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7 *Attorney for Plaintiffs the Phoenix*
8 *Police Sergeants and Lieutenants Association, and*
9 *Douglas McBride*

6 **ARIZONA SUPERIOR COURT**

7 **MARICOPA COUNTY**

8 The Phoenix Police Sergeants and
9 Lieutenants Association, an Arizona non
10 profit corporation; and Douglas
11 McBride, individually,

11 Plaintiffs

12 v.

13 The City of Phoenix, a municipal
14 corporation, and Ed Zuercher, in his
15 official capacity as City Manager of the
16 City of Phoenix; Cris Meyer, in his
17 official capacity as the City Attorney for
18 the City of Phoenix, and Vice Mayor
19 Carlos Garcia, individually and in his
20 official capacity as a councilman of the
21 City of Phoenix

22 Defendants.

No.

**VERIFIED COMPLAINT AND
PETITION FOR DECLARATORY
JUDGMENT, PRELIMINARY
INJUNCTION, AND PERMANENT
INJUNCTION**

20 Plaintiffs Phoenix Police Sergeants and Lieutenants Association (“PPSLA”) and
21 Sergeant Douglas McBride of the Phoenix Police Department (collectively where
22 appropriate the “Plaintiffs”) for their Complaint against the City of Phoenix, Ed
23 Zuercher, and Cris Meyer, (collectively where appropriate the “Defendants”) in a matter
24 concerning Real Party in Interest Vice Mayor Carlos Garcia (“Garcia”) allege as
25 follows:

26 **JURISDICTIONAL ALLEGATIONS**

- 27 1. Jurisdiction is appropriate pursuant to A.R.S. §12-1831 as Plaintiffs seek a
28 determination of questions of construction or validity of provisions of the

1 Phoenix City Charter and Phoenix City Code and they seek to obtain a
2 declaration of rights, status or other legal relations thereunder pursuant to
3 A.R.S. §12-1832.

4 2. Jurisdiction is appropriate pursuant to A.R.S. §13-4437 as Plaintiffs assert
5 that Plaintiff McBride is the victim of a crime under the Phoenix City
6 Charter and Phoenix City Code, and that Defendants denied and continue to
7 deny Plaintiff McBride his rights under the Arizona Victims' Bill of Rights
8 (Ariz. Const. Art. 2, §2.1) and the Crime Victims' Rights implementing
9 statutes (A.R.S. §13-4401 *et. seq.*).

10 3. Venue is proper in this Court pursuant to A.R.S. §12-401 as the parties are
11 residents and entities of Maricopa County and the events underlying this
12 lawsuit occurred in Maricopa County. All parties are residents of and/or are
13 doing business in Arizona.

14 **GENERAL ALLEGATIONS**

15 4. Plaintiffs reallege and incorporate, by this reference, their claims, facts and
16 allegations in the paragraphs above as if set forth fully herein.

17 5. Defendant City of Phoenix is a governmental entity that acts through its
18 employees, agents and independent contractors, including Defendants Ed
19 Zuercher and Cris Meyer.

20 6. Defendant Ed Zuercher is the duly-appointed City Manager of the City of
21 Phoenix and has ultimate authority to establish policy, practices, customs,
22 procedures, protocols and training for the City of Phoenix, and to direct the
23 establishment of policies related to Phoenix PD as an official policymaker. He
24 has the obligation to abide by and enforce the Charter and City Code of
25 Phoenix and has provided legal opinions as to their operation as it relates to
26 the conduct of Defendant Garcia. His actions and/or inactions in his official
27 capacity constitute actions of the Phoenix PD and the City of Phoenix is
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vicariously and directly liable for his wrongful conduct as alleged herein.

7. Defendant Cris Meyer is the duly-appointed City Attorney of the City of Phoenix, with authority and responsibility to establish policy, practices, customs, procedures, protocols and training for the Law Department as an official policymaker. His actions and/or inactions in his official capacity constitute actions of the City of Phoenix and the City is vicariously and directly liable for his wrongful conduct as alleged herein.

8. Defendant Carlos Garcia is a councilman of the City of Phoenix. He is responsible for upholding the Charter and City Code of the City of Phoenix, and if he is convicted of violating the Charter or Code, he is subject to automatic removal from his position on the Phoenix City Council.

9. Plaintiff PPSLA is an organization dedicated to fair representation of law enforcement officers employed by the City of Phoenix. Plaintiff McBride is a PPSLA member, and PPSLA therefore provides Plaintiff McBride with legal representation and incurs costs and fees associated with this representation. Plaintiff PPSLA further has a continuing interest in ensuring that its members are free from interference in their employment status based upon unlawful intervention from members of Phoenix City Council - including Garcia.

10. Plaintiff McBride is employed as a Sergeant at the Phoenix Police Department. He is entitled to due process protections by the Charter and City Code, including the right to be free from members of City Council calling for his removal from the Civil Service of the City of Phoenix.

ALLEGATIONS COMMON TO ALL COUNTS

Douglas McBride’s Employment with the Phoenix Police Department

11. Plaintiff Douglas McBride is a Phoenix Police Sergeant and a state-certified peace officer.

12. Plaintiff McBride successfully completed his probationary period as a Police

1 Sergeant, and is therefore entitled to Civil Service protections under the
2 Phoenix City Charter and Code.

3 13. Plaintiff McBride is a nonprobationary peace officer certified by the State of
4 Arizona, and is therefore entitled to the protections outlined in the Arizona
5 Peace Officers' Bill of Rights (A.R.S. §38-1101 *et. seq.*).

6 14. Plaintiff McBride after a media story was released, Plaintiff McBride was
7 placed on at-home administrative assignment on or about June 8, 2021
8 pending an internal investigation.

9 15. Upon information and belief, Defendant Zuercher directed outside law firm
10 Ballard Spahr to investigate and report on issues related to the media
11 coverage of Plaintiff McBride.

12 16. Plaintiff McBride provided a voluntary interview to Ballard Spahr on or about
13 June 9, 2021.

14 17. Ballard Spahr informed Plaintiff McBride prior to his interview that their
15 investigation would not constitute an internal investigation, and Ballard Spahr
16 did not provide all of the "basis materials" (as would have been required by
17 PPSLA Memorandum of Agreement Section 1-4(D) and/or the Arizona Peace
18 Officers' Bill of Rights) if this had, in fact, been a misconduct investigation to
19 Plaintiff McBride prior to his interview.

20 18. Ballard Spahr did not record the interview they conducted with Plaintiff
21 McBride.

22 19. Ballard Spahr ultimately authored a "report" that did not cite sources of its
23 conclusions.

24 20. Upon information and belief, Ballard Spahr did not record any of the
25 interviews that the conducted on behalf of Defendant Zuercher.

26 21. Upon information and belief, Ballard Spahr informed Defendant Zuercher
27 that further, formal investigations would be required if anyone (to include
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Plaintiff McBride) were to face formal discipline.

- 22. Ballard Spahr did not include interview summaries of all witnesses, and, upon information and belief, deliberately omitted from their report information gained in witness interviews that would tend to mitigate or exonerate Plaintiff McBride from allegations made against him in the Ballard Spahr reports.
- 23. The Ballard Spahr report was attorney work product, yet Defendant Zuercher made the decision to waive privilege and release it to the media on August 12, 2021 before any follow-up investigations could occur.
- 24. Defendant Zuercher and Defendant Meyers ignored or dismissed pleas from counsel for Plaintiffs to not release the Ballard Spahr reports until a full and fair investigation into the underlying matters could occur.
- 25. Defendants provided a copy of the Ballard Spahr reports to Plaintiffs' counsel less than an hour before the reports were released to the media.
- 26. Defendant Zuercher disciplined Chief Jeri Williams based upon the findings of the reports - even though the reports did not cite their sources.
- 27. Defendant Garcia released a public statement calling on "city staff" to "take the[] immediate action step[]" that "Leadership and all those connected to [the Ballard Spahr reports] should be held accountable. **We must fire Officer McBride and all other officers involved.** Every officer that declined to participate in the investigations must also be reprimanded. What the City Manager and Chief of Police have done today is not enough" (emphasis added).
- 28. Phoenix has a council-manager form of government, where the elected City Council is charged with making policy, and the appointed City Manager is charged with personnel decisions.
- 29. Multiple provisions of the Phoenix City Charter and the Phoenix City Code make it clear that members of Council are not to participate or attempt to

1 influence the hiring or removal of city employees. The only Phoenix
2 employee that the Council may direct or request be hired or fired is the City
3 Manager.

4 **The City's Charter and Code**

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6 30. Phoenix City Charter Chapter III, §4 - Council and Councilmen to deal with
7 City Officers and employees through the City Manager - states the following:

8 Neither the Council nor any of its Members shall direct or request the
9 appointment of any person to, or his removal from, office by the City
10 Manager or by any of his subordinates, or in any manner take part in the
11 appointment or removal of officers and employees in the administrative
12 service of the City. Except for the purpose of inquiry, the Council and its
13 Members shall deal with the administrative service solely through the City
14 Manager and neither the Council nor any Member thereof shall give orders to
15 any subordinates of the City Manager, either publicly or privately.

16 Any Member of the Council violating the provisions of this section, or
17 offering a resolution or ordinance in violation of this section, shall be
18 removed from office as in this Charter elsewhere provided.

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20 31. Phoenix City Charter Chapter XXI, §6 - Duties of City Attorney; authority of
21 Council to employ additional attorneys - states the following -

22 The City Attorney shall attend all meetings of the Council; shall prosecute in
23 behalf of the people, all criminal cases arising from violations of the
24 provisions of this Charter, and the ordinances of this City; shall attend to all
25 suits and proceedings in which the City may be legally interested; provided
26 that the Council shall have control of all litigation of the City, and may
27 employ other attorneys to take charge of any litigation or to assist the City
28 Attorney therein, and may provide for the payment for such additional legal
services and all proper services or work done on behalf of the City in
connection with its legal matters.

30 32. Phoenix City Charter Chapter XXI, §7 - Prosecution of violations of Charter
31 and ordinances; imprisonment of violators - states the following -

32 The violation of any provision of this Charter or of any ordinance of the City
33 shall be deemed a misdemeanor, and may be prosecuted by the authorities of
34 the City in the name of the State of Arizona, or may be redressed by civil
35 action, at the option of the Council. Any person sentenced to imprisonment
36 for violation of a provision of this Charter, or of an ordinance, may be
37 imprisoned in the City jail, or, if the Council, by ordinance, shall so prescribe,
38 in the county jail of the county in which the City of Phoenix is situated; in
which case the expense of such imprisonment shall be a charge in favor of
said county against the City of Phoenix.

1 33. Phoenix City Code Chapter 2, §2-49 - Interference with City Manager

2 Prohibited - states the following:

3 Neither the City Council nor any of its members shall direct or request the
4 appointment of any person to, or his removal from, office by the City
5 Manager or by any of his subordinates, or in any manner take part in the
6 appointment or removal of officers and employees in the administrative
7 branch of the City. Except for the purpose of inquiry, the Council and its
8 members shall deal with the administrative branch solely through the City
9 Manager and neither the Council nor any member thereof shall give orders to
10 any subordinates of the City Manager, either publicly or privately. (Code
11 1962, § 2-44)

12 34. Phoenix City Code Chapter 1, §1-5 - General penalty; continuing violations -

13 states the following:

14 Except for civil traffic violations for which the maximum sanction shall be
15 two hundred fifty dollars unless a specific other penalty is provided for,
16 whenever in this Code or in any ordinance of the City any act is prohibited or
17 is made or is declared to be unlawful or an offense or a misdemeanor or
18 whenever in such Code or ordinance the doing of any act is required or the
19 failure to do any act is declared to be unlawful, where no specific penalty is
20 provided therefor, any person violating any such provisions of this Code or
21 any ordinance is guilty of a Class 1 misdemeanor punishable by a fine not
22 exceeding two thousand five hundred dollars or imprisonment for a term not
23 exceeding six months or probation not to exceed three years or any
24 combination of such fine and imprisonment, and probation in the discretion of
25 the City magistrate. Each day any violation of any provisions of this Code or
26 of any ordinance shall continue shall constitute a separate offense.

27 In addition to the penalties hereinabove provided any condition caused or
28 permitted to exist in violation of any of the provisions of this Code or any
ordinance shall be deemed a public nuisance and may be, by the City, abated
as provided by law and each day that such condition continues shall be
regarded as a new and separate offense. (Code 1962, § 1-5; Ord. No. G-1864,
§ 1; Ord. No. G-2578, § 1; Ord. No. G-2753, § 1; Ord. No. G-3270, § 1)

The City and its Agents Misunderstand the Law

21 35. On August 12, 2021, counsel for Plaintiff McBride wrote an email to
22 Defendants and members of Phoenix City Council (including Defendant
23 Garcia) pointing out Defendant Garcia's request to "fire" Defendant McBride.
24 This correspondence (including original attachments) is attached as Exhibit A
25 to the Complaint and hereby incorporated by reference as if it were fully set
26 forth herein.

27 36. On August 17, 2021, Plaintiff McBride and President Ben Leuschner of
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1 Plaintiff PPSLA went to the Phoenix Police Special Investigations Detail to
2 attempt to report misdemeanor crimes committed by Defendant Garcia for
3 which Plaintiff McBride was a victim.

4 37. Police officers at the Special Investigations Detail refused to take a report -
5 stating that they would need to receive instructions from Defendant Zuercher
6 before they would be allowed to accept a police report from Plaintiff
7 McBride.

8 38. Later that afternoon, counsel for Plaintiff McBride wrote to Defendant
9 Zuercher (copying Defendant Meyer), requesting a referral to the appropriate
10 detail for Plaintiff McBride to contact to file a police report. This
11 correspondence (including original attachments) is attached as Exhibit B to
12 the Complaint and hereby incorporated by reference as if it were fully set
13 forth herein.

14 39. On August 18, 2021, Defendant Zuercher responded to the correspondence
15 and stated in relevant part “I disagree with your allegation that [Defendant
16 Garcia’s] statement violates the City Charter, Chapter 4. There is not a
17 violation of the Charter here because the Vice Mayor did not give me or my
18 subordinates an instruction or direction. This correspondence (including
19 original attachments) is attached as Exhibit C to the Complaint and hereby
20 incorporated by reference as if it were fully set forth herein.

21 40. On August 20, 2021, Plaintiff McBride’s counsel responded to Defendant
22 Zuercher’s correspondence, pointing out that the plain language of Defendant
23 Garcia’s public statement included calling on “city staff” to take “immediate
24 action steps” that would include firing Defendant McBride - and providing
25 further citations to the Charter and Code where any “request” for “removal
26 from office” violates the Charter and Code, and is therefore a misdemeanor.
27 This correspondence (including original attachments) is attached as Exhibit D
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1 to the Complaint and hereby incorporated by reference as if it were fully set
2 forth herein.

3 41. On August 24, 2021, Defendant Zuercher responded for a final time, stating
4 that his “position hasn’t changed” and that Plaintiff McBride could file a
5 complaint with the City Integrity Line. This correspondence (including
6 original attachments) is attached as Exhibit E to the Complaint and hereby
7 incorporated by reference as if it were fully set forth herein.

8 42. The City Integrity Line ultimately reports to Defendant Zuercher, and its staff
9 has no authority to investigate criminal allegations, nor does it have any
10 ability to enforce violations of the Charter and Code as applied to Phoenix
11 City Councilmen.

12 43. While the Charter includes references to an Ethics Commission, Defendant
13 Garcia and his fellow members of the Phoenix City Council have taken no
14 action to appoint members to the Ethics Commission, so it is inoperative.

15 **COUNT I**

16 **Declaratory Relief regarding the Phoenix City Charter and Code**

17 44. Plaintiffs reallege each and every allegation set forth in the paragraphs above
18 and incorporate each allegation by this reference.

19 45. Upon information and belief, Defendant Garcia, both publicly and privately,
20 has requested the appointment, reassignment and removal of members of the
21 Phoenix Police Department, including members of Plaintiff PPSLA, despite
22 the language in the Charter and Code prohibiting these actions.

23 46. Defendant Garcia publicly requested the termination of Plaintiff McBride,
24 despite the language in the Charter and Code prohibiting this action.

25 47. Defendant Zuercher stated in written correspondence that the language in the
26 Charter and Code does not prohibit Defendant Garcia from making
27 statements saying that Plaintiff McBride must be fired.
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- 1 48. Defendant Meyer - a subordinate to Defendant Zuercher - has not taken any
2 action to enforce the Charter and Code as it relates to Defendant Garcia's
3 efforts to influence the appointment, assignment, or termination of City
4 employees.
- 5 49. This issue is live, not moot, as Defendant Garcia's public statement calling
6 for Plaintiff McBride's removal remains accessible on his official page on the
7 City of Phoenix website.
- 8 50. This issue is a matter of public importance, as it involves the rights of
9 employees working in cities in Arizona with council-manager forms of
10 government whose rights to due process may be undermined if members of
11 council attempt to influence ongoing investigations of civil service-protected
12 employees.
- 13 51. This issue is likely to repeat, as Defendant Garcia has not retracted his
14 statement, nor have Defendants Zuercher or Meyer indicated that they will
15 take any action to prevent Defendant Garcia or any other councilmen from
16 making similar statements in the future.
- 17 52. Declaratory relief as to the meaning and application of the above-cited
18 provisions of the Phoenix Charter and Code will materially address real
19 concerns of Plaintiffs, as Plaintiffs maintain that Defendant Zuercher's
20 interpretation of the Charter and Code (that a violation only occurs with a
21 more specific "instruction or direction" than Defendant Garcia's statement
22 (see Complaint Exhibit C)) is legally incorrect.

23 **COUNT II**

24 **Declaratory Relief regarding the Victims' Bill of Rights**

- 25 53. Plaintiffs reallege each and every allegation set forth in the paragraphs above
26 and incorporate each allegation by this reference.
- 27 54. Plaintiff McBride attempted to report multiple misdemeanor crimes
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1 committed by Defendant Garcia to the Phoenix Police Special Investigations
2 Detail (i.e. the detail expressly authorized and empowered to initiate criminal
3 investigations involving City of Phoenix employees), but was told that
4 Defendant Zuercher would need to direct a different police detail to accept a
5 report.

6 55. Only sworn Phoenix Police officers have jurisdiction to enforce violations of
7 the Phoenix City Charter and Code.

8 56. Defendant Zuercher directed subordinates to not allow Plaintiff McBride to
9 file a police report against Defendant Garcia with the Special Investigations
10 Detail.

11 57. Defendant Zuercher refuses to assign or allow a different detail of the
12 Phoenix Police Department to take a report for the misdemeanor crimes
13 committed by Defendant Garcia.

14 58. Plaintiff McBride is a victim of the crimes committed under the Charter and
15 Code by Defendant Garcia, as Defendant Garcia is illegally calling for
16 Plaintiff McBride's termination - even though investigations into Plaintiff
17 McBride are ongoing and there have been no sustained findings of
18 misconduct by Plaintiff McBride at this time.

19 59. If investigations into Plaintiff McBride sustain allegations of misconduct,
20 Defendant Garcia's public statements will create pressure on city staff to bend
21 to Defendant Garcia's illegal request - exactly the circumstance that the
22 Charter and Code provisions cited above were designed to prevent.

23 60. Defendants Zuercher and Meyer's refusal to allow Plaintiff McBride to file a
24 criminal complaint violate Arizona's Victims' Bill of Rights (Ariz. Const. Art.
25 2, §2.1) and the Crime Victims' Rights statutes (A.R.S. §13-4401 *et. seq.*).

26 61. Specifically, Defendant Zuercher's actions and directions deprived Plaintiff
27 McBride of the rights outlined in A.R.S. §13-4405 as well as his state
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1 constitutional right to be treated with fairness, respect and dignity, and to be
2 free from intimidation, harassment or abuse, throughout the criminal justice
3 process.

4 62. This issue is live, not moot, as Plaintiff McBride has still not been able to file
5 a police report, but a declaration establishing his status as a victim of the
6 Charter and Code violations would clarify his position and likely lead to
7 Plaintiff McBride's ability to vindicate his state constitutional and statutory
8 rights.

9 63. This issue is a matter of public importance, as it involves the rights of
10 employees working in cities in Arizona with council-manager forms of
11 government whose rights to due process may be undermined if members of
12 council attempt to influence ongoing investigations of civil service-protected
13 employees.

14 64. This issue is likely to repeat, as Defendant Garcia has not retracted his
15 statement, nor have Defendants Zuercher or Meyer indicated that they will
16 take any action to prevent Defendant Garcia or any other councilmen from
17 making similar statements in the future.

18 **COUNT III**

19 **Injunctive Relief against Defendant Garcia regarding the Phoenix City**
20 **Charter and Code**

21 65. Plaintiffs reallege each and every allegation set forth in the paragraphs above
22 and incorporate each allegation by this reference.

23 66. Defendant Garcia's statement calling for the "immediate" action of firing
24 Plaintiff McBride remains visible on the official City of Phoenix website on
25 Defendant Garcia's district page.

26 67. Upon information and belief, Defendant Garcia continues to both publicly
27 and privately call for the assignment, reassignment, and removal of members
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of the Phoenix Police Department, including members of Plaintiff PPSLA.
68. Phoenix City Code Chapter 1, §1-5 establishes that continuing violations of the Code are considered public nuisances, and may be abated by proper authorities.

69. Defendant Garica’s request that Plaintiff McBride be fired is an unlawful act by a member of Phoenix City Council.

70. Defendant Garcia’s public effort to “direct” city staff to fire Plaintiff McBride is an unlawful act by a member of Phoenix City Council.

71. Plaintiffs are entitled to be free from Defendant Garcia directing or requesting the appointment or removal of Plaintiff McBride on Phoenix letterhead, on the official City of Phoenix website, and an injunction prohibiting Defendant Garcia from further posts or actions that violate these provisions of the Charter and Code will vindicate the interests of Plaintiffs.

72. Plaintiffs are entitled to be free from Defendant Garcia directing or requesting the appointment or removal of Phoenix Police employees, and an injunction prohibiting Defendant Garcia from further actions that violate these provisions of the Charter and Code will vindicate the interests of Plaintiffs.

73. Plaintiffs should receive injunctive relief under the principles of equity.

PRAYER FOR RELIEF

Plaintiffs pray for judgment against the Defendants as follows:

- (a) For costs and attorneys fees arising from Plaintiffs claims for declaratory relief, pursuant to A.R.S. §12-1840 in an amount to be determined by the Court;
- (b) For costs and attorneys fees arising from Plaintiffs claims for vindication of Plaintiff McBride’s claims under the Crime Victims’ Bill of Rights pursuant to A.R.S. §13-4437(B);
- (c) Costs and attorneys’ fees as may be allowed by law;

- 1 (d) Interim and permanent injunctive relief to remedy past violations and to
- 2 prevent further violations of Plaintiffs' rights; and
- 3 (e) Such other and further relief which is just and reasonable.

4 **NO JURY DEMAND**

5 Plaintiffs request a trial by judge.

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7 RESPECTFULLY SUBMITTED this 31st day of August, 2021.

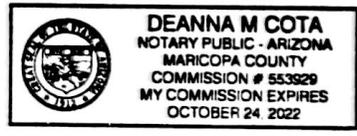
8 **STEVEN J SERBALIK, P.L.C.**

9
10 By: /s/Steven J. Serbalik
11 Steven J. Serbalik
12 4925 E. Desert Cove Ave #116
13 Scottsdale, Arizona 85254
14 *Attorney for Plaintiffs Douglas McBride and
the Phoenix Police Sergeants and Lieutenants
Association.*

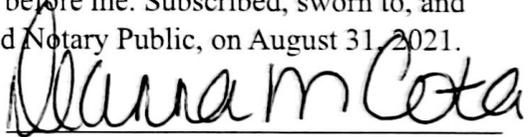
15 I, Benjamin Leuschner, in my official capacity as President of the Phoenix Police
16 Sergeants and Lieutenants Association, state that I am over 18 years of age. I hereby
17 subscribe and swear that the factual assertions in this Verified Complaint (other than
18 those stated as upon information and belief) are true and accurate to the best of my
19 knowledge.



20 State of Arizona)
21) ss.
22 County of Maricopa)



23 On August 31, 2021, before me, the undersigned, a Notary Public in and for
24 Arizona, personally appeared BENJAMIN LEUSCHNER, known to me to be the
25 person whose name is subscribed to the within instrument, being first duly sworn,
26 acknowledged that he executed the same before me. Subscribed, sworn to, and
27 acknowledged before me, the undersigned Notary Public, on August 31, 2021.



28 Notary Public

Exhibit A

From: Steve Serbalik steveserbalik@gmail.com 

Subject: Phoenix City Charter Chapter III, §4

Date: August 12, 2021 at Aug 12, 2021:4:06 PM

To: cris.meyer@phoenix.gov, ed.zuercher@phoenix.gov

Cc: mayor.gallego@phoenix.gov, council.district.1@phoenix.gov, council.district.2@phoenix.gov, council.district.3@phoenix.gov, council.district.4@phoenix.gov, council.district.5@phoenix.gov, council.district.6@phoenix.gov, council.district.7@phoenix.gov, council.district.8@phoenix.gov, Ben Leuschner ppsla.president@gmail.com



Mr. Zuercher, Mr. Meyer, Mayor and Members of Council.

I hope that the City of Phoenix - and its leadership - remain committed to following the law.

The bedrock principle of the local law in Phoenix is the Charter.

In Chapter III - Government - the Charter describes the Council-Manager system of government. Under this system of government, the City Manager is responsible for personnel issues.

Section 4 of this Chapter specifically says the following - "Neither the Council nor any of its Members shall direct or request the appointment of any person to, or his removal from, office by the City Manager or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the City."

This Section further states the penalty for violating this provision "Any Member of the Council violating the provisions of this section... shall be removed from office as in this Charter elsewhere provided."

Today, Vice Mayor Garcia issued a public statement, on Phoenix letterhead, stating "We must fire Officer (sic) McBride and all other officers involved. Every officer that declined to participate in the investigations must also be reprimanded. What the City Manager and Chief of Police have done today is not enough."

I believe it is clear that Vice Mayor Garcia's actions are in direct violation of the Charter, Chapter III, §4 and I ask that City leadership and the Council proceed appropriately.

I also request that the City Attorney's Office file the appropriate action in City Court to determine if Vice Mayor Garcia's actions are sufficient to cause him to be "convicted of violating any of the provisions of this Charter." Charter, Chapter III, §5(C).

Sincerely,

Steve Serbalik
Attorney for Doug McBride



City of Phoenix Office of Vice Mayor Carlos Garcia

Vice Mayor Garcia's Statement on Ballard Spahr's Investigations into Phoenix Police's Challenge Coin and Criminal Street Gang Charges Filed Against "ACAB"

"Last February, myself, alongside my colleagues Councilwoman Pastor and Councilwoman Guardado, called for an independent investigation of the Phoenix Police Department. In response, we were given the Ballard Spahr investigations released today. The contents of these reports are not a surprise. The members of our community that elected us to serve have repeatedly told us exactly what these reports confirm. In response, other colleagues on this council have shut down, ignored, and ridiculed the real experiences of our residents. The injustices outlined in these reports have and will continue to destroy people's lives if we don't take serious and swift action to rectify these egregious harms. I call on my colleagues and city staff to take these immediate action steps:

- Leadership and all those connected to these reports should be held accountable. We must fire Officer McBride and all other officers involved. Every officer that declined to participate in the investigations must also be reprimanded. What the City Manager and Chief of Police have done today is not enough.
- Every officer involved in these reports and those who refused to participate in these investigations must be placed on a public list and never hold someone's liberty in their hands again.
- The City Attorney must notify the Maricopa County Attorney's Office (MCAO) of all officers involved in these reports, including those that refused to cooperate and who witnessed what occurred. MCAO attorneys have a duty to then review these reports, audit all court cases, and disclose potential officer integrity issues.
- The Downtown Operations Unit, Tactical Response Unit, Gang Enforcement Unit, and Special Investigations Detail must be immediately disbanded. There is an established pattern that these units and their officers engage in unconstitutional and unjust actions that harm the public they are supposed to serve.
- It is clear the Memorandum of Understanding (MOU) between the City and the Phoenix Law Enforcement Association contains barriers that consistently help our officers evade accountability. The next MOU must go through a public negotiation process and city staff has a duty to renegotiate the components named in these reports that are a barrier to timely and thorough investigations.
- The Department of Justice must take immediate action in response to these reports. We cannot wait a year for another investigation that tells us what we already know.
- Finally, I demand that a special meeting is called by the city on Tuesday August 24th to address these reports and take these immediate action steps.

We cannot allow this to become another report that collects dust on a shelf while we sit back and watch lives continue to be ruined. The Department of Justice affirmed that we as a city should not hesitate to take any actions now to address the systemic issues in our police department that impede justice and accountability. There are no more excuses."

Exhibit B

From: Steve Serbalik <steveserbalik@gmail.com>
Subject: Fwd: Investigation (McBride - victim of a crime)
Date: August 17, 2021 at 4:04:00 PM MST
To: ed.zuercher@phoenix.gov
Cc: cris.meyer@phoenix.gov, Ben Leuschner <ppsla.president@gmail.com>, Brian Thatcher <bthatchesq@gmail.com>, Matthew L Siekmann <Matt.Siekmann@phoenix.gov>

Mr. Zuercher,

My client, Sergeant McBride, has information regarding criminal acts committed by a City of Phoenix employee. Today, he went to the Special Investigations Detail (SID) to attempt to formally report the criminal matters.

Normally, SID would take a report and potentially investigate crimes alleged to have been committed by Phoenix employees. Per Commander Siekmann, SID will not conduct a criminal review due to a perceived conflict of interest.

Please advise as to the appropriate City of Phoenix law enforcement detail to which Sgt. McBride can file his complaint - and receive the rights guaranteed to him as a victim of a crime.

I look forward to hearing from you.

Sincerely,

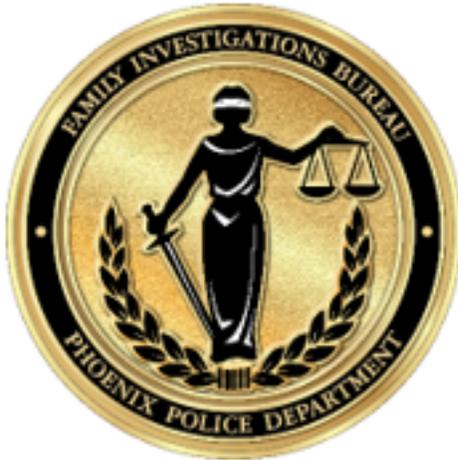
Steve Serbalik

Begin forwarded message:

From: Matthew L Siekmann <Matt.Siekmann@phoenix.gov>
Subject: Investigation
Date: August 17, 2021 at 3:48:09 PM MST
To: "steveserbalik@gmail.com" <steveserbalik@gmail.com>

As you are probably aware, Ben Leuschner and Doug McBride stopped by my office today to request criminal charges in an investigation involving Doug McBride as a victim. During that meeting, Doug McBride indicated you are his legal counsel in this matter. I attempted to reach Doug McBride a couple times today to update him, but I have been unable to reach him and he has not returned my calls. Since they indicated this was a time sensitive matter, I wanted to provide an update on their request. The Special Investigations Detail (SID) will not be conducting a criminal review of this matter due to a conflict of interest.

I would recommend reaching out to the City Manager's Office to request a proper investigative entity for Doug McBride's investigation.



MATTHEW SIEKMANN #6347

COMMANDER

PHOENIX POLICE DEPARTMENT

FAMILY INVESTIGATIONS BUREAU

2120 NORTH CENTRAL AVENUE

PHOENIX, AZ 85004

MAIN: (602) 534-2121

MATT.SIEKMANN@PHOENIX.GOV



Exhibit C

From: Ed Zuercher ed.zuercher@phoenix.gov

Subject: RE: Phoenix City Charter Chapter III, §4

Date: August 18, 2021 at Aug 18, 2021:12:59 PM

To: Steve Serbalik steveserbalik@gmail.com, Cris Meyer cris.meyer@phoenix.gov, Julie Kriegh Julie.Kriegh@phoenix.gov

Cc: Mayor Gallego mayor.gallego@phoenix.gov, Council District 1 PCC council.district.1@phoenix.gov, Council District 2 PCC council.district.2@phoenix.gov, Council District 3 PCC council.district.3@phoenix.gov, Council District 4 council.district.4@phoenix.gov, Council District 5 PCC council.district.5@phoenix.gov, Council District 6 PCC District6@phoenix.gov, Council District 7 PCC council.district.7@phoenix.gov, Council District 8 PCC council.district.8@phoenix.gov, Ben Leuschner ppsla.president@gmail.com

EZ

Dear Mr. Serbalik:

This is in response to your August 12, 2021 email to me, Cris Meyer, the Mayor and City Council regarding a public statement from Vice Mayor Garcia.

I disagree with your allegation that this statement violates the City Charter, Chapter 4. There is not a violation of the Charter here because the Vice Mayor did not give me or my subordinates an instruction or direction.

Councilmembers are entitled to publicly express their opinions. Only the City Manager has the authority to hire and fire employees (through delegated processes outlined in the civil service rules, personnel rules, MOUs, and in the case of police officers, state law). Further, I do not have the ability to discipline or fire any police officers without due process. I assure you that I am committed to due process for all City employees.

Sincerely,
Ed Zuercher

Ed Zuercher
City Manager
City of Phoenix, Arizona
@PHXCityManager

From: Steve Serbalik <steveserbalik@gmail.com>

Sent: Thursday, August 12, 2021 4:07 PM

To: Cris Meyer <cris.meyer@phoenix.gov>; Ed Zuercher <ed.zuercher@phoenix.gov>

Cc: Mayor Gallego <mayor.gallego@phoenix.gov>; Council District 1 PCC <council.district.1@phoenix.gov>; Council District 2 PCC <council.district.2@phoenix.gov>; Council District 3 PCC <council.district.3@phoenix.gov>; Council District 4 <council.district.4@phoenix.gov>; Council District 5 PCC <council.district.5@phoenix.gov>; Council District 6 PCC <District6@phoenix.gov>; Council District 7 PCC <council.district.7@phoenix.gov>; Council District 8 PCC <council.district.8@phoenix.gov>; Ben Leuschner <ppsla.president@gmail.com>

Subject: Phoenix City Charter Chapter III, §4

Mr. Zuercher, Mr. Meyer, Mayor and Members of Council.

I hope that the City of Phoenix - and its leadership - remain committed to following the law.

The bedrock principle of the local law in Phoenix is the Charter.

In Chapter III - Government - the Charter describes the Council-Manager system of government. Under this system of government, the City Manager is responsible for personnel issues.

Section 4 of this Chapter specifically says the following - "Neither the Council nor any of its Members shall direct or request the appointment of any person to, or his removal from, office by the City Manager or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the City."

This Section further states the penalty for violating this provision "Any Member of the Council violating the provisions of this section...shall be removed from office as in this Charter elsewhere provided."

Today, Vice Mayor Garcia issued a public statement, on Phoenix letterhead, stating "We must fire Officer (sic) McBride and all other officers involved. Every officer that declined to participate in the investigations must also be reprimanded. What the City Manager and Chief of Police have done today is not enough."

I believe it is clear that Vice Mayor Garcia's actions are in direct violation of the Charter, Chapter III, §4 and I ask that City leadership and the Council proceed appropriately.

I also request that the City Attorney's Office file the appropriate action in City Court to determine if Vice Mayor Garcia's actions are sufficient to cause him to be "convicted of violating any of the provisions of this Charter." Charter, Chapter III, §5(C).

Sincerely,

Steve Serbalik
Attorney for Doug McBride



City of Phoenix
Office of Vice Mayor Carlos Garcia

Vice Mayor Garcia's Statement on Ballard Spahr's Investigations into Phoenix Police's Challenge Coin and Criminal Street Gang Charges Filed Against "ACAB"

"Last February, myself, alongside my colleagues Councilwoman Pastor and Councilwoman Guardado, called for an independent investigation of the Phoenix Police Department. In response, we were given the Ballard Spahr investigations released today. The contents of these reports are not a surprise. The members of our community that elected us to serve have repeatedly told us exactly what these reports confirm. In response, other colleagues on this council have shut down, ignored, and ridiculed the real experiences of our residents. The injustices outlined in these reports have and will continue to destroy people's lives if we don't take serious and swift action to rectify these egregious harms. I call on my colleagues and city staff to take these immediate action steps:

- Leadership and all those connected to these reports should be held accountable. We must fire Officer McBride and all other officers involved. Every officer that declined to participate in the investigations must also be reprimanded. What the City Manager and Chief of Police have done today is not enough.
- Every officer involved in these reports and those who refused to participate in these investigations must be placed on a public list and never hold someone's liberty in their hands again.
- The City Attorney must notify the Maricopa County Attorney's Office (MCAO) of all officers involved in these reports, including those that refused to cooperate and who witnessed what occurred. MCAO attorneys have a duty to then review these reports, audit all court cases, and disclose potential officer integrity issues.
- The Downtown Operations Unit, Tactical Response Unit, Gang Enforcement Unit, and Special Investigations Detail must be immediately disbanded. There is an established pattern that these units and their officers engage in unconstitutional and unjust actions that harm the public they are supposed to serve.
- It is clear the Memorandum of Understanding (MOU) between the City and the Phoenix Law Enforcement Association contains barriers that consistently help our officers evade accountability. The next MOU must go through a public negotiation process and city staff has a duty to renegotiate the components named in these reports that are a barrier to timely and thorough investigations.
- The Department of Justice must take immediate action in response to these reports. We cannot wait a year for another investigation that tells us what we already know.
- Finally, I demand that a special meeting is called by the city on Tuesday August 24th to address these reports and take these immediate action steps.

We cannot allow this to become another report that collects dust on a shelf while we sit back and watch lives continue to be ruined. The Department of Justice affirmed that we as a city should not hesitate to take any actions now to address the systemic issues in our police department that impede justice and accountability. There are no more excuses."

more excuses.

Exhibit D

From: Steve Serbalik <steveserbalik@gmail.com>

Subject: Re: Phoenix City Charter Chapter III, §4 - McBride

Date: August 20, 2021 at 10:26:32 AM MST

To: Ed Zuercher <ed.zuercher@phoenix.gov>

Cc: Cris Meyer <cris.meyer@phoenix.gov>, Julie Kriegh <Julie.Kriegh@phoenix.gov>, Mayor Gallego <mayor.gallego@phoenix.gov>, Council District 1 PCC <council.district.1@phoenix.gov>, Council District 2 PCC <council.district.2@phoenix.gov>, Council District 3 PCC <council.district.3@phoenix.gov>, Council District 4 <council.district.4@phoenix.gov>, Council District 5 PCC <council.district.5@phoenix.gov>, Council District 6 PCC <District6@phoenix.gov>, Council District 7 PCC <council.district.7@phoenix.gov>, Council District 8 PCC <council.district.8@phoenix.gov>, Ben Leuschner <ppsla.president@gmail.com>

Mr. Zuercher,

Thank you for your response. I also appreciate your stated commitment to due process.

I would like to provide you with additional context, and to confirm that you believe that Vice Mayor Garcia's statement made on August 12, 2021 and still available at the official Phoenix.gov website as of the date of this email does not violate either the City Charter or City Code.

Specifically, Vice Mayor Garcia's statement says the following:

"I call on my colleges and city staff to take these immediate action steps:...We must fire Officer McBride and all other officers involved." (emphasis added).

While you state in your response that you determined that the Vice Mayor did not give you or any of your subordinates an instruction or direction, I want to ensure you reviewed the plain language of his statement that calls on "city staff" to take the "immediate action" step of firing McBride.

Additionally, even if you believe that Vice Mayor's comment was not a "direction" for "immediate action" - I would point you to the language of the Charter and the City Code that states a councilman may not "request...removal from[] office" of any City employee. (Charter Chapter III, §4; Phoenix City Code Art. II, §2-49). If I understand your prior correspondence, you believe that Vice Mayor Garcia's statement does not qualify as a request by him for McBride's "removal from office" and is therefore permissible under the Charter and the Code?

Further, I followed up with you regarding McBride's request to file a criminal report. The usual detail to that that report (the Special Investigations Detail) stated that they had a conflict and would not accepting information or file a report, and that you would provide

direction as to the appropriate detail of the Phoenix Police Department to contact. I have not heard back from you.

I am assuming from your August 18 email that your determination that Vice Mayor Garcia's August 12 statement does not violate the Charter and City Code is final, and that your silence on the request for an appropriate detail to whom McBride can report a crime means that you are unwilling to designate a detail of the Police Department for McBride to contact. If either of these determinations are untrue, or if I am inaccurate in the assessment contained in this email, please let me know by 5pm on Tuesday, August 24, 2021.

If you would like to discuss this further, or if you would like any additional information, please feel free to contact me.

Sincerely,

Steve Serbalik
Attorney for Doug McBride

On Aug 18, 2021, at Aug 18, 2021:12:59 PM, Ed Zuercher <ed.zuercher@phoenix.gov> wrote:

Dear Mr. Serbalik:

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I disagree with your allegation that this statement violates the City Charter, Chapter 4. There is not a violation of the Charter here because the Vice Mayor did not give me or my subordinates an instruction or direction.

Councilmembers are entitled to publicly express their opinions. Only the City Manager has the authority to hire and fire employees (through delegated processes outlined in the civil service rules, personnel rules, MOUs, and in the case of police officers, state law). Further, I do not have the ability to discipline or fire any police officers without due process. I assure you that I am committed to due process for all City employees.

Sincerely,
Ed Zuercher

Ed Zuercher
City Manager
City of Phoenix, Arizona
@PHXCityManager

From: Steve Serbalik <steveserbalik@gmail.com>
Sent: Thursday, August 12, 2021 4:07 PM
To: Cris Meyer <cris.meyer@phoenix.gov>; Ed Zuercher <ed.zuercher@phoenix.gov>
Cc: Mayor Gallego <mayor.gallego@phoenix.gov>; Council District 1 PCC <council.district.1@phoenix.gov>; Council District 2 PCC <council.district.2@phoenix.gov>; Council District 3 PCC <council.district.3@phoenix.gov>; Council District 4 <council.district.4@phoenix.gov>; Council District 5 PCC <council.district.5@phoenix.gov>; Council District 6 PCC <District6@phoenix.gov>; Council District 7 PCC <council.district.7@phoenix.gov>; Council District 8 PCC <council.district.8@phoenix.gov>; Ben Leuschner <ppsla.president@gmail.com>
Subject: Phoenix City Charter Chapter III, §4

Mr. Zuercher, Mr. Meyer, Mayor and Members of Council.

I hope that the City of Phoenix - and its leadership - remain committed to following the law.

The bedrock principle of the local law in Phoenix is the Charter.

In Chapter III - Government - the Charter describes the Council-Manager system of government. Under this system of government, the City Manager is responsible for personnel issues.

Section 4 of this Chapter specifically says the following - "Neither the Council nor any of its Members shall direct or request the appointment of any person

to, or his removal from, office by the City Manager or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the City.”

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I believe it is clear that Vice Mayor Garcia’s actions are in direct violation of the Charter, Chapter III, §4 and I ask that City leadership and the Council proceed appropriately.

I also request that the City Attorney’s Office file the appropriate action in City Court to determine if Vice Mayer Garcia’s actions are sufficient to cause him to be “convicted of violating any of the provisions of this Charter.” Charter, Chapter III, §5(C).

Sincerely,

Steve Serbalik
Attorney for Doug McBride

<image001.png>

Exhibit E

From: Ed Zuercher ed.zuercher@phoenix.gov
Subject: RE: Phoenix City Charter Chapter III, §4 - McBride

Date: August 24, 2021 at Aug 24, 2021:4:38 PM

To: Steve Serbalik steveserbalik@gmail.com

Cc: Cris Meyer cris.meyer@phoenix.gov, Julie Kriegh Julie.Kriegh@phoenix.gov, Mayor Gallego mayor.gallego@phoenix.gov, Council District 1 PCC council.district.1@phoenix.gov, Council District 2 PCC council.district.2@phoenix.gov, Council District 3 PCC council.district.3@phoenix.gov, Council District 4 council.district.4@phoenix.gov, Council District 5 PCC council.district.5@phoenix.gov, Council District 6 PCC District6@phoenix.gov, Council District 7 PCC council.district.7@phoenix.gov, Council District 8 PCC council.district.8@phoenix.gov, Ben Leuschner ppsla.president@gmail.com

EZ

Dear Mr. Serbalik:

This is in response to your August 18, 2021 email to me regarding where to file a complaint about an alleged Charter violation by a Council Member.

While my position hasn't changed, in the absence of an appointed Ethics Commission, the appropriate entity to receive a complaint you describe is the City Integrity Line. The complaint can be submitted online at <https://www.phoenix.gov/auditor/>. Then click through to the Integrity Line Reporting form for instructions on reporting. The Integrity Line Committee and staff will review the information provided and determine what actions are appropriate and where the matter should be assigned. There is a built-in mechanism for status reporting to a complainant.

Regards,
Ed

Ed Zuercher
City Manager
City of Phoenix, Arizona
@PHXCityManager

From: Steve Serbalik <steveserbalik@gmail.com>

Sent: Friday, August 20, 2021 10:27 AM

To: Ed Zuercher <ed.zuercher@phoenix.gov>

Cc: Cris Meyer <cris.meyer@phoenix.gov>; Julie Kriegh <Julie.Kriegh@phoenix.gov>; Mayor Gallego <mayor.gallego@phoenix.gov>; Council District 1 PCC <council.district.1@phoenix.gov>; Council District 2 PCC <council.district.2@phoenix.gov>; Council District 3 PCC <council.district.3@phoenix.gov>; Council District 4 <council.district.4@phoenix.gov>; Council District 5 PCC <council.district.5@phoenix.gov>; Council District 6 PCC <District6@phoenix.gov>; Council District 7 PCC <council.district.7@phoenix.gov>; Council District 8 PCC <council.district.8@phoenix.gov>; Ben Leuschner <ppsla.president@gmail.com>

Subject: Re: Phoenix City Charter Chapter III, §4 - McBride

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Thank you for your response. I also appreciate your stated commitment to due process.

I would like to provide you with additional context, and to confirm that you believe that Vice Mayor Garcia's statement made on August 12, 2021 and still available at the official [Phoenix.gov](https://www.phoenix.gov) website as of the date of this email does not violate either the City Charter or City Code.

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City Manager
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Subject: Phoenix City Charter Chapter III, §4

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I also request that the City Attorney’s Office file the appropriate action in City Court to determine if Vice Mayor Garcia’s actions are sufficient to cause him to be “convicted of violating any of the provisions of this Charter.” Charter, Chapter III, §5(C).

Sincerely,

Steve Serbalik
Attorney for Doug McBride

<image001.png>

1 Steven J. Serbalik
2 Bar No. 028191
3 4925 E. Desert Cove Avenue, Unit 116
4 Scottsdale, AZ 85254
5 (480) 269-1529
6 steveserbalik@gmail.com
7 *Attorney for Plaintiffs the Phoenix*
8 *Police Sergeants and Lieutenants Association, and*
9 *Douglas McBride*

6 **ARIZONA SUPERIOR COURT**

7 **MARICOPA COUNTY**

8 The Phoenix Police Sergeants and
9 Lieutenants Association, an Arizona non
10 profit corporation; and Douglas
11 McBride, individually,

11 Plaintiffs

12 v.

13 The City of Phoenix, a municipal
14 corporation, and Ed Zuercher, in his
15 official capacity as City Manager of the
16 City of Phoenix; Cris Meyer, in his
17 official capacity as the City Attorney for
18 the City of Phoenix, and Vice Mayor
19 Carlos Garcia, individually and in his
20 official capacity as a councilman of the
21 City of Phoenix

22 Defendants.

No.

**MOTION FOR A TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

20 Plaintiffs move for a temporary restraining order and preliminary injunction to
21 enjoin Phoenix Vice Mayor Carlos Garcia from posting or maintaining any posts on
22 official City of Phoenix letterhead or taxpayer-funded resources calling for the
23 termination of Douglas McBride or any member of the Phoenix Police Sergeants and
24 Lieutenants Association.

25 **FACTUAL BACKGROUND**

26 Plaintiff Douglas McBride (“McBride”) is a Phoenix Police Sergeant and
27 member of Plaintiff Phoenix Police Sergeants and Lieutenants Association (“PPSLA”)
28 who is currently under internal investigation (*See e.g.* Verified Complaint, *passim*). This

1 questions going to the merits’ – a lesser showing than likelihood of success on the
2 merits – then an injunction may still issue if the ‘balance of hardships tips sharply in the
3 plaintiff’s favor,’ and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v.*
4 *Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild*
5 *Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)); *see also Jordahl*, 336
6 F.Supp.3d 1038-39 (quoting *Cottrell*). Under this serious questions variant of
7 the *Winter* test, “[t]he elements ... must be balanced, so that a stronger showing of one
8 element may offset a weaker showing of another.” *Lopez v. Brewer*, 680 F.3d 1068,
9 1072 (9th Cir. 2012).

10 **LIKELIHOOD OF SUCCESS ON THE MERITS**

11 **The Charter and City Code clearly prohibit a member of Phoenix City Council** 12 **from directing or requesting the termination of a Phoenix employee**

13 The Phoenix operates under a Council-Manager form of government, where the
14 City Council sets policy, while personnel decisions are explicitly outside their purview
15 and are the responsibility of the Phoenix City Manager (Charter Chapter III, §2(B)). The
16 Charter explicitly prohibits members of the Phoenix City Council from “directing” or
17 “requesting” the appointment or removal from office of any City employee (Charter
18 Chapter III, §4). These Charter provisions are echoed in the Phoenix City Code (Code
19 Chapter 2, §2-49).

20 These provisions operate in harmony with the Phoenix Civil Service system -
21 enshrined in Chapter XXV of the Charter. The Civil Service System operates to ensure
22 that covered employees (including McBride and members of PPSLA) are assured
23 “impartial treatment...in all aspects of personnel administration...and proper regard for
24 their privacy and constitutional rights as citizens...” (Charter Chapter XXV, §2(e)). As
25 police officers, McBride and members of PPSLA are also entitled to due process
26 consideration as part of the Arizona Peace Officers’ Bill of Rights (A.R.S. §38-1101 *et.*
27 *seq.*) which states that officers are not subject to disciplinary action except for just cause
28

1 (A.R.S. §38-1103).

2 **Vice Mayor Garcia Used - and is Continuing to Use - Phoenix Resources to Call**
3 **For McBride and “other officers” Termination**

4 Despite the legal protections guaranteed by the Charter, Code, and state law,
5 Garcia decided to publish - and continues to publish - a statement on official Phoenix
6 letterhead, accessible on the official phoenix.gov website calling for the termination of
7 McBride and unspecified other officers (*See* Exhibit 1 to this Motion).

8 **LIKELIHOOD OF IRREPARABLE HARM**

9 Having established Plaintiffs' likelihood of success on the merits, the next issue
10 is whether Plaintiffs are likely to suffer irreparable harm absent the protection of
11 a temporary restraining order and preliminary injunction. The unqualified answer is yes.

12 The plain language of Garcia’s statement calls for “city staff” to take the
13 “immediate action step” of terminating McBride and “all other officers involved.”

14 This language is encouraging members of City staff - which would include
15 investigating and reviewing personnel - to improperly prejudge any and all results of a
16 pending internal investigation and to summarily terminate McBride and other
17 employees under investigation.

18 Additionally, Garcia’s statement is visible to members of the Phoenix Civil
19 Service Board (an entity appointed by council members including Garcia) and
20 improperly signals to them that “firing” McBride and other involved employees is the
21 desired result of a council member who has a direct role in deciding if the Board
22 members would be reappointed to serve on the Board.

23 The Code makes it clear that this harm is ongoing - as each day the Code is
24 violated constitutes a further, actionable violation (*see* Code §1-5; “Each day any
25 violation of any provisions of this Code or of any ordinance shall continue shall
26 constitute a separate offense”).

27 McBride and PPSLA, through counsel, brought this issue to the attention of the
28

1 City Manager, the City Attorney, and Garcia himself (*See* Exhibit A to the Verified
2 Complaint - Email to Defendants), yet the post continues to remain on official Phoenix
3 resources, and is accessible to be viewed and considered by decision-makers charged
4 with ensuring that the rights of McBride and other PPSLA members are respected.
5 Because other responsible entities refuse to act, a court order is appropriate to ensure the
6 Charter, Code, and state law are respected.

7 **BALANCE OF EQUITIES AND THE PUBLIC INTEREST**

8 The Court should also find that the balance of equities tips in favor of McBride
9 and PPSLA.

10 Garcia and the other defendants are duty-bound to respect the Charter and Code.
11 There is no equitable interest in Garcia engaging in unlawful conduct, and the voters of
12 Phoenix have a strong interest in the proper balance existing between the policy-making
13 responsibilities of the City Council and the personnel decisions of the City Manager and
14 his staff.

15 **CONCLUSION**

16 Plaintiffs have shown that they are likely to succeed on the merits of their claims,
17 that they are likely to suffer irreparable harm in the absence of a temporary restraining
18 order and preliminary injunction, and that the balance of equities and public interest
19 favor judicial intervention. The Court, therefore, should grant Plaintiffs' request for
20 a temporary restraining order, followed by a hearing on a preliminary injunction and
21 enjoin Defendant Garcia from utilizing City resources to call for the termination of
22 McBride or any other member of PPSLA. A proposed Order is submitted with this
23 Motion.

24
25 RESPECTFULLY SUBMITTED this 31st day of August, 2021.
26
27
28

STEVEN J SERBALIK, P.L.C.

By: /s/Steven J. Serbalik
Steven J. Serbalik
4925 E. Desert Cove Ave #116
Scottsdale, Arizona 85254
*Attorney for Plaintiffs Douglas McBride and
the Phoenix Police Sergeants and Lieutenants
Association.*

CERTIFICATE OF SERVICE

I, Steven J. Serbalik, hereby certify that, on August 31, 2021, I caused a true and accurate copy of the Verified Complaint and this Motion to be provided to Defendants via their official City of Phoenix email addresses.

/s/ Steven J. Serbalik

Exhibit 1

CARLOS GARCIA, DISTRICT 8



Statement from
Council District 8

**Vice Mayor Garcia's Statement
on Ballard Spahr's
Investigations into Phoenix
Police's Challenge Coin and**

[Skip to main content](#)

Criminal Street Gang Charges Filed Against "ACAB"

AUGUST 12, 2021 12:30 PM

"Last February, myself, alongside my colleagues Councilwoman Pastor and Councilwoman Guardado, called for an independent investigation of the Phoenix Police Department. In response, we were given the Ballard Spahr investigations released today. The contents of these reports are not a surprise. The members of our community that elected us to serve have repeatedly told us exactly what these reports confirm. In response, other colleagues on this council have shut down, ignored, and ridiculed the real experiences of our residents. The injustices outlined in these reports have and will continue to destroy people's lives if we don't take serious and swift action to rectify these egregious harms. I call on my colleagues and city staff to take these immediate action steps:

- Leadership and all those connected to these reports should be held accountable. We must fire Officer McBride and all other officers involved. Every officer that declined to participate in the investigations must also be reprimanded. What the City Manager and Chief of Police have done today is not enough.
- Every officer involved in these reports and those who refused to participate in these investigations must be placed on a public list and never hold someone's liberty in their hands again.
- The City Attorney must notify the Maricopa County Attorney's Office (MCAO) of all officers involved in these reports, including those that refused to cooperate and who witnessed what occurred. MCAO attorneys have a duty to then review these reports, audit all court cases, and disclose potential officer integrity issues.
- The Downtown Operations Unit, Tactical Response Unit, Gang Enforcement Unit, and Special Investigations Detail must be immediately disbanded. There is an established pattern that these units and their officers engage in unconstitutional and unjust actions that harm the public they are supposed to serve.
- It is clear the Memorandum of Understanding (MOU) between the City and the Phoenix Law Enforcement Association contains barriers that consistently help our officers evade accountability. The next MOU must go through a public negotiation

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process and city staff has a duty to renegotiate the components named in these reports that are a barrier to timely and thorough investigations.

- The Department of Justice must take immediate action in response to these reports. We cannot wait a year for another investigation that tells us what we already know.
- Finally, I demand that a special meeting is called by the city on Tuesday August 24th to address these reports and take these immediate action steps.

We cannot allow this to become another report that collects dust on a shelf while we sit back and watch lives continue to be ruined. The Department of Justice affirmed that we as a city should not hesitate to take any actions now to address the systemic issues in our police department that impede justice and accountability. There are no more excuses."

[View a letter from the Vice Mayor, Councilwoman Pastor and Councilwoman Guardado from February 26th requesting these investigations be made public.](#)

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