



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. CITY OF TUCSON  
CV-16-0301-SA**

**PARTIES AND COUNSEL:**

*Petitioner:* State of Arizona, *ex rel.* Attorney General Mark Brnovich

*Respondent:* City of Tucson

**FACTS:**

In 2000, the Arizona legislature passed House Bill 2095 which declared:

It is the intent of the legislature to clarify existing law relating to the state's preemption of firearms regulation in this state. Firearms 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. This act applies to any ordinance enacted before or after the effective date of this act.

H.B. 2095, 44th Legis. 2nd Reg. Sess. (Ariz. 2000). That legislation also amended A.R.S. § 13-3108 to provide: “[A] political subdivision of this state shall not enact any ordinance, rule or tax relating to the transportation, possession, carrying, sale, transfer, purchase, acquisition, gift, devise, storage, licensing, registration, discharge or use of firearms or ammunition . . . in this state.” A.R.S. § 13-3108(A).

In 2005, the City of Tucson enacted Tucson City Code § 2-142 which governs the “disposition of unclaimed and forfeited firearms by the [Tucson] police department.” The Tucson Code permits the Tucson Police Department to keep a forfeited firearm for its own purposes, or to lend or transfer it to another law enforcement agency or museum; otherwise, the Code states that the police “shall dispose” of “unclaimed and forfeited firearms” by “destroying” them. Tucson City Code § 2-142.

In 2013, the legislature amended two state statutes governing the destruction of firearms. Section 13-3108 was revised to add new subsection (F) which provides: “[A]ny agency or political subdivision of this state and any law enforcement agency in this state shall not facilitate the destruction of a firearm. . . .” H.B. 2455, 51st Legis., 1st Reg. Sess. (Ariz. 2013). And, section 12-945(B), which governs the disposal of “unclaimed property in the hands of [a] public agency,” was amended to state:

[I]f the property is a firearm, the 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 according to federal and state law, unless the

firearm is otherwise prohibited from being sold under federal and state law.

H.B. 2455, 51st Legis., 1st Reg. Sess. (Ariz. 2013); *see also* A.R.S. §§ A.R.S. § 12-943 (making A.R.S. § 12-945 applicable to cities, including Tucson). Between 2013 and October 2016, Tucson destroyed approximately 4,800 unclaimed or forfeited firearms.

In March 2016, the legislature passed Senate Bill 1487, codified primarily in A.R.S. § 41-194.01. S.B. 1487, 52nd Legis., 2d Reg. Sess. (Ariz. 2016). It establishes a framework pursuant to which “one or more members of the legislature” may require 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.” A.R.S. § 41-194.01(A). The statute gives the attorney general thirty days to investigate and provide a “written report of findings.” A.R.S. § 41-194.01(B). If the attorney general concludes the regulation or ordinance at issue “[m]ay violate a provision of state law,” then he

shall file a special action in supreme court to resolve the issue, and the supreme court shall give the action precedence over all other cases. The court shall require the county, city or town to post a bond equal to the amount of state shared revenue paid to the county, city or town pursuant to § 42-5029 and 43-206 in the preceding six months.

A.R.S. § 41-194.01(B)(2). If the attorney general or the supreme court determines that a city’s ordinance does violate state law, A.R.S. § 41-194.01(B)(1)(a) then provides that the state treasurer “shall withhold and redistribute” state shared monies that would otherwise be provided to the city. *See also* A.R.S. §§ 42-5029(L) and 43-206(F).

In October 2016, utilizing A.R.S. § 41-194.01, Representative Mark Finchem requested that the Attorney General’s Office investigate whether the Tucson Code violates state law. The Office investigated, receiving public records and a written response from Tucson. Tucson contended that the City Code’s requirement that forfeited firearms be destroyed was a valid exercise of the City’s “organic law” as a charter city, *see* Ariz. Const. art. 13, § 2, and that the state’s firearms statutes have no application to the City. The response also suggested that A.R.S. § 41-194.01 might be unconstitutional.

On November 14, the Attorney General issued his report, concluding that the Tucson Code “may violate one or more provisions of state law,” because it requires the destruction of firearms, conflicting with A.R.S. § 12-3108(F) which prohibits any “political subdivision” from “facilitat[ing] the destruction of a firearm.”

The Attorney General’s Office forwarded its report to the City. The Tucson City Council met on December 6 and refused to repeal or otherwise change the Code. Tucson did, however, suspend the Police Department’s practice of destroying guns until the issue could be adjudicated.

On December 6, the Attorney General’s Office filed this special action pursuant to A.R.S. § 41-194.01(B)(2), asking the Arizona Supreme Court to declare that the Tucson Code was invalid because it conflicts with state law and is not a matter under the City’s control under the

charter city provisions of the Arizona Constitution.

On December 12, Tucson filed a complaint in Pima County Superior Court, seeking an injunction against the implementation of A.R.S. § 41-194.01 and a declaration that the statute is unconstitutional.

On January 18, 2017, this Court issued an order scheduling oral argument to address the issues below. The order deferred the Court's decision whether to accept jurisdiction of this special action until after oral argument. The order also permitted Tucson to continue to litigate its action in Superior Court.

**ISSUES:**

- (1) Is the Court's jurisdiction under A.R.S. § 41-194.01(B) mandatory or discretionary and, if the latter, should the Court accept jurisdiction?
- (2) Do either A.R.S. §§ 41-194.01(A) or (B)(2) violate Arizona's Constitution?
- (3) Are the bond provisions of A.R.S. § 41-194.01(B)(2) mandatory or discretionary?
- (4) Are the provisions of A.R.S. § 41-194.01 severable?
- (5) Under Article XIII, section 2, of the Arizona Constitution, does Tucson City Code § 2-142 supersede inconsistent provisions in A.R.S. § 12-945(B) and § 13-3108(F)?
- (6) If Tucson City Code § 2-142 does not supersede and therefore violates conflicting provisions of state law, would appropriate relief include an order instructing the State Treasurer to withhold and redistribute certain state-shared monies from the City if the City does not resolve the violation within a specified time?

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