COLORADO SUPREME COURT 2 East 14th Avenue, 4th Floor Denver, CO 80203	DATE FILED January 26, 2026 4:10 PM FILING ID: 9BA6F55CCEAB0 CASE NUMBER: 2024SA309
City of Aurora Municipal Court 14999 Alameda Pkwy Aurora, CO 80012 Case Numbers J316178, J317516 Honorable Shelby L. Fyles, Judge	
In Re: People of the State of Colorado by and through the City of Aurora, v. Danielle Ashley Simons	**▲COURT USE ONLY▲**
Attorneys for the People of the State of Colorado By and Through the People of the City of Aurora Josh A. Marks, Atty. Reg. # 16953 Chris G. Seldin, Atty. Reg. # 31928 BERG HILL GREENLEAF RUSCITTI LLP 1712 Pearl Street Boulder, CO 80302 Tel: (303) 402-1600 Fax: (303) 402-1601 jam@bhgrlaw.com chris.seldin@bhgrlaw.com	Supreme Court Case Number: 2024SA308 2024SA309

PETITION FOR REHEARING

CERTIFICATE OF COMPLIANCE

I hereby certify that this PETITION FOR REHEARING complies with all requirements of C.A.R. 32 and 40, including all formatting requirements set forth in these rules. Specifically, I certify that:

This document complies with the applicable word limits set forth in C.A.R. 32 and 40. In total, it contains 1,887 words (not to exceed 1,900 words pursuant to C.A.R. 40).

I acknowledge that my document may be stricken if it fails to comply with any of the requirements of C.A.R. 32 or 40.

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

Counsel for People of the State of Colorado
By and Through the People of the
City of Aurora

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

The People of the State of Colorado, by and through the City of Aurora ("Aurora") respectfully submit the following Petition for Rehearing pursuant to C.A.R. 40.

I. INTRODUCTION

Aurora does not ask the Court to change the result in this case. Aurora does ask the Court to change the analysis used to reach that result. Here, operational conflict preemption requires picking and choosing between different state interests embodied in different state statutes. Aurora respectfully submits that principles of statutory construction provide the appropriate mechanism for resolving conflicting state interests, not preemption.

The United States Supreme Court and this Court have long recognized that legislatures may rationally structure the criminal justice system differently in urban and non-urban areas. *See, e.g.*, *Missouri v. Lewis,* 101 U.S. 22, 30 (1879); *Francis v. County Court*, 487 P.2d 375, 379 (Colo. 1971).

This Court has also long recognized that "[t]he preservation of the health, safety, welfare and comfort of dwellers in urban centers of population requires the enforcement of very different and usually much more stringent police regulations in such districts than are necessary in a state taken as a whole." *Woolverton v. Denver*, 361 P.2d 982, 986 (Colo. 1961). The Court's Opinion here similarly holds

there is no "inherent need for statewide uniformity" in low-level criminal penalties. Opinion, ¶ 30.

And Colorado's General Assembly has long agreed, differentiating with separate statutes municipal penalties from misdemeanor and petty offense penalties. It has done so despite objections that its enactments authorized harsher penalties for municipal offenses than for misdemeanors and petty offenses. *See* January 17, 2013, House Judiciary Committee Testimony on H.B. 13-1060.[1] Justifications for this divergence include reducing burdens on the County Court system and allowing cities to adapt criminal penalties to local conditions. *See id.* These are state interests embodied in state statutes.

The Court concludes operational conflict preemption applies even without evidence that the legislature intended to preempt local enactments. But what if legislative history shows an intent *not* to preempt? The legislative history of S.B. 21-271 shows the CCJJ specifically *declined* to address municipal penalties. And the legislative history of the municipal penalty statutes shows the General Assembly specifically *chose* to authorize municipal penalties harsher than state

[1]https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20260122/29/3249#agenda_ (hereinafter, "2013 House Judiciary Recording")

penalties. Does operational conflict preemption license courts to contradict what the legislature did intend?

Aurora respectfully submits the correct analysis here is statutory construction. That approach employs well-settled principles, removes the need to distinguish and implicitly overrule so many of this Court's prior preemption decisions, and avoids separation-of-powers issues that operational conflict doctrine creates in cases like this. Aurora does not ask the Court to change its holding, only its rationale.

II. ARGUMENT

Operational conflict preemption rests on the premise that a local enactment materially impedes a state interest. This can include authorizing what state law forbids, or forbidding what state law authorizes. *See City of Longmont Colo. v. Colo. Oil & Gas Ass'n*, 369 P.3d 573, 582 (Colo. 2016).

The Court concluded S.B. 21-271 manifests a state interest in uniform sentencing. The plain language of S.B. 21-271 does not reference sentencing uniformity. The court divines that state interest from certain portions of S.B. 21-271's legislative history. *See* Opinion, ¶ 44 n.10.

When one reads the legislative history of S.B. 21-271 along with the legislative history of §§ 13-10-113 and 31-16-101, however, it is clear that the

General Assembly actively *intended to authorize* municipal penalty caps that differ from misdemeanor and petty offense penalty caps. It did so to advance specific state interests. Thus, the Court's S.B. 21-271 operational conflict analysis defeats state interests manifested in other state statutes.

Consider first the plain language of § 13-10-113(1)(a) and § 31-16-101(1)(a):

> Except as provided in subsection (1)(b) of this section,[2] any person convicted of violating a municipal ordinance in a municipal court of record may be incarcerated for a period not to exceed three hundred sixty-four days or fined an amount not to exceed two thousand six hundred fifty dollars, or both.

This language does not say "except as capped by penalties for corresponding misdemeanors and petty offenses . . ." The legislative history demonstrates why: the legislature actually intended the maximum penalties to be different.

Apart from a 2019 amendment that dropped the maximum jail sentence from 365 days to 364 for immigration reasons, the most recent amendments to municipal penalties occurred in 2013 and 1991. In 2013, the General Assembly enacted H.B. 13-1060, which raised the maximum municipal fine from $1000 to today's inflation-indexed $2650. At the hearing before the House Judiciary Committee on January 17, 2013, Bridget Klauber from the Colorado Criminal Defense Bar

[2] Subsection (1)(b) indexes the monetary penalties for inflation.

testified against the bill. She noted state and municipal offenses regularly overlap, and that the overlap primarily involves class 2 and 3 misdemeanors, which respectively carried fines of $1000 and $750. She further noted that some municipal violations are more in line with petty offenses. She criticized the bill for authorizing municipal fines that exceed state fines. *See* 2013 House Judiciary Recording at 4:52:00-4:56:00. Understanding this, the General Assembly nonetheless enacted the legislation and authorized the higher municipal fines.

It did so to further a variety of state interests. Representative McLachlan sponsored the bill. He testified that it authorized towns and cities to make their own decisions concerning fine levels within the new maximum, and enabled them to better compensate for financial damages to their communities. *See id.* at 4:44:05-4:44:50. Mayor Doug Tisdale testified that the bill's benefits included reducing the load on County Courts. *See id.* at 5:05:00. Mayor Ron Rakowski testified that municipal courts were closer to citizens than state courts, held evening sessions unlike state courts, and enhanced police productivity because officers didn't have to travel long distances to testify. *See id.* at 5:29:00.

A March 21, 2013, hearing before the Senate Local Government Committee generated similar testimony, and included testimony from Senator Newell and

Megan Storrie that the bill raised fines to better deter certain types of municipal violations and provide flexibility to municipal judges.[3]

In 1991, the General Assembly enacted S.B. 91-69. *See* 1991 Colo. Sess. Laws 742. It amended both § 13-10-113 and § 31-16-101 to raise the maximum penalties for municipal courts of record from 90 days of jail to a year in jail, and from a fine of $300 to $1000. *See id.* at 743, 756. At the time, these maximum penalties coincided with those authorized for class 2 misdemeanors, but substantially exceeded those authorized for class 3 misdemeanors and petty offenses. *See* § 18-1-106(1) C.R.S. (1991); § 18-1-107, C.R.S. (1991).[4]

This legislative history shows: (1) the General Assembly deliberately established municipal sentencing caps independently of misdemeanor and petty offense sentencing caps; and (2) it did so to advance specific state interests, such as reducing the burden on the state court system, providing citizens with readier access to court for low-level offenses, and allowing cities and towns latitude to adapt local law to local conditions.

---

[3] *See* https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20260116/41/8466#agenda_ at 11:58:00, 12:00:00; 12:22:30.

[4] Aurora was unable to access the recorded 1991 legislative history prior to the deadline for this Petition.

Aurora respectfully submits that the legislative history of S.B. 21-271 shows no intent to deviate from this longstanding practice of addressing municipal and state court penalties independently. While Governor Polis's letter to the CCJJ references sentencing consistency, the CCJJ's own records show that it specifically *declined* to address municipal penalties in S.B. 21-271. *See* Appendix to Westminster's Response in 24SA276 at 161-62 (CCJJ Sentencing Reform Task Force ("SRTF") minutes showing "[m]unicipal charges are not addressed in this recommendation," i.e., S.B. 21-271); Aleah Camp's Appendix in 24SA276, Attachment B at 36 (CCJJ Legislative Fact Sheet indicating that SRTF started with misdemeanors in order to complete during 2021 legislative session "some of the work" the Governor requested); Westminster's Response at 15-16 (noting CCJJ testimony before Senate and House Judiciary Committees that the CCJJ started with misdemeanors, and that S.B. 21-271 was the "first step" in a larger project of sentencing recalibration); S.B. 21-271, §§ 705-774 (extensively revising Title 42 but not § 42-4-110, which expressly authorizes different municipal penalties for identical traffic regulations).

The Court's reliance on one portion of the legislative history—Governor Polis's letter—to the exclusion of others is notable given the Governor's veto of H.B. 25-1147. That bill would have aligned municipal and state penalties as the

Court did. Among the Governor's reasons for vetoing it: (1) "It is not in the interest of increasing public safety to constrain a municipality's ability to set appropriate sentences for crimes within their borders;" (2) it undermined "numerous local ordinances that have been thoughtfully debated and adopted to address locality-specific crimes;" and (3) it should have been examined by an entity like the CCJJ, "with multidisciplinary stakeholders from all aspects of the criminal justice system at the table to come to consensus recommendations on the policy." Ex. 1 to Notice of Governor's Veto filed on May 19, 2025, in 2024SA276.

Aurora is not aware of another judicial decision that, on non-constitutional grounds, effectively enacts a policy that failed in the legislative process. Operational conflict preemption requires the Court "to assess the interplay between the state and local regulatory schemes." *Longmont*, 369 P.3d at 583. Here, the local regulatory scheme includes the state statutory scheme authorizing the ordinances at issue. Those statutes, through both their plain language and legislative history, show an intent to authorize dis-uniformity rather than uniformity.

The Court concludes operational conflict doctrine authorizes preemption even in the absence of legislative intent to preempt. *See* Opinion at ¶ 45. This new gloss on operational conflict doctrine is of course within the Court's power to

create. But can this judicially-fashioned doctrine override a legislative intent to *not* preempt? On what grounds does such judicial authority to override a statute rest?

The same ordinances the Court concludes materially impede the state's inferred interest in sentencing uniformity also materially *advance* the foregoing state interests associated with municipal independence and municipal courts. Thus, preempting those ordinances materially impedes those state interests. Moreover, preempting the ordinances forbids what state law has authorized in two ways. First, it implies into § 13-10-113(1) and § 31-16-101(1) penalty caps found nowhere in the plain language of those statutes. Second, it forbids municipal penalties that exceed state penalties when the legislative history of those two statutes shows the General Assembly clearly authorized the opposite. The legislative history of S.B. 21-271, meanwhile, shows the General Assembly deliberately did not disturb those prior enactments by choosing not to address municipal penalties.

If an ordinance advances one state interest but conflicts with another, how do courts pick and choose which statute prevails in the operational conflict analysis and which does not? Moreover, the Opinion's version of operational conflict preemption sets up the General Assembly to inadvertently nullify prior enactments vesting powers in counties, municipalities, special districts, and other entities

implementing statutory powers. The Court's Opinion provides no guidance with respect to these problems.

III. CONCLUSION

Leaving lower courts to pick and choose between statutes based on undeveloped operational conflict principles is not necessary and is likely to do violence to separation of powers principles. The Court can and should simply resolve this case using long-settled principles of statutory interpretation. Aurora takes no position on how the Court applies those principles and requests no change in the Court's holding.

Respectfully submitted January 26, 2026.

BERG HILL GREENLEAF RUSCITTI LLP

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

s/ Josh A. Marks
Josh A. Marks

s/ Christopher G. Seldin
Christopher G. Seldin

Counsel for People of the State of Colorado By and Through the People of the City of Aurora

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January 2026, a true and correct copy of the foregoing **PETITION FOR REHEARING** was served electronically via CES and/or by depositing same in the U.S. Mail, postage prepaid, addressed to the following:

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

Amy D. Trenary
Appeal to Justice LLC
P.O. Box 7593
Broomfield, CO 80021

Ashley A. Cordero
Power Law LLC
1133 N. Pennsylvania Street
Denver, CO 80203

Peter A. Schulte
Iliana J. Jaime
Aurora City Attorney's Office
14999 E. Alameda Parkway
Aurora, CO 80012

Robert D. Sheesley
Rachel J.M. Bender
Colorado Municipal League
1144 Sherman Street
Denver, CO 80203

Anya Havriliak
Denver District Attorney's Office
370 Seventeenth Street, Suite 5300
Denver, CO 80202

Katie McLoughlin
Denver City Attorney's Office
201 W. Colfax Avenue
Denver, CO 80202

s/ Jessica Vecchio
Jessica Vecchio

4933-6080-2442, v. 2