

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF ARIZONA**

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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Fund for Empowerment, a nonprofit
corporation, in its individual capacity;
Ronnie Massingille, individually;
Mohamed Sissoho, individually; Dyrwood
Moore, individually; Faith Kearns,
individually; Frank Urban, individually;
Timothy James, individually; Sherdina
Carr, individually; Papy Abdul Idrissa,
individually; and Jason Rich, individually,

Plaintiffs,

v.

City of Phoenix, a political subdivision of
the state of Arizona; Rachel Milne,
individually, and in her official capacity as
the Director of the Office of Homeless
Solutions; and Michael Sullivan
individually, and in his official capacity as
Interim Chief of the Phoenix Police
Department, Entities I-X, political
subdivisions of the state of Arizona; and

Case No.: 2:22-cv-02041-GMS

**NOTICE OF CLAIM OF
UNCONSTITUTIONALITY**

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1 John and Jane Does 1-75, in their
2 individual capacities,

3 Defendants.
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5 Pursuant to A.R.S. § 12-1841, Plaintiffs hereby provide notice to the Attorney
6 General of Arizona, the Speaker of the Arizona House of Representatives, and the
7 President of the Arizona Senate that Plaintiffs have filed the Complaint (Doc. 1) attached
8 hereto as **Appendix A** challenging the constitutionality of the City of Phoenix’s
9 enforcement of Phoenix City Code § 23-30 (the “Camping Ban”), Phoenix City Code §
10 23-48.01 (the “Sleeping Ban”), Phoenix City Code § 23-85.01 and Arizona Revised
11 Statutes § 13-1501 et seq. (together with Phoenix City Code § 23-85.01, the “Trespassing
12 Bans”).

13 This Notice of Claim of Unconstitutionality is being sent to the Arizona Attorney
14 General, the Speaker of the Arizona House of Representatives, and the President of the
15 Arizona Senate at the physical addresses and email addresses set forth in the Certificate
16 of Service below. The following information is being provided pursuant to A.R.S. § 12-
17 1841(B)(1) through (5):

18 **I. Plaintiffs’ Attorneys Contact Information.**

19 The Plaintiffs challenging the constitutionality of the Camping Ban, the Sleeping
20 Ban, and the Trespassing Bans are the Plaintiffs listed above and in the case caption.
21 Below are the names, addresses, telephone numbers and email addresses for each of
22 Plaintiffs’ attorneys of record in this matter:

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II. Case Information.

- a. Case Name:** Fund for Empowerment, et al, v. City of Phoenix, et al.
- b. Court Name:** United States District Court for the District of Arizona
- c. Caption:** The caption in this matter is as set forth in the Complaint attached as Appendix A and as above on this Notice of Unconstitutionality.
- d. Case Number:** Case No.: 2:22-cv-02041-GMS

1 **III. Brief Statement of the Basis of the Claim of Unconstitutionality.**

2 The Complaint alleges that the City's enforcement of the Camping Ban, the
3 Sleeping Ban, and the Trespassing Bans violate Plaintiffs' protection from the imposition
4 of excessive fines under the Eighth Amendment of the U.S. Constitution.

5 **IV. Brief Description of the Proceeding, With Copies of Any Court Orders.**

6 Plaintiffs filed their Complaint for declaratory and injunctive relief on November
7 30, 2022. On December 15, 2022, the United States District Court for the District of
8 Arizona entered an Order enjoining Defendants from doing any of the following:

9 1. Enforcing the Camping and Sleeping Bans against individuals who practically
10 cannot obtain shelter as long as there are more unsheltered individuals in Phoenix than
11 there are shelter beds available;

12 2. Seizing any property of the unsheltered without providing prior notice at the
13 property's location that the property will be seized, unless the agent or employee has an
14 objectively reasonable belief that it is (a) abandoned, (b) presents an immediate threat to
15 public health or safety, or (c) is evidence of a crime or contraband; and

16 3. Absent an immediate threat to public health or safety, destroying said property
17 without maintaining it in a secure location for a period of less than 30 days. December
18 15, 2022 Order (Doc. 32), attached as **Appendix B**.

19 On May 28, 2024, Defendants filed a Motion to Dismiss Plaintiffs' Complaint in
20 part, which is currently pending with the court.

21 As required by A.R.S. § 12-1841, copies of the orders (Docs. 152 and 154) issued
22 in this matter are attached as **Appendix C**.

23 **V. Date, Time, Location, Judge, and Subject of the Next Hearing, if Any.**

24 There are no current hearings pending before the Court.
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1 RESPECTFULLY SUBMITTED this 12th day of July, 2024.

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3 **ZWILLINGER WULKAN PLC**

4 By: /s/ Benjamin L. Rundall
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20 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2024, I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court for the District of Arizona by using the CM/ECF System. All participants in the case who are registered CM/ECF user will be served by the CM/ECF system.

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/s/ Stephanie Dolfini
