



MEMORANDUM

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To: Hon. Rex Scott, Chair, Hon. Jennifer Allen, Vice-Chair, Hon. Steve Christy, Hon. Matt Heinz, and Hon. Andrés Cano.

From: Sam E. Brown, Chief Civil Deputy County Attorney
Jonathan Pinkney, Deputy County Attorney, Health Law Unit Supervisor

Date: July 14, 2025

Subject: Firearm Preemption

This memo responds to a request for an update on the prospects for challenging Arizona's firearm preemption statute, A.R.S. 13-3108 (section 3108).

Background

In August 2022, the Board of Supervisors passed a resolution requesting that the Pima County Attorney's Office (PCAO) provide options to challenge the legality and/or constitutionality of Section 3108. Since then, PCAO has provided the Board with two substantive memoranda on the issue, in November 2022 and November 2023. In summary, we outlined three possible options to challenge Section 3108: (1) the passage of a local reporting ordinance "in a manner that may not violate Arizona's preemption law and may lay the groundwork for a future challenge" based on the state-created danger theory; (2) a challenge based on the theory of a state-created danger, similar to that adopted by plaintiffs in a lawsuit in Pennsylvania; and (3) a direct challenge to the legislature's authority to preempt local ordinances.

1. Lost or Stolen Firearm Ordinance

In March 2024, the Board of Supervisors opted to pursue the first option: Ordinance 2024-2, requiring that gun owners report the loss or theft of a firearm to law enforcement, with the aim of preventing illegal transfers of firearms to prohibited possessors who could then use them in the commission of serious crimes. Shortly afterwards, the Arizona Citizens Defense League, Inc. – a gun rights group – and one of its members filed a case in Superior Court, challenging the County's authority to enact the ordinance. It was PCAO's position that the ordinance did not concern any of the issues specifically preempted by Section 3108 and could not "relate to"

possession of a firearm when no possessory right in any firearm was affected. We further argued that it could not have been the Legislature’s intent to preempt the entire field of firearm-related regulation in the absence of any express language to that effect. However, after oral argument, Judge Sakall ruled against the County and issued a permanent injunction preventing the County from enforcing the ordinance. The Board subsequently declined to appeal that ruling.

2. “State-Created Danger” Theory

With respect to the option of pursuing a challenge to Section 3108 based on the theory of a state-created danger, the Pennsylvania Supreme Court in November 2024 unanimously ruled against the legal challenge to Pennsylvania’s preemption statute by residents of Philadelphia and Pittsburgh whose family members had died from gun violence, the City of Philadelphia, and a gun-safety organization. In doing so, it declined to apply the state-created danger theory, finding that although “certain municipalities and residents thereof may believe, even justifiably, that our state government is not doing enough to remedy this problem and that particular local regulations are needed to do so but are preempted,” “a state has no affirmative obligation to protect its citizens from private acts of violence.” *Crawford v. Commonwealth*, 326 A.3d 850, 887–88, 881 (Pa. 2024). We are not aware of any other jurisdiction that has succeeded in overcoming a state preemption statute on this basis so the already narrow window of opportunity to prevail on this novel application of the state-created danger theory has effectively been closed.

3. Direct Challenge

In our prior memoranda, PCAO found the direct-challenge option to be the “least likely to succeed.” Indeed, it is doubtful that we could even make a good faith claim on this basis. “The doctrine of preemption is derived from the supremacy clause, which establishes the hierarchy of different levels of government.” *Coconino Cnty. v. Antco, Inc.*, 214 Ariz. 82, 90 (App. 2006). And it is a “fundamental principle of law” that the Arizona constitution “vests the legislative authority of the state in a legislature consisting of a senate and a house of representatives, reserving however, to the people the right of initiative and referendum.” *Associated Dairy Prods. Co. v. Page*, 68 Ariz. 393, 395 (1949) (citing Ariz. Const. art. IV, Pt. 1 § 1). “The authority of a county board of supervisors is in no way parallel to that of the legislature. . . . The Board of Supervisors can exercise only those powers specifically ceded to it by the legislature.” *Hart v. Bayless Inv. & Trading Co.*, 86 Ariz. 379, 384 (1959). Thus, although we can argue – and did, in our defense of Ordinance 2024-02 – that specific issues lie within those powers and have not been preempted, there is no legal basis for a frontal assault on the legislature’s authority to preempt local ordinances.

Other Pertinent Cases

Our review of relevant cases nationwide found only two cases where a local government has successfully challenged firearms preemption statutes, in both instances relying on a specific provision in their respective state constitution that is not found in the Arizona constitution. For example, Colorado upheld local ordinances with respect to the open carry of firearms, the sale of assault weapons and Saturday night specials, and the possession of firearms in city parks

under a home rule amendment to the state constitution granting municipalities “every power theretofore possessed by the legislature to authorize municipalities to function in local and municipal affairs.”¹ In Florida, on the narrow issue of whether the Governor could remove local officials who enforced local firearm ordinances that were preempted under Florida law, the Courts found such action to be barred by a provision in the state constitution authorizing the Governor only to suspend county commissioners and recommend their removal.²

Virtually every other court has upheld state authority to preempt local regulation of firearms. See *City of Fargo v. State*, 2024 ND 236, 14 N.W.3d 902; *Fried v. State*, 355 So. 3d 899 (Fla. 2023); *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 599, ¶ 41, 399 P.3d 663, 674 (2017), *as amended* (Aug. 17, 2017); *Cleveland v. State*, 2010-Ohio-6318, ¶ 13, 128 Ohio St. 3d 135, 137, 942 N.E.2d 370, 374. Official published opinions of State Attorneys General overwhelmingly arrive at the same conclusion.

Conclusion

In conclusion, the recent developments in Pennsylvania, and the outcome of our case in Arizona with respect to Ordinance 2024-02, have only served to bolster Section 3108’s preemption authority over even tangentially firearm-related issues. Notably, the Giffords Law Center currently characterizes Arizona’s preemption statute as both “broad” and “extreme,” as it expressly preempts all, or substantially all, aspects of local firearms and/or ammunition regulation and allows courts to impose a penalty of up to \$50,000 on local officials who are found to have knowingly and willfully violated it.³ Similarly, Everytown for Gun Safety’s updated “Gun Law Rankings” for 2025 found that Arizona ranks 43rd in the country for gun safety measures, in part because it “preempts towns and cities from making their own gun safety policy” and “threatens to punish localities that regulate firearms.”⁴ Though we remain in communication with these and other organizations in search of viable legal theories, none have become apparent over the past few years.

Any further County action on this issue would not only likely be futile, but could also expose the County and its officials to draconian penalties under § 13-3108, including a civil penalty of up to fifty thousand dollars, termination from employment, and an award of damages up to one hundred thousand dollars plus attorney fees and costs for any legal challenge to an ordinance found to be enacted in willful violation of the statute. Moreover, any ordinance enacted in violation of state law is liable to result in the withholding of all state shared monies from the county under A.R.S. § 41-194.01. The state legislature has, most recently, attempted to pass SB1705 to *strengthen* those penalty provisions, but the Governor vetoed the bill. Still, it is at the legislature that any changes in the preemption scheme for any local regulation of firearms will have to take place.

¹ *City and Cnty. of Denver v. State of Colorado*, 2004 WL 5212983 (Colo. Dist. Ct.) *aff’d* *State v. City and Cnty. Of Denver*, 139 P.3d 635 (Colo. 2006); see Article XX, Section 6, Colo. Const.

² *Marcus v. Scott*, 2014 WL 3797314 (Fla. Cir. Ct.); see Article IV, Section 7, Fla. Const.

³ At <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/preemption-of-local-laws/>.

⁴ At <https://www.everytown.org/press/everytown-for-gun-safety-releases-2025-state-gun-law-rankings-with-arizona-ranking-43rd-for-the-weakness-of-its-gun-laws/>.