

**Arizona Citizens Defense League, et al. v. Pima County, et al. –
Backgrounder**

Date Filed: April 26, 2024

Last Step: Filed complaint in Pima County Superior Court

Next Step: Await county response

Executive Summary

Arizona law broadly prohibits political subdivisions from enacting almost any kind of firearm-related ordinance.

The Pima County Board of Supervisors is the latest local government entity to thumb their nose at the state's firearm statutes by unlawfully enacting an ordinance that subjects firearm owners to fines of up to \$1,000 for failing to report the loss or theft of a firearm to the government within 48 hours. Members of the Board say that the restriction is necessary to combat the alleged problem of prohibited possessors acquiring firearms from so-called straw purchasers (people who buy firearms legally, then turn around and sell them illegally).

But local ordinances relating to the possession, sale, transfer, purchase, or acquisition of firearms are expressly preempted by state law, as are ordinances that are more prohibitive or more punitive than state law. With very few exceptions, only the state legislature can pass firearm-related regulations—not political subdivisions such as counties. This prevents the state from becoming a patchwork of varying firearm laws and ensures that the fundamental rights to keep and bear arms are uniformly protected throughout Arizona.

That's why the Goldwater Institute, through its Scharf-Norton Center for Constitutional Litigation, filed a Complaint against Pima County in state court on behalf of the Arizona Citizens Defense League (a firearms advocacy group based in Pima County) and Chris King (a U.S. Air Force veteran and NRA-certified firearms instructor who lives in Pima County) challenging the unlawful ordinance.

Background

Efforts to undermine Arizona's broad protections for the rights to keep and bear arms are not new. For example, in 2013, the City of Tucson passed a similar firearm reporting ordinance. The Arizona Attorney General found it illegal. Ariz. A.G. Op. No. I13-010. Over the next several years, Tucson destroyed nearly 5,000 unclaimed or forfeited firearms under another preempted ordinance. In 2017, the Arizona Supreme Court found those actions and ordinance unlawful. *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588 (2017). And just last year, the City of Phoenix rammed through an ordinance that quickly disposed of nearly 600 unclaimed and seized firearms by sending them to the National Police of Ukraine. The Arizona Attorney General,

belatedly, agreed that Phoenix’s ordinance violated state law. Ariz. AG Investigative Report No. 23-003.

Undeterred, Pima County has sought for years to overturn or evade Arizona’s firearm preemption law, A.R.S. § 13-3108.

After learning more about the state firearm preemption statute, the Board of Supervisors, at the behest of District 1 Supervisor Rex Scott, passed a resolution on August 2, 2022, calling for the repeal of A.R.S. § 13-3108. AzCDL submitted a letter to the Board opposing the resolution. The Board continued to discuss efforts to repeal or circumvent the law over the following year.

In January 2024, in response to the Board’s actions, Rep. Nancy Gutierrez introduced a bill in the state legislature to repeal A.R.S. § 13-3108. The bill did not advance due to a lack of support.

Having failed to get the statute repealed, the Board decided to simply ignore it. In February 2024, the Board announced a plan to “require the reporting of lost or stolen firearms to help keep dangerous weapons out of the hands of prohibited possessors.” Public records show that county officials thought a court might find a “loophole” in the statute but knew that “in the long run it would not hold up to future challenges.” Other officials rightly lamented that the proposal targeted victims of loss or theft, rather than criminals. At least one anti-gun rights activist group was informed of and involved with the Board’s plans.

On March 5, 2024, the Board, by a 4-1 vote, enacted Ordinance 2024-2, which subjects firearm owners to fines of up to \$1,000 for failing to report the loss or theft of a firearm to law enforcement within 48 hours. Among the expressly stated goals of the ordinance are to combat “the *sale or transfer* of firearms to prohibited *possessors* ... from straw *purchasers* who *buy* firearms on their behalf with the intent of *selling* them illegally.” (emphasis added).

After the meeting, at least two state legislators wrote to the Board, notifying them that the ordinance was unlawful.

Legal Analysis

The right to keep and bear arms is a fundamental individual right under both the U.S. and Arizona constitutions. U.S. Const. amend. II; Ariz. Const. art. II § 26. As such, the Arizona Legislature has taken—and reinforced—measures to prevent a regulatory patchwork across the state by expressly preempting all local firearms-related rules, ordinances, and regulations, with very narrow and defined exceptions. *See generally* A.R.S. § 13-3108. *See also, e.g.,* A.R.S. §§ 12-943, 12-945(B) (prescribing how municipalities dispose of unclaimed firearms).

Pima County’s firearm reporting ordinance directly conflicts with at least two provisions of state law.

First, the ordinance conflicts with a ban against “any ordinance ... *relating to the ... possession ... sale, transfer, purchase, [or] acquisition* ... of firearms ... in this state.” A.R.S. § 13-3108(A)) (emphasis added). The ordinance itself specifically talks about the possession, sale,

purchase, transfer, and acquisition of firearms—all areas expressly preempted by state law. And members of the Board have made numerous statements acknowledging that the ordinance relates to those topics.

Second, the ordinance is also preempted by a newer subsection of the statute preempting any ordinance that “relates to firearms and is more prohibitive than or that has a penalty that is greater than any state law penalty.” A.R.S. § 13-3108(D). The ordinance is more prohibitive than state law because state law does not impose a reporting requirement on gun owners in the event of loss or theft of a firearm. Additionally, state law does not impose a penalty on those who fail to report firearm loss or theft to local authorities. The ordinance, however, imposes a substantial penalty. The Arizona Attorney General has found that where “‘Arizona state law does not ... establish any penalty for a failure to report the loss or theft of a firearm,’” and an ordinance imposes a civil infraction and fines, it “is greater than any state law penalty and brings [the ordinance] directly into conflict with § 13-3108(D).” Ariz. AG Op. I13-010 at 5 (citation omitted).

These and other provisions of state law are among the reasons why the Arizona Supreme Court has recognized that “[i]n no uncertain terms, the Arizona Legislature has declared that ‘[f]irearms regulation is of statewide concern’ and has expressed its intent to preempt ‘firearms regulation in this state’ and thereby ‘limit the ability of any political subdivision of this state to regulate firearms.’” *Brnovich*, 242 Ariz. at 598 ¶ 37 (quoting 2000 Ariz. Sess. Laws, ch. 376, § 4 (2d Reg. Sess.)). The Arizona Attorney General has concluded that this means the state has “effectively preempted the field” of firearms regulation. Ariz. A.G. Op. No. I13-010. The legal doctrine of field preemption therefore also applies.

In short, the rights to keep and bear arms are fundamental and essentially uniform throughout the state, protected from local interference by Arizona law. Pima County knew this when it illegally enacted its firearm reporting ordinance.

Case Logistics

The Goldwater Institute represents the Arizona Citizens Defense League (“AzCDL”), and Christopher M. King. AzCDL is an Arizona nonprofit grassroots advocacy organization based in Pima County, dedicated to defending the right of self-defense and the rights to keep and bear arms as protected by the U.S. and Arizona constitutions. Mr. King is a firearm owner and taxpayer residing in Pima County. He is a member of AzCDL, holds a concealed carry permit, is an NRA-certified firearms instructor, and is a retired U.S. Air Force Explosive Ordnance Disposal (“EOD”) Technician. Both AzCDL as an organization and Mr. King individually are adversely affected by the Ordinance.

Pima County and the members of the Pima County Board of Supervisors, in their official capacities, are the defendants in this case.

The case was filed in the Superior Court of Arizona in and for Pima County on April 26, 2024.

The Legal Team

Jon Riches is the Vice President for Litigation for the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation and General Counsel for the Institute. He litigates in federal and state trial and appellate courts in the areas of economic liberty, regulatory reform, free speech, taxpayer protections, public labor issues, government transparency, and school choice, among others.

Scott Day Freeman is a Senior Attorney at the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation. He has more than 28 years of experience litigating complex commercial and tort defense cases at large international and regional law firms. Scott previously served as Vice Chair for the Arizona Independent Redistricting Commission during the 2011 redistricting cycle. He litigates free speech, associational rights, property rights, and election-related cases.

Parker Jackson is a Staff Attorney at the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation, where he focuses on taxpayer protection, free speech, associational rights, government transparency, education, and election-related issues.