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9 *("AZCOPS")*

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

10 Dusten Mullen, individually and the Arizona
11 Conference of Police and Sheriffs
12 ("AZCOPS"), an Arizona nonprofit
13 corporation,

14 Plaintiffs,

15 v.

16 Matthew Giordano, in his official capacity as
17 Chief of Police of the Phoenix Police
18 Department; the City of Phoenix, a municipal
19 corporation, and Anna Hernandez, in her
20 official capacity as Phoenix City Council
21 member, District 7,

22 Defendants.

Case No.:

VERIFIED COMPLAINT
(42 U.S.C. § 1983 – First and
Fourteenth Amendment Violations;
Arizona Constitution Art. 2, § 6;
Related State Claims)

**TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY
INJUNCTION REQUESTED**

23 Plaintiffs Dusten Mullen and the Arizona Conference of Police and Sheriffs
24 ("AZCOPS") (collectively "Plaintiffs") for their Complaint against Defendants allege as
25 follows:

26 **JURISDICTIONAL ALLEGATIONS**

27 1. This Court has jurisdiction over Plaintiffs' federal claims pursuant to 42 U.S.C. §
28 1983 and the First and Fourteenth Amendments to the United States Constitution. This
Court also has jurisdiction over Plaintiffs' state constitutional claims under Article 2,

1 Section 6 of the Arizona Constitution (the Arizona analog to the First Amendment), which
2 guarantees that “[e]very person may freely speak, write, and publish on all subjects, being
3 responsible for the abuse of that right.” This Court has jurisdiction over all related state-
4 law claims.

5 2. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b)
6 because all parties reside in Arizona and a substantial part of the events giving rise to this
7 action occurred in Maricopa County, Arizona. All parties are subject to personal
8 jurisdiction in this District, and the Phoenix Division is the appropriate division for filing.

9 3. Plaintiffs seek declaratory and injunctive relief, including a temporary
10 restraining order and/or preliminary injunction to preserve the status quo.

11 GENERAL ALLEGATIONS

12 4. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if
13 fully set forth herein.

14 PARTIES

15 5. Plaintiff Dusten Mullen is a Sergeant with the Phoenix Police Department (PPD)
16 and a state-certified peace officer formerly assigned to the South Mountain Precinct. He is
17 an AZCOPS member.

18 6. Plaintiff AZCOPS is a statewide organization dedicated to the fair representation
19 and protection of law enforcement officers throughout Arizona. AZCOPS provides legal
20 representation to Sgt. Mullen and incurs costs and fees in doing so.

21 7. Defendant Matthew Giordano is the Chief of Police of the Phoenix Police
22 Department and the final policymaker for PPD disciplinary decisions, including those
23 made by the Professional Standards Bureau (PSB). He is sued in his official capacity.

24 8. Defendant City of Phoenix is a municipal corporation that operates the Phoenix
25 Police Department and is liable for the policies, customs, and actions of its officials and
26 employees.

27 9. Defendant Anna Hernandez is the Phoenix City Councilmember for District 7
28 (which includes the South Mountain Precinct). She is sued in her official capacity for

1 actions alleged to have violated the Phoenix City Charter and Code.

2 **ALLEGATIONS COMMON TO ALL COUNTS**

3 **Sgt. Mullen’s Employment and Protected Off-Duty Conduct**

4 10. Sgt. Mullen received an “exceptional” performance review dated January 26,
5 2026, praising his leadership and results.

6 11. Phoenix Police Department policies expressly protect the First Amendment
7 rights of all individuals, including its own officers when acting in their capacity as private
8 citizens [See Exhibit A. This exhibit, as well as all other exhibits, are attached and
9 incorporated by reference as if fully set forth in this Verified Complaint].

10 12. PPD has no policy requiring pre-clearance, prior approval, or any other
11 permission for off-duty officers who intend to engage in protest, counter-protest, or other
12 expressive activity on matters of public concern.

13 13. On January 30, 2026, while off-duty, Sgt. Mullen engaged in protected First
14 Amendment speech and expressive activity as a private citizen near a student protest in
15 Chandler, Arizona. He was not on duty, not in uniform, and acting in his personal
16 capacity. **Sgt. Mullen did not identify himself as a police officer or as a City of
17 Phoenix employee during his presence at the protest. Chandler Police Department’s
18 public press release explicitly stated that the “masked man” (later identified as Sgt.
19 Mullen) “did not commit any crimes.”** No criminal charges were filed against him.

20 14. PPD policies do not prohibit off-duty officers from engaging in such protected
21 activity on matters of public concern, specifically, public protests.

22 15. Under the applicable provision of the Arizona Peace Officers Bill of Rights,
23 A.R.S. § 38-1101(7), discipline may be imposed only for “just cause.” Just cause requires,
24 among other elements, that the officer received reasonable notice (through policies, rules,
25 or the nature of the conduct) that the conduct could lead to discipline, and that any
26 discipline imposed must not be excessive and must be reasonably related to the
27 seriousness of the offense and the officer’s service record.

28 **Timeline of PPD’s Knowledge and Delayed Action**

1 16. PPD policies require that off-duty officers notify an appropriate supervisor if
2 they have any off-duty law enforcement contact - whether they are a victim, witness, or
3 suspect in a crime. Because Sgt. Mullen was the victim of an assault, and therefore
4 contacted by the Chandler Police Department, Sgt. Mullen notified the appropriate
5 supervisor on the same day — January 30, 2026 — approximately 90 minutes after he was
6 the victim of an assault during the encounter. Chandler Police Department did not notify
7 Phoenix PD until February 2, 2026, at 5:25 p.m.

8 17. Despite knowing the facts, PPD allowed Sgt. Mullen to remain on active duty
9 and full assignment for approximately two-and-a-half months following the January 30,
10 2026 incident.

11 18. It is PPD's practice to place officers on administrative leave when they are
12 facing likely termination, while officers are generally left on full duty assignments if the
13 discipline they are facing is less than termination.

14 **PPD's Retaliatory and Defective Investigation**

15 19. PPD's Professional Standards Bureau (PSB) opened an internal investigation.
16 Sgt. Mullen submitted information and materials for review. PSB identified additional
17 areas for inquiry and noticed a follow-up interview with Sgt. Mullen.

18 20. Lt. Brian Thatcher, Discipline and Grievance Chairman for the Phoenix Police
19 Sergeants and Lieutenants Association (PPSLA) and an AZCOPS member, has
20 provided a sworn declaration attesting to the following [See Exhibit B]:

- 21 • Lt. Thatcher was present for Sgt. Mullen's PSB interview on March 3, 2026
22 and reviewed the materials that PSB provided. As part of that review, he learned
23 that PSB had interviewed Sgt. Mullen's supervisor on February 11, 2026.
- 24 • After Sgt Mullen's March 3, 2026 interview, there were no further updates on
25 the PSB investigation until after the media reported on this incident on April 8,
26 2026.
- 27 • The investigation was originally intended to be classified in a manner that
28 would have resulted in discipline less than termination - and would have been

1 eligible under PPD policies for the full review contemplated by the IRP
2 procedures.

- 3 • Phoenix Councilwoman Hernandez commented on this investigation to the
4 media on April 9, 2026, and Sgt Mullen was placed on at-home assignment on
5 April 10, 2026.
- 6 • On April 17, 2026, PSB Investigators set a follow-up interview for Sgt. Mullen
7 to take place on April 21, 2026.
- 8 • On the morning of Monday, April 20, 2026, PSB cancelled the follow-up
9 interview of Sgt. Mullen.
- 10 • On the afternoon of April 20, 2026, Lt. Thatcher, on behalf of Sgt. Mullen,
11 provided additional exonerating or mitigating materials to PSB, including Sgt.
12 Mullen's cellphone video capturing all of his verbal statements at the protest
13 and evidence corroborating a 7-minute phone call with Sgt. Mullen's supervisor
14 within 90 minutes of the assault.
- 15 • Lt. Thatcher requested that PSB provide all body-worn camera footage of the
16 incident, but PSB declined to provide it.
- 17 • Lt. Thatcher reviewed evidence showing that Sgt. Mullen made a timely phone
18 call to his supervisor on January 30, 2026, approximately 90 minutes after the
19 assault.
- 20 • The supervisor confirmed that, after the supervisor received the phone call from
21 Sgt. Mullen, the supervisor made timely notification to command including
22 details about Sgt. Mullen's attire, attendance at the protest, and that Sgt. Mullen
23 had been assaulted.
- 24 • Lt. Thatcher reviewed the limited BWC footage provided and confirmed Sgt
25 Mullen did not incite violence or use fighting words.
- 26 • Lt. Thatcher reviewed the documentation received by Chandler PD, which
27 shows that Chandler's purported "notification" to Phoenix PD was not sent until
28 February 2, 2026, at 5:25 p.m.

- 1 • Lt. Thatcher has reviewed the typical conduct that would result in Class III
2 discipline. This includes officers committing elements of a felony, knowingly
3 submitting a report with false information, on-duty sexual conduct, and out of
4 policy use of deadly force.
- 5 • Classifying off-duty protest activity as Class III - and therefore bypassing the
6 standard IRP procedures, is highly unusual and excessive based upon his
7 training and experience as a member of the Phoenix Police Department and
8 Discipline and Grievance Chair.
- 9 • PSB has not adequately analyzed the April 20 materials and has not conducted
10 the originally contemplated re-interview of Sgt. Mullen.

11 21. PPD Operations Order 2.2.00, Section 1.A requires that “all alleged or
12 suspected personnel misconduct ... will be thoroughly investigated.” Operations Order
13 2.2.00 further establishes a detailed, multi-step process for misconduct investigations,
14 including the mandatory Investigative Review Process (IRP) under Section 9 [See Exhibit
15 C].

16 22. On April 17, 2026, PSB requested an additional interview for Sgt. Mullen-
17 which was scheduled for April 21, 2026. On April 20, 2026, PSB canceled the noticed
18 interview, failed to conduct PSB’s customary thorough review and analysis of the
19 information and materials submitted by Sgt. Mullen and Lt. Thatcher, as well as the
20 complete body-worn camera footage that PSB received from Chandler PD (and Chandler
21 PD’s public statement that he “did not commit any crimes”), and bypassed both the
22 normal investigative review process and the IRP.

23 23. Investigations must not be compromised or rendered deficient because of media
24 coverage or pressure from elected officials; yet that is precisely what occurred here.

25 24. Only after incomplete media coverage of the incident in early April 2026, and
26 after public criticism and intervention by Councilwoman Anna Hernandez, did Chief
27 Giordano place Sgt. Mullen on paid administrative leave on or about April 10, 2026.

1 25. PPD issued public statements alleging it was notified solely by Chandler PD,
2 when PSB knew Sgt. Mullen had made a timely self-notification the day of the incident.

3 26. On April 10, 2026, Chief Giordano issued a public Media Advisory regarding
4 the incident. In that statement, Chief Giordano declared:

5 *“As law enforcement professionals, we are held to higher standards of conduct – both in*
6 *and out of uniform. Our community expects integrity, accountability, and sound judgment*
7 *from every member of this Department, and I expect the same. **When we fall short, we***
8 ***must be accountable**, and we will not tolerate actions which undermine the trust the*
9 *community has placed in the Department.*

10 *The incident is under investigation and that process will soon conclude. The completed*
11 *investigation report will ultimately come to me for review and action after a **thorough and***
12 ***fair assessment of the facts**. In the meantime, the employee has been placed on*
13 *administrative leave...I am taking this matter very seriously and I will **communicate my***
14 ***findings publicly as soon as they are made.**” (Emphasis added) [See Exhibit D].*

15 27. This public statement implied that Sgt. Mullen had engaged in misconduct
16 before any complete investigation had occurred, and it promised the public (and Sgt.
17 Mullen) a “thorough and fair assessment of the facts.” In reality, PSB has not conducted
18 such an assessment.

19 28. PPD possesses complete body-worn camera (BWC) footage received from
20 Chandler PD and other internal evidence — including Chandler PD’s statement that Sgt.
21 Mullen “did not commit any crimes” and the materials provided by Lt. Thatcher — that
22 contradicts the partial public narrative in the media and is mitigating or exonerating for
23 Sgt. Mullen [See Exhibit B].

24 **Proposed Elevation of Discipline Under Operations Order 2.1.01.5**

25 29. PPD now intends to elevate this incident to a Class III violation under
26 Operations Order 2.1.01.5 (“Classification Guidance Criteria”), Section 5(C)(4), citing
27 criteria such as “The conduct was so outrageous that attempts to correct performance
28 would be fruitless” and/or “The employee’s actions violated the oath of office or basic

1 Department values.” These criteria purportedly support termination or referral to the
2 Police Chief (or designee) for a *Loudermill* Hearing [See Exhibit E]. This elevated
3 classification - after media coverage and the statement from Councilwoman Hernandez-
4 would deprive Sgt. Mullen of the opportunity to address this investigation and associated
5 evidence under the IRP procedures.

6 30. As applied in this case, these Class III criteria in Operations Order 2.1.01.5 are
7 unconstitutionally vague and overbroad [See Exhibit E]. They are entirely subjective,
8 grant unfettered discretion to decision-makers, and have the effect of punishing officers
9 for engaging in protected off-duty First Amendment speech and expressive activity—
10 particularly when that speech advocates an unpopular opinion on a matter of public
11 concern. This is precisely the type of viewpoint-based retaliation the First Amendment
12 (and its Arizona constitutional analog, Art. 2, § 6) is designed to prohibit.

13 **Deprivation of Investigative Review Process (IRP) and Thorough Analysis**

14 31. By escalating the matter directly to a Class III *Loudermill* Hearing, PPD is
15 deliberately bypassing the Investigative Review Process (IRP) required under Operations
16 Order 2.2.00, which contains concrete deadlines for disclosing materials, a response by
17 the employee under investigation, and a conversation about appropriate discipline. PPD is
18 bypassing the review process-citing Operations Order 2.1.00 [See Exhibit F], which states
19 that if a *Loudermill* Hearing is conducted, an IRP will not be conducted.

20 32. At a minimum, PPD policy requires PSB to thoroughly analyze **all** evidence in
21 its possession — including materials submitted by Sgt. Mullen and Lt. Thatcher, as well
22 as the complete body-worn camera footage received from Chandler PD — and to reflect
23 that complete analysis in the investigation report, consistent with the Operations Orders
24 and PSB’s own past practices.

25 **Council Interference**

26 33. Councilwoman Anna Hernandez publicly criticized Sgt. Mullen’s off-duty
27 conduct and questioned his continued employment in her district.

28 34. The proposed termination of Sgt. Mullen was made at the request or behest of

1 Councilwoman Hernandez, in violation of Phoenix City Code § 2-49, which prohibits City
2 Council members from directing or requesting the appointment or removal of
3 administrative employees. All such matters must route through the City Manager.

4 **Intended Immediate Termination**

5 35. PPD now intends to terminate Sgt. Mullen immediately on the basis of the
6 incomplete and defective PSB investigation and the application of the subjective Class III
7 criteria in Operations Order 2.1.01.5, without allowing the normal investigative process—
8 including the IRP—to conclude [See Exhibit E].

9 36. These actions are in retaliation for Sgt. Mullen’s protected off-duty speech and
10 expressive activity on a matter of public concern. The delayed placement on
11 administrative leave — only after media coverage and political intervention — and the
12 invocation of these subjective Class III criteria demonstrate pretext.

13 37. The actions have created and will continue to create a chilling effect on the
14 First Amendment rights of Sgt. Mullen and other AZCOPS members, as well as their
15 rights under the Arizona Constitution, Art. 2, § 6.

16 **CLAIMS FOR RELIEF**

17 **COUNT I**

18 **42 U.S.C. § 1983 – First Amendment Retaliation (Protected Off-Duty Speech and**
19 **Viewpoint Discrimination)**

20 (Against Chief Giordano and the City of Phoenix)

21 38. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

22 39. Sgt. Mullen’s off-duty conduct constituted protected speech and expressive
23 activity on matters of public concern. Defendants’ actions — including the delayed
24 adverse action only after media coverage and Councilwoman Hernandez’s intervention,
25 the invocation of the subjective Class III criteria in Operations Order 2.1.01.5 to elevate
26 any discipline to termination [See Exhibit E], the bypass of the IRP [See Exhibit C], the
27 refusal to adequately review Lt. Thatcher’s additional exonerating/mitigating materials
28 [See Exhibit B], and the refusal to provide all body-worn camera footage — were

1 motivated by retaliatory animus and viewpoint discrimination. These actions would chill a
2 person of ordinary firmness from engaging in such activity.

3 40. As applied, the Class III criteria in Operations Order 2.1.01.5 [See Exhibit E]
4 are unconstitutionally vague and overbroad because they permit punishment based on
5 subjective perceptions arising from protected off-duty speech on unpopular viewpoints.

6 41. Defendants' conduct violated Sgt. Mullen's rights under the First and
7 Fourteenth Amendments.

8 COUNT II

9 **42 U.S.C. § 1983 – Fourteenth Amendment Procedural Due Process Violation**

10 (Against All Defendants)

11 42. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

12 43. As a classified PPD employee, Sgt. Mullen has a property interest in continued
13 employment. The truncated PSB investigation, cancellation of the noticed interview,
14 refusal to adequately review submitted materials and Lt. Thatcher's additional
15 exonerating/mitigating materials (including Chandler PD's exonerating statement) [See
16 Exhibit B], the refusal to provide all body-worn camera footage, and the deliberate bypass
17 of the Investigative Review Process and thorough-analysis requirements mandated by
18 Operations Orders 2.2.00 and 2.1.00 [See Exhibits C and E] deprive him of a meaningful
19 pre-termination opportunity to respond (*Cleveland Bd. of Educ. v. Loudermill*).

20 44. The proposed termination further violates the "just cause" requirements of the
21 Arizona Peace Officers Bill of Rights, A.R.S. § 38-1101(7), including the requirements of
22 reasonable notice and that discipline not be excessive.

23 45. The Arizona Supreme Court in *McMichael-Gombar v. Phoenix Civil Service*
24 *Board* (2023) held that the Phoenix Civil Service Board lacks authority to adjudicate
25 constitutional claims, rendering post-termination administrative appeal inadequate.

26 46. Councilwoman Hernandez's alleged involvement and the application of the
27 vague Class III criteria [See Exhibit E] further violate due process and Phoenix City Code
28 § 2-49.

COUNT III

42 U.S.C. § 1983 – First Amendment Retaliation / Chilling Effect

(Against All Defendants)

47. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

48. The false/misleading public statements [See Exhibit D], combined with the threatened termination on an incomplete record (while withholding Chandler PD’s statement that Sgt. Mullen engaged in no unlawful behavior and Lt. Thatcher’s additional materials) [See Exhibit B], and the selective invocation of the subjective Class III criteria [See Exhibit E] and bypass of the IRP [See Exhibit C] only after media and political pressure, magnify reputational harm and create an ongoing chilling effect on protected speech by law enforcement officers.

COUNT IV

Violation of Phoenix City Charter / Code § 2-49

(Against Councilwoman Hernandez and the City of Phoenix)

49. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

50. Councilwoman Hernandez’s involvement in requesting or directing employment action against Sgt. Mullen violates the City Charter’s prohibition on council interference in administrative personnel matters.

COUNT V

Arizona Peace Officers’ Bill of Rights (A.R.S. § 38-1101 et seq.)

(Against Chief Giordano and the City of Phoenix)

51. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

52. Defendants failed to follow required procedural safeguards in the internal investigation, including the “just cause” requirements of A.R.S. § 38-1101(7) (reasonable notice and non-excessive discipline) and proper consideration of exculpatory information and the mandatory Investigative Review Process.

COUNT VI

Arizona Constitution, Art. 2, § 6 – Free Speech

(Against All Defendants)

52. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

53. Defendants’ actions, including application of the vague Class III criteria [See Exhibit C] and the bypass of the IRP [See Exhibit C], violate Sgt. Mullen’s rights to free speech under Article 2, Section 6 of the Arizona Constitution.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants as follows:

Primary Relief Requested:

- (a) Issue a temporary restraining order, preliminary and permanent injunction requiring that Sgt. Mullen receive the full Investigative Review Process (IRP) under Operations Order 2.2.00 [See Exhibit C]— as would have occurred under normal Department practice before media coverage and pressure from elected officials — before any final disciplinary decision or *Loudermill* hearing; and

Alternative Relief Requested (in the event the Court declines to order the full IRP):

- (b) Issue a temporary restraining order, preliminary and permanent injunction enjoining any termination or *Loudermill* hearing of Sgt. Mullen until the Professional Standards Bureau (1) thoroughly evaluates and analyzes all evidence in its possession (including all materials submitted by Sgt. Mullen and Lt. Thatcher on April 20, 2026, the complete body-worn camera footage, and Chandler PD’s public statement that Sgt. Mullen “did not commit any crimes”) [See Exhibit B], (2) completes a full and accurate investigation report reflecting that analysis, and (3) does so consistent with the requirements of Operations Orders 2.2.00 and 2.1.00 and PSB’s past practice [See Exhibits C and F];
- (c) Declare the Class III criteria in Operations Order 2.1.01.5 [See Exhibit E] unconstitutional both on their face and as applied to protected off-duty First Amendment activity and Arizona constitutional speech rights;
- (d) Declare Defendants’ actions — including the bypass of the IRP, the failure to

1 conduct a thorough and complete investigation [See Exhibit C], the violation of
2 A.R.S. § 38-1101(7) just cause requirements, and the influence of media coverage
3 and elected-official pressure — unconstitutional and in violation of state law;

- 4 (e) Award attorneys' fees and costs pursuant to 42 U.S.C. § 1988, A.R.S. provisions,
5 and other applicable law;
- 6 (f) Award such other and further relief as the Court deems just and proper.
- 7 (g) Plaintiffs demand a trial by jury on all claims and issues so triable, including all
8 claims for damages under 42 U.S.C. §1983.

9 RESPECTFULLY SUBMITTED this 27th day of April, 2026.

10
11 **STEVEN J SERBALIK, P.L.C.**

12 By: /s/Steven J. Serbalik

13 Steven J. Serbalik

14 4925 E. Desert Cove Ave #116

15 Scottsdale, Arizona 85254

16 *Attorney for Plaintiffs Dusten Mullen and*
17 *AZCOPS*

18 Verification of Dusten Mullen

19 I, Dusten Mullen, declare under penalty of perjury pursuant to 28 U.S.C. §1746,
20 that I have read this Verified Complaint, and that the facts alleged therein of which I have
21 personal knowledge are true and correct.

22 

23 _____
24 Dusten Mullen
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27
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