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Attorneys for Defendants City of Sierra Vista,
7 Officer E. Slusser, Officer R. Hertman, Officer
S. McHunting, and Officer M. Partridge
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9 **SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **COUNTY OF COCHISE**

11 ELI DALTON-WEBB,

12 Plaintiff,

13 v.

14 CITY OF SIERRA VISTA, a municipal
corporation in Arizona, OFFICER E.
15 SLUSSER, R. HERTMAN, OFFICER S.
MCHUNTTING, M. PARTIDGE, peace
16 officers of the Sierra Vista Police Department,

17 Defendants.
18

NO. S0200CV202400628

**DEFENDANT CITY OF SIERRA VISTA'S
MOTION TO DISMISS**

(Assigned to the Honorable David Thorn)

19 Defendant City of Sierra Vista¹ moves to dismiss all claims against it pursuant to
20 Rule 12(b)(6), Ariz.R.Civ.P. because (1) the Arizona Constitution does not authorize a private
21 cause of action under the First Amendment; (2) it is barred by the one-year statute of limitations
22

23 ¹ Defendants Slusser, Hertman, McHunting, and Partridge have not been properly served
and a limited appearance and timely response to Plaintiff's Default Petition shall be filed under
separate cover on their behalf.

1 and (3) fails to state a claim. Accordingly, the Court should dismiss the Complaint against the
2 City.

3 **A. Certificate of Good Faith Consultation with Plaintiff.**

4 Defense counsel Derek R. Graffious certifies that before filing this Motion to
5 Dismiss, he conferred with Plaintiff, by telephone, on multiple occasions to discuss the issues
6 raised in this Motion, including on November 21, 2024 and December 3, 2024. The Parties were
7 unable to reach a resolution.

8 **B. Factual Background.**

9 Plaintiff's Complaint alleges that on October 7 and 8, 2023, a permitted events was
10 held by a private organization at the "Veteran's Memorial Park." (Compl. at ¶ 7.) Plaintiff alleges
11 on October 7 and 8, 2023 he was collecting signatures for ballot access for the Cochise County
12 Libertarian Party. (Compl. at ¶ 8.) According to the Complaint, on October 7, 2023, an unknown
13 woman approached Plaintiff demanding that he and another petition circulator stop petitioning in
14 the park. (Compl. at ¶ 10.) The police were called to the area and "W Partidge [sic] SVPD" and
15 an unidentified female police officer responded to the park. (Compl. at ¶ 12.) The Complaint
16 further alleges that the officers "assertively" spoke to him and the other Petition Circulator. *Id.*
17 Plaintiff alleges that he was detained and instructed not to petition in a vaguely defined area of
18 the park, which violated his rights under Article 2 § 5 of the Arizona Constitution.² (Compl. at ¶
19 13, 14.) Plaintiff claims he was confused as to which area of the park was rented and which
20 areas of the park they "were and were not allowed" to carry-out their petition circulation. (Compl.
21 at ¶ 18.)

22 On the following day, October 8, 2023, Plaintiff returned to the Veteran's Memorial
23 Park to petition. (Compl. at ¶ 20.) Pursuant to "the police's instructions", Plaintiff used his
24

25 ²The right of petition, and of the people peaceably to assemble for the common good, shall
never be abridged. Ariz. Const. art. II, § 5.

1 common sense and kept a distance from the Art in the Park tents while petitioning. (Compl. at ¶
2 23.) According to the Complaint, Officer Hertman detained him and Officer Slusser threatened
3 to arrest him if he continued to petition in the vaguely defined areas of the park. (Compl. at ¶ 26.)

4 Plaintiff's Complaint states that the City of Sierra Vista "is responsible for gross
5 negligence and/or willful negligence for continuing to violate Plaintiff's right to petition, as the
6 City had overnight to do legal research and communicate with police command... ." (Compl. at ¶
7 30.) Plaintiff's Complaint alleges that "the City of Sierra Vista violated Article 2 Sections 5, 6,³
8 and 21⁴ of the Arizona Constitution and the First and Fourteenth amendments of the federal
9 Constitution."⁵ (Compl. at ¶ 34.) Plaintiff's Complaint states that the City "violated Plaintiff's
10 rights of free speech, right to petition, right to assemble, right to free exercise of elections, and
11 other rights." (Compl. at ¶ 35.)

12 Plaintiff filed his Complaint on October 9, 2024.

13 **C. Plaintiff's State Law Claims Are Barred by the One-Year Statute of**
14 **Limitations.**

15 Plaintiff cannot maintain any state law claims against the City [or any City Police
16 Officer or employee] because he failed to file his lawsuit within one year of his claims accruing
17 under A.R.S. § 12-821. "All actions against any public entity or public employee shall be brought
18 within one year after the cause of action accrues and not afterward." A.R.S. § 12-821. A cause
19 of action accrues when the damaged party realizes he has been damaged and knows or reasonably
20 should know the cause, act, instrumentality or condition which caused or contributed to the
21 damage. *Dube v. Litkins*, 216 Ariz. 406 (App. 2007). Here, there can be no dispute that Plaintiff

22 ³ Every person may freely speak, write, and publish on all subjects, being responsible for
23 the abuse of that right. Ariz. Const. art. II, § 6.

24 ⁴ All elections shall be free and equal, and no power, civil or military, shall at any time
interfere to prevent the free exercise of the right of suffrage. Ariz. Const. art. II, § 21.

25 ⁵ Plaintiff has dismissed his federal claims pursuant to a Stipulation filed with this Court
on November 22, 2024.

1 knew his cause of action accrued on October 7th and 8th, 2023 when he interacted with City of
2 Sierra Vista police officers. Plaintiff then had one year to bring his state law claims against the
3 City, no later than October 7th or 8th [depending on the claim]. But Plaintiff did not file his
4 Complaint until October 9, 2024, 2 days [or 1 day had Plaintiff elected not to litigate the alleged
5 First Amendment violations on October 7th] after the statute of limitations expired under A.R.S. §
6 12-821.⁶ Accordingly, because Plaintiff failed to comply with A.R.S. § 12-821, the Court must
7 dismiss all of Plaintiff's state law claims against the City in this action with prejudice.

8 **D. There is No Private Cause of Action Under the Arizona Constitution.**

9 Plaintiff's claims against the City under Article 2, Sections 5, 6, and 21 are not
10 legally cognizable cause of action. The Arizona Legislature has never enacted a statute creating a
11 damage remedy for general violations of state constitutional rights. Courts in Arizona have
12 recognized this difference and have accordingly declined to fashion a judicial damages remedy in
13 the absence of the legislature. *See, e.g., Diaz v. Arizona*, CV 11-02337-PHX-FJM, 2012 WL
14 1203692, at *5 (D. Ariz. Apr. 11, 2012), *aff'd*, 555 Fed. Appx. 698 (9th Cir. 2014) (dismissing
15 state-law constitutional claims because plaintiffs failed to show that they were cognizable);
16 *Cesare v. Pima County*, CV1402514TUCCCKJEJM, 2015 WL 13741218, at *25 (D. Ariz. Dec. 7,
17 2015), *report and recommendation adopted*, CIV142514TUCCCKJEJM, 2016 WL 836873 (D.
18 Ariz. Mar. 4, 2016) (“[N]either of the cases cited by Plaintiffs give support to the argument that
19 Arizona recognizes a private right of action for damages under Art. II, § 6 of the Arizona
20 Constitution. Accordingly, Plaintiffs have failed to show that their claims are based on cognizable
21 legal theories”). As such, Plaintiff's claims brought under the Arizona State Constitution are
22 not legally cognizable claims and must be dismissed.

23
24 ⁶ During consultation with Plaintiff, Plaintiff pointed to the date stamped by the Court on
25 his Complaint was October 4, 2024. However, without more, Defendant relies on the Court's filed
date of October 9, 2024, as it appears a deficiency prevented the Clerk from filing Plaintiff's
Complaint.

ORIGINAL of the foregoing electronically filed
this 3rd day of December, 2024.

COPY of the foregoing mailed and emailed
this 3rd day of December, 2024, to:

Eli Dalton-Webb
5009 E. Ironwood Circle
Sierra Vista, AZ 85650
dw4az@proton.me
Plaintiff, in Pro Per

/s/ *Cindy Castro*