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7 Attorney for Defendants

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

10 ARIZONA CITIZENS DEFENSE)
11 LEAGUE, INC, an Arizona nonprofit)
12 Corporation; and CHRISTOPER M. KING)

CASE NO. C20242478

13 Plaintiffs,

14 vs.

Motion to Dismiss
(Rule 12(b)(6))

15 PIMA COUNTY, a political subdivision)
16 of the State of Arizona: REX SCOTT,)
17 MATT HEINZ, SYLVIA M. LEE, STEVE)
18 CHRISTY, and ADELITA S. GRIJALVA)
19 in their official capacities as members of)
20 and constituting the Pima County Board of)
21 Supervisors,)

22 Defendants,

23 Pima County, a political subdivision of the State of Arizona, and Rex Scott, Matt Heinz,
24 Sylvia M. Lee, Steve Christy, and Adelita Grijalva, in their official capacities as members of and
25 constituting the Pima County Board of Supervisors, by and through their undersigned counsel,
26 hereby move this Court to dismiss the above case for lack of standing. Plaintiffs have failed to
27 state a claim upon which relief may be granted pursuant to Rule 12(b)(6), Ariz. R. Civ. P.
28 Specifically, they do not have standing to initiate this litigation as they have not alleged actual
harm caused by the Defendants' conduct, nor have they alleged the existence of an actual

1 controversy between the parties.

2 MEMORADUM OF POINTS AND AUTHORITIES

3 INTRODUCTION:

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5 The Pima County ordinance at issue is intended “to protect the inhabitants of Pima
6 County by aiding local law enforcement and the County Attorney in the enforcement of A.R.S. §
7 13-3102(A)(5) and preventing the commission of crimes using firearms obtained in violation of
8 that statute.” Pima County Code Section 9.85.010, Declaration of Policy.
9

10 FACTS:

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12 On March 5, 2024, the Pima County Board of Supervisors, *hereinafter* “PCBOS” passed
13 Ordinance 2024-2, including the following “Declaration of policy”
14

15 *The purpose of this chapter is to protect the inhabitants of Pima County by aiding*
16 *local law enforcement and the County Attorney in the enforcement of A.R.S. § 13-*
17 *3102(A)(5) and preventing the commission of crimes using firearms obtained in*
18 *violation of that statute. This chapter in no way affects the possession, transfer, or*
19 *storage of firearms because this chapter does not provide means by which firearm*
20 *possession could be revoked or transferred, nor does it seek to regulate the*
21 *storage of firearms.*

22 On March 13, 2024, Plaintiffs’ counsel sent a demand letter to the PCBOS seeking the
23 repeal of the Ordinance no later than April 2, 2024.
24

25 On April 26, 2024, the Arizona Citizens Defense League, and Christopher M. King,
26 *hereinafter* “Plaintiffs”, filed a complaint with this Court seeking declaratory and injunctive
27 relief against Pima County and the members of the Pima County Board of Supervisors. Plaintiffs
28 contend that Pima County Ordinance 2024-2, *hereinafter* “Ordinance”, unlawfully regulates
firearms in Pima County because it is both preempted and prohibited by A.R.S. § 13-
3108(A),(D).

1 On June 5, 2024, the PCBOS took official action to delay the effective date of the
2 Ordinance to allow time for the parties to meet, confer and draft a stipulated briefing schedule.
3 To date, the Ordinance has not been enforced against any person or organization. The Complaint
4 does not assert that anyone has been fined by Pima County under the ordinance.
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6 On June 6, 2024, after having met and conferred about the complaint, ordinance
7 and anticipated motions from both sides, the parties submitted a stipulated briefing schedule to
8 the Court for approval.
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10 According to ¶ 4 of the complaint, Plaintiff Arizona Citizens Defense League is an
11 Arizona nonprofit grassroots advocacy organization based in Pima County, “dedicated to
12 defending the right of self-defense and the rights to keep and bear arms as protected by the U.S.
13 and Arizona constitutions.” While this paragraph claims, without support, that the Ordinance
14 “adversely affects members of AzCDL...” it provides no other information beyond this
15 conclusory statement.
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17 Likewise, in ¶ 5 of the complaint, Plaintiff Christopher M. King is described as “..a
18 firearm owner and taxpayer residing in Pima County.” Again, this paragraph makes the same
19 unsupported and conclusory claim that “Mr. King’s rights...are adversely affected by the
20 Ordinance.”
21

22 The Plaintiffs’ complaint contains two counts, both of which are based upon the legal
23 doctrine of preemption. Count 1 alleges that the Ordinance is expressly preempted by A.R.S. §
24 13-3108. Count 2 alleges that the state legislature has occupied the field regarding firearms
25 regulation in Arizona and thus, the Ordinance is again, preempted. The Plaintiffs complaint,
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1 however, alleges insufficient facts to support their claim, and pursuant to Rule 12(b)(6), Arizona
2 Rules of Civil Procedure, and the relevant case law their complaint must be dismissed.
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5 **LAW AND ARGUMENT:**
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7 **THE COMPLAINT SHOULD BE DISMISSED BECAUSE**
8 **THE PLAINTIFFS LACK THE NECESSARY STANDING TO**
9 **CHALLENGE THE ORDINANCE.**

10 According to the Arizona Supreme Court, a party must have standing to bring a claim and
11 while "Arizona's Constitution does not contain a specific case or controversy requirement. ...,
12 [but] this Court has traditionally required a party to establish standing." *citation omitted*. Thus,
13 as a general matter, we have stated that "[t]o gain standing ... a plaintiff must allege a distinct and
14 palpable injury." *Ariz. Pub. Integrity Alliance v. Fontes*, 250 Ariz. 58, 475 P.3d 303, 307 (Ariz.
15 2020) *citing* *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16, 961 P.2d 1013, 1017 (1998). When
16 considering a motion to dismiss for failure to state a claim, the Court should assume that the
17 allegations in the complaint are true and determine if the plaintiff is entitled to relief under any
18 theory of law. *Acker v. CSO Chevira*, 188 Ariz. 252, 255, 934 P.2d 816, 819 (App.1997).
19 Neither of the Plaintiffs have alleged a distinct and palpable injury and thus, both lack standing
20 to challenge the ordinance.
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23 To begin, organizational Plaintiff AzCDL has not alleged facts in the complaint which
24 demonstrate that it has suffered a distinct and palpable injury as required by the holding in
25 *Fontes*. As previously discussed, the only possible "harm" which AzCDL mentions in the
26 complaint is the unsubstantiated claim, citing to A.R.S. § 13-3108(K), that "[t]he Ordinance
27 adversely affects..." its members. Complaint ¶ 4. However, the cited statutory language does
28

1 not grant the Plaintiff standing but instead only defines the remedies available to a party *with*
2 *standing* who goes on to prevail in the action. A.R.S. § 13-3108(K). This is an important
3 distinction because while well pleaded facts are to be admitted by the court, conclusions of law
4 and unwarranted deductions of fact are not. *Sensing v. Harris* 217 Ariz. 261, 172 P.3d 856, 857
5 (App. 2007). Surely, if the legislature intended paragraph (K) of the statute to confer standing
6 upon gun owners, it would have stated so in clear and direct language, but it did not use such
7 language in § 13-3108. In contrast, the legislature did mandate standing in two other statutes that
8 inform the analysis here. The first is A.R.S. § 15-754 which states in relevant part “ ***The parent***
9 ***or legal guardian of any Arizona school child shall have legal standing to sue*** for enforcement
10 of the provisions of this statute” (emphasis added). The second is A.R.S. 16-979(B) which states
11 in relevant part “***The commission has standing to defend this chapter on behalf of this state in***
12 ***any legal action...***” (emphasis added). Simply put, the Plaintiffs’ apparent reliance on
13 paragraph (K) as a grant of legal standing is completely without statutory or legal support.
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17 Examples of the type of organizational harm which have been found to establish standing
18 are things such as a drain on the organization’s resources from “both a diversion of its resources
19 and frustration of its mission.” *Valle Del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013)
20 *citing Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219
21 (9th Cir. 2012). AzCDL alleges no facts in the complaint that document any loss of resources or
22 frustration of its mission which is to “defend the right of self-defense and the rights to keep and
23 bear arms as protected by the U.S. and Arizona constitutions.” Complaint ¶ 4. Further, an
24 organization “cannot manufacture the injury by incurring litigation costs or simply choosing to
25 spend money fixing a problem that otherwise would not affect the organization...It must instead
26 show that it would have suffered some other injury if it had not diverted resources to
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1 counteracting the problem.” *Valle Del Sol. Id.* When this Court applies the relevant case law to
2 the well pleaded facts in the complaint, it should conclude the AzCDL does not have standing to
3 bring the claim.

4
5 Like the AzCDL, individual Plaintiff King does not allege facts which establish that he
6 has suffered a distinct and palpable injury caused by the Ordinance. Again, looking to the
7 allegations in the complaint, Mr. King has not cited a single example of how he has been harmed
8 by the Ordinance. Instead, he offers up another conclusory statement that his “rights” which are
9 protected by A.R.S. § 13-3108, “including his rights to transport, possess, carry, sell, transfer,
10 purchase, acquire, give, devise, store, license...are adversely affected by the Ordinance.”
11
12 Complaint ¶ 5. While Mr. King’s list of the subject areas enumerated in § 13-3108 is accurate,
13 that list is not at issue in this matter. The real issue is how many, if any, of those “rights” have
14 been, or could be, adversely affected by the Ordinance under the facts alleged in the complaint.
15 The answer to that question is that none of them have been, or could be, adversely affected.
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17 Taken one at a time, with deference to the facts (or lack thereof) alleged in the
18 Complaint, it is clear that the Complaint fails to state a claim upon which relief can be granted.
19 The Complaint does not describe or even imply a single way by which the Ordinance affects Mr.
20 King’s “rights” under section 13-3108, generally, or allege how the ordinance impacts his “right”
21 to transport a firearm, to possess or carry a firearm, to sell or transfer a firearm, to purchase or
22 acquire a firearm, to give or devise a firearm, or to store or license a firearm.
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25 Again, merely asserting legal conclusions and unwarranted deductions of fact are not
26 enough to show the Plaintiff has standing to bring his claim. *Sensing, supra.* At best, Mr. King,
27 implies a hypothetical scenario that the Ordinance might somehow affect him but that is again,
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1 insufficient under the law. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008).

2 Simply put, courts are not permitted "to speculate about hypothetical facts that might entitle the
3 plaintiff to relief," *Id.* at 420, ¶ 14. Further, "[M]ere conclusory statements are insufficient to
4 state a claim upon which relief can be granted," and when that is the case, the court may properly
5 grant a motion to dismiss. *Id.* at 419, ¶ 7."

7 Finally, to frame this issue another way, the Plaintiffs' claim is not ripe for determination
8 by this Court. The Arizona Supreme Court has held:

10 "Although the Arizona Constitution does not have a case or controversy requirement
11 like the Federal Constitution, we do apply the doctrines of standing and ripeness "as a matter of
12 sound judicial policy. "" *Bennett v. Napolitano*, 206 Ariz. 520, 524 ¶ 16, 81 P.3d 311, 315 (2003).
13 Because in this case the underlying concerns for standing and ripeness are the same, we simply
14 use the term "ripeness" to apply to both doctrines..." *Brush & Nib Studio, LC v. City of Phx.*, 247
15 Ariz. 269, 448 P.3d 890, 891 (Ariz. 2019). The failure to plead a particularized injury is so
16 important that normally courts will consider the merits of such a matter "...only in exceptional
17 circumstances, generally in cases involving issues of great public importance that are likely to
18 recur. " *Bennett v. Napolitano, supra.* at 318. The Court in *Bennett* also noted "The paucity of
19 cases in which we have waived the standing requirement demonstrates both our reluctance to do
20 so and the narrowness of this exception.'" *Id.* The Plaintiffs have not pleaded a particularized
21 injury or exceptional circumstances which are sufficient to avoid the conclusion their claim is not
22 ripe for determination and should be dismissed.

1 **CONCLUSION:**

2 Based upon the reasons set forth in this motion, Pima County and the PCBOS and its
3 members, Rex Scott, Matt Heinz, Sylvia M. Lee, Steve Christy and Adelita Grijalva respectfully
4 ask this Court to grant this motion to dismiss the complaint on the basis the plaintiffs have failed
5 to state a claim upon which relief may be granted.
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7 **RESPECTFULLY SUBMITTED** this 1st day of July, 2024.
8

9
10 s/ Diego Rodriguez
11 **DIEGO RODRIGUEZ**
12 Attorney for Defendant
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16 ORIGINAL OF THE FOREGOING E-FILED to the following authorized registrants this 1st day
17 of July, 2024 to:

18 Clerk of the Court
19 Pima County Superior Court
20 110 W. Congress
Tucson, Arizona 85701

21 Jonathan Riches
22 Scott Day Freeman
23 Parker Jackson
24 Scharf-Norton Center for Constitutional Litigation at the
25 GOLDWATER INSTITUTE
26 500 E. Coronado Rd.
27 Phoenix, Arizona 85004
28 (602) 462-5000

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Rule 7.1(h) Good Faith Certificate

15 PIMA COUNTY, a political subdivision)
16 of the State of Arizona: REX SCOTT,)
17 MATT HEINZ, SYLVIA M. LEE, STEVE)
18 CHRISTY, and ADELITA S. GRIJALVA)
19 in their official capacities as members of)
20 and constituting the Pima County Board of)
21 Supervisors,)

22 Defendants,

23 Pima County, a political subdivision of the State of Arizona, and Rex Scott, Matt Heinz,
24 Sylvia M. Lee, Steve Christy, and Adelita Grijalva, in their official capacities as a members of
25 the Pima County Board of Supervisors, by and through their undersigned counsel, hereby certify
26 they have met and conferred with counsel for the opposing parties by telephone and made a good
27 faith attempt to resolve this issue.

28 **RESPECTFULLY SUBMITTED** this 1st day of July, 2024.

s/ Diego Rodriguez
DIEGO RODRIGUEZ
Attorney for Defendant

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