

COPY

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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 Hamm,
10 Plaintiffs,
11 -vs-
12 Charles L. Ryan, director, Arizona
13 Department of Corrections,
14 Defendant.

No. CV 2011-097117

PLAINTIFFS' SEPARATE
STATEMENT OF MATERIAL
FACTS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

15 Plaintiffs *in pro per* James J. Hamm and Donna Leone Hamm, in support
16 of Plaintiffs' separately filed Motion for Summary Judgment (Unconstitutional
17 Tax) submit the following Separate Statement of Material Facts, pursuant to the
18 provisions of Rule 56(c)(2), Arizona Rules of Civil Procedure and
19 Rule 3.2(f & g), Local Rules of Court (Maricopa):

20 1. Plaintiffs James J. Hamm and Donna Leone Hamm are Arizona
21 taxpayers over the age of 18 and citizens of the United States and the State of
22 Arizona who were and are residents of Maricopa County, Arizona at all times
23 relevant to this Complaint. Plaintiffs each submitted an application to visit an
24 Arizona Department of Corrections ("ADC") inmate on July 21, 2011, along with
25 payment of a required \$25.00 fee. See Verified Complaint, at page 3, ¶ 8 &
¶ 9.

1 2. Defendant Charles L. Ryan. Charles L. Ryan is the Director of the
2 Arizona Department of Corrections (“ADC”). Subsequent to enactment of
3 A.R.S. § 41-1604.B(3), Defendant Ryan authorized a revised administrative
4 procedure, Department Order 911 (“DO 911”) effective July 20, 2011, which,
5 at section .01, subsection 1.2, establishes a \$25.00 visitor background check
6 fee for all persons over the age of 18 who apply to visit an ADC inmate, with
7 100% of monies so collected to be deposited into the ADC Building Renewal
8 Fund. See Verified Complaint, at pages 3-4, ¶ 10; and Hamm Attachment C.¹

9 3. The \$25.00 fee imposed by Defendant Ryan via DO 911, section 1.2,
10 was authorized by A.R.S. § 41-1604.B(3), which states:

11 *B. The director may:*

12 3. *Establish by rule a one-time fee for conducting*
13 *background checks on any person who enters a*
14 *department facility to visit a prisoner. A fee shall not be*
15 *charged for a person who is under eighteen years of*
16 *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.

17 A.R.S. § 41-1604.B(3).

18 4. The statute establishing the ADC Building Renewal Fund expressly
19 constrains and dedicates the use of the monies in the fund, as follows:

20 A. The department of corrections building renewal
21 fund is established consisting of monies deposited
22 pursuant to section 31-230.... The director shall
23 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.

24 B. The director shall use the monies in the fund for

25 ¹ All references are to the Verified Complaint and the Attachments thereto.

1 building renewal projects that repair or rework buildings
2 and supporting infrastructure that are under the control
3 of the state department of corrections and that result in
4 maintaining a building's expected useful life. Monies in
5 the fund may not be used for new building additions,
6 new infrastructure additions, landscaping and area
7 beautification, demolition and removal of a building
8 and, except as provided in subsection C of this section,
9 routine preventive maintenance.

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

8 **A.R.S. § 41-797.**

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

12 **1.2 Background Check Fee - A one-time,**
13 **non-refundable, \$25.00 background check fee**
14 **must be paid at the time the application is**
15 **submitted for all adult visitors applying for**
16 **visitation on or after July 20, 2011. The fee is**
17 **applicable regardless of the outcome, unless the**
18 **visitor is exempt from the fee as set forth below**
19 **in 1.2.1. The Director shall deposit all**
20 **background check fees into the Department's**
21 **Building Renewal Fund, established by A..R.S.**
22 **41-797.**

18 **1.2.1 The following persons are exempt from the**
19 **one-time \$25.00 background check fee:**

19 **1.2.1.1 Children under the age of 18.**

20 **1.2.1.2 Inmates' attorneys of record**
21 **and their agents.**

22 **1.2.1.3 Foster parents or court**
23 **appointed legal guardians of**
24 **the inmates' minor children, as**
25 **outlined in 1.3.5.2 of this**
26 **section.**

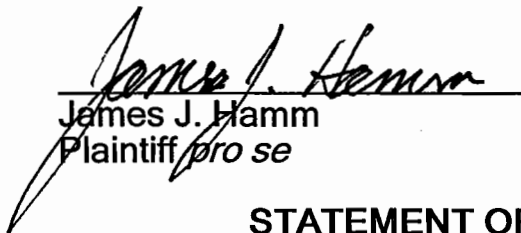
27 **1.2.1.4 Persons applying for**
28 **telephone-only contact.**

29 **1.2.2 Applications...shall not be processed until**
30 **the background check fee is received.**

25 **See ADC DO 911.01, subsection 1.2., attached to the Verified Complaint as**

1 Hamm attachment C. The attachment consists of only the first three pages of
2 ADC DO 911, which is a 37-page document, because only those pages directly
3 address the \$25.00 visitor background check fee challenged in the Verified
4 Complaint as an unconstitutional tax and an unconstitutional special law.

5 RESPECTFULLY SUBMITTED this 1st day of August, 2011.

6
7 
8 James J. Hamm
Plaintiff *pro se*


Donna Leone Hamm
Plaintiff *pro se*

9 **STATEMENT OF FILING AND SERVICE**

10 Original and / or Copy of the foregoing filed / served this ___ day of August,
11 2011, as noted below:

12 Michael K. Jeanes, Clerk, Maricopa County Superior Court, 201 West
Jefferson, Phoenix, Arizona 85003 (Original filed);

13 THE HONORABLE _____, Maricopa County Superior
14 Court, 201 West Jefferson, Phoenix, Arizona 85003 (copy mailed); and

15 Tom Horne, Arizona Attorney General, 1275 West Washington Street,
Phoenix, Arizona 85007 (attorney for Defendant).

16 By 
17 James Hamm
18
19
20
21
22
23
24
25

NAME: Donna Leone Hamm & James J. Hamm

ADDRESS: 139 East Encanto Dr

CITY, STATE, ZIP: Tempe, Az 85281

COPY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Donna Leone Hamm and

James J. Hamm

PLAINTIFFS,

vs.

CHARLES Ryan

DEFENDANT.

NO. _____

CERTIFICATE OF
COMPULSORY
ARBITRATION

The undersigned certifies that the largest award sought by the complainant, including punitive damages, but excluding interest, attorneys' fees, and costs ~~does~~ does not exceed limits set by Local Rule for compulsory arbitration. This case is ~~is~~ is not subject to the Uniform Rules of Procedure for Arbitration.

SUBMITTED this 1 day of August, 2011.

BY Donna Leone Hamm / James J. Hamm

MIDDLE GROUND PRISON REFORM
139 East Encanto Drive
Tempe, Arizona 85281
(480) 966-8116

August 2, 2011

Honorable Tom Horne
Office of the Attorney General
1275 West Washington
Phoenix, Arizona 85007

Dear Mr. Horne:

I am writing to advise you that my husband, James Hamm, and I are currently visitor applicants to an inmate who is incarcerated in the Arizona Department of Corrections ("ADC"). We submitted our applications via certified mail on July 22, 2011, along with the required \$25.00 fee for each of us.

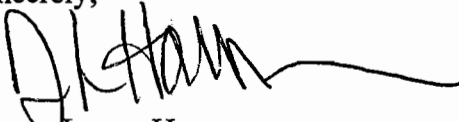
Enclosed you will find a copy of a Complaint for Declaratory Judgment, challenging the constitutionality of A.R.S. § 41-1604.B(3) (effective July 20, 2011), which is the statutory enactment of certain portions of SB 1621. This particular lawsuit challenges the fee to be charged to all adult visitors to the ADOC for a "background check." The Department has set that fee at \$25.00. Per statute, 100% of the fees collected are to be placed in the "Building Renewal Fund" for the ADOC (see A.R.S. § 41-797) and used exclusively for building renewal and maintenance. We believe that this fee is an unconstitutional tax and a prohibited special law.

Pursuant to A.R.S. § 12-1841.A, we are serving a copy of the Complaint upon the Attorney General, the President of the Senate and the Speaker of the House, along with the Notice of Claim required by A.R.S. § 12-1841.B. We are representing ourselves in this litigation.

As you may know, Middle Ground opposed this fee from the onset and we believe that all taxpayers benefit from the services provided by the Arizona Department of Corrections in protecting public safety and, therefore, all taxpayers should bear the burden associated with building renewal and maintenance for buildings under the control of the ADC.

We would be happy to sit down and discuss any issues related to this litigation with you.

Sincerely,



Donna Leone Hamm
Director

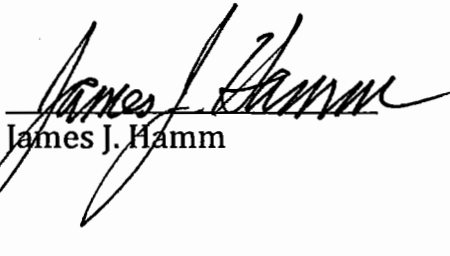
Encl: Notice of Claim
Complaint for Declaratory Judgment (conformed copy)
Motion for Summary Judgment (conformed copy)

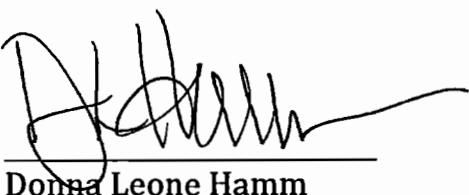
Donna Leone and James J. Hamm
139 East Encanto Drive
Tempe, Arizona 85281
(480) 966-8116

in re: NOTICE OF CLAIM PURSUANT TO A.R.S. § 12-1841.B

In accord with the provisions of **A.R.S. § 12-1841.B**, the following information is hereby provided:

1. Plaintiffs have submitted to the Arizona Department of Corrections (“ADC”) applications to visit an ADC prisoner; and the accompanying Complaint for Declaratory Judgment seeks judicial review of the constitutionality of **A.R.S. § 41-1604.B(3)** (effective July 20, 2011), the statute which authorizes the ADC to collect a fee for a visitor background check, with the monies collected to be deposited into the ADC Building Renewal Fund, a new fund established by **A.R.S. § 41-797**.
2. Plaintiffs are representing themselves in this litigation. Contact information (address and phone number) is provided above.
3. The case name is Hamm v. Ryan. It is filed as a Complaint for Declaratory Judgment case in the Maricopa County Superior Court. The Case Number. is: CV 2011-097117.
4. Plaintiffs contend that, because 100% of the monies collected by means of the visitor background check fee is to be used for building renewal and maintenance of agency buildings, the one-time fee of \$25.00 to be paid by all adult applicants for visitation of an inmate, after July 20, 2011, constitutes a tax rather than a fee and an unconstitutional special law.
5. A copy of the Complaint for Declaratory Judgment and a copy of Plaintiffs’ Motion for Summary Judgment and accompanying Statement of Material Facts is enclosed with this Notice of Claim and cover letter.
6. At time of the service of this set of documents, no date, time, location, judge, or subject of a hearing has been set.


James J. Hamm


Donna Leone Hamm