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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,

Reply in Support of Motion to Dismiss

14 vs.

(Assigned to the Hon. Greg Sakall)

(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)
Supervisors,

Defendants,

21 Pima County, a political subdivision of the State of Arizona, and Rex Scott, Matt Heinz,
22 Sylvia M. Lee, Steve Christy, and Adelita Grijalva, in their official capacities as members of and
23 constituting the Pima County Board of Supervisors, by and through their undersigned counsel,
24 hereby file this Reply in support of their Motion to Dismiss.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION:**

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4 Once again, the Pima County ordinance at issue is intended “to protect the inhabitants of
5 Pima County by aiding local law enforcement and the County Attorney in the enforcement of
6 A.R.S. § 13-3102(A)(5) and preventing the commission of crimes using firearms obtained in
7 violation of that statute.” Pima County Code Section 9.85.010, Declaration of Policy.
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9 Both the Plaintiff’s complaint and the opposition to the motion to dismiss are devoid of
10 facts that show how they have been harmed by the ordinance or even the existence of an actual
11 controversy between the parties. The Plaintiffs’ Complaint and the arguments presented in their
12 opposition to the motion to dismiss are fatally flawed. While both the complaint and the
13 opposition pleading contain numerous allegations, which may appeal to a friendly audience at a
14 political rally, they do not meet the legal standing requirement under Arizona law and the
15 complaint should be dismissed.
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17 **LAW AND ARGUMENT:**

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19 **I.**

20 **THE PLAINTIFFS’ COMPLAINT DOES NOT ALLEGE**
21 **FACTS TO SHOW THE EXISTENCE OF AN ACTUAL**
22 **CONTROVERSY BETWEEN THE PARTIES SO THE**
23 **COMPLAINT MUST BE DISMISSED.**

24 The Plaintiffs’ complaint must be dismissed because while they have made a skillful
25 political presentation in both their complaint and their pleadings, those presentations are legally
26 insufficient to support their claim. The Plaintiffs have not shown a cognizable harm they have
27 suffered under Arizona law thus, there is no actual controversy between the parties in this case.
28 Every single aspect of the Plaintiffs’ claim in this matter is based upon the incorrect assumption

1 that the right to bear arms under the Arizona constitution is so broad that it prevents even the
2 reasonable use of Pima County's law making authority to regulate conduct which does not
3 implicate the possession of weapon for self-defense. A clear-eyed review of the scope of the
4 right to bear arms under the Arizona constitution clearly illustrates this point and undermines the
5 Plaintiffs' entire position in this case.
6

7 Arizona courts have long held that the right to bear arms under our state constitution is
8 not absolute. For example, in *Dano v. Collins*, 166 Ariz. 322, 802 P2d, 1021, 1023, (Ariz. App
9 Div. 1 1999), *reconsideration denied*, May, 9, 1990, *review granted*, Jan. 15, 1991. There, the
10 Court of Appeals rejected a constitutional challenge to then A.R.S. § 13-3102(A)(1) and (2)
11 which prohibited the carrying of a concealed weapon holding, "We do not read the Arizona
12 constitutional provision as granting an absolute right to bear arms under all situations. The right
13 to bear arms in self-defense is not impaired by requiring individuals to carry weapons openly.
14 Appellants are free to bear exposed weapons for their defense." Thus, the scope of right to bear
15 arms under the Arizona constitution is not absolute and *limited to possession in furtherance of*
16 *self-defense*. The Court in *Dano* provided the rationale for this limitation:
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19 In *State v. Reid*, 1 Ala. 612 (1840) the court stated:

20 The constitution, in declaring that, "Every citizen has the right to bear arms in
21 defence of himself and the State," has neither expressly or by implication, denied
22 to the Legislature, the right to enact laws in regard to the manner in which arms
23 shall be borne. The right guarantied to the citizen, is not to bear arms upon all
24 occasions and in all places, but merely "in defence of himself and the State." The
25 terms in which this provision is phrased seem to us, necessarily to leave with the
26 Legislature the authority to adopt such regulations of police, as may be dictated by
27 the safety of the people and the advancement of public morals.

28 *Id.*

29 Thus, applying the law to the facts of this case, the missing and essential element of the
30 Plaintiffs' claim is now obvious. The Plaintiffs have not explained how the ordinance's

1 requirement that a gun owner report the loss or theft of a gun, impairs their right to bear arms in
2 defense of himself or the state. On its face, the ordinance only requires the owner to report the
3 loss or theft of a gun, it does not in any way limit, inhibit, prohibit or even effect the possession
4 of a gun for self-defense. Thus, the ordinance does not impair the Plaintiffs' right to bear arms,
5 so no harm or injury to that right exists. The Plaintiffs having suffered no harm or injury, they do
6 not have standing and their claim must be dismissed.
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8 Likewise, the Plaintiffs' improper attempt to rely upon their request for declaratory
9 judgement relief as a work around to establish standing fails for the same reasons stated above.
10 The Plaintiffs' claim for declaratory judgement is premised on their mistaken assumption that the
11 ordinance infringes on their right to bear arms under the Arizona constitution. Simply put there is
12 no legal authority to support the Plaintiffs' overly broad interpretation of Article II, section 26.
13 The truth of the matter here is that the Plaintiffs now ask this Court to declare that the right to
14 bear arms in Arizona is absolute and cannot be infringed upon in any way. However, like the
15 Court in *Dano*, the Court in *State v. Moerman*, 182 Ariz. 255, 895 P.2d 1018 (App. 1994)
16 rejected a different challenge to then A.R.S. § 13-3102, and reaffirmed the common sense
17 conclusion that the right to bear arms in Arizona is not absolute: "First, we note that Article II,
18 section 26 itself provides not an absolute right, but instead a qualified one in which "[t]he right
19 of the individual citizen to bear arms in defense of himself or the State shall not be impaired...."
20 (Emphasis added.) Its plain wording demonstrates that the right is not absolute and implies that
21 some qualification is permissible. *Dano*, 166 Ariz. at 325, 802 P.2d at 1024. "Indeed, its very
22 language suggests that people do not have the right to bear arms in any manner and under all
23 circumstances in Arizona. *Id.* at 323, 802 P.2d at 1022." *Moerman* at 895 P.2d 1022. The import
24 of the holding in both *Dano* and *Moerman* is clear, there is no legal support for the Plaintiffs'
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1 contention that the ordinance at issue implicates or affects the right to bear arms in self-defense.
2 The ordinance is nothing more than a reporting requirement placed upon gun owners who have
3 lost their weapons or have had them stolen from them, but it does not implicate the right to bear
4 arms in self-defense.

5
6 If this Court concludes that the ordinance does somehow infringe upon the Plaintiffs'
7 right to possess a firearm, it could only do so by expanding the scope of that right beyond the
8 express language of the Arizona constitution which limits it to bearing arms in defense of one's
9 self and or the state. However, this Court should reject the Plaintiffs' invitation to do so since it
10 is limited by the cited precedent and the fundamental axiom that in any conflict between the
11 constitution and a statute, the constitution is the final authority.

12
13 It remains the case that Plaintiffs have not alleged facts to establish legal standing to
14 bring this claim since they have not shown how the ordinance has caused them to suffer an actual
15 harm or how it has impaired a cognizable right they possess.

16 II.

17 A.R.S. § 13-3108 (K) DOES NOT GRANT STANDING TO THE PLAINTIFFS

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19 Contrary to the Plaintiffs' mistaken belief, the Arizona legislature did not include an
20 express grant of standing in A.R.S. 13-3108 (K). The standard rules of statutory interpretation
21 are a helpful guide in this instance:

22 In construing a statute, our primary purpose is to "determine and give effect to the
23 legislative intent behind the statute." *State v. Korzep*, 165 Ariz. 490, 493, 799 P.2d
24 831, 834 (1990). There also is a presumption that the legislature does not include
25 in statutes provisions which are redundant, void, inert, trivial, superfluous, or
26 contradictory. *See State v. Deddens*, 112 Ariz. 425, 429, 542 P.2d 1124, 1128
27 (1975); *see also State v. Edwards*, 103 Ariz. 487, 489, 446 P.2d 1, 3 (1968). We
28 must examine the statute as a whole and give harmonious effect to all its sections.
State v. Ball, 157 Ariz. 382, 384, 758 P.2d 653, 655 (App.1988) (emphasis added).

1 *State v. Moerman*, 182 Ariz. 255, 895 P.2d 1018, 2023 (Ariz. App. 1994)

2 Plaintiffs do not dispute that § 13-3108 lacks any language that clearly and
3 unambiguously grants standing to a party seeking to use the statute as a basis for challenging a
4 given law, rule or statute. Also, the Plaintiffs’ opposition ignores the two examples of a clear
5 statutory grant of standing cited by the Defendants, namely A.R.S. § 15-754, Parental Standing,
6 and A.R.S. § 16-979, CEC Standing. At a minimum, the two cited examples illustrate that when
7 the legislature intends to make a statutory grant of legal standing, it does so in clear and
8 unambiguous language, There is no such language in § 13-3108 and so logically this Court
9 retains its inherent authority to decide whether the Plaintiffs even have standing to bring this
10 claim.
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12 Plaintiffs’ attempt to manufacture standing contextually also fails. As previously stated,
13 “There also is a presumption that the legislature does not include in statutes provisions which are
14 redundant, void, inert, trivial, superfluous, or contradictory. *See State v. Deddens*, 112 Ariz. 425,
15 429, 542 P.2d 1124, 1128 (1975); *see also State v. Edwards*, 103 Ariz. 487, 489, 446 P.2d 1, 3
16 (1968).” *Moerman, Id.* This Court should notice two vital points.
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18 First, the legislature placed the following specific language in paragraph (K) that “A
19 person or an organization whose membership is adversely affected by any ordinance...” It
20 should be noted that the phrase, “adversely affected” appears more than 100 times in the Arizona
21 Revised Statutes. Logically then, it makes no sense to interpret paragraph (K) as an automatic
22 statutory grant of standing when it is predicated on the demonstration of an *adverse effect on a*
23 *person or membership*. According to the Merriam Webster Online Dictionary the definition of
24 the word “adversely” is “in an adverse manner: in a way that is bad or harmful.” If the Court
25 were to adopt the Plaintiffs’ position, then the word “adversely” as used in paragraph (K) would
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1 be rendered superfluous. *State v. Deddens, supra*. Moreover, since the ordinance does not
2 infringe on the right to bear arms in self-defense and no one has been cited under it, the Plaintiffs
3 cannot show how they have been adversely affected. Plaintiffs point to *Welch* for the proposition
4 that “similar standing provisions...” related to open meetings and conflicts of interest “...confer
5 standing.” Plaintiffs’ Response at 4:14-17. But those provisions are missing the operative word:
6 adverse (or, adversely).¹ Plaintiffs are correct in that the similar statutes referenced in *Welch*
7 “confer standing.” However, Plaintiffs misstate the law (“Section 13- 3108(K) creates a private
8 right of action for affected parties to enforce the legislature’s preemption of firearm-related
9 ordinances.”) in an attempt to make “similar” statutes apply alike. They do not. A.R.S. § 13-
10 3108 does not confer a right to sue based on mere affect. The Legislature clearly required
11 plaintiffs to be adversely affected. Plaintiffs reliance on *Home Builders* is similarly misplaced,
12 citing the Court of Appeals finding that “statutory language authorizing declaratory action by
13 ‘[a]ny person who is or may be affected by’ certain county rules or ordinances to sue was
14 sufficient to grant standing.” Plaintiffs’ Response at 4:19-21. The *Home Builders* court did not
15 interpret a statute which required an adverse affect on the plaintiff. To accept Plaintiffs’
16 arguments supporting standing in this matter would be to turn statutory construction on its head
17 and ignore the Legislature’s unequivocal intent to require an adverse affect.
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21 Second, the “zone of interest” argument, as stated by Plaintiffs, might apply if this case,
22 like the Court in *Welch*, were interpreting the phrase “[a]ny person affected by...” (see
23 Plaintiffs’ Response at 5:8-10). But section 3108(k) does not use that phrase, and the attempted
24 application of that test to this case is a red herring. Relatedly, the argument that the mere
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27 ¹See Plaintiffs’ Response fn. 1 (citing A.R.S. § 38-431.07(A), “Any person affected by an alleged
28 violation of this article...”; and fn. 2 (citing A.R.S. § 38-506(B), “Any person affected by a
decision...)).

1 existence of a legal duty automatically creates an adverse affect is nonsensical and unsupported
2 by law.

3 In the end, the Plaintiffs' complaint is nothing more than a long and detailed political
4 grievance. None of AZCDL's members or Mr. King have been harmed by the ordinance in any
5 way, and at least not in any adverse way. Likewise, neither Mr. King nor AZCDL's members'
6 right to bear arms are even implicated by the ordinance under a limited and correct interpretation
7 of the Article II § 26 right to bear arms.
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9 **CONCLUSION:**

10 Based upon the reasons set forth in this motion, Pima County and the PCBOS and its
11 members, Rex Scott, Matt Heinz, Sylvia M. Lee, Steve Christy and Adelita Grijalva respectfully
12 ask this Court to grant this motion to dismiss the complaint on the basis the plaintiffs have failed
13 to state a claim upon which relief may be granted.
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15 **RESPECTFULLY SUBMITTED** this 31st day of October 2024.
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17
18 s/ Diego Rodriguez
19 DIEGO RODRIGUEZ
20 Attorney for Defendant
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24 ORIGINAL OF THE FOREGOING E-FILED to the following authorized registrants this 31st
25 day of October 2024 to:

26 Clerk of the Court
27 Pima County Superior Court
28 110 W. Congress
Tucson, Arizona 85701

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