September 10, 2019

Pima County Board of Supervisors and Administrator 130 W. Congress Street, 11<sup>th</sup> Floor Tucson, AZ 85701

Pima County Board of Supervisors Miller, Valadez, Bronson, Christy, and Chair Elias and County Administrator C. H. Huckelberry,

Re: Tobacco 21 Ordinance Memorandum

In addition to the opportunity to attend stakeholder meetings, the below signed members of the public health community would like to provide a formal written response to the Pima County Memorandum issued August 8, 2019. We appreciate the opportunity to address many of the concerns and questions that have been brought forward by the Board of Supervisors and the County Administration.

#### **State and County Role in Tobacco Enforcement:**

Information was requested on the role of state and county in tobacco enforcement. As Dr. Garcia and the Health Department staff have shared in hearings, the State of Arizona's tobacco control enforcement funding has been dwindling over the years, with fewer and fewer compliance checks happening in Pima County while an increasing number of illegal sales to minors are occurring. Last year, less than one in five retailers were checked for underage sales and 10% made an illegal sale. News media reported on June 28, 2019 that this year's violation rate had jumped to 26%, with one in four retailers making an illegal sale to someone age 16 or 17 and only 66 of Tucson's over 500 retailers receiving checks in the first half of the year. When state compliance checks do occur, the penalty is often placed solely on the clerk, with the requirement to attend an education course for violation in lieu of a monetary fine. The retailer owners have noted in testimony that upon being caught making an illegal sale, the clerks are fired. This often leaves a low-wage worker with a monetary penalty or attending an education course for a job they no longer hold. The retailer profiting off of the illegal sale reportedly go unpenalized and are held unaccountable. To date, Pima County has not been playing a direct role in additional checks beyond that of the state enforcement.

#### **Comparison to Alcohol and Civil/Criminal Penalties:**

Details regarding the enforcement and penalty structure for alcohol verses tobacco were requested. In Arizona, alcohol violations hold a far steeper monetary fine and a comparable suspension structure as the proposed Pima Tobacco 21 policy (see chart below).

#### **Options for Penalties:**

States and communities across the country have adopted a wide variety of different penalty structure for underage sales of tobacco products. These variances have given opportunity for observation on how to achieve retailer compliance. The national model gives the following guidance on the penalty structure:

**Tobacco retailers.** Any tobacco retailer found to have violated this [statute/ ordinance] shall be subject to: (1) For a first violation, a fine no less than \$500; (2) For a second violation within a 36 month period, a fine no less than \$750 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of seven days; (3) For a third violation within a 36 month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of 30 days; and (4) For a fourth and any subsequent violations within a 36 month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a period of three years.

**Employees.** Any person found to have violated this [statute/ordinance] while acting as a non-management agent or employee of a tobacco retailer shall be subject to non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion programs, and community services.

**Other persons.** Any person 21 years of age or older, besides a tobacco retailer or a tobacco retailer's agent or employee, who violates this [statute/ordinance] is subject to an administrative fine of \$50.

As originally proposed, a minimum time for suspension for illegal sales should happen by the second violation. The accrual period for violations should span over 36 months, unless multiple compliance checks per year are being conducted at each location. Base on the proposed compliance regime by the Pima Health Department (of 50% retailer checks), a 24-month accrual period would be insufficient and not supported. Weak penalty structures, as the ones that retailers have requested in testimony or at the August 8<sup>th</sup> stakeholder meeting (with revocation on the 4<sup>th</sup> violation), do not incentivize retailers to comply with the law.

#### Penalties on the Buyer

Penalties should never exist on the buyer for purchase, use or possess of the product, as research shows that such penalties cause further disparities in our low income and minority populations and are enforced inequitably. Tobacco use is an addiction, and should be treated as such. Placing any type of penalty on the youth make it less likely they will seek cessation services, as they do not want to admit they are participating in an illegal activity. In addition, when purchase use and possession penalties exist on the buyer, jurisdictions are more likely to

#### **Grandfather Clause**

It is recommended that the grandfather clause that allow those currently between the ages of 18-20 to continue to purchase tobacco products and develop a life-long addiction be removed. This will cause confusion for the retailer and those enforcing the law when trying to figure out if the person is of age or not under the law.

#### Retailer Education

Educating retailers on the new law is going to be important to aid in compliance with the law.

#### Severability

It is recommended to include a severability clause in the ordinance: Below is language that would help to ensure that the ordinance remains in place if any part of it should be challenged legally. Both severability and retailer education example language can be found in the national model.

We strongly urge the Board of Supervisors to put the health and wellbeing of the youth in Pima County above industry profits and adopt the original policy as proposed.

Sincerely,

Dustin Williams, Pima County School Superintendent
Ricardo M. Jasso, CEO of Amistades Inc
Dr. Ravi Grivois-Shah
Dr. Randy Friese, State Representative Legislative District 9
American Cancer Society – Cancer Action Network
American Heart Association
American Lung Association
Campaign for Tobacco Free Kids
CityHealth
Preventing Tobacco Addiction Foundation
Arizonans Concerned About Smoking

c: Jan Lesher, Chief Deputy County Administrator
Francisco Garcia, Assistance County Administrator for Community and Health Services
Bob England, Interim Director, Health Department
Rebecca O'Brien, Tobacco Program Manager
Jonathan Pinkney, Pima County Attorney
Nick Mahon, Chief of Staff for Council Member Paul Durham

#### **Best Practices Examples from Other Jurisdictions**

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City/State/County	Penalty Population Youth	on Penalty on Retailer	Penaity on Clerk	Fine/Penalty	Suspension/Revocation	Tobacco Retail License Fee	Notes
Chicago Illinois	2,705,994 No	Yes	No	Retailer: First violation \$1,000-\$2,500, second violation \$2,500-\$3,500, third violation \$5,000-\$7,500	Three or more violations within 24 months: permanent revocation of license.	\$250 per location, \$165 additional per register, wholesale tobacco retailer is \$550. Renewed annually.	
St. Louis County Missouri	998,581 No	Yes	Yes	Retailer: First violation not less than \$500, second not less than \$750, third not less than \$1,000 within a three year period. Clerk fine is not more than \$150 for first; \$250 for second; and \$500 for subsequent.	Suspension of license for 30 days at second violation, suspension for a period of 120 days at a third violation, revocation of license on the fourth violation all in a three year period. If within 1000 ft of school, license suspension	\$125 for a tobacco license. \$25 for a license to sell e-cigarettes. Both renewed yearly.	NO exemptions for military or grandfathering. No tobacco retail licenses within 1,000 feet of schools.
Hartford Connecticut	124,775 No	Yes	No	Retailer: \$250 for each violation.	Two violations within a three year period: license suspended for at least 7 days, three violations within a three year period: suspended minimum of 30 days, four violations within a three year period: license revoked.	Set yearly by Hartford Board of Healt and Human Services	n Department of Health will engage in a public education program for those affected by this policy. No grandfathering or military exemptions.
Columbus Ohio	860,090 No	Yes	No	Retailer: First violation: \$500, second and all additional violations within two years: \$1,000	Violations within two years of license being issued may results in suspension or revocation.	\$150. Renewed annually.	NO exemptions for military or grandfathering
Flagstaff Arizona	71,459 No	Yes	Yes- education	Retailer: First violation no less than \$500. Second violation no less than \$750, third violation no less than \$1,000, fourth violation no less than \$1,000	Two violations within 36 months: suspension for a minimum of 7 days, three violations within 36 months; suspension for minimum of 30 days, fourth violation within 36 months: three year suspension.	Changed necessarily by City Council.	People besides retailers and agents of a retailer that are over 21 face a \$50 fine for violation of the ordinance. No militare exemptions or grandfathering.
Alachua County Florida	247,336 No	Yes	No	Retailer: Fine not to exceed \$500.	First violation: 7 day suspension, second within 24 months: 30 day suspension, third within 24 months: 90 day suspension, forth violation within 24 months; permanent	Set annually by the County.	No military exemption or grandfathering.
Lane County Oregon	351,715 Yes	Yes	Yes	Retailer: First violation: \$1,650, second and further violation: \$4,950 fine. Clerk and youth penalty is a \$50 fine.	First violation within 24 months: 10 day suspension, second violation within 24 months: third day suspension, third violation within 24 months: thirty day suspension, four or	\$100 per store. Yearly renewal for \$75.	No military exemption or grandfathering.
California	39,540,000 No	Yes	No	Retailer: First violation: fine between \$400-600, second violation: \$900-1,000, third violation: \$1,200-1,800: forth	Third violation within five years: license suspension. Fifth violation within five years: license revocation.	\$265 per location. \$265 yearly renewal fee. Wholesale/distributor	No military exemption or grandfathering.
Connecticut	3,590,000 No	Yes	Yes- education then fines	Retailer: First violation: \$300, second violation: \$750, third violation: \$1,000, forth or more: \$1,000. All within two years. Clerk: first violation: education or \$200 fine for failure to complete education. Second violation: \$250 if	License suspension after the third violation. License revoked after the forth violation.	Annual fee of \$200.	No military exemption or grandfathering.
Denver (proposed adoption Sept 30th)	619,968 Yes	Yes	No	Youth: Noncriminal for only under age 18.	Retailer: License Suspension on second violations within 12 months with 4 annual compliance checks per retailer.	\$250 Application fee, \$500 annual license fee	No military exemption or grandfathering.







Dear Pima County Board member,

You are voting on an ordinance that has been crafted by the retailers that are selling our youth addictive and deadly products. They must be held accountable for selling to kids, and this ordinance does not do that. It gives them little incentive to comply with tobacco sales age. Please protect our kids, not the retailers. Vote no on the modified ordinance.

(Please include your personal message below)

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When kids as	ra too Valvable.
Sincerely	Jay Dechan
(Signature) 1059 E Oskbronks	(Printed Name) Tucsan Az 85747
(Home Address)	(City, State, Zip)

(Mobile Number)







Dear Pima County Board member,

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Sincerely Charlen Ha	bel Charlen Grabowski
	Agril (Printed Name) TUCSON AZ 85718
(Home Address)	(City, State, Zip)







Dear Pima County Board member,

Please stop vaping	z- hids are getting
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(Signature) 2028 S. Cutter Ln.	Stacey Mathis (Printed Name) TUCSON AZ 85110
(Home Address)	(City, State, Zip)
(Email)	 (Mobile Number)







Dear Pima County Board member,

(Email)

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(Email)

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(Please include your personal message	below) . ()
My husband @ age 6	ated to Not Smoke and VAP
Kids Have to Be educ	ated to Not Smoke and VAP
Singerely Dune Gene Lad	Dolones Sune Crawford
(Signature) 7641 E. 39+h	(Printed Name) TUC AZ 85736
(Home Address)	(City, State, Zip)

(Mobile Number)







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(Signature) 3530 ju Ave Sombra	(Printed Name)		_
(Home Address)	(City, State, Zip)		

(Mobile Number)







Dear Pima County Board member,

Keep this stuff	away from our Kids!
Sincerely Bullebardt	Sandra Butterbroaf
(Signature) 16020 N Chapulin Way	(Printed Name) TUCSON AZ 85739
(Home Address)	(City, State, Zip)
(Email)	(Mobile Number)







Dear Pima County Board member,

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(Please include your personal message below)

VOTE NO!

Sincerely M. M. (Signature)

4768 t. Calle Chuca

Kyli M'arkle-Olbin

(Printed Name)

Tucson, AZ 85718

(City, State, Zip)

(Home Address)

(Email)

(Mobile Number)







Dear Pima County Board member,

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(Please include your personal message below)

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(Home Address)	(City, State, Zip)
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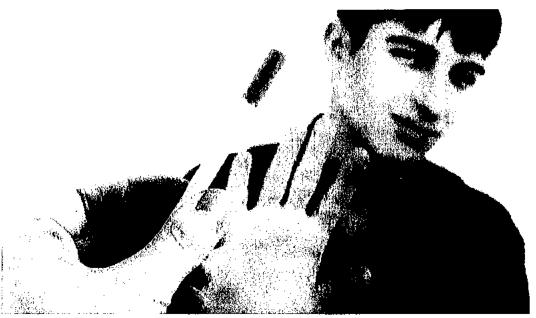
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Sincerely

Jupan Common Aup Ard Muli

(Signature)

S573 W. Iron (rest. Tucson, Az 8

(Home Address)

(Email)

(Mobile Number)

(City, State, Zip)







Dear Pima County Board member,

Sincerely	Amy D'Agoino
(Signature) (601 W.W)ndsnSt	(Printed Name) TUCYN, AZ 8570_S
Home Address)	(City, State, Zip)
(Email)	(Mobile Number)





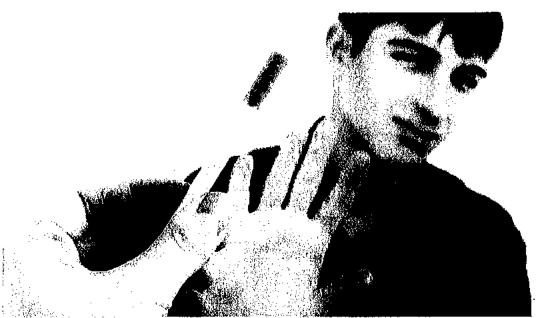


Dear Pima County Board member,

Stop Mich	1 go-to 2.1 Now!
Sincerely MVeVaSa	MARIA VORG SCO
(Signature) W. 18 th ST	(Printed Name)  TUCSON 8570 1
(Home Address)	(City, State, Zip)
(Email)	(Mobile Number)







Dear Pima County Board member,

(Please incluae your personal messa	ge pelow)
Please vote No	s. Protet our Kels.
Sincerely /	
Sincerely Lamani	DARLENE DAMIANI
(Signature) 9920 N. N. Warana Way	(Printed Name) TUCSON, Az. 85742
(Home Address)	(City, State, Zip)
	(Mobile Number)







Dear Pima County Board member,

You are voting on an ordinance that has been crafted by the retailers that are selling our youth addictive and deadly products. They must be held accountable for selling to kids, and this ordinance does not do that. It gives them little incentive to comply with tobacco sales age. Please protect our kids, not the retailers. Vote no on the modified ordinance.

(Please include your personal message below)

Vote No. Tratect ever	yone!
Sinceyely / Mul. CUT	Natalie Meier
(Signature) E CANTOR Rd	(Printed Name) AZ 85739
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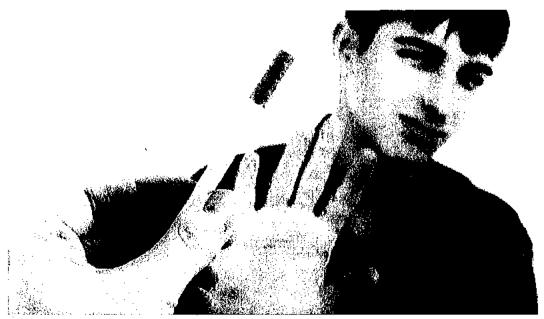


Dear Pima County Board member,

The ordinan	ce as modified is
ineffective	
Sincerely	Kymberley Maffett
(Signature)	(Printed Name) AZ 85718
(Home Address)	(City, State, Zip)
(Email)	(Mobile Number)







Dear Pima County Board member,

VOTE NO PROTECT	- OUR YOUTH!
Sincerely  Auch M. French  (Signature)  7390 E. Damasco PL	PATRICIA FRENCY  (Printed Name)  TUCSON AZ 85750
(Home	(City, State, Zip)
(Email)	(Mohile Number)







Dear Pima County Board member,

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(Please include your personal message below)

Sincerely

Sincerely

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(Printed Name)

Tucson A2

(Home Address)

(City, State, Zip)

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Dear Pima County Board member,

The current ordinance protect Kide.	is unenforceable + does not
Sincerely M. Ja (Signature)	Charmaine M. Lang
(Signature) 11664 N. Raih Rock Way	(Printed Name) Valley, Az 85737
(Home Address)	(City, State, Zip)
(Email)	(Mohile Number)





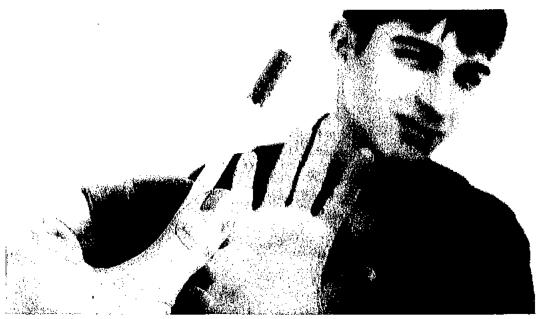


Dear Pima County Board member,

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the Ord: Nance UNENF	
Sincerely Lot	Linde Montes- Pota
(Signature)	(Printed Name)
3436 N. South Miniclane	TUCSUN, AZ 85745
(Home Address) TWSUN, NZ 85745	(City, State, Zip)
(Fmail)	(Mobile Number)







Dear Pima County Board member,

(Email)

You are voting on an ordinance that has been crafted by the retailers that are selling our youth addictive and deadly products. They must be held accountable for selling to kids, and this ordinance does not do that. It gives them little incentive to comply with tobacco sales age. Please protect our kids, not the retailers. Vote no on the modified ordinance.

(Please include your personal mes	ssage below)
Vote no. Th	ce ordinance associate
HAVAAROBA	cannot be enforced
Properly.	
Sincerely	Beth Jimmons
(Signature)	(Printed Name) Valley, AZ 85731
Home Address)	(City, State, Zip)

(Mobile Number)







Dear Pima County Board member,

Vote No	octow)
Sincerely	Cindy THOMAS
(Signature) 4550 W TTe CHA D	(Printed Name)
(Home Address)	(City, State, Zip)
(Email)	(Mobile Number)







Dear Pima County Board member,

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to growing brains.	
Sincerely	
(Signature)	(Printed Name)
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(Email)	(Mobile Number)







Dear Pima County Board member,

(Please include your personal message	below)
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Dear Pima County Board member,

You are voting on an ordinance that has been crafted by the retailers that are selling our youth addictive and deadly products. They must be held accountable for selling to kids, and this ordinance does not do that. It gives them little incentive to comply with tobacco sales age. Please protect our kids, not the retailers. Vote no on the modified ordinance. (Please include your personal message below)

VOTE NU	
Dictect Kids	
Sincerel	Victoria Conzuler
(Signature) 28 Spinn	(Printed Name) TUCSUM HZ 85712
(Home Address)	(City, State, Zip)

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(Signature)	(Printed Name)
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Home Address)	(City, State, Zip)

Mobile Number)







Dear Pima County Board member,

Protest Kids not relations	
Sincerely  Win Montguy  (Signature)  9999271 2. Cree L	Vian Montgomen (Printed Name)
(Home Address)	(City, State, Zip)
(Email)	(Mobile Number)







Dear Pima County Board member,

(Home Address)

(Email)

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(Please include your personal mess	age below) ,
Protectour Reds no	tretailers. Vaping & smoking is bad in don't even have mature lungs
et any age, but tee	no don't even have mature lungs
are affected the most,	VOTE NO!
Sincerely .	
See Henry	LEE STENINGER
Signature)	(Printed Name)
4740 E. Vaseo Del Oac	Treason AZ 85718

(City, State, Zip)

(Mobile Number)







Dear Pima County Board member,

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Please protect our kids, not the retailers. Vote no on the modified ordinance.

(Please include your personal message below)

(Please include your personal messo	ige below)
as on every commu	nity, our Children are The
	so. With The decline in health
That This new gener	ition is facing, we must act now
Sincerely Vote No.	> Sandra Garcia
(Signature) S. Chatery WM	(Printed Name) AZ 85746
(Home Address)	(City, State, Zip)

(Mobile Number)







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Protect Kids Lut	h entreable lans ; requestions
Sincerely & Sur	Brandy Ferrer
(Signature) (Signature) (Signature) (Signature)	(Printed Name) Tucson Az 85712
(Home Address)	(City, State, Zip)

(Mobile Number







Dear Pima County Board member,

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the minimum age to	al for tropacco. the retailers
should not be preyin	of on impressionable youth
Sincerely Pdh	Holly Palomores
(Signature) VI Hearth Side	(Printed Name) 1 TUCSON AZ 85748
(Home Address) 85748	(City State 7in)
(Emgil)	(Mobile Number)







Dear Pima County Board member,

Sincerely Column	ROBERT HANNON
(Signature) 36165	(Printed Name)
(Home Address)	(City, State, Zip)
(Fmail)	(Mobile Number)





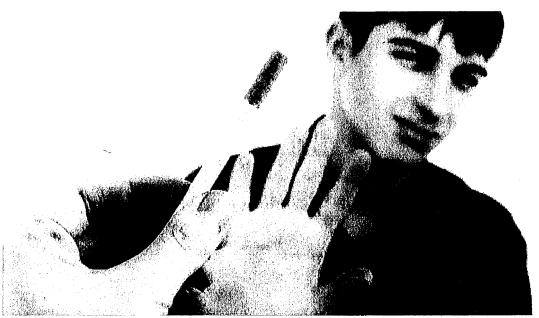


Dear Pima County Board member,

Perse Vote so to protect our kings		
Sincerely Marian Hannon	Marian Hannow	
(Signature)	(Printed Name)  Tocson, AZ	
(Home Address)	(City, State, Zip)	
(Email)	(Mobile Number)	





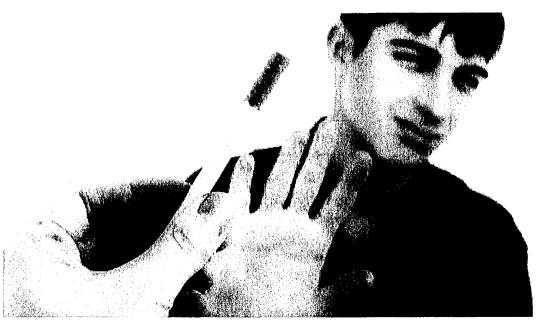


Dear Pima County Board member,

(Please include your personal message	
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(Signature)	(Printed Name)
(Home Address)	(City, State, Zip)
(Email)	(Mobile Number)







Dear Pima County Board member,

Protect our leids es	pecially Vote No!
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(Signature)	(Printed Name)
(Home Address)	(City, State, Zip)
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Protect kids no	t relailer
Sincerely	Vdestina Ollima
Signature)	(Printed Name)

(Home Address)

(City, State, Zip)







Dear Pima County Board member,

Vote No.	
Sincerely (Signature)  TANET KNIGHT	JANET KNIGH  (Printed Name)  3405 No TANURI DR
(Home Address)	(City, State, Zip)
(Email)	(Mobile Number)







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(Please include your personal message below)

I work in a middle School

Sincerely Sude

(Signature)

3126 W. Neblasta

Kim Freidah, PhD

(Printed Name)

Tueson 172 8574

(City, State, Zip)

(Home Address)

(Email)

(Mobile Number)







Dear Pima County Board member,

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(Home Address)	(City, State, Zip)  [UCSON 85718
(Email)	(Mobile Number)







Dear Pima County Board member,

riedse protect our kids, not the retailers. Vote no on the modified ordinance.		
(Please include your personal message below)		
Sincerely	1.1-1 1.11 C F	
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224 6 4	- 1/1c 03/101	
(Home Address)	(City, State, Zip)	
(Email)	(Mobile Number)	







Dear Pima County Board member,

Sincerely	KABEL WELCH
(Signature) 9467 N. STONE BROOK	(Printed Name) [VCSON AZ 8574]
(Home Address)	(City, State 7in)
(Email)	(Mobile Number)







Dear Pima County Board member,

Don't vape, Da	nt snoke (i)
Sincerely	Lard Mimifle
(Signature) 5750 N. Camino Esplandua apt 2	(Printed Name)
(Home Address)	(City, State, Zip)
(Email)	(Mobile Number)