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DISTRICT 1

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Arizona House of Representatives
Phoenix, Arizona 85007

August 21, 2023

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 North Central Avenue
Phoenix, Arizona 85004

Re: Request for Investigation of City of Phoenix Ordinance S-50010 Authorizing Donation of Unclaimed Firearms to Ukraine In Violation of Arizona Laws

Dear Attorney General Mayes:

Pursuant to A.R.S. § 41-194.01, and as current members of the Arizona House of Representatives, we respectfully request an investigation of the City of Phoenix's ("City") Ordinance S-50010 ("Ordinance"). Specifically, we request an investigation of the following question:

Does the City of Phoenix's Ordinance S-50010 authorizing the City's execution of a contract with a private company to give away 599 unclaimed firearms to the National Police of Ukraine violate A.R.S. §§ 12-943, 12-945, and/or 13-3108?

In addition to the information and analysis below, enclosed are the following materials for your review: (1) a copy of the City's Ordinance; (2) the executed contract between the City and the private company, D.T. Gruelle Company Group, L.L.C. ("Gruelle"); and (3) two letters that we exchanged with the City on this subject.

On June 28, 2023, the City approved the Ordinance, which states that "[t]he City has selected approximately 500-600 unclaimed firearms to transfer through Gruelle, a private company," to the National Police of Ukraine. The Ordinance states that "9mm, 45mm, 39mm and 12 gauge firearms will be sent"—obviously mischaracterizing the correct caliber of the designated firearms.

As an apparent justification for its Ordinance, a City spokesperson stated that the Miami Police Department in Florida had sent unclaimed firearms to the National Police of Ukraine.¹

A few days later, we sent a letter to the City calling for a repeal of the Ordinance. As we explained, Arizona law plainly states that unclaimed property, including firearms, "may only be disposed of" by following the requirements of A.R.S., Title 12, article 8. State law allows unclaimed firearms to be sold to authorized businesses *or* traded among law enforcement agencies for ammunition, weapons, equipment or other materials to be exclusively used for law enforcement purposes. A.R.S. § 12-945. We also pointed out that just six years ago, in *Brnovich v. City of Tucson*,

¹ See <https://kjzz.org/content/1850834/phoenix-send-unclaimed-firearms-national-police-ukraine#:~:text=Phoenix%20leaders%20have%20unanimously%20approved,unclaimed%20firearms%20outside%20the%20U.S.>

242 Ariz. 588 (2017), the Arizona Supreme Court held that these state laws prevailed over the City of Tucson's ordinance that attempted to authorize the destruction of unclaimed firearms.

On August 4th, the City executed the contract with Gruelle. On August 16th, the City finally responded in writing to our letter, confirming its intent to move forward with the unlawful donation of 599 firearms itemized in the contract. Tellingly, the City made no effort to address any of the state laws identified in our letter or the Arizona Supreme Court's decision in *City of Tucson*.

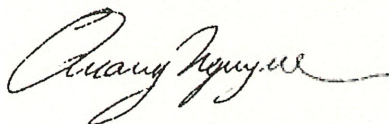
Instead, the City now claims that its unprecedented actions are "similar" enough to Governor Ducey's donation of equipment—not firearms—to Ukraine in 2022.² Aside from ignoring the obvious differences between a Governor's legal authority and a City Council's authority, the City also ignores that its Contract with Gruelle is expressly "governed by and construed in accordance with the substantive laws of th[is] state." Contract at p. 8. And to the extent the City may attempt to rely on Miami's conduct, it bears emphasis that Florida law—unlike Arizona law—expressly exempts cities from state laws governing the disposition of unclaimed weapons. *See* Fl. Stat. Ann. § 790.08(7).

The City's willful ignorance of state law is not only troubling; it places the City in a precarious position should this issue be litigated. *See* A.R.S. § 13-3108(H) (any ordinance that violates state firearm laws "is invalid and subject to a permanent injunction" and "[i]t is not a defense that the political subdivision was acting in good faith or on the advice of counsel"); (I) (authorizing a court to impose a civil penalty of up to \$50,000 if a political subdivision "knowingly and wilfully" violates A.R.S. § 13-3108).

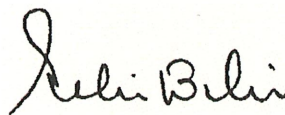
Finally, we note that in your recent investigation of the City's "prevailing wage" ordinance, you "converted" Senator Miranda's investigation request into a request for an opinion after the City repealed its ordinance, and then issued your non-binding opinion several months later. *See* Ariz. Att'y Gen. Op. I23-004. For clarity, we are *not* requesting a legal opinion pursuant to A.R.S. § 41-193(A)(7).

Please issue a written report within 30 days as required by A.R.S. § 41-194.01(B). If the City repeals its unlawful Ordinance here, we urge you to take no further action and conclude that your investigation is moot. *See, e.g.*, S.B. 1487 Investigation Nos. 21-001 & 20-001. If you determine that the *City of Tucson* decision does not clearly resolve the question presented and that the Ordinance may violate state law, please pursue a special action in the Arizona Supreme Court for judicial resolution of this important matter of statewide concern.

Respectfully,



Representative Quang Nguyen



Representative Selina Bliss

Enclosures

cc: Marco@DTGruelle.com, Camron@DTGruelle.com, Thornton.James@DTGruelle.com
c/o D.T. Gruelle Company Group, LLC, 301 Moon Clinton Road, Moon Township, PA 15108

² *See* <https://www.azfamily.com/2022/04/01/ducey-arizona-sending-surplus-military-equipment-ukraine/> (documenting donation of vests, helmets, tactical clothing, footwear, pads and shields donated by 11 local, county, state and tribal law enforcement agencies with coordination of the Arizona Department of Emergency and Military Affairs).