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**IN THE PIMA COUNTY SUPERIOR COURT,
FOR THE STATE OF ARIZONA**

STATE OF ARIZONA,

Plaintiff,

vs.

LANE JEFFERY MYERS

Defendant

Case No.: CR2025-1454-001

**DEFENDANT'S REPLY RE:
AGGRAVATED HARASSMENT ON
GROUNDS OF VAGUENESS,
OVERBROAD AND THE FIRST
AMENDMENT**

(Assigned to Hon. D. Douglas Metcalf)

Date: TBD
Time: TBD

Defendant, Lane Jeffery Myers, by and through Counsel, William J. Parven, respectfully replies to the State's response pursuant to Rule 1.9(b). Mr. Myers maintains that the harassment statute is unconstitutional because he is deprived of his constitutional First Amendment Right to use social media to investigate and criticize public employees. He is deprived of his constitutional right to argue his legitimate purpose to a jury. With no requirement of specific intent, no affirmative defense of legitimate purpose, and no allowance for social media as protected activity, all residents of Arizona, including Mr. Myers, risk losing their freedom should they dare criticize their government. All of Arizona is at risk of losing their freedom should they dare critique a politician, celebrity,

1 restaurant owner, or a leader of a corporation. The thought of this should scare everyone
2 and the Legislature is aware of their mistake. Until HB 2043 becomes law, this Court
3 must declare the current harassment statute unconstitutional as further explained below.
4

5 **I. With No Requirement of Specific Intent, No Legitimate Purpose Defense,**
6 **And No Allowance for Social Media, The Current Harassment Statute**
7 **Regulates Protected Speech And Implicates The First Amendment.**

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9 The Defense challenged the original harassment statute because of its potential to
10 criminalize the delivery of bad news, disturbing messages, firing of employees etc. *State*
11 *v. Brown*, 207 Ariz. 231, ¶20, 85P.3d 109, 115-116 (App 2004). The Court of Appeals
12 ruled this was a nonissue because of the requirement of specific intent. *Id.* ¶21. The Court
13 noted similar statutes which also required specific intent were constitutional. *Id.* ¶9.
14

15 As discussed in his motion, the current statute fails. It does not matter if a person
16 has any specific intent. It does not matter if they have a legitimate purpose. One's use of
17 social media is criminalized if another person is annoyed by it. The fears addressed in
18 *Brown* are valid. The Legislature is aware of the problem and in the process of changing
19 the statute. This Court must declare this current statute unconstitutional.
20

21 **II. The Requirement To Knowingly Commit An Act Does Not Save The**
22 **Statute Because There Is No Mens Rea Requirement For The Actual**
23 **Harassment.**

24 The United States Supreme Court ruled that the minimum mens rea requirement
25 sufficient for First Amendment purposes is recklessness. *See Counterman v. Colorado*,
600 U.S. 66, 73, 143 S.Ct. 2106, 2112 (2023). The Colorado statute at issue made it

1 unlawful to make forms of communication in “a manner that would cause a reasonable
2 person to suffer serious emotional distress and does cause that person ... to suffer serious
3 emotional distress.” *Id.* at 70, 2114. The Court ruled it unconstitutional because the State
4 did not need to prove any kind of subjective intent to threaten. *Id.* at 71, 2114.

5 Arizona’s current harassment statute requires knowingly committing an act. *ARS*
6 §13-2921. It does not require knowledge that the act would be considered harassment. It
7 has the same language “ a manner that” which SCOTUS ruled unconstitutional for First
8 Amendment purposes. *Id.* The Legislature is aware of the problem. HB 2043 changes the
9 statute to acting “with the intent to harass.” It knows the current law is unconstitutional.

11 The lack of a mens rea requirement for the actual harassment portion of the statute
12 is problematic as illustrated in the following examples.

13 (1) A person knowingly makes a video on social media asking people to contact a
14 politician about an issue the person feels strongly about. People are encouraged to send
15 letters, e-mails, and make phone calls. Multiple videos are made. Although most
16 communications are docile, some are not. The politician is seriously annoyed by the
17 communications. The politician is rightfully alarmed by a few illegal threats which are
18 made. Under this current statute, the person who made the videos can be found guilty of
19 harassment simply for making the videos. He knew he made the videos. He knew he
20 encouraged contact with a person. He knew he posted the work e-mail, address, and
21 phone number. He knew others would respond and initiate contact with the politician.
22 He likely knew the politician would be annoyed. Despite this person’s legitimate purpose
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1 and despite any lack of intent to harass, Arizona's current unconstitutional harassment
2 law requires the trier of fact to find this person guilty as charged.

3 (2) A producer markets a movie to children that some may find morally
4 questionable. An actress with a personal history that may not be suitable for a child's role
5 model is casted for the lead. A concerned citizen posts videos on social media informing
6 parents that no child should see this movie. The producer is specifically referenced in
7 videos as an individual with mischievous motives for the film including brainwashing.
8 The actress's personal history is exposed. The concerned individual posts the contact
9 information for the movie studio so that anyone could contact the studio and express their
10 displeasure about the movie. Word gets out. The producer receives shameful messages
11 and comments. The actress receives horrible, perhaps defaming, messages. Enough
12 people contact the studio and there is enough negative publicity that the movie is
13 cancelled. The producer is fired. The actress's career is severely hindered. This all
14 happened due to the concerned citizen's social media posts.

17 The citizen knew what he was doing. He knew what might happen. He had the
18 legitimate purpose of protecting children, but he knowingly acted. Both the producer and
19 actress were annoyed, alarmed, humiliated, and mentally distressed. A jury panel
20 composed of citizens who happen to disagree with the movie's cancellation are
21 empaneled. The jury is told how this concerned citizen knowing caused contact with the
22 producer and actress and that they were thereafter harassed. The jury finds the concerned
23 citizen guilty as charged based on this unconstitutional statute. It does not matter what the
24 purpose or intent was.
25

1 A prosecutor may argue that they would never charge a person under either of
2 these situations. That is precisely the reasoning this Court must rule this statute
3 unconstitutional. A Statute is unconstitutionally vague if it allows for arbitrary
4 enforcement. *State v. Brown*, 207 Ariz. 231, ¶16, 85 P.3d 109, 115 (App. 2004). If a
5 prosecutor determines whether the topic at issue should be considered harassment
6 citizens are beholden to a prosecutor's mercy. There is no free speech.
7

8 **III. Mr. Myers Has Standing Because He Is Constitutionally Deprived Of His**
9 **Right To Argue His Legitimate Purpose To A Jury In Addition To His**
10 **Lack Of Intent And Lawful Exercise Of His First Amendment Right To**
11 **Contact Public Employees And Criticize Over Social Media.**

12 First, it should be noted that this situation meets the narrow exception for standing.
13 This is a First Amendment case. The statute's deterrent effect on legitimate expression is
14 both real and substantial as discussed above. Notwithstanding the First Amendment
15 exception, the State has no right to deprive Mr. Myers of his right to a trial by jury on all
16 factual issues. Mr. Myers asserts he had the legitimate purpose of exposing government
17 corruption. He has the legitimate purpose of defending himself in the Court of Public
18 Opinion. He was educating others on the law. He was explaining his actions. The State
19 claims Mr. Myers was retaliating for the firing of his "wife," but this started before that
20 point. Mr. Myers was prosecuted for booing. He contacted public employees about the
21 issue, including Ms. Walker. This happened prior to the firing of his "wife."
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1 The Pima County Attorney Office has charged Mr. Myers with fifteen counts of
2 harassment under the statute at issue. They allege these were fifteen separate incidents. Is
3 the State really arguing that Mr. Myers has no standing to challenge any of these dates?

4 In the two at issue in this case number, Mr. Myers's legitimate purpose is
5 obvious. The first was explaining his defense to the injunction and the charges. The
6 second was to prove a point that anyone can access public employees' work contact
7 information online. It was labeled "is this a felony" as a sarcastic and rhetorical question.
8 The answer was supposed to be obvious, but Mr. Myers was nonetheless charged.
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RESPECTFULLY SUBMITTED this 21st day of April , 2025

Original of the foregoing filed
with Clerk of Court
Pima County Superior Court
this 21st day of April, 2025

Pima County Attorney Office
The Hon. D. Douglas Metcalf