



March 18, 2024

SENT VIA E-MAIL AND U.S. MAIL

Pima County Board of Supervisors
Administration Building
130 W. Congress Street
Tucson, AZ 85701

Subj: *Arizona Citizens Defense League v. Pima County Board of Supervisors -
Impending Litigation re. Ordinance 2024-2 – Mandatory Reporting for Loss or
Theft of Firearms*

Dear Supervisors:

The Scharf-Norton Center for Constitutional Litigation at the Goldwater Institute (the “Goldwater Institute”) represents the Arizona Citizens Defense League (“AzCDL”)¹ and certain of its members who reside in Pima County regarding the unlawful passage of Ordinance 2024-2 (“Ordinance”), Attachment 1, which purports to require firearm owners to report the loss or theft of a firearm within 48 hours or face a \$1000 fine. Because the ordinance violates our client’s statutory and constitutional rights, the County must swiftly repeal it to avoid litigation.

Specifically, the Ordinance directly conflicts with at least two provisions of state law. A.R.S. § 13-3108(A) preempts “any ordinance ... *relating to* the transportation, *possession*, carrying, *sale*, *transfer*, *purchase*, *acquisition*, gift, devise, *storage*, licensing, registration, discharge or use of firearms ... in this state.” (emphasis added). The Ordinance regulates in many of these areas. Additionally, the Ordinance is preempted because it “has a penalty that is greater than any state law penalty.” A.R.S. § 13-3108(D). Arizona has no law imposing penalties for the loss or theft of a firearm; therefore, the County’s penalty is plainly “greater than any state law penalty.”²

Indeed, the Arizona Attorney General’s Office previously issued an Opinion finding nearly identical provisions of a City of Tucson Ordinance unlawful. Opinion No. I13-010.³

¹ See <https://azcdl.org/>.

² We also understand that the Board is in receipt of a March 12, 2024 letter from Representative Quang Nguyen, who chairs the Judiciary Committee in the Arizona House of Representatives, outlining the core legal reasons why the Ordinance is preempted by state law. We agree with Rep. Nguyen’s legal analysis.

³ <https://www.azag.gov/opinions/i13-010-r13-012>

The county attorney's office⁴ and members of the public notified the Board of these legal deficiencies before it passed the Ordinance at the March 5 hearing,⁵ yet the Board disregarded them, along with related concerns raised by Supervisor Christy. Moreover, a majority⁶ of the Board recognized that state law preempts the ordinance, which subjects the county to the penalties authorized by A.R.S. § 13-3108(I) for "knowingly and willfully" violating the preemption statute.

The Ordinance also raises constitutional concerns under the Second Amendment to the U.S. Constitution and Article II, § 26 of the Arizona Constitution.

Our clients will not allow their elected representatives to ignore well-established state law and place improper restrictions on their statutory and constitutional rights.

Based on the foregoing, we demand that the Board immediately repeal Ordinance 2024-2, **no later than at its April 2, 2024 meeting**. If the ordinance is not repealed by that date, we will seek all legal remedies available to our clients.

Should you have any questions concerning this matter, please do not hesitate to contact me at (602) 462-5000 or pjackson@goldwaterinstitute.org.

Sincerely,



Parker Jackson
Staff Attorney
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute

⁴ See https://www.tucsonsentinel.com/local/report/030524_pima_gun_ordinance/pima-county-supes-vote-require-gun-owners-report-missing-firearms/.

⁵ See <https://youtu.be/nL1n3flCzWA>.

⁶ Supervisor Scott specifically stated that the ordinance "is designed to combat straw *purchases* ... [and] make sure that prohibited *possessors* do not *obtain* weapons." (emphasis added). Supervisor Heinz, citing his own experience as a former state legislator, acknowledged that "the only way" to enact certain firearm regulations is "at the state level," a sentiment echoed by Supervisor Lee, who shared Heinz's desire to see a change in the composition of the state legislature so that certain firearms could then be banned at the local level. Supervisor Heinz also cited the alleged transfer of firearms into Mexico as additional grounds for disagreeing with Supervisor Christy's concerns about the ordinance.

Pima County Board of Supervisors

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cc: (via email only)

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ORDINANCE 2024- 2 _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA
COUNTY, ARIZONA, RELATING TO LAW ENFORCEMENT;
AMENDING THE PIMA COUNTY CODE, TITLE 9**

THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, FINDS THAT:

1. The Board of Supervisors has authority under A.R.S. § 11-251.05 to adopt ordinances necessary or proper to carry out the duties, responsibilities, and functions of the county.
2. The Pima County Sheriff and Pima County Attorney, as county officers, have a duty to preserve the peace and prosecute criminal proceedings under A.R.S. §§ 11-441 and 11-532, respectively.
3. The county also has a duty to take action to preserve the health of the county and the health and safety of its inhabitants. See, e.g., A.R.S. §§ 36-183.02, 11-251(17).
4. The Sheriff and County Attorney are responsible for enforcing A.R.S. § 13-3102(A)(5), prohibiting the sale or transfer of firearms to prohibited possessors.
5. Under A.R.S. § 13-3101(A)(7), prohibited possessors include people convicted of a felony or domestic violence offense, people who have been involuntarily committed for mental health treatment, and undocumented aliens.
6. Firearm-related violence by prohibited possessors is a threat to public order and to the health and safety of the county and its inhabitants. Most prohibited possessors abide by the removal of their right to possess a firearm unless or until it is restored. However, prohibited possessors commit a significant number of firearm-related crimes in Pima County. And, people who are prohibited from possessing firearms for reasons related to their mental health are at a higher risk of suicide if they are able to illegally obtain a gun.

7. Prohibited possessors routinely obtain firearms from straw purchasers who buy firearms on their behalf or with the intent of selling them illegally. Reporting requirements assist with the apprehension and prosecution of straw purchasers, preventing or deterring them from claiming that a firearm they bought and transferred to a prohibited possessor was lost or taken in an unreported theft as well as preventing or deterring prohibited possessors from falsely claiming that their firearms were lost or stolen when law enforcement moves to remove them.
8. Although A.R.S. § 13-3108 prohibits the enactment of any local ordinance relating to the transportation, possession, carrying, sale, transfer, purchase, acquisition, gift, devise, storage, licensing, registration, discharge or use of firearms, a reporting requirement for the loss or theft of a firearm relates to none of these issues. The Arizona Court of Appeals found in *City of Tucson v. Rineer* that A.R.S. § 13-3108 only prohibits local firearms regulations with respect to those issues specifically identified in § 13-3108.
9. A U.S. District Court within the Ninth Circuit found that a city ordinance requiring gun owners to maintain liability insurance was not preempted by general state laws regarding firearm possession, “[w]ithout any means by which handgun possession can be revoked, the Ordinance cannot be interpreted to be entering the field of residential handgun possession...” *National Association for Gun Rights, Inc. v. City of San Jose*, 632 F.Supp.3d 1088, 1100 (N.D. Cal. 2022). Likewise, a reporting requirement for the loss or theft of a firearm that does not provide means by which firearm possession could be revoked does not enter the field of firearm possession.
10. It is in the best interest of the county to amend the Pima County Code by adding a requirement that the loss or theft of a firearm be reported to law enforcement.

IT IS ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

SECTION 1. A new Chapter 9.85 of the Pima County Code is enacted, reading as follows:

CHAPTER 9.85 LOSS OR THEFT OF FIREARM-MANDATORY REPORTING

9.85.010 Declaration of policy. The purpose of this chapter is to protect the inhabitants of Pima County by aiding local law enforcement and the County Attorney in the enforcement of A.R.S. § 13-3102(A)(5) and preventing the commission of crimes using firearms obtained in violation of that statute. This chapter in no way affects the possession, transfer, or storage of firearms because this chapter does not provide means by which firearm possession could be revoked or transferred, nor does it seek to regulate the storage of firearms.

9.85.020 Definitions.

A. "Firearm" is defined as in A.R.S. § 13-3101.

B. "Person" is defined as in A.R.S. § 13-105.

9.85.030 Mandatory reporting of loss or theft of firearm.

A. Except as otherwise provided in this chapter, it is unlawful for any person to fail to report to a local law enforcement agency the knowing loss or theft of a firearm.

B. The report of a loss or theft of a firearm pursuant to section A must be made in the jurisdiction in which the loss or theft occurred and within forty-eight hours of the time the person knew or reasonably should have known that the firearm had been lost or stolen.

C. Every person reporting a lost or stolen firearm pursuant to section A must report the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report.

9.85.040 False reporting. It is unlawful for any person to report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false.

9.85.050 Exemptions. This chapter does not apply to:

A. Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties if he or she reports the loss or theft to his or her employing agency.

B. Any United States marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.

C. Any firearms dealer or manufacturer licensed under federal law and subject to the reporting requirements of 18 U.S.C. 923(g)(6).

9.85.060 Violation—Penalty. A person violating a provision of this chapter is guilty of a petty offense and is subject to a penalty of up to \$1000.00 for each violation.

SECTION 2. This Ordinance is effective 30 days after the date of adoption.

PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona, this 5th
day of March, 2024.



Chairman, Pima County Board of Supervisors


MAR 05 2024

ATTEST:



Clerk of the Board

APPROVED AS TO FORM



Deputy County Attorney