IN THE SUPERIOR COURT IN AND FOR MARICOPA COUNTY, IN THE STATE OF ARIZONA

STATE OF ARIZONA, **Appellee** **VS.** **RICK PAINTER,** **Appellant**	**COMPLAINT NUMBER:** **20089045235-01, 02**

APPELLANT'S MEMORANDUM

(Oral Argument Requested)

Rick Painter
2020 W Bonanza Lane
Phoenix, AZ 85085

Erik W. Stanley*
FL Bar No. 0183504
Dale Schowengerdt
AZ Bar No. 022684
Alliance Defense Fund
15192 Rosewood
Leawood, KS 66224
(913) 685-8000 – Phone
(913) 685-8001 – Fax
**pro hac vice admission forthcoming*

John J. Jakubczyk
AZ Bar No. 005894
4643 E. Thomas Rd., Ste #5
Phoenix, AZ 85018
(602) 468-0030 - Phone
(602) 468-0053 - Fax

Brett Harvey
AZ Bar No. 025120
Alliance Defense Fund
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020 – Phone
(480) 444-0028 – Fax

Attorneys for Appellant

STATEMENT OF FACTS

Bishop Rick Painter, Pastor of Cathedral of Christ the King in Phoenix was sentenced to ten days in jail and three years of probation because his Church rings bells. *See* Sentencing Order of June 3, 2009. The Municipal Court also ordered that the Church bells may only be played at certain times of the day and only on certain religious holidays in spite of the Church's testimony that it rings bells to worship and glorify God. *Id.*

Christ the King Cathedral ("CKC" or "Church") is an Anglican church that is located at 2929 West Greenway Road in the City of Phoenix. (T.5, 6, 101).[1] CKC relocated their church to the Greenway Road property from a property on Bell Road. (T.101, 118, 131). After moving in to the Greenway property, the Church Council for CKC, which is the governing body of the Church, made the decision to install an electronically amplified bell system on the roof of the church building, and begin to ring bells. (T. 126, 127). The bell system was purchased by CKC in either 1994 or 1995 and was set up on its previous property at Bell Road. (T. 130-31). No one ever complained about the bell system operating at the Bell Road property. (T. 131).

On Palm Sunday, March 16, 2008, CKC began to ring bells from its electronic system. (T.102). The bells initially began to ring from 7:00 a.m. to 9:00 p.m., tolling the time every half hour, with the addition of a short song playing at 9:00 a.m., 12:00 p.m., 3:00 p.m., 6:00 p.m. and 9:00 p.m. (T. 102, 139).

On Monday, March 17, 2008, Detective Cook from the Phoenix Police

[1] References to the Transcript in this case will be to T.___.

Department visited the Church and spoke with Deacon James Lee, an employee of CKC, about the bells, notifying him that he was following up on a neighborhood complaint about the bells. (T.4, 104). Detective Cook notified Deacon Lee that no laws were being violated by playing the bells. (T. 105). No citation was issued to CKC for playing the bells. *Id.*

The following day two of the Church's neighbors spoke to Deacon Lee and complained about the bells. (T.106). In an attempt to explain the Church's position and hopefully foster peace in the neighborhood, the Church held a meeting on March 21, 2008, at the Church with Bishop Rick Painter and three of the neighbors who had complained about the bells. (T. 29, 45, 53, 120, 138). During the meeting, Bishop Painter attempted to explain the religious meaning behind ringing the bells and to see if there was a compromise that could be reached with the neighbors. (T. 120; 138). One of the neighbors got angry during the meeting, said he did not need to hear the Bishop's explanation, got up, and walked out of the meeting. (T. 138).

CKC plays the bells to glorify and worship God. (T. 104, 122, 129). CKC rings the bells as part of the exercise of its religion. (T. 127). The ringing of church bells as a way of worshipping God is a centuries-old tradition for churches. (T. 123, 129). CKC rings bells to "honor God as creator and sustainer of all that is.... That He has created time, lives outside of time, and time is for our convenience." (T. 129). Bishop Painter testified that, "The bells are there to say there's a God that's over all of us, we're all accountable. If you need hope, you need help, you want to pray, here's a place. We'll help you, we'll pray with you, you can go in our church and pray yourself. The whole

purpose of bells is glorifying God and evangelizing." (T. 172).

The decision to ring the Church's bells was made by the Church Council which is the governing body of the Church. (T. 128-29). Bishop Painter does not have control over the decision whether to ring the bells. (T. 129). Bishop Painter could not stop ringing the bells without defying the Church Council and placing his job as Pastor in jeopardy. (T. 142-43).

After meeting with the neighbors, CKC voluntarily changed the bell-ringing so that the bells began to ring every hour (instead of every half hour) with a short hymn played during the noon hour. (T. 108, 136). The bells that ring every hour start with a 16-beat Angelus taken from Handel's *Messiah* prior to the tolling of the hour. (T. 136). At the noon hour, after the hour tolls, CKC plays a short version of a hymn from church history, such as Martin Luther's hymn *A Mighty Fortress is our God*, or John Newton's hymn *Amazing Grace*. (T. 136).

The Church has made several attempts to mitigate the effect of the noise on the neighbors. (T. 108, 122-23, 139-41). The frequency of the bells was reduced so that they played between 8:00 a.m. and 8:00 p.m.. *Id.* Instead of chiming every half hour, the bells were reduced to chiming every hour. *Id.* Instead of playing five songs during the day, the Church only played one song at the noon hour. *Id.* The Church installed a two inch Styrofoam buffer on the side of the speakers where the neighbors were located and also pointed the speakers more directly up in the air in an attempt to mitigate the noise level on the neighbors. *Id.*

On May 12, 2009, Bishop Painter was convicted of violating Phoenix Municipal

Noise Ordinance §23-12. The Ordinance states, "Subject to the provisions of this article, the creating of any unreasonably loud, disturbing and unnecessary noise within the limits of the City is hereby prohibited." Phoenix Municipal Ordinance §23-12 attached hereto as Appendix "A". The Phoenix Noise Ordinance sets forth a list of non-exclusive examples of what type of noise violates §23-12 and also sets forth a list of noises exempted from §23-12. *See* Phoenix Municipal Ordinance §§23-14, 23-15, Appendix "A". The only decibel level standard contained in the ordinance allows for the use of amplifiers and speakers from vehicles such as ice-cream trucks as long as the noise measures less than 70 decibels at a distance of fifty feet. *See* §23-15(d).

Testimony at trial revealed that the Noise Ordinance contains no objective standards for enforcement. Detective Cook testified that, in his opinion, the bells violated §23-12 but said that his opinion was not based on any objective measurement and rather was just his own personal preference and was based on the complaints of the neighbors. (T. 17-18, 18-19, 22). Detective Cook never took any decibel readings to determine how loud the bells were. (T. 10, 21). Detective Min Moss from the Phoenix Police Department testified that he does not know whether the City of Phoenix even has the ability to take decibel level readings and also testified that he never took decibel readings of the bells in this case. (T. 61, 62-63).

The neighbors testified that they had not taken decibel readings of the bell noises either and that it was just their personal opinion that the bells were too loud. (T.37, 49, 57). One neighbor attempted to testify that he had taken decibel readings of the bells but could not remember specifically when he took them, what equipment he used, where he

took the readings and what the specific readings were. (T. 87-88). He also testified that he did not know how loud the bells actually were and presented no evidence to substantiate any decibel readings. (T. 92).

In contrast, CKC took its own decibel readings of the bells on July 18, 2008. (T. 109). The peak decibel readings of the bells measured between 65.6 to 67.6 decibels at the property line of the neighbors closest to the Church. (T. 112-115). The noise level of the bells measured by the Church is less than the noise level allowed for ice-cream trucks at 70 decibels. *See* §23-15(d).[2]

STATEMENT OF LAW

I. THE PHOENIX NOISE ORDINANCE IS UNCONSTITUTIONAL BOTH ON ITS FACE AND AS-APPLIED.

A. The Noise Ordinance is Unconstitutionally Vague.

The Phoenix Noise Ordinance is unconstitutional on its face and as applied in this case because it is vague. The Noise Ordinance prohibits the "creating of any unreasonably loud, disturbing and unnecessary noise within the limits of the City...." Phoenix Municipal Noise Ordinance §23-12. The terms "unreasonably loud," "disturbing," and "unnecessary" are nowhere defined in the Ordinance and are unconstitutionally vague.

"An unconstitutionally vague statute is one that defines the prohibited conduct in

[2] The exact distance between the speakers of the bell system at CKC and the neighbor's property line has not been measured. Testimony from Alfred Brooks, one of the Church's neighbors, stated that his fence line was 40 feet from the building where the speakers were located. (T. 34). However, even at 40 feet, the decibel level of the bells is less than that allowed of ice-cream trucks at a distance of 50 feet.

such indefinite terms that a person of common intelligence must guess at its meaning." *State v. Martin*, 847 P.2d 619, 622 (Ariz. Ct. App. 1993). The vagueness doctrine ensures that "all be informed as to what the state commands or forbids." *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). A law cannot be "so vague that men of common intelligence must necessarily guess at its meaning and differ in its application." *Smith v. Goguen*, 415 U.S. 566, 577 (1974) (quoting *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926)). The prohibition against overly-vague laws protects citizens from having to voluntarily curtail their First Amendment activities because of fear that those activities could be characterized as illegal. *See Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972). The Supreme Court has enunciated the standards under the vagueness doctrine:

> The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement....Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of vagueness doctrine "is not actual notice, but the other principle element of the doctrine -- the requirement that a legislature establish minimal guidelines to govern law enforcement." Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."

Kolender v. Lawson, 461 U.S. 352, 357-358 (1983) (internal citations and footnote omitted). While it is true that mathematical certainty is not required of language in a statute or ordinance, it is also true that an ordinance must not impermissibly delegate "basic policy matters to policemen, judges, and juries for resolution on an ad hoc and

subjective basis, with the attendant dangers of arbitrary and discriminatory application." *See Grayned*, 408 U.S. at 109, 110.

In this case, the Phoenix Noise Ordinance suffers from both of the infirmities identified by the Supreme Court. The Ordinance contains terms that are so vague that the ordinary citizen must guess as to what is prohibited. What is an "unreasonably loud" or "disturbing" or "unnecessary" noise? These terms are not defined anywhere in the Noise Ordinance and are not susceptible to meaningful, objective definition that would protect against infringement on constitutionally protected speech by notifying individuals what conduct the Ordinance prohibits and by protecting against arbitrary and subjective enforcement of the Ordinance.

Other courts that have addressed the exact same language as found in the Phoenix Noise Ordinance have found such language to be unconstitutionally vague. In *Dupres v. City of Newport*, 978 F. Supp. 429 (D.R.I. 1997), the court found a noise ordinance that prohibited "unreasonably loud, disturbing or unnecessary noise" to be unconstitutionally vague. The Court stated that the noise ordinance provisions

> do not adequately delineate their proscriptions. Instead they set forth standards of conduct which are impermissibly broad and lacking objectivity.... Under the Newport ordinance, the legality of a person's conduct is judged solely by the subjective characteristics assigned to it by anyone exposed to it.

Id. at 433-34. Similarly, the court in *Dae Woo Kim v. City of New York*, 774 F. Supp. 164 (S.D.N.Y. 1991), declared unconstitutional a noise ordinance that prohibited any "unnecessary noise." The court there stated that the ordinance "does not provide any standard to aid in determining when particular noise is 'unnecessary.'" *Id.* at 170.

"Because it provides only this subjective standard, the conduct barred by [the noise ordinance] will vary with the listener. [The ordinance's] broad terms and lack of objective standards invite the arbitrary and discriminatory enforcement that the vagueness doctrine is designed to avoid." *Id.* Likewise the federal district court in *Fratiello v. Mancuso*, 653 F. Supp. 775 (D.R.I. 1987), declared a noise ordinance unconstitutional that prohibited "unnecessary noises or sounds... which are physically annoying" because the ordinance did not "provide the requisite clear notice of what is prohibited." *Id* at 790. The court also stated that, "Attempts to comply with or to enforce the ordinance require application of a completely subjective standard." *Id.*

> Provision of clear and explicit standards to guide law enforcement officers and triers of fact in their application of the ordinance are necessary to prevent arbitrary and discriminatory enforcement. [The noise ordinance] subordinates the exercise of First Amendment freedoms to a police officer's entirely subjective determination of whether an actor's speech is "unnecessary" and "annoying". The grant of such unbridled discretion invites the suppression of ideas. The ordinance provides a means of preventing discussion of unpopular, controversial or unorthodox views. "Annoyance at ideas can be cloaked in annoyance at sound."

Id. at 790; *see also Nichols v. City of Gulfport*, 589 So. 2d 1280, 1283 (Miss. 1991) ("The adjectives 'unnecessary' and 'unusual' modifying the noun 'noises' are inherently vague and elastic and require men of common intelligence to guess at their meaning."); *Thelen v. State*, 526 S.E. 2d 60, 62 (Ga. 2000) ("By prohibiting 'any... unnecessary or unusual noise which... annoys... others,' the ordinance here fails to provide the requisite clear notice and sufficiently definite warning of the conduct that is prohibited."). As the Supreme Court of Mississippi stated:

> If beauty is in the eye of the beholder, whether a noise is "unnecessary," "unusual" or "annoying" certainly depends upon the ear of the listener. A statute is unconstitutionally vague when the standard of conduct it specifies is dependent upon the individualized sensitivity of each complainant.

Nichols, 589 So. 2d at 1283. Just as these cases demonstrate, the Phoenix noise ordinance is unconstitutionally vague.

The Ordinance also provides no guidelines to govern enforcers of the law. This allows the Ordinance to be enforced in a selective or arbitrary manner based solely on the personal preferences of the enforcer. This aspect is plainly seen in the facts of this case. Detective Cook testified that, in his opinion, the bells violated §23-12 but said that his opinion was not based on any objective measurement. Instead, it was based on his own personal preference and the complaints of the neighbors. (T. 17-18, 18-19, 22). Detective Cook never took any decibel readings to determine how loud the bells were. (T. 10, 21). Detective Min Moss from the Phoenix Police Department testified that he does not know whether the City of Phoenix even has the ability to take decibel level readings and also testified that he never took decibel readings of the bells in this case. (T. 61, 62-63). As this testimony demonstrates, these police officers believed that the bells were in violation of the Noise Ordinance, but only based on their personal predilections. There was no objective standard used in this case to determine whether the Ordinance was violated because the Ordinance does not contain any objective standard. The way this Ordinance is drafted would allow a policeman to believe that CKC's bells were in violation of the Ordinance, but that some other amplification was not in violation even though it was the same noise level. There is no way to determine whether different noises that are at the

same noise level violate the Ordinance other than the personal preferences of the officer who happens to be enforcing the Ordinance. Does a backyard neighborhood party violate the Ordinance, or an outdoor wedding, or a garage band that practices weekly? In short, there is no way to determine what conduct violates the Ordinance and what does not. The vague terms allow for arbitrary and subjective enforcement so the Ordinance is unconstitutionally vague.

B. The Noise Ordinance Violates the Free Exercise Clause of the First Amendment to the United States Constitution.

The Phoenix Noise Ordinance violates the Free Exercise Clause because it provides categorical exemptions to the Ordinance for enumerated conduct, but not religious conduct. The bells played by CKC are part of the religious exercise of the Church. (T. 104, 122, 123, 127, 129, 172).

A law that is neutral and generally applicable may burden religious exercise without being subject to strict scrutiny by a court. *See Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). However, laws that are not neutral or generally applicable are subject to strict scrutiny and must be justified by a compelling governmental interest that is advanced in the least restrictive means available. *See Smith*, 494 U.S. at 878; *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993). A law will be found to be not neutral or generally applicable if it provides for a categorical exemption for secular conduct but fails to provide a similar exemption for religious exercise. In *Fraternal Order of Police Newark Lodge v. City of Newark*, 170 F.3d 359 (3d Cir. 1999), the court considered a police policy that prohibited officers from

wearing beards but offered exemptions to two categories: 1) officers who had medical reasons for wearing a beard; and 2) officers that were undercover. *Id.* at 360. The court held that providing a categorical exemption from the beard policy for medical reasons, but refusing to provide a similar exemption for religious reasons rendered the law not neutral or generally applicable and triggered heightened scrutiny under the Free Exercise Clause. *Id.* Likewise, in *Blackhawk v. Pennsylvania*, 381 F.3d 202 (3d Cir. 2004), a Lakota Indian kept two bears on his property to conduct religious ceremonies in keeping with his tribe's traditions. *Id.* at 204. A state law prohibited privately keeping wildlife without paying a fee for a permit. *Id.* at 211. Nonetheless, zoos and nationally recognized circuses were exempt from the fee requirement. *Id.* The court found the law not generally applicable under *Smith* and *Lukumi* because the zoo and circus exemptions "work against the Commonwealth's asserted goal of discouraging the keeping of wild animals in captivity," and its interest in generating revenue. *Id.* Thus, Pennsylvania's decision not to grant an exemption for religious reasons was subject to strict scrutiny and declared to be unconstitutional as a violation of Free Exercise.

In this case, the Phoenix Noise Ordinance provides several exemptions for noises but does not provide a similar exemption for religious exercise. Section 23-15 provides an exemption for (1) City vehicles engaged upon necessary public business; (2) street work during the night; (3) noncommercial use of amplifiers or loudspeakers, and; (4) sounds from moving vehicles measured at less than 70 decibels fifty feet away. *See* §23-15. These exemptions are contained on the face of the Ordinance, but no similar exemption is granted on the face of the Ordinance for religious noises. Further, as

applied in this case, the Municipal Court Judge refused to apply the exemptions in the Ordinance to CKC (T. 162), and refused to grant CKC a religious exemption from the Ordinance. The exemptions in the Ordinance both on their face and as applied render the Noise Ordinance not neutral or generally applicable.

The City has no compelling interest in this case. A City's interest in protecting its citizens from unwelcome noise certainly cannot be considered compelling in this case. "[A] law cannot be regarded as protecting an interest of the highest order...when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 547 (internal quotations omitted). What this means is that because the Phoenix Noise Ordinance allows for noises that are exactly as loud or louder than CKC's bells, its interest in protecting its citizens from unwelcome noise cannot be deemed compelling. The bells in this case ring every hour at no more than 67.6 decibels measured at the nearest property line of the neighbor to the Church. (T. 115). Yet the Noise Ordinance allows a vehicle to travel past the Church every hour playing music from a loudspeaker at 70 decibels without violating the Ordinance. Because the Ordinance allows for noises just as loud or louder in different contexts the City's interest in preventing unwelcome noise cannot be deemed compelling.

Even if the City's interest could somehow be characterized as compelling, it certainly is not advanced in the least restrictive means available. The district court in *Dupres* held that the noise ordinance at issue in that case was not the least restrictive means available because the City could advance its interests easily by adopting a decibel level provision specifying noise levels that are prohibited. *See Dupres*, 978 F. Supp. 2d at

435. The same is true in this case. There certainly is a lesser restrictive means available to advance the City's interest in protecting its citizens from unwanted noise. The City, though, has chosen not to pursue such means thus rendering the Noise Ordinance unconstitutional under the Free Exercise Clause.

C. The Noise Ordinance is Unconstitutionally Overbroad.

The Noise Ordinance is unconstitutionally overbroad because it sweeps within its ambit constitutionally protected speech. *See Grayned,* 408 U.S. at 114; *Dae Woo*, 774 F. Supp. at 170; *Fratiello*, 653 F. Supp. at 791. Noise Ordinances are unconstitutionally overbroad if, by their terms, they apply to prohibit speech that is considered by the listener to be unnecessary or disturbing. In *Dae Woo*, the district court struck down as overbroad a noise ordinance that prohibited unnecessary noise that annoyed or disturbed others. *Dae Woo*, 774 F. Supp. at 170.

> By barring noise that is "unnecessary" because it "annoys" or "disturbs" others, however [the noise ordinance] bars sounds regardless of their volume level; by its terms, the ordinance would apply to speech delivered in a moderate tone, or even a whisper, so long as it annoys another person.

Id. Similarly, the district court in *Fratiello* struck down the Providence noise ordinance as overbroad because "Public discourse may not be prohibited simply because it may be deemed unnecessary and/or annoying to the listener." *Fratiello*, 653 F. Supp. at 791.

In this case, the Noise Ordinance prohibits unnecessary noise and noise that is disturbing. The Ordinance is overbroad because it allows for noise that disturbs others to be prohibited no matter the volume level. As in *Dae Woo*, the Phoenix Noise Ordinance prohibits noise in a moderate voice or even a whisper if it disturbs others or is somehow

deemed unnecessary. The complete lack of objective standards overly burdens the constitutionally protected speech that is subject to the provisions of the Noise Ordinance. As such, the Ordinance is overbroad and unconstitutional.

D. The Noise Ordinance is an Unconstitutional Content-Based Restriction.

The Phoenix Noise Ordinance is unconstitutional because it cannot be applied without reference to the content of the speech at issue. "The principal inquiry in determining content neutrality is whether the government has regulated speech without reference to its content." *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 754 (1994) (*citing Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). Therefore, if, in the regulation of speech, the government references the content of the speech, then the regulation of the speech will be considered a content-based regulation. "For the state to enforce a content based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983)(*citing Carey v. Brown*, 447 U.S. 455, 461 (1980)). Content based regulations of speech constitute "censorship in a most odious form." *Cox v. Louisiana*, 379 U.S. 536, 581 (1965) (Black, J. concurring).

The Phoenix Noise Ordinance is content-based because it prohibits "unnecessary" noise, "disturbing" noise, noise that is "commercial" and allows only "pleasing melodies" from moving vehicles. *See* §§23-12, 23-15(c), 23-15(d)(2). The inclusion of these terms in the Ordinance mean that the Ordinance cannot be enforced without referencing the content of the speech to determine if it is commercial, if it is necessary, if it disturbs others, or if the melody involved is "pleasing."

The court in *Dupres* struck down the noise ordinance as content-based because the prohibition against noises that were "unnecessary" or "annoying" "invite[s] law enforcement and others to make a determination as to whether the ordinance has been violated on purely subjective, content-based criteria." *Dupres*, 978 F. Supp. 429. Similarly the court in *Dae Woo* struck down the ordinance in that case because "the subjective definition of unnecessary noise offends basic free speech principles because it would support a conviction where the content of the speech annoys a particular listener." *Dae Woo*, 774 F. Supp. at 170. As described above, the City has no compelling interest that is advanced in the least restrictive means available. Therefore, the Ordinance is unconstitutional.

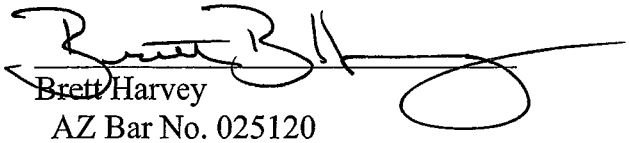
II. CONVICTING BISHOP PAINTER FOR AN ACTION OF HIS CHURCH WAS IMPROPER.

The undisputed testimony in this case demonstrates that Bishop Painter did not make the final decision to begin ringing the bells. Instead, he implemented the decision of the Church Council which is the governing board of the Church. (T. 126-27, 128-29, 142-43). Convicting Bishop Painter for a decision that he was not responsible for is improper. Bishop Painter is not the proper defendant in this case. *See State v. Double Seven Corp.,* 219 P.2d 776 (Ariz. 1950) (charging corporation for crime committed by corporation). Thus, his conviction should be overturned.

CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Court reverse the Trial Court, direct a verdict of acquittal, and discharge the Defendant.

Respectfully submitted this 17th day of August, 2009.



Brett Harvey
AZ Bar No. 025120
Alliance Defense Fund
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020 – Phone
(480) 444-0028 – Fax

Erik W. Stanley*
FL Bar No. 0183504
Dale Schowengerdt
AZ Bar No. 022684
Alliance Defense Fund
15192 Rosewood
Leawood, KS 66224
(913) 685-8000 – Phone
(913) 685-8001 – Fax
**pro hac vice admission forthcoming*

John J. Jakubczyk
AZ Bar No. 005894
4643 E. Thomas Rd., Ste #5
Phoenix, AZ 85018
(602) 468-0030 - Phone
(602) 468-0053 - Fax

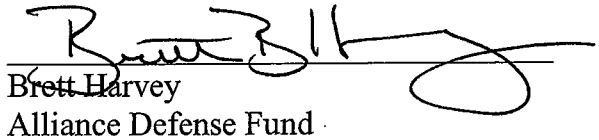
Attorneys for Appellant

APPELLANT'S CERTIFICATION OF MAILING/DELIVERY

I, Brett Harvey, Counsel for the Appellant, hereby certify that on the 17th day of August, 2009, I delivered an Original Memorandum to the Phoenix Municipal Court and the appropriate number of copies to the following opposing party:

City of Phoenix Prosecutor's Office
P.O. Box 4500
300 West Washington, 8th Floor
Phoenix, AZ 85030-4500

RESPECTFULLY SUBMITTED this 17th day of August, 2009.



Brett Harvey
Alliance Defense Fund
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020 – Phone
(480) 444-0028 – Fax
Counsel for Appellant

For Court Use

Date Received_____ Date Due _____

□ Filed timely □ Filed late

Clerk's Initials _____