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12  
13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
14 **IN AND FOR THE COUNTY OF PIMA**

15 ARIZONA CITIZENS DEFENSE  
16 LEAGUE, INC; and CHRISTOPHER M.  
17 KING,

18 Plaintiffs,

19 vs.

20 PIMA COUNTY, a political subdivision of  
21 the State of Arizona; REX SCOTT, MATT  
22 HEINZ, SYLVIA M. LEE, STEVE  
23 CHRISTY, and ADELITA S. GRIJALVA,  
24 in the official capacities as members of and  
25 constituting the Pima County Board of  
26 Supervisors,

27 Defendants,

Case No. C2024-2478

**PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

**(Oral Argument Requested)**

(Assigned to the Hon. Greg Sakall)

28 Pursuant to Rule 56 of the Arizona Rules of Civil Procedure, Plaintiffs respectfully  
29 move for summary judgment on the claims asserted in their Complaint Seeking  
30 Declaratory and Injunctive Relief against Pima County Ordinance 2024-2 (the  
31 "Ordinance").

**INTRODUCTION**

32 The state has a strong interest in protecting citizens' constitutional rights and  
33 ensuring uniform statewide laws related to firearms. To serve that interest, the Legislature  
34 has created a comprehensive statutory scheme that preempts local governments from  
35 enacting firearms regulations. *See, e.g.*, A.R.S. § 13-3108.



1 Briefing Schedule (“Stip.”) at 2 (“The parties agree this case raises questions of law that  
2 can likely be resolved on dispositive motions.”).

3 The case should be resolved on summary judgment.

#### 4 **FACTUAL BACKGROUND**

##### 5 **I. The Board adopted the Ordinance in knowing defiance of state law.**

6 Since at least 2021, the Pima County Board of Supervisors,<sup>1</sup> in conjunction with  
7 the Pima County Attorney’s Office, have tried to find ways to undermine or repeal  
8 Arizona’s principal firearm preemption statute, Section 13-3108. Pls.’ Separate Statement  
9 of Facts in Support of Mot. for Summ. J. (“SOF”) ¶¶ 12–21. These efforts began with a  
10 search for “defect[s] in the statute’s construction,” SOF ¶ 13, proceeded to a formal Board  
11 resolution calling for the statute’s repeal, *id.* ¶¶ 14–19, and culminated in the passage of  
12 Ordinance 2024-2, which directly contradicts the statute, *id.* ¶¶ 20–32.

13 Sparked by a desire to ban gun shows at the county fairgrounds, *id.* ¶ 12, and  
14 inspired by a vision of ultimately banning many common firearms at the local level, *id.* ¶¶  
15 16, 31, the County crafted the Ordinance “with the goal of surviving a court challenge”  
16 and the hope of “find[ing] a loop hole [sic],” even if “in the long run [the Ordinance]  
17 would not hold up to future challenges ... be it legislative or judicial,” *id.* ¶ 23. In the  
18 process of defying state law, the Board ignored concerns raised by law enforcement, a  
19 dissenting Supervisor, sitting state legislators, and members of the public that the  
20 Ordinance was unlawful. *Id.* ¶¶ 23–24, 29, 31, 33–37.

21 The Ordinance’s findings repeatedly refer to the need to “keep dangerous weapons  
22 out of the hands of prohibited *possessors*” of firearms. *Id.* ¶¶ 20–21; 38 (emphasis added).  
23 The Ordinance cites (in both the findings section and in the operative codified text)  
24 Section 13-3102(A)(5), which prohibits the *sale* or *transfer* of firearms to prohibited  
25 *possessors*. SOF, Ex. 13 at 1 ¶ 4 (Pima Cnty. Code (“PCC”) § 9.85.010); *see also* SOF  
26 ¶¶ 38–39. It also cites the alleged problem of “straw *purchasers* who *buy* firearms on their  
27 behalf or with the intent of *selling* them illegally,” and notes the Board’s finding that

28 \_\_\_\_\_  
<sup>1</sup> The identities of the Defendants are outlined at SOF ¶¶ 6–11.

1 “[r]eporting requirements assist with the apprehension and prosecution of straw  
2 *purchasers*, preventing or deterring them from claiming that a firearm they *bought* and  
3 *transferred* to a prohibited *possessor* was lost or taken in an unreported theft ... .” SOF,  
4 Ex. 13 at 2 ¶ 7 (emphasis added) ; *see also* SOF ¶ 38. The codified “Declaration of  
5 Policy” states that the Ordinance is intended to “aid[] ... in the enforcement of A.R.S. §  
6 13-3102(A)(5) [regarding the sale or transfer of firearms to prohibited possessors] and [in]  
7 preventing the commission of crimes *using* firearms *obtained* in violation of that statute.”  
8 SOF, Ex. 13 at 2 (PCC § 9.85.010) (emphasis added); *see also* SOF ¶ 39.

## 9 **II. The Ordinance and its requirements**

10 The Ordinance makes it “unlawful [with exceptions] for any person to fail to report  
11 to a local law enforcement agency the knowing loss or theft of a firearm.” SOF, Ex. 13 at  
12 3 (PCC § 9.85.030(A)); SOF ¶ 41. *See also id.* ¶ 40. The report must include “the make,  
13 model, and serial number of the firearm, if known by the person, and any additional  
14 relevant information required by the law enforcement agency taking the report.” *Id.* ¶ 43,  
15 and must be made “in the jurisdiction in which the loss or theft occurred and within forty-  
16 eight hours of the time the person knew or reasonably should have known that the firearm  
17 had been lost or stolen.” *Id.* ¶ 42.

18 None of this is required (or permitted) under state law. *See* SOF ¶ 45.

19 Violation of the Ordinance is considered a petty offense. *Id.* ¶ 44. Each violation is  
20 subject to a penalty of up to \$1,000. *Id.*

21 The Ordinance was passed and signed on March 5, 2024. *Id.* ¶¶ 28, 32. It took  
22 effect on April 4, 2024, 30 days after the date of adoption. *Id.* ¶¶ 32, 37.

23 Members of the Board and other public officials in Pima County knew about the  
24 preemption statute and its broad preemptive scope when they passed the Ordinance. *Id.* ¶¶  
25 12–32. They received multiple warnings about the Ordinance’s legal deficiencies,<sup>2</sup> yet  
26 chose not to repeal it. *Id.* ¶¶ 29–37.

27 \_\_\_\_\_  
28 <sup>2</sup> Since Plaintiffs filed this action, the Ordinance’s sponsor continues to publicly state that  
it is aimed at matters involving firearm possession, sale, transfer, purchase, and

1 **III. The Plaintiffs and their injuries**

2 Plaintiffs are the Arizona Citizens Defense League (“AzCDL”)—an Arizona  
3 nonprofit grassroots advocacy organization based in Pima County dedicated to defending  
4 the right of self-defense and the rights to keep and bear arms as protected by the federal  
5 and state constitutions—and Christopher M. King, a firearm owner and taxpayer residing  
6 in Pima County. SOF ¶¶ 1, 3; *see also id.* ¶¶ 2, 4.

7 King is a retired U.S. Air Force Explosive Ordnance Disposal (“EOD”) Technician,  
8 an NRA-certified firearms instructor, holds a concealed carry permit, and is a member of  
9 AzCDL. *Id.* ¶¶ 4–5; *see also id.* ¶ 2.

10 The Ordinance imposes a new legal obligation on Plaintiffs. *See* SOF ¶¶ 40–47. It  
11 increases the legal and financial risks to AzCDL, its members, and Plaintiff King. *See id.*  
12 And it creates a patchwork of inconsistent local firearms regulations, which state law  
13 prohibits. *See* A.R.S. ¶ 13-3108. As a result, lawful owners of firearms in Arizona are  
14 being deprived of the uniformity and predictability of state law with respect to their  
15 constitutionally guaranteed rights. *See* SOF ¶¶ 46–47. These rights include Plaintiffs’ right  
16 to bear arms, to privacy regarding their gun ownership, and to not be compelled to speak  
17 about their gun ownership. *See id.*; U.S. Const. amends. I, II; Ariz. Const. art. II §§ 6, 8,  
18 26.

19 **ARGUMENT**

20 **I. The Ordinance is preempted by Section 13-3108.**

21 The right to keep and bear arms is a fundamental right protected by both the U.S.  
22 and Arizona constitutions. U.S. Const. amend. II; Ariz. Const. art. II § 26. The Arizona

23 \_\_\_\_\_  
24 acquisition of firearms—and to implicitly acknowledge that the Ordinance is preempted  
25 by state law. Supervisor Scott recently told reporters that “[o]ftentimes when guns are  
26 allegedly lost or stolen, it’s actually a cover for a straw *purchase*,” and said that he  
27 “wish[es] Arizona lawmakers *would not restrict us* in finding solutions to help our  
28 communities.” *See* Jonathan McCall, *Pima County Officials Say “Law-Abiding” Gun  
Owners Should Have “Nothing to Fear” with New Theft Reporting Ordinance*, 12 News  
(May 11, 2024) <https://www.12news.com/article/news/local/arizona/lawsuit-challenges-pima-county-ordinance-aimed-at-preventing-gun-violence/75-4e23b2bc-c073-4487-8540-e6707f897900> (emphasis added).

1 Legislature has codified various statutory protections for this right. Among these are  
2 provisions that preempt local firearm regulations and thus ensure uniformity with respect  
3 to firearms regulations—preventing a patchwork of local rules and regulations. *McMann*  
4 *v. City of Tucson*, 202 Ariz. 468, 473 ¶ 13 (App. 2002) (“[T]he legislature’s primary  
5 concern [in strengthening the preemption statute], according to the only legislative history  
6 of which we are aware, was to ensure that conduct legal in one municipality is not illegal  
7 in another and that citizens have access to firearms for protection.”). Such statewide  
8 uniformity is valuable and important. *Cf. Republic Inv. Fund I v. Town of Surprise*, 166  
9 Ariz. 143, 149 (1990) (“Our constitution's framers were well aware of the ... evils created  
10 by a patchwork type of legal system where some laws applied in a few locations while  
11 others applied elsewhere.”). It ensures predictability and stability for citizens in the  
12 exercise of their rights. *See City of Cleveland v. State*, 942 N.E.2d 370, 378 ¶ 35 (Ohio  
13 2010) (firearm preemption statute addresses legislative “concern that absent a uniform law  
14 throughout the state, law abiding gun owners would face a confusing patchwork of  
15 licensing requirements, possession restrictions, *and criminal penalties* as they travel from  
16 one jurisdiction to another” (emphasis added)).

17 At issue here is Section 13-3108. Subsection (A) of that Section provides that, with  
18 certain exceptions not applicable here, no political subdivision of the state may enact “any  
19 ordinance, rule or tax relating to the transportation, possession, carrying, sale, transfer,  
20 purchase, acquisition, gift, devise, storage, licensing, registration, discharge or use of  
21 firearms or ammunition.” Subsection (D) provides that no political subdivision of the state  
22 may enact “any rule or ordinance that relates to firearms and is more prohibitive than or  
23 that has a penalty that is greater than any state law penalty.” Subsection (H) provides that  
24 “[i]t is not a defense that the political subdivision was acting in good faith or on the advice  
25 of counsel.” The Ordinance is invalid because it violates subsections (A) and (D).<sup>3</sup>

26  
27  
28 <sup>3</sup> A rule or ordinance that relates to firearms and that is inconsistent with or more  
restrictive than state law is null and void. A.R.S. § 13-3108(D).

1           **A. The Ordinance relates to the possession, sale, transfer, purchase, and**  
2           **acquisition of firearms, in plain violation of state law.**

3           The Ordinance relates to possession, sale, transfer, purchase, and acquisition of  
4           firearms. Both its stated findings and its substantive policy requirements concern those  
5           subjects. “Relating to,” as used in Subsection (A), means “[c]onnected in some way;  
6           having relationship to or with something else.” *See* “Related,” Black’s Law Dictionary  
7           (12th ed. 2024).<sup>4</sup>

8           The Ordinance *obviously* is connected to the ownership, transfer, and possession of  
9           firearms, and thus “relates to” the possession, sale, etc., of firearms. *See In re Drummond*,  
10          543 P.3d 1022, 1025 ¶ 7 (Ariz. 2024) (“Absent a statutory definition, courts generally give  
11          words their ordinary meaning and may look to dictionary definitions.”).

12          An Ordinance need not directly “affect[]” or “regulate”<sup>5</sup> firearm possession, sale,  
13          transfer, purchase, or acquisition, in order to be preempted. It need only “*relate to*” those  
14          subjects—that is, be connected to or associated with the preempted matter—in order to be  
15          void. Arizona courts have already held that “relate to” (or equivalent phrases) should be  
16          read broadly as meaning “connected to or associated with.” *See, e.g., Landon v. Indus.*  
17          *Comm’n of Ariz.*, 240 Ariz. 21, 26 ¶ 16 (App. 2016). *See also Key Air, Inc. v. Comm’r of*  
18          *Revenue Servs.*, 983 A.2d 1, 8 n.11 (Conn. 2009) (observing that “[o]utside of the tax  
19          context, courts consistently have construed the statutory phrase ‘in connection with’  
20          broadly,” and citing examples).

21          Theft or loss of a firearm plainly relates to the “possession” and “transfer” of a  
22          firearm. “Theft” means unlawful possession or conversion, *see, e.g.,* A.R.S. § 13-1802,  
23          and here, “theft” necessarily relates to the *possession* and *transfer* of a firearm: the owner  
24          loses *possession* by a theft. Similarly, “lost” refers to a firearm unintentionally or  
25          involuntarily separated from its owner: *possession* ends when an owner loses a firearm.

26          <sup>4</sup> *Accord* “relate to,” Merriam-Webster.com (“to connect (something) with (something  
27          else) ... to be connected with (someone or something): to be about (someone or  
28          something)”).

29          <sup>5</sup> *See* SOF, Ex. 13 at 2 (PCC § 9.85.010) (“This chapter in no way affects the possession,  
30          transfer, or storage of firearms because this chapter does not provide means by which  
31          firearm possession could be revoked or transferred, nor does it seek to regulate the storage  
32          of firearms.”). This self-serving conclusion is false for the reasons stated herein.

1 See “Lose,” Merriam-Webster.com (“... to miss from one’s *possession* ... to suffer  
2 deprivation of ... or removal of or final separation from.”).

3 Other portions of the Ordinance<sup>6</sup> repeatedly refer to “prohibited *possessors*,” SOF,  
4 Ex. 13 at 1–2 ¶¶ 4–7, and cite to Section 13-3102(A)(5), which prohibits the *sale* or  
5 *transfer* of firearms to prohibited possessors. *Id.* ¶ 4. Indeed, the Ordinance specifically  
6 targets “straw *purchasers* who *buy* firearms on their behalf or with the intent of *selling*  
7 them illegally,” *id.* ¶ 7 (emphasis added), which obviously relates to firearm transfer,  
8 acquisition, purchase, sale, and possession.

9 The Ordinance also states that “[r]eporting requirements assist with the  
10 apprehension and prosecution of straw *purchasers*, preventing or deterring them from  
11 claiming that a firearm they *bought* and *transferred* to a prohibited *possessor* was lost or  
12 taken in an unreported theft.” *Id.* This, again, obviously “relat[es] to the ... possession ...  
13 sale, ... transfer, purchase, [and] acquisition ... of firearms.” A.R.S. § 13-3108(A)  
14 (emphasis added).

15 The Ordinance is consequently preempted by state law.

16 If any further proof were needed, statements by members of the Board and other  
17 public officials also show that the Ordinance relates to—at a minimum—firearm  
18 possession, sale, transfer, purchase, and acquisition. SOF ¶¶ 12–14, 16, 18, 20–21, 23–27,  
19 30–31; *supra* n.2. The Attorney General has expressly determined that a local ordinance  
20 requiring a person who owns or possesses a firearm to report its theft to law enforcement  
21 or face fines relates to the *possession* or *transfer*<sup>7</sup> of firearms, and thus violates Section  
22 13-3108. Ariz. AG Op. I13-010 (2013) at 5<sup>8</sup>; *see also* Ariz. AG Op. I78-274 (1978)

24 \_\_\_\_\_  
25 <sup>6</sup> The Supreme Court has examined prefatory language indicating legislative intent when  
analyzing questions related to Section 13-3108. *See Brnovich*, 242 Ariz. at 591 ¶ 2, 598  
¶ 37.

26 <sup>7</sup> Recently, the Attorney General also found that a City of Phoenix ordinance providing  
for the transfer of firearms to Ukraine violated A.R.S. § 13-3108(A). Ariz. AG  
27 Investigative Report 23-003 at 11.

28 <sup>8</sup> Ariz. AG Op. I13-010 analyzed a Tucson ordinance that included a provision nearly  
identical to the one at issue here: requiring that firearm owners report lost or stolen  
firearms to law enforcement or face fines.

1 (overlapping ordinance regarding unlawful possession of firearm preempted by earlier  
2 version of state law). The same is true here.

3 Other courts agree. For example, in *Firearm Owners Against Crime v. City of*  
4 *Harrisburg*, 218 A.3d 497, 502–03 (Pa. Cmwlth. 2019), *aff’d sub nom. Firearm Owners*  
5 *Against Crime v. Papenfuse*, 261 A.3d 467 (Pa. 2021), a firearm advocacy organization  
6 and individual firearm owners, under Pennsylvania’s firearm preemption statute,  
7 challenged a strikingly similar ordinance “requir[ing] firearms owners to report lost or  
8 stolen firearms to law enforcement within 48 hours after discovery of the loss or theft” or  
9 face fines of up to \$1,000 per violation, among other penalties. *Id.* The court noted that the  
10 “Lost/Stolen Ordinance” was one of several challenged ordinance sections that “has a  
11 chilling effect on the [i]ndividual [p]laintiffs’ rights to engage in constitutionally protected  
12 activities with respect to firearms,” *id.* at 506, and concluded that it “regulate[d] in some  
13 fashion the *use, possession, ownership, and/or transfer*<sup>9</sup> of firearms within the City.” *Id.* at  
14 502 (emphasis added).<sup>10</sup> *Accord Ohioans for Concealed Carry, Inc. v. City of Cleveland*,  
15 90 N.E.3d 80 (Ohio App. 2017) (ordinance requiring reporting of lost or stolen firearms  
16 within 48 hours “implicate[d] the *possession and transfer* of firearms” and was therefore  
17 preempted by conflicting state law. *Id.* at 88–89 ¶¶ 29, 31 (emphasis added)).<sup>11</sup> *See also*

18 \_\_\_\_\_  
19 <sup>9</sup> Pennsylvania’s statute prevents local governments from “in any manner regulat[ing] the  
20 lawful *ownership, possession, transfer or transportation* of firearms.” 18 Pa.C.S. §  
21 6120(a) (emphasis added). Notably, the Commonwealth Court of Pennsylvania has  
22 concluded that “in enacting section 6120(a), the General Assembly has, indeed, expressed  
23 its unambiguous intention to preempt the entire field of firearm regulation.” *Firearm*  
24 *Owners Against Crime v. City of Pittsburgh*, 276 A.3d 878, 897 (Pa. Cmwlth. 2022).  
25 Arizona’s preemption statute is broader because instead of “regulating” it merely says  
26 “relating to,” and the subsequent list of firearm-related actions covered by the law is more  
27 than three times as long. A.R.S. § 13-3108(A).

28 <sup>10</sup> As explained in Plaintiffs’ Response to the Defendants’ Motion to Dismiss, the *City of*  
*Harrisburg* court ultimately found that the plaintiffs had standing to challenge the  
ordinances and reversed the lower court’s dismissal of the relevant claim. 218 A.3d at  
515–16.

<sup>11</sup> Ohio’s preemption statute stated as follows:

The individual right to keep and bear arms, being a fundamental individual  
right that predates the United States Constitution and Ohio Constitution, and  
being a constitutionally protected right in every part of Ohio, the general  
assembly finds the need to provide uniform laws throughout the state  
regulating the *ownership, possession, purchase, other acquisition, transport,*  
*storage, carrying, sale, or other transfer of firearms, their components, and*

1 *City of Edmonds v. Bass*, 481 P.3d 596, 602–03 ¶ 30, 32 (Wash. App. 2021) (ordinances  
2 regulating firearm storage and targeting prohibited possessors preempted because they  
3 attempt to regulate firearm *possession* and *transfer*).

4 **B. The Ordinance is more prohibitive than state law and has a penalty that**  
5 **is greater than any state law penalty.**

6 The Ordinance is also preempted under Section 13-3108(D). That subsection  
7 prohibits any ordinance that “relates to firearms and is more prohibitive than or that has a  
8 penalty that is greater than any state law penalty.”

9 The penalty for noncompliance with the Ordinance—up to a \$1,000 fine per  
10 violation—exceeds any state law penalty because there is *no* state law penalty for failing  
11 to report gun loss or theft. Thus, the Ordinance “has a penalty that is greater than any state  
12 law penalty.” A.R.S. § 13-3108(D).

13 The Attorney General has already found that a local ordinance imposing civil  
14 penalties for failing to report the loss or theft of a firearm necessarily has a penalty that is  
15 “greater than any state law penalty,” because ““Arizona state law does not ... establish any  
16 penalty for a failure to report the loss or theft of a firearm.”” Ariz. AG Op. I13-010 at 5.  
17 As a result, locally imposed civil penalties in the absence of any state law penalty bring  
18 such ordinances “directly into conflict with § 13-3108(D).” *Id. Compare State v. Lopez-*  
19 *Vega*, 826 P.2d 48, 50 n.1 (Or. App. 1992) (local provision with a penalty greater than state  
20 law penalties for same conduct preempted), *with City of Seattle v. Ballsmider*, 856 P.2d  
21 1113, 1114–15 (Wash. App. 1993) (firearm ordinance with greater penalty than state law  
22 penalty only permissible due to express exception to the preemption statute).

23 Additionally, the Ordinance is more prohibitive than state law because it prohibits  
24 gun owners who experience firearm theft or loss from *not* reporting that information, or

25  
26 \_\_\_\_\_  
27 their ammunition. Except as specifically provided by the United States  
28 Constitution, Ohio Constitution, state law, or federal law, a person, without  
further license, permission, restriction, delay, or process, *may own, possess,*  
*purchase, sell, transfer, transport, store, or keep any firearm, part of a*  
*firearm, its components, and its ammunition.*

OH ST § 9.68 (2007) (emphasis added).

1 from otherwise keeping that information private. *Cf. Mgmt. Props., LLC v. Town of*  
2 *Redington Shores*, 352 So.3d 909, 913–14 (Fla. App. 2022) (reversing summary judgment  
3 against claim that requirement for vacation rental operators to report *any* legal violation to  
4 the town or law enforcement compelled speech). *See generally* U.S. Const. amend. I; Ariz.  
5 Const. art. II §§ 6, 8. State law, in fact, expressly prohibits the government from  
6 maintaining records on firearm ownership, sale, and possession.<sup>12</sup>

7 A person might not report for a variety of understandable reasons, including lack of  
8 awareness or incapacity, misunderstanding, contractual breach, ongoing search, fear of  
9 “doxxing,” etc. Also, a firearm may be lost or stolen, but found or lawfully recovered  
10 within 48 hours. Yet the Ordinance provides no exemption for these scenarios; *any* loss or  
11 theft must be reported—and along with that, personal information must be disclosed—  
12 regardless of whether the owner was deprived of possession for more than 48 hours. Such  
13 a scenario might even trigger an investigation under the “false reporting” section of the  
14 Ordinance, further increasing the legal and financial risks of the Ordinance to gun owners.  
15 In short, the Ordinance prohibits *non*-reporting, and state law does not.

## 16 **II. The Ordinance is invalid under the doctrine of field preemption.**

17 Field preemption prohibits local governments from legislating in a particular area  
18 when “the subject is one of state-wide concern, and the Legislature has appropriated the  
19 field.” *Associated Dairy Products Co. v. Page*, 68 Ariz. 393, 396 (1949) (quoting *Clayton*  
20 *v. State*, 38 Ariz. 466, 468 (1931)).<sup>13</sup> When the Legislature enacts a “comprehensive

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21 <sup>12</sup> Section 13-3108(C)(2) prohibits the government from “requir[ing] or maintain[ing] a  
22 record in any form, whether permanent or temporary, including a list, log or database, of  
23 ... any identifying information of a person who owns, possesses, purchases, sells or  
24 transfers a firearm” unless it is “in the course of a law enforcement investigation.” By  
25 creating additional grounds and opportunities to initiate law enforcement investigations,  
26 the Ordinance undermines the privacy protections of Subsection (C), and intrudes on the  
27 “private affairs” protected by the Arizona Constitution. *See* Ariz. Const. art. II § 8. *See*  
28 *also* A.R.S. § 13-3109(B) (“Nothing in this section [regulating sales or gifts of firearms to  
minors] shall be construed to require reporting sales of firearms, nor shall registration of  
firearms or firearms sales be required”).

<sup>13</sup> In *Clayton*, the Supreme Court determined that “the Legislature had ... taken over and  
appropriated to itself, *to the exclusion of others*, the power and right to prescribe the  
qualifications of motor vehicle drivers, *and to punish them* for driving while under the  
influence.” 38 Ariz. at 468 (emphasis added). That holding was extended to “the subject  
of reckless driving,” another matter of statewide concern, in *Keller v. State*, 46 Ariz. 106,

1 statutory scheme,” courts “can infer an obvious preemptive policy.” *Jett v. City of Tucson*,  
2 180 Ariz. 115, 122 (1994).

3         Once the Legislature has “fully occupied the field<sup>14</sup> to the exclusion of boards of  
4 supervisors” and other subdivisions of the state, local entities may not “enact[] legislation  
5 relating to” the subject matter “unless [the Legislature] has *plainly, directly, and explicitly*  
6 conferred upon such boards *express power* to enact the ordinance in question.” *Associated*  
7 *Dairy Products*, 68 Ariz. at 397 (emphasis added).

8         “[E]xpress power” means “authority which confers power to do a particular thing  
9 set forth and declared exactly, plainly and directly with well defined limits.” *Id.* at 398.  
10 Similarly, “[a]n express authority is one given in direct terms, definitely and explicitly,  
11 and not left to inference or to implication, as distinguished from authority which is  
12 general, implied, or not directly stated or given.” *Id.* (citation omitted). *See also City of*  
13 *Edmonds*, 481 P.3d at 602 ¶ 27 (absence of the word “storage” from list in Washington’s  
14 firearm preemption statute “does not indicate an intent to allow cities to regulate this  
15 aspect of firearm ownership”); *State v. Coles*, 234 Ariz. 573, 576 ¶¶ 15–16 (App. 2014)  
16 (absence of a particular word from a preemption statute, or existence of exceptions, not  
17 enough to avoid the “focus” of the statute). Since no “express power” to regulate firearms  
18 has been given to the County, the Ordinance is, again, invalid.

19         In *Brnovich*, the Supreme Court recognized that “[i]n no uncertain terms, the  
20 Arizona Legislature has declared that ‘[f]irearms regulation is of statewide concern’ and  
21 has expressed its intent to preempt ‘firearms regulation in this state’ and thereby ‘limit the  
22 ability of any political subdivision of this state to regulate firearms.’” 242 Ariz. at 598  
23 ¶ 37 (quoting 2000 Ariz. Sess. Laws, ch. 376, § 4 (2d Reg. Sess.)). The court held that

24 \_\_\_\_\_  
25 115 (1935). A Phoenix ordinance related to reckless driving was “therefore invalid  
26 because the Legislature has completely covered that subject in [statute].” *Id.* at 118. *See*  
27 *also Phoenix Respirator & Ambulance Serv., Inc. v. McWilliams*, 12 Ariz. App. 186, 188  
28 (1970) (extending *Clayton* and *Keller* to the “operation of motor vehicles,” including the  
“regulation of emergency vehicles”).

<sup>14</sup> The Legislature does not have to provide for every possible detail within a field for the  
field to be “fully occupied.” A statutory scheme need only be “*designed* to provide a  
complete coverage of the matter” and contain “provisions ... *substantially covering*” the  
subject. *Associated Dairy Products*, 68 Ariz. at 397.

1 “applicable, firearms-related statutes implicate several matters of statewide, not merely  
2 local, concern and therefore govern over ... conflicting municipal [o]rdinance[s].”<sup>15</sup> *Id.*  
3 ¶ 38; *see also id.* at 600 ¶ 47 (“Unlike municipalities, which have ‘no inherent police  
4 power,’ the state has broad police power. ... Matters involving the police power generally  
5 are of statewide concern.” (citations omitted)); Ariz. AG Op. I13-010 at 6 (concluding  
6 local firearm loss or theft reporting ordinance invoked statewide concerns).

7 Section 13-3108 contains broad, comprehensive language. The terms “relating to,”  
8 “relates to,” and “any” are each important, carefully chosen terms through which the  
9 Legislature made plain its intent to occupy the entire field of firearms regulation. The  
10 Legislature was quite specific in prohibiting counties from regulating “the transportation,  
11 possession, carrying, sale, transfer, purchase, acquisition, gift, devise, storage, licensing,  
12 registration, discharge or use of firearms or ammunition or any firearm or ammunition  
13 components or related accessories in this state.” A.R.S. § 13-3108(A). Exceptions are  
14 limited and precisely defined. *See id.*; A.R.S. § 13-3108(G).<sup>16</sup> Given that specificity, there  
15 is no room for doubt that the Ordinance is preempted.

16 The Legislature also made plain its determination to preempt the field of firearm  
17 regulation when it said:

18 It is the intent of the legislature to clarify existing law relating to the *state’s*  
19 *preemption of firearms regulation* in this state. *Firearms regulation is of*  
20 *statewide concern. Therefore, the legislature intends to limit the ability of any*  
21 *political subdivision in this state to regulate firearms and ammunition. This*  
22 *act applies to any ordinance enacted before or after the effective date of this*  
23 *act.*

24 2000 Ariz. Sess. Laws, ch. 376 § 4 (emphasis added). The title of A.R.S. § 13-3108—  
25 “*Firearms regulated by state; state preemption; injunction; civil penalty; cause of action;*

26 <sup>15</sup> That conclusion is more applicable here, because Pima County is not a home-rule  
27 jurisdiction like Tucson, and is therefore bound to follow state law *even on matters of*  
28 *purely local concern. See, e.g., id.* ¶ 56 (noting that “in only two areas have we upheld a  
municipal ordinance that directly conflicts with state law,” namely municipal elections  
and the disposition of city real estate).

<sup>16</sup> There are even additional preemptive restrictions *within the exception provision. See,*  
*e.g., A.R.S. § 13-3108(G)(2)–(4).*

1 violation; classification; definition.” (emphasis added)—also reflects a policy of  
2 preemption. *See* Ariz. AG Op. I13-010 at 7.

3 Additional statutes likewise demonstrate that the Legislature has created a  
4 comprehensive regulatory scheme for firearms,<sup>17</sup> deliberately excluding political  
5 subdivisions from the field of firearm-related regulations. *See, e.g.,* A.R.S. §§ 12-943, -  
6 945(B) (firearm destruction and disposal); *Id.* § 13-3107 (firearm discharge); *Id.* §§ 13-  
7 3109, -3111 (minors’ access to firearms); *Id.* § 13-3114 (local firearm manufacture); *Id.* §  
8 13-3118 (further preempting, with narrow exceptions, political subdivision regulations  
9 “relating to the possession, transfer or storage of firearms”). *Cf. id.* § 13-3120 (preemption  
10 scheme for knives). In fact, one of those statutes even prohibits the *state*—“*[e]xcept for*  
11 *the legislature*”—from enacting or implementing such regulations. *Id.* § 13-3118  
12 (emphasis added). That the Legislature even shut out *state* agencies from promulgating  
13 firearm-related regulations indicates that legislatively enacted firearms statutes constitute  
14 a comprehensive regulatory scheme—and are intended to do so. And that bars the County  
15 from interfering.

16 “The boards of supervisors of the various counties of the state have only such  
17 powers as have been expressly or by necessary implication, delegated to them by the state  
18 legislature.” *Associated Dairy Products*, 68 Ariz. at 395. The Ordinance cites the County’s  
19 general “duty to take action to preserve the health of the county and the health and safety  
20 of its inhabitants” as its authority, SOF, Ex. 13 at 1 ¶ 3 (citing A.R.S. §§ 36-183.02, 11-  
21 251(17)), but even here, state law is unambiguous that counties may only exercise that  
22 authority “*under such limitations and restrictions as are prescribed by law.*” A.R.S. § 11-  
23 251 (emphasis added). *See also City of Edmonds*, 481 P.3d at 598 ¶ 1 (ordinance  
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25 <sup>17</sup> The scope of the appropriated field may even extend beyond firearms and encompass  
26 all “[w]eapons and [e]xplosives” regulated in Chapter 31 of the Criminal Code. *See*  
27 A.R.S. §§ 13-3101–13-3122. In *Phoenix Respirator & Ambulance Serv.*, the court found  
28 that the regulation of emergency vehicles was “of no less statewide concern than the  
matters covered in other sections of [the] *same chapter* dealing with the operation of  
motor vehicles which were considered in *Clayton... or Keller ...*.” 12 Ariz. App. at 188  
(emphasis added). *See also Associated Dairy Products*, 68 Ariz. at. 397 (large statutory  
scheme appropriated field of production and processing of milk and milk products).

1 regarding firearm storage and access to firearms by minors, at-risk persons, and prohibited  
2 possessors preempted “regardless of its arguable benefits to public safety”). And the  
3 Supreme Court has said that “insofar as counties are concerned, the protection of public  
4 health is [also] a matter of *state-wide* concern.” *Associated Dairy Products*, 68 Ariz. at  
5 400 (emphasis added).

6 Thus, not only has the Legislature occupied the field of firearm regulation and  
7 prohibited local government from making laws in this area, it has also conferred no  
8 authority on the County to regulate in this area. The County thus has no lawful power to  
9 impose the Ordinance.

10 Moreover, the *Associated Dairy Products* court rejected a board of supervisors’  
11 claim of authority to regulate the production and processing of milk and milk products  
12 under a prior iteration of the very same statute cited by the County here. 68 Ariz. at 397–  
13 99 (citing A.C.A.1939 § 17-309). The court explained that broad statutory authorizations  
14 to “[a]dopt provisions for the preservation of the health of their respective counties as  
15 necessary,” and to “[m]ake and enforce all local, police, sanitary and other regulations not  
16 in conflict with general laws,” gave the County no “express authority” that would  
17 overcome the Legislature’s “complete coverage of the matter.” *Id.* at 397–98; *see also*  
18 *Next Level Arcade Tucson, LLC v. Pima County*, No. C20210057 (Pima Cnty. Super. Ct.  
19 Jan. 19, 2021) (enjoining Pima County curfew ordinance despite ongoing pandemic,  
20 because it was beyond the scope of the County’s authority under Section 11-251(17)).<sup>18</sup>

21 The Legislature has made clear that when it comes to firearms regulation, state  
22 statute preempts (with narrow, inapplicable exceptions) any local regulation. Indeed, the  
23 state “has so completely occupied the field that it [has] become[] the sole and exclusive  
24 law on the subject,’ leaving no room for the [County’s Ordinance] to supplement [the  
25 County’s] authority to act in this area.” *Jett*, 180 Ariz. at 121 (quoting *State v. Mercurio*,  
26 153 Ariz. 336, 340 (App. 1987)). The Ordinance and state law conflict and are incapable  
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28 <sup>18</sup> <https://www.goldwaterinstitute.org/wp-content/uploads/2022/02/C20210057-Under-Advisement-Ruling.pdf>.

1 of consistent coexistence. *See id.* (citation omitted). The Ordinance must therefore be  
2 enjoined.

3 **CONCLUSION**

4 This Court should grant Plaintiffs' Motion for Summary Judgment on all claims,  
5 declare that the Ordinance is preempted by Section 13-3108, declare that the Ordinance is  
6 field preempted, and enter a permanent injunction against the implementation or  
7 enforcement of the Ordinance.

8  
9 **RESPECTFULLY SUBMITTED** this 16th day of June 2024.

10  
11 **GOLDWATER INSTITUTE**

12 */s/ Parker Jackson*

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21 **CERTIFICATE OF SERVICE**

22 ORIGINAL E-FILED this 16th day of August 2024, with a copy delivered via the ECF system to:

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