IN THE SUPREME COURT

STATE OF ARIZONA

OAK CREEK HOSPITALITY, LLC Plaintiff/Appellant, v. CITY OF SEDONA; SCOTT JABLOW, in his official capacity as Mayor of the City of Sedona; ANETTE SPICKARD, in her official capacity as City Manager of the City of Sedona, Defendants/Appellees.	Arizona Supreme Court No. CV-25-0332-PR Court of Appeals Division One No. 1 CA-CV 25-0135 Yavapai County Superior Court No. S13100CV202480241

BRIEF OF *AMICUS CURIAE* LEAGUE OF ARIZONA CITIES AND TOWNS IN SUPPORT OF PETITIONER CITY OF SEDONA

[WITH CONSENT]

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Pursuant to Rules 14 and 16, Ariz. R. Civ. App. P, this amicus curiae brief ("Brief") is submitted by the League of Arizona Cities and Towns ("League") with the written consent of the parties. No other person or entity authored this Brief or made a monetary contribution for its preparation or submission.

Founded in 1937, the League is a voluntary membership organization of all 92 incorporated municipalities in Arizona. The League advocates for their interests at the legislature and before the courts. The League is advised by its Amicus Committee, which identified this case for its statewide significance.

The League respectfully submits this Brief in support of Petitioner City of Sedona and its Petition for Review of the Court of Appeals' opinion in *Oak Creek Hospitality, LLC v. City of Sedona*, 2025 WL 3290656 (App. 2025) (the "Opinion"). Review is important to the League's membership because the Opinion misinterprets A.R.S. § 9-500.39 with the effect of further restricting the ability of Arizona municipalities to regulate short-term and vacation rentals ("STRs"). For over 11 years, the League has been a vocal advocate of protecting local authority to regulate STRs. The League can share its unique perspective about the statute and provide additional information about the statewide impacts of STRs to complement what has already been presented by the parties.

INTRODUCTION

The Legislature preempts local laws, not the Court of Appeals. The Opinion improperly expands the preemptive language of A.R.S. § 9-500.39 by stretching the statutory definition of a STR beyond its text and meaning. Review is warranted to correct this judicial overreach and ensure that local regulatory authority over STRs is not stripped away in a manner that was never intended by the Legislature.

ARGUMENT

A. PREEMPTIVE LANGUAGE SHOULD BE INTERPRETED CAREFULLY AND NARROWLY.

Preemption involves a two-step analysis: 1) whether a subject matter is one of statewide concern; and 2) whether the state legislation has appropriated the field. *Winkle v. City of Tucson*, 190 Ariz. 413, 416 (1997) (stating the court could not undertake review of any substantive legislation until an actual conflict between a state law and an ordinance exists).

Here, the Opinion makes several errors in its preemption analysis. First, for preemption analysis to apply, there must be a municipal ordinance that actually conflicts with a governing state law. *See id.* (stating substantive legislation could not be reviewed in the absence of an actual conflict between a state law and a local ordinance). Respondent/Appellant Oak Creek Hospitality, LLC ("Oak Creek") has never alleged that any ordinance conflicts with A.R.S. § 9-500.39. The Opinion even acknowledges that Oak Creek is not challenging how an ordinance is written. It notes

that Oak Creek is challenging "how the ordinance is enforced," but Court of Appeals never identifies the ordinance in question. Opinion at ¶ 10. The lack of a conflicting ordinance is important because a charter city like Sedona may exercise all powers granted by its charter, provided its charter is not inconsistent with the constitution or state law. *See Babe's Cabaret v. City of Scottsdale*, 197 Ariz. 98, 101 ¶ 7 (App. 1999).

Nevertheless, Sedona's City Code is consistent with A.R.S. § 9-500.39. *See* City of Sedona, City Code, Section 5.25.020. Sedona has also acknowledged that it allows a mobile home to qualify for a STR license when it meets the "one-to-four-family" requirement; however, a company's mobile home park with fifty-nine units on two parcels of land does not qualify for a STR license because it is neither a "one-to-four-family house" nor a "one-to-four-family dwelling unit." *See* Pet. at 4.

Second, the Opinion misreads A.R.S. § 9-500.39. When interpreting a statute, courts begin with its text. *Franklin v. CSAA Gen. Ins. Co.*, 255 Ariz. 409, 411 ¶ 8 (2023). The best indication of legislative intent is the statute's plain language, which, when clear, is applied as written "unless an absurd or unconstitutional result would follow." *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, 195 ¶ 9 (2016) (citation omitted). If the text is "reasonably susceptible to differing interpretations," it is ambiguous, and courts may turn to "secondary factors, such as the statute's

context, subject matter, historical background, effects and consequences, and spirit and purpose." *Id.* Here, the statute defines a STR as:

> [A]ny individually or collectively owned single-family or one-to-four-family house or dwelling unit or any unit or group of units in a condominium or cooperative that is also a transient public lodging establishment or owner-occupied residential home offered for transient use if the accommodations are not classified for property taxation under § 42-12001.[1]

A.R.S. § 9-500.39(L)(4). The Opinion concludes that all mobile homes in Arizona qualify under this definition because the words "house or dwelling unit" encompass mobile home units (but not an entire mobile home park). *See* Opinion at ¶¶ 19-21. The text and grammatical structure of the definition do not support such an interpretation.

The Opinion cannot ignore the limiting modifier ("one-to-four-family") and treat "house or dwelling unit" in isolation. *See State v. Serrato*, 259 Ariz. 493, 493 (2025) (stating that a statute must be interpreted to give meaning to *every* word when possible). By doing so, the Opinion reads the phrase as if it says: "one- to four-family house, or any dwelling unit whatsoever"—but that language simply is not there.

[1] "[It] [d]oes not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center or another similar use." A.R.S. § 9-500.39(L)(3); *see also* A.R.S. § 9-500.39(D)(2) (providing that a STR does not include property that is used for "any nonresidential use, including retail, restaurant, banquet space, event center or another similar use").

Read naturally, "one-family-to-four family" modifies both "house" and "dwelling unit." *See generally, Pawn 1st, L.L.C. v. City of Phoenix*, 231 Ariz. 309, 312 (Ct. App. 2013) (stating courts may utilize grammatical rules to aid construction of an ambiguous statute where no contrary legislative intent appears from the statute's language or context); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 140-141 (2012) (stating words must "be given the meaning that proper grammar and usage would assign them" and grammar is not "a category of indication separate from textual meaning").

Third, the Opinion fails to construe the definition by looking at the statute as a whole. *See Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017). The effect is to render meaningless several provisions in A.R.S. § 9-500.39 that preserve local police powers and certain zoning authority. When then-Governor Doug Ducey signed an amendment to A.R.S. § 9-500.39 in 2019, he stated: "local governments may enforce rules related to building codes, traffic control, noise, zoning and other areas that ensure that neighborhoods are safe and pleasant places to live." Arizona Governor's Message, H.B. 2672 (May 21, 2019). This intent is reflected in the statute. While municipalities cannot ban all STRs from their boundaries (A.R.S. § 9-500.39(A)), the statute preserves local authority to regulate and restrict STRs based on their classification, use, or occupancy as follows:

- to protect the public's health and safety (A.R.S. § 9-500.39(B)(1));

- to apply use and zoning ordinances in the same manner as other property classified under A.R.S. §§ 42-12003 and 42-12004 (A.R.S. § 9-500.39(B)(2));
- to limit or prohibit STRs from housing sex offenders or being used to sell illegal drugs, operate sober living homes, or engage in various adult-oriented businesses (A.R.S. § 9-500.39(B)(3));
- to require an emergency contact who will promptly respond to complaints and emergencies (A.R.S. § 9-500.39(B)(4));
- to require an annual transaction privilege tax license and a local regulatory permit or license (A.R.S. § 9-500.39(B)(5));
- to require neighborhood notifications (A.R.S. § 9-500.39(B)(6));
- to require certain disclosures in advertisements (A.R.S. § 9-500.39(B)(7));
- to require liability insurance (A.R.S. § 9-500.39(B)(8)); and
- to require the owner to reside onsite if the property contains an accessory dwelling unit constructed on or after September 14, 2024 (A.R.S. § 9-500.39(B)(9)).

These provisions show that A.R.S. § 9-500.39 does not completely occupy the field in such a way that prevents municipalities from enacting or enforcing non-conflicting ordinances. The Opinion cannot ignore these provisions and decide that

all mobile homes in this state can be used as STRs, regardless of how the underlying parcel is used or how many mobile home units are located on that parcel.

Finally, the Opinion misapplies the *in pari materia* doctrine. Courts may consider statutes of the same subject or general purpose for guidance and to give effect to all the provisions. *See City of Phoenix v. Orbitz Worldwide Inc.,* 247 Ariz. 234, 238 (2019); *see also Collins v. Stockwell*, 137 Ariz. 416, 419 (1983); *Territory v. Wingfield*, 2 Ariz. 305, 307 (1887) (reading two acts together as if part of the same legislation because they were passed the same day and related to the same subject of compensating county officials). In *Emps. Mut. Cas. Co. v. McKeon*, this Court declined to read two statutes together because there was no statutory conflict or ambiguity, the statutes were enacted at different times, and the newer statute addressed a more specific set of circumstances. 159 Ariz. 111, 114 (1988). As a result, applying *in pari materia* would cause more confusion than enlightenment. *Id*. In *St. Paul Fire & Marine Ins. Co. v. Gilmore*, this Court declined to read two statutes together because they were adopted at different times and the older statute's definition was *explicitly limited in application by the Legislature*. 168 Ariz. 159, 164-65 (1991) (noting the context of the older statute was important because its definition was explicitly limited by the phrase "*as . . . used in this chapter*").

Here, the Opinion analyzed "house or dwelling unit" by considering two statutory definitions that have no textual or logical connection to A.R.S. § 9-500.39.

In particular, the Opinion looks at the definition of "residential dwelling unit" in A.R.S. § 9-1301(9)[2] and the definition of "dwelling unit" in A.R.S. § 33-1409(8). There is no basis for reading A.R.S. § 9-500.39 with either of these definitions.

Each definition was adopted before the emergence of the STR industry as part of a separate regulatory scheme. *See* Laws 1995, Ch. 214, § 1 (regarding A.R.S. § 9-1301(9)); Laws 2005, Ch. 245, § 2, eff. July 1, 2006 (regarding A.R.S. § 33-1409(8)). The definition of "residential dwelling unit" relates to the Residential Rental Inspection Programs Act, which allows municipalities to adopt inspection programs for slum and blighted properties. *See* A.R.S. §§ 9–1301 to § 9–1305. In contrast, the definition of "dwelling unit" in A.R.S. § 33-1409(8) is part the Mobile Home Parks Residential Landlord and Tenant Act—and this act does not even apply to "any mobile home and mobile home space if both are owned by the same person." *See* A.R.S. § 33-1407(B) (stating that the Act "does not apply to a mobile home and mobile home space if both are owned by the same person"). Moreover, each definition is explicitly limited in its application by the Legislature, precluding its application to the STR statute. *See* A.R.S. § 9-1301(9) (explicitly limiting the definition of "residential dwelling unit" to Chapter 12 of A.R.S. Title 9, unless the context requires otherwise); A.R.S. § 33-1409(8) (explicitly limiting the definition

[2] The phrase "residential dwelling unit" does not appear in A.R.S. § 9-500.39.

of "dwelling unit" to Chapter 11 of A.R.S. Title 33, unless the context requires otherwise).[3]

We urge this Court to grant review because the Opinion improperly expands preemption beyond the text of A.R.S. § 9-500.39, allowing STRs where they were never intended. Policy choices belong to the Legislature, not the courts. *See Arizona Free Enter. Club v. Hobbs*, 253 Ariz. 478, 489 (2022) (stating that a court should decline the invitation to rewrite a statutory definition under the pretense of interpreting it, even if the court "divine[s] a more desirable intended outcome than the text allows").

B. JUDICIAL EXPANSION OF THE STR DEFINITION HAS REAL WORLD IMPACTS.

The rapid growth and proliferation of STRs—combined with the statutory limits on local authority—have created significant challenges for local governments who retain the primary responsibility for protecting public health, safety, and welfare within residential neighborhoods.

[3] The Opinion states that A.R.S. § 33-1409 and § 9-1301 consistently treat terms like "house or dwelling unit" as referring to the structures themselves, and not the "legal character of a property's *use*." Opinion at ¶ 18 (emphasis in original). This is incorrect because the manner of using a property is central to both definitions. The definition of "residential dwelling unit" focuses on how a mobile home is "used" as a home or residence and maintained as household. *See* A.R.S. § 9-1301(9). Similarly, "dwelling unit" is defined to exclude real property that is "*used* to accommodate a mobile home." A.R.S. § 33-1409(8) (emphasis added).

STRs have completely transformed the residential character of many neighborhoods throughout the state. Traditional zoning distinguishes between residential and commercial or transient lodging uses—and STR activity blurs those lines. Homes that are used exclusively or predominantly for STRs function like hotels. They often feature high guest turnover, event-based rentals, and an influx of property managers, event planners, and other commercial activities. They are also associated with increased complaints relating to loud parties and large gatherings, over-occupancy, parking congestion, trash and litter, public intoxication, and disorderly conduct. Although municipalities can generally enforce nuisance and misdemeanor laws, those mechanisms are reactive in nature, and they can place significant strains on police and code enforcement resources.

Many cities cite housing impacts as their central concern—particularly in high-demand tourism regions. While empirical findings vary by market, it is undisputed that STRs have removed critical housing stock from long-term rental and sales markets. Several cities have declared housing emergencies, including Sedona. *See, e.g.*, City of Sedona, *Housing Shortage Emergency Resolution R2024-37* (adopted Dec. 10, 2024); City of Flagstaff, *Housing Shortage Emergency Resolution* 2020-66 (adopted Dec. 1, 2020); Town of Cottonwood, Housing Shortage Emergency Declaration, Resolution No. 3329 (adopted Feb. 5, 2025); Town of Bisbee, *Housing Shortage Emergency Resolution 25-03* at 67-68 (adopted Feb. 18,

2025). Nearly four in ten residential parcels in Sedona have a mailing address that is located outside Sedona, indicating that many of these parcels are likely a second home, STR, or both. About 18% of Sedona's housing stock in 2025 was consumed by STRs, which was nearly double the amount since 2020 (and a 5.7% increase since 2024). *See* City of Sedona, *Draft Data Analysis and Recommended Targets* at 22-23 (Mar. 2026).

Municipalities across Arizona have streamlined permitting processes and adopted programs to encourage the construction of affordable housing, but they can only go so far. Municipalities in other states can use various tools to increase the supply of housing, but most of these tools are prohibited or limited in Arizona. For example, Arizona is one of only seven states that prohibit local governments from enacting inclusionary zoning ordinances. A.R.S. § 9-461.16(A). Arizona also prohibits rent control, except with respect to units that are owned, financed, subsidized, or insured by a municipality or state agency. A.R.S. § 33-1329. Arizona is also the only state that does not allow tax increment financing ("TIF"). A.R.S. § 36–1488.01 (repealed by Laws 1999, Ch. 165, § 4, eff. Aug. 6, 1999, retroactively effective to Jan. 1, 1999). The STR statute compounds the issues.

Review should be granted because this Court's interpretation of A.R.S. § 9-500.39 has important legal and practical consequences for Arizona's cities and towns.

CONCLUSION

For the reasons stated above, the League respectfully urges this Court to grant review.

RESPECTFULLY SUBMITTED this 18th day of March 2026 by:

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