STATE OF ARIZONA

COURT OF APPEALS, DIVISION ONE

CITY OF SCOTTSDALE, an Arizona municipal corporation, Plaintiff/Appellant, vs. STATE OF ARIZONA, Defendant/Appellee. JIM TORGESON and SIGN KING LLC, Intervenors/Appellees.	Case No. 1-CA-CV 14-0798 A Maricopa County Superior Court Case No. CV 2014-003467 Hon. Robert Oberbillig

APPELLANT'S REPLY TO STATE APPELLEE'S ANSWERING BRIEF

SCOTTSDALE CITY ATTORNEY'S OFFICE
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
(480) 312-2405 (T)
Bruce Washburn (SBN: 015346)
Lori S. Davis (SBN: 027875)
legal@scottsdaleaz.gov
Attorneys for Plaintiff-Appellant
City of Scottsdale

TABLE OF CONTENTS

TABLE OF CITATIONS

Federal Cases

State Cases

State Statutes

Other Authorities

Scottsdale City Code

I. INTRODUCTION

The State has provided the Court with no basis to refute the premise that the City's regulation of the commercial use of its own property is a purely local concern. In fact, the State's briefing presumes a statewide interest exists without explaining how, and instead relies upon the legislature's declaration of interest. *See* State Appellee's Answering Brief ("SAB") at 17. As more fully discussed in the City's Opening Brief, the legislature's declaration is not dispositive of this Court's determination of statewide interest. The State's difficulty in finding a "statewide interest" is palpable. This is because there are no actual statewide interests at stake here. The State's argument in favor of a statewide concern, *i.e.*, protection of free speech, is merely pretextual because freedom of speech is already protected, subject to reasonable time, place, and manner restrictions. With no valid articulated statewide interest, the local regulation of the use of City property prevails.

In the State's search for a theory, the State invites the Court to invent new rules, effectively stripping charter cities of all powers over local matters. For example, the State contends that, because commercial sign walkers are "common to other Arizona cities," and the City's ordinance "reaches all Arizona residents," then the ordinance must regulate a matter of statewide concern. (SAB at 8, 16) However, application of such a test finds no support in logic and is contrary to

existing precedent. *See City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon, 67 Ariz. 330 (1948) ("City of Tucson v. Arizona ASAE"); see also McMann v. City of Tucson*, 202 Ariz. 468 (App. 2002) . In fact, adopting the State's position would abrogate long-standing precedent that the disposition and regulation of the commercial use of a city's property is a local concern. It is clear that the State desires to usurp all constitutionally guaranteed powers of charter cities, rendering charter "sovereignty" empty and meaningless. The Court should decline the State's invitation.

The State does admit to two specific areas where Arizona Courts have recognized the power of charter cities: elections and proprietary functions. (SAB at 10) Specifically, the State concedes that "[c]harter cities can decide how to sell or lease their own real . . . property. . . ." *Id.* This is exactly the point made by the City/Appellants herein. Charter cities can and should decide how their own property is used for commercial purposes.

Finally, the vast majority of the authorities relied upon by the State for its assertion that the state law controls are *zoning* cases. This is not a zoning matter and never has been. Neither A.R.S. § 9-499.13 nor S.R.C. § 16-353(c) is a zoning law. As the City's Opening Brief and Reply herein make clear, this case is about a charter city's ability to control and regulate the commercial use of its own property, not the City's ability to tell property owners what they can and cannot do

with their own (the property owners') property, *i.e.*, zoning. The City does not dispute that the regulation of zoning is a matter of statewide concern.

II. REBUTTAL TO STATE APPELLEE'S STATEMENT OF FACTS

Contrary to the State's assertion, the City's ordinance does not ban commercial sign walkers from all public fora. *See* SAB at 1. Specifically, the ordinance precludes commercial sign walkers from operating on streets and sidewalks. (IRA 24 at p. 4-5, ¶¶ 16-18). There are no prohibitions upon commercial sign walkers operating on other public fora such as parks or other public areas, and they are not banned from private property, such as in the parking areas of merchants. *Id*.

Furthermore, the City's ordinance only seeks to regulate the commercial use of the City's property. *Id*. The State admits that sign walkers use business signs to advertise goods and services (SAB at 1) and, as such, sign walkers are using the City's property for commercial purposes.[1]

[1] Intervenors/Appellees also admit that this is a commercial business venture wherein Sign King, LLC and its employees "will be prohibited from plying their trade on public streets in Scottsdale…." Intervenors' Answering Brief at 3.

III. ARGUMENT

A. THE STATE HAS FAILED TO ARTICULATE A VALID STATEWIDE INTEREST, AND INSTEAD, PROPOSES A SERIES OF NEW TESTS WHICH LACK LOGICAL FOUNDATION AND PRECEDENTIAL AUTHORITY

On page 24 of its Brief, the State points out, correctly, what this case is ***not*** about. It is not about whether health, safety and aesthetics are proper areas for municipal regulation, or whether cities have the power to regulate the use of their sidewalks, or whether the City's ordinance is a constitutionally permissible regulation of commercial speech. In other words, the State concedes, as it must, that the City has regulated a matter of local concern and that, at least for the purposes of this proceeding, there is no issue of anything being inherently wrong with the regulation itself. Therefore, that should end the matter ***unless*** the State has shown that what is being regulated is also a matter of statewide concern. So the question then becomes, what has the State brought forward to establish that there is a matter of statewide concern? An examination of the State's briefing in this matter reveals a position in search of a rationale, a search that in the end yields no results.

In the trial court, the State's position was that the City was exercising the police power granted it by the State under the zoning statute. *See* IRA 27 at 2:10-11. However, as noted elsewhere, this case has nothing to do with zoning. It has to

do with regulating commercial behavior on the City's property – its sidewalks – intended to distract drivers and resulting in visual clutter. The fact that the behavior involves, in part, the use of signs[2] to distract drivers and create visual clutter does not make the ordinance an exercise of police power under the zoning laws. As noted by the Arizona Supreme Court in *Levitz v. State,* 126 Ariz. 203, 205 (1980), a case which the State cites in support of the proposition that the City's ordinance is a zoning law, " . . . sign regulations were made a part of zoning regulations to achieve a more uniform treatment of buildings, structures, and improvements." The City's ordinance has nothing to do with "buildings, structures and improvements," it has to do with behavior on City property that involves the use of signs. Scottsdale, along with many other cities, has numerous ordinances regulating what people can do and cannot do in the City's parks and public places, and the State has not cited to one case that holds that those regulations all constitute zoning laws.

The State, in apparent recognition of the weakness in its zoning regulation argument, manufactures a series of new tests or rules it claims Arizona law imposes on the determination of what is and is not a matter of statewide concern. However, none of them has support in existing law. Set forth below is a synopsis

[2] It should be noted that the ordinance also forbids using wearing apparel to engage in the prohibited distractive activities.

of the State's attempts to articulate a "statewide concern," followed by a more detailed discussion of each of the items.

Ordinances with criminal penalties. The State contends the City cannot criminalize what the state permits (SAB at 17), and cites a section of McQuillin that does not address the issue of the powers of charter cities, and a Minnesota case holding that a charter city's traffic regulation cannot conflict with a state law, a proposition that is not at issue here. The fact is that no court has ever held that just because a city ordinance has a criminal penalty attached, it has to be deemed a matter of statewide concern. It makes no sense that some behavior would be a matter of statewide concern if the ordinance prohibiting it has a criminal sanction, but would not be a matter of statewide concern if the city only imposed a civil sanction. The Court should reject the State's proposal to adopt such a novel and irrational test for what is a matter of statewide concern.

Enforcement in court. The State contends that because prosecutions for violations of the City's ordinance have to be brought in the name of the State, this proves they are matters of statewide concern. (SAB at 4) As discussed further herein and in the City's Opening Brief, the Arizona constitution vests control of the courts in the state legislature, and the legislature has decreed that all actions shall be brought in the name of the State. The City does not quarrel with the State's right to exercise the power given it by the constitution, but the State does

not explain why the State's control of the courts turns every ordinance that might result in a proceeding in court into a matter of statewide concern. The court should reject this unprecedented and nonsensical rule.

The same activity occurs throughout the state. The State contends that, because commercial sign walkers are "common to other Arizona cities," and the City's ordinance "reaches all Arizona residents" then the ordinance must regulate a matter of statewide concern. (SAB at 8, 16) These are two tests conjured up by the State which find no support in logic and contradict existing precedent. *See City of Tucson v. Arizona ASAE*, 67 Ariz. 330 (1948); *see also McMann*, 202 Ariz. 468 (App. 2002). When the Arizona Court of Appeals held that the requirement of background checks for gun purchases occurring on City property were matters of local concern, it did not say "but only if the purchase is by a resident of the City." *See McMann*, 202 Ariz. 468. Likewise, no such caveat was issued by the Arizona Supreme Court when it held that the disposition of property by charter cities is not a matter of statewide public concern, but rather is a matter of local concern. *See City of Tucson v. Arizona ASAE*, 67 Ariz. 330. Presumably, sales of city property and commercial gun shows on city property take place all over the state, so clearly the court has not found that fact to be in any way determinative of whether they are matters of purely local concern.

Banned from all public fora. The State claims that the City has "bann[ed] sign-walkers from all public fora." (SAB at 1) It is unclear why this would make the City's ordinance a matter of statewide concern, but in any event this is incorrect. The only conflict between the City's ordinance and the state statute involves commercial sign walkers' use of the City's sidewalks, which are all City-owned property. Commercial sign walkers are not banned from the City's parks or other public areas, and they are not banned from private property, such as in the parking areas of merchants, even if those parking areas are clearly visible from the street. The City did not try to eliminate these commercial sign walkers from the city, or to regulate their actions on private property, but only to ban them from its own sidewalks.

The *Coles* case. The State contends that *State v. Coles*, 234 Ariz. 573 (App. 2014) is "indistinguishable" from the current case and therefore is controlling. (SAB at 13). However, the fact the word "charter" appears 75 times in the State's brief in this court, but not once in the *Coles* opinion, highlights the key distinction between the two cases. In *Coles*, as more fully discussed herein, the City argued that its ordinance banning being in a public place "under the influence of alcohol" was not preempted by a state statute that said a city could not make it illegal to be "found in an intoxicated condition." *Id.* at 575. The City argued, and the Superior Court agreed, that the two provisions could be harmonized. *Id.* The Court of

Appeals disagreed. *Id.* The City never argued that its status as a charter city empowered it to criminalize public intoxication when the legislature had determined that intoxication needed to be treated as an illness rather than a criminal act. *Id.* at 577.

Two "narrow and discrete areas." The State contends that Arizona law recognizes only two "narrow and discrete areas" where charter cities are allowed "some measure" of plenary power, and that any exercise of authority by a charter city that does not fall into one of those two areas must be subject to control by the state. (SAB at 10) Of course, the City's ordinance does fall into one of the areas that the courts have held to be a matter of local concern, namely the control of commercial activity on City property. But in any event, no case has ever held that these are the only two areas that can possibly be considered matters of strictly local concern. The State asks this Court to forgo the kind of analysis necessary to determine whether a matter is truly one of only local concern in favor of the adoption of a new rule that decides the question by applying labels. The Court should reject the State's simplistic and formulaic analysis.

The purposes found by the state. The supposedly statewide purposes proclaimed by the legislature are to protect "fundamental free speech rights" and to require "uniform regulations for all individuals." The problem is that the state law does neither of these things.

The important fact here is that the state law gives commercial sign walkers the right to engage in dangerous and disruptive behavior on city sidewalks ***free of all reasonable time place and manner restrictions***. There is no fundamental right to be free of reasonable restrictions. Furthermore, commercial sign walkers are not given "uniform" treatment with other citizens. To the contrary, commercial sign walkers are the only citizens who do not have to comply with reasonable restrictions. To paraphrase George Orwell's *Animal Farm,* the state legislature wants all citizens to be equal, but for commercial sign walkers to be more equal than the others.

Unmistakably, the State has provided this Court with no basis to refute the premise that the City's determination of how its property may be used is a purely local concern. The State assumes, without explanation, that the State's declaration prevails because, after all, it is the State. However, the law requires something more than that. As more fully explored in the City's Opening Brief, the law requires an actual statewide interest, and the legislature's declaration is not dispositive of the issue. *City of Tucson v. State*, 229 Ariz. 172, 178 ¶ 34 (2012). While legislative findings are accorded deference, courts "must not merely rubber stamp the legislature's decision." *Arizona Center for Law in the Public Interest v. Hassell*, 172 Ariz. 356, 369 (App. 1991). The Court must instead look beyond the declaration of a state interest and determine whether, in fact, a statewide interest is

present. *See City and County of Denver v. State*, 788 P.2d 764, 768 n.6 (Colo. 1990).

That is exactly what the Arizona Supreme Court did in *Strode v. Sullivan*, 72 Ariz. 360, 368, (1951), wherein the Arizona Supreme Court held the mere legislative declaration of statewide interests in A.R.S. § 9-821.01 (A) was insufficient to overcome Tucson's autonomy to choose the structure and manner of its elections. *City of Tucson v. State*, 229 Ariz. 172 at ¶ 31-34. That is exactly what the Court should do in the case at bar. The Court should conclude that the legislative declaration of statewide interests in A.R.S. § 9-499.13 is insufficient to overcome Scottsdale's autonomy to choose how to regulate the commercial use of its property.

By contrast, adopting the State's position would abrogate long-standing precedent that regulating the commercial use of a city's property is a local concern. *See City of Tucson v. Arizona ASAE*, 67 Ariz. at 336; *see also McMann v. City of Tucson*, 202 Ariz. 468 (App. 2002). Once again, the State is inviting the Court to invent a new rule, effectively stripping charter cities of their powers over local matters, including the control and use of their own property for commercial purposes. The State's attempt to arrogate control over all local matters, without an actual statewide interest, should be rejected out of hand by this Court.

B. THE STATE ADMITS THE LOCAL PROPRIETARY INTEREST IN THE CITY'S DISPOSITION AND CONTROL OF CITY PROPERTY

As mentioned, the State admits to two specific areas where Arizona Courts have recognized the power of cities over local matters: elections and proprietary functions. *See* SAB at 10. Specifically, the State concedes that "[c]harter cities can decide how to sell or lease their own real . . . property. . . ." *Id.* This is exactly the point made by the City – the regulation of the commercial use of City property by the City is a strictly local concern.

Charter cities have long held the right to control the disposition of their own property. *City of Tucson v. Arizona ASAE*, 67 Ariz. at 336 (holding recognized by *Strode v. Sullivan*, 72 Ariz. 360, 366 (1951)). Likewise, charter cities have long held the right to control the commercial use of their own property. *McMann v. City of Tucson*, 202 Ariz. 468 (App. 2002). As the Court in *McMann* recognized, a city has the constitutional right to regulate the use of its property for business purposes and that is solely a local concern not subject to the will of the legislature. *Id*. at 472-73 ¶¶ 10-12. Here, the use of City of Scottsdale's rights of way by sign walkers is a commercial use of the City's property analogous to that in *McMann* and as such is subject to local control as a local matter.

Finally, in its Opening Brief, the City stated:

> Municipal government essentially has two classes of functions: those undertaken in a sovereign or governmental capacity, and those undertaken in a proprietary capacity. *City of Scottsdale v. Mun. Court of City of Tempe*, 90 Ariz. 393, 403, 368 P.2d 637, 643 (1962).
>
> > [A] municipality usually exercises ***proprietary functions*** when it promotes the ***comfort, convenience***, ***safety and happiness of its own inhabitants*** rather than the welfare of the general public. . . . ***Promotion of the public health and welfare of a community is a duty of the municipality***; it certainly has a sovereign right to accomplish this within its borders.
>
> *Id.* (citation omitted) (emphasis added).

O. B. at 17-18. In providing the above authority, the City erroneously and inadvertently omitted the parenthetical notation that the definitional reference was taken from the dissenting opinion. The City regrets this error. However, the City takes issue with the assertion that the cited reference was contradicted by the majority opinion. *See* SAB at 21. To the contrary, the reference set forth basic municipal law with regard to the proprietary function of government. Specifically, the dissenting *dicta* merely set forth the general proposition that municipal government essentially has two classes of functions: those undertaken in a sovereign or governmental capacity, and those undertaken in a proprietary capacity. The dissent then explains how the two basic capacities differ. There is nothing controversial there. In fact, the same definitions can be found in authoritative treatises on municipal law, and even in *Black's Law Dictionary*. *See Black's Law Dictionary* 1219 (6th ed., West 1990) ("*Proprietary functions*.

Functions which city or town, in its discretion, may perform when considered to be for best interests of its citizens. 'Governmental function' has to do with administration of some phase of government, that is to say, dispensing or exercising some element of sovereignty, ***while 'proprietary function' is one designed to promote comfort, convenience, safety and happiness of citizens***." (internal citations omitted) (emphasis added). Thus, a nearly identical definition is found in *Black's Law Dictionary* as was provided by the dissent in *City of Scottsdale v. Mun. Court of City of Tempe, supra*. Furthermore, the question before the Court in *City of Scottsdale v. Mun. Court of City of Tempe* was whether the operation of a municipal sewage disposal plant was in discharge of governmental function and whether the municipality was subject to zoning regulation of another municipality in which the property was located. 90 Ariz. at 395. The majority opinion provided no definition of what constitutes a "proprietary" or "governmental function." Obviously, beyond the explanation provided in *dicta* by the dissent, the remainder of the case is immaterial as it concerns questions of zoning, eminent domain, and the acquisition of land for public purposes – all of which have no application here. That explains why the portion quoted by the State makes no sense in the context of the case at bar (*i.e.*, "citizens of the state . . . have an interest in the prevention and spread of infectious or contagious diseases") and certainly does nothing to support the State's

argument. *See* SAB at 21. The State's attempt to mischaracterize the citation error to gain a tactical advantage falls flat.

C. THE STATE HAS COME FORWARD WITH NOTHING MORE THAN A ZONING ARGUMENT, WHICH HAS NO APPLICABILITY TO THE QUESTION AT ISSUE

As noted above, the State's search for a workable theory continues to hinge primarily on characterizing this as a zoning case. As the State told the trial court:

> [T]he sole issue is whether charter cities are permitted to use police and zoning powers (which the state delegates to them) to forbid conduct that Arizona statute expressly permits.

(IRA 38 at 2:13-15) Seeing the lack of merit in its own argument, the State has attempted to enhance its zoning argument with a series of other rules and tests, none of which are of any avail, while still relying almost exclusively upon inapplicable precedent regarding zoning. In fact, the vast majority of the authority relied upon by the State in its briefing is grounded in zoning law.[3]

---

[3] *See, e.g.*, Appellee State's citations to *City of Scottsdale v. Scottsdale Assoc. Merchants, Inc.*, 120 Ariz. 4 (1978) (referred to by the State as "*Scottsdale III*") (zoning case); *Levitz v. State*, 126 Ariz. 203 (1980) (zoning case); *Folsom Investments, Inc. v. City of Scottsdale*, 620 F.Supp. 1372 (D.Ariz. 1985) (zoning case); *Luhrs v. City of Phoenix*, 52 Ariz. 438 (1938) (police powers case); *City of Scottsdale v. Arizona Sign Ass'n, Inc*., 115 Ariz. 233 (App. 1977) (zoning case); *City of Tempe v. Outdoor Systems, Inc*., 201 Ariz. 106 (App. 2001) (zoning case); *City of Scottsdale v. Superior Court*, 103 Ariz. 204 (1968) (referred to by the State as "*Scottsdale II*") (zoning case); *Transamerica Title Ins. Co. v. City of Tucson*, 157 Ariz. 346 (1988) (zoning case); and *City of Tucson v. Whiteco Metrocom, Inc*., 194 Ariz. 390 (App. 1999) (zoning case). Aside from the State's discussion of cases relied upon by the City and cases setting forth basic propositions of generally

As more fully addressed in the City's Opening Brief, this matter does not concern zoning or police powers. Neither A.R.S. § 9-499.13 nor S.R.C. § 16-353(c) is a zoning law. Zoning is where the City tells property owners what they can and cannot do with their own (the property owners') property. Zoning is not where the City tells people what they can and cannot do on *the City's* property. The fact that signs are involved, and that a separate zoning ordinance regulates the size and location of signs, should not confuse the issue. The ordinance and statute at issue address whether sign walkers have a legal right to engage in behavior that makes commercial use, without restriction, of the City's property, not whether the City's property is *zoned* to prohibit these types of signs or sign walkers. Clearly, zoning has no applicability to the issue here.

It is interesting that the State relies upon *Earhart v. Frohmiller*, 65 Ariz. 221, 224 (1947) for the proposition that "[t]he Legislature is vested with the whole of the legislative power of the state, and may deal with any subject within the scope of civil government unless it is restrained by the provisions of the Constitution." *See* SAB at 27. The remainder of that quote, had the State chosen to include it in its briefing, clearly shows the Court had a different perspective on the Legislature's wielding of power than that represented by the State:

---

accepted law, the only remaining Arizona cases relied upon by the State are *State v. Coles*, 234 Ariz. 573 (App. 2014) and *Earhart v. Frohmiller*, 65 Ariz. 221 (1947), which are discussed further herein.

> ***The Constitution of Arizona is not, as is the Constitution of the United States, to be considered a grant of power or enabling act to the Legislature, but rather is a limitation upon the power of that body***, and that 'The Legislature is vested with the whole of the legislative power of the state, and may deal with any subject within the scope of civil government unless it is restrained by the provisions of the Constitution, ***and the presumption that the Legislature is acting within the Constitution holds good until it is made to appear in what particular it is violating constitutional limitations***.'

Earhart, 65 Ariz. at 224 (emphasis added). In the case at bar it is clear that the Legislature is acting outside of its constitutional authority in trying to seize the constitutionally guaranteed powers of charter cities to exercise their dominion and control over local matters. The Court should recognize and halt the State's efforts to unconstitutionally commandeer charter authority.

The State also cites prior decisions against the City which have no relevance here, and harken back to its ill-chosen zoning argument. *See* SAB at 12-13 (citing *City of Scottsdale v. Scottsdale Assoc. Merchants, Inc.*, 120 Ariz. 4 (1978) (referred to by the State as "*Scottsdale III*"); *Folsom Investments, Inc. v. City of Scottsdale*, 620 F.Supp. 1372 (D.Ariz. 1985); and *State v. Coles*, 234 Ariz. 573 (App. 2014)). However, none of these cases provides any guidance to the Court.

Specifically, both *Scottsdale III* and *Folsom Investments* are zoning cases with no applicability here. Similarly, the State mistakenly relies upon *State v. Coles*, 234 Ariz. 573 (App. 2014). However, as discussed above, *Coles* had no bearing upon the question of charter sovereignty. The sole issue presented in

Coles was whether a local ordinance prohibiting the "incapacitation by alcohol in public" was preempted by a state statute which prohibited local laws criminalizing "being a common drunkard or being found in an intoxicated condition." 234 Ariz. at 574, ¶ 2. Coles had been charged with the offense, and the City Court granted Coles' motion and dismissed the public intoxication charge. *Id*. Thereafter, the Maricopa County Superior Court reversed the City Court's decision, holding that although the state statute "preempts local laws that include being in 'an intoxicated condition' as an element of an offense, it does not preempt local laws in which being 'under the influence of alcohol' is an element of an offense." *Id*. at ¶ 3. Ultimately, the Court of Appeals concluded that the state statute preempted the local ordinance "because the two provisions conflict with each other in an area in which the Arizona Legislature has acted with the intent to preempt local regulation." *Id*. at ¶ 5. The Court's determination centered upon whether there was a direct conflict between the laws requiring state preemption, or whether the two laws could be harmonized. *Id*. No argument was made or decided regarding whether public intoxication was a purely local concern governed by charter sovereignty. As such, the *Coles* decision lends the Court no assistance in the determination of the controversy before it.

Similarly, despite the protestations of the State to the contrary, the City of Scottsdale cannot be stripped of its constitutionally endowed charter city

sovereignty by the suggestion that *the manner of enforcement* of its ordinances through police powers is determinative of the issue. As more fully explored in the City's Opening Brief, it is ***the subject matter of the concern*** which must determine whether a matter is of local or statewide concern, not the manner of its enforcement. *See Wonders v. Pima County,* 207 Ariz. 576, 579, ¶ 9 (App. 2004) ("A state law only preempts conflicting local ordinances when ***the subject matter of the legislation*** is of statewide concern and the state has appropriated the field.") (emphasis added) (*quoted with approval in Coconino County v. Antco, Inc.*, 214 Ariz. 82, 90 (App. 2006)). If the State's position were accurate, constitutionally guaranteed charter "sovereignty" would be empty and meaningless. As a consequence, the Court should decline to adopt such a position.

IV. CONCLUSION

In *City of Tucson v. Arizona ASAE,* 67 Ariz. 330, 336 (1948), the Arizona Supreme Court bases its determination of whether the sale of municipal real estate is purely a matter of local concern on the following assessment:

> It is of no interest to the cities of Phoenix, Yuma, or any other city or town in the State of Arizona, what the provisions of the charter of the City of Tucson provide [with respect to the sale of municipal real estate]. The people of Arizona, through their duly elected representatives, should not be concerned with legislation looking to the intricacies of management of a large city.

This frames the fundamental question that has to be answered in order to demonstrate that there truly is a matter of statewide concern. What interest of the other cities has been shown that justifies their dictating to a charter city how it manages its own affairs? In this case the State has not articulated any response that stands up to even the slightest scrutiny. Why should the citizens of Yuma or Bullhead City care about, or be able to dictate to, the citizens of Scottsdale how they, through their elected representatives, manage commercial activity on the City's own property? The State has simply failed to answer that question.

For the reasons stated above, the Superior Court's judgment against Appellant City of Scottsdale should be reversed. The City asks this Court to conclude that the legislative declaration of statewide interests in A.R.S. § 9-499.13 is insufficient to overcome Scottsdale's autonomy to choose how to regulate the commercial use of its property. Appellant prays that this Honorable Court will grant summary judgment in its favor herein, reversing the decision of the trial court and declaring that: (1) Scottsdale's municipal ordinance, S.R.C. § 16-353(c), and the Scottsdale Charter supersede the provisions in amended A.R.S. § 9-499.13 and (2) Scottsdale is exempt from amended A.R.S. § 9-499.13 because amended A.R.S. § 9-499.13 cannot be constitutionally applied to the City of Scottsdale. Appellant further prays for any other relief this Court should deem just and proper.

RESPECTFULLY SUBMITTED this 17th day of March, 2015.

SCOTTSDALE CITY ATTORNEY'S OFFICE

By: */s/ Bruce Washburn*

Bruce Washburn, City Attorney
Lori S. Davis, Senior Assistant City Attorney
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
Attorneys for Appellant City of Scottsdale

STATE OF ARIZONA

COURT OF APPEALS, DIVISION ONE

CITY OF SCOTTSDALE, an Arizona municipal corporation, Plaintiff/Appellant, vs. STATE OF ARIZONA, Defendant/Appellee. JIM TORGESON and SIGN KING LLC, Intervenors/Appellees.	Case No. 1-CA-CV 14-0798 A Maricopa County Superior Court Case No. CV 2014-003467 Hon. Robert Oberbillig

APPELLANT'S CERTIFICATE OF COMPLIANCE

SCOTTSDALE CITY ATTORNEY'S OFFICE
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
(480) 312-2405 (T)
Bruce Washburn (SBN: 015346)
Lori S. Davis (SBN: 027875)
legal@scottsdaleaz.gov
Attorneys for Plaintiff-Appellant
City of Scottsdale

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 14, Arizona Rules of Civil Appellate Procedure, I certify that the attached brief uses proportionately spaced type of 14 points or more, is double-spaced using a roman font and contains approximately 5326 words.

Dated this 17th day of March, 2015.

SCOTTSDALE CITY ATTORNEY'S OFFICE

By: */s/ Bruce Washburn*
Bruce Washburn, City Attorney
Lori S. Davis, Senior Assistant City Attorney
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251

STATE OF ARIZONA

COURT OF APPEALS, DIVISION ONE

CITY OF SCOTTSDALE, an Arizona municipal corporation, Plaintiff/Appellant, vs. STATE OF ARIZONA, Defendant/Appellee. JIM TORGESON and SIGN KING LLC, Intervenors/Appellees.	Case No. 1-CA-CV 14-0798 A Maricopa County Superior Court Case No. CV 2014-003467 Hon. Robert Oberbillig

APPELLANT'S CERTIFICATE OF SERVICE

SCOTTSDALE CITY ATTORNEY'S OFFICE
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
(480) 312-2405 (T)
Bruce Washburn (SBN: 015346)
Lori S. Davis (SBN: 027875)
legal@scottsdaleaz.gov
Attorneys for Plaintiff-Appellant
City of Scottsdale

CERTIFICATE OF SERVICE

On this date, counsel undersigned e-filed Appellant's Reply to State Appellee's Answering Brief with the Clerk of the Court for Division One, and e-mailed copies of it to the following:

- Mark Brnovich, Attorney General, Robert L. Ellman, Senior Litigation Counsel, David D. Weinzweig, Senior Litigation Counsel, 1275 West Washington Street, Phoenix, AZ 85007-7989, (602) 542-7989; David.Weinzweig@azag.gov; Robert.Ellman@azag.gov; DefensePhx@azag.gov; Counsel for Defendant-Appellee STATE OF ARIZONA

- Scharf-Norton Center for Constitutional Litigation, At the Goldwater Institute, Clint Bolick, Attorney at Law, Kurt M. Altman, Attorney at Law, Jared Blanchard, Attorney at Law, 500 East Coronado Road, Phoenix, AZ 85004, (602) 462-5000; kaltman@goldwaterinstitute.org; litigation@goldwaterinstitute.org; Counsel for Intervening Defendants JIM TORGESON AND SIGN KING, LLC

Dated this 17th day of March, 2015.

By: */s/ Bruce Washburn*
Bruce Washburn, City Attorney
Lori S. Davis, Senior Assistant City Attorney
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251