

SUPREME COURT OF ARIZONA

STATE OF ARIZONA, *ex rel.*
MARK BRNOVICH, Attorney General,

Petitioner,

v.

CITY OF TUCSON, Arizona,

Respondent, and

JEFF DEWIT, in his official capacity as
State Treasurer,

Nominal Respondent.

Case No.:

PETITION FOR SPECIAL ACTION

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INTRODUCTION

The City of Tucson (the “City”) is violating Arizona law by requiring the destruction of legal firearms. Section 2-142 of the Tucson City Code (the “Ordinance”) requires the Tucson Police Department (“TPD”) to destroy forfeited firearms with limited exceptions. However, Arizona law prohibits a political subdivision from facilitating the destruction of legal firearms. A.R.S. § 13-3108(F). Rather than destroying such firearms, a political subdivision must sell them to an authorized dealer. *Id.* § 12-945(B).

Because the Ordinance requires TPD to take actions contrary to state law, the Ordinance violates the law. And the City’s status as a charter city does not create a safe harbor. This is because firearms regulation, including regulating the destruction of legal firearms, is a matter of statewide concern that implicates: (1) preserving the constitutional right to bear arms; (2) regulating police departments’ conduct; and (3) regulating firearms as a way to preserve public safety. Cases involving the disposition of municipal *real* property, which do not implicate these statewide interests, are not to the contrary.

Therefore, pursuant to A.R.S. § 41-194.01(B)(2), Petitioner respectfully requests that this Court declare that the Ordinance violates state law; set a time by which the City must repeal the Ordinance and otherwise resolve the violation; and

retain jurisdiction to conduct further proceedings, if the City does not act, to direct the State Treasurer to withhold and redistribute certain state-shared monies.

PARTIES

Petitioner State of Arizona *ex rel.* Mark Brnovich, Attorney General, is the proper party to bring actions under A.R.S. § 41-194.01. Respondent City of Tucson is a municipal corporation and charter city, organized under the laws of the State of Arizona. Nominal Respondent Jeff DeWit is the State Treasurer and has duties related to withholding and redistributing state shared monies under § 41-194.01 and related statutes. He is named solely in his official capacity to effect the relief provided in those statutes.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this petition pursuant to Article VI, § 5(6) of the Arizona Constitution, which grants this Court “[s]uch other jurisdiction as may be provided by law,” and the recently enacted Senate Bill 1487. *See* S.B. 1487, 52nd Leg., 2d Reg. Sess. (2016) (codified at A.R.S. §§ 41-194.01, 42-5029(L), and 43-206(F)). Under § 41-194.01(A), a member of the Legislature may request that the Attorney General investigate “any ordinance, regulation, order or other official action adopted or taken by the governing body of a county, city or town that the member alleges violates state law or the Constitution of Arizona.” If the Attorney General determines that an ordinance “may violate” state law, then the Attorney

General is directed to file a special action petition in this Court to resolve the issue, and this Court is directed to “give the action precedence over all other cases.” A.R.S. § 41-194.01(B)(2).

On October 12, 2016, Representative Mark Finchem submitted a request for investigation pursuant to § 41-194.01, identifying the Ordinance as being potentially unlawful. Exh. 3 at APP0021.¹ The Attorney General’s Office commenced an investigation, soliciting public records and a written response on legal and factual issues from the City. On November 14, the Attorney General’s Office issued its statutorily prescribed report, which concluded that the Ordinance conflicts with state statutes prohibiting municipalities from facilitating the destruction of firearms. Exh. 1 at APP0008.

The report also concluded that the proper reading of the relevant legal authorities is that the regulation and destruction of firearms is a matter of statewide concern. *Id.* at APP0009-10. It thus disagreed with the City’s claim that as a charter city it could regulate the destruction of firearms in its possession as a matter of purely local concern. However, because the City’s contentions on that issue were based on a reasonable (albeit incorrect) reading of existing authorities, the Attorney General’s Office formally determined that the Ordinance “may

¹ Representative Finchem submitted two complaints. Exh. 2 at APP0016; Exh. 3 at APP0020. The second complaint differs from the first only in that it specifically identifies Tucson City Code 2-142 as the ordinance at issue.

violate” state law under § 41-194.01(B)’s structure. This triggered a requirement to seek resolution from this Court before state-shared revenue is withheld. *Id.* at APP0014.

The Attorney General’s Office forwarded its report to the City on the day it was issued, and then communicated with the Tucson City Attorney regarding whether the City would alter the Ordinance to moot the dispute over its legality and obviate the need for this special action. Exh. 7 at APP0135. However, on December 6, the Tucson City Council met and refused to take action toward repealing or otherwise changing the Ordinance, leaving in place the requirement that the TPD destroy legal firearms in violation of state law. This petition for special action followed.

The Court’s jurisdiction over this petition is properly invoked and is mandatory rather than discretionary. First, given the Attorney General’s determination that the proper reading of the authorities is that the Ordinance violates state law, and the City Council’s subsequent refusal to repeal or change the Ordinance, there is an actual case or controversy between Petitioner and the City regarding the lawfulness of the Ordinance and its mandate that TPD destroy firearms. *See, e.g., Ariz. State Bd. of Dirs. for Junior Colls. v. Phoenix Union High Sch. Dist. of Maricopa Cnty.*, 102 Ariz. 69, 73 (1967) (concluding that actual controversy existed over a claim by high school district to certain funds); *Adage*

Towing & Recovery, Inc. v. City of Tucson, 187 Ariz. 396, 397 n.1 (App. 1996) (same; based on ongoing conflict between towing agency and law enforcement agencies); *cf. MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007) (discussing longstanding case law that “an appropriate action for declaratory relief *can* be a case or controversy under Article III” of the U.S. Constitution).

Second, § 41-194.01(B) vests this Court with mandatory rather than discretionary jurisdiction in cases where the Attorney General makes a “may violate” determination. The statute’s plain language establishes mandatory jurisdiction by providing that when the Attorney General concludes that a county or municipal action “may violate” state law, “the attorney general shall file a special action in [the] supreme court to resolve the issue, and the supreme court shall give the action precedence over all other cases.” A.R.S. § 41-194.01(B)(2). This Court therefore has a duty to exercise its jurisdiction. *See* Ariz. Const. art. VI, § 5(6) (The Court “shall have . . . [s]uch other jurisdiction as may be provided by law.”); A.R.S. § 12-102(A) (“The supreme court shall discharge the duties imposed and exercise the jurisdiction conferred by the constitution and by law.”); *cf.* Ariz. R.P. Special Actions 1(b) (describing statutory special actions).

If there were ambiguity concerning whether the Court’s jurisdiction is mandatory, and there is none, then the Court “may consider the statute’s subject matter, legislative history, and purpose, as well as the effect of different

interpretations, to derive its meaning.” *Fleming v. State Dep’t of Pub. Safety*, 237 Ariz. 414, 417 ¶ 12 (2015) (quotation marks and citation omitted). Here, the subject matter involves both state finances and resolving the legality of official actions by counties, cities, and towns—legal questions that require prompt, final resolution. Moreover, the legislative history shows that legislators understood this Court would be the one to promptly adjudicate those questions.² The contrary interpretation, that an action must start in Superior Court and wind its way through multiple levels of judicial review before being finally resolved by this Court, would delay and therefore subvert the legislative purpose—obtaining prompt compliance with state law.³

² For example, Senate President Andy Biggs, S.B. 1487’s sponsor, testified in the House Commerce Committee that an action is going to “get a priority over all other cases [through] a special action to the state supreme court.” 3/9/16 House Commerce Committee Hr’g at 36:41, *available at* http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=17223&meta_id=352904. Similarly, Representative Warren Petersen stated during the House floor debate that under S.B. 1487, counties, cities, and towns “have a priority that the Supreme Court will resolve the issue.” 3/16/16 House Floor Session Pt. 6 at 48:50, *available at* http://media-14.granicus.com:443/OnDemand/azleg/azleg_c9af7b43-b6f2-45bc-8232-67798cd40c97.mp4.

³ Even if this Court’s jurisdiction under § 41-194.01(B)(2) were discretionary, the Court should nonetheless accept jurisdiction because this case presents purely legal questions of statewide importance. *See, e.g., Randolph v. Groscost*, 195 Ariz. 423, 425 ¶ 6 (1999). This action addresses the proper relationship between the State and a charter city such as Tucson, and the Court’s resolution of this issue will affect charter cities throughout the state. *See City of Tucson v. State* (“*Tucson I*”), 229 Ariz. 172, 173 ¶ 6 (2012) (conflict between charter city ordinance and state

Finally, this Court also has jurisdiction to conduct additional proceedings to instruct the State Treasurer to withhold and redistribute certain state-shared monies from the City if the City does not resolve the violation within such time as the Court sets. Section 41-194.01(B)(2) describes “a special action in [the] supreme court *to resolve the issue*” (emphasis added). This broad language empowers the Court to resolve the entire dispute between Petitioner and the City. Petitioner has therefore named the State Treasurer, solely in his official capacity, as a nominal respondent for relief purposes only.

STATEMENT OF THE ISSUE

Does a charter city ordinance requiring its police department to destroy forfeited firearms violate state laws prohibiting municipalities from facilitating the destruction of legal firearms when those laws implicate at least three statewide interests—preserving the constitutional right to bear arms, regulating the conduct of police departments, and regulating firearms as a way to preserve public safety?

statute on dates of municipal elections “involves legal issues of statewide importance”). This case also implicates government finances and the constitutional right to bear arms, both issues of statewide importance. *See, e.g., Rumery v. Baier*, 231 Ariz. 275, 278 ¶ 13 (2013) (use of state trust proceeds to pay management costs is issue of statewide importance); *Fushek v. State*, 218 Ariz. 285, 288 ¶ 6 (2008) (availability of constitutional right to jury trial is of statewide importance).

STATEMENT OF FACTS

A. Applicable State Firearms Regulations.

State law contains several statutes regulating firearms, including provisions concerning firearms licensing, where persons may carry firearms, the proper use of firearms, and who may carry firearms. *See* A.R.S. §§ 13-3101 *et seq.* State law also restricts the ability of political subdivisions to regulate firearms. In 2000, the Legislature declared that “[f]irearms regulation is of statewide concern. Therefore, the Legislature intends to limit the ability of any political subdivision of this state to regulate firearms and ammunition.” H.B. 2095, 44th Leg., 2nd Reg. Sess. (2000). The Legislature thus enacted a statute that explicitly prohibits political subdivisions from enacting any ordinance relating to the acquisition, licensing, registration, or use of firearms. A.R.S. § 13-3108(A).

State law also specifically regulates the circumstances under which state and local governments may destroy firearms. Two statutes relevant here were amended in 2013. *See* H.B. 2455, 51st Leg., 1st Reg. Sess. (2013). First, A.R.S. § 13-3108(F) establishes that “[t]his state, any agency or political subdivision of this state and any law enforcement agency in this state shall not facilitate the destruction of a firearm or purchase or otherwise acquire a firearm for the purpose

of destroying the firearm except as authorized by section 13-3105 or 17-240.”⁴ Second, A.R.S. § 12-945(B) sets out the proper procedure for the disposing of firearms in the possession of a public entity: “[T]he agency shall sell the firearm to any business that is authorized to receive and dispose of the firearm under federal and state law and that shall sell the firearm to the public . . . unless the firearm is otherwise prohibited from being sold under federal and state law.”⁵ Section 12-943 states that property “in the possession of a state, county, city or town agency may only be disposed of pursuant to this article,” which includes § 12-945.

B. The City of Tucson’s Ordinance.

On April 19, 2005 the Tucson City Council passed the Ordinance, which provides in part:

(a) Unless needed as evidence, and except as provided in subsection (b) of this section, after either forfeiture in accordance with section 2-140, forfeiture to the police department pursuant to a court order, or a determination that a firearm is contraband, the police department *shall dispose of such firearm by destroying the firearm.*

Tucson City Code § 2-142 (emphasis added); *see* Exh. 5 at APP0041-43. Tucson

⁴ A.R.S. §§ 13-3105 and 17-240 provide for certain limited exceptions to the general rule that firearms may not be destroyed but rather must be transferred to an authorized dealer. These apply to firearms that are illegal under federal or state law and those “classified as a curio or relic” by the U.S. treasury department.

⁵ This statute also authorizes police departments to trade a firearm to a federally licensed business for “ammunition, weapons, equipment or other materials to be exclusively used for law enforcement purposes.” A.R.S. § 12-945(B).

City Code § 2-140 prescribes the procedure for deeming a firearm “forfeited.” Exh. 5 at APP0042. The TPD has developed procedures for the disposal of firearms to carry out the Ordinance’s requirement. The Ordinance also permits the TPD to keep a firearm for its own purposes, to lend or transfer the firearm to another law enforcement agency, and to lend or transfer the firearm to a museum. *Id.* at APP0043.

Despite the 2013 enactment of A.R.S. §§ 12-945(B) and 13-3108(F), banning almost all destruction of legal firearms, the Ordinance remains in effect and TPD continues to destroy forfeited firearms. *See* Exh. 6 at APP0046-133. According to the City’s estimates, TPD has destroyed roughly 4,820 firearms over the past four years. Exh. 4 at APP0039.

ARGUMENT

I. The Ordinance Violates State Law.

A. The Ordinance’s Requirement that TPD Destroy Forfeited Firearms Conflicts with State Law Requiring Municipalities to Sell Legal Firearms to Authorized Dealers.

The Ordinance conflicts with state law, which explicitly prohibits political subdivisions from enacting ordinances relating to the possession, transfer, storage, sale, licensing, registration, discharge, or use of firearms. *See* A.R.S. §§ 13-3108(A), 13-3118(A). Furthermore, under state law, political subdivisions “shall not facilitate the destruction of a firearm or purchase or otherwise acquire a firearm

for the purpose of destroying the firearm[.]” *Id.* § 13-3108(F). Rather, a political subdivision must dispose of legal firearms by selling them to “any business that is authorized to receive and dispose of the firearm under federal and state law.” *Id.* § 12-945(B). The Ordinance states that TPD “shall dispose” of forfeited firearms “by destroying the firearm.” Tucson City Code § 2-142(a). TPD cannot comply with both the Ordinance and A.R.S. §§ 12-945(B) and 13-3108(F).

Under A.R.S. § 41-194.01, the pertinent question is whether the Ordinance “violates state law or the Constitution of Arizona.” As discussed above, the conflict between the Ordinance’s requirement and state law is clear, leaving only the question of whether the City falls within a safe harbor.⁶

B. The Ordinance Does Not Supersede State Law.

1. Firearms Regulation Is a Matter of Statewide Concern Because It Involves the Constitutional Right to Bear Arms, Police Conduct, and Public Safety.

The Ordinance cannot supersede state law here because firearms regulation is a matter of statewide concern. This Court previously has held that “a city

⁶ Even if the issue were whether state law preempts the Ordinance, the result would not change. For preemption to occur, “[t]he existence of a preempting policy must be clear. Also, the assertedly competing provisions in question must be actually conflicting rather than capable of peaceful coexistence.” *Union Transportes de Nogales v. City of Nogales*, 195 Ariz. 166, 171 ¶ 21 (1999) (emphasis omitted) (quotation marks and citation omitted). The State has repeatedly stated its intent to occupy the field of firearms regulation. *See* H.B. 2455, 51st Leg., 1st Reg. Sess. (2013); H.B. 2095, 44th Leg., 2nd Reg. Sess. (2000). Furthermore, the Ordinance and state law plainly conflict.

charter, when regularly adopted and approved, becomes the organic law of the city and the provisions of the charter supersede all laws of the state in conflict with such charter provisions insofar as such laws relate to purely municipal affairs.” *Tucson I*, 229 Ariz. at 176 ¶ 19 (quoting *Strode v. Sullivan*, 72 Ariz. 360, 365 (1951)); *see also* A.R.S. § 9-284. The City is a charter city under Article XIII, Section 2 of the Arizona Constitution. And the City’s charter states that it “shall have the power . . . [t]o purchase, receive, have, take, hold, lease, use and enjoy property of every kind and description, both within and without the limits of said city, and control and dispose of the same for the common benefit.” Tucson City Charter, Ch. IV, Sec. 1(4).

But firearms regulation, including regulating the destruction of firearms, implicates statewide interests and therefore is not of purely local concern.⁷ The Legislature has declared firearms regulation to be a matter of “statewide concern,” *See* H.B. 2095, 44th Leg., 2nd Reg. Sess. (2000). That declaration is entitled to respect. *See, e.g., Tucson I*, 229 Ariz. at 178 ¶¶ 33-34. Furthermore, the destruction of forfeited firearms implicates at least three statewide interests:

⁷ An ordinance regulates a matter of purely local concern only when the matter affects the interests of the municipality alone. *See State v. Jaastad*, 43 Ariz. 458, 465 (1934). But when a matter implicates both statewide and local interests, “a charter city’s ordinance is invalid if it conflicts with a valid state statute.” *City of Tucson v. Consumers For Retail Choice Sponsored by Wal-Mart*, 197 Ariz. 600, 602 ¶ 6 (App. 2000).

(1) preserving the right to bear arms under the Arizona and Federal Constitutions, (2) regulating police departments' conduct, and (3) regulating firearms as a way to preserve public safety.

First, the State has an interest in preserving the right to bear arms under the Arizona and Federal Constitutions. Courts in other states have recognized that the regulation of firearms is a matter of statewide concern because the ownership of firearms is constitutionally protected. *See Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996) (quoting Pennsylvania constitution); *see also Cleveland v. State*, 942 N.E.2d 370, 375 ¶ 17 (Ohio 2010) (holding Ohio's firearms regulations were "a comprehensive statewide legislative enactment"); *Doe v. City & Cnty. of San Francisco*, 186 Cal. Rptr. 380, 382 (Cal. App. 1982) (concluding a city's handgun ordinance "legislates in an area of statewide concern"). The Arizona statutes regulating firearms, *see, e.g.*, A.R.S. §§ 12-945(B), 13-3108(F), are tied directly to this interest because they ensure that the thousands of legal guns that TPD acquires each year remain available to Arizona's law-abiding citizens. This may increase the supply of firearms, lower the cost of firearms, and generally facilitate citizens' right to bear arms. The Ordinance contravenes this interest by mandating the destruction of, on average, over a thousand otherwise legal and usable firearms every year.

Second, the State has an interest in regulating local police departments' conduct, including how they dispose of firearms. This Court has determined that "the preservation of order and the protection of life and property and the suppression of crime" are matters in which "the entire state" is interested. *Luhrs v. City of Phoenix*, 52 Ariz. 438, 448 (1938). Relying on this reasoning, Arizona courts have recognized that matters even tangentially connected to the primary work of public safety officers are nonetheless of statewide concern. *See, e.g., id.* at 448 ("fixing a minimum wage for policemen and firemen" is a matter of statewide concern); *Prendergast v. City of Tempe*, 143 Ariz. 14, 17-18 (App. 1984) (compensation of local police officers is a matter of statewide concern); *Phoenix Respirator & Ambulance Serv., Inc. v. McWilliams*, 12 Ariz. App. 186, 188 (1970) (finding the regulation of "emergency vehicles" to be a matter of statewide concern). Here, the State has an interest in ensuring that local police departments are taking steps to preserve "order . . . and the suppression of crime." *Luhrs*, 52 Ariz. at 448. The State is furthering that interest by requiring police departments to use forfeited firearms or transfer them for public sale, which the State believes to be important not just for general public safety, but also for the effective funding of law enforcement bodies.

Finally, the State has an interest in regulating firearms as a way to preserve public safety. This Court has recognized that "it is the concern of the state in the

exercise of its police powers to see that such steps are taken as may be necessary to protect the health of its citizenry.” *Associated Dairy Prod. Co. v. Page* (“Page”), 68 Ariz. 393, 396-97 (1949) (holding the regulation of milk products as being within the scope of the statewide concern for “public health”); *City of Flagstaff v. Associated Dairy Prod. Co.*, 75 Ariz. 254, 259 (1953) (same); *see also Luhrs*, 52 Ariz. at 448 (“[T]he preservation of order and the protection of life and property and the suppression of crime are primary functions of the state; . . . the entire state is interested in these matters, and . . . they are proper subjects for general laws.”). Public safety is a component of public health. As evidenced by its statutes, the State believes that increasing the supply of legal firearms is in the interest of public safety. *See, e.g., State v. Coles*, 234 Ariz. 573, 576-77 ¶¶ 12-17 (App. 2014) (deriving the purpose of legislation prohibiting municipal involvement). Thus, by prohibiting municipalities from destroying firearms, the State has taken a step that it believes to “be necessary to protect the health of its citizenry.” *Page*, 68 Ariz. at 397. The Ordinance infringes upon this interest by eliminating a lawful source of firearms in the state.⁸

⁸ The State also has an interest in ensuring that cities do not waste resources that could be transferred statewide and in the process generate revenue or offset expenses for the City. In *American-La France & Foamite Corporation v. City of Phoenix*, 47 Ariz. 133 (1936), this Court held that there is a statewide interest in regulating and ensuring the fiscal health of municipal budgets. Specifically, the Court held that a charter city was not exempt from a state law prohibiting cities

Arizona courts have found wide-ranging matters subject to legislative action to be of statewide concern. These matters include: the regulation of “sign walkers,” *City of Scottsdale v. State*, 237 Ariz. 467 (App. 2015), the criminalization of public intoxication, *State v. Coles*, 234 Ariz. 573 (App. 2014), traffic regulations for emergency vehicles, *Phoenix Respirator & Ambulance Serv., Inc. v. McWilliams*, 12 Ariz. App. 186 (1970), the setting of the minimum wage, *State v. Jaastad*, 43 Ariz. 458 (1934), and punishment for driving under the influence, *Clayton v. State*, 38 Ariz. 135 (1931). If a matter as minor as the right of sign walkers to use public sidewalks is a matter of statewide concern, then so is a matter as important as the regulation of firearms and their disposal.

Indeed, in nearly one-hundred years of jurisprudence, Arizona courts have found only two matters to be squarely issues of purely local concern—municipal elections, *see, e.g., Tucson I*, 229 Ariz. 172; *City of Tucson v. State* (“*Tucson II*”),

from purchasing anything for which they had not budgeted or for which they did not have sufficient cash on hand. *Id.* at 145. Here also, the State has an interest in ensuring that the City does not waste firearms that the City could sell to authorized dealers statewide. Under the reasoning of *American-La France*, the revenue from these sales could help strengthen the fiscal health of the City’s budget. Although the Court has held that a city’s securing of revenue is a matter of local concern, *see, e.g., Barrett v. State*, 44 Ariz. 270, 273 (1934), the cases citing this principle have used it simply to uphold the power of charter cities to tax items concurrently with the State. These cases do not deviate from the sound principle that strengthening the fiscal health of municipalities is a statewide concern.

235 Ariz. 434 (App. 2014), and disposition of municipal real property.⁹ This case does not involve municipal elections. And as discussed below, the cases involving the disposition of real property do not apply to the destruction of firearms that can be readily transferred throughout the state as part of a statewide market.

2. The Destruction of Forfeited Firearms Is Unlike the Disposition of Municipal Real Property, Which Courts Have Found to be of Purely Local Concern.

In two cases, Arizona courts have held that “the sale or disposition of property by charter cities’ is a matter of solely local concern in which the state legislature may not interfere.” *McMann v. City of Tucson*, 202 Ariz. 468, 472 ¶ 10 (App. 2002) (quoting *City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon*, 67 Ariz. 330, 336 (1948) (hereinafter, “AASAE”)). These cases dealt with the disposition of municipal real property, and neither is applicable to the destruction of personal property such as firearms, which can be readily transferred statewide.

In *AASAE*, the City deeded a portion of land to the plaintiffs. 67 Ariz. at 332. The City, however, had not complied with a statute requiring cities to allow for public bidding before disposing of land. *Id.* The defendant insurance company therefore argued that it could not issue title insurance for the property because the

⁹ The Court may have recognized a third, “advertising a city’s advantages,” but the opinion is not entirely clear and seems to suggest that the State may adopt a policy of advertising that would be of statewide concern and therefore preemptive of a city’s advertising plan. See *City of Tucson v. Tucson Sunshine Climate Club*, 64 Ariz. 1, 8 (1945).

deed was invalid. *Id.* The Court disagreed: “By its charter [the City] was given the power to dispose of its real estate and to provide for the method of its disposition. It is clear that the provisions contained in [the statute requiring public bidding have] no application to charter cities. . . . [T]he sale or disposition of property by charter cities is not a matter of general or public concern[.]” *Id.* at 335-36. The City, therefore, was free to dispose of land as it saw fit.

In *McMann*, the plaintiffs challenged the City’s practice of conditioning the use of the Tucson Convention Center “for gun shows on the show’s promoter’s agreement to require instant background checks for prospective gun purchasers.” 202 Ariz. at 470 ¶ 3. The plaintiffs argued that this conflicted with A.R.S. § 13-3108(A), which prohibited municipalities from enacting “any ordinance . . . relating to the transportation, possession, carrying, sale . . . or use of firearms.” The Court of Appeals concluded that the statute did not preempt the City’s practice: “the use permit the parties entered into is . . . essentially a lease, which is a disposition of property.” *Id.* at 472 ¶ 10. Relying on *AASAE*, the court found that any conditions attached to the lease of real property are a matter of purely local concern. *Id.*

These cases are unlike the City’s firearms destruction for three reasons. First, they involved the disposition of real property, not personal property such as firearms that is readily transferable statewide. This difference is significant. In

AASAE, the Court stressed that “the manner and method of disposal of real estate of a city is not a matter of state-wide public concern” because, for example, what Tucson’s charter provided regarding local real estate “is of no interest to the cities of Phoenix, Yuma, or any other city or town in the State of Arizona[.]” 67 Ariz. at 336; *see also City of Scottsdale*, 237 Ariz. at 471 ¶ 16 (same). Real estate cannot move and therefore will remain within a municipality’s confines. Personal property such as firearms, however, is by its nature portable and part of a statewide market. Thus, the City’s firearms destruction will affect the entire State’s firearms supply and the interests of citizens throughout the State.

Second, the court in *McMann* stressed that “municipalities have a constitutional right to engage in business activities,” and “[w]hen engaging in business activities, a city is presumed to act under the same restrictions as a private person.” 202 Ariz. at 472 ¶ 11. The City was therefore free to attach conditions to a lease of its own real property. But here, the City is not engaging in a business activity by destroying firearms. This activity is non-commercial—it does not generate revenue or benefit the City financially. Rather than making a business judgment, the City appears to be making a political and policy judgment about firearms and therefore has infringed upon a statewide interest already established by the Legislature.

Finally, the State in *AASAE* and *McMann* did not articulate any statewide interest in the disposition of real property involved in those cases. Here, at least three statewide interests are implicated in the City’s firearms destruction. See Part I(B)(1), *supra*. Although the City also may have a local interest in this practice, such corresponding interests often exist between municipalities and the State. But in such cases, as noted above (*supra* note 7), where both statewide and local interests exist in a particular practice, “a charter city’s ordinance is invalid if it conflicts with a valid state statute.” *Consumers For Retail Choice Sponsored by Wal-Mart*, 197 Ariz. at 602 ¶ 6; see also *Tucson I*, 229 Ariz. at 176 ¶ 20 (finding that a charter provision supersedes state law only when it relates to a “purely local interest” (emphasis added)); *McMann*, 202 Ariz. at 472 ¶ 9 (“Municipal affairs subject to local control, independent of any state legislative interference, are those subjects of ‘solely local concern,’ rather than subjects of statewide or mixed statewide and local concern.”). Given the statewide interests identified here, there can be no question that the issue is one of statewide concern and the Ordinance violates state law.

REQUEST FOR ATTORNEY FEES

Pursuant to A.R.S. § 12-348.01, Petitioner requests its reasonable attorney fees in preparing this petition and conducting proceedings in this Court. See *City of Tempe v. State*, 237 Ariz. 360, 367 ¶¶ 26-27 (App. 2015) (affirming mandatory

fees award under § 12-348.01 in action seeking declaratory and special action relief).

CONCLUSION

The Ordinance, which requires TPD to destroy legal firearms, conflicts with state law. Furthermore, firearms regulation is a matter of statewide concern and the City must comply with A.R.S. §§ 12-945(B) and 13-3108(F). Petitioner therefore respectfully requests that this Court declare the Ordinance violates state law; set a time by which the City must repeal the Ordinance and otherwise resolve the violation; and retain jurisdiction to conduct further proceedings, if the City does not act, to direct the State Treasurer to withhold and redistribute certain state-shared monies from the City.

RESPECTFULLY SUBMITTED this 6th day of December, 2016.

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