here.

First, “this Court has held that ‘the manner and method of disposal of real estate of a city is not a matter of state-wide public concern.’” *Id.* at 602, ¶57 (citing *City of Tucson v. Ariz. Alpha of Sigma Alpha Epsilon* (“AASAE”), 67 Ariz. 330, 336 (1948)).⁸ The subject matter here, however, has nothing to do with the City’s disposition of its own real estate.

Second, this Court held that a charter city has the power to supersede state law on matters regarding the city’s “governmental structure[,]” *i.e.*, “who shall be its governing officers and how they shall be selected.” *Strode*, 72 Ariz. at 368. This is the core holding of *Strode*, which involved whether city council elections would be partisan or nonpartisan. *See id.* at 361. And similar to the partisan/nonpartisan composition of the city council in *Strode*, the issue in *Tucson II* was whether council members would be elected from districts or citywide (or a hybrid of the two). *Tucson II*, 229 Ariz. at 175, ¶16. This Court recognized in *Tucson II* that, like *Strode*, the district versus at-large issue addressed “a charter city’s authority to structure its own government[.]” *Id.* at ¶18.

Tucson II ultimately held that “electors in charter cities may determine under their charters whether to constitute their councils on an at-large or district basis and

⁸ It is unclear whether that holding is based on constitutional or statutory grounds. *See Tucson IV*, 242 Ariz. at 606, ¶75 (Bolick, J, concurring) (noting that *AASAE*, 67 Ariz. at 335, “resolv[ed the] conflict between state and charter city laws pursuant to charter statute[,]” now codified at A.R.S. § 9–284).

whether to conduct their elections on a partisan basis” notwithstanding a conflicting state law. *Id.* at 180, ¶47. But this Court expressly stated, “[w]e do not question that some aspects of the conduct of local elections may be of statewide concern[,]” noting that “***election dates*** ... involve matters qualitatively different from determining how a city will constitute its governing council.” *Id.* at 178, ¶35 (emphasis added) (citing *Tucson I*, 191 Ariz. at 439; A.R.S. § 9–821.01(A)).⁹

Accordingly, both *Strode* and *Tucson II* addressed provisions in city charters concerning the structure of a city’s government—a recognized purely local interest. Here, the Ordinance governs the dates of city elections, which, as discussed more below, is “qualitatively different” than “determining how a city will constitute its governing council.” *Id.*

...
...
...

⁹ This Court’s precedents have also stated “the ‘method and manner of conducting elections in the city ... is peculiarly the subject of local interest and is not a matter of statewide concern.’” *See Tucson IV*, 242 Ariz. at 602, ¶56 (quoting *Strode*, 72 Ariz. at 368, and citing *Tucson II*, 229 Ariz. at 177, ¶¶30-31). But this language is clearly a gloss on the actual holdings of *Tucson II* and *Strode*. If all election-related matters were of purely local concern as a matter of constitutional law, then the key language in *Tucson II* that “***election dates*** ... involve matters qualitatively different from determining how a city will constitute its governing council” would not have been necessary.

II. This Court Should Not Expand The “Narrowly Limited” Areas Of Purely Local Concern To Include Election Dates—Matters “Qualitatively Different” Than The Structuring Of The City’s Own Government

For several reasons, this Court should not affirmatively depart from its prior precedent (and even the lower court’s narrow reasoning in *Tucson III*) to hold that city election dates are *per se* matters of purely local concern under Article XIII, § 2 of the Arizona Constitution. First, such a holding would be inconsistent with other provisions in the constitution, which vest broad authority in the Legislature to regulate elections. Second, it would be inconsistent with *Strode* and *Tucson II*, which did not purport to make all election-related laws matters of purely local concern. Third, as the Legislature specifically found when enacting A.R.S. §§ 16–204.01 and 16–204.02, election dates do implicate statewide interests, including “increas[ing] voter participation in elections.” *See* A.R.S. § 16–204.01(A). Finally, because it was based on a lack of legislative findings, the Court of Appeals’ *Tucson III* decision does not alter the outcome here.

A. The Arizona Constitution Vests Broad Authority In The Legislature To Regulate Local Elections

“[W]hether state law prevails over conflicting charter provisions under Article 13, Section 2 is a question of constitutional interpretation.” *Tucson IV*, 242 Ariz. at 598, ¶37 (quoting *Tucson II*, 229 Ariz. at 178, ¶34). The Arizona Constitution, as a whole, demonstrates that the Legislature has constitutional

authority to regulate many aspects of local elections, undercutting any argument that all local election matters are of purely local concern. *See Corp. Comm'n v. Pacific Greyhound Lines*, 54 Ariz. 159, 170 (1939) (“In construing the provisions of the constitution, it is clearly necessary that we consider the instrument as [a] whole, and endeavor to give such a construction to each and every part as will make it effective and in harmony with all the other parts.”).

As the Court of Appeals observed in *Tucson I*, “[t]he Constitution requires the [L]egislature’s involvement in elections, including those conducted by charter cities, on many levels.” 191 Ariz. at 438 (citing ARIZ. CONST. art. IV, pt. 1, § 1(8) (cities “may prescribe the manner of exercising [powers of the initiative and referendum] within the restrictions of general laws”); ARIZ. CONST. art. IV, pt. 2, § 19(11), (20) (prohibiting local laws on the “conduct of elections” and allowing general laws by implication); ARIZ. CONST. art. VII, § 1 (“All elections by the people shall be by ballot, or by such other method as may be prescribed by law; Provided, that secrecy in voting shall be preserved”); ARIZ. CONST. art. VII, § 10 (requiring Legislature to “enact a direct primary election law, which shall provide for the nomination of candidates for all elective State, county, and city offices”); ARIZ. CONST. art. VII, § 12 (purity of elections clause); ARIZ. CONST. art. VII, § 16 (requiring Legislature to enact campaign finance law for all candidates for public office)). In addition, “general election laws shall apply to recall elections in so far

as applicable.” Ariz. Const. art. VIII, pt. 1, § 6. And it is fundamental that the Constitution vests the legislative authority of the State in the Legislature, which has plenary authority to enact any law not violating the federal or state constitutions. *See* ARIZ. CONST. art. IV, pt. 1, § 1.

Indeed, the Legislature has exercised its broad authority to enact numerous election laws that govern local elections. For example, the Legislature has established “[a] primary election for nominations of candidates” in “municipal elections in incorporated cities and towns[,]” *see* A.R.S. § 16–203, generally-applicable laws that apply to initiatives and referendums, *see* A.R.S. § 19–141 *et seq.*, and procedures that apply to recall elections, *see* A.R.S. § 19–201 *et seq.* And when regulating procedural aspects of elections (akin to election dates here), the Legislature has expressed a preference for statewide uniformity while expressly allowing charter cities some flexibility to regulate certain aspects of elections. *See, e.g.,* A.R.S. § 9–301 (“In incorporated cities and towns which elect a mayor, other than those specifically provided for, councilmen and other officers shall hold their respective offices for two years.”); A.R.S. § 19–141(D) (“The procedure with respect to municipal and county legislation shall be as nearly as practicable the same as the procedure relating to initiative and referendum provided for the state at large, except the procedure for verifying signatures on initiative or referendum petitions may be established by a city or town by charter or ordinance.”).

In light of the constitutional authority discussed above, this Court should not conclude *for the first time* that the Arizona Constitution gives charter cities authority to override state law as to all matters regarding local elections. *See Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 521, ¶14 (2000) (noting that a limitation on legislative authority “may be implied by the text of the constitution or its structure taken as a whole”). To the contrary, the Arizona Constitution contemplates, and this Court’s precedents confirm, that charter cities’ authority to regulate local elections is not absolute and must give way to state law when the regulation affects statewide interests.

B. *Strode* And *Tucson II* Themselves Confirm That Election Dates Are “Qualitatively Different” Than Matters Concerning A Charter City’s “Governmental Structure”

As discussed above, the Court of Appeals held in *Tucson I* that A.R.S. § 16–204—which declared “that the holding of all elections on certain specific consolidated days is a matter of statewide concern”—governs a matter of statewide concern and “takes precedence over the City’s Charter” that authorized different election dates. 191 Ariz. at 437, 440.¹⁰ And in *Tucson II*, this Court cited *Tucson I* with approval while stating, “[w]e do not question that some aspects of the conduct

¹⁰ This Court later disapproved of *Tucson I*’s “use of a balancing test in its analysis” to “determin[e] whether local or statewide interests were ‘paramount.’” *Tucson IV*, 242 Ariz. at 604, ¶64 (quoting *Tucson I*, 191 Ariz. at 439). But *Tucson IV* did not otherwise disturb *Tucson I*’s holding.

of local elections may be of statewide concern[,]" including "election dates[.]" 229 Ariz. at 178, ¶35 (citing *Tucson I*, 191 Ariz. at 439). This Court did not just limit those "aspects" to election dates, but also the "various examples listed in § 9–821.01(A)." *Tucson II*, 229 Ariz. at 178, ¶35. The examples are "initiative and referendum elections, the method of elections other than by ballot, laws relating to primary elections, voter registration laws to prevent abuse and fraud[,] and campaign finance laws." A.R.S. § 9–821.01(A). Therefore, this Court in 2012 recognized *several* areas that are "qualitatively different from determining how a city will constitute its governing council." *Tucson II*, 229 Ariz. at 178, ¶35; *see also City of Tucson v. Consumers For Retail Choice*, 197 Ariz. 600, 603-04, ¶¶8-10 (App. 2000) (holding a Tucson ordinance did not conflict with state law while acknowledging that "[c]harter city elections" can "involve matters of significant statewide importance").

Strode's reasoning is similarly limited to the structure of the City's governing council. "The framers of the Constitution, in authorizing a qualified city to frame a charter for its own government, certainly contemplated the need for officers and the necessity of a procedure for their selection." *Strode*, 72 Ariz. at 368. This Court described the needs for officers and a selection procedure as "essentials" required for "the preparation of a governmental structure." *Id.*

Strode and *Tucson II* thus stand for the proposition that a charter city’s “governmental structure[,]” *i.e.*, “who shall be its governing officers and how they shall be selected[,]” is the only narrow exception to the State’s otherwise plenary power over elections. *Strode*, 72 Ariz. at 368; *Tucson II*, 229 Ariz. at 176, ¶21 (“*Strode* is absolutely clear that charter city governments enjoy autonomy with respect to structuring their own governments.”).¹¹

The Legislature’s requirement here in A.R.S. § 16-204.01, that cities align their local election dates with statewide election dates when local elections produce an actual decrease in voter turnout, does not fall within the narrow category of a purely local interest in a city’s governmental structure under *Strode* or *Tucson II*. Election dates are “administrative aspects of elections” that do not mandate the structure of a city’s government. *See Tucson II*, 229 Ariz. at 178, ¶35.

C. Election Dates Implicate The Statewide Interests In Increasing Voter Turnout, Protecting The Right To Vote, And Promoting Election Integrity

The decision of when to hold local elections involves a matter of statewide concern, irrespective of whether a particular city’s elections produce evidence of

¹¹ The earlier case of *Maxwell v. Fleming*, which also related to partisan vs. non-partisan city council elections (and whether a runoff was required if a candidate received a majority of votes in the non-partisan primary), was based on the absence of “a constitutional or lawful restriction” on Phoenix adopting that charter provision, and did not state or hold that the constitution permits charter cities to preempt state law on election dates. 64 Ariz. 125, 128 (1946).

low voter turnout, because this decision gives rise to the State’s interests in increasing voter participation, protecting the fundamental right to vote, and preserving election integrity. *See Burson v. Freeman*, 504 U.S. 191, 208 (1992) (observing that a government has “a compelling interest in securing the right to vote freely and effectively”); *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (“voting is of the most fundamental significance under our constitutional structure”); *Eu v. San Francisco Cty. Dem. Cent. Comm.*, 489 U.S. 214, 231 (1989) (“A State indisputably has a compelling interest in preserving the integrity of its election process.”); *Tedards v. Ducey*, 398 F. Supp. 3d 529, 539 (D. Ariz. 2019) (finding “voter turnout [is] an important State interest”).

Nonetheless, A.R.S. § 16–204.01 is only triggered by low voter turnout in a city’s election. *See* A.R.S. § 16–204.01(B) (requiring political subdivision to “hold its elections on a statewide election date if its previous elections on a nonstatewide election date resulted in a significant decrease in voter turnout in that political subdivision”). The statute, therefore, is narrowly tailored to the statewide interest: the Legislature allows political subdivisions, including charter cities, to continue to schedule off-cycle elections. But when it is undisputed that substantially fewer Arizonans are exercising their right to vote in off-cycle local elections, the statewide interests in regulating local election dates become even

more pronounced, and are even more compelling, to override any conceivable local interests.

As noted, the Legislature first declared in 1996, when A.R.S. § 16–204 was enacted, that “for the purposes of increasing voter participation ... it is a matter of statewide concern that all elections in this state be conducted on a limited number of days” and “that the holding of all elections on certain specific consolidated days is a matter of statewide concern.” A.R.S. § 16–204(A) (1996). And the Legislature again reiterated in A.R.S. § 16–204.01(A) that “increasing voter turnout through the use of consolidated election dates for candidate and other elections as prescribed by this section is a matter of statewide concern.” The Legislature’s broad declarations, while not dispositive of the issue, are significant in considering the statewide interests at stake. *See Tucson IV*, 242 Ariz. at 598, ¶37; *Clayton v. State*, 38 Ariz. 135, 145 (1931) (emphasizing that the state, “through its Legislature and judiciary[,]” decides which “affairs” concern municipal or state interests) (citation omitted).

Indeed, the decision of when to hold local elections implicates the statewide interest of increasing voter turnout and two other statewide interests: (1) the constitutional right to vote; and (2) the integrity of the electoral process. *See Burson*, 504 U.S. at 208; *Illinois Bd. of Elections*, 440 U.S. at 184; *Eu*, 489 U.S. at 231. The right to vote is so fundamental that it is safeguarded by our state

Constitution, which provides that “[a]ll political power is inherent in the people,” ARIZ. CONST. art. II, § 2, “[a]ll elections shall be free and equal,” ARIZ. CONST. art. II, § 21, and “[t]he rights of citizens of the United States to vote and hold office shall not be denied or abridged... on the account of sex,” ARIZ. CONST. art. VII, § 2. Likewise, the Constitution recognizes the State’s interest in election integrity by empowering the Legislature to enact laws to “secure the purity of elections and guard against abuses of the elective franchise,” ARIZ. CONST. art. VII, § 12. This Court has also recognized that the State has a substantial interest in promoting election integrity. *See Miller v. Picacho Elementary School Dist. No. 33*, 179 Ariz. 178, 179 (1994) (“the integrity of the electoral process is an issue of statewide importance”); *Kromko v. State*, 132 Ariz. 161, 163 (1982) (“The preservation of the integrity of the electoral process is a legitimate state goal.”).

While voter turnout is affected by a myriad of factors, according to one study, “timing is clearly the most important factor affecting turnout[.]” Public Policy Institute of California, Zoltan L. Hajnal, Paul G. Lewis, Hugh Louch, *Municipal Elections in California: Turnout, Timing, and Competition*, at 64 (2002);¹² *see also Lynch v. Illinois State Bd. of Elections*, 682 F.2d 93, 97 (7th Cir. 1982) (“Standardization of election dates ... imposes a reasonable limit on the

¹² Available at https://www.ppic.org/content/pubs/report/R_302ZHR.pdf (last accessed Aug. 25, 2020).

number of times voters may be called to the polls and creates an opportunity for more widespread voter attention...”). Another study pointed out that “[e]lections held at odd times force potential voters to bear additional costs to participate in the political process.” Christopher R. Berry & Jacob E. Gersen, *The Timing of Elections*, 77 U. Chi. L. Rev. 37, 39 (2010). The same study also concluded that, due to the increased costs in participation for off-cycle elections, the result is “selective participation” in which “single-issue interest groups are especially influential.” *Id.* at 39; *see also Tedards*, 398 F. Supp. 3d at 540 (reasoning that “a unified election date has the potential to lower the barriers to ballot access, allowing more Arizona voters the chance to exercise their right to vote” and therefore, the State’s interest in having a special election align with a general election is “an important regulatory interest”).

As the Attorney General of California recently opined—in determining that California charter cities must follow a similar statewide law that requires on-cycle local elections following a decrease in voter turnout—“[e]lections are less ‘complete’ when there is significantly lower voter turnout because fewer eligible voters are participating in the electoral process.” Cal. Att’y Gen. Op. No. 16–603, 100 Ops. Cal. Atty. Gen. 4, *4 (July 11, 2017); *see also* Cal. Elec. Code § 14052 (eff. Jan. 1, 2018) (requiring political subdivisions to hold elections on a statewide election date “if holding an election on a noncurrent date has previously resulted in

a significant decrease in voter turnout[,]” unless the political subdivision “has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election”). Thus, “off-cycle elections may impinge on voting by causing low voter turnout” and “[t]his turnout therefore undermines electoral integrity and thus involves a matter of statewide concern.” *Id.*¹³

Off-cycle elections, therefore, implicate the statewide interests in increasing voter turnout, protecting the fundamental right to vote, and safeguarding election integrity. *See* Cal. Att’y Gen. Op. 16–603, at *5 (“When off-cycle elections result in significantly decreased voter participation, they compromise ‘the essence of a democratic form of government,’ raising an important matter of statewide concern.”) (quoting *Jauregui v. City of Palmdale*, 172 Cal. Rptr. 3d 333, 346 (App. 2d Dist. 2014)). In light of these significant statewide interests, this Court should find that state law prevails over the City’s Ordinance regulating local election dates. *See Tucson IV*, 242 Ariz. at 600, ¶46 (holding state law prevailed over City’s ordinance where the State “identifie[d] several matters of alleged statewide

¹³ The California Attorney General arrived at this conclusion even when the California Constitution expressly “gives charter cities the power to legislate ‘in respect to municipal affairs’ over inconsistent state law.” Cal. Att’y Gen. Op. 16–603, at *1 (quoting CAL. CONST., art. XI, § 5(a)); *see supra* n.7.

concern implicated by its statutes and on which [the Ordinance] encroaches[,]” which included “protecting [a] constitutional right”).

D. The Arizona Court of Appeals’ Decision In *Tucson III* Does Not Alter The Outcome Here

As discussed above, this Court’s decisions in *Strode* and *Tucson II* compel the conclusion that state law supersedes the City’s Ordinance because “election dates” are “qualitatively different” than “purely local” matters that concern a city’s governmental structure. *See Tucson II*, 229 Ariz. at 178, ¶35; *Strode*, 72 Ariz. at 368. The City will likely rely on the Arizona Court of Appeals’ non-binding decision in *Tucson III*, however, to argue that its election dates involve a matter of purely local concern. Such reliance would be misplaced, however, for several reasons.

First, *Tucson III* is contrary to *Tucson II*. In *Tucson III*, the Court of Appeals agreed with the State that *Tucson II* “arguably places election dates outside of local autonomy and interest.” *Tucson III*, 235 Ariz. at 438, ¶12. Nonetheless, the Court of Appeals brushed aside this Court’s specific statement in *Tucson II* (referring to “election dates” as a “qualitatively different” matter than the structure of a city’s council) as dicta. *Id.* The Court of Appeals purported to rely on *Strode* and *Tucson II* when it held that Tucson and Phoenix could continue to hold off-cycle elections notwithstanding the provisions of A.R.S. § 16–204. *Id.* at 440, ¶20. But for the reasons discussed above, *Strode* and *Tucson II* confirm that

election dates do not concern purely local interests that are sufficient to override state law.

Second, *Tucson III* cannot be reconciled with the Court of Appeals' 1997 decision in *Tucson I*, where the Court of Appeals reasoned that A.R.S. § 16–204 “indicate[s] a strong state interest” and held that this statute “takes precedence over the City’s Charter” that authorized election dates other than those specified by state law. *Tucson I*, 191 Ariz. at 437-40 (relying on *Strode*, 72 Ariz. at 365). To be sure, *Tucson III* attempted to distinguish *Tucson I* on the basis that the “practical impact on the City” as a result of the 1996 law in *Tucson I* was “a one-week change in the date of its primary election[,]” whereas A.R.S. § 16–204(E) “would require major changes to city charters and election procedures, including altering the terms of office for some officials.” *Tucson III*, 235 Ariz. at 438, ¶13.¹⁴ *Tucson III* then “address[ed] whether an off-cycle election is an integral component of the method and manner of conducting elections” and faulted the State for failing to advance “facts or legislative findings to support” the Legislature’s express declaration in A.R.S. § 16–204(A) of a statewide interest in increasing voter participation. *Id.* at 438-39, ¶¶13-17.

¹⁴ This type of concern is not present here because the Legislature provided for a one-time lengthening of the terms of office for election officials “at the time of consolidation” for political subdivisions that must “comply with the consolidation of election dates if required under § 16-204.01[.]” A.R.S. § 16–204.02(A).

But *Tucson III* neither reconciled its holding with, nor disapproved of, *Tucson I*. Again, in *Tucson II*, this Court unequivocally explained that election dates are not matters of purely local concern and did not suggest that the analysis should turn on whether statewide legislation impacts the timing of local elections by one week or one year. *See* 229 Ariz. at 178, ¶35. *Tucson III* attempted to write off as dicta *Tucson II*'s statements about timing, *Tucson III*, 235 Ariz. at 438, ¶12, but those statements should not be so lightly disregarded. This Court drew a significant distinction between “election dates” and other matters (such as the partisan/nonpartisan manner of electing city council members in *Tucson II*) that concern a city’s governmental structure—an important component of the Court’s analysis about the Legislature’s authority over charter city elections. Thus, *Tucson III* is inconsistent with *Tucson I* and *Tucson II*.

Third, putting aside the correctness of *Tucson III*, that decision is ultimately distinguishable and should not guide this Court’s analysis. *Tucson III* was predicated on the State’s failure to proffer evidence that off-cycle elections result in lower voter turnout. *See* 235 Ariz. at 439-40, ¶¶17-19. But imposing a burden on the State to submit evidence supporting the State’s position that voter turnout is a matter of statewide importance is inconsistent with *Tucson IV*. In that case, the State challenged a City ordinance that required the City’s police department to destroy unclaimed or forfeited firearms, when state law forbade the destruction of

such firearms and instead required that the firearms be sold. *Tucson IV*, 242 Ariz. at 591, ¶¶2-4. The City argued that the State had not established a statewide concern because of a “lack ‘of any evidence of a gun shortage in Tucson, leaving Tucsonans or visitors without access to firearms in the City’” or “any evidence ‘that the ordinance impacts anyone or anything outside of Tucson.’” *Id.* at 601, ¶52. This Court swiftly rejected any requirement to submit such evidence, instead confirming that whether “general state laws displace charter provisions depends on whether *the subject matter* is characterized as of statewide or purely local interest.” *See id.* Thus, *Tucson III*’s imposition of an evidentiary requirement cannot be reconciled with *Tucson IV*.

Even if there were an evidentiary requirement associated with showing that a particular subject matter is of statewide concern, the Legislature specifically and narrowly responded to *Tucson III*’s holding by providing such evidence in the form of a triggering mechanism in A.R.S. § 16–204.01. *See* A.R.S. § 16–204.01(A).¹⁵ Although the statute unquestionably now applies to the City, A.R.S. § 16–204.01 does *not* require all cities and other political subdivisions to align their local

¹⁵ The text of the statute itself reflects that the Legislature enacted A.R.S. § 16–204.01 “[a]fter consideration of the court’s opinion in [*Tucson III*.]” A.R.S. § 16–204.01(A). The statute likely would never have come into existence if the Arizona Court of Appeals’ holding in *Tucson III* had been consistent with its earlier holding in *Tucson I*.

election dates; instead, only those that experience a “significant decrease in voter turnout” are required to shift local election dates. *Id.*

The Legislature created a facially even-handed, uniform, and quantitative mechanism to identify and define evidence of a “significant decrease in voter turnout.” A.R.S. § 16–204.01(A), (D). In other words, the Legislature provided charter cities with an opportunity to safeguard the right to vote and encourage participation in the political process. When triggered, however, this mechanism provides the evidentiary basis that *Tucson III* found to be lacking to support the State’s regulation of the timing of local elections. The Legislature’s enactment of A.R.S. § 16–204.01 renders *Tucson III* materially distinguishable because the statute is now triggered by quantifiable evidence of low voter turnout, which bolsters the Legislature’s declaration of statewide interest in A.R.S. § 16–204.01(A).

Accordingly, applying the Court’s precedents in *Strode*, *Tucson II*, and *Tucson IV*, the Legislature’s alignment of charter city election dates with those for statewide elections upon evidence of a significant decrease in voter turnout does not violate the Arizona Constitution.

REQUEST FOR ATTORNEY FEES

Pursuant to A.R.S. § 12–348.01, the Attorney General requests reasonable attorney fees in preparing this petition and conducting proceedings in this Court.

See City of Tempe v. State, 237 Ariz. 360, 367, ¶¶ 26-27 (App. 2015) (affirming mandatory fees award under § 12–348.01 in action seeking declaratory and special action relief).

CONCLUSION

The Ordinance conflicts with A.R.S. §§ 16–204.01 and –204.02, and the subject matter at issue—regulation of election dates—does not involve a matter of purely local concern. Instead, the Ordinance and state laws implicate the important statewide interests of increasing voter participation, protecting the fundamental right to vote, and safeguarding the integrity of Arizona’s elections.

The State respectfully requests that this Court declare that the Ordinance violates state law and is therefore null and void.

RESPECTFULLY SUBMITTED this 26th day of August, 2020.

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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF PIMA**

13 CITY OF TUCSON, a municipal
14 corporation,

15 Plaintiff,

16 vs.

17 STATE OF ARIZONA, and MARK
18 BRNOVICH, in his official capacity as
19 Attorney General of Arizona,

20 Defendants.
21

No. C20201904

**FIRST AMENDED COMPLAINT FOR
SPECIAL ACTION, AND FOR
DECLARATORY RELIEF,
INJUNCTIVE RELIEF (Rules of
Procedure for Special Actions; A.R.S. §§
12-1801 et seq., and A.R.S. §§ 12-1831 et
seq.)**

(Assigned to Hon. Brenden J. Griffin)

22 The Plaintiff, the City of Tucson, a municipal corporation, by and through its
23 undersigned attorneys, respectfully submits its Complaint for Special Action, and for
24 declaratory and injunctive relief, pursuant to the Arizona Rules of Procedure for Special
25 Actions (RPSA); A.R.S. §§ 12-1831 *et seq.*, A.R.S. §§ 12-1801 *et seq.*, and Arizona Rules
26 of Civil Procedure (ARCP) 57 and 65, as set forth below.

27 Pursuant to ARCP 57, the Plaintiff requests that the Court order a speedy hearing of
28 its action for declaratory judgment, and advance it on the calendar.

1 **PARTIES**

2 1. Plaintiff City of Tucson (“City”) is an Arizona municipal corporation and
3 charter city, eligible to institute this special action, and action for declaratory and injunctive
4 relief, whose rights, status, or other legal relations are affected by:

5 (a) A.R.S. §§ 16-204.01 and 16-204.02, as added by House Bill (HB) 2604, enacted
6 by the Fifty-Third Legislature of the State of Arizona during the Second Regular Session in
7 2018 and signed by Governor Doug Ducey on April 17, 2018, becoming Session Laws
8 Chapter 247 (hereafter “A.R.S. §§ 16-204.01 and 16-204.02”); and

9 (b) A.R.S. § 16-204(F)(4), as amended by Senate Bill (SB) 1152, enacted by the Fifty-
10 Third Legislature of the State of Arizona during the First Regular Session in 2017 and signed
11 by Governor Doug Ducey on May 22, 2017, becoming Session Laws Chapter 332 (hereafter
12 “amended A.R.S. § 16-204(F)(4)”).

13 2. Defendant State of Arizona, acting through its Legislative and Executive
14 Branches, has amended A.R.S. § 16-204(F)(4), and enacted A.R.S. §§ 16-204.01 and 16-
15 204.02, all of which set requirements that conflict and interfere with the Tucson Charter
16 regarding the City’s method and manner of electing its Mayor and Council Members, and
17 of carrying out elections related to its exercise of its local initiative, referendum, and
18 transaction privilege taxation powers.¹ As applied to Tucson or other charter cities, A.R.S.
19 § 16-204(F)’s last sentence also directly conflicts with the language of Article 13, § 2 of the
20 Arizona Constitution regarding the permissible timing of charter amendment elections and
21 is therefore unconstitutional and void.

22 In outline, the conflicts and interference with the Tucson Charter are as follows:

23 **The Tucson Charter:**

24 (a) Requires that the City’s candidate elections be held in odd years;

25
26 ¹As used in this Complaint, the term “referendum” is intended to encompass both: (1) the submission
27 for City voter approval of measures already enacted by Mayor and Council through a petition signed
28 by ten percent of the City’s qualified electors (Ariz. Const. Art. 4, Pt. 1, § 1, ¶¶ 3, 8; Tucson Charter
Ch. XX, § 1) and; (2) the submission of measures to City voters for adoption or rejection by the
Mayor and Council (Tucson Charter Ch. XX, § 2).

1 (b) Creates four-year terms for the City’s elected officials that always end in odd
2 years;

3 (c) Allows the City to choose to hold its initiative and referendum elections
4 simultaneously with its candidate elections but also separately in time from federal, State
5 and County candidate, initiative, and referendum elections; and

6 (d) Allows the City, through the charter amendment process authorized by Chapter
7 XXVI of the Tucson Charter and Article 13, § 2 of the Arizona Constitution, to hold odd-
8 year or even-year elections approving, or authorizing the assessment of, the transaction
9 privilege tax authorized by Chapter IV, § 2 of the Tucson Charter, and to hold such elections
10 on election dates other than the first Tuesday after the first Monday in November.

11 (e) Gives the City control over the administration of its own elections.

12 **Amended A.R.S. § 16-204.01 and 16-204.02 would:**

13 (a) Require the City to hold its primary and general elections for candidates in even
14 years and on the same days that the State holds its primary and general elections for
15 senatorial, congressional, State, judicial, County, and precinct offices and, in presidential
16 election years, its general election for President of the United States;

17 (b) Require the City to expand the terms of its elected officials beyond what is
18 mandated by the Tucson Charter;

19 (c) Remove the City’s option to hold its initiative and referendum elections
20 simultaneously with its own candidate elections but also separately in time from federal,
21 State, and County candidate, initiative, and referendum elections. The City could do one or
22 the other but not both; and

23 (d) Interfere with City control over the administration of its own elections.

24 **Amended A.R.S. § 16-204(F)(4) would:**

25 (a) Require the City to hold any election for the approval of, or authorizing the
26 assessment of, its transaction privilege tax only on the first Tuesday after the first Monday
27 in November of even-numbered years, in other words, on the same days that the State holds
28 its primary and general elections for senatorial, congressional, State, judicial, County, and

1 precinct offices as well as many of its ballot measures and, in presidential election years, its
2 general election for President of the United States. As applied to Tucson or other charter
3 cities, A.R.S. § 16-204(F)'s last sentence directly conflicts with the language of Article 13,
4 § 2 of the Arizona Constitution regarding the permissible timing of charter amendment
5 elections ("may be amended by amendments proposed and submitted by the legislative
6 authority of the city to the qualified electors thereof (or by petition as hereinafter provided),
7 at a general or special election...") and is therefore unconstitutional and void.

8 (b) Remove the City's option to hold its transaction privilege tax elections
9 simultaneously with its own candidate elections but also separately in time from federal,
10 State, and County candidate, initiative, and referendum elections. The City could do one or
11 the other but not both;

12 (c) Interfere with City control over the administration of its own elections;

13 3. In creating these conflicts and interference, A.R.S. § 16-204.01 compares
14 voter turnout in a strictly local election and a statewide election, an apples and oranges
15 comparison that has no rational basis. It makes an arbitrary distinction of a 25% differential
16 in voter turnout between the statewide election and local election, likewise an apples and
17 oranges comparison that has no rational basis. Finally, it fails to otherwise describe, or
18 provide any other rational basis, for why an election concerning strictly local issues is of
19 statewide importance so as to allow this state interference and attempted control.

20 4. Given these conflicts and the statutory interference, and A.R.S. § 16-204.01's
21 lack of a rational basis, all as described above, the City is unclear about what the
22 consequences of complying with its Charter versus State law are, putting the City at an
23 unknown risk, and militating for the City to bring this action.

24 5. Defendant Mark Brnovich, named solely in his official capacity as Attorney
25 General of the State of Arizona, is routinely involved in election litigation and enforcement
26 actions involving the application of state law, and is also one of the officers empowered to
27 bring quo warranto actions (ARS 12-2041 et seq.), which might well ensue if there are
28 arguments about the validity of the City's candidate elections. The Attorney General is one

1 potential litigant, and the most likely State official, who could and would seek to enforce the
2 application of A.R.S. §§ 16-204.01 and 16-204.02 and amended A.R.S. § 16-204(F)(4)
3 against the City. Moreover, as a matter of law, the Attorney General “is a proper party
4 defendant in declaratory judgment actions involving the constitutionality of a statute....”
5 *Ethington v. Wright*, 66 Ariz. 382, 388 (1948). Accord *Yes on Prop 200 v. Napolitano*, 215
6 Ariz. 458, 469, ¶ 33 (App. 2007); *City of Tucson v. Woods*, 191 Ariz. 523, 526–27 (App.
7 1997). Finally, the Attorney General will already be litigating the case on behalf of the State,
8 so becoming a named party is no additional burden.

9 6. Each defendant is an officer or legal entity against whom the City seeks special
10 action relief; who has or could claim an interest affected by the declaratory judgment; and
11 whom the City desires to restrain by injunction.

12 **JURISDICTION**

13 7. This court has jurisdiction to hear and determine this Complaint for Special
14 Action, and to grant the declaratory and injunctive relief requested, by virtue of Article 6, §
15 18 of the Arizona Constitution; Article 13, § 2 of the Arizona Constitution; RPSA 3 and 4;
16 A.R.S. §§ 12-1801 *et seq.*; and A.R.S. §§ 12-1831 *et seq.*

17 8. Special action jurisdiction is appropriate in this case under RPSA 3(b).
18 Defendants have proceeded or are threatening to proceed without or in excess of their
19 jurisdiction or legal authority by requiring the City to hold its municipal elections under an
20 electoral system mandated by amended A.R.S. § 16-204(F)(4) and new A.R.S. §§ 16-204.01
21 and 16-204.02 that conflicts with the system mandated by the City’s Charter.

22 **BASIS FOR SPECIAL ACTION**

23 9. Without a determination that the Tucson Charter supersedes amended A.R.S.
24 § 16-204(F)(4) and new A.R.S. §§ 16-204.01 and 204.02, the City will be unable to:

25 a. Determine whether it needs to move its odd-year primary and general
26 elections to even years, beginning with a move of the 2021 elections to 2022, with later
27 elections correspondingly adjusted. In the absence of a declaration by the court, whatever
28 choice the City might make—i.e., either to conduct the elections in an odd year, as mandated

1 by the Charter, or to conduct them in an even year, as mandated by amended A.R.S. §§ 16-
2 204.01 and 16-204.02—will open the door to election challenges by any qualified city
3 elector who alleges that the method and manner of conducting the election is in violation of
4 either amended A.R.S. §§ 16-204.01 and 16-204.02 or the Tucson Charter. A decision to
5 conduct the elections in an odd year, as mandated by the Charter, could also result in an
6 action by the Attorney General to enforce the application of amended A.R.S. §§ 16-204.01
7 and 16-204.02.

8 b. Advise candidates or incumbents running for election in 2021 what their term
9 of office will be; and will similarly be unable to advise the qualified electors of the City
10 what the term of the successful candidates will be upon election.

11 c. Determine when it may hold elections regarding its Tucson Charter-based
12 transaction privilege tax.

13 10. Any civil action to determine priority as between the City Charter and
14 amended A.R.S. § 16-204(F)(4) and new A.R.S. §§ 16-204.01 and 204.02 that is begun
15 after the statute’s provisions have come into force and an election has taken place will
16 disrupt and cloud the governance of the City. Except for this special action, and action for
17 declaratory and injunctive relief, brought prior to the time the statute’s provisions actually
18 affect the City’s elections, the City has no other adequate remedy at law.

19 **VENUE**

20 11. Venue is proper in Pima County by virtue of A.R.S. § 12-401; RPSA 4(b); and
21 *Bishop v. Marks*, 117 Ariz. 50, 570 P.2d 821 (App. 1977).

22 **BASIS FOR RELIEF**

23 **A. A.R.S. §§ 16-204.01 and 204.02.**

24 12. During the Arizona Legislature’s 2018 Regular Session (Fifty-Third
25 Legislature, Second Regular Session), it enacted House Bill (HB) 2604, which added brand
26 new A.R.S. §§ 16-204.01 and 16-204.02, regarding statewide consolidated election dates
27 and voter turnout, to read as follows:
28

1 **16-204.01. Declaration of statewide concern; city, charter city or town;**
2 **political subdivision consolidated election dates; voter**
3 **turnout; definitions.**

4 A. After consideration of the court's opinion in *City of Tucson v. State*, 235
5 Ariz. 434 (Ct. App. 2014), the legislature finds and determines that it is a
6 matter of statewide concern to increase voter participation in elections,
7 including elections for cities, including charter cities, towns and other
8 political subdivisions, and the legislature finds and declares that if cities,
9 including charter cities, towns and other political subdivisions demonstrate
10 low voter turnout in elections that are not held on the consolidated election
11 dates prescribed in section 16-204, the low voter turnout constitutes
12 sufficient factual support for requiring candidate and other elections to be
13 held on certain specific consolidated dates. The legislature further finds and
14 declares that after evidence of low voter turnout in city, including charter
15 city, and town elections and in elections held for other political subdivisions,
16 increasing voter turnout through the use of consolidated election dates for
17 candidate and other elections as prescribed by this section is a matter of
18 statewide concern. This section preempts all local laws, ordinances and
19 charter provisions to the contrary.

20 B. A political subdivision shall hold its elections on a statewide election date
21 if its previous elections on a nonstatewide election date resulted in a
22 significant decrease in voter turnout in that political subdivision.

23 C. Beginning with elections in 2018, for each political subdivision's
24 elections, other than special elections or recall elections, if a significant
25 decrease in voter turnout occurs as prescribed in subsection B of this section,
26 the political subdivision shall hold its subsequent elections on the statewide
27 election dates beginning three calendar years after the occurrence of the
28 significant decrease in voter turnout.

1 D. For the purposes of this section:

2 1. "Political subdivision" means any governmental entity operating under
3 the authority of this state and governed by an elected body, including a city,
4 charter city, town, county, school district, community college district or
5 other district organized under state law. Political subdivision does not
6 include a special taxing district.

7 2. "Significant decrease in voter turnout" means the voter turnout for the
8 office that received the highest number of votes in the most recent candidate
9 election for a political subdivision in which candidates are elected at large,
10 or portion of a political subdivision if candidates are not elected at large, is
11 at least twenty-five percent less than the voter turnout in that same political
12 subdivision or portion of a political subdivision for the most recent election
13 in which the office of the governor appeared on the ballot.

14 3. "Statewide election date" means the date of the regular statewide primary
15 election and the regular statewide general election.

16 4. "Voter turnout" means the number of ballots cast in a specific candidate
17 race prescribed by this section divided by the total number of active
18 registered voters in that political subdivision or portion of a political
19 subdivision, as applicable, or if no specific candidate race is prescribed by
20 this section, the number of ballots cast in that political subdivision or portion
21 of a political subdivision, as applicable, divided by the total number of
22 active registered voters in that political subdivision or portion of a political
23 subdivision at the election prescribed by this section.

24 **16-204.02. Implementation of consolidated elections; term of office;**
25 **alternative expenditure limitation.**

26 A. Notwithstanding any other law, in order to comply with the consolidation
27 of election dates if required under section 16-204.01 or by voluntary action
28 of the political subdivision, the terms of office for elected officials of the

1 political subdivision shall be lengthened at the time of consolidation to align
2 with the consolidated election dates.

3 B. For any political subdivision whose alternative expenditure limitation is
4 scheduled to expire at any time after the year in which the political
5 subdivision is required to comply with the election consolidation
6 requirements of section 16-204.01, subsection B, or voluntarily consolidates
7 its elections, the political subdivision's existing voter-approved alternative
8 expenditure limitation shall continue as established before its expiration and
9 the penalties prescribed by section 41-1279.07 do not apply if the political
10 subdivision seeks voter approval of an alternative expenditure limitation at
11 the next eligible regular election following consolidation.

12 13. Governor Doug Ducey signed HB 2604 on April 17, 2018, and it was
13 chaptered in the 2018 Session Laws as Chapter 247.

14 14. Pursuant to Ariz. Const. Art. 4, Part 1, § 1, ¶ 3, amended A.R.S. § 16-204.01
15 and 204.02 took effect on August 3, 2018, the general effective date for nonemergency
16 statutes passed during the Fifty-Third Legislature, Second Regular Session.

17 15. In a nutshell, A.R.S. § 16-204.01, provides that beginning with municipal
18 elections in 2018, other than special or recall elections, if a “significant decrease in voter
19 turnout” occurs, the municipality shall hold its subsequent elections on the even-year
20 Statewide election dates beginning three (3) calendar years after the occurrence of the
21 significant decrease in voter turnout. A.R.S. § 16-204.02(A) correspondingly lengthens the
22 term of incumbent municipal elected officials to align with the new election dates.

23 16. According to the statute, “Significant decrease in voter turnout” means the
24 voter turnout for the office that received the highest number of votes in the most recent
25 candidate election for a political subdivision in which candidates are elected at large, or
26 portion of a political subdivision if candidates are not elected at large, is at least twenty-five
27 percent less than the voter turnout in that same political subdivision or portion of a political
28 subdivision for the most recent election in which the office of the governor appeared on the

1 ballot.” The statute does not make clear if “at least twenty five percent less” is to be
2 calculated by multiplying the state turnout percentage by 0.75 or by subtracting 25% from
3 the state voter turnout percentage.

4 17. According to the statute, "voter turnout" means the number of ballots cast in
5 a specific candidate race prescribed by this section divided by the total number of active
6 registered voters in that political subdivision or portion of a political subdivision, as
7 applicable, or if no specific candidate race is prescribed by this section, the number of ballots
8 cast in that political subdivision or portion of a political subdivision, as applicable, divided
9 by the total number of active registered voters in that political subdivision or portion of a
10 political subdivision at the election prescribed by this section.”

11 18. So, for the City of Tucson, the relevant elections subject to the voter turnout
12 comparison under the statute are the 2018 Statewide election (which included the office of
13 governor) and the City’s 2019 candidate election.

14 19. Using the statutory definition, the “voter turnout” in the 2018 Statewide
15 election, as measured within the City limits, was just over 67%.

16 20. If a City voter turnout “at least twenty five percent less” than the state voter
17 turnout in the 2018 Statewide election is to be calculated by multiplying the Statewide voter
18 turnout percentage of 67% by 0.75, then any City voter turnout under 50.2% in the City’s
19 2019 election would trigger the statute.

20 21. If a City voter turnout “at least twenty five percent less” than the state voter
21 turnout in the 2018 Statewide election is to be calculated by subtracting 25% from the
22 Statewide voter turnout percentage of 67%, then any City voter turnout under 42% in the
23 City’s 2019 election would trigger the statute.

24 22. Using the statutory definition, the “voter turnout” in the City’s 2019 election
25 was just over 39%. Using either possible method of calculation of “at least twenty five
26 percent less,” voter turnout in the City’s 2019 election was “at least twenty five percent less”
27 than the state voter turnout in the 2018 Statewide election.

28

1 23. Pursuant to A.R.S. § 16-204.01(C) as enacted under HB 2604, following a
2 municipal election where a “significant decrease in voter turnout” occurs, the city is required
3 to hold its subsequent elections on the statewide elections dates (i.e., in an even numbered
4 year) beginning three (3) calendar years after that municipal election.

5 24. In other words, if the provisions of the statute were to apply to the City of
6 Tucson, the next City candidate election for Wards 3, 5, and 6 would occur in 2022, rather
7 than 2021; and the 2023 election for Mayor and Wards 1, 2, and 4 would be rescheduled to
8 2024.

9 25. HB 2604 also added A.R.S. § 16-204.02(A), which states that if a city either
10 voluntarily moves to the consolidated election dates or is required to move pursuant to
11 A.R.S. § 16-204.01, the terms of office of the elected officials of the city shall be lengthened
12 to align with the new consolidated election dates.

13 26. As stated in A.R.S. § 16-204.01, both of these statutes expressly apply to
14 charter cities as well as to all other cities and towns.

15 27. These statutory provisions conflict with the Charter provisions described
16 above.

17 28. The Mayor and Council immediately recognized that the new law was subject
18 to challenge as a violation of the City’s Charter powers over its own elections, as granted by
19 Article XIII, § 2 of the Arizona Constitution. See *Strode v. Sullivan*, 72 Ariz. 360 (1951);
20 *City of Tucson v. State of Arizona*, 229 Ariz. 172 (2012); *City of Tucson v. State of Arizona*,
21 235 Ariz. 434 (App. 2014), *review denied (March 17, 2015)*.

22 29. However, the City faced a potential dilemma in deciding whether to
23 immediately bring such a challenge. On the one hand, it was not clear that the Arizona
24 courts would consider such a challenge by the City to be “ripe” unless and until the City had
25 actually met the conditions for the statute’s actual application to it. On the other hand,
26 waiting until the City might be faced with the application of the statute could leave the City
27 pressed for time in seeking to litigate the matter.
28

1 30. For those reasons and others, the Mayor and Council decided to give City
2 voters an opportunity to express their will about the timing of the City’s elections.
3 Accordingly, during the Study Session held on May 22, 2018, the Mayor and Council voted
4 to direct staff to prepare a proposed Charter amendment to refer to City voters at the
5 November 2018 election, which if approved by voters would have moved City candidate
6 elections to even-numbered years beginning in 2020.

7 31. Under the proposed Charter amendment (presented to the voters as Proposition
8 408), the Mayor and those Councilmembers whose terms were set to expire in 2019 (Wards
9 1, 2, and 4), would have continued in office until 2020, at which time there would be primary
10 and general elections for those four offices for four-year terms ending in 2024. Those
11 Councilmembers whose terms currently expire in 2021 (Wards 3, 5, and 6) would have been
12 continued in office until 2022, at which time there would have been primary and general
13 elections for those three offices for four-year terms ending in 2026.

14 32. Tucson’s voters rejected Proposition 408 at the November 2018 election, with
15 42.16% (66,699 votes) voting “Yes” and 57.84% (91,513) voting “No.” As a result, the
16 provisions of the Tucson Charter and Arizona statutes relating to the timing of the next City
17 candidate election remain squarely in conflict.

18 33. On February 19, 2020, the Mayor and Council enacted Ordinance No. 11731
19 (Attachment 1 to this Complaint), calling the August 3, 2021 City Primary election and the
20 November 2, 2021 City General Election, and gave notice that these elections, and any
21 special elections occurring on either of those dates, will be conducted as mail ballot elections
22 supplemented by on-site voting locations in each ward.

23 34. Arizona’s courts have previously determined that the Arizona Legislature
24 cannot regulate the “method and manner” of conducting the City’s elections in a manner that
25 conflicts with the provisions of the City’s Charter. *City of Tucson v. State*, 229 Ariz. 172
26 (Ariz. 2012); *City of Tucson v. State*, 235 Ariz. 434 (App. 2014). In particular, the Arizona
27 courts have held that the Legislature cannot compel Tucson to hold its municipal elections
28 in even-numbered years, and that the City’s Charter requirement that these elections occur

1 in odd-numbered years governs this issue. *City of Tucson v. State*, 235 Ariz. 434, 440 (App.
2 2014).

3 B. A.R.S. §§ 16-204(F)(4).

4 35. During the Arizona Legislature's 2017 Regular Session (Fifty-Third
5 Legislature, Second Regular Session), it enacted SB 1152, which amended A.R.S. §§ 16-
6 204(F)(4) to add a new last sentence regarding election dates for ballot measures relating to
7 transaction privilege taxes, to read as follows (change highlighted in ***bold italics***).

8 F. Beginning with elections held in 2014 and later that are not candidate
9 elections, an election held for or on behalf of any political subdivision of this
10 state, and including a special election to fill a vacancy or a recall election,
11 may only be held on the following dates:

12 1. The second Tuesday in March.

13 2. The third Tuesday in May.

14 3. Through 2019, the tenth Tuesday before the first Tuesday after the first
15 Monday in November. Beginning in 2020 and later, the election shall be held
16 on the first Tuesday in August.

17 4. The first Tuesday after the first Monday in November. Notwithstanding
18 any other law, an election must be held on this date for the approval of an
19 obligation or other authorization requiring or authorizing the assessment of
20 secondary property taxes by a county, city, town, school district, community
21 college district or special taxing district, except as provided by title 48.

22 ***Notwithstanding any other law, an election must be held on the date***
23 ***specified in this paragraph and only in even-numbered years for the***
24 ***approval of or authorizing the assessment of transaction privilege taxes by***
25 ***a county, city or town.***

26 36. Governor Doug Ducey signed SB 1152 on May 22, 2017, and it was chaptered
27 in the 2017 Session Laws as Chapter 332.

28

1 37. Pursuant to Ariz. Const. Art. 4, Part 1, § 1, ¶ 3, amended A.R.S. § 16-204.01
2 and 204.02 took effect on August 9, 2017, the general effective date for nonemergency
3 statutes passed during the Fifty-Third Legislature, First Regular Session.

4 38. In contrast to its new November-of-even-years requirement for elections
5 relating to transaction privilege taxes, amended A.R.S. § 16-204 continues to provide that
6 all cities, including charter cities, may hold elections on most other non-candidate ballot
7 measures (e.g., initiative, referendum, bonds) in either odd-numbered or even-numbered
8 years (with no similar statement of concern for “voter turnout” as defined in the statute), and
9 either in November or one of the other three dates specified in the statute, except that
10 elections seeking approval of bonds requiring or authorizing the assessment of secondary
11 property taxes must be held only on the first Tuesday after the first Monday in November.
12 *See* A.R.S. § 16-204(F).

13 **C. Odd-Year Candidate Election Requirements of the Tucson Charter.**

14 39. The City is a charter city framed under Article 13, § 2 of the Arizona
15 Constitution, and is sovereign in all matters that are of strictly local, municipal concern.

16 40. According to the Tucson Charter, “The [C[ity shall have power... [t]o provide
17 for the manner in which and the times at which any municipal election shall be held
18 Tucson Charter, Chapter IV, § 1, ¶ 20.

19 41. Specific provisions of the Tucson Charter enacted by the City’s voters in 1960
20 and initially implemented in 1961 require odd-year elections of the Mayor and of Council
21 Members for four-year terms, with Council Member terms staggered so that a portion of the
22 governing body is elected through a primary and general election held every two years.²
23 Tucson Charter, Chapter XVI, §§ 2-4.

24 _____
25 ² Prior to the enactment of the current provisions, the Tucson Charter (adopted in 1929)
26 required elections of the Mayor and of Council Members for two-year terms, with Council
27 Member terms staggered and a portion of the governing body elected in the spring of every
28 year. A primary election was held on the first Tuesday in March (changed in 1948 to the
third Tuesday in February), and a general election was held on the first Tuesday in April.
Holding City elections in the Spring assured that in even years, those elections would still

1 42. Pursuant to these provisions, a primary and general election for Mayor and for
2 Council Members for Wards 1, 2, and 4 was held in 2019, and another primary and general
3 election for those offices will be held in 2023, while primary and general elections for
4 Council Members for Wards 3, 5, and 6 will be held in 2021 and 2025.

5 43. Because the City of Tucson holds primary and general elections for its
6 candidates for City offices, amended A.R.S. §§ 16-204.01 and 16-204.02 potentially apply
7 to it.

8 44. If amended A.R.S. §§ 16-204.01 and 16-204.02 apply to the City, which the
9 City denies, the Tucson Charter’s odd-year provisions will no longer apply and the City will
10 have to move its 2021 primary and general elections for City office to 2022, and
11 correspondingly adjust all of its later odd-year elections to an even year.

12 **D. Initiative and Referendum Elections under the Tucson Charter.**

13 45. Under the Tucson Charter, a special election for the original enactment of an
14 initiative or referendum may occur either separate from or together with a candidate (usually
15 general) election. Tucson Charter, Chapter XIX, § 4(b); Chapter XX, §§ 1, 2.

16 46. A special election for the repeal or amendment of a previously adopted
17 initiative measure must occur together with a City general election. Tucson Charter, Chapter
18 XIX, § 9.

19 47. Except for the situation described in Paragraph 46 immediately above, the
20 Tucson Charter also permits the City to hold a special election for an initiative or referendum
21 either separately from or together with federal, State, and County candidate, initiative, and
22 referendum elections. Tucson Charter Chapter IV, § 1, ¶ 20; Chapter XVI, § 6; Chapter
23 XIX, § 4(b); Chapter XX, § 1.

24
25 _____
26 be separate from the State’s Fall primary and general elections. When the City’s voters
27 enacted the current Charter provisions in 1960, they sought to preserve this separateness of
28 City and State elections through the current requirement of biennial, odd-year Fall elections
for City office.

1 48. Under the Tucson Charter, the City can and often does choose to hold its
2 initiative or referendum elections simultaneously with its candidate elections, but also at a
3 time separate from federal, State, and County candidate, initiative, and referendum elections.

4 **E. Conflict between the last sentence of A.R.S. § 16-204(F)(4) and the Tucson**
5 **Charter and Arizona Constitution regarding transaction privilege tax**
6 **elections under the Tucson Charter.**

7 49. The City’s power to impose, levy, and collect its transaction privilege tax is
8 contained in Chapter IV, § 2 of the Tucson Charter, which the City is empowered to frame
9 under Article 13, § 2 of the Arizona Constitution.

10 50. Any Tucson Charter amendments regarding the City’s transaction privilege
11 tax must and do occur through the charter amendment process authorized by Chapter XXVI
12 of the Tucson Charter, which expressly states that the Charter “may be amended in the
13 manner provided in the Constitution of the State of Arizona.”

14 51. In turn, Article 13, § 2 of the Arizona Constitution provides that the Tucson
15 Charter “may be amended by amendments proposed and submitted by the legislative
16 authority of the city to the qualified electors thereof (or by petition as hereafter provided) at
17 a general or special election, and ratified by a majority of the qualified electors voting
18 thereon and approved by the Governor as herein provided for the approval of the charter.”

19 52. Article 13, § 2 of the Arizona Constitution expressly does *not* restrict the time
20 of charter amendment elections to the first Tuesday after the first Monday in November of
21 even-numbered years, that is, the time of the State’s “general election” as defined in Article
22 7, § 11 and A.R.S. § 16-211, but rather also allows amendment at either a “general or special
23 election.”

24 53. As applied to Tucson or other charter cities, A.R.S. § 16-204(F)’s last sentence
25 not only conflicts with the City’s charter powers, but also directly conflicts with the language
26 of Article 13, § 2 of the Arizona Constitution regarding the permissible timing of charter
27 amendment elections and is therefore unconstitutional and void. *Bolin v. Superior Court In*
28 *& For Maricopa County*, 85 Ariz. 131, 136 (1958) (“Article 7, Section 11, of the Arizona
Constitution designates the biennial election to be held on the first Tuesday after the first

1 Monday in November of even numbered years to be a ‘general election’; so it is apparent
2 the phrase ‘general election’ has a constitutionally defined, fixed and uniform meaning.”);
3 *Hudson v. Cumnard*, 44 Ariz. 7 (1934) (“elections for a definite purpose, and regularly
4 recurring at fixed intervals without any other requirements than the lapse of time, are
5 ‘general,’ while all others are ‘special.’”)

6 **F. City control over the administration of its own elections.**

7 54. The City currently administers its own elections, and specifically controls the
8 method and manner of those elections. Tucson Charter, Chapter IV, § 1, ¶ 20. The City does
9 sometimes contract with Pima County for specific services, but always in the context of City
10 control over the method and manner of its own elections.

11 **G. Conflict between the Tucson Charter and A.R.S. §§ 16-204.01 and 16-
12 204.02.**

13 55. The City’s Charter-based odd-year elections permit City voters to focus on
14 local candidates, issues, and ballot measures.

15 56. The City’s Charter-based odd-year elections also permit the City to hold and
16 administer its elections separately from State and County elections, thereby minimizing or
17 eliminating problems or conflicts regarding ballot space and placement, voter fatigue,
18 processing of mail ballots or early voting, and placement of voting locations.

19 57. With one exception (see Paragraph 46 above [repeal or amendment of
20 previously adopted initiative measure]), the City’s Charter provisions also give the City the
21 ability to choose to place ballot measures matters on even-year election ballots where the
22 Mayor and Council determine that doing so is in the best interests of the City and its
23 electorate.

24 58. By requiring the City to hold its candidate elections in even years, on the same
25 day that the State holds its primary and general elections for senatorial, congressional, State,
26 judicial, County, and precinct offices and, in presidential election years, its general election
27 for President of the United States, amended A.R.S. §§ 16-204.01 and 16-204.02 directly
28 conflict with the Tucson Charter, and interfere with the City’s method and manner of

1 electing its Mayor and Council Members and of exercising its local initiative and referendum
2 powers, in all the following ways:

3 ***Candidate Elections and Mayor and Council Member Terms***

4 a. The City would be required to go from odd-year elections for its Mayor and
5 its Council Members, as specified in its Charter, to even-year elections, as required by the
6 statute.

7 b. The provisions of A.R.S. §§ 16-204.01 and 16-204.02 that prohibit odd-year
8 candidate elections conflict with the Tucson Charter provision establishing that the term of
9 its elected Mayor and Councilmembers is four (4) years, since the City can only satisfy that
10 Charter requirement by remaining on its current odd-year election schedule.

11 ***Initiative and Referendum Elections***

12 d. With respect to initiatives and referenda, the City would no longer have the
13 option to hold its ballot measure elections both simultaneously with its own candidate
14 elections and separately in time from federal, State, and County candidate and ballot measure
15 elections. It could do one or the other, but not both.

16 And either of these remaining options would damage not only the City's control over
17 the method and manner of its elections, but also its ability to hold meaningful elections
18 regarding local candidates and ballot measures:

19 i. If the City chose to hold its ballot measure elections
20 simultaneously with its candidate elections, then both would routinely be
21 overshadowed and upstaged by simultaneous, competing presidential,
22 senatorial, congressional, State, judicial, and County elections for
23 candidates, issues, and ballot measures, and the campaigns (and independent
24 expenditures) regarding them. And if the City further chose to participate in
25 the consolidated ballot process (see subsection (f)(i) below), or to proceed
26 with an all mail ballot under A.R.S. § 16-204(G) [see subsection (f)(ii)
27 below], then the City's ballot measures would always come last on the ballot,
28 as required by A.R.S. §§ 16-502 and 19-125.

1 ii. Alternatively, if the City chose to hold its ballot measure
2 elections separate from its candidate elections, then it would avoid
3 competition from simultaneous federal, State, and County candidate and
4 ballot measure elections and campaigns. But City voters also would lose the
5 efficiency and other benefits of simultaneous local candidate and ballot
6 measure elections. Candidates would not be required (or have the
7 opportunity) to make their positions on ballot issues part of their campaigns.
8 Finally, the City would have to pay the costs of two separate elections.

9 iii. In being required to make this choice in the first place, City
10 voters would lose to the flexibility to address ballot measures quickly and
11 efficiently, to the satisfaction of the local electorate, in a manner chosen at
12 the local level, that takes into account the various issues and factors listed in
13 (i) and (ii) above.

14 e. In the case of a special election for the repeal or amendment of a previously
15 adopted initiative measure, A.R.S. §§ 16-204.01 and 16-204.02, when read together with the
16 City's Charter, would not even give the City the options described in subparagraph (d)
17 above, unless the City amended the relevant charter provision in the future. Currently, under
18 the Charter, such an election must occur in conjunction with a City general election. Tucson
19 Charter, Chapter XIX, § 9. So a ballot measure posing the question of repeal or amendment
20 of a previously adopted initiative measure would have to appear on a ballot along with City
21 candidates, and thus, under A.R.S. § 16-204(E)(2), also be voted upon at the same time as
22 County, State, and federal candidates and ballot measures. The City has already mentioned
23 the problem of its ballot measure being overshadowed and upstaged in these circumstances.
24 In addition, this requirement means that the City's voters might, in some cases, not be able
25 to vote on repealing or amending a Tucson Charter or code provision previously adopted by
26 initiative for almost two years after a petition for such amendment or repeal had been found
27 sufficient.

1 *Administration of City Elections*

2 f. A.R.S. §§ 16-204.01 and 16-204.02 grossly conflict and interfere with the
3 City's Charter-granted power and ability to administer its local elections. They would give
4 the City only four administrative options with respect to its candidate elections--as well as
5 to its ballot measure elections, to the extent the City chooses to hold them simultaneously
6 with its candidate elections (see subsection (d)(i) above). None of these options would be
7 good for the City or its voters and only one (the first and also most interfering of all) would
8 likely be administratively practical:

9 **i. *Participate in the consolidated election ballot used by County***
10 ***election officials for the State election.*** This is the option that county
11 election officials would almost certainly always agree to, but also the one
12 that would interfere the most with the City's status as a charter city and
13 corresponding local control over the administration of its own elections. The
14 City's candidates always would appear at the very bottom of the "Partisan
15 Ballot" section of the ballot, below federal, state, and county offices (A.R.S.
16 § 16-502).

17 If the City chose to put ballot measures on the consolidated ballot
18 along with candidates, those ballot measures would also appear at the very
19 bottom of the ballot measures section of the ballot, which in turn would only
20 appear at the bottom of the ballot as a whole, after the partisan and
21 nonpartisan candidate sections of the ballot (A.R.S. §§ 16-502, 19-125).

22 Thus, City candidates or ballot measures would become the most
23 likely victims of voter fatigue and voter confusion: voter fatigue would occur
24 because many voters would either fail to vote at all on, or might vote
25 uniformly for or against, candidates or measures that were lower down on
26 the ballot without specific consideration before each particular vote. And the
27 longer ballot would potentially create more voter confusion than currently
28

1 occurs from separate, odd-year elections, offset one year from federal, State,
2 and County elections, and focusing on local candidates and issues.

3 **ii. *Participate in the consolidated State election, but seek***
4 ***permission to have the City's voters vote in an all-mail ballot election***
5 ***administered by Pima County, as authorized by A.R.S. § 16-204(G).***

6 Amended A.R.S. § 16-204 allows the City to seek a mail ballot election for
7 its voters, administered by County election officials, in the context of
8 participating in the consolidated ballot process. But this would only be an
9 option if County election officials also agreed to it, which is by no means
10 certain, and which in itself would mean a loss of City control over its own
11 elections. While A.R.S. § 16-204(G) authorizes County election officials to
12 implement a City all mail ballot election as part of a consolidated election, it
13 does not require them to do so upon City request. Thus, before it could
14 actually occur, the City would not only have to enter into an
15 intergovernmental agreement with County election officials for City
16 participation in the consolidated election generally (A.R.S. § 16-205), but
17 also convince County election officials to specifically agree to administer an
18 all mail ballot election for the City as part of that process (as authorized by
19 A.R.S. § 16-204(G)). It might well be that County officials would not agree
20 to do this, as it would require them to process the City's all mail ballots at
21 the same time as, and in addition to, processing the County's own early
22 ballots for the state election (resulting from both individual requests and
23 ballots sent out automatically based on Pima County's permanent early
24 voting list (PEVL)).

25 Even assuming County election officials did agree in particular cases
26 to administer an all mail ballot election under A.R.S. § 16-204(G) on behalf
27 of the City in the context of consolidated participation, the result and effect
28 would still be that the City would no longer have ultimate control of the

1 method and manner of its own elections. The final say would be with Pima
2 County.

3 There would be still other problems. The City's candidates, and any
4 ballot measures the City chose to include on the consolidated ballot, would
5 still be at the bottom of their respective sections of the ballots, leaving the
6 City still open to voter fatigue.

7 Finally, the City's separate all mail ballot election would occur only
8 at City cost, meaning the City would certainly not save any money as a result
9 of the consolidated election.

10 **iii. Carry out its own all mail ballot election under A.R.S. § 16-**
11 **409, administered by the City itself.** The City could also conduct its own
12 mail ballot elections on the same dates in even years as the consolidated
13 federal, State, and County election. To the extent the City chose to contract
14 with Pima County for ballot processing (signature verification), Pima County
15 would have to first agree, as the County would be required to verify the
16 signatures for the City's all mail ballots at the same time as, and in addition
17 to, processing the County's own early ballots for the simultaneous state
18 election.

19 As with the other options above, additional serious complications
20 arise with this option. Carrying out its own mail ballot election would not
21 solve the upstaging problems listed in subparagraphs (c), (d)(i), and (e) above
22 that would arise through the City's holding primary and general elections on
23 the same days as the State's biennial elections for federal, State, and County
24 offices.

25 **iv. Conduct its own polling place election, supplemented by its**
26 **own early voting, on the same days as the State's election, but separate**
27 **from it, and using a separate ballot.** This would likely be the worst option
28 of all. In addition to all the same problems that would arise from a separate

1 City all mail ballot election under (iii) above, the City also would be forced
2 to find joint locations with County election officials for polling place
3 locations that: (1) had adequate space for both jurisdictions to provide
4 election boards and voting equipment; and (2) also complied with the
5 requirements of the Americans with Disabilities Act (ADA). The City
6 operates its polling places under an ADA settlement agreement with the U.S.
7 Department of Justice. Pima County does not. Thus, Pima County can use
8 facilities unavailable to the City of Tucson. It is too early to articulate what
9 effect the current COVID-19 pandemic will bring, but the City is preparing
10 for the possibility of future complications.

11 And compared to the all mail ballot elections the City now routinely
12 administers, an election with both polling places and early voting would be
13 more costly and would certainly not save the City any money.

14 **F. The Tucson Charter supersedes A.R.S. §§ 16-204(F)(4), 16-204.01**
15 **and 16-204.02.**

16 59. The Tucson Charter provisions at issue in this case govern the method and
17 manner of conducting the City’s local candidate and ballot measure elections, specifically
18 including its transaction privilege tax elections, which are all matters of strictly local,
19 municipal concern and, in the case of the City’s transaction privilege tax elections, directly
20 governed by the provisions of Article 13, § 2 of the Arizona Constitution.

21 60. Amended A.R.S. § 16-204(F)(4) and new A.R.S. §§ 16-204.01 and 16-204.02
22 conflict with those Tucson Charter provisions, and interfere with the method and manner of
23 conducting the City’s local candidate and ballot measure elections, specifically including its
24 transaction privilege tax elections.

25 61. As applied to charter cities, amended A.R.S. §§ 16-204(F)(4) also directly
26 conflicts with the provisions of Article 13, § 2 of the Arizona Constitution regarding the
27 permissible timing of charter amendment elections and is unconstitutional and void. *Bolin*
28

1 v. *Superior Court In & For Maricopa County*, 85 Ariz. 131, 136 (1958); *Hudson v.*
2 *Cummard*, 44 Ariz. 7 (1934).

3 62. Pursuant to Art. 13, § 2 of the Arizona Constitution, *Strode v. Sullivan*, 72
4 Ariz. 360, 236 P.2d 48 (1951), and *City of Tucson v. State of Arizona*, 229 Ariz. 172, 273
5 P.3d 624 (2012), the Tucson Charter provisions supersede amended A.R.S. § 16-204(F)(4)
6 and new A.R.S. §§ 16-204.01 and 16-204.02.

7 WHEREFORE, the City of Tucson requests the following relief:

8 1. A judgment declaring that pursuant to Article 13, § 2 of the Arizona
9 Constitution, *Strode v. Sullivan*, 72 Ariz. 360, 236 P.2d 48 (1951), and *City of Tucson v.*
10 *State of Arizona*, 229 Ariz. 172, 273 P.3d 624 (2012), with respect to the City's municipal
11 elections, the methods and procedures set forth in the Tucson Charter supersede the
12 provisions in the new A.R.S. §§ 16-204.01 and 16-204.02 and the last sentence of amended
13 A.R.S. § 16-204(F)(4) .

14 2. In the case of amended A.R.S. § 16-204(F)(4), a judgment declaring that as
15 applied to charter cities, amended A.R.S. § 16-204(F)(4) also directly conflicts with the
16 provisions of Article 13, § 2 of the Arizona Constitution regarding the permissible timing of
17 charter amendment elections and is unconstitutional and void.

18 3. A permanent injunction enjoining defendants from requiring the City of
19 Tucson to comply with the requirements of amended A.R.S. § 16-204(F)(4) and new A.R.S.
20 §§ 16-204.01 and 16-204.02 in the administration of any future City election.

21 4. Attorney fees incurred in this action, as authorized pursuant to ARS § 12-
22 348.01.

23 5. The taxable costs of this action.

1 6. Such other and further relief as the Court deems just and proper.

2
3 RESPECTFULLY SUBMITTED this 11th day of June, 2020.

4 MICHAEL G. RANKIN
5 City Attorney

6 BY: /s/Dennis P. McLaughlin
7 Dennis P. McLaughlin
8 Principal Assistant City Attorney
9 Roi Lusk
10 Principal Assistant City Attorney
11 Jennifer Stash
12 Principal Assistant City Attorney
13 *Attorneys for City of Tucson*

12 PDF of the foregoing electronically filed and
13 and served this 11th day of June, 2020 with:

14 Turbo Court/Pima County Superior Court

15 Copy e-delivered this 11th day of June, 2020 to:

16 Hon. Brenden J. Griffin
17 Pima County Superior Court
18 110 West Congress
19 Tucson, AZ 85701

20 Copies emailed/mailed this 11th day of June, 2020 to:

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By /s/ C. Turner

1 VERIFICATION

2
3 STATE OF ARIZONA)
4) ss:
5 COUNTY OF PIMA)

6 Dennis P. McLaughlin, an attorney with the Tucson City Attorney’s Office, being
7 duly sworn, upon oath deposes and says:

8 That I have read the foregoing Complaint for Special Action, and for Declaratory and
9 Injunctive Relief, and know the contents thereof, and that the Complaint is true of my own
10 knowledge, except the matters stated in the Complaint on information and belief and as to
11 those matters, I believe the Complaint to be true.

12 Dated: June 11, 2020

13
14 BY: /s/Dennis P. McLaughlin
15 Dennis P. McLaughlin
16 Principal Assistant City Attorney
17 *Attorneys for City of Tucson*
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27
28

Attachment 1

February 19, 2020

ORDINANCE NO. 11731

RELATING TO ELECTIONS; PURSUANT TO THE PROVISIONS OF TUCSON CHARTER CHAPTER IV, SECTION 1(20) AND CHAPTER XVI, SECTION 6; TUCSON CODE SECTION 12-38; AND ARIZONA REVISED STATUTES SECTION 16-409, CALLING THE AUGUST 3, 2021 CITY PRIMARY ELECTION AND THE NOVEMBER 2, 2021 CITY GENERAL ELECTION, AND GIVING NOTICE THAT THESE ELECTIONS, AND ANY SPECIAL ELECTIONS OCCURRING ON EITHER OF THOSE DATES, WILL BE CONDUCTED AS MAIL BALLOT ELECTIONS SUPPLEMENTED BY ON-SITE VOTING LOCATIONS IN EACH WARD; AND DECLARING AN EMERGENCY.

WHEREAS Chapter XVI, Sec. 6 and Chapter IV, Sec.1(20) of the Charter empower the Mayor and Council to provide for the manner in which and the times at which any City election shall be held; and

WHEREAS Tucson Code (T.C.) Sec. 12-38 and A.R.S. § 16-409 authorize the Mayor and Council to conduct any City election as a mail ballot election, and T.C. Sec. 12-38 also provides that all City elections held on the same date shall use the same method of voting; and

WHEREAS the Mayor and Council desires that the City conduct as mail ballot elections the August 3, 2021 primary election, the November 2, 2021 general election, and any special elections occurring on either of those dates; and

WHEREAS the Mayor and Council shall comply with the requirements of Tucson Charter Chapter XVI, Sec. 10 and T.C. Secs. 12-15 and 12-38 and designate at least one (1) location in each Ward in the City for the casting of votes, with each such location to be kept open on the day of election from 6:00 a.m. to 7:00 p.m.; and

WHEREAS, conducting the candidate elections for Wards 3, 5 and 6 in 2021 is mandated by the Tucson Charter, the provisions of which control over any conflicting re-

quirements of A.R.S. Sections 16-204.01 and 16-204.02 pursuant to various decisions of the Arizona courts, including *City of Tucson v. State of Arizona*, 229 Ariz. 172 (2012) and *City of Tucson v. State of Arizona*, 235 Ariz. 434 (App. 2014), *review denied* (March 17, 2015).

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. Pursuant to the provisions of Tucson Charter Chapter IV, Sec. 1(20) and Chapter XVI, Sec. 6, the Mayor and Council call a City primary election, to be held on Tuesday, August 3, 2021, at which candidates for the offices of Council Members from Wards Three, Five, and Six shall be nominated for each properly and duly qualified political party.

SECTION 2. Pursuant to the provisions of Tucson Charter Chapter IV, Sec. 1(20) and Chapter XVI, Sec. 6, the Mayor and Council call a City general election, to be held on Tuesday, November 2, 2021, at which three Council Members representing Wards Three, Five, and Six shall be elected, who shall hold office for the term commencing at 10:00 a.m. on Monday, December 6, 2021, and extending to 10:00 a.m. on Monday, December 1, 2025, and until their successors are elected and qualified.

SECTION 3. The Council Members shall be nominated each from and by the respective voters of the ward in which he or she resides, and shall be elected by the voters of the City at large.

SECTION 4. Pursuant to the provisions of Tucson Charter Chapter IV, Sec. 1(20) and Chapter XVI, Sec. 6; T.C. Sec. 12-38; and A.R.S. § 16-409, the August 3, 2021 Primary Election and the November 2, 2021 General Election, and any special elections occurring on those dates, will be conducted as mail ballot elections.


SECTION 5. Pursuant to Tucson Charter Chapter XVI, Sec. 10 and T.C. Secs. 12-15 and 12-38, the City Clerk is authorized and directed to identify and designate at least one (1) location in each Ward for the casting of ballots.

SECTION 6. The City Clerk is authorized and directed to cause this Ordinance to be published in a daily newspaper published and circulated in the City of Tucson.

SECTION 7. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

SECTION 8. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this Ordinance become immediately effective, an emergency is hereby declared to exist and this Ordinance shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, on February 19, 2020



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER


DPM/dg
2/11/20