

TULLY | BAILEY <sup>LLP</sup>

---

The Honorable Judge John J. Tuchi  
United States District Court  
401 W. Washington St. Courtroom 505  
Phoenix, AZ 85003

December 7, 2022

Dear Judge Tuchi,

We represent the plaintiffs in *Brown et al. v. City of Phoenix*, CV2022-010439, in the Superior Court for the State of Arizona, Maricopa County. Our lawsuit was referenced in the Complaint in *Fund for Empowerment, et al. v. City of Phoenix, et al.*, No. CV-22-02041-PHX-JJT. Specifically, the plaintiffs in your case allege that cleaning sweeps will “intensify” as a result of the *Brown* lawsuit. Compl. ¶¶ 50, 107-112. They therefore allege, “Upon information and belief, the City’s only reason for performing these sweeps is in response to the *Brown* lawsuit brought by Phoenix residents which requests relief which would violate the constitutional rights of the unsheltered community.” *Id.* ¶ 112.

We wish to make known that the relief Plaintiffs seek in the *Brown* case does not require “cleaning sweeps.” Our plaintiffs have alleged public nuisance under Arizona law, and we have argued that the public nuisance in our plaintiffs’ neighborhood can be abated in any number of ways while still complying with the federal Constitution. It was the City that volunteered that it intended to continue “cleaning sweeps,” as if that would resolve the pressing state-law public nuisance claim. (It would not.) Therefore, the relief the plaintiffs are seeking in the lawsuit before you does not conflict with the relief we are seeking in state court, which requires neither cleaning sweeps nor the taking of personal property, but rather the creation of structured campgrounds and/or the enforcement of current laws that will result in the dismantling of the encampment Phoenix has improperly and illegally allowed to be constructed on the public property adjacent to our clients’ property.

We write to you, however, because the City of Phoenix has recently filed a motion to stay our state-court proceedings on the ground that the federal lawsuit will resolve critical issues in the state-court litigation. Thus, we have become concerned that both the plaintiffs and the defendant in your lawsuit plan to join forces to argue to your Court that the relief in our lawsuit “would violate the constitutional rights of the unsheltered community.” Should the parties make that argument, we would seek intervention, and would promptly file a motion to dismiss on the basis of ripeness as well as federal abstention doctrines, including *Pullman* and *Colorado River* abstention.

We are attaching to this letter the City’s motion to stay our case, as well as our response, which will give this Court more background on the issues, including on federal abstention doctrines. We further request the opportunity to be present at the December 14 preliminary injunction hearing, and to be heard should the parties argue anything to the effect that the state-court proceedings in our case should be enjoined, or seek relief that would adversely impact the rights of our clients, or should it become apparent that the matter before you is not a true adversary proceeding.

Most sincerely,

TULLY | BAILEY <sup>LLP</sup>

---



Ilan Wurman  
Stephen Tully  
Michael Bailey

Tully Bailey LLP  
Attorneys for Freddy Brown et al.,  
CV2022-010439 (Arizona 2022)