

AUG 01 2011



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6 *In Propria Personam*

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

8 IN AND FOR THE COUNTY OF MARICOPA

9 James J. Hamm and Donna Leone
10 Hamm,

11 Plaintiffs,

12 -vs-

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

15 Defendant.

No. CV2011-097117

COMPLAINT FOR
DECLARATORY JUDGMENT

16 COME NOW Plaintiffs *in pro per* James J. Hamm and Donna Leone
17 Hamm and petition the Court for declaratory relief as follows:

18 I. INTRODUCTION

19 1. Challenge to Constitutionality of Statute. This is a verified
20 Complaint for Declaratory Judgment,¹ challenging the constitutionality of a
21 statutory provision, specifically A.R.S. § 41-1604.B(3), passed by the Arizona
22 Legislature and signed into law by the Governor, with an effective date of
23 July 20, 2011.

24 2. Purpose of Statute. A.R.S. § 41-1604.B(3) authorizes the director
25 of the Arizona Department of Corrections ("ADC") to collect a fee for conducting

¹ A copy of Plaintiffs' notarized Verifications are attached hereto, designated Hamm Attachment A-1 & A-2, and are now incorporated by reference as though fully set forth herein.

1 a background check on persons who apply to visit a prisoner residing within the
2 ADC; and directs that all fees so collected be deposited to the Arizona
3 Department of Corrections Building Renewal Fund, a new fund established in
4 A.R.S. § 41-797.

5 3. Establishment of \$25.00 Visitor Background Check Fee. The ADC
6 Director, Charles L. Ryan, has established a \$25.00 visitor background
7 check fee, effective July 20, 2011, pursuant to the statutory authorization
8 in A.R.S. § 41-1604.B(3) (see Plaintiffs' presentation of Material Facts,
9 herein, at ¶ 12 - ¶ 16.

10 4. Plaintiffs' Constitutional Contention. Plaintiffs assert that the
11 statutorily authorized fee constitutes an unconstitutional tax and a "*special law*"
12 prohibited by Ariz. Const. art. 4, pt. 2, § 19 (9) & (20).

13 5. Declaratory Judgment Sought. This Complaint seeks declaratory
14 relief in the form of an Order declaring A.R.S. § 41-1604.B(3) to be
15 unconstitutional.

16 II. JURISDICTION AND VENUE

17 6. Jurisdiction. This Court has jurisdiction of the parties and the
18 subject matter of this Complaint for Declaratory Judgment pursuant to A.R.S.
19 § 12-1831 *et seq.*, the Uniform Declaratory Judgments Act; and pursuant to
20 A.R.S. Const. art. 6, § 14 (Original Jurisdiction of Superior Court); A.R.S.
21 § 12-123 (Statutory Jurisdiction of Superior Court); A.R.S. § 12-122 (Common
22 Law Power of Superior Court); and A.R.S. Const. art. 2, § 4 (Right to Due
23 Process), § 5 (Right of Petition), and § 13 (Equal Privileges and Immunities).

24 7. Venue. Venue in Maricopa County Superior Court is proper for this
25 Complaint for Declaratory Judgment pursuant to A.R.S. § 12-1831.

1 **III. PARTIES**

2 **8. Plaintiff James J. Hamm.** James J. Hamm is a taxpayer over the
3 age of 18 and a citizen of the United States and the State of Arizona who was
4 a resident of Maricopa County, Arizona at all times relevant to this Complaint.
5 Plaintiff submitted an application to visit an ADC inmate on July 21, 2011, along
6 with payment of the \$25.00 fee pursuant to A.R.S. § 41-1604.B(3) and ADC
7 DO 911.

8 **9. Plaintiff Donna Leone Hamm.** Donna Leone Hamm is a taxpayer
9 over the age of 18 and a citizen of the United States and the State of Arizona
10 who was a resident of Maricopa County, Arizona at all times relevant to this
11 Complaint. Plaintiff submitted an application to visit an ADC inmate on July 21,
12 2011, along with payment of the \$25.00 background check fee.

13 **10. Defendant Charles L. Ryan.** Charles L. Ryan is the Director of
14 the Arizona Department of Corrections (“ADC”), the state agency authorized
15 by A.R.S. § 41-1604.B(3) to charge a fee for conducting a background check
16 on persons who apply to visit a prisoner residing within the ADC, with all
17 monies so collected to be deposited into the ADC Building Renewal Fund.
18 Subsequent to enactment of the statute, Defendant Ryan authorized a new
19 administrative policy / procedure, effective July 20, 2011, which established
20 a \$25.00 visitor background check fee for all persons over the age of 18
21 who apply to visit an ADC inmate, with all monies so collected to be deposited
22 into the ADC Building Renewal Fund (see ¶¶ 14 & 15 herein).

23 **IV. STATEMENT OF THE ISSUES**

24 **11.** The issues presented for determination by this Court are (1) whether
25 the statutory provision challenged herein constitutes an unconstitutional tax

1 and a "special law" prohibited by Ariz. Const. art. 4, pt. 2, § 19 (9) & (20);
2 and (2) Whether Plaintiffs are entitled to an Order declaring the statute
3 unconstitutional and prohibiting collection of the \$25.00 fee.

4 **V. STATEMENT OF MATERIAL FACTS**

5 12. A.R.S. § 41-1604.B(3),² authorizing the ADC to collect a visitor
6 background check fee, is the codification of one portion of Senate Bill 1621
7 (SB 1621).

8 13. A.R.S. § 41-797³ is the codification of the Arizona Department of
9 Corrections Building Renewal Fund portion of Senate Bill 1621 (SB 1621).

10 14. Defendant Ryan has promulgated an inmate notification regarding

11
12 ² *B. The director may:*

13 *3. Establish by rule a one-time fee for conducting background*
14 *checks on any person who enters a department facility to visit a*
15 *prisoner. A fee shall not be charged for a person who is under*
eighteen years of age. The director may adopt rules that waive all
or part of the fee. The director shall deposit, pursuant to sections
35-146 and 35-147, any monies collected pursuant to this
paragraph in the department of corrections building renewal fund
established by section 41-797. A.R.S. § 41-1604.B(3).

16 ³ The statute establishing the ADC Building Renewal Fund expressly
17 constrained and dedicated the use of the monies in the fund, as follows:

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

20 *B. The director shall use the monies in the fund for building*
renewal projects that repair or rework buildings and supporting
infrastructure that are under the control of the state department of
corrections and that result in 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.

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

25 A.R.S. § 41-797.

1 revision of Department Order 911 (hereinafter "DO 911"), Inmate Visitation,
2 regarding implementation of a \$25.00 "visitor application fee"⁴ A copy of ADC
3 notification #27-11 is attached hereto, designated Hamm Exhibit B, and
4 now incorporated by reference as though fully set forth herein.

5 **15. Notification # 27-11 expressly informed inmates as follows:**

6 Department Order 911, Inmate Visitation has been
7 revised and will be effective July 20, 2011. The
8 significant revisions include requiring a one-time,
9 non-refundable, \$25.00 Visitation Application fee.
The fee must be paid at the time the application
is submitted for all adult visitors. The fee is applicable
regardless of the outcome. All fees collected will
be applied to the Building Renewal Fund.

10 **ADC Notification # 27-11 (Hamm Exhibit B).**

11 **16. ADC Department Order 911, Inmate Visitation, effective July 20,**
12 **2011, at DO 911.01 (Visitation Application Process), subsection 1.2, provides,**
13 **in pertinent part, as follows:**

14 **1.2 Background Check Fee - A one-time,**
15 **non-refundable, \$25.00 background check fee**
16 **must be paid at the time the application is**
17 **submitted for all adult visitors applying for**
18 **visitation on or after July 20, 2011. The fee is**
19 **applicable regardless of the outcome, unless the**
20 **visitor is exempt from the fee as set forth below**
21 **in 1.2.1. The Director shall deposit all**
22 **background check fees into the Department's**
23 **Building Renewal Fund, established by A..R.S.**
24 **41-797.**

20 **1.2.1 The following persons are exempt from the**
21 **one-time \$25.00 background check fee:**

21 **1.2.1.1 Children under the age of 18.**

22 **1.2.1.2 Inmates' attorneys of record and**
23 **their agents.**

24 **1.2.1.3 Foster parents or court appointed**
25 **legal guardians of the inmates'**
minor children, as outlined in 1.3.5.2

⁴ The reference to a "visitor application fee" was revised to a "background check fee" after objection by Plaintiff Donna Hamm.

of this section.

1.2.1.4 Persons applying for telephone-only contact.

1.2.2 Applications...shall not be processed until the background check fee is received.

See ADC DO 911.01, subsection 1.2., attached hereto, designated Hamm Exhibit C, and now incorporated by reference as though fully set forth herein.⁵

17. Based upon Plaintiffs' informal research, no other state in the nation charges a background check fee to prison visitors.

VI. APPLICABLE LAW

A. UNIFORM DECLARATORY JUDGMENTS ACT

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

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

A.R.S. § 12-1831.

Pursuant to A.R.S. § 12-1831, Plaintiffs herein seek declaratory relief in the form of an Order declaring the rights and duties of the respective parties with regard to the statutory provision, A.R.S. § 41-1604.B(3). Plaintiffs seek declaratory relief in the form of an Order declaring that A.R.S. § 41-1604.B(3)

⁵ ADC DO 911 is a 37-page document; Hamm Exhibit C consists of only the first three pages, however, because only those pages directly address the \$25.00 visitor background check fee challenged herein as an unconstitutional tax and an unconstitutional special law.

1 constitutes an unconstitutional tax and a "special law" prohibited by
2 Ariz. Const. art. 4, pt. 2, § 19 (9) & (20).

3 Pursuant to A.R.S. § 41-1034, Plaintiffs seek declaratory relief in the
4 form of an Order declaring that the \$25.00 fee authorized in ADC administrative
5 regulation DO 911 constitutes an unconstitutional tax and a "special law"
6 prohibited by Ariz. Const. art. 4, pt. 2, § 19 (9) & (20). A.R.S. § 41-1034
7 provides that:

8 A. Any person who is or may be affected by a rule
9 may obtain a judicial declaration of the validity of the
10 rule by filing an action for declaratory relief in the
11 superior court in Maricopa county in accordance with
12 title 12, chapter 10, article 2 [the Uniform Declaratory
13 Judgments Act].

14 A.R.S. § 41-1034.

15 **B. APPLICABLE CONSTITUTIONAL PROVISIONS**

16 The Arizona Constitution prohibits special laws for the assessment and
17 collection of taxes:

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

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

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

22 In addition, the Arizona Constitution categorically prohibits the enactment
23 of special laws, which therefore includes laws for the assessment and collection
24 of taxes:

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

20. When a general law can be made applicable.

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

1 For purposes of constitutional analysis, “*A special law ‘applies only to*
2 *certain members of a class or to an arbitrarily defined class which is not*
3 *rationally related to a legitimate legislative purpose.’” See Town of Gilbert
4 v. Maricopa County, 213 Ariz. 241, ¶ 13, 141 P.3d 416, ¶ 13 (App.2006, Div.1),
5 quoting State Compensation Fund v. Symington, 174 Ariz. 188, 192,
6 848 P.2d 273, 277 (1993) (quoting Arizona Downs v. Arizona Horsemen's
7 Foundation, 130 Ariz. 550, 557, 637 P.2d 1053, 1060 (1981)).*

8 VII. CAUSE OF ACTION

9 Plaintiffs contend that the statutorily authorized fee constitutes an
10 unconstitutional tax and a “*special law*” prohibited by Ariz. Const. art. 4, pt. 2,
11 § 19 (9) & (20), and that the administrative regulation establishing and
12 imposing a \$25.00 visitor background check fee is an action without or in
13 excess of legal authority.

14 RELIEF REQUESTED

15 WHEREFORE, based upon the foregoing, Plaintiffs request this Court
16 review Plaintiffs’ Complaint for Declaratory Judgment and order relief as follows:

- 17 1. Issue an Order declaring A.R.S. § 41-1604.B(3), the statute
18 authorizing a visitor background check fee and mandating that the monies
19 collected by the fee are to be deposited into the Arizona Department of
20 Corrections Building Renewal Fund, to be a tax, not a fee;
- 21 2. Issue an Order declaring A.R.S. § 41-1604.B(3) to be an
22 unconstitutionally imposed tax;
- 23 3. Issue an Order striking down A.R.S. § 41-1604.B(3) as a special
24 law prohibited by Ariz. Const. art. 4, pt. 2, § 19 (9) & (20);

1 4. Issue an Order striking down the recently implemented Arizona
2 Department of Corrections administrative regulation establishing a
3 \$25.00 visitor background check fee *i.e.*, Department Order 911,
4 section 1.2, to be a regulation not authorized by law and therefore of no
5 legal force and effect;

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

11 6. Grant such other and further relief as this Court deems reasonable,
12 necessary, or just.

13 RESPECTFULLY SUBMITTED this ⁵¹ day of August, 2011.

14
15 
16 James J. Hamm
17 Plaintiff *pro se*

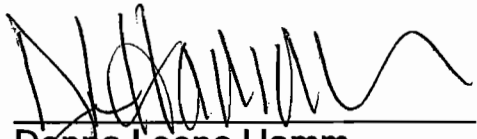
14
15 
16 Donja Leone Hamm
17 Plaintiff *pro se*

EXHIBIT A

1 STATE OF ARIZONA

)
)
)
)

2) ss.

VERIFICATION

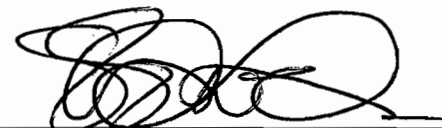
3 COUNTY OF MARICOPA

4
5 I, James J. Hamm, being first duly sworn upon my oath, depose and
6 state the following:

- 7 1. I am a named Plaintiff in the Complaint to which this Verification is
8 attached.
- 9 2. I have caused to be prepared the Complaint for Declaratory
10 Judgment to which this Verification is attached, and I know the
11 contents thereof to be true based upon my own personal
12 knowledge, except such matters as are stated to be upon
13 information and belief, and, as to those matters, I believe them to be
14 true.
- 15 3. I submitted to the Arizona Department of Corrections an application
16 to visit an ADC prisoner, Betty Smithey, ADC # 24685, on July 21,
17 2011.
- 18 4. I have paid the \$25.00 visitor background check fee assessed by
19 the Arizona Department of Corrections

20 
21 _____
22 James J. Hamm, Plaintiff *pro se*

23 SUBSCRIBED AND SWORN TO before me this 1st day of August, 2011.

24 
25 _____
NOTARY PUBLIC

My Commission Expires



1 STATE OF ARIZONA

)
)
)
)

ss.

VERIFICATION


2
3 COUNTY OF MARICOPA

4
5 I, Donna Leone Hamm, being first duly sworn upon my oath, depose
6 and state the following:

- 7 1. I am a named Plaintiff in the Complaint to which this Verification is attached.
- 8 2. I have caused to be prepared the Complaint for Declaratory Judgment to which this Verification is attached, and I know the contents thereof to be true based upon my own personal knowledge, except such matters as are stated to be upon information and belief, and, as to those matters, I believe them to be true.
- 9 3. I submitted to the Arizona Department of Corrections an application to visit an ADC prisoner, Betty Smithey, ADC # 24685, on July 21, 2011.
- 10 4. I have paid the \$25.00 visitor background check fee assessed by the Arizona Department of Corrections

11
12
13
14
15
16 
Donna Leone Hamm, Plaintiff *pro se*


17
18 SUBSCRIBED AND SWORN TO before me this ___ day of August, 2011.

19
20
21 
22 NOTARY PUBLIC

My Commission Expires



EXHIBIT B

	ARIZONA DEPARTMENT OF CORRECTIONS INMATE NOTIFICATION	Notification Number: 27-11
		Issue Date: June 7, 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. This notification contains changes that are related to inmate issues/concerns only. Attached with this Inmate Notification is a copy of the revised Department Order for review purposes only.

TO ALL INMATES

Department Order 911, Inmate Visitation has been revised and will be effective July 20, 2011. The significant revisions include requiring a one-time, non-refundable, \$25.00 Visitation Application fee. The fee must be paid at the time the application is submitted for all adult visitors. The fee is applicable regardless of the outcome. All fees collected will be applied to the Building Renewal Fund.

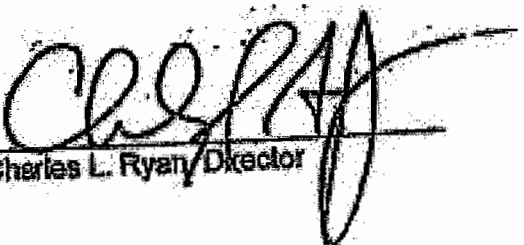

Charles L. Ryan, Director

EXHIBIT C


 <p>ARIZONA DEPARTMENT OF CORRECTIONS</p> <p>DEPARTMENT ORDER MANUAL</p>	<p>CHAPTER: 900</p> <p>INMATE PROGRAMS AND SERVICES</p>	<p>OPR:</p> <p>OPS</p>
	<p>DEPARTMENT ORDER: 911</p> <p><i>INMATE VISITATION</i></p>	<p>SUPERSEDES:</p> <p>DO 911 (02124111)</p>
		<p>EFFECTIVE DATE:</p> <p>JULY 20, 2011</p>
		<p>REPLACEMENT PAGE REVISION DATE:</p> <p>N/A</p>

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PURPOSE

This Department Order establishes procedures authorizing family members and others to visit inmates for the purpose of maintaining family and community ties.

RESPONSIBILITY

Except where noted, the Warden, unit Deputy Wardens, unit Associate Deputy Wardens, or the Deputy Warden for Contract Beds, possess discretionary authority and shall be responsible for the management of Visitation in their area. Specific responsibilities include:

- Screening and approval of visitors.
- Placement of inmates into Non-Contact Visitation.
- Suspension of visits.
- Approval of special circumstance visitation.

The Department retains the authority to deny any individual visitation privileges. The decision of the parent or legal guardian shall always be the determining factor when rendering a determination to permit a minor's visitation.

APPLICABILITY

This Department Order applies to all Department Prisons. Visitation for inmates assigned to Contract Beds shall be in compliance with this Department Order and any applicable Department contract.

PROCEDURES

911.01 **VISITATION APPLICATION PROCESS** - Persons with a disability may request reasonable accommodation, e.g., a sign language interpreter, in accordance with Department Order #108, Americans with Disabilities Act (ADA) Compliance, by contacting the Department. Requests should be made as early as possible to allow time to arrange the accommodation.

1.1 Initial Processing

- 1.1.1** During intake processing, inmates who choose to have visits shall complete and submit a Visitation List, Form 911-1, to the designated staff. Inmates are permitted to have a maximum of 20 approved visitors on their Visitation List form.
- 1.1.2** Inmates who submit a Visitation List shall list the full name and relationship of each potential visitor.
- 1.1.3** Persons wishing to visit an inmate may complete and submit the Application to Visit an Inmate form on line at www.azcorrections.gov, or print, complete and mail the form as outlined in 1.1.3.3 of this section. In Contract Bed facilities or institutions not listed on the website as able to receive the electronic form the inmate shall be responsible for mailing an Application to Visit an Inmate, Form 911-4, to each person listed on the Visitation List.

1.1.3.1 Inmates shall be responsible for postage expenses associated with mailing the applications.

1.1.3.2 The Department shall pay the postage for mailing applications for all inmates verified as indigent by the appropriate Business Office.

1.1.3.3 All applications shall be legible, fully completed, signed by the potential visitor (unless submitted electronically), and returned by mail with the envelope reading "Attention Visitation Officer" or via the internet directly to the unit Visitation Officer where the inmate is assigned. The one-time **\$25.00** background check fee shall be mailed in accordance with 1.2.2.1 of this section.

1.1.3.3.1 Applications to visit on behalf of a minor child may only be submitted by a non-incarcerated parent, legal guardian or temporary custodian of that minor child, and when someone other than a parent submits the visitation application, the application shall include documentation from a court establishing legal guardianship and/or temporary custody of the minor child.

1.1.3.3.2 A non-incarcerated parent, legal guardian or temporary custodian of record of a minor child may authorize a third party to accompany and be responsible for the minor child at visitation, as long as that third party has a notarized statement from the non-incarcerated parent, legal guardian or temporary custodian of record and is also an approved visitor.

1.1.4 Former Department employees:

1.1.4.1 Shall be prohibited visitation with an inmate for a period of two years from the date of separation of employment, except when the inmate is an immediate family member or relative.

1.1.4.2 Employees terminated or who resigned while under investigation for inappropriate behavior with an inmate or possession and/or introduction of contraband are permanently ineligible to visit any inmate.

1.1.5 Former inmates shall be prohibited visitation with an inmate for a period of two years from the date of release, except when the inmate is an immediate family member or relative.

1.2 Background Check Fee - A one-time, non-refundable, **\$25.00** background check fee must be paid at the time the application is submitted for all adult visitors applying for visitation on or after July 20, 2011. The fee is applicable regardless of the outcome, unless the visitor is exempt from the fee as set forth below in 1.2.1. The Director shall deposit all background check fees into the Department's Building Renewal Fund, established by A.R.S. 41-797.

1.2.1 The following persons are exempt from the one-time **\$25.00** background check fee: