

12/12/2016 2:42:05 PM

BY: ALAN WALKER  
DEPUTY

Case No. C20165733  
HON. CATHERINE M WOODS

1 **BOSSÉ ROLLMAN PC**

2 3507 NORTH CAMPBELL AVENUE, SUITE 111  
TUCSON, ARIZONA 85719 520.320.1300

3 Richard M. Rollman, SB#004116/PCC#48932  
rollman@bosserollman.com

4 Richard A. Brown, SB#013779/PCC#64757  
brown@bosserollman.com

5 Attorneys for Plaintiffs

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **FOR THE COUNTY OF PIMA**

8 CITY OF TUCSON, an Arizona municipal  
corporation, JONATHAN ROTHSCHILD,  
9 taxpayer and duly elected Mayor of the City of  
Tucson,

10 Plaintiffs,

11 vs.

12 THE STATE OF ARIZONA; MARK  
BRNOVICH, Attorney General of the State of  
13 Arizona; JEFF DEWIT, Treasurer of the State  
of Arizona,

14 Defendants.

No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY, INJUNCTIVE,  
AND SPECIAL ACTION RELIEF**

(Assigned to Hon. \_\_\_\_\_,  
Div. )

15  
16 The City of Tucson ("City") and Jonathan Rothschild for their Complaint allege  
17 as follows:

18 **PARTIES**

19 1. Plaintiff City is a municipal corporation located in Pima County, Arizona.  
20 2. Plaintiff Jonathan Rothschild ("Rothschild") brings this complaint in his  
21 capacity as a taxpayer of the City and also in his capacity as the elected Mayor of the  
22 City. *See* Ex. 1 (Rothschild Decl.) ¶ 1.

23 3. Defendant Mark Brnovich is the State of Arizona Attorney General ("the  
24 Attorney General"), and he is sued solely in his official capacity, not in his individual  
25 capacity.  
26

1 4. Defendant Jeff DeWit is the Treasurer of the State of Arizona  
2 (“Treasurer”), and he is sued solely in his official capacity, not in his individual capacity.

3 **INTRODUCTION**

4 5. The 52nd legislature of the State of Arizona (“Legislature”) adopted a bill  
5 known as Senate Bill 1487 (“SB 1487”), which was signed into law by the Governor of  
6 Arizona at Chapter 35 of 2016 Session Laws. SB1487—now codified as A.R.S. § 41-  
7 194.01 and within A.R.S. §§ 42-5029(L) and 43-206(F)—became effective on August 6,  
8 2016. SB1487 uses the withholding and redistribution of certain state shared revenue  
9 (“SSR”) to threaten cities and towns to not enact laws, and to coerce the repeal of  
10 previously-enacted laws, that any legislator and the Attorney General believe may  
11 violate State law. Plaintiffs are under a direct and immediate threat from the Office of  
12 the Arizona Attorney General, who he claims is acting under the putative authority of  
13 SB1487. Through this special action complaint, Plaintiffs ask this Court to enjoin, and  
14 declare invalid, SB1487 in its entirety, or alternatively its component parts, because the  
15 law violates the ARIZONA CONSTITUTION; and to issue a writ of mandamus directing the  
16 Treasurer to make payments of SSR to the City as provided in state law, without any  
17 withholding and/or redistribution of those revenues under the putative authority of any of  
18 the provisions of SB1487.

19 **JURISDICTION AND VENUE**

20 6. This Court has jurisdiction to hear and determine this Complaint for  
21 Special Action, and to grant the declaratory, injunctive, and special action relief  
22 requested (including but not necessarily limited to mandamus), by virtue of Article VI,  
23 §§ 14 and 18, and Article XIII, § 2 of the ARIZONA CONSTITUTION; RULES OF  
24 PROCEDURE FOR SPECIAL ACTIONS (“RPSA”) 3 and 4; A.R.S. §§ 12-123, 12-1801 *et*  
25 *seq.*; A.R.S. §§ 12-1831 *et seq.*; A.R.S. §§ 12-2021 *et seq.*, and ARIZ. R. CIV. P. 57 and  
26 65.

1           7. Special action jurisdiction is appropriate in this case under RPSA 3(a), (b),  
2 and (c). Defendants have proceeded or are threatening to proceed without or in excess of  
3 their jurisdiction or legal authority; have made or are threatening to make determinations  
4 that are arbitrary and capricious or an abuse of discretion; and have failed or are  
5 threatening to fail to perform duties required by law as to which they have no discretion.

6           8. Declaratory and injunctive relief is appropriate here because this action  
7 seeks a determination of the constitutionality and validity of SB1487 and the Plaintiffs'  
8 rights, status or other legal relations thereunder.

9           9. Injunctive relief to enjoin the application of SB1487 in its entirety, and  
10 A.R.S. § 41-194.01 in particular, and to prevent the Attorney General and Treasurer  
11 from taking action to withhold from the City SSR funds is appropriate here because:

12           a. SB1487 is unlawful and unconstitutional. Plaintiffs have a strong  
13 likelihood of success on the merits and will suffer irreparable harm if relief is not  
14 granted.

15           b. Plaintiffs lack an adequate remedy at law.

16           c. The threatened irreparable injury to Plaintiffs is substantial, and  
17 granting the requested injunctive relief will not cause the Defendants to suffer  
18 harm.

19           d. Granting the requested relief will promote the public interest by  
20 preserving the status quo until this Court can determine SB1487's  
21 constitutionality.

22           10. Plaintiffs, along with the residents, businesses and visitors of Tucson, will  
23 be deprived of SSR absent mandamus relief from this Court, and will suffer irreparable  
24 harm unless the requested writ of mandamus is granted, directing the Treasurer to make  
25 payments of SSR to the City as provided in state law, without any withholding and/or  
26 redistribution of those revenues under the putative authority of SB1487.

1 11. Venue is proper in this Court under RPSA 4(b) and *Bishop v. Marks*, 117  
2 Ariz. 50, 51, 570 P.2d 821, 822 (App. 1977).

3 **FACTUAL BACKGROUND**

4 A. CHARTER CITY AUTHORITY.

5 12. The City is one of 19 Arizona charter cities, having adopted a charter (“the  
6 City Charter”) under Article XIII, § 2 of the ARIZONA CONSTITUTION. The City Charter  
7 is the organic law of the City.

8 13. ARIZONA CONSTITUTION, Article XIII, § 2, provides for the adoption of the  
9 City Charter. It was included in the State Constitution to permit local communities to  
10 govern their local affairs without interference from the Legislature.

11 14. The City Charter supersedes State laws in conflict with the City Charter in  
12 matters that pertain to municipal affairs of a local nature.

13 15. Article XIII, § 2 grants to the City constitutional authority to adopt  
14 ordinances, regulations, and practices that conflict with state law on matters of local  
15 concern.

16 16. Whether a particular legislative act addresses a matter of statewide or local  
17 concern is exclusively a matter for the State’s Judicial Department to decide.

18 17. A.R.S. § 41-194.01 seeks to subvert the rights granted to charter cities and  
19 their elected officials and creates barriers to judicial relief.

20 B. WITHHELD SSR UNDER A.R.S. § 41-194.01(B)(1) OF SB1487.

21 18. SB1487 (*see* § 41-194.01(A)) compels the Attorney General, upon the  
22 request of a legislator to investigate whether any “ordinance, regulation, order or other  
23 official action adopted or taken” by a governing body of a county, city or town in  
24 Arizona, violates state law or the ARIZONA CONSTITUTION.

25 19. SB1487 (*see* § 41-194.01(B)(1)) requires the Attorney General to give  
26 notice to the City if the Attorney General concludes that an ordinance, regulation, order

1 or other action of the City violates a provision of Arizona law or the ARIZONA  
2 CONSTITUTION (“SB1487 Notice”). SB1487 (*see id.*) further requires that subsequent to  
3 the SB1487 Notice, if the Attorney General determines that the City fails to “resolve the  
4 violation” within 30 days, then he shall notify the State Treasurer to withhold tax  
5 revenues the City is entitled by statute (*see* A.R.S. §§ 42-5209 and 43-206) to receive as  
6 its share of SSR. SB1487 requires (*see* § 41-194.01(B)(1)(a)) that the Treasurer, upon  
7 such notice from the Attorney General, redistribute these withheld tax revenues  
8 (“Withheld Revenue Sharing”) to other counties, cities and towns.

9       20. The withholding and redistribution of the Withheld Revenue Sharing  
10 occurs at the request of a single legislator and upon the opinion of the Attorney General  
11 without any legislative action by the Legislature or prior judicial proceedings.

12       21. SSR is authorized for the benefit of municipalities by §§ 42-5029 and 43-  
13 206 under voter-approved initiative measures adopted respectively in 1960 and 1972.

14       22. Section 43-206 requires the state to deposit into the Urban Revenue  
15 Sharing Fund 15% of the net state income taxes of the two prior years. The Treasurer  
16 then must distribute on a monthly basis to each city or town 1/12 of its entitlement,  
17 which is based on the city or town’s population based on the last census.

18       23. Similarly, § 42-5209 requires the state to deposit 25% of state transaction  
19 privilege taxes (TPT) into a fund and distribute those revenues to incorporated  
20 municipalities in the state in proportion to their population.

21       24. The City’s projected share of SSR that is implicated under SB1487 (*i.e.*,  
22 the SSR distributed pursuant to §§ 42-5029 and 43-206) during fiscal year 2016-2017 is  
23 \$115,218,680, which constitutes approximately 23.5% of the City’s annual general fund  
24 budget. *See* Ex. 2 ¶ 3.

25 .....  
26 .....

1 C. IMPACT TO PLAINTIFFS OF WITHHELD REVENUE SHARING.

2 25. The City depends on receipt of SSR from the State to meet budget  
3 obligations and provide services to its residents, businesses and visitors. *See* Ex. 2 ¶ 4.

4 26. The City's general fund is used to fund the operational expenses of the  
5 City incurred in providing services to the City's residents, businesses and visitors. These  
6 services include but are not limited to those provided by the Tucson Fire Department  
7 (TFD"), the Tucson Police Department ("TPD"), the Tucson Parks and Recreation  
8 Department ("TP&RD"), the Office of the City Manager, the City Attorney's Office  
9 (which includes the City Prosecutor), the Public Defender, the Department of  
10 Transportation, Planning and Development Services, Procurement, Information  
11 Technology, and various other City departments and offices. *See* Ex. 2 ¶ 5.

12 27. The City's current fiscal year budget (FY2017 budget) includes allocations  
13 of funding from the City's general fund, in part, as follows: (a) \$148,779,290 for TPD;  
14 (b) \$91,165,710 for TFD; (c) \$27,104,310 for TP&RD. More than one-half of the  
15 FY2017 general fund budget is allocated for public safety and justice services (police,  
16 fire, city court, prosecution and public defender); and more than 64 % of the City's  
17 FY2017 budget is allocated for the costs of the combined services and operations  
18 provided by the TPD, TFD, TP&RD, and public transit. *See* Ex. 2 ¶ 6.

19 28. More than \$24,700,000 of the City's FY2017 general fund budget is  
20 allocated for the payment of debt service associated with financing instruments known as  
21 certificates of participation ("COPs") and other similar instruments, which are long-term  
22 obligations of the City. *See* Ex. 2 ¶ 7.

23 29. In addition to the debt service for repayment of COPs, approximately \$100  
24 million of the City's FY2017 general fund budget is allocated for payment of other long-  
25 term City obligations, to include (but not limited to) payment of the City's pension  
26 obligations (approximately \$77 million), which includes the City's obligations relating

1 to the Arizona Public Safety Professionals Retirement System (“PSPRS”) (nearly \$60  
2 million) and relating to the City’s pension system for its non-public safety employees  
3 (the Tucson Supplemental Retirement System, “TSRS”) (more than \$17 million). These  
4 pension obligations, and in particular those associated with PSPRS, are projected to  
5 increase substantially in subsequent years. *See* Ex. 2 ¶ 8.

6 30. Under Article XXIX, § 1 of the ARIZONA CONSTITUTION, membership in a  
7 public retirement system, including TSRS and PSPRS, is a contractual relationship  
8 protected from impairment by Article II, § 25 (the “Contract Clause”).

9 31. Any withholding of City SSR that is appropriated for payment of the  
10 City’s long-term obligations, which arise out of existing contracts, including but not  
11 limited to payment of the City’s obligations towards TSRS and PSPRS, would  
12 unconstitutionally impair City contract obligations under Article II, § 25 of the ARIZONA  
13 CONSTITUTION.

14 32. If the City is denied SSR, it will be unable to meet its obligations to  
15 employees (i.e., payroll and pension payments), maintain parks and roadways, and  
16 provide necessary municipal services (i.e., police and fire services) as well as  
17 discretionary municipal services.

18 33. The City does not have other sources of revenue to replace SSR from the  
19 state. In particular, the City’s ability to collect additional revenues through taxes is  
20 capped or otherwise extraordinarily limited by operation of the City Charter and state  
21 law.

22 34. A denial of the City’s SSR under SB1487 will compel the City to make  
23 immediate and enormous reductions to the operational expenditures associated with its  
24 provision of public services. These reductions will most dramatically impact the City  
25 functions and services that comprise the largest pieces of the City’s General Fund  
26 budget: police and fire services, parks and recreations services, and public transit.

1           35.    The withholding and redistribution of the City’s SSR for the current fiscal  
2 year would force the City to lay off more than 1,200 City employees and eliminate the  
3 services they provide. *See* Ex. 1 ¶ 5; Ex. 2 ¶ 9.

4           36.    The withholding and redistribution of the City’s SSR for the current fiscal  
5 year will have the following immediate effects, at a minimum: (1) greatly increased  
6 response times for the City’s emergency responders (police, fire), and the associated  
7 increased risk to the health and safety of the City’s residents, including the risk of  
8 increased crime and property damage; (2) closing of existing fire stations; (3) dramatic  
9 cuts to transit services, including those currently provided to low-income, elderly and  
10 disabled passengers; (4) closing of parks, community pools, and other recreational  
11 facilities; (5) elimination of funding for maintenance of City facilities and infrastructure,  
12 including technology infrastructure; (6) elimination of funding for animal care/impound  
13 services; and (7) dramatic reductions in criminal prosecutions. Additionally, the loss of  
14 revenues would limit economic growth within the City, damage the City’s  
15 creditworthiness, and cause a downgrade in the City’s bond ratings, resulting in higher  
16 capital costs and difficulty in accessing municipal bond markets. *See* Ex. 1 ¶¶ 6-7;  
17 Ex. 2 ¶¶ 10-11.

18           37.    Rothschild, in his capacity as a City taxpayer, is entitled to the benefits  
19 resulting from SSR received from the State. The benefits to which Rothschild and other  
20 City taxpayers are entitled include, but are not limited to, receipt of emergency services  
21 from the City’s first responders (TPD, TFD); use and enjoyment of City parks and  
22 recreation facilities; and use of City streets and other public infrastructure. *See* Ex. 1 ¶ 3.

23           D.    PUNITIVE SSR BOND REQUIREMENT UNDER A.R.S. § 41-194.01(B)(2).

24           38.    If a legislator asks the attorney general to investigate a City ordinance or  
25 action and the Attorney General determines only that the ordinance or action “may”  
26 violate state law or the ARIZONA CONSTITUTION, then SB 1487 directs that the Attorney

1 General “shall file a special action” in the Arizona Supreme Court requesting that the  
2 court issue an advisory opinion to resolve the issue and requires the City to post a bond  
3 equal to the amount of SSR paid to the City in the preceding six (6) months (the  
4 “Bond”).

5 39. On December 6, 2016, the Attorney General filed a petition for special  
6 action in the Arizona Supreme Court, purportedly and mistakenly under the authority of  
7 SB1487 (specifically, § 41-194.01(B)(2)), alleging that the City is in violation of state  
8 laws relating to the disposition of unclaimed and forfeited property by the City and  
9 requesting that the court issue an opinion on that issue. The factual and legal  
10 background to the Attorney General’s petition is set forth in §§ F and G below.

11 40. SB1487 (*see* § 41-194.01(B)(2)) is entirely silent as to: (1) the state’s  
12 interest that is covered or secured by the Bond; (2) the timing of when the Bond is  
13 required (*i.e.*, either before or after the court’s disposition of the action); (3) the form of  
14 the Bond; (4) the purpose of the Bond; and/or (4) the disposition of the Bond, whether  
15 by exoneration, forfeiture, or otherwise, upon the completion of the action.

16 41. During the six-month time period from June 2016 and November 2016, the  
17 City received SSR under §§ 42-5029 and 43-206 in the aggregate amount of  
18 \$55,639,999.37. Accordingly, the Bond required under SB1487 if the Attorney General  
19 files the described special action could be set at or near this amount. *See* Ex. 2 ¶ 12.

20 42. The total of the City’s Fund Balance (*i.e.*, reserve funds) in the General  
21 Fund for the current fiscal year, as determined by preliminary unaudited totals, is  
22 approximately \$75,000,000 and, of this amount, approximately \$24,000,000 is restricted  
23 or committed under existing agreements, leaving approximately \$51,000,000 in available  
24 reserve funds. Thus, the Bond arguably required under SB1487 exceeds the sum total of  
25 the City’s available reserves by nearly \$5 million. *See* Ex. 2 ¶ 13.  
26

1           43. Given the limited availability of City reserve funds and monthly cash  
2 balances, and the already existing demands on those funds, the City cannot post the  
3 Bond as required under SB1487 (*see* § 41-194.01(B)(2)).

4           44. Even if the City held reserve fund balances adequate to post the Bond, the  
5 depletion of these reserves caused by posting a nearly \$56 million bond would have  
6 catastrophic impact on the City, leaving it entirely vulnerable to economic variances and  
7 causing an immediate negative impact to the City’s credit-worthiness and bond ratings.

8           45. The Bond is an unconstitutional filing fee, serving as a barrier to the City’s  
9 access to judicial relief and is intended to prevent the City from presenting its positions  
10 and arguments in a special action brought by the Attorney General.

11           46. The purpose of the Bond requirement is to coerce the City to eliminate  
12 actions found to be objectionable by a single legislator even if the Attorney General  
13 cannot determine whether the City action in question actually violates Arizona law.

14           E. CHILLING THE EXERCISE OF LOCAL OFFICIALS’ CONSTITUTIONAL  
15 AUTHORITY.

16           47. Rothschild, in his capacity as Mayor, together with the elected City  
17 Council members, is entitled and required to exercise the rights and duties of his office  
18 in order to further the best interests of City residents without threat of penalty from the  
19 Attorney General and Treasurer. Such right includes the opportunity to encourage the  
20 City to exercise the rights granted by Article XIII, § 2 of the ARIZONA CONSTITUTION  
21 and the City Charter. These rights are inherent in the form of government created by the  
22 ARIZONA CONSTITUTION and are implied with the same effect as if fully set forth in  
23 Article II, §§ 1 and 2 of the constitution. These rights are further established by the City  
24 Charter, including Chapters III, IV, V, VI, VII, and IX thereof. *See* Ex. 1 ¶ 8.

25           48. ARIZONA CONSTITUTION, Article II, § 1 states that “[a] frequent recurrence  
26 to fundamental principles is essential to the security of individual rights and the

1 perpetuity of free government.” It is a fundamental principle of a free democratic  
2 society that elected officials must be free to exercise their office without threat of duress  
3 or penalty. *See* Ex. 1 ¶ 9.

4 49. ARIZONA CONSTITUTION, Article II, § 2 states that “[a]ll political power is  
5 inherent in the people, and governments derive their just powers from the consent of the  
6 governed, and are established to protect and maintain individual rights.” Article XIII,  
7 § 2 of the constitution authorizes cities to adopt a charter that becomes the organic law of  
8 that city. In doing so, the ARIZONA CONSTITUTION intended to allow the charter city  
9 residents to elect officials to govern the City free from punitive threats from the  
10 Legislature and State officials. *See* Ex. 1 ¶ 10.

11 50. SB 1487 interferes with Rothschild’s exercise of the rights and duties of  
12 the office of Mayor to propose and take action on ordinances, resolutions and other  
13 official actions of the elected governing body of the City, under the authority granted to  
14 the City by Article XIII, § 2 of the ARIZONA CONSTITUTION and the City Charter. This  
15 same interference also occurs with respect to the City’s elected Council Members. *See*  
16 Ex. 1 ¶ 11.

17 51. SB 1487 interferes with elected officials’ exercise of their offices by  
18 imposing punitive consequences upon the City and its residents if elected officials  
19 support and cause the City to take actions in good faith but the Attorney General,  
20 without the benefit of prior judicial proceedings, concludes that the actions violate state  
21 law or the ARIZONA CONSTITUTION. Elected officials, including Rothschild, are thereby  
22 coerced into not supporting an action they believe to be lawful and in the City’s best  
23 interests if the Attorney General disagrees with their conclusion, made in reliance on the  
24 advice of the City Attorney, that the action is lawful. *See* Ex. 1 ¶ 12.

25 52. SB1487 also interferes with local elected officials’ exercise of their offices  
26 even in instances where the Attorney General, following an investigation of a complaint,

1 is unable to determine whether an action of the City violates state law or the ARIZONA  
2 CONSTITUTION, because the legislation imposes draconian sanctions upon the city even  
3 if the Attorney General concludes that an action of the City may—or may not—violate  
4 state law. In such a case, SB 1487 (*see* § 41-194.01(B)(2)) requires the Attorney  
5 General to commence an action in the Arizona Supreme Court, and arguably requires the  
6 City to post the Bond. Thus, City will be coerced to discontinue actions that are the  
7 subject of a requested investigation by a single legislator even if the Attorney General is  
8 unable to conclude the actions violate the law. *See* Ex. 1 ¶ 13.

9 53. SB1487 is a punitive measure adopted by the Legislature to (1) intimidate  
10 and threaten Rothschild and other lawfully elected local officials so as to prevent them  
11 from taking actions those officials believe to be lawful and in the particular local  
12 jurisdiction's best interests if the action is disliked by a single legislator—or by a private  
13 party who has access to and influence with that legislator—and the Attorney General  
14 either disagrees with the local jurisdiction's legal advisor that the action is lawful or is  
15 merely unsure whether the action is lawful; (2) coerce charter city municipalities and  
16 their duly elected officials to surrender to individual legislators and the Legislature the  
17 control of local matters despite the adoption of a city charter and (3) cause lawfully  
18 elected local officials like Rothschild and the City's Council Members to abandon and  
19 not pursue remedies despite their reasonable and good faith beliefs in the legitimacy and  
20 lawfulness of their actions if challenged by the Attorney General. *See* Ex. 1 ¶¶ 14-15.

21 54. The legislative intent of SB1487 to prevent charter Cities from exercising  
22 their constitutional authority is revealed by the following:

23 a. The apparent genesis of § 41-194.01 was outlined in Governor  
24 Doug Ducey's January 11, 2016 State of the State address. In the face of  
25 nationwide efforts by municipalities to increase the minimum wage and mandate  
26 additional employee benefits, Governor Ducey warned "all our cities and towns to

1 put the brakes on ill-advised plans to create a patchwork of different wage and  
2 employment laws” and promised to “use every constitutional power of the  
3 Executive Branch and leverage every Legislative relationship” to prevent  
4 adoption of such plans “up to and including changing the distribution of state-  
5 shared revenue.” See Tr. of 2016 State of the State Address (available at  
6 <http://azgovernor.gov/governor/news/2016/01/watch-arizona-state-state-address>);

7 b. One month later, Senate President Andy Biggs introduced SB1487,  
8 which put to action the Governor’s warnings. In testimony before the House  
9 Commerce Committee, President Biggs recognized that the threat of withholding  
10 shared revenue funds was a “stick” to hold “over a recalcitrant municipality,” and  
11 that he expected that if a city or town “were notified by the Attorney General that  
12 you are in violation the State Constitution or state statute ... that you would see a  
13 rapid-fire response by that municipality to come in and cure.” See Video  
14 <https://apps.azleg.gov/BillStatus/BillOverview/68142> of 3/9/16 House Commerce  
15 Committee Meeting. The Chairman of the Senate Government Committee, John  
16 Kavanaugh, recognized the potential chilling effect of such a serious threat: “I  
17 don’t think this law will ever have to be used, because I think the deterrent effect  
18 of this law will be so great that it will force municipalities to obey the law.” See  
19 Video <https://apps.azleg.gov/BillStatus/BillOverview/68142> of 2/17/16 Senate  
20 Government Committee Meeting at 12;

21 c. In committee meetings and during floor debate, legislators and city  
22 residents voiced concerns that the bill penalized cities and towns who disagreed  
23 with the Legislature, abrogated local control, violated the separation of powers  
24 and other provisions of the State Constitution, short-circuited the legal process,  
25 allowed one legislator to threaten an entire city’s economic planning, and  
26 punished residents by depriving them of funding for vital services. See Video

1 <https://apps.azleg.gov/BillStatus/BillOverview/68142> of 3/9/16 House Commerce  
2 Committee Meeting; Video <https://apps.azleg.gov/BillStatus/BillOverview/68142>  
3 of 3/14/16 House Rules Committee;

4 d. In the House Rules Committee, House staff attorneys advised the  
5 committee that there were “potential constitutional problems” with SB1487. *See*  
6 Video <https://apps.azleg.gov/BillStatus/BillOverview/68142> of 3/14/16 House  
7 Rules Committee. Nonetheless, SB1487 passed both houses of the Legislature,  
8 and was signed into law by the Governor on March 17, 2016.

9 F. TUCSON CODE § 2-142 AND THE FINCHEM REQUEST FOR INVESTIGATION.

10 55. On or about August 10, 2016, in response to an inquiry by State Senator  
11 Gail Griffin, the Attorney General opined that the provisions of SB1487 apply  
12 retroactively to ordinances, resolutions and other actions approved by cities and towns  
13 prior to the enactment of SB 1487. *See* Ex. 4.

14 56. On or about October 12, 2016, Representative Mark Finchem filed with  
15 the Attorney General a request under SB1487 to investigate whether the City was in  
16 violation of state gun laws as to its disposal of weapons that had come to be City  
17 property (“the “Finchem Request”). The Finchem Request (as amended on or about  
18 October 14, 2016) alleged that City of Tucson Ordinance No. 10146, codified in the  
19 TUCSON CODE as T.C. § 2-142, violates various provisions of state law (A.R.S. §§ 12-  
20 941-945; 13-3105(A); and 13-3108(F)). *See* Ex. 5.

21 57. T.C. § 2-142, adopted and approved by the City’s Mayor and Council in  
22 April, 2005 (11 years before SB1487) under Ordinance No. 10146, provides that  
23 unclaimed and forfeited firearms held by the TPD and no longer needed for evidentiary  
24 purposes shall be disposed of by destruction, with certain exceptions that include use of  
25 the firearm for TPD’s own purposes; transfer to another law enforcement agency; or  
26 transfer to a museum or educational institution.

1           58. T.C. § 2-142 does not prohibit or regulate any person's conduct relating to  
2 firearms and does not impose any penalty on any person. Specifically, § 2-142 does not  
3 regulate or limit a private person's rights to own, possess, carry, transfer, transport, store,  
4 license, register, transport, discharge or use a firearm. Section 2-142 does not in any  
5 way regulate or limit the "right of the individual citizen to bear arms in defense of  
6 himself of the state," as contemplated in Article II, § 26 of the ARIZONA CONSTITUTION,  
7 or the right to keep and bear arms as provided in the Second Amendment to the UNITED  
8 STATES CONSTITUTION. Instead, it merely establishes how the City disposes of its own  
9 property.

10           59. The City does not acquire firearms for the purpose of destroying them  
11 through "buyback" or other similar programs. *See* Ex. 3 (McKay-Hills Decl.) ¶ 3.1

12           60. The only "buyback" event in the City of which the City is aware was a  
13 single event in 2013, during which approximately 200 firearms were turned in for the  
14 purpose of disposal through destruction. *See* Ex. 3 ¶ 3.

15           61. TPD typically acquires more than 1,500 firearms each year in carrying out  
16 its law enforcement activities that are performed in protecting and promoting the public  
17 health, safety and welfare of City residents. *See* Ex. 3 ¶ 4.

18           62. The sources of the firearms acquired by TPD vary. Firearms may be  
19 seized, collected, turned over or held by TPD for the purposes of "safe keeping,"  
20 "investigation," "forfeiture," or "identification." *See* Ex. 3 ¶ 5.

21           63. Firearms designated as "safekeeping" are considered non-evidentiary  
22 property placed into TPD's temporary custody for the purpose of safeguarding for the  
23 rightful owner. This designation includes firearms being held in domestic violence  
24 situations where the firearm is not evidence of a crime; firearms turned in to TPD during  
25

26 <sup>1</sup> Nancy McKay-Hills is TPD's Evidence Superintendent.

1 the pendency of an order of protection; firearms that are part of prisoner property where  
2 the firearm is not evidence of a crime; and, in rare instances, firearms turned in by  
3 members of the community who no longer wish to possess the firearm. This  
4 “safekeeping” designation is estimated to comprise approximately 10% of the firearm  
5 inventory in question. *See Ex. 3 ¶ 6.*

6 64. Firearms taken into custody for “investigation” purposes are those  
7 designated as evidence related to a violation of law and that may implicate or clear an  
8 individual of a crime. *See Ex. 3 ¶ 7.*

9 65. “Forfeited” or “forfeiture” firearms are those that following a civil judicial  
10 forfeiture proceeding in which a court issues an order awarding possession of the firearm  
11 to the City as the proceeds of a crime or as an instrument that was used or intended to be  
12 used to facilitate the commission of a crime. Forfeiture may also occur following a  
13 criminal conviction as part of the orders issued by the sentencing court. *See Ex. 3 ¶ 8.*

14 66. The “investigation” related firearms and the “forfeited” firearms categories  
15 comprise approximately 85% of the firearm inventory acquired by TPD through its law  
16 enforcement activities in the City. *See Ex. 3 ¶ 9.*

17 67. Firearms taken into custody for “identification” purposes are designated as  
18 “found property” having been determined to be lost or abandoned. These firearms are  
19 held temporarily in an effort to determine the legal owners. Also, on certain rare  
20 occasions, TPD will assist other agencies in returning a firearm recovered in another  
21 jurisdiction to a rightful owner within the City. This designation is estimated to  
22 comprise approximately 5% of the firearm inventory acquired by TPD. *See Ex. 3 ¶ 10.*

23 68. Under T.C. § 2-142, TPD destroyed 4,820 firearms during the time period  
24 from 2013 to October 13, 2016. *See Ex. 3 ¶ 11.*

25 69. Of these destroyed firearms, the vast majority were acquired by TPD under  
26 the “evidence” and “forfeiture” classifications described above; meaning that they were

1 acquired by TPD because they had been seized in connection with a person's violation of  
2 law, or were proceeds of a crime or an instrument used or intended to be used to  
3 facilitate the commission of a crime. *See* Ex. 3 ¶ 12.

4 70. T.C. § 2-142 was adopted and approved by the City's Mayor and Council  
5 under Chapter IV, § 1(4) of the Tucson Charter, which provides that the City has the  
6 power to "purchase, receive, have, take, hold, lease, use and enjoy property of every kind  
7 and description, both within and without the limits of said city, and control and dispose  
8 of the same for the common benefit." (Emphasis added).

9 71. T.C. § 2-142 was also adopted and approved by the City's Mayor and  
10 Council under the Tucson Charter, Chapter VII, § 1(35), providing that Mayor and  
11 Council have the power to "prescribe by ordinance the duties of all officers whose duties  
12 are not defined by this Charter; and may by ordinance prescribe for any officer's duties  
13 in addition to those herein prescribed, when the same are not inconsistent with the  
14 provisions of this chapter, and ... the mayor and council shall exercise all of the powers  
15 of the city, and shall pass any and all ordinances or resolutions necessary to carry out the  
16 provisions of this Charter."

17 72. T.C. § 2-142 was also adopted and approved by the City's Mayor and  
18 Council under the Tucson Charter, Chapter VII, § 1(32), providing that Mayor and  
19 Council have the power to "adopt and enforce by ordinance all such measures and to  
20 establish all such regulations in case no express provisions is in this Charter made, as the  
21 mayor and council may from time to time deem expedient or necessary for the  
22 promotion and protection of the health, comfort, safety, life, welfare and property of the  
23 inhabitants of the city, the preservation of peace and good order, the promotion of public  
24 morals, and the suppression of vice in the city."

25 73. As a matter of long-standing Arizona law, the sale or disposition of  
26 property by charter cities—and specifically by the City under its Charter—is a matter of

1 solely local concern “in which the state legislature may not interfere.” *McMann v. City*  
2 *of Tucson*, 202 Ariz. 468, 472, 47 P.3d 672, 676 (App. 2002) (citing *City of Tucson v.*  
3 *Arizona Alpha of Sigma Alpha Epsilon*, 67 Ariz. 330, 336, 195 P.2d 562, 566 (1948)).  
4 Thus, the provisions of Ordinance No. 10146, including T.C. § 2-142, supersede any  
5 conflicting statutes enacted by the Legislature, including but not limited to the statutes  
6 cited in the Finchem Request.

7 74. Disposal of unclaimed property held by the City is the subject of A.R.S. §§  
8 12-940 through 12-945. These statutes contain no declaration of state preemption of  
9 local ordinances or regulations. Arizona law is clear that preemption must be clearly  
10 stated. *City of Tucson v. Consumers for Retail Choice Sponsored by Wal-Mart*, 197  
11 Ariz. 600, 603 ¶ 7, 5 P.3d 934, 937 (App. 2000) (“The legislative intent to preempt must  
12 be clear; a negative inference is insufficient”); *City of Tucson v. Rineer*, 193 Ariz. 160,  
13 162, ¶ 2, 971 P.2d 207, 209 (App. 1998) (“The existence of a preempting policy must be  
14 clear”).

15 75. While A.R.S. § 13-3108 (one of the statutes cited in the Finchem Request)  
16 includes a provision in § 13-3108(A) that purports to preempt a city’s authority to  
17 regulate firearms in certain contexts, none of the identified areas of preemption apply to  
18 the City’s destruction of its own property.

19 76. T.C. § 2-142 does not regulate a private person’s ability to own, possess,  
20 carry, transfer, transport, store, license, register, transport, discharge or use a firearm.

21 77. The City’s methods of disposition of firearms serve solely local concerns  
22 and interests. In particular, the destruction of City-acquired firearms that were used in  
23 crimes or otherwise acquired by TPD prevents the reintroduction of these weapons into  
24 the community, where they might once again be put to that purpose and encountered by  
25 City residents and TPD officers carrying out their law enforcement responsibilities in the  
26 City. Not only is this a purely local concern, it is a legitimate local public health and

1 safety concern over which the City has authority to legislate pursuant to the police  
2 powers conferred through its Charter. *See Rineer*, 193 Ariz. at 164-66 ¶¶ 10-18, 971  
3 P.2d at 211-213 (finding that a Tucson ordinance prohibiting firearms within City parks  
4 relates to a “legitimate and narrow local concern” that is plainly within the City’s  
5 authority to enact through its police powers as conferred under Chapter VII, § (1)(32) of  
6 the Tucson Charter).

7 78. In addition, the City, as a charter city, has the constitutional right to engage  
8 in business activities in the same manner as a private person. *McMann*, 202 Ariz. at 472  
9 ¶ 11, 47 P.3d at 676. When acting in a proprietary capacity relating to its business  
10 activities—including commercial activities—under its charter and constitutional  
11 authority, the City is not subject to the will of the Legislature. *Id.* ¶¶ 11-12.

12 79. The Legislature’s acts referenced in the Finchem Request all relate to  
13 statutory provisions that attempt to compel Arizona cities to engage in commercial  
14 business activities (the sale of city-acquired firearms) in a particular manner. Under  
15 *McMann*, these acts are superseded by the City’s rights under its Charter and the Arizona  
16 Constitution, and the City remains free to make its own business decisions and act under  
17 the same authority and restrictions as a private person. *Id.* Nothing in the Arizona laws  
18 cited in the Finchem Request or in any other Arizona laws compel a private person to  
19 sell his or her firearms, or prohibit a private person or business from destroying his or  
20 her (or its) firearms. Thus, nothing in those statutes can prohibit the City from  
21 destroying its firearms or compel the City to sell them. Instead, the City is free to  
22 choose which of its firearms it destroys, and which firearms it will sell, all without  
23 interference from the Legislature.

24 G. THE ATTORNEY GENERAL’S INVESTIGATIVE REPORT.

25 80. On November 14, 2016, the Attorney General, acting under the provisions  
26 of SB 1487, issued its investigative report in response to the Finchem Request (the

1 “Attorney General Report”). The Attorney General Report (issued as Investigative  
2 Report No. 16-002) concludes that T.C. § 2-142 “*may violate*” one or more provisions of  
3 state law. *See* Ex. 6 (emphasis in original) at 2.

4 81. The Attorney General Report does not address the question of SB1487’s  
5 unconstitutionality, noting instead that the determination of issues relating to a law’s  
6 constitutionality are reserved for the courts. The Attorney General Report states that,  
7 “[i]n its response [to the Finchem Request], as well as additional letters, the City also  
8 laid out arguments challenging the constitutionality of S.B. 1487, codified at A.R.S. §  
9 41-194.01. The Office considered those arguments, but this Report will not address  
10 them and will reserve any response for a court proceeding, if one arises, where the City  
11 may raise them.” *See* Ex. 6 at 3 n. 2.

12 H. CITY’S DECISION TO DEFEND ITS RIGHTS; ATTORNEY GENERAL’S SPECIAL  
13 ACTION.

14 82. Because the Attorney General Report concluded that T.C. § 2-142 “may  
15 violate” state law, he was statutorily compelled to commence an action in the Arizona  
16 Supreme Court seeking an advisory opinion on the matter under § 41-194.01(B)(2).

17 83. By letter dated November 30, 2016, the Attorney General advised the City  
18 that, if the City’s Mayor and Council did not promptly take action to repeal or modify §  
19 2-142 following its meeting of December 6, 2016, he planned to file a special action  
20 with the Arizona Supreme Court “shortly thereafter to obtain a resolution of the issue  
21 pursuant to A.R.S. § 41-194.01(B)(2).” *See* Ex. 7.

22 84. On December 6, 2016, at its regularly scheduled public meeting, the City’s  
23 Mayor and Council unanimously approved a motion to defend the City and Rothschild’s  
24 rights and challenge SB1487’s constitutionality in all respects but directed that further

25 <sup>2</sup> Investigative Report No. 16-002 is also directly linkable at:  
26 <https://www.azag.gov/sites/default/files/sites/all/docs/complaints/CLD-Complaints/16-002%20-%20Investigative%20Report%20-%2011-14-2016.pdf>.

1 destruction of firearms pursuant to T.C. § 2-142 would be suspended pending the  
2 outcome of litigation. See Ex. 8 (Mayor and Council’s Legal Action Report of  
3 December 6, 2016) at 3.

4 85. Also on December 6, 2016, immediately after this action by the City’s  
5 Mayor and Council, the Attorney General filed the special action with the Arizona  
6 Supreme Court.

7 86. In his special action petition, the Attorney General now alleges, contrary to  
8 his determination in the Attorney General Report No. 16-002, that T.C. § 2-142 does in  
9 fact—rather than merely “may”—violate the state laws cited in the Finchem Request.  
10 Despite that finding, the Attorney General still claims to be proceeding under § 41-  
11 194.01(B)(2), the “may” provision, in his Special Action.

12 87. If the Supreme Court agrees with the Attorney General that the action is  
13 properly brought under § 41-194.01(B)(2), the City potentially faces the requirement to  
14 post the Bond even though the amount of the Bond is not based on potential loss of  
15 revenues or any other potential harm to which the state is at risk in the associated special  
16 action. If in fact the Supreme Court requires the City to post the Bond in order to defend  
17 itself in those proceedings, the City faces immediate and irreparable harm in connection  
18 with the Attorney General’s filing of the special action petition

19 I. THE CURRENT COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND SPECIAL  
20 ACTION RELIEF IN THIS COURT.

21 88. A controversy now exists between the City, Rothschild, the State of  
22 Arizona, the Attorney General, and the Treasurer regarding the validity and  
23 constitutionality of SB1487. The City contends that SB1487 is invalid and  
24 unconstitutional for the following reasons:

25 ....

26 ....



1 exercise the powers belonging to either of the others. These Article III violations  
2 include, but are not necessarily limited to:

3 i. The usurpation of the authority of the Legislature and the Attorney  
4 General by empowering a single legislator to compel action (an investigation and  
5 issuance of an investigative report and determination) by the Attorney General;

6 ii. The usurpation of the authority of the Attorney General by compelling  
7 the Attorney General to file a special action in the Arizona Supreme Court if the  
8 Attorney General cannot decide if an action by a city, town or county violates  
9 state law, and instead decides the action “may” violate state law;

10 iii. The usurpation of the powers of the judiciary by providing the Attorney  
11 General, a member of the executive department, the authority to determine  
12 whether a City ordinance, resolution or other action is lawful and to impose a  
13 catastrophic sanction against the City based on that determination, without prior  
14 consideration of determination by any court. Under Article III, the power to  
15 determine whether an ordinance, resolution or other action of the City violates  
16 state law or the ARIZONA CONSTITUTION is exclusively held by the Judicial  
17 Department, and not by the Attorney General, who is a member of the executive  
18 branch of state government.

19 iv. The usurpation of the powers of the Legislature to appropriate state  
20 funds, by empowering the Attorney General and requiring the Treasurer to  
21 reallocate and redistribute SSR without any prior legislative action by the  
22 Legislature;

23 v. The usurpation of the executive powers of the Treasurer, a member of  
24 the executive branch with powers separate from those of the Attorney General  
25 and Legislature, by compelling the Treasurer to redistribute SSR upon the  
26 direction of the Attorney General following the request of a single legislator.

1 **Count 4: SB1487 Provides for Unconstitutional Delegation of Legislative Authority**

2 92. SB1487 violates the prohibition against delegation of legislative authority  
3 by empowering the Attorney General and compelling the Treasurer to modify the  
4 statutorily-prescribed distribution of SSR as otherwise provided by law under §§ 42-  
5 5209 and 43-206; all upon the request of a single legislator and without any prior  
6 legislative action of the Legislature.

7 **Count 5: SB1487 Provides for Unconstitutional Appropriations**  
8 **Without Action by the Legislature**

9 93. SB1487 violates Article IX, § 5 of the ARIZONA CONSTITUTION, which  
10 provides, in relevant part that “[n]o money shall be paid out of the State treasury, except  
11 in the manner provided by law.” As stated by the Arizona Supreme Court, “[p]rovisions  
12 of this nature appear in many state constitutions, and they have universally been  
13 interpreted to mean that the people’s money may not be expended without their consent  
14 either as expressed in the organic law of the state or by constitutional acts of the  
15 Legislature appropriating such money for a specified purpose.” *Crane v. Frohmiller*, 45  
16 Ariz. 490, 495-96, 45 P.2d 955, 958 (1935). SB1487 purports to allow the Attorney  
17 General and Treasurer to distribute and appropriate SSR monies from the State treasury  
18 at their discretion in a manner wholly inconsistent with the mandated formulas for  
19 distribution contained in the SSR statutes. This is an unconstitutional delegation of the  
20 Legislature’s appropriation authority, and seeks to statutorily compel an unlawful  
21 appropriation of public money in violation of Article IX, § 5 of the ARIZONA  
22 CONSTITUTION.

23 **Count 6: SB 1487 Violates Plaintiff Rothschild’s Due Process**  
24 **and Equal Protection and Equal Privileges and Immunities Rights**

25 94. SB1487 empowers a single legislator and the Attorney General to deprive  
26 the taxpayers and residents of Arizona cities of tax revenues that are dedicated and  
appropriated, by operation of statutes enacted through voter-approved initiative

1 measures, to fund the local services received by those taxpayers; to include police and  
2 fire response, use and enjoyment of city parks and recreation facilities, and use of City  
3 streets, public transit and other public infrastructure. Under SB1487, this deprivation of  
4 tax revenues and the services they fund occurs without any prior action or even  
5 consideration by the Legislature or the Arizona courts. In particular, § 41-194.01 would,  
6 upon the finding of the Attorney General, take tax revenues generated in one  
7 municipality and distribute them to every municipality but that one; and it would do so  
8 strictly on the opinion of one executive branch officer, the Attorney General, following  
9 no judicial proceeding. As a matter of substantive due process, Arizona's constitution  
10 requires "fair apportionment" in taxation and thus prohibits "[o]ne municipality ... from  
11 reap[ing] an undue windfall at the expense of the taxpayer or another community." *City*  
12 *of Prescott v. Town of Chino Valley*, 163 Ariz. 608, 619, 790 P.2d 263, 274 (App. 1989);  
13 *see also* John D. Leshy, *The Arizona Constitution* at 59 (citing *City of Prescott*,  
14 explaining that court of appeals interpreted substantive due process guarantee, combined  
15 with equal protection guarantee as requiring "fair apportionment" in taxation). Further,  
16 to deprive the taxpayers of revenues they generated without a judicial hearing on that  
17 deprivation offends procedural due process. Under due process, the party who risks a  
18 deprivation must, at a minimum, be allowed to be heard in a constitutionally adequate  
19 process. Here, the Attorney General alone finds and determines the facts, without an  
20 opportunity for the Taxpayers to be heard by an independent decision maker. This  
21 scheme violates both the ARIZONA CONSTITUTION's substantive and procedural due  
22 process guarantees, as well as the equal protection and equal privileges and immunities  
23 rights of the taxpayers and residents of the City, including Plaintiff Rothschild, that are  
24 guaranteed by Article II, §§ 4 and 13 of the ARIZONA CONSTITUTION.

25 ....  
26 ....



1 retirement systems of which its current and former employees are members. Any such  
2 withholding and redistribution of SSR would violate Article II, Section 25 (the Contract  
3 Clause) and Article XXIX, Section 1 (the Pension Clause) of the ARIZONA  
4 CONSTITUTION.

5 **Count 9: SB1487 is an Unconstitutional Bill of Attainder**

6 98. SB1487 causes punishment to be inflicted on the City and upon the  
7 taxpayers, residents, and visitors of the City without trial or judicial relief. It provides  
8 for the imposition of a severe punishment and penalty—the deprivation of SSR—upon  
9 ascertainable persons or members of a group (namely, a city targeted by a legislator, and  
10 the taxpayers of that city, including in this instance Plaintiff Rothschild) without any  
11 prior judicial trial or hearing. SB1487 thus violates the prohibitions against bills of  
12 attainder set forth in both Article II, § 25 of the ARIZONA CONSTITUTION and Art. I, § 10  
13 of the UNITED STATES CONSTITUTION.

14 **Count 10: SB1487 allows for Unconstitutional Amendment of Statute by Reference**

15 99. SB1487 violates Art. IV, Part 2, § 14 of the ARIZONA CONSTITUTION,  
16 which provides: “No Act or section thereof shall be revised or amended by mere  
17 reference to the title of such Act, but the Act or section as amended shall be set forth and  
18 published at full length.” SB1487 allows executive branch officials, acting unilaterally,  
19 to withhold and reallocate the City’s SSR, in violation of the formulas enacted and  
20 mandated in the SSR statutes, with no attempt to amend those SSR statutes through  
21 legislative act, much less any attempt to set them out in full.

22 **Count 11: SB1487 Unconstitutionally Limits Access to the Judiciary**

23 100. SB1487, in § 41-194.01(B)(2), mandates that, if the Attorney General  
24 determines that a city action *may* be in conflict with Arizona law, he must initiate an  
25 action in the Arizona Supreme Court to “resolve” the matter. Section 41-194.01(B)(2)  
26 further requires that after the Attorney General files that action (although the statute is

1 unclear as to the precise timing of this requirement), the subject city must post a Bond in  
2 an amount that it cannot possibly post without crippling the city's ability to operate or to  
3 meet its daily obligations to its residents. The required Bond bears no rational  
4 relationship to any harm or risk faced by the Legislature, Attorney General or State in  
5 connection with that legal action, and instead serves as a financial punishment designed  
6 to coerce the subject city to bow to the will of the complaining legislator, even though  
7 the Attorney General could not even reach a conclusion as to whether the complained-of  
8 action is in conflict with Arizona law. This punitive Bond requirement violates due  
9 process and unreasonably burdens the right of the City to reasonable access to the  
10 judicial department of the state.

11 **Count 12: SB1487 Provides for Unlawful Advisory Opinion**

12 101. SB1487, by § 41-194.01(B)(2), compels the Attorney General to file a  
13 special action in the Arizona Supreme Court when, following an investigation of a  
14 complaint, he decides that an action by a city or town "may" violate state law. The  
15 nature of this special action is necessarily a request that the Court issue an advisory  
16 opinion on a legal issue, specifically in an instance where the Attorney General cannot  
17 opine whether the action in question does or does not violate state law. This part of  
18 SB1487 violates the prohibition against the issuance of advisory opinions by the Arizona  
19 courts.

20 **Count 13: Tucson Code § 2-142 is a Valid Exercise of City Charter Authority,**  
21 **and Supersedes the Legislature's Attempts to Govern a Matter of Local Concern**

22 102. T.C. § 2-142 was adopted and approved by the City's Mayor and Council  
23 under Chapter IV, § 1(4) of the Tucson Charter, which provides that the City has the  
24 power to "purchase, receive, have, take, hold, lease, use and enjoy *property of every kind*  
25 *and description*, both within and without the limits of said city, and control and dispose  
26 of the same for the common benefit."

1           103. T.C. § 2-142 is a lawful, valid exercise of its express charter authority, and  
2 in exercising this authority, the City is free from the interference of the Legislature under  
3 Article XIII, § 2 of the ARIZONA CONSTITUTION.

4           104. The subject matter of § 2-142 relates to matters of local, and not statewide,  
5 concern; and under long-standing Arizona decisional authority, § 2-142 supersedes any  
6 and all statutes referenced in the Fincham Request and Attorney General Report, and any  
7 other attempt by the Legislature to interfere with local governance on this issue.

8           105. T.C. § 2-142 does not violate the ARIZONA CONSTITUTION or any state  
9 law.

10           106. The controversies set forth above make a declaratory judgment, injunctive  
11 relief, and ensuing writ of mandamus, necessary and proper in order to determine, and  
12 protect, the rights and obligations of the City and the other Plaintiffs.

13           WHEREFORE, the Plaintiffs request that the Court enter judgment as follows:

- 14           1. Declaring that SB1487, in its entirety, is invalid and unconstitutional; and
- 15           2. Declaring in particular that the provisions of SB1487 that provide for the  
16 withholding and redistribution of SSR are invalid and unconstitutional;
- 17           3. Enjoining any continued application of A.R.S. § 41-194.01, and  
18 specifically enjoining any actions by the Attorney General and/or Treasurer under  
19 that provision;
- 20           4. Declaring that the Bond requirement of SB1487 is invalid and  
21 unconstitutional, and/or in the alternative, is only enforceable prospectively  
22 following a judicial determination that the City has exceeded its Charter authority  
23 and is acting in violation of state law or the ARIZONA CONSTITUTION;
- 24           5. Declaring that the scope of SB1487 is limited to those matters not  
25 protected by the rights granted to the City by its Charter and by Article XIII, § 2  
26 of the ARIZONA CONSTITUTION;

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6. Declaring that the City’s disposal of personal property, including forfeited and unclaimed firearms, is a matter of local concern and as a result, T.C. § 2-142 is a lawful exercise of the City’s charter authority and is not a violation of state law;

7. Issuing a writ of mandamus directing the Treasurer to make payments of SSR to City as provided in state law, without any withholding and/or redistribution of those revenues under the putative authority of any of the provisions of SB1487;

8. Awarding attorney’s fees to City and Rothschild under A.R.S. § 12-348.01 and *City of Tempe v. State*, 237 Ariz. 360, 366-69 ¶¶ 25-27, 35-36, 351 P.2d 367, 373-76 (App. 2015), as well as A.R.S. § 12-2030, or as otherwise provided by law;

9. Granting such other and further relief as to the Court seems just and equitable.

RESPECTFULLY SUBMITTED December 12, 2016.

BOSSÉ ROLLMAN PC

By: /s/Richard M. Rollman  
Richard M. Rollman  
Richard A. Brown  
Attorneys for Plaintiffs