

IN THE CIRCUIT COURT OF SAINT CHARLES COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,
Plaintiff

Cause No. 2311-CR03370-01
Division No. 1

v.
MATTHEW T. MCMENAMY
Defendant

MOTION TO DISMISS BASED ON VIOLATIONS OF
FREE SPEECH AND
REQUEST FOR EVIDENTIARY HEARING

COMES NOW the Defendant, Matthew T. McMenemy, by and through undersigned counsel, Randall Weist, and respectfully moves this Honorable Court to dismiss this action pursuant to Missouri Supreme Court Rule 24.04(b)(2), because the charges in the Information as applied to Mr. McMenemy, violates his right to freedom of speech, as guaranteed by the First Amendment of the United States Constitution and Article I Section 8 of the Missouri Constitution.

REQUEST FOR HEARING

Defendant requests an evidentiary hearing on his motion to dismiss to decide the legal question of whether Mr. McMenemy's conduct was constitutionally protected speech, on Tuesday, the 2nd day of September, 2025 at 1:30pm, or as soon thereafter as counsel may be heard.

SUMMARY OF ARGUMENT

Speech about “matters of public concern” receives the highest protection under the First Amendment’s free speech clause. “Matters of public concern” are anything of concern to the community or matters of legitimate news interest. Social media websites are the modern-day public square where debates about “matters of public concern” take place. A police officer is a public official, and their conduct on and off duty is a “matter of public concern.” Whether or not their conduct was illegal or immoral or unprofessional or indicative of bias, is a matter for the court of public opinion to decide. These vital debates and conversations must not be suppressed. The First Amendment does not permit the government to punish citizens based on disagreement with the content of their speech or that the content may be hurtful to some, as that is the hallmark of a police state.

When Missouri courts have applied the Harassment and Stalking statutes to speech only conduct, they have only done so to the narrowly defined category of unprotected speech “Fighting words,” or words addressed generally in a face-to-face manner, or directly to the victim, which content is personally abusive, that by their very utterance inflict injury or tend to incite an immediate breach of the peace. Mr. McMenemy’s speech does not fit into the unprotected category of “fighting words,” because the flyers and posts were distributed to the general public, not directly addressed to Complainants, and were about a matter of public concern. No messaging or speech of any kind was addressed directly to the complainant and did not contain personally abusive language that would inflict injury or tend to incite immediate breach of the peace. An even narrower application of “fighting words” applies when addressed directly to police, as properly trained police officer may reasonably be expected to exercise a

higher degree of restraint than average citizen and are less likely to respond belligerently to “fighting words.”

Further, Mr. McMenemy’s speech does not fit into any other unprotected category of speech. While mentioned above that Missouri Courts have not found speech other than “fighting words” to apply to the harassment and stalking statutes, for the sake of argument, defense counsel will illustrate how Mr. McMenemy’s speech is wholly protected, as it does not fit into any unprotected category, even the ones that have never been applied to the offenses alleged in this cause. Because all of Mr. McMenemy’s speech that constitutes the basis for this cause is protected, this Information is in direct violation of the U.S. and Missouri Constitutions and must be dismissed as a matter of law.

Finally, the element in Count II Stalking 1st Degree, alleging a “course of conduct including ...violating a bond condition ‘no use of social media,’ ” is the result of an overbroad bond condition that violates Mr. McMenemy’s fundamental right to free speech. Missouri courts have held that a “course of conduct” does not include constitutionally protected activity. The Supreme Court has recently reiterated that a law cannot burden substantially more speech than necessary to advance a legitimate government interest when examining a total ban on social media access for sex offenders on parole. Because the bond condition in this cause substantially restricted more speech than necessary, with its total ban on all use of social media, Count II is unconstitutional for that reason as well and cannot stand.

In support of his motion, Defendant states the following grounds:

I. PROCEDURAL BACKGROUND

1. On September 6, 2023, Matthew T. McMenemy was charged by complaint with Harassment in the 1st Degree.
2. Mr. McMenemy's bond was set at \$10,000.00; CASH ONLY; IN DEFENDANT'S NAME ONLY; NO SURETY; 10% IS AUTHORIZED; NO CONTACT WITH VICTIM; NO USE OF SOCIAL MEDIA.
3. On November 8, 2023, an Amendment Complaint was lodged and filed adding Count II Stalking in the 1st Degree.
4. On February 20, 2025, the above cause was bound over to circuit court by waiver of preliminary hearing.
5. Here now, before the Honorable Brittney Smith, Division 1, of the 11th Circuit Court of St. Charles County, Missouri, Matthew T. McMenemy ("Mr. McMenemy") is charged in Count I of the Information, filed on March 6, 2025, with Harassment – 1st Degree in violation of Mo. Rev. Stat. 565.090. An individual violates such section if:

A person commits the offense of harassment in the first degree if he or she, *without good cause*, engages in any act with the purpose to cause emotional distress to another person, and such act does cause such person to suffer emotional distress.
6. Mr. McMenemy is charged with violating such section by allegedly, on or between September 1, 2023 and September 4, 2023,...without good cause, engaged in act with the purpose to cause emotional distress to Complainant 1 by distributing fliers containing Complainant 1's photo, which allege Complainant 1 is a racist, posting information about Complainant 1 and his family on social media, and threatening to take the Complainant 1's things, cash, retirement and business, and such act did cause Complainant 1 to suffer emotional distress. *See Information filed 3/6/2025.*

7. Mr. McMenemy is charged in Count II of the same Information with Stalking – 1st Degree – L/E or relative, in violation of Mo. Rev. Stat. 565.225. An individual violates such section if:

A person commits the offense of stalking in the first degree if he or she purposely, through his or her course of conduct, disturbs or follows with the intent of disturbing another person and... (3) At least one of the actions constituting the course of conduct is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal.

8. Mr. McMenemy is charged with violating such section subsection (2) part (3) of such Section, by allegedly on or about September 15, 2024 and October 25, 2023, Defendant disturbed Complainant 1, by repeatedly posting threats and harassing communication on social media and at least one of Defendant's actions constituting the course of conduct

was in violation of a condition of pretrial release, "no posting on social media", as ordered by the Hon. Jeffrey Sandcork, Division 9, in the 11th Circuit Court of St. Charles County, on September 6, 2023, and the victim was intentionally targeted as a law enforcement officer. *See information filed 3/6/2025.*

9. The above cause is currently scheduled for jury trial to commence on October 7, 2025.

II. FACTUAL BACKGROUND

Mr. McMenemy and Complainant 1 first came into contact on March 4, 2017.

Complainant 1, in his official duties as a law enforcement officer, responded to Mr.

McMenemy's place of residence in O'Fallon, Missouri, for a reported disturbance, ultimately ending in the involuntary commitment of Mr. McMenemy. *See Report 17-1231 Defense Exhibit*

A. This was the first and only time, to this very day, Complainant 1 and Mr. McMenemy

interacted directly or came into face-to-face contact with one another. The incident from 2017 is

a point of much contention for Mr. McMenemy, who believes this was an illegal arrest without probable cause and his lawful right to own a firearm under the Second Amendment was violated.

At the residence, Complainant 1 was met by Mr. McMenemy's parents, who told him their son was acting unusual and may have been suffering adverse effects from his medication. Complainant 1 contacted Mr. McMenemy in his bedroom, who was in his bed, under the covers, with his hands raised. Mr. McMenemy notified Complainant 1 that a loaded handgun was present under the covers, to which Complainant 1 promptly retrieved the firearm without incident. Mr. McMenemy was described in Complainant 1's report as completely uncooperative to questioning. No other observations are described and there were no further incidents reported. Mr. McMenemy was then taken by Complainant 1 to St. Joseph's Hospital in Wentzville for further evaluation and treatment.

Years later, on September 3, 2023, Complainant 1 was notified by a friend that flyers were found on businesses along Main Street, in St. Charles, MO, containing the following: Official department picture of Complainant 1 in uniform; Two screenshots of Facebook posts made by Complainant 1; The first of which was from September 18, 2017 and read, "If black lives matter then why are they shooting and killing each other at an alarming rate"; The second post from March 27, 2019 read, "I feel offended that the Chicago Mayor said White Wash in his statement on Jussie Smollet case *smile emoji* *tilted crying laughing emoji*"; A QR code; The X (formerly "Twitter") logo; Two usernames "@DefundBadPolice" and "@Billboard4Bcops"; Text at the top which read in bold, "Is Detective Michael Cantillon a racist?"; Text at the bottom which read in bold, "Detective for St. Charles Police Department", (herein "the Flyers"). See

Defense Exhibit B.

Complainant 1 acknowledges the Facebook posts used on the flyer came from his personal Facebook page, that he did not know his Facebook page was open to the public for viewing, and the posts were unaltered from how he originally published them.

At first, it was unknown who had posted the flyers, but Detective Grarup of Wentzville Police Department began investigating the incident and came to learn the name Matthew McMenemy. He was notified of Facebook posts made by Mr. McMenemy, referencing Complainant 1 and Complainant 2. Complainant 1, also a police detective, ran Mr. McMenemy's information to see if they had any prior contact, because at the time he did not remember this individual or know why he would be posting these flyers. Upon researching, Complainant 1 recalled the 2017 involuntary commitment incident and acknowledged the two of them had no contact of any kind since then.

It was later determined that The Flyers were posted at various St. Charles County government buildings, Complainant 1 and Complainant 2's business, and other businesses throughout St. Charles City and St. Peters, between Saturday, September 2, 2023 and Monday, September 4, 2023. The flyers contained a QR code that directed the scanner to an Instagram account that had Matthew McMenemy's name as the username. The Instagram and Facebook pages also referenced a website "<https://defundbadpolice.org/>" a Youtube page, and Twitter page, all coordinated and generally sharing the same content and messaging. *See Defense Exhibits C, D and E.*

Upon viewing the Instagram and Facebook page, a Youtube video link was posted on a channel believed to be associated with Mr. McMenemy. The video was posted September 3, 2023, and showed Mr. McMenemy getting out of his car at St. Joseph's Hospital in Wentzville, proceeding to the entrance, and posting the same flyers on the outside of the hospital's doors and

windows. Flyers were also posted on windshields of cars in the parking lot. Of note, this is the same hospital where he was involuntarily committed to by Complainant 1 in 2017. The video is over 30 minutes long and only part of it was screen recorded by Det. Grarup.

The Detective in his report notes that Mr. McMenemy was narrating how he was upset with the commitment, believes something happened to him at the hospital, and that he was there to do a peaceful protest. He states in the video how he was trying to attract the attention of the people in the county, people outside the county, and people traveling on highways nationally, to let them know what happened to him. There was also a description for the YouTube video that described much of the same information narrated in the video.

The Youtube caption ends with the following, "SSMHealth owes me a blank check", "I am going to take all of Detective Michael Cantillon's things, his cash, his retirement, his business", "I am going to take everything my parents own." Complainant 1 acknowledges that the statement about taking his things, cash, retirement, his business is in reference to bringing a lawsuit against him. *See Defense exhibit F.*

Following the events of early September, Mr. McMenemy's Facebook page was reviewed in detail and contained numerous posts referencing Complainant 1 and Complainant 2. The posts generally referenced an effort to expose police misconduct, the 2017 arrest and how Mr. McMenemy believed it was illegal, posts from Complainant 1's Facebook page, Mr. McMenemy's belief that Complainant 1 was racist, how he planned to sue Complainant 1 and SSM, how he believed the charges in this above cause were unlawful, Complainant 1 and Complainant 2's business being involved in the 2017 arrest, and ended with vague references to future plans for his social media campaign to investigate police misconduct. At no point does Mr. McMenemy post explicit threats to commit any act of unlawful violence and at no point is

there any direct contact between Mr. McMenemy and Complainant 1 and 2. Complainant 1 acknowledges that he would be notified of new posts and go view them himself or was routinely monitoring Mr. McMenemy's Facebook page for new posts out of concern for his safety. *See Defense exhibit G.*

The posts began on or about August 16, 2023, starting with a picture of the report #17-1231 from the 2017 incident. Mr. McMenemy then clearly lays out his intentions behind his Facebook, Instagram, Twitter, Youtube pages, when he posts on August 28 that, "my first goal of my organization will be to change the narrative of Defund the Police to Defund Bad Police," and "I will be going to pitch my organization... I have a glorious idea to end police abuse and hold officers accountable when they violate the law."

He references the 2017 involuntary commitment and how he believed it was illegal and that his second amendment right was unlawfully violated to form the basis for his involuntary commitment. He posted about how other evidence that should have been considered was ignored by officers. He shared a belief that lies were told about his medication's impact on his mental health. He ends his late August posts with a comment, "Broke the law. They owe me millions. I will not stop until I get justice. #attorney." These posts clearly referencing from the outset his intentions on taking legal action against the parties involved in what he believed to be an illegal arrest in 2017.

On August 30th, 2023, Mr. McMenemy again references taking legal action by posting, "no more negotiations. I am going to sue everyone involved personally. I will be going for everything you own. Every last penny." He continues about how he is going to put up billboards with Complainant 1's Facebook posts that he believed were racist, link Complainant 1's business, and states how his goal was to ruin Complainant 1's life and rid him from public office.

He later states, “Billboards for Bad Cops is going to start fires of freedom and Change America.”

He asks, “will people come forward once I put up these billboards?”

On or about September 1, 2023, he posts “working on a nickname for my massive social media campaign.” He talks about his spinal injuries and purported abuse he suffered as a child. He discusses his current struggles with mental illness that brought on or worsened by his commitment in 2017.

Mr. McMenemy also posted screenshots from Complainant 1’s open Facebook page. The same posts seen on the flyer, Instagram, Twitter and website, and other posts that Mr. McMenemy believed were racially motivated. He repeatedly alleged that Complainant 1 was a racist and illegally arrested him in 2017, and that he was going to sue him for everything he’s got. He posited the question to his followers and members of the public, whether these posts were racially motivated and reflected the character of a peace officer and of the St. Charles Police Department as a whole and whether they (St. Charles PD and citizens of St. Charles) would approve of them. *See Defense Exhibits H, I, and J.*

He also posted court documents after charges were initially filed in this cause, including the probable cause statement and charging documents. He posted a picture of Complainant 1 and Complainant 2 he acquired from Complainant 1’s open Facebook page. *See Defense exhibit K.*

At no point did Mr. McMenemy reveal any information about Complainant 1 or 2’s family that was not publicly available or shared publicly by Complainant 1 and 2 on their open Facebook page or public business page. Complainant 1 acknowledges that no personal information was “leaked” that wasn’t already available to the public. Mr. McMenemy continues his posts on September 5 with, “I erected DefundBadPolice.org so others can come to me. With evidence. Of same situations...” Mr. McMenemy continued to post on Facebook after being released on bond

but never contacted Complainant 1 or 2 directly or indirectly and never posted explicit threats to commit violence or cause them harm by an unlawful means.

Mr. McMenemy continued to focus his posts in late September 2023 on what he believed was now an illegal arrest and charge in this cause and continued to allege Complainant 1 is racist. On October 1, 2023 he again references “I will be suing a lot more people now than just Complainant 1. I will be taking all of your things and money for violating my rights...now leave me alone or the civil suit gets larger.” He then posted about the 2017 incident and how he believed it was illegal and how the current cause was illegal. How they never had contact.

He declares, “I will always denounce violence,” “Violating my civil rights plain as day. I cannot wait to sue.” He posted vague statements about the anniversary of his parents threatening his life back in 2017 was approaching and that he had something amazing planned that was going to gain national attention. He states he will, “ruin all their lives in a way they won’t want to move forward, you will want to settle with me before this 7th anniversary.” He posts “goodbye cruel world,” after repeated posts openly sharing his struggles with mental health and how he was driven to suicide by his unlawful commitment in 2017. He posts how everyone is paranoid and how he loves to keep people on their toes. He adds, “What is planned, more interesting things to expose maybe?” He posts how he is going to “keep exposing Complainant 1 that he wants him out of public service and out of the community and that he should settle.”

Mr. McMenemy also posted on twitter (now “X”) under the username “Bizarre Effect” and tagged the St. Charles County Prosecuting Attorney’s office in the post. Tagging is a feature contained on many social media websites where a user types the “@” symbol and a username, to notify that user of their post. The post was similar in nature to Mr. McMenemy’s other posts and

contained images in the tweet were screenshots from Complainant 1's Facebook page and the probable cause statement filed in the above cause.

On September 5, 2023, Complainant 1 obtained an ex parte order of protection against Mr. McMenemy including the conditions that he not commit or threaten to commit domestic violence, stalking, molesting, sexual assault, or disturbing the peace of petitioner wherever petitioner may be found, enter or stay upon the premises wherever Petitioner may reside, place of employment or school located at WHEREEVER PETITIONER MAY RESIDE, communicate with petitioner in any manner or through any medium. On October 4, 2023, a full order of protection was granted to Complainant 1, adding the conditions that Mr. McMenemy shall not harass, stalk, or threaten Petitioner or engage in other conduct that would place petitioner in reasonable fear of bodily injury to Petitioner and use, attempt to use, or threaten to use physical force against petitioner that would reasonably cause bodily injury, not to come within 500 feet of petitioner, not to go onto premises of wife's business.

To this day, Mr. McMenemy has not violated the order of protection. Again, Mr. McMenemy has never contacted Complainant 1 or Complainant 2 directly, never threatened them with any act of unlawful violence, and never violated the order of protection. He posted on his own Facebook page and other social media pages his own story, belief that his 2017 arrest was illegal, that the officer involved was possibly racist and shared what he believed were concerning posts, stated that he was going to sue everyone involved in 2017, and added that he thought he charges in this cause were also illegal. Complainant 1 acknowledges that nobody at the department or in the community believes he is racist or a bad cop and that he has actually garnered much support throughout this matter. Mr. McMenemy has been confined in jail on this cause, since January 17, 2024, or for over 580 days.

III. LEGAL AUTHORITY AND ANALYSIS

Defenses and objections based on defects in the institution of the prosecution or in the indictment or information may be raised only by motion before trial. *Mo. Ct. Rule 24.04(b)*. When the basis of a defendant's motion to dismiss is a question of law, the trial court may, for the purpose of deciding the legal issue, consider material outside of the information or indictment. *State v. Metzinger*, 456 S.W.3d 84, 93 (Mo.App.E.D 2015) citing *State v. Fernow*, 328 S.W.3d 429, 431 (Mo.App.E.D.2010) (trial court necessarily considered facts outside of the information when it determined that the information was insufficient to charge defendant with escape from custody after arrest for a felony because, at the time he absconded, he was not in custody for a felony but pursuant to a capias warrant).

The First Amendment to the United States Constitution states that, “Congress shall make no law...abridging the freedom of speech.” Similarly, Article I, Sec. 8 of the Missouri Constitution promises, “that no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate, whatever he will on any subject, being responsible for all abuses of that liberty.” The free speech provision of the federal constitution has been incorporated to the states through the 14th Amendment to the United States Constitution. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

Missouri courts have yet to address whether our state constitution offers more free speech protection than that offered by the federal constitution. See *Kansas City Premier Apartments, Inc. v. Missouri Real Estate Com’n*, 344 S.W.3d 160, 169-70 (Mo. banc 2011). Nevertheless, the Missouri Supreme Court has stated that “analysis of a section of the federal constitution is strongly persuasive in construing the like section of our state constitution.” *Id.* at 4. (citing *Doe v.*

Phillips, 194 S.W.3d 833, 841 (Mo. banc 2006)). The Court has further noted that it gives “due deference to United States Supreme Court precedents when our state constitutional provisions are the same as the United States constitutional provisions.” *Id.* Thus, at the very least, Defendant’s case is governed by federal precedent with respect to his first amendment freedom of speech claims.

A. The conduct alleged in the Information is speech about matters of public concern on a modern public forum and is therefore entitled to the highest degree of protection under the Free Speech clause of the First Amendment

“The First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *State v. Wooden*, 388 S.W.3d 522, 525 (Mo. banc 2013) (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). More specifically, “[t]he freedom of speech guaranteed in the United States and Missouri Constitutions limits the ability of our legislature to criminalize spoken words.” *State v. Roberts*, 779 S.W.2d 576, 578 (Mo. banc 1989). “[S]peech on ‘matters of public concern’ ... is ‘at the heart of the First Amendment’s protection.’ ” *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985). The First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). That is because “speech concerning public affairs is more than self-expression; it is the essence of self-government.” *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964).

Accordingly, “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Connick v. Myers*, 461 U.S. 138, 145 (1983). Speech deals with matters of public concern when it can “be fairly considered as relating to any matter of political, social, or other concern to the community,” *Id.* at 146. Or when it “is a

subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public,” *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 492–494 (1975); *Time, Inc. v. Hill*, 385 U.S. 374, 387–388, (1967).

[W]e have repeatedly referred to public streets as the archetype of a traditional public forum,” noting that “ ‘[t]ime out of mind’ public streets and sidewalks have been used for public assembly and debate.” *Frisby v. Schultz*, 487 U.S. 474, 480 (1988). While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the “vast democratic forums of the Internet” in general, and social media in particular. *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017) citing *Reno v. American Civil Liberties Union*, 521 U.S. 844, 868 (1997).

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.

Lovell v. City of Griffin, Ga., 303 U.S. 444, 452 (1938).

Here, Mr. McMenemy’s speech was about matters of public concern, namely alleged police misconduct, potential racial bias, and suing for such misconduct. Police officer conduct, both on and off duty, concerns the public on a daily basis. Peace officers of this county are entrusted with legal authority to temporarily deprive citizens of their freedom through their lawful arrest powers. Citizens of St. Charles County have a keen interest in maintaining a highly professional police force. An officer who has unlawfully arrested someone would be of interest to members of the public, who may be or have also been, subjected to potential illegal conduct by this officer or department. Importantly, the lawfulness of arrests and searches and seizures is routinely a topic of litigation in the court systems. Citizens who feel they have been subjected to

illegal police conduct can seek legal recourse either through suppression of evidence, dismissal of criminal charges, or potentially civil lawsuits. Therefore, suing an officer for alleged illegal conduct or violations of civil rights, is also a matter of public concern.

Further, an officer with a racial bias against a particular race is also of public concern. An officer with a racial bias against a particular race could effect an arrest against certain members of the community more often than others, or respond with aggressive tactics more often, against a particular race over another. This would not be acceptable to the St. Charles community nor tolerable by the police department. Citizens are entitled to engage in debates about these subjects and they are routinely topics of discussion on the news and in political forums.

Further, Mr. McMenmany engaged in debate on these topics in public forums. He directed his discussion to members of the community at large and did not single out complainant 1 or 2. In fact, he posted his flyers on government buildings that are open to members of the public and on business that open to members of the public, because he wanted to reach as many people as possible with his topic of debate. Additionally, his Facebook posts were made on his own open Facebook page that was visible to members of the public who followed him, were directed to his page from his flyers, or searched for his topics of discussion.

While some may disagree with his opinions and supporting evidence, others may agree, or not care one way or another. And while his words may have offended some, particularly Complainants 1 and 2 in this cause, his ability to engage in conversations about matters of public concern cannot be criminalized because some may disagree, are offended or alarmed by the content of his speech. These open debates are one of the hallmarks of our Free country and the majority of public opinion weighs heavily in these debates, but suppressing these important

conversations reeks of potential corruption and has a chilling effect on others who may wish to engage with their fellow citizens.

B. While Missouri Courts have only applied the Harassment and Stalking statutes in cases involving speech only conduct, to speech that constituted fighting words, the conduct alleged in the Information does not fit into any of the defined unprotected categories of speech including fighting words, and is therefore protected speech

“The protections afforded by the First Amendment, however, are not absolute....” *Virginia v. Black*, 538 U.S. 343, 358 (2003) (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–72, (1942)). “There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” *Wooden*, 388 S.W.3d at 526 (quoting *Chaplinsky*, 315 U.S. at 571–72). “Unprotected speech includes ‘the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.’ ” *Id.* (quoting *Chaplinsky*, 315 U.S. at 572). Speech integral to criminal conduct is one of the few permissible restrictions on speech. *See Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834 (1949) “True threats” of violence [are] yet another historically unprotected category of communications. *Black*, 538 U.S. 343 at 359; *see United States v. Alvarez*, 567 U.S. 709 (2012). However, there is no categorical ‘harassment exception’ to the First Amendment’s free speech clause. *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir. 2001). For example, “criminal harassment” is unprotected where it “constitutes true threats or speech that is integral to prescribable criminal conduct.” *Ackell*, 907 F.3d at 76; *see United States v. Stevens*, 559 U.S. 460, 468 (2010).

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

“Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate. That choice requires that we shield Westboro from tort liability for its picketing in this case.”

Snyder v. Phelps, 562 U.S. 443, 460 (2011).

Counsel for Defendant will now illustrate how Mr. McMenemy’s speech does not fall into **any** of the unprotected categories of speech and is therefore fully protected speech under the First Amendment’s free speech clause.

i. Mr. McMenemy’s speech does not constitute “True Threats” under the law

True threats are “serious expression[s]” conveying that a speaker means to “commit an act of unlawful violence,” to a particular individual or group of individuals. *Virginia v. Black*, 538 U.S. 343, 359 (2003). To prosecute someone for making a “true threat,” the government must show the defendant acted with recklessness or was aware their communication would be viewed as threatening violence. *Counterman v. Colorado*, 600 U.S. 66, 82 (2023).

Missouri courts have examined true threats on a number of occasions and have held that when a listener could not reasonably consider the statement to be a serious expression of an intent to cause injury to another it is not a true threat. *C.G.M., II v. Juvenile Officer*, 258 S.W.3d 879, 883 (Mo. Ct. App. 2008) (statement by juvenile that he may get dynamite from dad for birthday and asked friend if he would help him blow up the school not a true threat because it

was not a declaratory statement and did not express an intent to cause incident involving danger to human life).

In *State v. Metzinger*, the Defendant tweeted during the world series about “tailgating with a pressure cooker,” referenced the Boston Bombing, and a song “Bad Habit,” which lyrics speak of road rage with a gun, 456 S.W.3d 84 (Mo. Ct. App 2015). The court examined the tweets facially and in the context of a sports rivalry, *Id.* at 97. The court concluded that while the references were tasteless and offensive, the context of the tweets was such that a reasonable person would not interpret them as serious expressions of an intent to commit violence. *Id.* In contrast, true threats were found when a defendant informed police officer he, “had explosives in his truck and was assuming command and taking over. *see State v. Tanis*, 247 S.W.3d 610, 614; *see also Browder v. State*, 326 S.W.3d 33, 35 (Mo. Ct. App 2010) (communicated threat to school by stating you know me if you don’t take care of it I’ll take care of it and when advised not to take threat stated im not, im just telling you what im going to do.) *Id.* at 36.

Nowhere in any of Mr. McMenamy’s Facebook posts or flyers posted around town, are there any serious expressions of an intent to commit an act of unlawful violence. In fact, Mr. McMenamy specifically denounces violence in one of his posts, references peaceful protesting, social media campaigns, and taking legal action. Saying he is going to sue someone and ruin their lives is not a statement of a serious expression of intent to commit an act of unlawful violence, and is instead, a legal mechanism for recourse available in this country. When examined facially and in the context of his conduct in total, no reasonable person viewing his posts could conclude that he made any true threats nor that he had the requisite mental state for making a true threat required by *Counterman*. For those reasons, his speech does not fall into the unprotected category of true threats.

ii. **Mr. McMenemy's speech does not constitute "Fighting Words" under the law**

Fighting words are "those which by their very utterance inflict injury or intend to incite an immediate breach of the peace." *State v. Collins*, 648 S.W.3d 711, 717 (Mo. banc 2022) (quoting *Chaplinsky*, 315 U.S. at 571-72). "This court recognizes generally 'such offensive language can be statutorily prohibited only if it is personally abusive, addressed in a face-to-face manner to a specific individual and uttered under circumstances such that the words have a direct tendency to cause an immediate violent response by a reasonable recipient.'" *Id.* at 718 (quoting *Swoboda*, 658 S.W.2d at 26). This court has rejected overbreadth challenges to statutes when applied to fighting words that were not addressed in a face-to-face manner nor caused an immediate violent response by the recipient. *State v. Koetting*, 616, S.W.2d 822, 826 (Mo. 1981) (defendant made repeated telephone calls to the victim's home telephone). The *Koetting* court found that because the statute applied only to protect privacy of person in their home, it was not overbroad. *Id.* at 827. *See also State v. Wooden*, 388 S.W.3d 522, 527 (Mo banc 2013) (defendant sent emails directly to victim containing personally offensive language, referenced weapons, assassinations, and domestic terrorism). Additionally, the "fighting words" exception recognized in *Chaplinsky*, might require a narrower application in cases involving words addressed to a police officer, because "a properly trained officer may reasonably be expected to 'exercise a higher degree of restraint' than the average citizen, and thus be less likely to respond belligerently to 'fighting words.'" *See City of Houston, Tex. v. Hill*, 482 U.S. 451, 462 (1987) (citing *Lewis v. City of New Orleans*, 415 U.S. 130, 135 (1987)).

Here, Complainant 1 acknowledges that he never had any face-to-face interactions with Mr. McMenemy. Further, there were no phone calls, emails, text messages, or any other form of directed communications between the two parties. Everything that occurred in this cause

happened over Facebook and a one-time flyer campaign around town. Complainant 1 did not even discover the Flyers himself, nor was he ever handed a flyer personally by Mr. McMenemy. Complainant 1 also acknowledged that he was not following Mr. McMenemy's Facebook page as a friend or "follower," but would routinely check the page himself or when notified by someone else that more posts had occurred out of concern for his safety. This case is exactly what the court in *Koetting* emphasized that Harassment and Stalking must intrude upon one's privacy when it stated:

"unlike the public expression situation in *Cohen*, wherein all an unwilling recipient need to is avert his eyes from an unwanted sight or ignore unwanted sounds, an unwilling recipient sitting in his home has no recourse against the intruding element except potentially dangerous self help."

Koetting, 616 S.W.2d at 826.

Accordingly, the fact that the two parties never had any face-to-face interactions or directed communications, makes Mr. McMenemy's Facebook posts and flyers more like the public expression in *Cohen*, and because he never intruded upon Complainant's privacy, all complainant had to do was avert his eyes, therefore this court cannot find that his speech constituted "fighting words" under applicable case law.

iii. Mr. McMenemy's speech was not "Speech Integral to Criminal Conduct"

Speech integral to criminal conduct was first cited in *Giboney Empire Storage & Ice Co* 336 U.S. 490 (1949). To qualify as speech integral to criminal conduct, the speech must be integral to conduct that constitutes **another offense** that does not involve protected speech itself, such as (antitrust conspiracy), as in *Giboney*, 336 U.S. 490, 498, 69 S.Ct. 684, 93 L.Ed. 834

(1949), (extortion) *United States v. Petrovic*, 701 F.3d 849, 855 (8th Cir. 2012), or (in-person harassment) *United States v. Osinger*, 753 F.3d 939, 941-47 (9th Cir. 2014) or other crimes such as witness tampering. The Eight Circuit court of appeals most recently analyzed the speech integral to criminal conduct in the context of the federal cyberstalking statute 18 U.S.C. 2261A(2)(B) in *United States v. Sryniawski*, 48 F.4th 583 (8th Cir 2022).

A defendant is guilty of cyberstalking if he (1) “with the intent to ...harass [or] intimidate, uses “any...electronic communication system of interstate commerce ...to engage in a course of conduct,” that (3) “causes, attempts to cause, or would reasonably expected to cause substantial emotion distress to” the victim or his immediate family.

In that case, the Defendant was alleged to have sent a series of emails directly to a candidate for Nebraska legislature. The Court found that to sustain a conviction, the government had to identify that *Sryniawski* acted with intent to “harass” or “intimidate,” in a sense that is not protected under the First Amendment. *Id.* at 587-88. The Court in *Sryniawski* rejected that the emails were integral to criminal conduct of cyberstalking itself, boldly stating, “that argument is circular and unpersuasive. Congress may not define speech as a crime, and then render the speech unprotected by the First Amendment, merely because it is integral to speech that Congress has criminalized.” *Id.* at 588.

While Mr. McMenamy is not charged under this federal cyberstalking statute, most of the conduct alleged to support the charges in the information in this cause mirrors the language in the federal statute. Here, the speech itself, (Facebook posts, website, Twitter, Instagram, flyers), is alleged by the state to be the basis to have constituted the criminal offense of harassment and stalking, by its very nature and content, and was thus not integral to *some other* illegal act. There is no categorical ‘harassment exception’ to the First Amendment’s free speech clause. *Saxe v.*

State Coll. Area Sch. Dist., 240 F.3d 200, 204 (3d Cir. 2001). The speech itself is the purported crime, so therefore, this exception cannot apply.

iv. Defamatory speech cannot be the basis for a criminal offense in Missouri

Missouri, like many States, in the interest of protecting citizens freedom of speech, repealed their criminal libel statutes in years following the Supreme Court's decision in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). *See* sections 559.410 – 559.440 RSMo., previously Missouri's criminal libel law. (Repealed L. 1977 S.B. 60 § 1).

As the Court further reiterated years later, the mere “threat of criminal prosecution for making a false statement can inhibit the speaker from making true statements.” *United States v. Alvarez*, 567 U.S. 709, 733 (2012). The line between protected speech and criminally punishable defamation is often blurry, allowing a government official to “decide who may speak and who may not based upon the content of the speech or viewpoint of the speaker.” *Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750 (1988). Missouri instead, left defamation to a civil matter between parties to avoid any risk of government interference with freedom of speech due to alleged falsities.

Much of Complainant 1's alleged emotional distress in this case, is reportedly the result of what he believes are false statements and attempts to defame him, with lies and conspiracy theories. As defamation is not a criminal matter, any supposed defamatory statements cannot be used to support a criminal charge and are reserved as a civil matter between parties, and thus this exception also does not apply to this cause. Even if defamation could be the basis for harassment, which Missouri courts have declined to accept, the State would fail to prove essential elements of a defamation claim as there is no actual malice nor damage to reputation.

v. **Mr. McMenemy's speech was not "Obscene" under the law**

In 1975, the Missouri Supreme Court adopted the guidelines established in *United States v. Miller* to enable Missouri to regulate the dissemination of obscene material if these guidelines are met. *See McNary v. Carlton*, 527 S.W.2d 343 (Mo. Banc 1975). In *Miller*, the court confined the permissible scope of a state's regulation to works which depict or describe sexual conduct.

The conduct must be specifically defined by the applicable state law, and the state offense must be limited to works which meet the court's guidelines. 413 U.S. at 24 (1973). The court then set out the basic guidelines for the trier of fact:

(a) whether the 'average person applying contemporary community standards' would find the work, taken as a whole, appeals to the prurient interest, (citations omitted); (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. *Id.* at 24.

Missouri's obscenity laws are established under Chapter 573, and "obscene material" is defined as, "material if taken as a whole: applying contemporary community standards, its predominant appeal is to prurient interest in sex; and the average person applying contemporary community standards would find the material depicts or describes sexual conduct in a patently offensive way and lacks serious literary, artistic, political, or scientific value." *See sections 573.010, 573.020, and 573.030 RSMo.*

Here, Mr. McMenemy is not charged under Missouri's obscenity laws and there are no allegations that Mr. McMenemy distributed obscene materials related to Complainant 1 or

Complainant 2, or anyone for that matter. Therefore, Mr. McMenemy's speech does not fall into the unprotected category of obscene speech.

vi. Mr. McMenemy's speech was not "incitement of imminent lawless action"

Where such speech is directed at inciting or producing imminent lawless action and is likely to incite or produce such, that speech is not protected. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) and *Hess v. Indiana*, 414 U.S. 105 (1973). *Hess* involved a speaker's words: "We'll take the fucking street later," spoken while facing a crowd at an anti-war demonstration. The Court concluded that the statement could not be incitement, because it was not directed to any group or person, was not advocating for any action, and not intended to produce, nor likely to produce imminent disorder, instead the statement was at worse, "advocacy for illegal action at some indefinite future time." *see Hess*, 414 U.S. 105 at 108-09.

At no point is it alleged that Mr. McMenemy advocated for any illegal action nor illegal action was likely to result from said advocating. Mr. McMenemy denounced any violence and instead called upon his follows to join him in peaceful protest, submit information, be present with him when turning himself in, provide information about other unlawful acts or bad cops in St. Charles County and other police department. Mr. McMenemy's Facebook posts consisted of him recounting his arrest in 2017, his belief that the arrest was unlawful, the officer involved was racist and sharing the officer's open Facebook posts, and how he thought his arrest in this cause was unlawful and how he wanted to sue all parties involved which is a lawful mechanism. He called for police reform and justice. Mr. McMenemy's flyers posed the question whether an officer was racist based on two Facebook posts and directed viewers to his Instagram via a QR code. At no point did the flyers advocate for any violence nor likely to produce imminent violence. At no time was any speech directed at producing imminent lawless action nor was

imminent lawless action likely, due to any of Mr. McMenemy's speech. For those reasons, Mr. McMenemy's speech cannot proceed under the unprotected category of inciting imminent lawless action.

As shown above, Mr. McMenemy's speech does not fit into any of the unprotected categories of speech, defined by the United States Supreme Court and adopted by Missouri courts, namely "fighting words," which is the only exception Missouri courts have applied to Harassment and Stalking cases involving only speech conduct. Because his speech does not fit into any of the other unprotected categories, his speech is protected by the First Amendment's free speech clause and cannot be the basis for applying the harassment and stalking statutes to prosecute him in this cause.

V. The essential element in Count II is the result of an overbroad bond condition that violates Missouri Rule 33.01 and Mr. McMenemy's freedom of speech as guaranteed by the First Amendment

On September 6, 2023, Mr. McMenemy's bond was set on the above cause at: \$10,000, cash only, in Defendant's name only, no surety, 10% authorized; no contact with victim, *no use of social media*, so ORDERED by the Honorable Jeffrey Sandcork, Division 9 of the 11th judicial circuit in St. Charles County, Missouri.

The issue raised by this part of Defendant's motion is can a trial court ban a defendant from using social media in any capacity prior to trial and can an alleged violation of such ban be used as an essential element to enhance a charge, as Count II of cause does, making the charge of Stalking a 1st degree felony instead of a 2nd degree, without violating Mr. McMenemy's fundamental right to freedom of speech under the First Amendment of the United States Constitution.

The court's condition in this case was unambiguous: Mr. McMenamy was not to *use any social media* while detained or out on bond pending trial or disposition of the above cause. This meant not only could Mr. McMenamy not use Facebook, or Youtube, or Twitter, or Instagram, but he also could not access professional networking websites like LinkedIn, view or share recipes on Allrecipes.com, shop or open an online store on Etsy.com, share or comment about a book on goodreads.com, stream or view livestreams on Twitch.com, talk with family or friends on Whatsapp, or Discord, etc, etc.

Article I Section 21 of the Missouri Constitution states that, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." Accordingly Missouri Supreme Court rule 33.01 declares, "the court shall set and impose the *least restrictive* condition or combination of conditions of release, and that the court shall not set or impose any condition or combination of conditions of release *greater than necessary* to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses." *Mo. Sup. Ct. Rule 33.01(c)(16)*. Additionally, Missouri statute on pretrial release only references conditions necessary to secure the appearance of the person being released, "the court to impose any or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:... (7) impose any other condition deemed reasonably necessary to assure the appearance as required. *See 544.455 RSMo*."

The condition in this case is almost the dictionary definition of overbroad and more restrictive than necessary to secure defendant's appearance and protect the safety of the community and crime victims.

“As commonly understood, the term ‘social media platforms’ typically refers to websites and mobile apps that allow users to upload content—messages, pictures, videos, and so on—to share with others.” *See Moody v. NetChoice*, 603 U. S. 707 (2024). As briefly noted earlier, here are examples of what Mr. McMenemy apparently could *not* do, under the court’s current prohibition on *use*, as such sites would qualify as “social media” under the above definition.

- Mr. McMenemy could not message others using the popular messaging application WhatsApp.
- Mr. McMenemy could not comment on a livestream of a football game or a political debate on Youtube.com.
- Mr. McMenemy could not look at pictures of a sunset on Instagram.
- Mr. McMenemy could not watch a short video clip of a popular dance move on TikTok let alone remark that it was “awesome.”
- Mr. McMenemy could not follow his favorite political candidates on X (formerly Twitter).
- Mr. McMenemy could not post a message of thanks on Venmo after paying back a friend.
- Mr. McMenemy could not apply for a job on LinkedIn, or reach out to potential employers. He could not even search for jobs on LinkedIn.
- Mr. McMenemy could not post pictures of his redesigned kitchen on Pinterest, or look at others’ kitchens for inspiration.
- Mr. McMenemy could not ask for advice on what computer to buy on Reddit or even read existing threads on the topic.

- Mr. McMenemy could not post an answer to a philosophical question on Quora, or browse the answers of others.
- Mr. McMenemy could not watch his friends play video games on the video game streaming website Twitch.com or offer suggestions for improvement.
- Mr. McMenemy could not share his favorite soup recipe on Allrecipes.com.
- Mr. McMenemy could not rate and review his driver on Uber, or send a message to his driver saying he was running late.
- Mr. McMenemy could not rate and review a product on Amazon.com.
- Mr. McMenemy could not interact with sellers on ebay.com, as it allows messaging between customers and sellers. He could not sell anything on Ebay.

The above examples are of course not exhaustive. Importantly, many of them could involve Mr. McMenemy not posting anything but merely passively observing the work of others (a football game, a sunset, pictures of kitchens, someone playing a video game).

The prohibition on Mr. McMenemy's use is total; a restriction on "social media *use*" (emphasis added). To the extent that the court wanted to rule out the above examples (or the many more like it), it could have issued a narrower condition, preventing Mr. McMenemy from *posting or uploading certain content* on *certain* social media sites or even about certain topics if it made findings deeming them truly harmful. Of course it did not. Or the court could have stuck with simply prohibiting Mr. McMenemy from, "having any contact with the victims in this case what so ever." Which the court did, and that condition alone accomplished the goal of protecting the crime victim in the case from any further harm while not being overly restrictive by permitting Mr. McMenemy to still use social media for other legitimate purposes mentioned above that in no way involved harm to the community or crime victims nor impacted his

probability of appearing at future court dates. The total ban on *use* of social media was excessive and more than necessary to secure the safety of the victim and community and secure the appearance of Mr. McMenemy at future proceedings, is unconstitutionally overbroad, and thus no reasonable fact finder could be permitted to find for this essential element of Count II as a matter of law.

The findings the court made in this case are nowhere near what would be necessary to set such a comprehensive ban. The court's condition on Mr. McMenemy is excessive, and prevents Mr. McMenemy from using much -- if not most -- of the internet so long as his case remains pending.

a. The Condition Violates Mr. McMenemy's Constitutional Rights

But the problem with this bail condition goes beyond its violation of Missouri Supreme Court rule 33.01. The leading Supreme Court case points to the fact that this kind of blanket restriction on a person's speech in the "new public square" -- i.e., social media websites on the internet -- is unacceptable. It violates Mr. McMenemy's rights.

The U.S. Supreme Court set down the relevant principles in its case, *Packingham v. North Carolina*. *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017). *Packingham* dealt with a restriction on registered sex offenders from accessing "social networking websites" (a term which was defined by statute, and which exempted photo-sharing and commercial websites). The court struck down the prohibition as in violation of *Packingham's* First Amendment rights.

In doing so, the Supreme Court emphasized that “social media in particular” represented an “essential venue[] for public gathering[] to celebrate some views, to protest others, or simply learn and inquire.” *Id.* at 1735. In particular, the Court said:

On Facebook, for example, users can debate religion and politics with their friends and neighbors or share vacation photos. On LinkedIn, users can look for work, advertise for employees, or review tips on entrepreneurship. And on Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. ... In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics "as diverse as human thought."

Id. at 1735-36 (2017) (citations omitted).

These observations led the Court to conclude that it had to “exercise extreme caution” before suggesting that somehow the First Amendment did not give strong protection for access to social media websites. *Id.* at 1736 (2017).

The Court struck down the ban on registered sex offenders accessing social media websites as an “unprecedented” burden on Packingham’s First Amendment Speech. With one stroke, the Court said, Packingham was prevented from accessing “what for many are the principle sources” for news, ads, and for “speaking and listening in the modern public square and otherwise exploring the vast realms of human thought and knowledge.” *Id.* at 1737. Social media sites, the Court continued, were perhaps the most “powerful mechanism” available to citizens to make their “voice heard.” *Id.* The Court emphasized that social media was a place for the “legitimate exercise of First Amendment rights” even of convicted criminals, let alone sex offenders who had completed their sentences (as was the case with Packingham). *Id.*

Of course, Mr. McMenamy only has charges pending; he has not been convicted of anything in this case. He is presumed to be innocent of those charges. Still, he is prevented

entirely by the trial court's order "from speaking and listening in the modern public square." He cannot post *anything* on Facebook, and the trial court's ban on social media *use* leaves open whether he can even *access* Facebook. In any event, *Packingham* makes clear that what worried the court was not just a ban on access, but a ban on participating in social media -- citizens speaking and making their voices heard. Again, Mr. McMenamy can't do that *anywhere* on *any* social media platform until his case gets resolved.

This violates his rights under the United States Constitution as well as the Missouri Constitution, Missouri Supreme Court Rules, and Missouri statute. The condition needs to be vacated, and continued prosecution on Count II, as a 1st degree felony cannot proceed. As noted in the prior section, Count II is also unconstitutional entirely, not just because of this alleged violation of a ban on social media use, that was unconstitutionally overbroad restriction on his freedom of speech under the first amendment, but because the **entirety** of the course of conduct Mr. McMenamy is alleged to have engaged in is constitutionally protected speech under the First Amendment. For both of these reasons, Count II cannot stand and must be dismissed.

CONCLUSION

WHEREFORE, because the conduct alleged in the Information was protected speech about a matter of public concern, does not fit into any unprotected category of speech, namely fighting words, which is the only unprotected category of speech Missouri courts have applied to Harassment and Stalking statutes, and additionally, because the condition used to enhance Count II is an overbroad restriction of client's fundamental right to freedom of speech, Mr. McMenamy and undersigned counsel respectfully ask the Court to dismiss this action, in whole or in part, as a matter of law.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 22nd day of August, 2025, an electronic copy of the foregoing was sent through the Missouri e-Filing system to counsel of record.

/s/ Randall Weist

Randall Weist