

Jonathan Riches (025712)
Scott Day Freeman (019784)
Parker Jackson (037844)
**Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE**
500 E. Coronado Rd.
Phoenix, Arizona 85004
(602) 462-5000
litigation@goldwaterinstitute.org
Attorneys for Plaintiffs

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

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

Plaintiffs,

vs.

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

Defendants,

Case No. C2024-2478

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO
DISMISS**

(Oral Argument Requested)

(Assigned to the Hon. Greg Sakall)

Plaintiffs Arizona Citizens Defense League (“AzCDL”) and Chris King each have standing to challenge Pima County’s unlawful reporting Ordinance. Arizona’s firearm preemption statute expressly confers standing on *any* “person or an organization whose membership is adversely affected by any ordinance ... that is in violation of [the statute].” A.R.S. § 13-3108(K). Plaintiffs are each adversely affected by the illegal Ordinance because it imposes a new legal duty on firearm owners, whose rights fall within the zone of interests the legislature sought to protect in the preemption statute.

Indeed, even in the absence of the express standing provision in Section 13-3108(K), Plaintiffs would have standing under ordinary standing rules, because the new

1 legal duty imposed on them by the Ordinance constitutes an injury in fact, implicates
2 Plaintiffs’ constitutional rights, and is a direct assertion over them of a regulatory
3 authority that state law prohibits.

4 In any event, standing is a prudential doctrine in Arizona, not a constitutional
5 prerequisite. The County may not evade judicial review of its Ordinance through non-
6 enforcement or selective enforcement, or through cramped views of standing and ripeness.
7 An actual controversy exists between the parties as to the legality of the Ordinance, and
8 Plaintiffs are entitled to declaratory and injunctive relief. The Complaint adequately
9 pleads valid, ripe preemption claims upon which such relief may be granted.

10 BACKGROUND

11 Arizona law broadly preempts local governments from enacting firearm-related
12 ordinances, including those with penalties greater than those imposed by state law. A.R.S.
13 § 13-3108(A), (D). “In no uncertain terms, the Arizona Legislature has declared that
14 ‘[f]irearms regulation is of statewide concern’ and has expressed its intent to preempt
15 ‘firearms regulation in this state’ and thereby ‘limit the ability of any political subdivision
16 of this state to regulate firearms.’” *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588,
17 598 ¶ 37 (2017) (quoting 2000 Ariz. Sess. Laws, ch. 376, § 4 (2d Reg. Sess.)).

18 The Pima County Board of Supervisors was well aware of this restriction on its
19 authority when it enacted Pima County Ordinance 2024-2. Pima County officials
20 previously failed to get the preemption statute repealed, so they sought a “loop hole [sic]”
21 that would allow them to issue firearm-related regulations that might “surviv[e] a court
22 challenge.” Compl. ¶ 27. Although the preemption statute expressly covers ordinances
23 “relating to the ... possession, ... sale, transfer, purchase, acquisition ... storage ...
24 registration ... or use of firearms,” A.R.S. § 13-3108(A), the County aimed its Ordinance
25 at “the sale or transfer of firearms to prohibited possessors ... from straw purchasers who
26 buy firearms on their behalf with the intent of selling them illegally.” Compl. Ex. 13 at 1–
27 2 ¶¶ 4–7. Similarly, although the statute prohibits local firearm ordinances that impose
28 penalties “greater than any state law penalt[ies],” A.R.S. § 13-3108(D), the Ordinance’s

1 fines of up to \$1,000 are greater than any state law penalties for failing to report the loss
2 or theft of a firearm to law enforcement—because there are no such penalties in the state’s
3 firearm statutes.

4 The County now seeks to avoid judicial scrutiny for enacting an ordinance that is
5 plainly preempted by state law by contending that Plaintiffs lack standing and that this
6 case is not ripe. Both arguments easily fail.

7 LEGAL STANDARD

8 Rule 12(b)(6) motions to dismiss are disfavored. *Luchanski v. Congrove*, 193 Ariz.
9 176, 179 ¶ 17 (App. 1998). They may be granted “*only* if ‘as a matter of law [] plaintiffs
10 would not be entitled to relief under *any* interpretation of the facts susceptible of proof.’”
11 *Coleman v. City of Mesa*, 230 Ariz. 352, 356 ¶ 8 (2012) (citation omitted; emphasis
12 added). “In determining if a complaint states a claim on which relief can be granted,
13 courts *must* assume the truth of all well-pleaded factual allegations and indulge *all*
14 reasonable inferences from those facts,” relying on the complaint and any “exhibits” or
15 “public records” referenced in the complaint. *Id.* at ¶ 9 (emphasis added).

16 ARGUMENT

17 Plaintiffs have statutory standing, easily satisfy the traditional standing test, and in
18 any event, this Court should decide the case as a prudential matter.

19 I. Plaintiffs have standing.

20 A. The statute expressly grants Plaintiffs standing.

21 Section 13-3108(K) is broad. It says that “[a] person or an organization”—that is,
22 *any* person or organization—“whose membership is adversely affected by any ordinance
23 ... in violation of this section *may file a civil action for declaratory and injunctive relief*
24 ... in any court of this state having jurisdiction over any defendant in the action.”
25 (Emphasis added).

26 This wording is truly unambiguous. Yet the County argues that Section 13-3108(K)
27 “does not grant the Plaintiff standing but instead only defines the remedies available to a
28 party with standing who goes on to prevail in the action.” Defendants’ Motion to Dismiss

1 (“MTD”) at 4–5 (emphasis removed). The County appears to think that the statutory
2 language is deficient because it does not contain the word “standing.” *See id.* at 5. But the
3 law does not usually require the use of magic words, least of all in the realm of standing.
4 *HB Fam. Ltd. P’ship v. Teton Cnty. Bd. of Cnty. Comm’rs*, 468 P.3d 1081, 1090 n.8
5 (Wyo. 2020) (“[t]here are no magic words which must be pled to establish standing”
6 (citation omitted)). And in any event, the language of Section 13-3108(K) is plain enough:
7 “a person” or “an organization whose membership is adversely affected by any ordinance
8 ... *may file a civil action for declaratory and injunctive relief* ... against the political
9 subdivision.” (Emphasis added). Plaintiff King is “a person” adversely affected by the
10 Ordinance, and Plaintiff AzCDL is “an organization whose membership is adversely
11 affected” by the Ordinance. They brought this case for declaratory and injunctive relief
12 against the County, a political subdivision. They have statutory standing. It’s as simple as
13 that.

14 In *Welch v. Cochise County Board of Supervisors*, 251 Ariz. 519 (2021), the
15 Supreme Court interpreted similar standing provisions in the state’s open meetings¹ and
16 conflict-of-interest² statutes. *Id.* at 523 ¶ 13. It stated that both “similarly worded
17 enforcement provisions ... *confer standing*.” *Id.* (emphasis added). And in *Home Builders*
18 *Association of Central Arizona v. Kard*, 219 Ariz. 374, 380 ¶ 25 (App. 2008), the Court of
19 Appeals said that statutory language authorizing declaratory action by “[a]ny person who
20 is or may be affected by” certain county rules or ordinances to sue was sufficient to grant
21 standing. Both statutes examined in *Welch*, and the law at issue in *Kard* identify persons
22 who may sue and expressly authorize the commencement of suits, even though none of
23 these statutes use the magic words “shall have legal standing” or “has standing.” *See*
24 MTD at 5 (citations omitted).

25
26 ¹ “Any person affected by an alleged violation of this article ... may commence a suit ...
27 for the purpose of requiring compliance with, or the prevention of violations of, this
28 article ... or to determine the applicability of this article to matters or legal actions of the
public body.” A.R.S. § 38-431.07(A)

² “Any person affected by a decision of a public agency may commence a civil suit ... for
the purpose of enforcing the civil provisions of this article.” A.R.S. § 38-506(B).

1 To argue that the language of Section 13-3108(K), which identifies who may sue—
2 “[a] person or an organization whose membership is adversely affected by any ordinance
3 ... that is in violation of this section”—and expressly authorizes that such a person or
4 organization “*may file a civil action* for declaratory and injunctive relief” (emphasis
5 added)—somehow “does not grant ... standing” is nonsensical. MTD at 4–5. Section 13-
6 3108(K) creates a private right of action for affected parties to enforce the legislature’s
7 preemption of firearm-related ordinances.

8 Both Plaintiffs are adversely affected by the Ordinance. The *Welch* case interpreted
9 the phrase “[a]ny person affected by” in the two relevant statutes at issue in that case. 251
10 Ariz. at 523 ¶ 13. The Supreme Court construed the use of that phrase uniformly under
11 each statute. *Id.*; *see also id.* at n. 3. First, “person” means “[a] human being,” which “[n]o
12 doubt” included the plaintiff in *Welch*, like Plaintiff King here. *Id.* at 524 ¶ 14 (internal
13 marks & citation omitted); *see also* A.R.S. § 13-105(30); Compl. Ex. 13 at 3 (adopting the
14 statutory definition of “person”). Plaintiff King has standing as “a person.”

15 As to “affected by,” the *Welch* court adopted a “zone of interests” test to determine
16 whether a plaintiff was “affected by” an ordinance or decision. It explained: “Given the
17 statute’s remedial purpose, we read its enforcement provision broadly—specifically, we
18 ask[] ‘whether the interest sought to be protected by the complainant is arguably within
19 the zone of interests to be protected or regulated by the statute.’” 251 Ariz. at 526 ¶ 23
20 (quoting *City of Scottsdale v. McDowell Mountain Irrigation & Drainage Dist.*, 107 Ariz.
21 117, 121 (1971)). *Scenic Arizona v. City of Phoenix Bd. of Adjustment*, 228 Ariz. 419
22 (App. 2011), applied the same “zone of interests” test to a statute granting standing to a
23 “person aggrieved”—defined as a person “having legal rights that are *adversely affected*,”
24 *id.* at 423 ¶ 9 n.8 (emphasis added)—and concluded that “the legislature intended to
25 permit much broader standing in this context than in other proceedings,” *id.* ¶ 9.

26 For purposes of public accountability laws, *Welch* found that a claimant’s status as
27 a county resident and Board constituent were sufficient to establish standing because
28 resident/constituent interests in transparency and accountability were implicated by the

1 Board’s open meetings violation and self-dealing. 251 Ariz. at 527 ¶ 26 (“Our
2 interpretation’s recognition of a large class of claimants ... does not cause us to question
3 its soundness. ... *The law’s remedial purpose favors a more inclusive reading.*” (emphasis
4 added)). The court rejected the idea that the plaintiff’s alleged injuries were speculative
5 because he sought “to vindicate his own statutorily protected interest in the Board’s
6 deliberative transparency,” *id.* at 528 ¶ 31, as well as his “statutorily protected interest in
7 preventing self-dealing,” *id.* at ¶ 33. Instead, the Court found that both statutes
8 “embodie[d] a prophylactic policy of transparency and accountability.” *Id.* ¶ 32.

9 Here, like in *Welch*, the statute is remedial in nature. In Section 13-3108(K), the
10 Legislature provided a mechanism to remedy violations of the preemption statute to
11 private citizens, like Plaintiff King, and to organizations, like AzCDL. Plaintiff King is a
12 resident of Pima County. Compl. ¶ 5. That alone is enough under *Welch* to show that he is
13 “affected by” the Pima County Board of Supervisors’ actions. County residents have an
14 interest in holding their elected officials accountable for violating state law and for
15 exceeding the scope of their delegated power. *See* Ariz. Const. art. II § 2 (“All political
16 power is inherent in the people, and governments derive their just powers from the
17 consent of the governed, and are established to protect and maintain individual rights.”).
18 This is particularly true of county governments, which as “a settled principle of law ...
19 only [have] such legislative powers as have been expressly, or by necessary implication,
20 delegated to them by constitution or by the legislature ... powers [which] will be strictly
21 construed.” *Vangilder v. Arizona Dep’t of Revenue*, 252 Ariz. 481, 488 ¶ 24 (2022).

22 Further, Plaintiffs have an interest—at least sufficient to withstand a motion to
23 dismiss—in their rights to keep and bear arms,³ to not be compelled to speak,⁴ and to not
24 be disturbed in their private affairs.⁵ If Plaintiffs’ interests are adversely affected by the
25 Ordinance as the Complaint alleges⁶—and this Court must take such allegations as true
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27 ³ U.S. Const. amend II; Ariz. Const. art. II § 26.

28 ⁴ U.S. Const. amend I; Ariz. Const. art. II § 6.

⁵ Ariz. Const. art. II § 8.

⁶ *See* Compl. ¶¶ 4, 5, 42–44, 66, 71–73. *Cf.* Compl. Ex. 4.

1 for purposes of this motion, *Ulan v. Lucas*, 18 Ariz. App. 129, 130 (1972)—then these all
2 fit within the zone of interests protected by the preemption statute, and that is all that is
3 necessary to withstand the motion.⁷

4 Plaintiff King is also a firearm owner. Compl. ¶ 5. Firearm owners have an interest
5 in uniform and predictable firearms laws, an interest the preemption ordinance directly
6 addresses. *See McMann v. City of Tucson*, 202 Ariz. 468, 473 ¶ 13 (App. 2002) (“In
7 [enacting broad preemptive language], the legislature’s primary concern, according to the
8 only legislative history of which we are aware, was to *ensure that conduct legal in one*
9 *municipality is not illegal in another* and that citizens have access to firearms for
10 protection ...”). Multiple inconsistent local regulations of guns—creating a patchwork of
11 legislation between political subdivisions—would severely burden the rights of gun
12 owners by making it difficult, if not impossible, to know what firearm-related regulations
13 apply each time they cross jurisdictional boundaries. The preemption statute was designed
14 to prevent such confusion and overregulation. *See Welch*, 251 Ariz. at 528 ¶ 32 (noting
15 “prophylactic policy” of statutes at issue). The interests of firearm owners are therefore
16 within the zone of interests protected by the statute.

17 Indeed, Plaintiff King’s interests are even stronger than other firearm owners
18 because he is a concealed carry permit holder, an NRA-certified firearms instructor, and a
19 U.S. Air Force veteran. *See* Compl. ¶ 5. In *City of Harrisburg*, 218 A.3d at 506, 508, the
20 court found that individual plaintiffs had standing to challenge a remarkably similar
21 “Lost/Stolen [Firearms] Ordinance” where they “each own, possess, use, and bear
22 firearms for purposes of self-defense, hunting, firearms training and education, and target
23 shooting,” and were “licensed to carry concealed firearms.” The court concluded that the
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25 ⁷ The Ordinance even implicates the interests of certain nonresidents on whom the duty to
26 report is imposed. *See* Compl. Ex. 13 at 3 (duty to report applies to any “person” as
27 defined in A.R.S. § 13-105); *Firearm Owners Against Crime v. City of Harrisburg*, 218
28 A.3d 497, 506 (Pa. Cmwlth. 2019), *aff’d sub nom. Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467 (2021) (finding standing to challenge similar ordinance for two nonresidents who were licensed to carry concealed firearms, one of whom commuted daily to the jurisdiction for work and the other of whom regularly traveled “on an average bi-weekly basis” to the jurisdiction for political activities).

1 plaintiffs’ “interest in the legality of [the reporting ordinance] ... surpasses the common
2 interest of all citizens.” *Id.*

3 Plaintiff King is a member of AzCDL, Compl. ¶ 5, so if Plaintiff King has
4 standing, then AzCDL has organizational standing under the statute. *See* A.R.S. § 13-
5 3108(K).

6 AzCDL’s membership is also “affected by” the Ordinance in several other ways.
7 As Arizona’s leading gun rights advocacy organization, AzCDL advocates for statewide
8 preemption of firearm regulations. *See* Compl. ¶ 4. It has actively opposed efforts by the
9 Pima County Board of Supervisors to undermine state firearms preemption. Compl. ¶ 18;
10 Compl. Ex. 4. As an organization, AzCDL therefore has an interest in the enforcement of
11 the preemption statute.

12 The Ordinance imposes new legal duties on Plaintiffs that do not exist in state law.
13 Noncompliance with those duties results in fines of up to \$1,000 per violation. The
14 Ordinance also burdens Plaintiffs’ constitutional rights to keep and bear arms, in addition
15 to their statutory rights to possess, sell, transfer, purchase, acquire, give, devise, store, or
16 otherwise use their firearms, free from local firearm-related penalties that exceed those
17 found in state law. *See City of Harrisburg*, 218 A.3d at 506 (citing “chilling effect” on
18 plaintiffs’ “rights to engage in constitutionally protected activities with respect to
19 firearms” as a reason supporting standing to challenge a “Lost/Stolen Ordinance”). Lastly,
20 the introduction of new local firearm-related regulations destroys the uniformity and
21 predictability of firearm laws established by the preemption statute, undermining the
22 express purpose of the preemption law. These are all the kinds of “effects” that give rise
23 to standing under Section 13-3108(K).

24 **B. Plaintiffs have traditional standing even in the absence of the statutory**
25 **grant.**

26 Even without Section 13-3108(K), Plaintiffs would have standing because they
27 meet traditional standing requirements “to plead and prove palpable injury personal to
28 themselves ... fairly traceable to the defendant’s allegedly unlawful conduct and likely to

1 be redressed by the requested relief.” *Bennett v. Napolitano*, 206 Ariz. 520, 524, 525 ¶¶
2 16, 18 (2003) (citations omitted).

3 “No injury is more palpable or direct than infringement of a constitutional right.”
4 *Fay v. Fox*, 251 Ariz. 537, 541 ¶ 22 (2021). Additionally, the Supreme Court has held that
5 even “indirect assertion of regulatory authority” leading to conflicting claims regarding
6 statutory and constitutional authority of public officials “is sufficient injury to provide
7 standing.” *City of Surprise v. Arizona Corp. Comm’n*, 246 Ariz. 206, 210 ¶ 9 (2019).

8 Here, Plaintiffs’ constitutional rights are infringed by the Ordinance, *see supra* at 6;
9 Compl. ¶ 42, and the County’s unlawful assertion of regulatory authority over Plaintiffs is
10 sufficient to confer standing. *City of Surprise*, 246 Ariz. at 210 ¶ 9.⁸

11 Additionally, the Ordinance imposes a new legal duty on Plaintiffs, with significant
12 fines for noncompliance. This constitutes an injury in fact that is directly traceable to the
13 Board’s enactment of the Ordinance and which can only be redressed by declaratory and
14 injunctive relief. It is not “a hypothetical scenario,” MTD at 6, or speculative in any way.
15 In *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269 (2019), the Supreme Court
16 found that the business owner plaintiff had standing to challenge the constitutionality of a
17 city ordinance under which the business faced potential punishment for violation. *See id.*
18 at 280–81 ¶¶ 39–40. Notably, there was no actual prosecution threatened in that case.⁹ Yet
19 the court held that the fact that the Ordinance imposed a “threat of criminal prosecution
20 and significant penalties” was alone sufficient to confer standing. *Id.* at 280 ¶ 40.

21 Similarly, in *City of Harrisburg*, the court found that a nearly identical ordinance
22 “requir[ing] firearms owners to report lost or stolen firearms to law enforcement within 48
23 hours after discovery of the loss or theft ... *imposes an obligation* on the [i]ndividual
24 [p]laintiffs, as lawful gun owners who live in, work in, or regularly visit the City,” such
25 that the plaintiffs had “an interest in the legality of the Lost/Stolen Ordinance that
26

27 ⁸ In addition to *statutory* organizational standing, Plaintiff AzCDL also qualifies for
28 *traditional* organizational standing because at least some of its members have “standing to
sue in their own right.” *Scenic Arizona*, 228 Ariz. at 422 ¶ 7 (citation omitted).

⁹ *See Brush & Nib Studio, LC v. City of Phoenix*, 244 Ariz. 59, 68–69 ¶ 16 (App. 2018).

1 surpasses the common interest of all citizens” because they fell “within the class of
2 individuals on whom the ordinance imposes a duty to report.” 218 A.3d at 502, 509. The
3 court found that the gun owners’ interest was “direct” and “immediate” because there was
4 “a causal connection between the [i]ndividual [p]laintiffs’ possession and use of firearms
5 and the City’s decision to impose an affirmative reporting obligation on those who chose
6 to do so should they lose their firearm or have their firearm stolen,” and because even
7 though “the reporting obligation is triggered only in the event a firearm is lost or stolen,
8 *the reporting obligation nonetheless exists now.*” *Id.* at 509 (emphasis added). The court
9 concluded that the harm suffered by the plaintiffs was therefore “not speculative ... [or]
10 remote”; rather, the plaintiffs were “presently adversely affected” by the ordinance, and
11 consequently were the “proper plaintiffs to challenge the legality of that ordinance.” *Id.*
12 The same is true here, such that Plaintiffs both qualify under traditional standing
13 doctrines.

14 The fact that Plaintiffs seek declaratory relief also supports a finding of standing.
15 *Cf. id.* at 505. In addition to the preemption statute, Plaintiffs also invoke Arizona’s
16 declaratory judgment statute, A.R.S. § 12-1831 et seq., *see* Compl. ¶ 67, whose standing
17 requirement is broader than that in federal court because “actual injury is not required.”
18 *Arizona Creditors Bar Ass’n, Inc. v. State*, 549 P.3d 205, 209 ¶ 12 (Ariz. App. 2024).
19 Rather, “standing for a declaratory judgment still exists if ‘an actual controversy exists
20 between the parties.’” *Id.* (citation omitted).

21 When a party’s “rights, status or other legal relations are affected by a statute,”
22 A.R.S. § 12-1832, then “standing is suggested by Arizona’s declaratory judgment statute,”
23 *City of Surprise*, 246 Ariz. at 209 ¶ 9. That is because the declaratory judgment statute,
24 like Section 13-3108(K), is remedial in nature. “[I]ts purpose is to settle and to afford
25 relief from uncertainty and insecurity with respect to rights, status and other legal
26 relations; and is to be liberally construed and administered.” A.R.S. § 12-1842. *See also*
27 *City of Tucson v. Consumers for Retail Choice Sponsored By Wal-Mart*, 197 Ariz. 600,
28 601–02 ¶ 1 (App. 2000) (noting consolidation of dueling cases filed by municipality and

1 by an advocacy group, each seeking declarations regarding the validity, constitutionality,
2 and/or preemption of local referendum ordinances). The Arizona Supreme Court has
3 described declaratory judgment actions as “the simplest and the best way” of resolving
4 conflicting claims regarding the authority of public officials. *City of Surprise*, 246 Ariz. at
5 209 ¶ 9 (quoting *Merrill v. Phelps*, 52 Ariz. 526, 529 (1938)). This is particularly true
6 where a widespread lack of standing would leave parties with “no means of redress.”
7 *Dobson v. State ex rel. Comm’n on Appellate Ct. Appointments*, 233 Ariz. 119, 122 ¶ 11
8 (2013).

9 Further, the Court of Appeals has elaborated that an actual justiciable controversy
10 exists when there is “an assertion in the complaint of a legal ... right in which the
11 [plaintiff] has a definite interest and an assertion of the denial of it by the other party.”
12 *Morris v. Fleming*, 128 Ariz. 271, 273 (App. 1980). “The mere ... denial of a right, [or]
13 the assertion of an unfounded claim ... may constitute the operative facts entitling a party
14 to declaratory relief.” *Arizona State Bd. of Dirs. for Jr. Colleges v. Phoenix Union High*
15 *School Dist.*, 102 Ariz. 69, 73 (1967) (citation omitted).

16 The Complaint easily satisfies these standards. It asserts that Plaintiffs’ legal rights
17 to keep and bear arms, as well as the corollary rights protected by the preemption statute,
18 are infringed by the Ordinance. Compl. ¶¶ 4–5, 41–44. It also outlines the new legal
19 obligations imposed by the Ordinance on Plaintiffs and the associated penalties. *Id.* ¶¶ 1,
20 4–5, 47, 54–55, 66, 71–73. That is all that is required for standing purposes.

21 **C. This Court should hear this case as a prudential matter.**

22 Even if Plaintiffs lacked statutory and common law standing to challenge the
23 Ordinance’s legality, this Court should hear this case as a prudential matter. It is well
24 established that Arizona’s constitution does not have a “case or controversy” requirement,
25 and “standing is not jurisdictional, but instead is a prudential doctrine.” *Dobson*, 233 Ariz.
26 at 122 ¶ 9. Arizona courts apply “more relaxed” requirements in suits between private
27 parties and government entities, particularly where public officials’ compliance with the
28 law is at issue. *Arizona Pub. Integrity Alliance v. Fontes*, 250 Ariz. 58, 62 ¶ 11 (2020).

1 The County improperly characterizes *Fontes* as *holding* that organizational
2 plaintiffs must have “suffered a distinct and palpable injury” to sue. MTD at 4. *Fontes*
3 specifically *rejected* this argument (distinguishing *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16
4 (1998)), and found that the statutory phrase “party beneficially interested” should be
5 “applied liberally to promote the ends of justice” because it “reflects the Legislature’s
6 desire to broadly afford standing to members of the public to bring lawsuits to compel
7 officials to perform their public duties.” 250 Ariz. at 62 ¶ 11 (cleaned up). In any event,
8 the law virtually never requires a person to “await the consummation of threatened injury
9 to obtain preventive relief.” *Addington v. U.S. Airline Pilots Ass’n*, 606 F.3d 1174, 1179
10 (9th Cir. 2010) (citation omitted).

11 The preemption statute reflects the other side of the coin, namely the Legislature’s
12 desire to broadly confer standing on members of the public—and adversely affected
13 organizations—to bring lawsuits to stop officials from violating the law. *See* A.R.S. § 13-
14 3108(K). Just like *Fontes*, this case seeks to ensure that public officials follow the law.

15 The County contends that “the Ordinance has not been enforced against any person
16 or organization” such that no one has been fined—yet—under the Ordinance. MTD at 3.
17 But that is exactly the argument the court rejected in *Brush & Nib Studio*, 247 Ariz. at 278
18 ¶ 23, 280 ¶ 39, when it said the plaintiffs had standing even though they had not violated
19 the ordinance and were not threatened with enforcement. Here, the only reason
20 enforcement has not occurred is because the County stipulated to stay enforcement of the
21 Ordinance while dispositive motions are pending in this case. So, of course, there have
22 been no enforcement actions. Stipulation at 2; *see also* Order Regarding Stay at 1. The
23 Ordinance was operative¹⁰ at the time the Complaint was filed, Stip. at 1–2, and it will
24 become operative again upon resolution of “the initial dispositive motions in this case.”
25 Order at 1. The County cannot bootstrap its temporary stipulation into a dismissal based
26

27 ¹⁰ The Ordinance adversely affected Plaintiffs as soon as it took effect because it imposed
28 a new legal duty on firearm owners, and that duty, along with the attendant penalties for
noncompliance, will again adversely affect Plaintiffs should the Ordinance become
operative again at any point during this litigation.

1 on non-enforcement, or avoid judicial scrutiny of its unlawful Ordinance by
2 gamesmanship. *See McMann*, 202 Ariz. at 475 ¶ 22 (“[W]e hesitate to encourage the City
3 to attempt to avoid judicial review of its actions.”).

4 What’s more, Plaintiffs do not have to wait for the Ordinance to be enforced
5 against them before bringing suit. In resolving a similar question of standing in a case
6 brought by gun owners against a municipality over a preempted firearm ordinance, the
7 Commonwealth Court of Pennsylvania found it “disconcerting” that the government
8 would attempt, “by deliberately failing to enforce the Ordinance” to “essentially
9 determine who may challenge the Ordinance and when.” *Firearm Owners Against Crime*
10 *v. Lower Merion Twshp.*, 151 A.3d 1172, 1180 n.10 (Pa. Cmwlth. 2016). The question of
11 standing, the court said, was “within the purview of the courts and should be determined
12 by the relevant facts and constitutional considerations,” not by the town’s “arbitrar[y]
13 enforce[ment]” choices. *Id.*

14 Finally, this case presents “issues of great public importance that are likely to
15 recur,” which warrants judicial resolution. *Bennett*, 206 Ariz. at 527 ¶ 31. In *City of*
16 *Edmonds v. Bass*, 481 P.3d 596, 600 ¶ 13 (Wash. App. 2021), the court allowed gun
17 owners to bring an action for declaratory and injunctive relief against an ordinance
18 regulating firearm storage and firearm access by prohibited possessors because “whether
19 that provision is preempted by state law is an issue of public importance sufficient to
20 confer standing.” *Id.* Likewise here, this case involves pressing constitutional and public
21 policy questions regarding when and how local governments can interfere with the
22 constitutional and statutory protections for the rights of firearm ownership. *See, e.g.,* Ariz.
23 Atty. Gen. Op. I13-010; *Brnovich*, 242 Ariz. at 604 ¶ 65 (finding local ordinance
24 regarding firearm destruction preempted); AG Investigative Report No. 23-003 (Sept. 20,
25 2023) (finding local ordinance transferring unclaimed firearms to Ukraine preempted).¹¹ If
26 the legality of the Ordinance is not resolved now, it is likely to recur in future actions, and
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28 ¹¹ <https://www.azag.gov/sites/default/files/docs/complaints/sb1487/23-003/Investigative%20Report%20No.%2023-003.pdf>.

perhaps in other municipalities and counties throughout the state.¹² See *City of Edmonds*, 481 P.3d at 600–01 ¶¶ 18, 20 (noting that “Edmonds [was] not the only municipality to enact [similar] regulations” as a reason “the public would benefit greatly by a decision on the validity” of the ordinance). In short, “whether a [political subdivision] has the authority to enact gun regulations *affects every gun owner and every [subdivision of] the state.*” *Id.* ¶ 18 (emphasis added).

Although Plaintiffs have statutory and traditional standing, this Court should also hear and resolve the critical issues of statewide concern presenting in this case as a prudential matter.

II. Plaintiffs’ claims are ripe.

Plaintiffs’ claims are also ripe. The County’s ripeness arguments overlap with its standing arguments, and because Plaintiffs have been injured for standing purposes, their case is also ripe. *Town of Gilbert v. Maricopa Cnty.*, 213 Ariz. 241, 244 (App. 2006) (“Ripeness is analogous to standing.”). As the Supreme Court has made clear, “if the plaintiff has incurred an injury, the case is ripe.” *Brush & Nib Studio*, 247 Ariz. at 280 ¶ 36. As set out above, Plaintiffs were injured when the County enacted the Ordinance and imposed upon them a new legal duty that had not previously existed and that is expressly preempted by state law. That injury is still ongoing (notwithstanding the temporary stipulation of non-enforcement).

Waiting for the County to enforce the Ordinance against Plaintiffs, or any other party, “makes little sense” because “we presume [plaintiffs] do not want to [break the law] before they can challenge it[, and] ... it ... makes little sense to force law-abiding citizens to rely on law breakers to advocate their interests.” *City of Harrisburg*, 218 A.3d at 513; see also *Mills v. Arizona Bd. of Tech. Registration*, 253 Ariz. 415, 424–25 ¶ 30 (2022)

¹² In addition to the growing number of firearm preemption issues in Arizona, analogous firearm loss or theft reporting ordinances are being enacted and challenged across the country with increasing frequency. See, e.g., *Clarke v. House of Representatives*, 957 A.2d 361, 362 (Pa. Cmwlth. 2008); *Ohioans for Concealed Carry, Inc. v. City of Cleveland*, 90 N.E.3d 80, 88 ¶ 29 (Ohio App. 2017); *City of Harrisburg*, 218 A.3d at 509 (2019); *City of Phila. v. Armstrong*, 271 A.3d 555, 557 (Pa. Cmwlth. 2022).

(plaintiffs not required to await prosecution before bringing declaratory judgment complaints); *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308 (1972) (“Where a statute clearly and immediately affects the property rights of the citizen, he has an immediate and present controversy with reference to the validity of such a statute, *without further subjecting himself to a criminal prosecution or other severe penalties provided by the statute.*” (emphasis in original, citation omitted)). “Pre-enforcement review of [the ordinance] is, therefore, appropriate, and [plaintiffs] are exactly who we would expect to bring such a challenge.” *City of Harrisburg*, 218 A.3d at 514. The same is true here. Plaintiffs should not be required to break the law before they can challenge the Ordinance’s legality.

Lastly, Plaintiffs claims are also ripe because they present issues fit for judicial decision, no additional factual development is required, and Plaintiffs (and the public) would face hardship if the court withholds its consideration and the Ordinance were fully implemented. *See, e.g., Phelps Dodge Corp. v. Arizona Elec. Power Co-op. Inc.*, 207 Ariz. 95, 118 ¶ 94 (App. 2004) (“The courts determine ripeness by evaluating both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” (emphasis added)); Stip. at 2 ¶ 3 (“The parties agree this case raises questions of law that can likely be resolved on dispositive motions.”); *Alim v. City of Seattle*, 474 P.3d 589, 598–99 (Wash. App. 2020) (finding gun owners’ and gun organizations’ preemption challenge to firearm storage ordinance ripe for the same reasons).

CONCLUSION

The Court should deny Defendants' Motion to Dismiss.

RESPECTFULLY SUBMITTED this 16th day of August 2024.

GOLDWATER INSTITUTE

/s/ Parker Jackson

Jonathan Riches (025712)
Scott Day Freeman (019784)
Parker Jackson (037844)
Scharf-Norton Center for
Constitutional Litigation at the
GOLDWATER INSTITUTE
500 E. Coronado Rd.
Phoenix, Arizona 85004

CERTIFICATE OF SERVICE

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

Samuel Emiliano Brown
Jonathan Pinkney
PIMA COUNTY ATTORNEY'S OFFICE
Sam.brown@pcao.pima.gov
Jonathan.pinkney@pcao.pima.gov
Stefanie.gillie@pcao.pima.gov
Victoria.chavarria@pcao.pima.gov

Diego Rodriguez
RODRIGUEZ LAW OFFICE PLLC
330 N. 2nd Ave.
Phoenix, AZ 85003
diego@rlopllc.com

/s/ Kris Schlott
Kris Schlott, Paralegal