

Substantial Disruption



On Your Marks, Get Set, Stop!

By Mike Tully

Those who viewed the President's inaugural speech were treated to a description of the country that read like the script for a "Mad Max" movie. The problems that bedevil every recent administration, such as poverty ([which is going down](#)) a decline in factory jobs ([which are not coming back](#)), some underperforming schools ([although the high school graduation rate is at an all-time high](#)) and crime ([which is still near an all-time low](#)) were described as "carnage." [Merriam-Webster online](#) describes "carnage" as: "the flesh of slain animals or humans" or a "great and usually bloody slaughter or injury." That may apply to Aleppo, or the [Pulse Nightclub](#), but America?

Comrade Trump might be onto something if you consider the Pulse Nightclub massacre, the ongoing slaughter in Chicago, and the tragic numbers [killed and wounded by firearms](#). No American can accept tens of thousands killed and wounded annually as reasonable or necessary, or as an inevitable side effect of the Second Amendment. Carnage in the name of the Constitution is never inevitable or defensible. It's wrong to shout "fire" in a crowded theater. It's wrong to open fire in one, too.

Most of us agree that too many weapons fall into the wrong hands and avoidable death and injury result. There is little or no agreement on how to keep firearms away from those who should not possess them.

That is one wing of the bird. The other is the number of guns in circulation, [more than three hundred million](#). The national firearms inventory is too large. Every business understands how important it is to [control inventory](#) to prevent spoilage, loss, and theft. America's inability to control its firearms inventory contributes to the carnage, which is why municipalities such as Tucson reduce the inventory through buy-back programs and [destruction of forfeited weapons](#). The City has that authority under its Charter, or so it thought.

The authority has been challenged by a couple of Marks. The first is Mark Finchem, who took advantage of an [Arizona statute](#) that allows a legislator to [snitch](#) on a City, Town or County believed to violate state law. I interviewed Finchem when he first ran for office. Since I knew nothing about him, I visited his website to see what primarily concerned him. He cited unnecessary and burdensome regulations, so I lobbed a softball and asked him to name two of them. Deer in the headlights. I asked: name just one. Crickets. Suffice it to say Finchem is not the brightest bulb in the marquee. However, the law seems to empower him and the other Mark, Attorney General Mark Brnovich (please, Vanna, buy this man a vowel!) [took on the City of Tucson](#) and its gun-destruction ordinance.

The matter is in litigation and the Arizona Supreme Court will conduct a hearing in Tempe on February 28th. While there are [several issues the Court will examine](#), the matter of whether the gun-destruction ordinance is an effective way to address the carnage will not be one of them. The issues include whether the law is constitutional and whether the statute preempts the City Charter.

A local charter provision cannot override legislation that address a matter of statewide concern. The [Attorney General lists three issues](#) he argues override the Charter: (1) preserving the constitutional right to bear arms; (2) regulating police departments' conduct; and (3) regulating firearms as a way to preserve public safety. The first issue is the weakest, because the right to bear arms is impacted by legal forfeiture before the weapon is destroyed. The destruction does not impact the right: the forfeiture does. The other issues are legitimate local concerns. I doubt the Court will get that far. First of all, the statute requires the City to post an unreasonably high bond as the cost of admission to court in the first place. That is an unconstitutional bar to reasonable access to the courts. It is likely to be struck down. While elimination of that provision may not invalidate the entire statute, there remains another salient issue: Finchem's [standing](#). Any plaintiff or petitioner must demonstrate that he or she is actually damaged in some fashion and that a court can remedy the damage. How, exactly, is Finchem damaged? His right to bear arms is not affected; he has not forfeited a gun. He is not a City resident. The regulation of Tucson Police conduct does not affect him and his personal safety is not jeopardized by the destruction of forfeited weapons.

I suspect the City will prevail on procedural grounds. But at least the ordinance will survive, forfeited guns will continue to be destroyed, and that's a good thing. Mark my words.