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IN THE UNIVERSITY LAKES JUSTICE COURT
COUNTY OF MARICOPA, STATE OF ARIZONA

THE STATE OF ARIZONA, Plaintiff, vs. MICHAELA JOY KOERT, Defendant.	JC2024-148377-001 RESPONSE TO DEFENSE MOTION TO DISMISS, AND MOTION TO SET FOR EVIDENTIARY HEARING PURSUANT TO A.R.S. 12-751(C) (Assigned to the Honorable Tyler Kissell, Div. JCJ13)

The State of Arizona urges this Court to deny the defense motion. Defense counsel has filed a motion falsely alleging that the Maricopa County Attorney's Office's (MCAO) prosecution is "politically motivated" in violation of A.R.S. §12-751. First, Defense counsel has missed the required deadline for a motion pursuant to A.R.S. §12-751. Second, each piece of purported "evidence" cited by defense counsel individually and collectively amounts to no proof of bias, there is no bias in this prosecution. Defense counsel argues that MCAO has what they perceive as a "political motivation" rather than the true intent of §12-751. Neither law enforcement or MCAO was "substantially motivated" by a desire to deter speech by arresting individuals and prosecuting this case. Defense has not met the

prima facie burden required by §12-751. For the reasons set forth below, the Court should deny the defense motion. The State of Arizona requests permission of the court to exceed the page limit for motions pursuant to Rule 1.9(c). This allows the State to fully respond to the issues raised in defense counsels 28 page motion.

DATED this 26 day of June, 2025.

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I. FACTS

A. Protesters Were Given Multiple Warnings Throughout the Day and Early Hours of the Morning that Their Gathering was Unlawful and That They Needed to Leave ASU Property or be Arrested.

Just before 9:00 am on April 26, 2024, a number of individuals descended on Arizona State University (ASU) property at 400 East Tyler Mall, in Tempe, Arizona. The initial gathering was documented by the organizers and published on Instagram. (State Appendix 1, Partial Instagram Post Regarding Protest). Arizona State University police received a 911 call that about 50 individuals and 10 tents had been set up on the Old Main lawn. Three officers arrived as the individuals continued to set up their encampment and told the protesters that they could not set up tents and an encampment and that they would have to leave. The officers made three arrests but were very quickly outnumbered and surrounded. Protesters surrounded the officers, linked arms, and impeded officers' ability to walk away with those they had arrested. Officers broke through the protesters and the three arrested were taken to police vehicles and to the ASU police station.

The protesters continued to arrive, and the encampment grew larger with the protesters setting up tents, supplies, and even a portable toilet tent. ASU police continued to observe the protesters. Throughout the day and into the early hours of the next morning ASU police gave multiple warnings notifying the protesters that ASU had deemed the gathering unlawful, that they needed to leave, and that if they didn't leave, they would be arrested. Police gave the protesters a means of leaving the property. The announcement included the following statement:

> "This is Commander Anthony Momon, a police officer with the ASU Police Department and a peace officer in the state of Arizona. I declare this gathering under ARS13-2902. In the name of the state of Arizona,I declare this gathering to be a violation of State Law, and I command you to leave ASU property immediately. Those who do not immediately leave will be arrested. Leave by walking towards University and walking East or West away from ASU property."

Many protesters responded to the announcements by leaving the lawn area. Others continued to chant but had moved to an adjacent pathway next to the lawn and were no longer on the lawn. These protesters were allowed to continue to stay in the area and continue to chant. While the content of their chants remained the same as those protesters who continued to trespass, the protesters that followed police orders were not arrested. Just before midnight after giving numerous announcements to leave the lawn area, law enforcement officers began making arrests for the trespassing that had been warned about throughout the day. The group being arrested were only those who had remained on the lawn, had linked arms and refused to leave despite having been asked multiple times. The arrested protesters were eventually handcuffed using zip ties and walked to Sheriff's Office buses to be processed and then taken to jail. Additional protesters walked to the area where the buses were located. These separate protesters remained on the other side of the road away from the buses, law enforcement, and the arrested protesters. From there, they chanted in support of the arrested protesters. However, none from this separate group were arrested. The only people arrested were those who remained camped on ASU property and refused to disperse.

II. Argument

A. Defense counsel has not met the required deadline for A.R.S. §12-751 and his motion should be denied.

Defense counsel has missed the 60-day required deadline for A.R.S. §12-751. A.R.S. §12-751(D), commands that the motion to dismiss must "be filed within sixty days after the service of the complaint or other document on which the motion is based, or, in the court's discretion, at any later time on terms that the court deems proper, including a later time after there is actual notice of a party's misconduct." Defense has not addressed their failure to file the motions within sixty days of the complaint. They have also not asked leave of the Court to file the motion late. Certainly, none of the issues raised by the defense arose after the service of the complaint.

All complaints were filed between October 7, 2024, and October 9, 2024. Providing defense with the required notice and starting the clock regarding his motion. Defense counsels' deadline to file the motions ranged between December 6, 2024, and December 8, 2024, based upon the requirements of A.R.S. 12-751. This deadline has been missed by more than six months.

While the Defense characterizes some of the State's "misconduct" as not making a plea offer, it ignores the well-established principle that there is no right to a plea agreement in Arizona as discussed more fully below. *See State v. Morse*, 127 Ariz. 25, 31 (1980). Moreover, after the State told defense they would consider deviation requests, defense counsel waited more than three months, and not until April 23, 2025, to submit a plea proposal and then only for two defendants: Rachel Lim and Kathryn Nutter. Defense counsel cannot now claim that it is the State's actions that caused him to disregard the sixty-day timeline of A.R.S. §12-751. After being notified in January that there was no plea offer, defense counsel took 91 days to provide the State with a plea proposal. This

timeline alone is 31 days longer than the timeline provided to respond to file A.R.S. §12-751 motions. Defense counsel's inaction cannot be attributed to the State.

Furthermore, the State made disclosure between December 20, 2024, and December 23, 2024. Even if this were to start the timeline to file their motion, instead of the service of the complaint the defense missed the deadline by almost four months. Regardless of which of the above timelines are used, defense has missed the required timeline by several months.

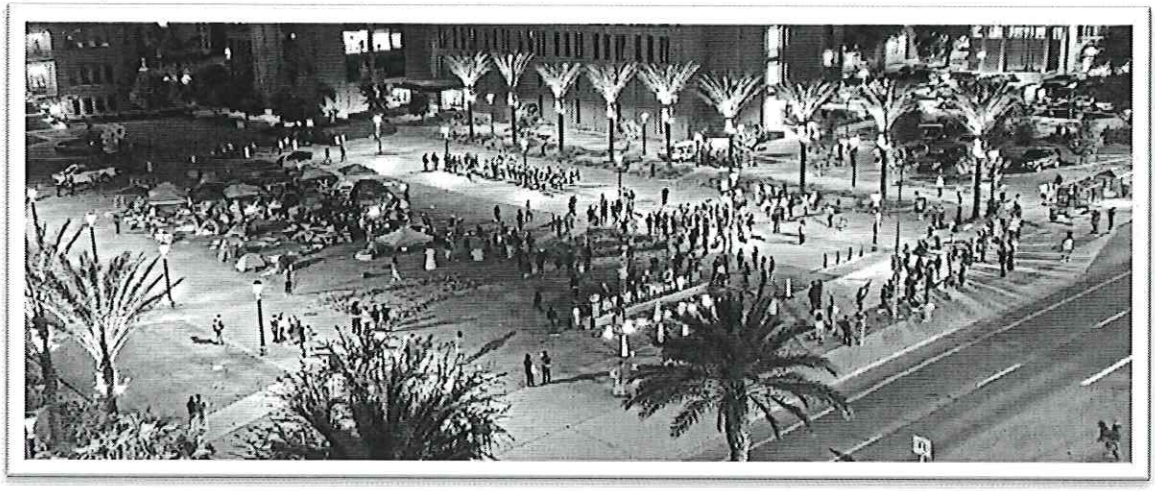
B. The Defense Isn't Even Close To Meeting Their Burden to Show That the Prosecution is "Substantially Motivated" by a Desire to Deter Defendant's Speech.

Similarly, Defense has failed to provide evidence of a prima facie case regarding that the prosecution is motivated by the content of the Defendant's protest. According to Arizona's anti-SLAPP law,

> A person who files a motion pursuant to subsection A of this section has the burden of establishing ***prima facie proof*** that the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right. The moving person may submit evidence based on the record, a sworn affidavit or other evidence that is submitted with the motion to dismiss or quash.

A.R.S. § 12-751 (emphasis added). The moving party must therefore present "evidence in his favor…sufficiently strong for his opponent to be called on to answer it." BLACK LAW'S DICTIONARY, *Prima Facie*, https://thelawdictionary.org/prima-facie/. *See State v. Peraza*, 239 Ariz. 140, 147 (Ct. App. 2016) ("prima facie evidence of a fact is a higher standard than required for admissibility. *See* Ariz. R. Evid. 402 (relevant evidence admissible).").

The evidence here conclusively shows that neither law enforcement or MCAO was motivated at all, let alone "substantially motivated," by a desire to deter speech. Throughout the day and into the early hours of the morning protesters were given warnings by law enforcement and told their gathering—NOT their speech—had been deemed unlawful, they were to leave the area or be arrested, and provided the way they could leave the area. After the warnings were initially given, many left the lawn area. None of these people were arrested or charged. After officers began arresting the protesters who remained on the lawn in a huddle with linked arms, many continued to leave the area. Those who left were not stopped from leaving, were allowed to continue to chant, and were not arrested or charged. When the arrested protesters were walked to MCSO buses others continued to chant and were not arrested or silenced. Barriers were set up around the lawn area where the main group of protesters remained with linked arms. A large number of protesters remained on the sidewalks and continued to chant the same message as those who were arrested for trespassing. Still, none of those who were on the sidewalks were arrested (or silenced) and the officers told the trespassers many times that all they had to do was leave the lawn. They did not say, "leave the lawn and be quiet."

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Despite there being far more people protesting, the only people arrested and charged were those that trespassed and refused to move despite repeated requests to do so. Those arrested and charged created a disruption to ASU and campus life and raised public safety concerns. The motivation in arresting these individuals was to clear the lawn of an unauthorized, makeshift encampment where they had no legal right to be. MCAO's motivation in prosecuting those who were clearly violating established trespassing law is to hold lawbreakers accountable and to deter future acts of lawlessness. None of this has anything to do with the content of their speech. If it had, the other people who had initially trespassed, but moved and continued to protest would have been charged.

Based on the analysis above, the Defendant cannot make a prima facie case of political discrimination—because there was none.

C. The Allegation that MCAO's Prosecution is Politically Motivated is a False Accusation.

Knowing that the evidence in this case cannot possibly support a prima facie case that the prosecution is substantially motivated by a desire to deter lawful speech, the defense instead complains that the prosecution is "politically motivated." Although "politically motivated" appears nowhere in the statute and is irrelevant to the issue before this Court, we will address these patently false and unfounded allegations. An A.R.S. §12-751 motion, must prove that the prosecution is "substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right," which in this case is free speech.

i. The Charges, By Themselves, Illustrate that MCAO Is Not Seeking to "Disproportionately Penalize" the Defendants.

On the very first page of the defense motion, the defense argues that MCAO is attempting to "disproportionately penalize" the defendant (Motion, Page 1, Line 24). Yet the motion points out "[i]t is a Class Three misdemeanor, the lowest classification of a criminal offense under Arizona law—a single step above a civil traffic violation." (Motion, Page 2, Line 23-24). The level of offense, by itself, undercuts the argument that the defendant is being subjected to "disproportionate" penalization. That the State has charged protesters with the lowest possible crime in Arizona indicates that the prosecution is proportionate. The goal of the protesters in this case was to cause a disruption, create a response and to get media exposure for their cause. This is why the arrested protesters refused to disperse. There is no argument that the State "trumped up charges" such as resisting arrest or any other felony.

ii. The "Five Month Review by MCAO" Cited by the Defense Proves the Opposite of the Defense Position. The Decision to Prosecute is Driven by the Facts, Not Politics.

The defense cites to the "five-month review by MCAO, in which it apparently assessed hundreds of hours of video evidence to identify potential criminal acts." (Motion, Page 3, Line 6-7). Rather than supporting the defense argument that this shows "political" bias, the lengthy review of video proves that MCAO's decision to prosecute was the product of a thorough review of the facts, not a political calculation. The defense has acknowledged (and complained about) the exceptional volume of videos disclosed in this case. Two prosecutors took the time to review all body worn camera and video evidence provided by law enforcement in the case to ensure that each charge against each defendant was documented and justified. This careful review led to MCAO not pursuing charges for four protesters against whom police had submitted charges. Like the level of offense, the fact that it took five months to file the charges here has zero value in supporting the claim of political bias. To the contrary, it shows careful and thoughtful review of the evidence.

iii. MCAO's Press Release Does Not Show Any Targeting or Bias.

MCAO, like public agencies all across the country, issues press releases to inform the community regarding criminal prosecutions. These press releases are routine and are restricted to the confines set forth in ER 3.6 and ER 3.8. The decision in October of 2024 to charge 68 defendants in a matter that was reported widely back in April of 2024 is clearly a permissible subject of a press release.

The defense does not dispute that the October 9, 2024, press release accurately described those charged as having been involved in "a large pro-Palestinian demonstration on the Alumni Lawn near Old Main…" The defense claims that the State, "makes the deliberate decision, in this press release, to identify the content of the political speech in which the protesters were engaged." (Motion, page 13-14). The defense objection appears to be that the phrase "pro-Palestinian" was used. However, the defense does not claim, nor can they, that the phrase "pro-Palestinian" is inaccurate. Nor can they claim that the phrase is pejorative or degrading. In fact, even the defense counsel refers to these protesters as "Pro-Palestinian." (Motion, page 27, line 4).

The defense then makes the argument that the use of the phrase "pro-Palestinian" was intended to "send a specific message about the type of speech that would be punished." (Motion page 20, line 4-5). The defense omits a critical fact for the court's consideration of this argument. The articles from those same outlets back on April 26-27, 2024, the time of the arrests, were already referring to the group as "pro-Palestinian protesters." A Google search of "ASU Pro-Palestine Protest" with a time restriction of April 1, 2024, to October 1, 2024 (before charges were filed and before the News Flash post) retrieves approximately 1,290 results. As can be seen below, Maricopa County Attorney, Rachel Mitchell did not manipulate the media into using the phrase "pro-Palestinian."

As the press release shows no bias based on speech, it does not support the Defendant's argument and does not establish a *prima facie* case.

iv. MCAO Correctly Informed Law Enforcement that a Criminal Charge Requires Specific, Individualized Evidence.

MCAO did not target any protesters before they committed crimes but told ASU law enforcement that before we would charge any offenses, MCAO would require specific facts relating to the criminal behavior of each individual. The defense cites to a conversation with attorney Bill Amato that was recorded on a body worn camera. Bill Amato is a contracted attorney providing legal advice for all three Arizona Board of Regents (ABOR) universities' police departments including ASU's police department.

Defense argues that MCAO was in "active communication" with ASU police as if that fact proves some nefarious bias in this prosecution. (Motion, Page 3, Line 16). Setting

aside the question of how "active communication" differs from "communication," the fact is that prosecutors and law enforcement agencies can, do, and should communicate with each other about events and criminal activity happening in their communities. MCAO communicates with law enforcement frequently during investigations. That communication can be over the phone, in an e-mail, text message or any other common method used by humans in the 21st century. Communication is a good thing. In fact, it is encouraged by the American Bar Association. ABA Standards for the Prosecution Function, Standard 3-3.2(c) Relationships with Law Enforcement states in relevant part:

> The prosecutor should become familiar with and respect the experience and specialized expertise of law enforcement personnel. **The prosecutor should promote compliance by law enforcement personnel with applicable legal rules**, including rules against improper bias. The prosecutor's office should keep law enforcement personnel informed of relevant legal and legal ethics issues and developments as they relate to prosecution matters, **and advise law enforcement personnel** of relevant prosecution policies and procedures. Prosecutors may exercise supervision over law enforcement personnel involved in particular prosecutions when in the best interests of justice and the public.

What the defense calls "active communication" does not show political bias by MCAO, but standard operating procedure that complies with national standards.

Tom Van Dorn is one of two law enforcement liaisons at MCAO, whose job includes frequent contact and communication with law enforcement that includes discussing general prosecution requirements for cases and submitted charges. MCAO Employee Policies and Procedures 4.3 discusses the role of the Law Enforcement Liaison Attorney position stating, "the Law Enforcement Liaison Attorney has frequent contact with enforcement agencies to ensure a smooth working relationship between our respective offices. The Law Enforcement Liaison attends police involved shootings, is available for

consultation with officers on a 24-hour basis to answer questions and acts as a general "ombudsperson" between the police and the prosecutor." Of course, MCAO communicates regularly with law enforcement, particularly when law enforcement has a potentially serious or large situation occurring, so that we can be on notice (among other reasons) of what is occurring. There is nothing sinister or unusual about this communication, and in fact the lack of communication about an incident like this one would be highly unusual.

The statement made by Bill Amato that the prosecutors would like to get "specific information about each individual who's out there" is precisely what any criminal justice practitioner should expect. (State Appendix 2, Transcript of ASU and Bill Amato Conversation). In fact, it is what the Constitution requires in relation to "probable cause."

> "The standard for arrest is probable cause, defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense.'"
>
> *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975)

That prosecutors simply reminded police they need *specific* information proving each person is in fact trespassing as opposed to being a lawfully present student passing through the area is not evidence of bias. Specific information would be required for each individual. Rather, this requirement falls squarely in line with the findings of Roland Steinle's report following the 2020 arrests of BLM protesters as cited by the defense.

When the conversation occurred with Bill Amato (11:40 am), ASU law enforcement had already made three arrests, and the trespassing had been on-going for more than two and a half hours. Protesters were continuing to build their encampment. The defense wrongly states that the "pro-Palestinian" protesters had not done anything but express their

intention to engage in political speech-and MCAO was already making requests to law enforcement to set up future prosecution." (Motion, Page 18, Line 20-22). MCAO's request for specific evidence related to any crimes was made in a larger context. The protesters were mimicking what had already occurred on campuses across the country in well-publicized instances of campus disruption. The intent to trespass and refuse to leave is important evidence, but only if it is linked to a particular defendant. MCAO's reminder to ask about or consider specific matters relevant to trespassing, disorderly conduct or other anticipated crimes is not evidence of "targeting" but rather sound, ethical law enforcement.

It is clear that the defense misinterpreted the words being spoken in the conversation between Tom Van Dorn and Bill Amato and ASU law enforcement. (State Appendix 2, Transcript of ASU and Bill Amato Conversation). This was prospective advice. MCAO prosecutors do not need specific information about each individual before a crime is committed; instead MCAO requires information to prove a crime after it has been committed. MCAO did not target the protesters, and the defense argument is without merit.

v. The Assignment of Experienced Prosecutors to a Lengthy, Complex, 68 Co-Defendant Case is Common Sense and Not Evidence of "Political Bias."

MCAO assigned the complex, high-profile, 68 co-defendant case to two experienced prosecutors who are members of the Justice Court Bureau. The defense states that "MCAO assigned highly experienced prosecutors—two women with nearly 50 years of combined experience—to serve as the lead attorneys in this matter." (Motion, Page 14, Line 15-16). This is a 68-co-defendant case. It is a complex, high-profile case with more

than 200 videos and more than 200 hours of body worn camera evidence. This is not the traditional trespass case prosecuted in the justice courts.

The Justice Courts are covered by two bureaus, Justice Court East and Justice Court West. The current case is being prosecuted in the Justice Court East Bureau. All newly barred attorneys are assigned to one of the two Justice Court Bureaus. The prosecutors then move through Justice Court to MCAO's Early Disposition Court (EDC) Bureau. Usually, their stay in Justice Court ranges from a few months to a year. Most of the prosecutors are assigned to Justice Court less than the anticipated life of a case such as this one. Justice Courts are staffed by inexperienced, recently hired prosecutors. The only exception are supervisors (Bureau Chief and Assistant Bureau Chief) and mentors in the MCAO justice court bureaus tasked with handling these courts. The two assigned prosecutors are the Bureau Chief and a mentor in the Justice Court Bureau.

Notwithstanding the relatively low-level misdemeanor charge, this case involves 68 defendants, huge amounts of video and other evidence, and as a result, would not be assigned to brand new prosecutors. The assignment of experienced prosecutors is consistent with prior practice and common sense. Complex and high-profile cases have been routinely assigned to Bureau Chiefs, Assistant Bureau Chiefs, mentors and Division Chiefs. Prosecutor caseload sizes in Justice Court usually range between 150 to 200 cases. It would be burdensome to a new attorney to add 68 complex cases to their caseload. There is nothing "political" about who is assigned to the cases. The assigned prosecutors are not in a specialized unit. They are simply more experienced attorneys in the group that is assigned to handle the cases. These prosecutors are not anticipated to transfer to another

division, which is especially important in a case that is so complex. The "evidence," of the assignment of "two women with nearly 50 years of combined experience" is not evidence of "political bias."

vi. Defendants Have No Constitutional Right to a Plea Offer and the Decision of Whether to Offer Diversion is at the Sole Discretion of MCAO.

Both Arizona and U.S. courts hold that defendants are not entitled to a plea offer from the prosecution because criminal plea negotiations are not guaranteed by either the state or federal constitutions. "[T]here is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial." *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977). "[A] defendant has no right to be offered a plea" *Missouri v. Frye*, 566 U.S. 134 (2012). Defendants lack the constitutional right to a plea deal even where they are guaranteed the right to competent counsel during plea negotiations. *See State v. Anderson*, 257 Ariz. 226, 232 (2024) ("Although a defendant has the right to effective assistance of counsel in deciding whether to take his chances at trial or to accept a plea offer, "defendants do not have a constitutional right to a plea bargain."") (quoting *State v. Nunez-Diaz*, 247 Ariz. 1 (2019)). Arizona law goes even further than U.S. Supreme Court precedent. Arizona law specifically provides that defendants have "no constitutional right to any plea offer, much less to an offer with a particular charge and sentence." *State v. Felix*, 153 Ariz. 417, 419 (Ct. App. 1986). *See also State v. McInelly*, 146 Ariz. 161, 165 (Ct. App. 1985) (rejecting appellant's argument that hinging their plea deal on the actions of their co-defendant constituted prosecutorial misconduct because "appellant has no right to a plea

offer from the prosecution and thus has no ground to complain about the terms of any such offer.").

The same analysis applies to diversion. MCAO offers diversion programs at both the felony and misdemeanor levels. Per MCAO's Prosecution policy 17.1, "The purpose of MCAO's diversion programs is to offer an alternative to traditional prosecution to allow appropriate offenders to participate in an educational or treatment program that addresses criminogenic risk factors related to recidivism." Offering diversion is not a requirement simply because the defendant meets the eligibility requirements. The defense mischaracterizes how MCAO offers Diversion by wrongly stating that diversion is the "default" offer for third-degree trespassing cases and neglects to include a policy that discusses this point. (Motion, Page 14, Line 15-16). MCAO Prosecution Policy 17.1 states, "Entrance into a program is in the sole discretion of the MCAO, and no offer of diversion is required simply because an offender meets criteria. The decision to divert a prosecution must be based on the facts and circumstances of the individual case after reasonable efforts are made to consult with any victim."

In Justice Court more than fifty percent of defendants are offered a plea offer that requires a plead to the charge. The primary type of offense prosecuted by MCAO in Justice Courts is DUI. The standard plea offer in a DUI is for the Defendant to plead to DUI. Similarly, traditionally, for criminal trespass cases the standard offer is to plead to the charge.

The State is skeptical whether an offer of diversion to the current defendants will lead to a reduction in recidivism. Diversion is offered per MCAO's policy to provide

education that will lead to a reduction in recidivism. Consider for example, an individual under 21 who gets caught with alcohol on ASU's campus. Diversion would help them make better decisions in the future to avoid future citations. The defendant is given a chance to correct their behavior and avoid future lapses in judgment. The crimes in this case were not the result of poor decision making. The current 68 defendants were told for many hours, again and again, that they simply needed to move from where they were to a different area. Many protesters did move, and nothing happened to them, they were not arrested and were allowed to continue their protest by chanting whatever they wanted to say. On the other hand, the 68 defendants were given many, many chances to follow the law and intentionally refused apparently desiring to be arrested. The refusal to obey law enforcement was calculated and pre-planned. Clearly, their intent was to refuse compliance with the law (i.e. trespassing or disorderly conduct) as a means of bringing attention to what they think is a worthwhile cause. This is the very definition of "civil disobedience": "Refusal to obey laws as a way of forcing the government to do or change something." See online Britannica Dictionary. The 68 defendants and their attorneys know that these crimes were committed with the goal of being arrested and charged. It is this goal that distinguishes these crimes from a typical scenario where misdemeanor diversion would be effective. This was not a lapse in judgement by the 68 defendants, this was their calculated and strategic decision.

This case is very different compared to the single defendant that the majority of justice court cases involve. This incident—notwithstanding the misdemeanor nature of the offense charged--was large and coordinated, requiring a massive and time-consuming law

enforcement and public safety response. It was highly disruptive to ASU and the campus life, raised public safety concerns, and thus may not be appropriate as a matter of course for diversion. Plea offers are individual assessments made and crafted for each defendant's individual situation. One-size-fits all is not appropriate and the fact that the State waited to get requests for offers or deviations is not a matter of politics or sinister activity, but prudence and careful administration of justice.

As in any criminal case, any defendant not offered a plea may either proceed to trial, as is their constitutional right, or they may take responsibility by pleading guilty to the court. In fact, honorably accepting legal consequences for misdemeanor offenses may be an integral part of civil disobedience. The defense counsel inaccurately characterizes any defendant not offered a plea as being "forced to incur the time, stress, anxiety, and expense of going to trial to challenge the suspicious nature and constitutionality of the arrest." This is simply not true. A defendant always has the option to plead guilty to avoid litigation if they wish to avoid the financial and temporal burdens associated with trial. The choices in resolving a case are not just trial or plea agreement; the defendant can always plead their case before the court and request a sentence they believe is appropriate. MCAO is in no way preventing any of these defendants from pleading to the court.

Whether MCAO offers pleas or not, is not indicative of a motivation to deter the exercise of a person's right to lawfully protest. As shown by charges not being filed against those protesters who stopped trespassing, trespassing charges were not filed as a result of protesters engaging in expressive activities. Rather, trespassing charges were filed against those who disrupted campus life, raised public safety concerns and continued to do so

despite repeated requests to stop. The prosecution is entirely unrelated to their political stance.

On January 17, 2025, all defense counsel were notified that MCAO wished to discuss the case. (State Appendix 3, State Emails with Defense Counsel Christina Griffin-Carter and Russell Facente). On January 22, 2024, the State spoke to defense counsel Facente informing him that we were not currently making a plea offer but that we would review any deviations that were presented and give them due consideration. After not receiving a response, on February 4, 2025, the State reached out to defense counsel Griffin-Carter to discuss the case. Ms. Griffin-Carter responded that day and spoke to the State the following day on February 5, 2025. Ms. Griffin-Carter was informed that we were not currently making a plea offer but that we would review any deviations that were presented and give them due consideration. The State has expressly asked all defense counsel for deviation requests and explained that all requests would be considered. Despite that the defense motion argues that MCAO is "*requiring individual defendants to submit deviation requests* attempting to convince MCAO why it should adhere to its own policy." (emphasis added) (Motion, Page 3, Line 22-23). However, just as MCAO is not required to offer a plea or diversion, no defendant is required to settle the case short of trial. If defense counsel believes their client(s) to be eligible for a diversion program or alternative resolution outside of trial, they *may* submit a deviation request to the office.

MCAO received 11 deviation requests starting in February 2025, with the 11th being provided on June 3, 2025. MCAO received the first deviation request (David Campbell for Mariam Kazmi) on February 19, 2025. In March we received one additional deviation

request from the same defense attorney (David Campbell for Ryan Kinsella). In April, eight additional deviation requests were received (Diego Rodriguez for Ian Sherwood, Christina Griffin Carter for Breanna Brocker, Autumn Byers, Charles Herman, Emma Quinlan, and Fernando Arcos, and Russell Facente for Rachel Lim and Kathryn Nutter). (State Appendix 4, Defense Deviation Requests From Russell Facente and Christina Griffin-Carter). One additional deviation request was sent in June (Susan Bassal for Rebecca Huang). Defense counsel Zayed Al-Sayyed has made no requests. The State waited to receive several requests before making a decision regarding deviations. The deviation requests trickled in over an almost five-month period. Defense counsel Facente took almost 3 months to provide two deviation requests.

As per the Arizona Constitution and the Victim's Bill of Rights MCAO has also held numerous conversations with ASU obtaining their position regarding pleas and deviations and has taken into account their position.

vii. MCAO has Provided the Necessary Evidence Ensuring it's Discovery and *Brady* Obligations are Met, and this Process is On-going.

Defense counsel has incorrectly, characterized the disclosure of evidence in the case as a "dump." (Mot. Page 22, Line 9). MCAO has provided the necessary evidence in the case as required under Rule 15.1 and *Brady*. This is a complex case with over 200 hours of body worn camera. All body worn camera was reviewed by two prosecutors. This is a lot of evidence, but it is nonetheless evidence that needs to be reviewed by both the prosecution and defense and certainly is the evidence that must be shared with defense. The defense discusses that the State should limit the discovery to only 4 hours of body

worn camera. (Motion, Page 22, Line 6-9). This is a ludicrous suggestion which although it would lead to less work for defense it would not meet the requirements of Rule 15.1 or *Brady, or possibly Rule 32 for that matter*. One can only imagine the tone of the defense motion had the State only disclosed the four-hour period. It is worth noting that had this happened, defense would not be aware of the conversation between Bill Amato and ASU law enforcement. This is exactly the reason why we disclose all evidence in a case allowing defense to determine what they believe is helpful to their case. In accordance with MCAO policies, Rule 15 and caselaw, the State has disclosed all body worn camera to defense.

Defense counsel's argument regarding the body worn camera "Dump" is also disingenuous and provides only partial information to the court. Complaints were filed for all defendants between October 7, 2024, and October 9, 2024. Arraignments occurred on November 4, 2024. Initial discovery of 8 documents, eleven photos, 20 audio files, and 259 videos was provided between December 20, 2024, and December 23, 2024. The State began informing defense counsel that they would provide them with the officer whose body worn camera showed their defendant. On April 18, 2025, defense David Campbell emailed the State informing them they appreciated the letters the State had sent identifying the officers' body worn camera footage they can refer to their client but that the body worn camera was not identifiable by officer. (State Appendix 5, Email Between the State and Defense Counsel Campbell). The State then notified all defense counsel of the issue and that we would provide clarification. Despite the defendant claiming that the State purposefully disclosed the BWC in a manner to make review more difficult, the State was unaware that the way in which the video was listed on Evidence.com for defense, was not

the same way that the State was able to view the evidence. The State continued conversations with defense counsel over the next month including during court hearings. At several hearings the court granted a 45-day continuance for the next hearing allowing the State the needed time to resolve the body worn camera issue. On May 28, 2025, the State sent an email to all defense counsel notifying them of the issue with the body worn camera not showing the officers names and attaching an Excel sheet identifying the video and the officers' names associated with each body worn camera (State Appendix 6, Email to All Defense Regarding Discovery). On June 26, 2025, the State re-disclosed all discovery (including several additional items of discovery) to all defense counsel (16 documents, 11 photos, 73 booking photos, 20 audio files, 267 videos). (State Appendix 7, Email to All Defense Regarding Redisclosure of Discovery). All body worn camera was renamed to include the officers' names making it easier for defense to identify the officers' body worn camera. For each body worn camera video the State included the defendants identified in the video. Defense was notified that this was not an exhaustive list, that there are multiple officers' body worn camera capturing different glimpses and moments of the event.

viii. The Defense Motion is full of Rhetoric and is Politically Motivated.

The defense has used rhetoric throughout their motion in an effort to play to the media and gain the attention they desire rather than focusing on sound legal argument related to A.R.S. §12-751. For example, regardless of one's position on the conflict in the Middle East, referring to Israel as a "genocidal, apartheid regime" (Motion, Page 10, Line 17) is inappropriate and beneath the dignity of a legal filing in a pending criminal

case. Another example is the motion's fixation on President Trump. The charges in this case are not related to the President, yet the name "Trump" appears over 20 times in the defense's motion. The only evidence of "political motivation" in this case is found in the defense counsel's filing of his motion, not MCAO's misdemeanor criminal trespass prosecution of the defendants.

In the motion, the defense improperly suggested that the court should consider matters that are both irrelevant and improper. The defense hyperbolically tells the court that its decision "will reverberate throughout the country." (Motion, Page 5, Line 11). Defense counsel's alarmist exaggerated claims that his motion "is likely to be one of true national importance" (Motion, Page 4, Line 16-17) also has no place in a pleading filed with the court. Rule 2.4 of the Arizona Code of Judicial Conduct states (emphasis added):

> (A) A judge shall not be swayed by partisan interests, **public clamor**, or fear of criticism.
> (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
> (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

The comment to this Rule aptly states, "An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are **popular or unpopular** with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences." (emphasis added).

Defense counsel has also made extrajudicial statements to the media. Less than two days after filing his motion, attorneys Russell Facente and Stephen Benedetto made statements to the media outlets AZCentral and ABC 15 implying wrongdoing by MCAO prosecutors.

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"Every one of these 68 people will be forced to incur the time, stress, anxiety, and expense of going to trial to challenge the suspicious nature and constitutionality of the arrest," the June 10 filing reads.

The Maricopa County Attorney's Office declined to comment, citing the open cases.

Police arrest pro-Palestinian protesters at ASU during encampment
Police make arrests at an encampment on ASU in Tempe on April 26, 2024.

Anti-SLAPP laws in the state are intended to protect Arizonans from retaliation for exercising their First Amendment rights. The law was expanded in 2022 to protect against criminal prosecutions in addition to lawsuits. Attorney Russell Facente said this week's complaint looks to protect what he believes is an important tenet of the American justice system.

"The system is not being used equally," Facente said. "And I think that that is a real threat to American values."

Among defense counsel's improper and misleading statements, Russell Facente stated "The system is not being used equally…And I think that that is a real threat to American values." Stephen Benedetto said, "We got the involvement of the top levels of the Maricopa County Attorney's Office guiding and interacting with the ASU Police Department before any arrests have even happened, which shadows what we saw in 2020, and ultimately led to a very large settlement against the county." It is clear that both Mr. Facente and Mr. Benedetto have been in "active communication" with the media and purposefully disseminating their allegations publicly while this case is still pending.

V. Conclusion

The State respectfully requests this Court to deny the defense motion. Defense counsel has missed the required deadline for a motion violating A.R.S. §12-751. Defense counsel has filed a motion falsely alleging that the Maricopa County Attorney's Office's (MCAO) prosecution is "politically motivated" in violation of A.R.S. §12-751. Defense counsel has wrongly focused on MCAO's "political motivation" rather than the focus of

A.R.S. §12-751. Neither law enforcement or MCAO was "substantially motivated" by a desire to deter speech by arresting individuals and prosecuting this case. Defense has not met the prima facie burden that is his regarding the §12-751 motion. The Court should deny the defense motion.

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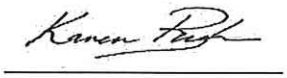
BY: 

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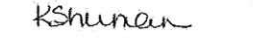
BY: 

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