ARIZONA COURT OF APPEALS

DIVISION ONE

CITY OF SCOTTSDALE, an Arizona municipal corporation, Plaintiff/Appellant, v. STATE OF ARIZONA, Defendant/Appellee, JIM TORGESON and SIGN KING LLC, Intervenor-Defendants/Appellees.	CA-CV 14-0798 Maricopa County Superior Court Case No. CV2014-003467 **INTERVENOR-DEFENDANTS/APPELLEES' ANSWERING BRIEF**

Statement of the Case

Intervenors-Defendants/Appellees (hereafter "Intervenors") Jim Torgeson and Sign King, LLC do not dispute Appellant City of Scottsdale's Statement of the Case, but supplement it to include matters relating to their intervention.

On May 30, 2014, Intervenors moved to intervene as defendants to protect their speech rights under the First Amendment; Art. II, § 6 of the Arizona Constitution; and A.R.S. § 9-499.13, which is the subject of this litigation (I.R. 8, 9). In their Answer to the Complaint, Intervenors asserted as affirmative defenses

that S.R.C. § 16-353(c), the ordinance implicated here, is properly preempted by state law (*id.*, Exh. A at 7-8, ¶¶ 41-49) and violates their free speech rights under the federal and state constitutions (*id.* at 9, ¶¶ 50-52).

Appellant ("City") opposed the motion, asserting *inter alia* that Intervenors were barred by claim and issue preclusion because they had unsuccessfully challenged S.R.C. § 16-353(c), the ordinance at issue here, under the First Amendment in a prior criminal proceeding (I.R. 16 (citing *State v. Torgeson*, rec. app. No. LC2007-000710-001 DT (Maricopa Cty. Super. Ct. Feb. 11, 2008) (*id.* at Exh. A)). On July 1, 2014, the trial court granted intervention, finding that the "State Constitution challenge portion of the Applicants' Claim was not previously litigated and is not barred by the doctrine of issue preclusion" and that Intervenors "have demonstrated proper grounds for intervention as of right and permissive intervention" (I.R. 20). The City did not appeal the trial court's order granting intervention.

Appellant and Appellee ("State") filed cross-motions for summary judgment. Intervenors joined the State's Motion for Summary Judgment, reserving their constitutional claims until a determination on that motion (I.R. 26). Intervenors joined the State's Response to the City's Motion for Summary Judgment and argued that the protection of free speech rights by A.R.S. § 9-499.13

is a matter of statewide interest and thus preempts the conflicting City ordinance (I.R. 26).

In its decision granting the State's and denying the City's summary judgment motions, the trial court noted that the "state contends that regulation of sign spinners is a matter of statewide importance to place business speech on equal footing with other speech and flows from the state's superior police and zoning power." *City of Scottsdale v. State*, min. ent., No. CV 2014-003467 (Maricopa Cty. Super. Ct. Aug. 18, 2014) (I.R. 43) at 2. The court concluded that "the state has demonstrated a matter of sufficient statewide concern and a desire to preempt the 'sign spinner' field." *Id.*

Statement of Facts

Intervenors join Appellee's Statement of the Facts. However, we supplement those facts to describe briefly Intervenors' circumstances, which illustrate the important human dimension of this case.[1]

Intervenor Jim Torgeson is the owner of Sign King, LLC (hereinafter "Sign King"), which has been in business since 2011, and previously operated since 2001 as Jet Media (I.R. 8 at 3). Sign King operates by conveying customers'

[1] For an interesting profile and video of sign spinners in action, see Doug Stutsman, "Sign-spinners Remain Popular for Advertising," *Augusta Chronicle* (Feb. 23, 2015), at http://chronicle.augusta.com/news/metro/2015-02-23/little-caesars-uses-sign-spinners-advertisement.

commercial messages through the use of "sign walkers," who are situated at visible public thoroughfares throughout Maricopa County (*id.*). As previously noted, Torgeson was charged with violating S.R.C. § 16-353(c), and his conviction was upheld by the Maricopa County Superior Court (I.R. 16, Exh. A at 1 & 7). Several of the sign walkers employed by Sign King also have been criminally charged under the ordinance (I.R. 8 at 3). If the City prevails and S.R.C. § 16-353(c) is operative, Sign King and its employees will be prohibited from plying their trade on public streets in Scottsdale (*id.* at 1) and their business customers will be deprived of an opportunity to advertise using sign walkers. Of course, such a ruling also would open the door to other charter cities to prohibit sign walkers and eliminate and criminalize the employment opportunities that companies like Sign King make available. That is precisely the fate that A.R.S. § 9-499.13 seeks to prevent.

Statement of Additional Issue Presented in Appeal

Is the protection of rights guaranteed by Art. II, § 6 of the Arizona Constitution a matter of statewide interest so as to allow the Legislature to preempt a charter city ordinance that completely prohibits sign walkers on public streets?

Argument

THE STATUTE ENSURING PUBLIC ACCESS TO SIGN WALKERS PROMOTES A STATEWIDE INTEREST AND THEREFORE PREEMPTS SCOTTSDALE'S BAN.

Standard of review. We concur with the City (Br. at 11) that this Court's review of the trial court's legal conclusion regarding preemption is a question of law and thus reviewed *de novo*. *State v. Coles*, 234 Ariz. 573, 574-75, ¶ 6 (App. 2014).

1. Applicable constitutional framework. This case presents a conflict between the State's desire to protect employment opportunities and free speech rights for sign walkers throughout Arizona and the City's determination to eradicate sign walkers from its sidewalks. Because the statute at issue advances a statewide interest, the State should prevail.

The legal framework for deciding the case is familiar and, apparently, agreed upon by the parties. Article 13, § 2 of the Arizona Constitution provides in relevant part that a city of requisite size "may frame a charter for its own government consistent with, and subject to, the Constitution and the laws of the state." The limiting principle attached to this charter authority is muscular (and in this case, dispositive): "consistent with, and subject to, the Constitution and the laws of the state."

Indeed, the City itself acknowledges this very important limitation when it asserts (Br. at 2) that as a charter city it "is sovereign in all matters that are of *strictly* local, municipal concern" (emphasis added). Indeed, even though it is our adversary's formulation, we believe that is precisely the touchstone this Court should keep foremost in mind as it weighs the legal arguments in this case: is the concern addressed by the State statute and City's ordinance *strictly* local, or does it implicate statewide interests? See, e.g., *Strode v. Sullivan*, 72 Ariz. 360, 365 (1951) (state law does not preempt charters "insofar as such laws relate to purely municipal affairs").

In *Strode*, the Supreme Court held that the manner of conducting municipal elections was solely a municipal rather than statewide concern. In *City of Tucson v. State*, 229 Ariz. 172 (2012), the Supreme Court reaffirmed *Strode*. Acknowledging that "[m]any municipal issues will be of both local and state concern," *id*. at 628, ¶ 20, the Court went on to determine whether the actual asserted state interests actually clashed with the way in which local control was exercised, concluding that they did not justify overruling the holding of *Strode* that the manner of conducting local elections is solely a local concern. *Id*. at 177-81, ¶¶ 24-47. Construing that decision, Division 2 of the Court of Appeals held that "the *possibility* of a statewide interest in a statute does not bar the conclusion that the

statute impermissibly reaches an area of 'purely' or 'solely' local interest." *City of Tucson v. State*, 235 Ariz. 434, 438, ¶ 11 (App. 2014) (emphasis added).

At roughly the same time, this Court set forth the framework that guides the disposition of this case. "When an issue affects both state and local interests, municipalities may address the issue by enacting and enforcing relevant laws unless specifically preempted by state law." *State v. Coles*, 234 Ariz. at 574, ¶ 6 (holding that state law regarding public intoxication preempted Scottsdale's contrary provision). "A state statute preempts a local ordinance when (1) the municipality creates a law in conflict with the state law, (2) the state law is of statewide concern, and (3) the state legislature intended to appropriate the field through a clear preemption policy." *Id.*

In Parts 2 and 3, *infra*, we will demonstrate that the statute here does not reflect a mere "possibility" but the reality of statewide interests that directly clash with the City's prohibition of sign walkers, so as to render impossible the City's depiction of its charter provision as a matter of solely local concern.

2. Zoning and police power interests. Intervenors join in the State's arguments that the authority exercised by the City in the charter provision inheres in the State and therefore properly may be limited by the State. See, e.g., *City of Scottsdale v. Scottsdale Assoc. Merchants*, 120 Ariz. 4, 5 (1978) ("Zoning

regulation is based upon the police power of the state" and thus "is a matter of statewide concern"). We add a few observations to support those arguments.

The City cannot seriously question that A.R.S. § 9-499.13 is intended to allow statewide access to public sidewalks for sign walkers and to preempt contrary municipal laws. As the State demonstrated in its cross-motion for summary judgment in the trial court (I.R. 27), the initial legislation that eventually led to A.R.S. § 9-499.13 was a response to the prosecution of Intervenor Jim Torgeson for violating the charter provision, and the City understood that its adoption would void the charter provision (*id.* at 4). The impact of the subsequent bill that was adopted as A.R.S. § 9-499.13 was similarly understood by the City (*id.* at 5). Likewise, according to its sponsor, the bill amending A.R.S. § 9-499.13 was aimed at preventing "abuses of free speech by City of Scottsdale" (*id.* at 6).

Decisions of our Supreme Court have determined that certain functions have "definitely been determined governmental, the control of which remains in the state. The police power is one." *Luhrs v. City of Phoenix*, 52 Ariz. 438, 444 (1938). "A municipal corporation has no inherent police power, but derives it solely from delegation by the state." *Id.*

In *Levitz v. State*, 126 Ariz. 203, 204 (1980), the City of Phoenix argued, as the City does here, "that the regulations of signs is purely a local matter subject to regulation by the local government under the power given to charter cities by

Article 13 § 2 of the Arizona Constitution." The Court categorically rejected that position, holding that sign regulation is not exempt from state regulation and overturning a contrary holding. *Id.* at 205.

Against this categorical and on-point ruling, the City cites *McMann v. City of Tucson*, 202 Ariz. 468 (App. 2002), in which the court held that a statute forbidding municipal regulation of firearms did not preempt the City's placing conditions on use permits for gun shows on City property requiring background checks. The court observed that "it is not clear that the legislature intended the statute to apply to the City's control of its own property as opposed to the City's attempt to control third parties." *Id.* at 471, ¶ 7. Noting that the Supreme Court "has held that 'the sale or disposition of property by charter cities' is a matter of solely local concern in which the state legislature may not interfere," the court reasoned that the use permit is "essentially a lease, which is a disposition of property." *Id.* at 472, ¶ 10 (citation omitted). Additionally, the court observed, "municipalities have a constitutional right to engage in business activities"; and when doing so, they are "presumed to act under the same restrictions as a private person." *Id.* at ¶ 11.

McMann does not apply here. Unlike the statute at issue in *McMann*, A.R.S. § 9-499.13 plainly is intended to preempt the City's actions here. Moreover,

despite the City's insistence that it is acting in a "proprietary" capacity,[2] it is neither engaged in a business transaction nor in the sale or disposition of City property.[3] Rather, it is regulating the conduct of third parties, who otherwise

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[2] The City (Br. at 17, 18, & 30) cites *City of Scottsdale v. Mun. Ct. of City of Tempe*, 90 Ariz. 393 (1962), without alerting the Court that all of the cited passages are from the *dissenting* opinion. Given that it was called out for the same omission below (I.R. 38 at 7), it is troubling that the City would repeat it here. The City cites the case for the proposition that a municipality exercises "proprietary functions when it promotes the comfort, convenience, safety and happiness of its own inhabitants," which it "has a sovereign right to accomplish" within its borders. *Id.* at 403 (Lockwood, J., dissenting). In fact, the Court held that "the preservation of the public health is one of the duties that devolves upon the state as a sovereignty"; and that when a municipality regulates to that end, it does so "in the exercise of a purely governmental function," acting not only for its own citizens but of all the citizens of the state. *Id.* at 398 (majority). We hope that in its Reply the City will acknowledge its mischaracterization of the dissent's views as the holding of the Court.

[3] The City urges (Br. at 15) that "the use of City of Scottsdale's right of way by sign walkers is a use of the City's property analogous to that in *McMann*. Sign walkers are using the City's rights of way for a business purpose, albeit for a short period of time. While no 'use permit' is required, the analysis is the same." Not exactly. *McMann* involved a *city's* business activities, in which it was leasing its property in one or more individual transactions. This case involves a blanket policy *forbidding* use of public property, ostensibly for the purpose of aesthetics and public safety, not the sale or disposition of property. That places it in the realm of police power or zoning, in which the State may supercede municipal regulation because those powers remain attributes of State sovereignty. Contrast *McMann*, 202 Ariz. at 471 (lease of city property is not exercise of police power), with a case cited therein, *Montgomery v. Oklahoma City*, 157 P.2d 454, 455 (Okla. 1945) ("Where the language of an ordinance conclusively shows that it was the intention of the city legislators to regulate the business in order to protect the public from imposition and injury, the ordinance is an exercise of the police power").

would enjoy the opportunity to access public sidewalks but are prevented from doing so only if they are carrying a sign. That is an exercise of the City's police power and it is a regulation of signs, which *Luhrs* and *Levitz*, respectively, have ruled are powers that are reserved to the State and are not matters of solely local concern.

The City gamely argues that *Levitz* and the State's zoning authority do not permeate its hegemony because the sign walker provision is not a zoning regulation. Indeed, unlike an ordinary zoning regulation, the charter provision does not regulate the size or location of the signs deployed by the sign walkers. Rather, it prohibits them on public sidewalks altogether. It defies logic to suggest that there is a statewide interest in the *regulation* of signs but not in their *prohibition*. Hence, the trial court was correct in applying *Levitz* to conclude that "the state has demonstrated a matter of sufficient statewide concern and a desire to preempt the 'sign spinner' field" (I.R. 43 at 2).

3. Free speech interests.[4] At their core, the City's ordinance, the statute, and this case are about speech. Does the State have an interest in enforcing the free

[4] Although it is not clear whether the trial court's decision is predicated in part on free speech interests, the court noted that the State asserted that the statute at issue serves such interests (I.R. 43 at 2); and as recited earlier, Intervenors presented those arguments in the court below. See, e.g., *Zuck v. State*, 159 Ariz. 37, 41-42 (App. 1988) ("this court may affirm a grant of summary judgment on grounds raised, but not explicitly considered, below").

speech guarantees of Ariz. Const. Art. II, § 6? To ask the question is to answer it. Cf. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 6 (2011) (Court granted petition for review because of the "statewide importance regarding the free speech rights of tattoo artists and the authority of municipal governments to regulate the location of tattoo parlors").

Yet the City devotes fewer than four pages out of 40 at the very end of its brief to refuting what it describes (Br. at 36) as the "State's only expressed interest." Despite its brevity, it is difficult to follow the logic of the City's argument. Says the City (*id.*), "this interest is protected by the Constitution and our courts" (hopefully so in this case!)—but apparently cannot be protected by the State? Certainly, if a right is important enough to be guaranteed in the Declaration of Rights of our Constitution, and to be enforced by the courts, it is by definition a statewide interest.

Then the City retreats a bit. "The City does not claim that it is at liberty to impose any restriction it wants to," it assures (*id.* at 37). "In this instance, free speech is already protected by reasonable time, place and manner restrictions in place. As such, the purported rationale of protecting free speech is not a legitimate statewide interest" (*id.* at 37-38).

Already protected by reasonable time, place, and manner restrictions in place? Is the City referring to its charter provision? If so, it is an odd "time, place,

and manner" restriction in which the affected speech is allowed to occur at no time, on no public street, or in any manner. Yet the City appears by that passage to be conceding that if there are *not* adequate time, place, and manner restrictions "in place," then indeed there is a "legitimate statewide interest" in protecting the speech.

In fact, not only does the charter provision far exceed time, place and manner regulations, it goes far beyond the prohibition of sign walkers. The relevant language of S.R.C. § 16-353 is majestic in its breadth:

> No person shall have, bear, wear or carry upon any street, any advertising banner, flag, board, sign, transparency, wearing apparel or other device advertising, publicly announcing or calling attention to any goods, wares, merchandise, or commodities, or to any place of business, occupation, show, exhibition, event or entertainment. The provisions of this subsection do not apply to the wearing of apparel without remuneration for doing so or business identification on wearing apparel.

(*Id.* at 5).

On its face, the language sweeps in speech that goes far beyond sign spinning. Indeed, it is not even limited to commercial speech. For instance, someone holding a sign announcing a City Council meeting would be "carry[ing] . . . a board publicly announcing or calling attention . . . to any . . . event." Someone waving an American flag to call attention to a political rally would violate the provision because flags are included within the prohibition. A waiter at Oregano's walking to work while wearing a uniform required by his employer would offend

the provision for "wearing apparel . . . advertising . . . any place of business" for remuneration. Because an offender need only "have, bear, wear, or carry" a sign on the streets of Scottsdale to violate the provision, a sign walker living in Scottsdale would violate the provision merely by driving to work in any of the communities surrounding Scottsdale that take a less draconian approach to such speech. The types of activities proscribed by the language of the provision are boundless and far exceed the parameters of the perceived problem.

And yet, despite the provision's broad scope in light of its purported purpose, there are a few words that a reasonable reader might logically expect to appear in the provision that somehow got left out, such as "spinning," "tossing," or even "distracting." The City presents (Br. at 3-4) a parade of horribles it attributes to "waving" and "tossing" signs, and to their "motion" and "animation." One might expect the provision to narrowly focus on those concerns. Certainly, sign spinning is encompassed within the provision's operative verbs ("have, bear, wear, or carry") and nouns ("advertising banner, flag, board, sign, transparency, wearing apparel or other device")—but so is a whole universe of other actions and things. The provision is a model of imprecision.

Which is constitutionally fatal, especially whereas here the provision is coupled with criminal prosecution. In *State v. Boehler*, 228 Ariz. 33 (App. 2011), this Court invalidated an ordinance banning panhandlers and other solicitors from

orally asking for cash after dark on public streets. As here, the ordinance "sweeps widely," *id.* at 36, ¶ 9, and on its face encompassed a great deal of protected speech beyond the perceived evil the City intended to restrict. *Id.* at 37, ¶ 11. Recognizing that "courts will invalidate a statute that 'reaches a substantial amount of constitutionally protected conduct'," *id.* at 35, ¶ 5 (citation omitted), the Court held that "[e]ven a content-neutral regulation of speech in a public forum may survive constitutional scrutiny only if it is 'narrowly tailored to serve a significant government interest, and leave[s] open ample alternative channels of communication.'" *Id.* at 37, ¶ 10 (citation omitted). It is hard to describe this crudely crafted provision as narrowly tailored, nor does it leave ample alternative channels for communication because it prevents sign walkers from accessing public streets altogether.

Indeed, the provision's constitutional infirmity is even more pronounced given that it is not a reasonable time, place, or manner regulation but a complete prohibition of the use of City streets for specific types of speech. Art. II, § 6 of our Constitution provides, "Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right." Given that our Constitution recognizes an affirmative right to speak, rather than merely prohibiting government abridgement of speech, our Supreme Court consistently has recognized that Art. II, § 6 accords greater protection to freedom of speech than the First Amendment.

See, e.g., *Coleman*, 230 Ariz. at 361, ¶ 36 n.5; *State v. Stummer*, 219 Ariz. 137, 143 (2008); *Mtn. States Tel. & Tel. Co. v. Ariz. Corp. Comm'n*, 160 Ariz. 350, 354-55 (1989).

The Scottsdale charter provision turns the protection of Art. II, § 6 upside-down: it presumes abuse from the outset and prohibits the speech on public streets altogether.[5] And it does so even as the City (Br. at 37) acknowledges that sidewalks are among the "quintessential" forums for free speech. *State v. Boehler*, 288 Ariz. at 37, ¶ 10 (citing *Hill v. Colo.*, 530 U.S. 703, 715 (2000)).

The critical distinctions between reasonable time, place, and manner regulation and outright prohibition is highlighted by this Court's decision in *Salib v. City of Mesa*, 212 Ariz. 446 (App. 2006), which is relied upon by the City (Br. at 36). At issue in *Salib* was an ordinance limiting commercial advertisements to a certain specified percentage of a store's windows. Applying the U.S. Supreme Court's test in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980), the Court held that the scope of a restriction on commercial speech "must be in proportion to the interest served. That is, the regulation must not go beyond what is necessary to achieve the desired objective." *Salib*, 212 Ariz.

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[5] The City admits as much (Br. at 4) in articulating the objective of its charter provision to completely prohibit the profession by "[r]emoving sign walkers from City sidewalks, walkways, and pedestrian thoroughfares protects the peace and beauty of the City as desired by its citizens."

at 452, ¶ 16. Explaining why it would not second-guess reasonable time, place, and manner regulations, the Court quoted from a federal appeals court decision: "'Better, in our view, to save such demanding review for situations where . . . [the law] does not leave ample alternative channels for communication because it is (or nearly is) a complete ban. . . .'" *Id.* at 453 (quoting *Prime Media, Inc. v. City of Brentwood,* 398 F.3d 814, 823-24 (6th Cir. 2005)).

Turning to the Arizona Constitution, the Court observed that whether Art. II, § 6 makes a distinction between commercial and noncommercial speech "has not yet been decided by our courts."[6] *Salib*, 212 Ariz. at 454, ¶ 25. Under Art. II, § 6, "government may impose reasonable restrictions that *incidentally* burden speech if they (1) are content neutral, (2) serve a significant governmental interest, (3) leave open ample alternative channels for communication of the information, and (4) are drawn 'with narrow specificity so as to affect as little as possible the ability of the sender and receiver to communicate'." *Id.* at 454, ¶ 27 (quoting *Mtn. States*, 160 Ariz. at 357-58) (emphasis added).

Applying the Art. II, ¶ 6 framework, the Court observed that the ordinance "does not completely ban signs within windows . . . This is particularly important

[6] Nor need the Court make that determination in this case, both because the constitutionality of the charter provision is not yet directly at issue, and the provision on its face does not limit its scope to commercial speech.

to our analysis, because communication with potential customers through window signs remains an available option, albeit in regulated form." *Id.* at ¶ 28. The Court distinguished other Arizona decisions invalidating regulations in which "communication was actually prevented from occurring," *id.* at 455, ¶ 33, or where "less restrictive means, such as increased law enforcement, had not been considered" by the government. *Id.* at ¶ 34.

Here, by contrast, not only has speech actually been prevented, but an entire business and profession engaged in pure speech have been disrupted. The ordinance completely excludes sign walkers (and a variety of other types of speech) from public streets. The city may well respond, "Well, we may have removed the quintessential public forum from the realm in which sign walkers may operate, but they can still do it on private property." That is cold comfort to businesses wishing to advertise that do not have ample alternate means of signage communications (such as many small businesses and stores enclosed within malls), and to the sign walkers themselves. Similarly, the City does not appear to have considered less draconian alternatives. Our Constitution insists that regulations aimed at suppressing speech must have something approaching surgical precision rather than employing a meat-ax approach. Rather than adopt or even consider genuine time, place, and manner regulations, the City has persisted in its stand-off

against the State and in its adherence to the most drastic and sweeping regulatory response.

The City contends (Br. at 36) that "requiring a city to allow sign walkers to use the City's property unrestricted by constitutionally permissible time, place and manner restrictions is not a legitimate protection of constitutional speech." It cites no support for that proposition perhaps because it is inaccurate. The only question before the Court is whether the statute addresses a statewide concern. If so, the State is empowered to displace inconsistent municipal enactments, regardless of whether they completely or only partially displace their regulatory power.

But the City's proposition also is inaccurate because it inaptly describes the statute, which forbids municipalities from prohibiting access to public streets but does not foreclose reasonable regulation. The City (Br. at 7-9) sets forth the full text of the amended (current) version of A.R.S. § 9-499.13. The relevant provisions are as follows (emphasis added):

> A. From and after December 31, 2008, notwithstanding the authority to regulate signs pursuant to section 9-462.01, and as a matter of statewide concern, all municipalities shall *allow* the posting, display and use of sign walkers. Except as provided in subsection B of this section, *municipalities may adopt reasonable time, place and manner regulations relating to sign walkers.*
>
> B. A municipality that adopts reasonable time, place and manner regulations relating to sign walkers may not restrict a sign walker from *using* a public sidewalk, walkway or pedestrian thoroughfare.

Quite plainly, the statute contemplates time, place, and manner regulations, so long as they are reasonable and do not prevent the use of public streets. The legislative findings (City Br. at 8-9) are quite clear on this point. The first finds that "[i]n a traditional public forum, freedom of speech is a fundamental right that must be protected from *unreasonable* abridgment by municipal regulation and enforcement" (emphasis added). The second finds that sidewalks are traditional public forums for speech purposes. The third finds that equal access to public streets is "fundamental to the exercise of free speech and expression. Notwithstanding reasonable time, place and manner regulations, the *use* of public sidewalks, walkways, and pedestrian thoroughfares must be uniform as between sign walkers and all other individuals" (emphasis added). The fourth is most on point: "Municipal regulations of time, place and manner that *target* sign walkers and *prevent* the equal use of public sidewalks, walkways, and pedestrian thoroughfares by sign walkers violate the public policy of this state and are void" (emphasis added).

Thus, even though it was not required to do so, the State left cities with extensive authority to regulate sign walkers in a manner short of prohibition. In short, the statute largely parallels the protections of the Arizona Constitution, which the City insists remain intact.

The State is not simply invoking a constitutional provision as a fig-leaf to displace the rightful prerogatives of charter cities. Rather, it acted to prevent the abuse by a handful of municipalities of the free speech rights of Arizona citizens. By tailoring its statute in this manner, the State codified in statute a core provision of the organic law. How can doing so not reflect a statewide interest?

It is true that freedom of speech is protected by our state and federal constitutions. But as this Court is well-aware, those protections are not self-executing. The City seems to think that only the judicial branch is empowered to protect those rights, thus requiring litigation wherever those rights are suppressed. Of course, in a republican form of government, *every* public official is responsible for upholding the Constitution; and in the first instance, it is not only appropriate but preferable for our elected officials to protect our rights. It is where they fail to do so that recourse to the courts is necessary and appropriate. Here, the Legislature acted to codify uniform protections of free speech rights and to prevent (or in this case to put a stop to) abuses of those rights. In so doing, the Legislature pursued a statewide purpose, and therefore its efforts should not be set aside.

Request for Relief

For the foregoing reasons, the trial court's decision and order should be affirmed.

Respectfully submitted March 2, 2015 by:

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