# HOME RULE CONCEPTS and RELATED LITIGATION

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Gary J. Verburg *
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# I. GENERAL HOME RULE CONCEPTS

A. The purpose of state constitutional provisions granting home rule authority for charter cities "was to render the cities adopting such charter provisions to be nearly independent of state legislation as was possible." *City of Tucson v. Walker*, 60 Ariz. 232, 239, 135 P.2d 223, 226 (1943) In Arizona, a charter city is "independent of the state legislature as to all subjects of strictly municipal concern." *City of Tucson v. Tucson Sunshine Climate Club,* 64 Ariz. 1, 8-9, 164 P.2d 598, 602 (1945).

B. A legislative statement that there is a statewide interest does not preclude judicial examination of the constitutional rights of the city. Whether the city is protected by home rule provisions in a constitution is exclusively an issue for the judicial department. *City of Tucson*, 229 Ariz. 172, 178, 273 P.3d 624 at 625-626.

C. The phrase "statewide concern" is "nothing more than a conceptual formula" that is uninformative. ("'Municipal affair' and 'statewide concern' represent, Janus-like, ultimate legal conclusions rather than factual descriptions"). To give meaning to that concept, it is necessary to "*focus on extramunicipal concerns* as the starting point for analysis." Thus, "as a condition of state legislative supremacy," the state must show "a dimension *demonstrably transcending identifiable municipal interests*," so that the phrase "statewide concern" does not invade areas of intramural concern only, thereby preserving core values of charter city government. Johnson v. Bradley, 841 P.2d 990, 996 (Cal. 1992)

D. In a scholarly and comprehensive study of home rule provisions published in 1916, Professor McBain wrote that the rationale for constitutional home rule provisions adopted among various states is modeled after the federalism principle:

> If it be conceded that this federal system, notwithstanding the political exigencies out of which it arose and notwithstanding its obvious and proved limitations, was on the whole happily applied to the solution of a relation in law between the nation and its integral units, may it not be asked why the same principle could not be beneficially applied in the establishment of a satisfactory legal relation between the city and state.

Howard McBain, The Law and Practice of Municipal Home Rule 109-10 (1916).

E. An early decision of the Oklahoma Supreme Court also supports the interpretation that the charter city authority was adopted in response to "popular demand for home rule in municipal affairs, in order that municipalities shall be allowed to govern themselves with greater freedom from legislative interference" with respect to municipal affairs. *Lackey v. State,* 116 P. 913, 916, 1911 Ok 270 (1911).

# II. ARIZONA CASE STUDY RELATED TO HOME RULE ON ELECTION MATTERS

Three Arizona cases over a 15 year time span demonstrate the difficulty courts have with respect to determining what constitutes a local concern as opposed to a statewide concern.

A. In *City of Tucson v. State of Arizona*, 191 Ariz. 436, 957 P.2d 341 (1998) the court held that state legislation which mandated that elections be consolidated and held on one of four dates in any given year was deemed a matter of state wide concern. The court reasoned that changing the Tucson Charter election date by one week is only a minor intrusion on its autonomy. Increasing voter turnout and reducing election costs were deemed a statewide concern.

B. In *City of Tucson v. State of Arizona*, 229 Ariz. 172, 273 P.3d 624 (2012) the court held that state legislation that prohibited partisan city elections was not a matter of statewide concern and that Tucson's Charter would control. The court reasoned that how a city decides to elect its own leaders is a local interest, not subject to the control of the state legislature.

C. In *City of Tucson v. State of Arizona*, 235 Ariz. 434, 383 P.3d 761 (2014) (Phoenix intervened in this case) the court held state legislation that mandated that city elections be held in even number years to coincide with state elections did not preempt Tucson's and Phoenix's charters requirement that elections be held in odd number years. The court noted that determining whether a matter is of local or statewide concern is problematic – the concepts do not have self-evident definitions. The court reasoned that how a city structures its own government is a matter of local concern.

## III. **THE EMPIRE** (Arizona State Legislature) **STRIKES BACK**

## A.R.S. § 41 – 194.01 AND RELATED LITIGATION

A. Summary of A.R.S. § 41-194.01 – AG Investigation

- AG to investigate any ordinance, regulation, order or other official action adopted or taken by a governing body of a county, city or town upon request of a legislator that alleges the action violates AZ law or Constitution;

B. A.R.S. § 41 – 194.01 - If AG finds municipal law violates state law:
   - City has 30 days to resolve by repeal or otherwise
   - If not resolved, Treasurer withholds State Shared Revenue (SSR):
     - SSR includes Urban Revenue Sharing (income tax) and TPT revenues.
     - Treasurer is not to withhold amounts that city "certifies" as being necessary to make any deposits or payments on debt service on bonds or other long-term obligations that were issued or incurred <u>before the violation</u>

C. Tucson Investigation

- Request by State Legislator alleging Tucson Code requiring destruction of city-acquired firearms violates state laws that prohibit destruction, state law requires sale to authorized dealers
- City response:
  - Charter city authority to dispose of property as it sees fit, without interference by Legislature
  - Constitutiional authority to engage in business/proprietary acts in same manner as private person
  - Law is plainly unconstitutional
- Lawsuits filed by both parties, case currently pending before the Arizona Supreme Court.

GUST ROSENFELD P.L.C.
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Gary J. Verburg
Gust Rosenfeld, PLC
One East Washington Street, Suite 1600
602.257.7463
gverburg@gustlaw.com