SUPREME COURT OF ARIZONA

STATE OF ARIZONA, *ex rel.* MARK BRNOVICH, Attorney General, Petitioner, v. CITY OF PHOENIX, Arizona, Respondent.	Case No.:

PETITION FOR SPECIAL ACTION

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INTRODUCTION

This is a "mandatory" jurisdiction case brought under A.R.S. § 41–194.01(B)(2). *See State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 593–96, ¶¶ 12–29 (2017).

In 2018, the voters amended the Arizona Constitution to prohibit "impos[ing] or increas[ing] any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or *any other transaction-based* tax, *fee*, stamp requirement or assessment on the privilege to engage in … any service performed in this state." ARIZ. CONST. art. IX, § 25 (emphasis added).

In December 2019, the City of Phoenix (the "City") enacted an ordinance that imposes and increases transaction-based "trip fees" on commercial ground transportation companies for transporting passengers to and from the Phoenix Sky Harbor International Airport ("Airport"). Specifically, § 4–78 of the Phoenix City Code (the "Ordinance") requires authorized providers—who are granted a privilege to operate at the Airport under a City permit—to pay new "pick-up" and "drop-off" fees whenever drivers enter or exit the airport and pick up or drop off passengers. Petition for Special Action Appendix ("App.") A at 25–26.

This Ordinance is contrary to the plain language of article IX, § 25 of the Arizona Constitution, and it is therefore unconstitutional. Even assuming any part of § 25 were ambiguous, its history and purpose confirm that the Ordinance

contravenes it. And to the extent the City may contend that article IX, § 25's prohibition against new and increased transaction-based fees cannot be applied to fees at the city-owned airport in light of the City's authority to manage its property under article XIII, § 5, the City would be mistaken. Article IX, § 25 does not infringe upon cities' constitutional powers, and Arizonans' constitutional right against new and increased fees can be reconciled with other provisions that grant cities authority to exercise certain powers. Indeed, the "home rule charter" provision of the Arizona Constitution expressly states that "[n]otwithstanding any provision of this section to the contrary, no charter shall provide a city with any power to violate article IX, section 25, which preempts such power." ARIZ. CONST. art. XIII, § 2.

Pursuant to A.R.S. § 41–194.01(B)(2), Petitioner respectfully requests that this Court declare the Ordinance violates the Arizona Constitution and is therefore null and void.

PARTIES

Petitioner State of Arizona *ex rel.* Mark Brnovich, Attorney General, is the proper party to bring actions under A.R.S. § 41–194.01. Respondent City of Phoenix is a municipal corporation and charter city, organized under the laws of the State of Arizona.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this petition under Article VI, § 5(6) of the Arizona Constitution, which grants this Court "[s]uch other jurisdiction as may be provided by law," and A.R.S. § 41–194.01(B)(2). *See City of Tucson*, 242 Ariz. at 593–96, ¶¶ 12–29 (holding § 41–194.01(B)(2) "quite clearly makes [this Court's] jurisdiction mandatory").

Under § 41–194.01(A), a member of the Legislature may request that the Attorney General investigate "any ordinance, regulation, order or other official action adopted or taken by the governing body of a county, city or town that the member alleges violates state law or the Constitution of Arizona." If the Attorney General determines that an ordinance "may violate" state law (as it concluded here), then the Attorney General is directed to file a special action petition in this Court "to resolve the issue," and this Court is directed to "give the action precedence over all other cases." A.R.S. § 41–194.01(B)(2); *see also City of Tucson*, 242 Ariz. at ¶ 22.

On December 19, 2019, Representative Nancy Barto submitted a request for legal review of the Ordinance pursuant to A.R.S. § 41–194.01, identifying the Ordinance's imposition and increase of "trip fees" as a violation of article IX, § 25 of the Arizona Constitution. The Attorney General's Office commenced an investigation, soliciting public records and a written response on legal and factual

issues from the City. On January 16, 2020, the Attorney General's Office issued its statutorily-prescribed report, which concluded that a plain-language analysis of the Ordinance and the Constitution demonstrates a "very likely" violation of the Constitution.[1]

The Attorney General's Office recognized that resolution of the legal issue presented involves issues of first impression that may require harmonizing multiple constitutional provisions "to preserve the full expression of the voters' intent" underlying article IX, § 25. *See Hughes v. Martin*, 203 Ariz. 165, 168, ¶ 17 (2002) (courts should reconcile constitutional amendments whenever possible to "give effect to both"). Accordingly, the Attorney General's formally determined that the Ordinance "may violate" state law under § 41-194.01(B) because "existing law [does not] clearly and unambiguously compel[]" the conclusion that the Ordinance violates article IX, § 25 of the Arizona Constitution. *See City of Tucson*, 242 Ariz. at 595, ¶ 25. This Special Action followed.

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[1] The request (Request No. 19–002), the City's response, and the Attorney General's Report are available at https://www.azag.gov/complaints/sb1487-investigations (last visited January 21, 2020).

STATEMENT OF THE ISSUE

Whether the City of Phoenix, in violation of article IX, § 25 of the Arizona Constitution, imposed or increased transaction-based fees on the privilege to engage in a service performed in this State when it approved an Ordinance that imposes and increases new "trip fees" for commercial ground transportation services beginning or terminating at the Airport.

STATEMENT OF FACTS

I. Voters Approve Proposition 126 to Amend the Arizona Constitution

Article IX, § 25 of the Arizona Constitution is a constitutional amendment that voters passed in 2018 through an initiative measure, Proposition 126 ("Prop. 126"). Section 25 states, in relevant part, that "any … city … created by law with authority to impose any tax, fee, … or other assessment, shall not impose or increase any … transaction-based … fee … on the privilege to engage in … any service performed in this state." ARIZ. CONST. art. IX, § 25. Taxes, fees, and other assessments that were already in effect on December 31, 2017, are not subject to this prohibition. *See id.*[2]

Prop. 126 also amended the "home rule charter" provision of the Arizona Constitution to expressly state that "[n]otwithstanding any provision of this section

[2] Here, § 4–78 of the City Code, which is currently in effect and existed prior to the City's adoption of the Ordinance, took effect on June 17, 2016. *See* App. B at 29.

to the contrary, no charter shall provide a city with any power to violate article IX, section 25, which preempts such power." ARIZ. CONST. art. XIII, § 2; *see also City of Tucson*, 242 Ariz. at 598–99, ¶¶ 39–40 (discussing origin and purpose of the home rule charter provision).

II. The City Adopts Ordinance G–6650

On December 18, 2019, the City adopted the Ordinance, *see* App. A, amending Chapter 4, Article IV of the Phoenix City Code ("City Code"), which governs "commercial ground transportation vehicles rules and regulations[,]" *see* App. B.[3] As relevant here, the Ordinance: (1) creates a new type of trip fee ("drop-off" fee) that all authorized ground transportation providers must pay; and (2) increases another type of trip fee ("pick-up" fee) for some providers. *See* App. A at 25–26; City Code § 4–67 (defining "trip fee" as "a fee imposed pursuant to [§] 4-78").

A. The Ordinance Imposes New "Drop-Off" Fees

First, the Ordinance establishes new "drop-off" fees that are assessed against transportation network companies ("TNCs") and "non-TNC authorized providers." App. A at 25–26; *see also id*. at 6 (expanding the definition of "trip" to include

[3] For ease of reference, the Attorney General has included the current City Code as Appendix B to this Petition. All citations to the City Code above refer to the current sections contained in Chapter 4, Article IV, unless otherwise noted. Appendix D consists of the City Council Report adopting the Ordinance, including Attachment A, the City's "summary sheet" of the new "trip fees."

"dropping off a passenger on an airport"); City Code § 4-67 (defining "transportation network company" as "an entity that has been issued a permit by the State of Arizona, that operates in the State of Arizona, that uses a digital network or software application to connect passenger(s) to transportation network services provided by transportation network company drivers, and that may but is not deemed to own, operate or control a personal motor vehicle of a transportation network driver").

The Ordinance requires TNCs to pay a "drop-off" fee of $4.00, which is scheduled to increase to $5.00 by 2024. App. A at 25. Beginning in 2025, this fee "will automatically increase annually at the greater rate of three percent or the percentage change in the most current consumer price index for all urban consumers (CPI-U)" ("Automatic Increase provision"). *Id*. For non-TNC authorized providers, the "drop-off" fee is between $1.75 and $5.00, depending on the vehicle size. *Id*. at 26. Beginning in 2021, the "drop-off" fees for non-TNC authorized providers will "automatically increase" at the same rate as set forth in the Automatic Increase provision. *Id*.

B. The Ordinance Increases Other "Trip Fees" ("Pick-Up" Fees)

Second, the Ordinance increases existing "pick-up fees" (currently labeled "trip fees") that are assessed against TNCs. App. A at 25; *see also* City Code § 4–67 (defining "trip" as "an authorized provider picking up a passenger on an

airport"); *id.*, § 4–78(A) (establishing "trip fees"). The Code does not distinguish between TNCs and other authorized providers to determine the applicable "trip fees"; instead, the Code sets "trip fees" in amounts ranging from $2.25 to $9.00, depending on the vehicle size and the date on which an authorized provider was "permitted." *See* City Code, § 4–78(A)(1)–(3).

By definition, TNC vehicles do not exceed eight passengers. *See id.*, § 4–67. The "trip fees" for vehicles equipped with one to eight seats ranged from $2.25 to $3.25 in calendar years 2017, 2018, and 2019; these "trip fees" were scheduled to increase somewhat ("at the lesser of three percent or the percent of change in the most current [CPI-U]") on January 1, 2020. *See id.*, § 4–78(A)(1)–(3), (6).

The 2019 (and present) trip fee for TNCs operating at the Airport is $2.66. *See* App. C. The Ordinance re-labels the "trip fee" as "pick-up" fee, increases the fee from $2.66 to $4.00 for TNCs, and establishes a schedule that increases the "pick-up" fee to $5.00 by 2024. App. A at 25. Under the Ordinance, starting in 2025, the pick-up fee for TNCs will rise on an annual basis at the same rate as set out in the Automatic Increase provision that the Ordinance similarly establishes for drop-off fees. *See id.*

ARGUMENT

I. The Ordinance's Imposition and Increase of "Trip Fees" Violates the Unambiguous Language of Article IX, § 25 of the Arizona Constitution

The Ordinance violates the Arizona Constitution's prohibition against "impos[ing] or increas[ing] any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, fee, stamp requirement or assessment on the privilege to engage in … any service performed in this state." ARIZ. CONST. art. IX, § 25. As a preliminary matter, the Ordinance characterizes the charges at issue as "trip fees"; the constitutional text unambiguously includes "fees"; and, as discussed below, the new "drop-off" fees and the increased "pick-up" fees qualify as transaction-based fees on the privilege to engage in services performed in Arizona.

In construing a constitutional provision, the primary goal "is to effectuate the electorate's intent in adopting it." *Saban Rent-a-Car LLC v. Ariz. Dept. of Revenue*, 246 Ariz. 89, 95, ¶ 21 (2019). If the provision's meaning is discerned "from its language alone," it is applied "without further analysis." *Id.*; *see also Calik v. Kongable*, 195 Ariz. 496, 498, ¶ 10 (1999) ("With only a few exceptions, if the language [of an initiative] is clear and unambiguous, we apply it without using other means of statutory construction."). "Each word, phrase, and sentence must be given meaning so that no part will be [void], inert, redundant, or trivial." *City of Phoenix v. Yates*, 69 Ariz. 68, 72 (1949).

When the Arizona Constitution does not further define a term, courts "look to their 'natural, obvious, and ordinary meaning.'" *Kotterman v. Killian*, 193 Ariz. 273, 284, ¶ 33 (1999); *see also DBT Yuma, L.L.C. v. Yuma Cty. Airport Auth.*, 238 Ariz. 394, 396, ¶ 9 (2015) ("Absent statutory definitions, courts generally give words their ordinary meaning … and may look to dictionary definitions[.]" (internal citations omitted)). "It is a 'fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.'" *Ariz. Dept. of Water Resources v. McClennen*, 238 Ariz. 371, 376, ¶ 26 (2015) (quoting *Deal v. United States*, 508 U.S. 129, 132 (1993)).

"City … ordinances are to be construed by the same rules and principles which govern the construction of statutes[.]" *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234, 279, ¶ 10 (2019) (quoting *Rollo v. City of Tempe*, 120 Ariz. 473, 474 (1978)).

Here, the Ordinance falls within the plain language of the Constitution's prohibition. The City is vested with the authority to impose the types of taxes, fees, and assessments to which § 25 is directed; the Ordinance imposes *and* increases a "fee" within the meaning of § 25; and the "trip fees" are "transaction-based" on a "privilege" to engage in a "service" within the meaning of § 25.

A. The City Is Created By Law With Authority To Impose A Fee

The City is "created by law with authority to impose any … fee" within the meaning of article IX, § 25. *See State v. McLamb*, 188 Ariz. 1, 4 (App. 1996) ("The City of Phoenix, as authorized by the Arizona Constitution, Article 13, Section 2, has adopted a charter permitting it to enact municipal ordinances."); *see also* ARIZ. CONST. art. XIII, § 2 (authorizing a city with a population of more than 3,500 to "frame a charter for its own government consistent with, and subject to, the Constitution").

B. The Ordinance "Impose[s]" And "Increase[s]" A Fee

The Ordinance both "impose[s]" and "increase[s]" "trip fees" within the meaning of § 25. *See* ARIZ. CONST. art. IX, § 25 (cities "shall not impose or increase…"). The City has mandated compliance with the Ordinance and satisfaction of the "trip fees" provision for those who enter the Airport. *See* City Code, Ch. 4, Art. I, § 4–2 ("[a]ny person who is granted permission by the City of Phoenix or Aviation Director … to enter or use any part of the airport shall comply with the airport rules and regulations" and "rules, regulations or other airport requirements" established by the Aviation Director "shall have the force and effect of law") (emphasis added). Commercial ground transportation providers must have a permit to engage in commercial activities at the Airport. *See* City Code, §4–68. The "trip fees" are therefore "impose[d]" under § 4–78, *see* App. A at 25–

33, which trigger an authorized provider's "decision to comply with the legally imposed regulations and fees[.]" *See Jachimek v. State*, 205 Ariz. 632, 636, ¶¶ 14–17 (App. 2003) (reasoning that a City of Phoenix ordinance "[i]mposed [an] [a]ssessment [u]pon [t]hose [s]ubject [t]o [i]ts [r]egulatory [c]ontrol" and that "[b]ecause [a] fee is charged for each transaction, the charge is imposed").

The word "impose" appears twice in § 25. As discussed above, the City indisputably has the authority to impose fees as a charter city, and has used that authority here. This Court cannot interpret "impose" as meaning something different within the same sentence; this would violate a basic canon of statutory construction. *See Sorenson v. Sec'y of the Treasury*, 475 U.S. 851, 860 (1986) ("'[I]dentical words used in different parts of the same act are intended to have the same meaning.'").[4]

C. The Fees Are "Transaction-Based" And Are Imposed On "The Privilege To Engage" In A "Service Performed In This State"

The "trip fees" also fall within the meaning of "transaction-based" fees that are imposed "on the privilege to engage in … any service performed in this state." ARIZ. CONST. art. IX, § 25 (cities "shall not impose or increase any sales tax,

[4] Even assuming for the sake of argument that the new "drop-off" fees are not "impose[d,]" these fees still constitute an "increase" of "trip fees" in violation of the Constitution. ARIZ CONST. art. IX, § 25. The City cannot contend that the Ordinance did not "increase" the trip fees by creating new "drop-off" fees and increasing the existing "pick-up" fees. The Ordinance thus both imposes and increases fees.

transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, fee … on the privilege to engage in … any service performed in this state"). The ordinary meaning of "transaction" is "[t]he act or an instance of conducting business or other dealings; especially, the formation, performance, or discharge of a contract," "a business agreement or exchange," or "[a]ny activity involving two or more persons." *Transaction*, Black's Law Dictionary (11th ed. 2019); *accord* A.R.S. § 44–7002(17) ("'Transaction' means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs"). "Service" is generally understood as "[l]abor performed in the interest or under the direction of others; specifically, the performance of some useful act or series of acts for the benefit of another, usually for a fee." *Service*, Black's Law Dictionary (11th ed. 2019).

Notably, the Constitution prohibits "*any* … transaction-based … fee" imposed on the privilege to engage in "any service." ARIZ. CONST. art. IX, § 25 (emphasis added). "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster's Third New International Dictionary 97 (1976)). This Court has repeatedly recognized this principle—that "the word 'any' is 'broadly inclusive.'" *City of Phoenix v. Glenayre Electronics, Inc.*, 242 Ariz. 139, 144, ¶ 17 (2017) (quoting *City of Phoenix v. Tanner*, 63 Ariz. 278, 280

(1945), citing *Gonzales*, 520 U.S. at 5, and rejecting City's argument for a narrow construction of the phrase, "[n]otwithstanding any other statute"). The electorate's approval of the word, "any," therefore supports an expansive reading of "transaction-based" and "service." However, neither of these terms should be read in isolation. *See Ariz. Dept. of Water Resources*, 238 Ariz. at 376, ¶¶ 25–26. Instead, "transaction-based" and "service" must be read in context of the entire clause. *Id*.

The constitutional text states that a transaction-based fee is charged "on the privilege to engage in … any service[.]" *See* ARIZ. CONST. art. IX, § 25. A privilege "grants someone the legal freedom to do … a given act." *Privilege*, Black's Law Dictionary (11th ed. 2019); *see, e.g., Ariz. State Liquor Bd. v. Poulos*, 112 Ariz. 119, 121 (1975) ("[A] liquor license is … a privilege to engage in a business subject to the regulation of the state.").

The Ordinance itself confirms that the "trip fees" are "transaction-based" and charged on authorized providers' "privilege" to offer passengers transportation "services" to and from the Airport. First, the Ordinance defines "trip" as "an authorized provider picking up or dropping off a passenger on an airport." App. A at 6. To explain when "trip fees apply[,]" § 4–78(A)(3) provides as follows:

> For authorized providers using global positioning system (GPS) trip tracking, trip fees apply each time a driver enters a geofence, makes one or more stops, and completes a pick-up or drop-off of one or more passengers. For all other authorized providers, trip fees apply

> each time a driver enters or exits an airport and stops at one or more designated passenger pick-up or drop-off locations.

Id. at 27.

Specifically, the "transaction" consists of entering or exiting the airport (a "pick-up" or "drop-off"), which involves "two or more persons" (drivers and passengers); the "trip fees" are charged on a "privilege" that the City grants authorized providers to operate a business at the Airport; and that privilege relates to the "services" performed by drivers, who give rides to passengers for a fee. *See* City Code, § 4–67 (defining "[a]uthorized provider" as "a person, authorized by the Aviation Director under permit or contract, to engage in commercial ground transportation" and defining "[d]river" as "any individual who drives, is driving, or is in actual physical control of, a ground transportation motor vehicle"); App. A at 6 (defining "[t]ransportation network driver" as a "person who receives connections to potential passenger(s) and related *services* from a [TNC] in exchange for payment of a fee to the [TNC]" and defining "[t]ransportation network vehicle" as a motor vehicle "that is used by a transportation network driver to provide transportation network *services*") (emphasis added).

Indeed, the "trip fees" are a condition of the permit issued by the Aviation Director. *See* App. A at 25 ("all authorized providers *will* pay the trip fees") (emphasis added); City Code, Ch. 4, Art. I, § 4–2(B) ("rules, regulations or other airport requirements" established by the Aviation Director "shall have the force

and effect of law"). In exchange for complying with the City's fees and regulations, commercial ground transportation providers receive a privilege that is not given to others—the right to provide these services commercially at the Airport. *Cf. Jachimek*, 205 Ariz. at 636, ¶ 16 (reasoning that "the decision to become a pawnbroker is a voluntary one, and … [i]n exchange for complying with the[] [city's] fees and regulations, the pawnbroker receives a privilege not given to others—the right to engage in pawn transactions").

The remedy for non-compliance with the Ordinance further confirms the Ordinance falls within the plain language of § 25's requirement of a "privilege." Authorized providers must pay the trip fees or risk losing their permit. *See* City Code, Ch. 4, Art. I, § 4–4 ("[t]he use of any portion of the airport for revenue-producing commercial activities or to solicit business or funds is prohibited unless authorized by the Aviation Director by lease, permit or license agreement under such terms and conditions that may be required by the Aviation Director[.]").

Lastly, the transportation services that drivers provide to and from the Airport are indisputably "performed in this state." ARIZ. CONST. art. IX, § 25.

II. Even Assuming Article IX, § 25 is Ambiguous, the History and Purpose of Article IX, § 25 Show the City's Ordinance Is Unconstitutional

The plain language of article IX, § 25 is clear. But even assuming any part of article IX, § 25 is ambiguous, the history and purpose of § 25 supports a finding of unconstitutionality. Where a constitutional provision is ambiguous, courts

"consider its text in conjunction with the history and purpose of the provision." *Saban Rent-a-Car LLC*, 246 Ariz. at 96, ¶ 22; *see also Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994) ("The fact that [a constitutional provision] is not clear on its face . . . permits us to . . . consider the history behind the provision, the purpose sought to be accomplished, and the evil sought to be remedied."). When interpreting a constitutional provision passed by ballot initiative, courts look to the publicity pamphlet as an indicator of the electorate's intent. *Heath v. Kiger*, 217 Ariz. 492, 496 (2008) ("To determine the intent of the electorate, courts may also look to the publicity pamphlet distributed at the time of the election.").

The publicity pamphlet for Prop. 126 indicates that the electorate intended to prohibit increased or newly-imposed fees on ride-sharing services. The pamphlet makes clear that the constitutional prohibition would apply broadly to many services that Arizonans use. For example, under the "findings and intent" section, the pamphlet states: "Each day millions of Arizonans pay for an *array* of services integral to daily life, ranging from medical treatments and auto repairs to haircuts and childchare [sic], *and much more*." Arizona 2018 General Election Publicity Pamphlet, 24 (Nov. 6, 2018) (emphasis added). In the "Arguments For" section, voters were presented with a wide range of services that they assumed would be covered, including such diverse services as funerals, self-defense instruction,

banking, and air conditioning. *Id.* at 27. As one supporter in the pamphlet noted, "the list could go on and on." *Id.* at 29.

There is nothing unique about ride-sharing services or commercial ground transportation services for Phoenix's largest and busiest Airport that indicate these services should be excluded from the broad range of services voters intended to protect from increased fees. Transportation services are no less "integral to daily life," *id.* at 24, than those services the voters intended to cover through Prop. 126. Considered in conjunction with § 25's broad language ("*any* service performed in this state", emphasis added), the publicity pamphlet further supports a conclusion that the commercial ground transportation services to the Airport here are covered. *See Glenayre Electronics, Inc.*, 242 Ariz. at 144, ¶ 17 (emphasizing "the word 'any' is 'broadly inclusive'").

The purpose of article IX, § 25 was to prohibit taxes and fees that would make every day services more expensive, increase the "financial strain on working families," and make it more difficult to create jobs. Arizona 2018 General Election Publicity Pamphlet, 24 (Nov. 6, 2018). Here, the City-imposed "trip fees" for a round-trip ride to and from the Airport using a ride-share service (defined as a "TNC" under the City Code) are $2.66, subject to a slight adjustment in 2020

permitted by § 4–78(A)(6).[5] Under the Ordinance, however, the "trip fees" for the same round-trip will be $8.00 in 2020, increasing to $10.00 by 2025. App. A at 25–26.

Ridesharing services have positively contributed to the Phoenix economy. *See* Steven Totten, *Report: This ride-hailing company has a $40M impact on Phoenix*, Phoenix Business Journal (Dec. 12, 2016) (stating, *inter alia*, that Lyft alone "contributed $39.6 million to the Phoenix economy" in 2016 and that "32 percent of rides start in underserved areas");[6] Ryan Randazzo, *Uber in Arizona: A timeline of events leading up to shutdown of self-driving cars*, AZ Central (May 23, 2018) (stating that Uber has 550 employees in the state and 16,000 contract drivers).[7] Lyft and Uber, for example, have created flexible economic opportunities for drivers, i.e., working Arizonans.

The Ordinance will discourage ride-sharing at the Airport, which in turn will negatively impact Arizona's economy, including job opportunities and transportation access for passengers across Phoenix and its suburbs. The publicity

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[5] *See* City Code, § 4–78(A)(6) ("Beginning January 1, 2020, fees will increase annually at the lesser of three percent or the percent of change in the most current Consumer Price Index…").

[6] https://www.bizjournals.com/phoenix/news/2016/12/12/report-this-ride-hailing-company-has-a-40m-impact.html

[7] https://www.azcentral.com/story/money/business/tech/2018/05/23/uber-arizona-timeline/637497002/

pamphlet confirms the voters intended to block all financially-straining and work-reducing fees imposed on services by government entities.

The City cannot rely on the title of the act and publicity pamphlet to argue that the Ordinance's "trip fees" were not intended to be prohibited by voters simply because the titles focus on "taxes." As discussed above, the plain text of Prop. 126 is as broad in its prohibition on revenue-raising mechanisms as it is on the services it covers. It prohibits "any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, *fee*, stamp requirement or assessment[.]" ARIZ. CONST. art. IX, § 25 (emphasis added). The history and purpose behind a statute cannot be used to contradict its clear text. *See Jett*, 180 Ariz. at 119 ("No extrinsic matter may be shown to support a construction that would vary [the Constitution's] apparent meaning.").

The publicity pamphlet for the passage of Prop. 126 indicates a broad reading of the services it covers. Simply put, the voters knew they were blocking *any* future increase in taxes *and* fees. Thus, the history and purpose of article IX, § 25 support a conclusion that the Ordinance's imposition and increase of "trip fees" on commercial ground transportation services provided to and from the Airport are unconstitutional.

III. The Home Rule Charter Provision In Article XIII, § 2 Further Confirms That The City Lacks Power To Violate The Prohibition Against New Or Increased Transaction-Based Fees for Services

Finally, as noted above, Prop. 126 also amended the "home rule charter" provision of the Arizona Constitution to expressly state that "[n]otwithstanding any provision of this section to the contrary, no charter shall provide a city with any power to violate article IX, section 25, which preempts such power." ARIZ. CONST. art. XIII, § 2. This is further evidence of the voters' intent to deprive charter cities of the "power" to violate the constitutional prohibition against new and increased transaction-based fees on services.

Although the home rule charter provision in article XIII, § 2 gives charter cities autonomy, that autonomy must be "consistent with" and is "subject to" the Arizona Constitution. ARIZ. CONST. art. XIII, § 2; *see also* A.R.S. § 9–284(B) (a charter "shall be consistent with and subject to the state constitution, and not in conflict with the constitution and laws relating to the exercise of the initiative and referendum…"); *City of Tucson*, 242 Ariz. at 602, ¶ 55 (emphasizing, "[o]ur cases have consistently recognized this significant constitutional restraint on charter cities' powers" and collecting cases). The City may contend that it possesses constitutional authority to impose the "trip fees" here. But cities' constitutional powers are not self-executing; instead, cities' charter provisions must be constitutional themselves. *See* A.R.S. §§ 9–283(A) ("On approval the charter shall

become the organic law of the city"); –284(B) (requiring charter to be "consistent with and subject to" the Arizona Constitution); *Buntman v. City of Phoenix*, 32 Ariz. 18, 26–27 (1927) (provisions of a city charter are "equivalent to an act of the Legislature granting the powers set forth therein" and cities' constitutional power "to engage in business [i]s not self-executing").

Provisions in the Arizona Constitution governing the City's constitutional powers are easily reconciled with article IX, § 25 because § 25 does not deprive the City of conducting is business, managing its property, or engaging in other lawful activities. Instead, § 25 reflects a specific limitation on the City's authority to impose or increase taxes and fees on services performed in Arizona. Thus, these constitutional rights and powers at issue can be reconciled. *See Hughes*, 203 Ariz. at 168, ¶ 17 (courts should reconcile constitutional amendments whenever possible to "give effect to both"). But to the extent any constitutional provisions conflict, the rights of the people of Arizona must govern. *See* ARIZ. CONST. art. II, § 2 ("All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.").

REQUEST FOR ATTORNEY FEES

Pursuant to A.R.S. § 12–348.01, the Attorney General requests reasonable attorney fees in preparing this petition and conducting proceedings in this Court.

See City of Tempe v. State, 237 Ariz. 360, 367 ¶¶ 26–27 (App. 2015) (affirming mandatory fees award under § 12–348.01 in action seeking declaratory and special action relief).

CONCLUSION

The Ordinance imposes and increases transaction-based fees on the privilege to engage in a service performed in this State, and therefore violates article IX, § 25 of the Arizona Constitution. The Attorney General therefore respectfully requests that this Court declare the Ordinance violates the Arizona Constitution and is null and void.

RESPECTFULLY SUBMITTED this 21st day of January, 2020.

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