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8 *Arizona Conference of Police and Sheriffs, Inc.*

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Dusten Mullen and the Arizona Conference of
12 Police and Sheriffs (“AZCOPS”) Plaintiffs,

13 v.

14 Matthew Giordano, in his official capacity as
15 Chief of Police of the Phoenix Police
16 Department, the City of Phoenix, a municipal
17 corporation, and Anna Hernandez, in her
18 official capacity as Phoenix City
19 Councilmember, District 7,

20 Defendants.

NO.

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

21
22 Plaintiffs Dusten Mullen and the Arizona Conference of Police and Sheriffs
23 (“AZCOPS”) (collectively “Plaintiffs”) respectfully move this Court, pursuant to Federal
24 Rule of Civil Procedure 65, for a preliminary injunction against Defendants.
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FACTUAL BACKGROUND

1
2 Sgt. Dusten Mullen is a Phoenix Police Sergeant who faces imminent termination
3 for protected off-duty First Amendment speech and expressive activity he engaged in as a
4 private citizen on January 30, 2026, near a student protest in Chandler, Arizona. He was
5 not on duty, not in uniform, and did not identify himself as a police officer or City
6 employee.

7 Sgt. Mullen went to the area near Hamilton High School because his children
8 attend the school and he was concerned that one of them might be participating in or
9 affected by the protest. He wore a pro-Trump t-shirt and a face covering to conceal his
10 identity. He was lawfully carrying a handgun and extra magazines, which is permitted
11 under Arizona law for a non-prohibited possessor. (Verified Complaint ¶ 13).

12 While at the protest, Sgt. Mullen was confronted by anti-ICE protestors engaged in
13 unlawful activity, including assaulting him. Chandler Police officers on scene recognized
14 that Sgt. Mullen was lawfully engaged in counter-protesting. Sgt. Mullen reported to
15 Chandler officers that he was the victim of an assault and requested that the assaultive
16 behavior stop and that the individuals who assaulted him be prosecuted. When Sgt.
17 Mullen attempted to walk away as directed by Chandler officers, multiple individuals
18 followed him and one threw water on him. At no point did Sgt. Mullen say anything to
19 incite an assault, verbally encourage any protestors to attack him, throw water on him, or
20 otherwise engage in unlawful behavior. Chandler Police ultimately escorted Sgt. Mullen
21 away from the protestors in a patrol car, at which time he provided his true and lawful
22 name for their assault report. Chandler Police Department's public press release explicitly
23 stated that the "masked man" (later identified as Sgt. Mullen) "did not commit any
24 crimes." No criminal charges were filed against him. (Verified Complaint ¶¶ 13–14).

25 Despite knowing the facts since the day of the incident (including Sgt. Mullen's
26 timely self-notification 90 minutes after he was assaulted), PPD left him on active duty for
27 over two months. Only after incomplete media coverage on April 8, 2026, and public
28 comments by Councilwoman Anna Hernandez on April 9, 2026 did PPD place him on

1 paid administrative leave on April 10, 2026. (Verified Complaint ¶¶20, 24).

2 PSB interviewed Sgt. Mullen’s supervisor on February 11, 2026. Sgt. Mullen was
3 interviewed on March 3, 2026. After the March 3 interview, there were no further updates
4 from PSB until after media coverage began on April 8, 2026. On April 17, 2026, PSB set a
5 follow-up interview for April 21, 2026, but canceled it on the morning of April 20, 2026.
6 That same afternoon, Lt. Brian Thatcher provided substantial additional exonerating and
7 mitigating materials on behalf of Sgt. Mullen. PSB has not adequately analyzed those
8 materials, has refused to provide complete body-worn camera footage, and has bypassed
9 the Investigative Review Process. (Verified Complaint ¶ 20; Thatcher Decl. ¶¶ 4–12).

10 On April 10, 2026, Chief Giordano issued a public Media Advisory promising a
11 “thorough and fair assessment of the facts” and that he would “communicate [his]
12 findings publicly as soon as they are made.” In reality, the investigation was rushed and
13 incomplete. (Verified Complaint ¶ 26).

14 Plaintiff AZCOPS represents hundreds of Phoenix officers. The chilling effect on
15 their protected off-duty speech is immediate and severe.

16 **LEGAL STANDARD**

17 A plaintiff seeking a preliminary injunction must show that (1) he is likely to
18 succeed on the merits, (2) he is likely to suffer irreparable harm without an injunction, (3)
19 the balance of equities tips in his favor, and (4) an injunction is in the public
20 interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In this Circuit,
21 “if a plaintiff can only show that there are ‘serious questions going to the merits’ – a lesser
22 showing than likelihood of success on the merits – then a preliminary injunction may still
23 issue if the ‘balance of hardships tips sharply in the plaintiff’s favor,’ and the other
24 two *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281,
25 1291 (9th Cir. 2013) citing *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135
26 (9th Cir. 2011).

LIKELIHOOD OF SUCCESS ON THE MERITS (OR SERIOUS QUESTIONS)

I. The Supreme Court and Lower Courts Recognize the Importance of Government Employees Retaining their First Amendment Rights to Comment on Matters of Public Concern

The First Amendment, made applicable to the States by the Fourteenth Amendment, provides that “Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.” U.S. Const. Amend. I. And citizens do not surrender these rights by accepting public employment. *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cty.*, 391 U.S. 563, 568 (1968).

As the Supreme Court has observed, “[i]t is fundamental that the First Amendment was fashioned to assure an unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 548 (2001) (internal quotations omitted). “At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.” *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 641 (1994). Indeed, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

II. Government Employees Speaking on Matters of Public Concern Retain Constitutional Protections

Speech by citizens on matters of public concern lies at the heart of the First Amendment. *Roth v. United States*, 354 U.S. 476, 484 (1957). This remains true when speech concerns information related to or learned through public employment. After all, public employees do not renounce their citizenship when they accept employment, and the Supreme Court has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights. *See, e.g., Connick v. Myers*,

1 461 U.S. 138, 142 (1983); *Pickering*, 391 U.S. at 568; *Keyishian v. Bd. of Regents of Univ.*
2 *of State of N.Y.*, 385 U.S. 589, 605 (1967).

3 *Pickering* provides the framework for analyzing whether the employee's interest or
4 the government's interest should prevail in cases where the government seeks to curtail the
5 speech of its employees. 391 U.S. at 568. It requires “balanc[ing] ... the interests of the
6 [public employee], as a citizen, in commenting upon matters of public concern and the
7 interest of the State, as an employer, in promoting the efficiency of the public services it
8 performs through its employees.” *Id.*

9 **III. Sgt. Mullen’s Off-Duty Expressive Activity as a Private Citizen on Matters**
10 **of Public Concern is Protected**

11 Sgt. Mullen’s off-duty presence at the protest — without identifying himself as an
12 officer or City employee — was classic private-citizen speech on matters of public
13 concern (immigration enforcement and student protests). Chandler PD confirmed he
14 committed no crimes. PPD has no pre-clearance requirement for such activity and its own
15 policies protect off-duty First Amendment rights. There is a strong likelihood (or at
16 minimum serious questions) that Defendants cannot satisfy the *Pickering/Garcetti*
17 framework. (Verified Complaint ¶¶13-14).

18 **IV. Retaliation, Viewpoint Discrimination, and Procedural Due Process**
19 **Violations**

20 Defendants’ actions — premature escalation under vague Class III criteria, bypass
21 of the mandatory IRP, refusal to review exonerating evidence (including BWC footage
22 received from Chandler PD and Lt. Thatcher’s April 20 materials), Phoenix’s false or
23 misleading public statement that Chandler notified Phoenix of Sgt. Mullen’s involvement
24 (even though Chief Giordano knew that Sgt. Mullen had made a timely notification to the
25 appropriate supervisor) (Verified Complaint ¶¶ 16, 25; Thatcher Decl. ¶¶ 3-4), and Chief
26 Giordano’s public statement implying misconduct (“When we fall short...”) before any
27 complete investigation — constitute retaliation and viewpoint discrimination. The timing
28 (only after media coverage on April 8 and Councilwoman Hernandez’s intervention on

1 April 9) demonstrates pretext (Verified Complaint ¶¶20, 24-27; Thatcher Decl. ¶¶ 3-4,
2 9-10).

3 No court of record — certainly not the Supreme Court or the Ninth Circuit — has
4 ever upheld discipline, much less termination, of a public employee for anonymous, off-
5 duty protest or counter-protest activity that did not involve unlawful conduct or
6 discriminatory animus. The weight of authority strongly favors protection of such activity.
7 (Verified Complaint ¶¶ 13–14; Thatcher Decl. ¶¶ 3-4, 9–10).

8 Lt. Thatcher’s declaration further confirms that classifying this off-duty protest
9 activity as a Class III violation is highly unusual and excessive compared to the types of
10 conduct that normally warrant that classification. (Thatcher Decl. ¶ 9).

11 The process also violates *Loudermill* and the “just cause” requirements of A.R.S. §
12 38-1101(7) (reasonable notice and non-excessive discipline). *McMichael-*
13 *Gombar* confirms the Civil Service Board cannot resolve these constitutional claims.

14 Plaintiffs have shown at least serious questions going to the merits, with a strong
15 likelihood on the core claims.

16 **LIKELIHOOD OF IRREPARABLE HARM**

17 The loss of First Amendment freedoms, even for minimal periods, constitutes
18 irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Immediate termination or a
19 defective *Loudermill* on an incomplete record would cause permanent reputational harm -
20 magnified by Chief Giordano’s April 10, 2026 public statements promising a “thorough
21 and fair assessment” and that he would “communicate [his] findings publicly as soon as
22 they are made” while the investigation was rushed and incomplete after media coverage
23 and political pressure. A public announcement of a termination based upon an unfair
24 process and incomplete investigation would create irreparable reputational and
25 professional harm that cannot be fully remedied by later reinstatement or backpay, and has
26 a severe chilling effect on Sgt. Mullen and other AZCOPS members. Continued paid
27 administrative leave imposes no hardship on PPD.

1 **BALANCE OF EQUITIES AND PUBLIC INTEREST**

2 The balance tips sharply in Plaintiffs' favor. Requiring PPD to follow its own
3 policies (thorough investigation and IRP or complete evidence review) creates no
4 operational burden. The public interest strongly favors constitutional compliance,
5 adherence to the City Charter, thorough (not politicized) police investigations, and
6 protection of off-duty First Amendment rights on matters of public concern.

7 **CONCLUSION**

8 Plaintiffs have demonstrated a likelihood of success on the merits (or at minimum
9 serious questions), irreparable harm, a balance of equities that tips sharply in their favor,
10 and that the public interest supports relief. Given the imminent *Loudermill* hearing
11 scheduled for May 4, 2026, the Court should immediately issue a Temporary Restraining
12 Order and set an expedited hearing on the preliminary injunction as requested in the
13 Prayer for Relief in the Verified Complaint.

14 Emergency Relief Requested: Order that the Phoenix Police Department shall
15 vacate the *Loudermill* hearing scheduled for May 4, 2026 and not proceed with any
16 disciplinary action related to Sgt. Mullen until a preliminary hearing; and

17 Primary Relief Requested: Order that Sgt. Mullen receive the full Investigative
18 Review Process (IRP) under Operations Order 2.2.00 — as would have occurred under
19 normal Department practice before media coverage and pressure from elected officials —
20 before any final disciplinary decision or *Loudermill* hearing; and

21 Alternative Relief Requested (in the event the Court declines to order the full IRP):
22 Enjoin any termination or *Loudermill* hearing of Sgt. Mullen until the Professional
23 Standards Bureau (1) thoroughly evaluates and analyzes all evidence in its possession
24 (including all materials submitted by Sgt. Mullen and Lt. Thatcher on April 20, 2026, the
25 complete body-worn camera footage received from Chandler PD, and Chandler PD's
26 public statement that Sgt. Mullen "did not commit any crimes"), (2) completes a full and
27 accurate investigation report reflecting that analysis, and (3) does so consistent with the
28 requirements of Operations Orders 2.2.00 and 2.1.00 and PSB's past practice.

1 A proposed form of Order is submitted herewith.
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3 RESPECTFULLY SUBMITTED this 27th day of April, 2026.
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