

DATE 3/5/24ITEM NO. RA41

COMMITTEES:
 APPROPRIATIONS
 APPROPRIATION
 SUB-COMMITTEE ON
 EDUCATION
 JUDICIARY,
 Chairman
 MILITARY AFFAIRS &
 PUBLIC SAFETY

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DISTRICT 1

Arizona House of Representatives
Phoenix, Arizona 85007

March 12, 2024

Via Email and U.S. Mail

Pima County Board of Supervisors
 Administration Building
 130 W. Congress Street
 Tucson, AZ 85701

Re: Ordinance No. 2024-002 – Mandatory Reporting Requirements for Lost or Stolen Firearms and Penalties; Conflict with State Law

Dear Supervisors,

I write to you today in my official capacity to urge you to repeal Ordinance No. 2024-002 (“Ordinance”), passed last week by a vote of 4-1. The Ordinance violates state law by imposing on lawful gun owners mandatory and stringent reporting requirements for a “knowing loss or theft of a firearm” and significant consequences (a petty offense and “a penalty of up to \$1000.00 for each violation”).

As you know, when the City of Tucson passed an ordinance that imposed the same mandatory reporting requirement (and a civil sanction of \$100) over ten years ago, the Arizona Attorney General issued an opinion concluding that the ordinance conflicted with A.R.S. § 13-3108(A) and (D).¹ State law has not materially changed since the Attorney General’s opinion. And the Ordinance even acknowledges that A.R.S. § 13-3108(A) broadly prohibits political subdivisions from enacting firearm-related regulations.

In 2017, the Arizona Supreme Court interpreted A.R.S. § 13-3108 and observed that “[i]n no uncertain terms, the Arizona Legislature has declared that ‘[f]irearms regulation is of statewide concern and has expressed its intent to preempt ‘firearms regulation in this state’ and thereby ‘limit the ability of any political subdivision of this state to regulate firearms.’” *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, ¶ 37 (2017).

Just last year, the Arizona Attorney General investigated the validity of a Phoenix ordinance regulating the disposition of unclaimed firearms and concluded that the ordinance violated multiple state laws—including A.R.S. § 13-3108(A).² As the Attorney General

¹ See Ariz. Att’y Gen. Op. No. I13-010 (Re: Preemption of Tucson Ordinances), available at <https://www.azag.gov/sites/default/files/2018-06/I13-010.pdf>.

² See Ariz. Att’y Gen. Investigative Report No. 23-003 (Re: Whether Phoenix Ordinance S-50010 providing for the donation of firearms to Ukraine violates state law), available at <https://www.azag.gov/sites/default/files/docs/complaints/sb1487/23-003/Investigative%20Report%20No.%2023-003.pdf>

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thoroughly explained, consistent with the *City of Tucson* opinion, “[f]irearms regulation is a matter of statewide concern.” Investigative Report No. 23-003 at 5-7.

The Ordinance ignores these precedents and instead cites other authorities that purportedly authorize the Ordinance. First, the Ordinance cites a 1998 opinion of the Arizona Court of Appeals, *City of Tucson v. Rineer*, 193 Ariz. 160 (App. 1998), for the proposition that “A.R.S. § 13-3108 only prohibits local firearms regulations with respect to those issues specifically identified in § 13-3108.” But reliance on the *Rineer* opinion is misplaced for several reasons. *Rineer* interpreted a prior version of § 13-3108 and did not address the validity of an ordinance like the Ordinance here, which creates obligations and penalties relating to firearms not found in state law. In fact, subsection (D)—which broadly prohibits political subdivisions from enacting “any ordinance that relates to firearms and is more prohibitive than or that has penalty that is greater than any state law penalty”—was not even added to § 13-3108 until 2010. *See* 2010 Ariz. Legis. Serv. Ch. 19, 2d Reg. Sess. (H.B. 2543). Instead, *Rineer* analyzed the validity of a Tucson City Code provision that prohibited using or possessing firearms within Tucson city parks. *Rineer* also pre-dates the Arizona Supreme Court’s 2017 opinion in *City of Tucson*, the Arizona Attorney General’s 2013 opinion, and the Attorney General’s 2023 Investigative Report discussed above.

Second, the Ordinance cites a federal district court opinion, *National Association for Gun Rights, Inc. v. City of San Jose*, 632 F.Supp.3d 1088 (N.D. Cal. 2022), which upheld a city ordinance under California law. It should go without saying that Arizonans expect county officials to enact laws that comply with Arizona laws, not California laws. Moreover, the ordinance that the federal court considered in the *San Jose* case did not impose any mandatory reporting requirements, fines, or penalties and bears no resemblance to the Ordinance here.

It is extremely troubling that Supervisor Christy’s concerns and these substantial legal issues surrounding the Ordinance have not been addressed. Under state law, any ordinance that violates § 13-3108 “is invalid and subject to a permanent injunction” and “[i]t is not a defense that the political subdivision was acting in good faith or on the advice of counsel.” A.R.S. § 13-3108(H). Additionally, a knowing and wilful violation of § 13-3108 is subject to a \$50,000 penalty against the political subdivision. A.R.S. § 13-3108(I).

For these reasons, I demand that you immediately repeal the Ordinance. Please contact me at your earliest convenience.

Respectfully,

A handwritten signature in black ink, appearing to read "Quang Nguyen", followed by a long horizontal flourish.

Representative Quang Nguyen