

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

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

v.

CITY OF TUCSON,
Respondent.

No. CV 20-0244-SA

AMICUS CURIAE BRIEF OF CITY OF PRESCOTT
IN SUPPORT OF RESPONDENT

Jon M. Paladini, Bar No. 015230
RoseMarie Horvath, Bar No. 030367
CITY OF PRESCOTT
LEGAL DEPARTMENT
221 S Cortez St.
Prescott, AZ 86303
(928) 777-1274
jon.paladini@prescott-az.gov
rosemarie.horvath@prescott-az.gov
Attorneys for City of Prescott

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INTEREST OF AMICUS CURIAE

This brief is submitted by the City of Prescott (“Prescott”) pursuant to Rule 16, Rules of Civil Appellate Procedure, in support of the Brief filed by the City of Tucson. Prescott adopts and incorporates the facts and arguments set forth in the supporting brief filed by the City of Tucson. In further support, Prescott includes the following additional facts and arguments.

Prescott is an Arizona municipal corporation and Charter City whose rights, status, and other legal interests are affected by the amendments to A.R.S. § 16-204.01, which requires charter cities align their elections with the State of Arizona’s even year elections. In direct contrast, the Prescott Charter calls for primary and general elections to be held in the fall of every odd-numbered year. *See* Prescott City Charter, Article IX, Sections 5 and 8, (Attachment 1).

The amendments to Section 16-204.01 requiring local elections to be held in even-numbered years directly conflicts and unreasonably interferes with Prescott’s method and manner of electing its Mayor and City Council Members. In particular, Section 16-204.01 will decrease voter turnout, increase the cost of local elections, create legal exposure and cause other

serious practical problems.

RELEVANT BACKGROUND

The Arizona Constitution, Article 13, § 2, (Attachment 2), was adopted to change the subservient relationship between charter cities and the Legislature. After 1910, the prior relationship that subordinated cities and towns to the supreme authority of the Legislature ceased to exist. Charter cities were granted “home rule” authority to govern themselves without the interference of the Legislature. The Constitutional drafters recognized that it is in the best interest of the charter cities, and their respective citizens, that they be autonomous and self-governing with little interference from the state when it comes to local concerns. The Constitutional drafters further recognized that charter cities are in the best position to govern local concerns. Because local elections are the providence of the charter cities, Prescott’s ordinance is consistent with the Constitution and inconsistent with Arizona Revised Statutes § 16-204.01.

In 1958, the qualified electors adopted the Prescott City Charter acknowledging that Prescott is a “home rule” city. The City Charter gives the City control over the administration of its own elections, among other powers. *See* Prescott City Charter Article IX, Section 2, (Attachment 1).

The Prescott City Charter requires that the City's candidate primary elections be held in the fall of every odd-numbered year on dates consistent with those permitted by State law and requires that the City's general elections, if necessary, be held in November of every odd-numbered year. *See* City Charter Article IX, Sections 5 and 8, (Attachment 1); *see also* Affidavit of Sarah Siep, Prescott City Clerk, (Attachment 3).

The Prescott City Charter creates four-year terms for the City's elected Council Members that always end in odd years and two year terms for the Mayor that always end in odd years. *See* Prescott City Charter, Article II, Sections 3 and 4, (Attachment 5). The Charter requires the swearing in of new Council Members and Mayor at the conclusion of the second regularly scheduled voting session of the council in November following a primary or general election. *Id.* The Charter prohibits the terms of elected council from being shortened. *Id.* Finally, because the Prescott voters created the Charter, it may be amended only by a vote of the electorate of Prescott. *See* Prescott City Charter, Article XV, Section 1 (Attachment 4).

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ARGUMENT

A. Decrease in voter turnout in even-numbered year elections.

The stated purpose of Arizona Revised Statutes § 16-204.01 is “to increase voter participation in elections, including elections for cities, including charter cities”. In reality, the impact of moving Prescott City Council elections to even-numbered years will in all likelihood have the opposite effect and cause lower voter-turn out.

Prescott City Council elections are all mail-ballot elections, which historically generate a higher voter turnout because voters do not have to take the extra step of contacting the Yavapai County Elections Office and requesting a ballot. If the City is forced to institute even year elections, independents must formally request a party ballot to participate in one of the party nominating primaries. *See* Affidavit of Sarah Siep, Prescott City Clerk (Attachment 3). Having to take the extra step to contact the Yavapai County Elections Office and request a ballot poses yet another obstacle to voting and causes voter frustration.

The Prescott elections are bipartisan, and if forced to hold elections on even-numbered years, the election issues will be confused with partisan issues which are not matters of “local concern.” Adding in all other

municipal, county, state and federal elections to the ballot serves only to cause voter fatigue and confusion. The Prescott voters should be allowed to focus solely on local representation and local concerns rather than being inundated with numerous choices such as rating unknown superior court judges, Corporation Commissioner elections and statewide initiatives.

Finally, if Prescott is forced to hold its elections in even-numbered years, it will incur additional fees from Yavapai County. The City will have to pay additional tax-payer funds to compensate Yavapai County for facilitating in-person voting as well as mail-in voting. *See* Affidavit of Sarah Siep, Prescott City Clerk, (Attachment 3).

B. A.R.S. § 16-204.01 Negatively Interferes with the Method and Manner of local elections.

The amendment to A.R.S. § 16-204.01 negatively impacts Prescott's manner and method to elect its governing officers and to determine the process as to how those officers are selected. If A.R.S. § 16-204.01 is ultimately applied to supersede Prescott's election process it will be unable to:

- (a) Enforce the remaining terms of the City Mayor and Council members who were elected in 2019, requiring Prescott to either

add years to their terms or reduce years from their terms in violation of the Prescott City Charter which will generate legal challenges and decrease confidence in our democratic process;

(b) Exercise its Charter rights to hold Prescott general elections and special elections separate and apart from state and federal elections;

(c) Educate voters on special election issues and secure their participation in the election as well as it would if such elections were held separately as allowed by the Prescott City Charter;

(d) Focus voter attention and avoid voter fatigue that would not arise in solely local City elections;

(e) Allow Prescott candidate elections to be handled by all mail in balloting as is the current practice;

(f) Encourage more candidates' participation because more political contribution funds would likely be available in a non-State or non-Federal election;

(g) Provide ballots to those Prescott voters who registered without identifying a party affiliation as those voters will no longer automatically receive an early ballot for local elections, and;

(h) To conduct truly non-partisan local candidate elections by requiring differing early voting procedures for Prescott's registered voters based solely on the voter's affiliation.

CONCLUSION

The amendments to A.R.S. §16-204.01 unconstitutionally supersede eight (8) voter-approved provisions of the Prescott City Charter. These voter-approved provisions of organic municipal law represent the long-standing method and manner of choosing local elected officials. The Legislature must not be allowed to unlawfully impose its definition of what is the "method and manner" of local elections. The Legislature has sought to upend these practices bringing confusion, and doing a disservice to the Prescott voters.

Respectfully submitted. Dated: __October, 27__, 2020

/s/ Jon M. Paladini

Jon M. Paladini, Bar No. 015230
RoseMarie Horvath, Bar No. 030367
CITY OF PRESCOTT
LEGAL DEPARTMENT
221 S Cortez St.
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rosemarie.horvath@prescott-az.gov
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