

1 David C. Arner, ADC # 139866
2 Arizona Department of Corrections
3 Eyman Complex/Meadows Unit
4 P.O. Box 3300
5 Florence, Arizona 85132-3300

6 *In Propria Persona*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 David Craig Arner,

10 Plaintiff,

11 -vs-

12 Charles L. Ryan, Director, Arizona
13 Department of Corrections,

14 Defendant.

No.

CV2011 096782

**COMPLAINT FOR
SPECIAL ACTION AND
DECLARATORY JUDGMENT;**

Expedited Ruling Requested¹

15 Plaintiff *in pro per* David C. Arner seeks Special Action and Declaratory
16 Judgment relief, complaining and alleging as follows.

17 **I. INTRODUCTION**

18 1. This is a verified Complaint for Special Action² and Declaratory
19 Judgment, challenging the constitutionality of a statutory provision, specifically
20 **A.R.S. § 31-230.D**, passed by the Arizona Legislature and signed into law by the
21 Governor, which has an effective date of July 20, 2011.

22 2. As of July 20, 2011, **A.R.S. § 31-230.D** (Prisoner Spendable
23 Accounts; Fees) authorizes the Arizona Department of Corrections ("ADC")

24 ¹ *"If a show cause procedure is used, the court shall set a speedy return date.
25 If that procedure is not used, the usual time periods established by the Rules of
26 Civil Procedure shall apply, but all times may be specially modified by court order
to achieve expeditious determination of the cause." See Rule 4(c), Rules of
Procedure for Special Actions (underlining added).*

² A copy of Plaintiff's verification is attached hereto, designated **Arner
Attachment A**, and now incorporated by reference as though fully set forth herein.



COPY

JUL 18 2011

MICHAEL K. JEANES, CLERK
C. ALLEN
DEPUTY CLERK

1 Maricopa County Superior Court is proper for this Complaint for Special Action
2 pursuant to **Rule 4(b), R.P.S.A.**, because **a)** actions involving a state agency may
3 be brought in Maricopa County Superior Court; because **b)** the cause of action
4 in this case arose in Maricopa County (*i.e.*, Maricopa County is the county in
5 which the state legislature enacted the law that is challenged herein); and
6 because **c)** Maricopa County is the location of principal office of the Defendant,
7 ADC director Charles Ryan, and the principal place of business of the ADC, the
8 state agency in charge of implementing the statute and collecting the illegal tax.

9 **III. PARTIES**

10 **8. Plaintiff David Arner.** David Arner is a citizen of the United States
11 and the State of Arizona who currently is committed to the custody of the
12 Arizona Department of Corrections to serve a sentence of incarceration. Plaintiff
13 receives regular deposits to his prisoner spendable account and will be subject
14 to the provisions of **A.R.S. § 31-230.D** on and after July 20, 2011.

15 **9. Defendant Charles Ryan.** Charles Ryan is the Director of the
16 Arizona Department of Corrections, the state agency authorized by **A.R.S.**
17 **§ 31-230.D** to deduct and collect a fee on deposits made to prisoner spendable
18 accounts. Subsequent to enactment of the statute, Defendant Ryan authorized
19 a new administrative procedure establishing a 1% fee on all deposits made to
20 prisoner spendable accounts on or after July 20, 2011 (see ¶ 14 of this
21 Complaint).

22 **IV. STATEMENT OF THE ISSUES**

23 **10.** The issues presented for determination by this Court are as follows:

24 **10.1.** Whether the statutory provision challenged herein
25 constitutes an unconstitutional tax and a “special law” prohibited by
26 **Ariz. Const. art. 4, pt. 2, § 19 (9) & (20)**; and, if so,

1 **10.1.1.** Whether deductions by Defendant from Plaintiff's prisoner
2 spendable account are without or in excess of legal authority; and

3 **10.1.2.** Whether Plaintiff is entitled to an Order declaring the
4 statute unconstitutional and prohibiting Defendant from deducting a 1% fee on
5 deposits made to Plaintiff's prisoner spendable account; and

6 **10.1.3.** Whether Plaintiff is entitled to an Order for reimbursement
7 of all monies actually deducted on or after July 20, 2011 from deposits to his
8 prisoner spendable account.

9 **V. STATEMENT OF MATERIAL FACTS**

10 **11.** **A.R.S. § 31-230.D** is the codification of the prisoner spendable
11 accounts portion of Senate Bill 1621 (**SB 1621**).³

12 **12.** **A.R.S. § 41-797** is the codification of the Arizona Department of
13 Corrections Building Renewal Fund portion of Senate Bill 1621 (**SB 1621**) and
14 prescribing the use of monies in the fund.⁴

15 **13.** Plaintiff is incarcerated within the Arizona Department of
16 Corrections and has a prisoner spendable account to which deposits are made

17 ³ D. The director may establish by rule a fee for any deposits made to a
18 prisoner spendable account. The director shall deposit, pursuant to sections
19 35-146 and 35-147, any monies collected pursuant to this subsection in the
20 department of corrections building renewal fund established by section 41-797.
21 **A.R.S. § 31-230.D.**

22 ⁴ A. The department of corrections building renewal fund is established
23 consisting of monies deposited pursuant to section 31-230.... The director shall
24 administer the fund. Monies in the fund are subject to legislative appropriation
25 and are exempt from the provisions of section 35-190 relating to the lapsing of
26 appropriations.

23 B. The director shall use the monies in the fund for building renewal
24 projects that repair or rework buildings and supporting infrastructure that are
25 under the control of the state department of corrections and that result in
26 maintaining a building's expected useful life. Monies in the fund may not be used
for new building additions, new infrastructure additions, landscaping and area
beautification, demolition and removal of a building and , except as provided in
subsection C of this section, routine preventive maintenance.

26 C. The director may use up to eight percent of the annual expenditures from
the fund for routine preventive maintenance. **A.R.S. § 41-797.**

1 on a regular basis. This circumstance will continue beyond July 20, 2011, and
2 Plaintiff has a reasonable expectation that this circumstance will continue
3 throughout his ADC incarceration, with his release currently anticipated to
4 occur in 2014.

5 **14.** Defendant Ryan has issued a notification regarding implementation
6 of a 1% fee on deposits to prisoner spendable accounts. A copy of **ADC**
7 **notification #28-11** is attached hereto, designated **Arner Attachment B**, and
8 now incorporated by reference as though fully set forth herein.⁵

9 **VI. APPLICABLE LAW**

10 **A. UNIFORM DECLARATORY JUDGMENTS ACT**

11 The Uniform Declaratory Judgments Act is codified at **A.R.S. § 12-1831**
12 *et. seq.* (i.e., **A.R.S. § 12-1831** to **A.R.S. § 12-1846**). The Uniform Declaratory
13 Judgments Act provides, in part, that:

14 Courts of record within their respective jurisdictions
15 shall have power to declare rights, status, and other
16 legal relations whether or not further relief is or could
17 be claimed. No action or proceeding shall be open to
18 objection on the ground that a declaratory judgment or
19 decree is prayed for. The declaration may be either
20 affirmative or negative in form and effect; and such
21 declarations shall have the force and effect of a final
22 judgment or decree.

19 **A.R.S. § 12-1831.**

20 Plaintiff seeks declaratory relief in the form of an Order declaring the
21 rights and duties of the respective parties with regard to the statutory provision
22 challenged herein, namely, **A.R.S. § 31-230.D**. Plaintiff also seeks declaratory
23 relief in the form of an Order declaring that the 1% fee authorized in ADC

24 ⁵ ADC Notification # 28-11 informs inmates that Director's Instruction
25 # 304 ("**DI-304**") becomes effective on July 20, 2011; that **DI-304** imposes
26 a 1% fee on all deposits to prisoner spendable accounts; and that all monies
collected will be deposited to the ADC Building Renewal Fund. See Arner
Attachment B.

1 administrative regulation **DI-304** constitutes an unconstitutional tax and a
2 “special law” prohibited by **Ariz. Const. art. 4, pt. 2, § 19 (9) & (20)**.

3 **B. EXTRAORDINARY WRITS — SPECIAL ACTIONS**

4 The rules of procedure governing special actions are codified and consist
5 of **Rules 1 to 10, R.P.S.A., 17B A.R.S.**

6 A special action is the statutorily revised format for an application for an
7 extraordinary writ under the common law or under the formal procedures for
8 extraordinary writs:

9 Rule 1. Nature of the Special Action

10 (a) Relief previously obtained against a body,
11 officer, or person by writs of certiorari, mandamus, or
12 prohibition in the trial or appellate courts shall be
13 obtained in an action under this Rule.... Special forms
and proceedings for these writs are replaced by the
special action provided by this Rule, and designation of
the proceedings as certiorari, mandamus, or
prohibition is neither necessary nor proper.

14 **Rule 1(a), R.P.S.A.**

15 The rules governing special actions prescribe a specific and limited set of
16 questions that may be raised, and no other question may be raised by way of
17 special action:

18 The only questions that may be raised in a special action
19 are:

20 (a) Whether the defendant has failed...to perform a duty
required by law as to which he has no discretion; or

21 **(b) Whether the defendant has proceeded or threatened**
22 **to proceed without or in excess of jurisdiction or legal**
authority; or

23 (c) Whether a determination was arbitrary or capricious or
24 an abuse of discretion.

25 **Rule 3, R.P.S.A. (bold print added).**

26 Assuming, *arguendo*, that the challenged statute is deemed by this Court
to be an unconstitutional tax / special law, Plaintiff raises the question

1 authorized by **Rule 3(b)**, *i.e.*, whether any and all deductions by Defendant Ryan
2 from Plaintiff's prisoner spendable account pursuant to **A.R.S. § 31-230.D** and
3 **ADC DI-304** on or after July 20, 2011 constitutes action "*without or in excess of*
4 *legal authority.*"

5 A non-statutory special action is available under **Rule 1, R.P.S.A.**, only
6 where a plaintiff has no plain, adequate, and speedy remedy at law or by appeal.
7 Under Arizona law, there is no statutory special action for a challenge to a
8 statute's constitutionality (a "statutory special action" is one expressly
9 authorized by the legislature as the procedure to be used in a particular case
10 when seeking judicial review), nor is there a statutory right to appeal from
11 imposition of a fee on deposits to prisoner spendable accounts.

12 Plaintiff did, in fact, attempt to challenge the 1% fee deduction by filing an
13 grievance within the ADC. See ADC Inmate Letter Response sent to Plaintiff
14 (denying any internal appealability with regard to the 1% fee deduction),
15 attached hereto, designated **Arner Attachment C**, and now incorporated by
16 reference as though fully set forth herein. The Inmate Letter Response informed
17 Plaintiff that the 1 % fee cannot be challenged via the official ADC
18 Administrative Inmate Grievance System, pursuant to **ADC Director's Order**
19 **802.01.2 ("DO 802")**, **subsection 1.2.1** (providing that the ADC grievance
20 system does not address actions of the Governor or State Legislature.

21 Further, Arizona's statutory procedure for appeals from administrative
22 decisions, *i.e.*, the Administrative Review Act ("**ARA**"), *i.e.*, **A.R.S. § 12-901 to**
23 **§ 12-914** (Judicial Review of Administrative Decisions), is not applicable to ADC.
24 See **Rose v. Arizona Department of Corrections**, 167 Ariz. 116, 804 P.2d 845
25 (App.1991, Div.1) and **Stanhope v. State**, 170 Ariz. 404, 825 P.2d 25 (App.1991,
26 Div.2).

1 In **Stanhope**, the challenge involved prisoner classification, and
2 Division Two of the Court of Appeals relied heavily upon the **Rose** court's
3 detailed analysis of ARA applicability;

4 As the court in *Rose* noted, judicial review of
5 an administrative decision is available only in
6 "contested cases." A.R.S. § 12-901(1). After a detailed
7 discussion of the issue, the court concluded that inmate
8 disciplinary hearings are not contested cases within
9 the meaning of the ARA, finding that the act's
procedures are ill-suited to such proceedings. That
is no less the case with inmate classification hearings.
As appellees have noted, administrative classification
proceedings concern matters of internal prison
security and administration.

10 **Stanhope**, 170 Ariz. at 406, 825 P.2d at 27.

11 In **Rose**, Division One of the Court of Appeals addressed in detail the
12 question of whether the **ARA** applied to inmate disciplinary decisions within the
13 prison setting, and noted that:

14 The APA defines "contested case" as "any proceeding,
15 including rate making, price fixing and licensing, in
16 which the legal rights, duties or privileges of a party
are required by law to be determined by an agency
after an opportunity for hearing." A.R.S. § 41-1001.3.

17 **Rose**, 167 Ariz. at 119, 804 P.2d at 848.

18 The **Rose** court held that:

19 Because of the distinct procedural differences between
20 inmate disciplinary hearings and proceedings under
21 the ARA, and the justifications for those differences,
we conclude that inmate disciplinary hearings are not
"contested cases" within the meaning of the ARA."

22 **Rose**, 167 Ariz. at 120, 804 P.2d at 849.

23 In this case, there is no hearing within the ADC for the 1% fee deductions,
24 and there is no determination of rights, duties, or privileges by the ADC with
25 regard to the 1% fee deductions. Accordingly, based upon the **Rose** court's
26 discussion of the definition and applicability of the term "*contested case*" and the

1 fact that Plaintiff's case involves an administrative procedure implementing a
2 statutorily authorized fee, it is clear that the ARA provides no route of appeal
3 regarding the 1% fee deduction from prisoner spendable accounts.

4 Accordingly, Plaintiff has no plain, adequate, and speedy remedy at law
5 or by appeal. Therefore, the only remedy available to Plaintiff is a Complaint for
6 Special Action within the state court system seeking an Order for
7 reimbursement, in conjunction with a declaratory judgment holding that the fee
8 is unconstitutional. The Rules of Procedure for Special Actions were specifically
9 designed to provide a means of judicial review in cases where there is no plain,
10 adequate, and speedy remedy at law or by appeal. See Rule 1, R.P.S.A.

11 **C. APPLICABLE CONSTITUTIONAL PROVISIONS**

12 The Arizona Constitution prohibits special laws for the assessment and
13 collection of taxes:

14 **§ 19. No local or special laws shall be enacted in**
15 **any of the following cases, that is to say:**
16 **9. Assessment and collection of taxes.**

17 **Ariz. Const. art. 4, pt. 2, § 19 (9).**

18 In addition, the Arizona Constitution prohibits special laws for the
19 assessment and collection of taxes:

20 **§ 19. No local or special laws shall be enacted in**
21 **any of the following cases, that is to say:**
22 **20. When a general law can be made applicable.**

23 **Ariz. Const. art. 4, pt. 2, § 19 (20).**

24 A "special law," for purposes of constitutional analysis, is one which
25 "applies only to certain members of a class or to an arbitrarily defined class which
26 is not rationally related to a legitimate legislative purpose." See State
Compensation Fund v. Symington, 174 Ariz. 188, 192, 848 P.2d 273,
277 (1993) (quoting Arizona Downs v. Arizona Horsemen's Foundation,

1 130 Ariz. 550, 557, 637 P.2d 1053, 1060 (1981)).

2 **VII. ARGUMENT**

3 **A. PLAINTIFF IS ENTITLED TO ASSERT A CHALLENGE TO THE**
4 **STATUTE / ADMINISTRATIVE REGULATION IN THIS CASE**
5 **BECAUSE HE POSSESSES A CONSTITUTIONALLY PROTECTED**
6 **PROPERTY INTEREST IN DEPOSITS TO HIS PRISONER**
7 **SPENDABLE ACCOUNT**

8 Prior case law within this jurisdiction addresses both the content and the
9 constitutional status of ADC prisoner spendable accounts; and holds that
10 prisoners have a protected property interest in the funds in such accounts:

11 A prisoner's spendable account includes “[a]ll monies
12 that are received by a prisoner and that are not required
13 to be deposited in another account.” A.R.S. § 31-230(A).
14 The account includes monetary gifts received from a
15 prisoner's family.

16 **State v. Stocks**, 2011 WL 2275975, (App.,2011Div.1), at ¶ 3, note 1.⁶

17 **...the State concedes...that Defendant has a**
18 **protected property interest in the funds in his**
19 **spendable account. See Zuther, 199 Ariz, at 111, ¶ 24,**
20 **14 P. 3d at 302 (prisoner has property rights in**
21 **earned wages that implicate due process); Mahers v.**
22 **Halford, 76 F.3d 951, 954 (8th Cir.1996) (prisoner has**
23 **protected property interest in money held in**
24 **prison account received from outside sources).**

25 **State v. Stocks**, *supra*, at ¶ 10 (emphasis by bold print added).

26 **B. CRITICAL CONSIDERATIONS BEARING UPON WHETHER**
27 **THE 1% FEE ON DEPOSITS TO PRISONER SPENDABLE**
28 **ACCOUNTS IS A PERMISSIBLE FEE OR A TAX AND A**
29 **CONSTITUTIONALLY-PROHIBITED SPECIAL LAW.**

30 Plaintiff contends that the 1% fee on deposits to his prisoner spendable
31 account pursuant to **DI-304** and pursuant to the statute that collects such funds
32 and mandates the use of the funds for the Arizona Department of Corrections
33 Building Renewal Fund is a tax and an unconstitutional “*special law*” in violation
34 of **Ariz. Const. art. 4, pt. 2, § 19 (9) & (20)**.

35 ⁶ Plaintiff possesses only the Westlaw citation for this 2011 case.

1 In determining whether an assessment is a fee or a tax, this Court should
2 consider the following questions: **(1)** was the assessment imposed by the
3 legislature or a lesser political entity; **(2)** is the assessment used for a general
4 public purpose; **(4)** are the collected monies subject to acquisition by the
5 legislature for public purposes; **(5)** is the assessment used for the regulation of
6 the group upon whom the assessment is imposed; **(6)** does the assessment
7 result in a special benefit to the group compelled to pay the assessment; and
8 **(7)** is the amount of the assessment based upon the theory of furnishing a
9 service to the group compelled to pay the assessment, and, if so, is the scale of
10 the assessment in reasonable proportion to the service provided.

11 **1. The Monies Collected by the Assessment Are Statutorily**
12 **Dedicated to a Public Purpose.**

13 The assessment is for a general public purpose (*"The director shall*
14 *deposit..., any monies collected pursuant to this subsection in the department*
15 *of corrections building renewal fund established by section 41-797."*). **A.R.S.**
16 **§ 31-230.D** (quoted in full at **Note 3**, herein).

17 The legislature expressly limited the use of the monies, in specific detail:

18 B. The director shall use the monies in the fund for
19 **building renewal projects that repair or rework**
20 **buildings and supporting infrastructure that are**
21 **under the control of the state department of**
22 **corrections and that result in maintaining a**
23 **building's expected useful life.** Monies in the fund
may not be used for new building additions, new
infrastructure additions, landscaping and area
beautification, demolition and removal of a building
and, except as provided in subsection C of this section,
routine preventive maintenance.

24 C. The director may use **up to eight percent of the**
25 **annual expenditures from the fund for routine**
preventive maintenance.

26 **A.R.S. § 41-797** (bold print added) (quoted in full at **Note 4**, herein).

1 **2. The Assessment Was Imposed by Authorization of the**
2 **Legislature, the Taxing Authority of the State.**

3 The assessment on deposits to prisoner spendable accounts, with the
4 monies mandatorily placed in the Arizona Department of Corrections Building
5 Renewal Fund, was imposed by the state legislature, the fundamental taxing
6 entity/authority of the state, rather than imposed by a lesser entity.

7 Taxing in the State of Arizona is a function of the legislature, and other,
8 lesser, entities may impose a tax only pursuant to a formal delegation enacted
9 by the legislature. In this case, the state agency which is to collect the “fee” is
10 not the entity which imposed the fee; instead, the assessment was accomplished
11 by statutory enactment of the primary taxing authority (“*The director may*
12 *establish by rule a fee for any deposits made to a prisoner spendable account.*” See
13 **A.R.S. § 31-230.D.**

14 **3. The Monies Collected by the Assessment Are Subject to**
15 **Legislative Appropriation for Other Public Purposes.**

16 Further, despite the statutorily-specified general public use for monies in
17 the ADC Building Renewal Fund, the legislature nonetheless expressly provided
18 that the monies may be appropriated for yet other public purposes. **A.R.S.**
19 **§ 41-797.A (“*Monies in the fund are subject to legislative appropriation....*”)**
20 (bold print added).

21 **4. The Assessment Is Not a Voluntary Charge Paid in Return**
22 **for a Public Service That Bestows a Specific Benefit on the**
23 **Particular Group Assessed.**

24 The Arizona Supreme Court has distinguished between a fee and a tax by
25 noting that a fee is a voluntary charge paid in return for a public service that
26 bestows a particular benefit on the recipient, “*while a tax is a forced contribution*
of wealth to meet the public needs of the government.” **Stewart v. Verde River**

1 **Irrigation & Power District**, 49 Ariz. 531, 534, 544-45, 68 P.2d 329, 330,
2 334-35 (1937). From an examination of the statutory directions for the use of
3 the collected monies — general building renewal projects that repair or rework
4 ADC buildings and supporting infrastructure, along with routine preventive
5 maintenance — it is quite clear that the 1% fee on deposits to prisoner
6 spendable accounts is “*a forced contribution of wealth to meet the public needs*
7 *of the government.*” The actual purpose for the monies collected by the
8 assessment that is challenged by Plaintiff is unambiguously established by
9 express language of the authorizing statute. See detailed discussion in **Section**
10 **VII. B. 1**, above. As a result of the legislative restriction on the use of the monies
11 accrued by the assessment, it is clear that the monies are **NOT** used for the
12 regulation or direct benefit of the parties upon whom the assessment is
13 imposed.

14 Plaintiff concedes that a fee which is imposed upon a select group and is
15 used to defray the costs of specific services or benefits to members of the group
16 upon whom the fee is assessed is, in all likelihood, a permissible enactment not
17 violative of the state constitution. Because the assessment in this case is based
18 upon deposits to prisoner spendable accounts, this Court might be presented
19 with an argument that the group of persons who are assessed the fee do receive
20 a particular benefit or service in return for the assessment, namely, that the ADC
21 allows prisoners to maintain accounts for their funds and that the ADC manages
22 those accounts for the prisoners. It is conceivable that such an argument might
23 include the claim that the fee is a voluntary one because prisoners are not
24 required by law to make deposits to their prisoner spendable accounts.

25 There are two problems with such an argument. First, the Department of
26 Corrections, however, was not authorized by the legislature to collect the fee for

1 the purpose of defraying the costs of maintaining and/or managing the prisoner
2 accounts. Any attempt to so claim would at once be revealed as a sheer pretext,
3 because the statute expressly mandates that the monies collected be deposited
4 to the ADC Building Renewal Fund, not the costs of managing and maintaining
5 prisoner accounts.^{7 8} Second, unless the ADC implemented a procedure
6 whereby prisoners could utilize their funds to make purchases within the prison
7 setting without making deposits to prisoner spendable accounts, it would be
8 facetious to assert that the decision to make a deposit is a voluntary one.

9 Moreover, pursuant to the language of the challenged statute, only those
10 prisoners who have funds deposited to their spendable accounts are assessed

11 ⁷ By statute, the Department of Corrections is permitted to place combined
12 / commingled inmate monies in interest-bearing accounts (with the approval of
the state treasurer), but the interest earned is not credited to inmate accounts:

13 A. The director may deposit any funds of offenders in
his possession with the state treasurer or, subject to
14 the approval of the state treasurer, deposit such funds
in interest bearing bank accounts. **Any proceeds
15 from such deposits shall be deposited in the special
services fund.**

16 B. Funds of individual offenders may be commingled
by the department only for the purpose of deposit
pursuant to this section.

17 **41-1604.05** (bold print added).

18 ⁸ All proceeds accrued from such ADC-deposited interest-bearing
19 accounts comprised of prisoner funds are to be deposited in a separate fund, the
ADC Special Services Fund, and expenditures from that fund are limited by statute:

20 A. A special services fund is established in the state
department of corrections. The department shall
administer the fund.

21 B. The special services fund, including the inmate
recreation fund, may be used for the following
22 purposes:

23 1. The benefit, education and welfare of committed
offenders, including the establishment, maintenance,
24 purchase of items for resale and other necessary
expenses of operation of canteens and hobby shops.

25 2. To pay the costs of a telephonic victim notification
system. Revenues that are generated by the inmate
26 telephone system and the automated public access
program shall be deposited in the special services fund.

A.R.S. § 41-1604.03.

1 the fee. Under the challenged statute, those prisoners who do not have deposits
2 to their spendable accounts are not assessed any fee in any amount at all. Yet
3 the benefit that accrues from the use of the funds deposited to the ADC Building
4 Renewal Fund accrues to all prisoners, and to all who use ADC buildings, not
5 merely to the group who is assessed the fee. Even further, the burden imposed
6 by the assessment does not fall equally upon all members of the sub-group, but
7 rather the amount of the fee differs from person to person, because those
8 persons who have greater monetary deposits pay a greater monetary
9 assessment.

10 The Arizona Supreme Court — in the course of discussing what
11 constitutes a tax rather than a fee — has held that a tax relates to the taxpayer's
12 ability to pay based on the taxpayer's property or income rather than its
13 relationship to any particular government service provided to the payees.
14 **Verde River**, *supra*, 49 Ariz. at 544-45, 68 P.2d at 334-35. Here, the prisoners
15 who are compelled to pay the assessment are those prisoners who receive
16 monies deposited to their accounts **and the assessment is wholly unrelated**
17 **to any particular benefit not accorded to others who do not pay the**
18 **assessment.**

19 **C. THE 1% FEE MEETS THE TESTS FOR A TAX AND A SPECIAL LAW**

20 Whether an assessment should be categorized as a tax or a fee is generally
21 determined by examining three factors: **(1)** the entity that imposes the
22 assessment; **(2)** the parties upon whom the assessment is imposed; and
23 **(3)** whether the monies accrued by the assessment are expended for general
24 public purposes or used for the regulation or benefit of the parties upon whom
25 the assessment is imposed. **Jachimek v. State of Arizona**, 205 Ariz. 632, ¶ 9,
26 74 P.3d 944, ¶ 9, (App.2003, Div.1), citing **May v. McNally**, 203 Ariz. 425,

1 430-31, 55 P.3d 768, 773-74 (2002).

2 **1. The Assessment In this Case Is A Tax, Not A Fee**

3 Two of the three elements reveal the assessment here as a tax and the
4 third element reveals the tax as a special law. The assessment was authorized
5 by the Legislature, not a lesser entity (see section **VII B. 2.**, herein); the monies
6 collected are subject to appropriation by the legislature (see **A.R.S. § 41-797.A**);
7 the assessment is not related to the regulation of or a benefit to the parties upon
8 whom the assessment was imposed (see section **VII B. 4.**, herein); the
9 assessment is imposed for a general public purpose (the maintenance and
10 renewal of buildings used by the ADC, section **VII B. 1.**, herein); and the
11 assessment is imposed upon a very narrow range of payers, inmates committed
12 to the custody of the state who have monies deposited to their prisoner
13 spendable accounts, but the assessment is for the benefit of the polity of the
14 State of Arizona, of **all** who use the buildings, including ADC employees, other
15 prisoners who do not have deposits to their spendable accounts, law
16 enforcement officers who interview prisoners at the prison, volunteers from the
17 community, university and college tour groups, and victims' reconciliation
18 groups who meet within the ADC. The State of Arizona constitutionally must
19 provide and maintain all buildings used by the Department of Corrections as
20 part of the state criminal justice system. The conclusion to be drawn from the
21 examination of the factors discussed in **Jachimek** is that the assessment
22 imposed in this case constitutes a **tax**, not a **fee**.

23 **2. The Assessment In this Case Is A Special Law**

24 Assuming, *arguendo*, that this Court deems the assessment to be a tax
25 rather than a fee, it is incumbent upon this Court to determine whether the tax
26 is being imposed in an unconstitutional manner.

1 The state constitution prohibits the enactment of special laws where a
2 general law can serve:

3 **§ 19. No local or special laws shall be enacted in**
4 **any of the following cases, that is to say:**

5 **9. Assessment and collection of taxes.**

6 **20. When a general law can be made applicable.**

7 **Ariz. Const. art. 4, pt. 2, § 19 (9) & (20).**

8 It is unquestionable that a general law taxing the citizenry of the state
9 provides monies for the general fund of the state and such tax monies provide
10 the source for the maintenance and renewal of buildings under the control of the
11 Department of Corrections. Here, the legislature has enacted a special law, one
12 which "*applies only to certain members of a class or to an arbitrarily defined class*
13 *which is not rationally related to a legitimate legislative purpose*" (see
14 **State Comp. Fund v. Symington**, 174 Ariz. 188, 192, 848 P.2d 273, 277 (1993)
15 (quoting **Ariz. Downs v. Ariz. Horsemen's Found.**, 130 Ariz. 550, 557,
16 637 P.2d 1053, 1060 (1981)).

17 In this case, the persons who use the buildings under the control of the
18 Department of Corrections include, but unquestionably are not limited to
19 prisoners. Other who use the buildings include Department officials,
20 Department staff and employees, members of the public who have business
21 with the Department, and the general citizenry of the state, who benefit from
22 the incarceration and rehabilitation of prisoners committed to the care and
23 custody of the department. Of the class of persons who use Department of
24 Corrections buildings or who derive a benefit from the use of ADC buildings, the
25 statute authorizing the assessment of a fee "*applies only to certain members of*
26 *[the] class, namely, prisoners within the ADC who receive deposits to their*
prisoner spendable accounts.

1
2 **3. The Statute Authorizing the Fee Does Not Have a
“Legitimate Legislative Purpose”**

3 As previously mentioned, the Arizona Supreme Court has addressed the
4 issue of a special law (one which “*applies only to certain members of a class or to*
5 *an arbitrarily defined class which is not rationally related to a legitimate*
6 *legislative purpose”* (see **State Comp. Fund v. Symington**, 174 Ariz. 188, 192,
7 848 P.2d 273, 277 (1993) (quoting **Ariz. Downs v. Ariz. Horsemen's Found.**,
8 130 Ariz. 550, 557, 637 P.2d 1053, 1060 (1981)). Within the context of a fee
9 challenged as a pretext for an unconstitutional special law actually imposing a
10 tax, not a fee, a “*legitimate legislative purpose*” requires a direct connection
11 between the use of the monies collected and a service or benefit unique to the
12 parties assessed:

13 ¶ 15 Here, there is clearly a legitimate governmental
14 objective—to provide fire and emergency services to
15 the county island residents. Moreover, the population
16 designated in the legislation, the county island
17 residents who will be losing their fire and emergency
18 services, is rationally related to that objective. The
19 legislation was enacted to assist the county island
20 residents in solving the problem of their impending
21 loss of services. **Therefore, the first prong of the test
is satisfied because the population classification is
rationally related to the legislation's objective of
providing fire and emergency services to those in
need.**

20 **Town of Gilbert v. Maricopa County**, 213 Ariz. 241, ¶ 15, 141 P.3d 416, ¶ 15
21 (App.2006, Div.1).

22 Thus, the legislative purpose behind the statute in this case is not a
23 *legitimate legislative purpose*, because the assessment does not provide any
24 service or benefit unique to the parties assessed. The purpose is to fund general
25 building renewal projects that repair or rework buildings and supporting
26 infrastructure, along with routine preventive maintenance, but not by means of

1 a constitutionally imposed tax, but rather by an assessment upon the varying
2 monetary assets of a subset of prisoners. This is not a legitimate legislative
3 purpose, because it represents an attempt to shift the legitimate tax burden of
4 the general citizenry of the State to a limited portion of a specialized group who
5 derive no special benefit from the use of the monies taken from them.

6 In Plaintiff's case, there is no direct connection between the use of the
7 monies collected and any service or benefit unique to the parties assessed. The
8 monies collected are not used for any purpose associated with prisoner
9 spendable accounts, such as managing and maintaining the accounts, nor any
10 direct connection to any service or benefit unique to prisoners who receive
11 deposits to their spendable accounts (as opposed to all those who use ADC
12 buildings).

13 The actual benefit arising from the statutorily directed use of the monies
14 — ADC building renewal and maintenance— accrues not only to **a)** prisoners in
15 the custody of the ADC who have deposits to their spendable accounts and
16 prisoners in the custody of the ADC who do not have deposits to their spendable
17 accounts, but also to **b)** the entire population of the State of Arizona (by
18 defraying the tax burden associated with maintaining buildings under control
19 of the state agency) and **c)** all persons who use ADC buildings regularly or
20 intermittently. This latter group includes **(1)** state and federal law enforcement
21 officers and officials who interview prisoners at the prison; **(2)** Board of
22 Executive Clemency members, Board staff, and members of the public attending
23 Board hearings conducted within the ADC; **(3)** staff and employees of the ADC;
24 **(4)** those persons who visit ADC prisoners; **(5)** ADC approved program
25 volunteers from the community; **(6)** institutions and organizations that provide
26 services to prisoners and/or to ADC staff and employees; **(7)** university and

1 college tour groups; and **(8)** victim reconciliation participants at meeting within
2 ADC institutions.

3 Accordingly, it is clear that there is no constitutionally sufficient
4 connection between the specific population that is assessed the 1% fee and a
5 benefit derived from that fee not accruing to others who are not assessed the
6 fee. **Hence, the fee is an unconstitutionally imposed tax and the statute is**
7 **an unconstitutional special law.**

8 RELIEF REQUESTED

9 **WHEREFORE**, based upon the foregoing, Plaintiff requests this Court
10 accept this Complaint for Special Action and Declaratory Judgment and order
11 relief as follows:

- 12 **1.** Issue an Order declaring the statute authorizing a fee on deposits to
13 prisoner spendable accounts with the monies to be deposited into the
14 Arizona Department of Corrections Building Renewal Fund, *i.e.*, **A.R.S.**
15 **§ 31-230.D**, to be a tax, not a fee;
- 16 **2.** Issue an Order declaring **A.R.S. § 31-230.D** to be an
17 unconstitutionally imposed tax;
- 18 **3.** Issue an Order striking down **A.R.S. § 31-230.D** as a special law
19 prohibited by **Ariz. Const. art. 4, pt. 2, § 19 (9) & (20)**;
- 20 **4.** Issue an Order striking down the Arizona Department of
21 Corrections administrative regulation establishing a 1% fee on deposits
22 to prisoner spendable accounts, *i.e.*, **Director's Instruction 304 (DI-304)**,
23 to be a regulation not authorized by law and therefore of no further force
24 and effect;
- 25 **5.** Issue an Order requiring Defendant Charles Ryan, Director of the
26 Arizona Department of Corrections, to reimburse Plaintiff for all

1 deductions from Plaintiff's prisoner spendable account that were assessed
2 pursuant to **A.R.S. § 31-230.D / DI-304**; and to do so within 45 days of
3 the date of this Court's Order;

4 **6.** Award Plaintiff reasonable costs, expenses, and fees, including filing
5 fees for the Complaint; service of process expenses for all parties served
6 pursuant to law; reasonable copying costs for documents served; and first
7 class postage for all documents (subsequent to service of the Summons
8 and Complaint) that were served by mail; and

9 **7.** Grant such other and further relief as this Court deems reasonable,
10 necessary, or just.

11 **RESPECTFULLY SUBMITTED** this 14 day of July, 2011.

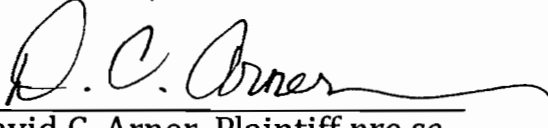
12 
13 _____
14 David C. Arner, Plaintiff *pro se*

EXHIBIT A

1 STATE OF ARIZONA

}
}
}

2 } ss.

VERIFICATION

3 COUNTY OF PIMA

4
5 I, David C. Arner, being first duly sworn upon my oath, depose and
6 state the following:

- 7 1. I am the named Plaintiff in the above referenced matter.
- 8 2. I have caused to be prepared the Complaint for Special Action and
9 Declaratory Judgment to which this Verification is attached, and
10 I know the contents thereof to be true based upon my own personal
11 knowledge, except such matters as are stated to be upon
12 information and belief, and, as to those matters, I believe them to be
13 true.

11 
12 _____
13 David C. Arner, Plaintiff *pro se*


14 No Notary Public being available to Plaintiff at time of signing
15 this Verification, I hereby affirm that the above statements are true
16 and correct.⁹

17 
18 _____
19 David C. Arner 7-14-11

20
21
22
23
24
25
26

⁹ When a Notary Public becomes available to Plaintiff, he will re-verify this
Complaint before a Notary and file the supplemental Verification with the Court.

EXHIBIT B

 CORRECTIONS ADC	ARIZONA DEPARTMENT OF CORRECTIONS INMATE NOTIFICATION	Notification Number: 28-11
		Issue Date: June 10, 2011

POSTING NOTIFICATION

This information is to be posted for a minimum of 30 days in areas accessible to inmates and shall be made available to inmates who do not have access to posted copies.

TO ALL INMATES

Director's Instruction # 304 , Inmate Trust Account Fees will be effective July 20, 2011.

A 1% fee will be deducted from all deposits made to the Inmate spendable account. All fees collected will be deposited into the Building Renewal Fund.

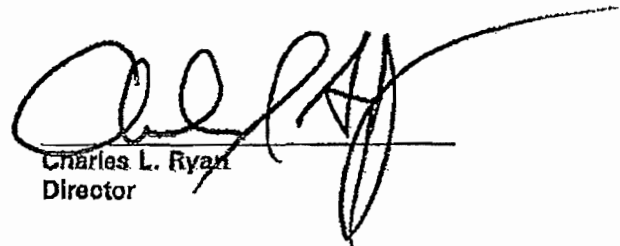

Charles L. Ryan
Director

EXHIBIT C

ARIZONA DEPARTMENT OF CORRECTIONS

5802B

For distribution: Copy of corresponding Inmate Letter must be attached to this response.

Inmate Letter Response

Inmate Name (Last, First M.I.) Arner, David	ADC Number 139866
Institution/Unit ASPC-T / Winchester	

From CO III Estrella	Location Winchester
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Re: Informal Grievance Pertaining to DI#304

According to SB 1621, Section 11:

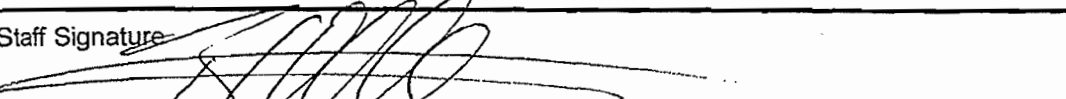
- A. The director shall establish a prisoner spendable account for each prisoner. All monies that are received by a prisoner and that are not required to be deposited in another account shall be deposited in the prisoner's spendable account.
- B. The director shall adopt rules for the disbursement of monies from prisoner spendable accounts.
- C. If the court has ordered the prisoner to pay restitution pursuant to section 13-603, the director shall withdraw a minimum of twenty per cent, or the balance owing on the restitution amount, up to a maximum of fifty per cent of the monies available in the prisoner's spendable account each month to pay the court ordered restitution.
- D. THE DIRECTOR MAY ESTABLISH BY RULE A FEE FOR ANY DEPOSITS MADE TO A PRISONER SPENDABLE ACCOUNT. THE DIRECTOR SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, ANY MONIES COLLECTED PURSUANT TO THIS SUBSECTION IN THE DEPARTMENT OF CORRECTIONS BUILDING RENEWAL FUND ESTABLISHED BY SECTION 41-797.

Per DO 802.01.2:

The following are not grievable under the Inmate Grievance Procedure:

- 1.2.1 Actions of the Governor or State Legislature.
- 1.2.2 Decisions of the Board of Executive Clemency.
- 1.2.3 Judicial proceedings or decisions of the Courts.

Since the policy you are attempting to grieve is an action of the State Legislature, your issue is not grievable and if you decide to do so it will be returned to you as unprocessed. End of response.

Staff Signature 	Date 06/27/2011
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Computer Electronic Version
Distribution: Original - Central Office Master File
Copy - Inmate
Copy - Institutional File

Requests are limited to one page and one issue. NO ATTACHMENTS PERMITTED. Please print all information.

Inmate Letter

Inmate Name (Last, First M.I.) ARNER DAVID C	ADC Number 139866	Institution/Unit 5-B-2-B	Date 6-25-11
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To: CD III Estrella	Location Winchester Unit Bldg 5
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State briefly but completely the problem on which you desire assistance. Provide as many details as possible.

I am attempting to resolve a grievance regarding the 1% Tax on inmate deposits:

I believe that the the D.O.C taking my deposit money for the building renewal fund is illegal.

Inmate Signature D.C. Arner	Date June 25, 2011
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Have You Discussed This With Institution Staff? Yes No **DW LANGE**
If yes, give the staff member's name: