

ADOPTED BY THE
MAYOR AND COUNCIL

June 22, 2021

RESOLUTION NO. 23357

RELATING TO PUBLIC SAFETY WITHIN THE CITY OF TUCSON: DECLARING THAT NOTWITHSTANDING HOUSE BILL 2111 AND ARIZONA REVISED STATUTES, SECTION 1-272, CONSTITUTIONAL FEDERAL LAWS OR REGULATIONS THAT REGULATE FIREARMS WILL HAVE FULL EFFECT WITHIN THE CITY OF TUCSON; AND DECLARING AN EMERGENCY.

WHEREAS, on or about April 6, 2021, Arizona Governor Ducey signed HB 2111, as approved by the Arizona Legislature. On its face, HB 2111 purports to amend Arizona law (A.R.S. Sec. 1-272) to provide that “. . . this state and all political subdivisions of this state are prohibited from using any personnel or financial resources to enforce, administer or cooperate with any act, law, treaty, order, rule or regulation of the United States that is inconsistent with any law of this state regarding the regulation of firearms;” and

WHEREAS, the United States Supreme Court has explicitly rejected the idea that the states can nullify federal law. In *Cooper v. Aaron* (1958) [and other cases], the Supreme Court of the United States held that federal law prevails over state law due to the operation of the Supremacy Clause, and that federal law "can neither be nullified openly and directly by state legislators or state executive or judicial officers nor nullified indirectly by them through evasive schemes ..." Thus, state laws purporting to nullify federal statutes or to exempt states and their citizens from federal statutes have only symbolic impact; and

WHEREAS, HB 2111 cites to Article II, Section 3 of the Arizona Constitution as its purported legal authority for prohibiting the political subdivisions of the state from using any

personnel or resources to enforce, administer or cooperate with any act, law or regulation of the United States Government that is “inconsistent *with any law of this state*” regarding the regulation of firearms. However, Article II, Section 3 of the Arizona Constitution provides no such authority. Instead, Article II, Section 3 of the Arizona Constitution only provides that the state, exercising its sovereign authority, may prohibit political subdivisions from using personnel or resources to enforce, administer or cooperate with federal actions or programs that are not consistent *with the Constitution of the United States*. Article II, Section 3 also expressly recognizes the authority of the Supremacy Clause of the United States Constitution, stating that the “Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject.”

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. Notwithstanding the provisions of HB 2111 and A.R.S. Section 1-272, the Mayor and Council direct the City Manager to continue to allow the use of City personnel and/or financial resources to enforce, administer and/or cooperate with federal actions and/or programs that regulate firearms, unless and until such federal action or program is found by a court of competent jurisdiction to violate the provisions of the United States Constitution. Such federal actions and/or programs include, but are not limited to, those that may require background checks, ban high-capacity magazines, ban assault weapons, establish “red flag” laws, and/or ban “ghost guns.”

SECTION 2. Notwithstanding the provisions of HB 2111 and A.R.S. Section 1-272, the Mayor and Council declare and proclaim that federal laws, orders and acts that regulate firearms in a manner that is consistent with the requirements of the United States

Constitution are and shall remain in full force and effect within the corporate limits of the City of Tucson, regardless of whether those laws, orders or acts are more restrictive or prohibitive than regulations established under the laws of this state.

SECTION 3. The Mayor and Council authorize the City Attorney, acting on behalf of the City of Tucson, to participate as amicus curiae in litigation relating to “Second Amendment Sanctuary” laws or proclamations similar to HB 2111 in order to support positions consistent with the provisions of Sections 1 and 2 of this Resolution, together with the recitals herein.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, June 22, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

MR/dg
6/15/21