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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota, Judge Peter A. Cahill
Plaintiff,

v.

	Court File Nos.
Nekima Levy-Pounds,	27-CR-15-1307
Kandace Montgomery,	27-CR-15-1304
Shannon Bade,	27-CR-15-1350
Todd Dahlstrom,	27-CR-15-1331
Amity Foster,	27-CR-15-1346
Adja Gildersleve,	27-CR-15-1335
Michael McDowell,	27-CR-15-1320
Catherine Salonek,	27-CR-15-1326
Pamela Twiss,	27-CR-15-2766
Jie Wronski-Riley,	27-CR-15-1349
Mica Grimm,	27-CR-15-1829

Defendants.

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE

INTRODUCTION

Defendants submit this Memorandum in support of their respective motions to dismiss the charges against them on the grounds that they lack probable cause. Defendants cannot be held criminally liable for charges set forth in the Complaints against them because the charges are based on alleged conduct that constitute protected speech or expression under the First Amendment to the United States Constitution and Article I, Section 3 of the Minnesota Constitution. The Complaint otherwise fails to

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provide sufficient allegations to show violations of specific elements of charged offenses.

Defendants request that the Court dismiss the charges against them summarily on the grounds that the Complaints, on their faces, fail to support the charges. To the extent that the Court does not dismiss charges on the face of the Complaints, Defendants request an evidentiary hearing pursuant to State v. Florence, 306 Minn. 442, 239 N.W.2d 892 (1976).

FACTUAL BACKGROUND

The City of Bloomington charges the eleven above-named Defendants with various misdemeanor offenses for allegedly participating in the organizing and/or playing leadership roles in a large political demonstration at the Mall of America (MOA) on December 20, 2014. The event was organized by Black Lives Matter, as part of planned protests around the country at that time in response to incidents where police had killed unarmed African Americans, but were not charged with any crimes. Although the City filed separate Complaints against each Defendant and some of the charges vary, the factual allegations in every Complaint are identical.

The Complaints allege that police learned about plans for the event on December 9, 2014 from a Facebook webpage. On December 12, agents of MOA sent a letter to Defendants McDowell and Grimm, and non-Defendant Nicholas Espinosa, stating that MOA did not permit protests, demonstrations or public debate, and suggested that they arrange to hold the planned event on nearby property. The letter did not contain any

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statement forbidding anyone from entering MOA property.

The Complaints allege subsequent written communications and verbal communications between city and police officials, and various Defendants, where the planned event was discussed. The Complaint alleges that the police maintained that the planned event was illegal, whereas Defendants maintained that the event would continue. Defendants Salonek and Dahlstrom initiated a meeting with Bloomington police officials where they informed the police about their plans for the event in order to help police prepare and avoid any unforeseen and ensure the event was peaceful. It is not alleged that any city or MOA officials ever told any Defendants that they were not allowed on MOA property.

On December 17, 2014, undercover Bloomington police officers infiltrated a planning meeting for the event. The Complaint identifies ten of the Defendants as leaders of the planned demonstration and as speakers at the planning meeting. The Complaint separately alleges Defendant Nekima Levy-Pounds as a speaker at the meeting, and observes that she identified herself as a lawyer and law professor. The Complaint claims that all speakers directed people to the MOA rotunda to call attention to their cause and disrupt business, but does not provide specifics as to their statements. Defendant Montgomery allegedly discussed roles for participants at the event, including "police liaison volunteers" and "marshals," and social media posts, chanting and sign making. The Complaint alleges that Defendant McDowell affirmed that a protest would take place

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at MOA and led some of the group in songs and chants. It alleges that Defendant Gildersleve ran a break-out session on the use of social media, Defendant Bade explained to marshals how to move protesters from place to place and collected cell phone numbers, and Levy-Pounds discussed "how events could and should play out during the protest." There are no specific allegations about any other Defendants' specific statements or actions at the December 17 meeting.

Undercover Bloomington police officers also infiltrated a meeting of marshals on December 20, 2014 at 12:15, at the Ikea store next to MOA. The Complaint alleges that Defendant Bade identified herself as the "primary marshal" and identified Defendants Foster and Wronski-Riley as "backup head marshals."[1] It alleges that Bade discussed how people would assemble in the MOA rotunda with signs and changes, then gradually move outside the building while staging die-ins after being asked to leave. MOA security officers identified Bade as an organizer and escorted her off MOA property before the demonstration began.

The event began as planned on December 20 at about 2 pm. More than 1000 people gathered in the rotunda. The complaint alleges that participants engaged in "loud, boisterous shouting and chanting," and Defendants Foster, Wronski-Riley, and Montgomery led the chants and Twiss later joined. It alleges that customers had difficulty getting through the rotunda and hallways, and some families with children

[1] The quoted descriptions are taken from the Complaints, but the Complaints themselves do not claim that the descriptions are direct quotes.

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"appeared visibly frightened and upset."[2] According to the Complaint, Defendants Dahlstrom, Salonek, Foster, Gildersleve and McDowell led or marshaled protesters through the hallways as the protesters continued chanting and left the building.

The Complaint alleges that MOA management announced to the crowd in the rotunda through a public address system at 2:03 pm that the event was unauthorized and ordered participants to leave the building, and gave subsequent warnings. There are no allegations indicating which if any Defendants were able to hear the announcement. The Complaint states that at 2:10, MOA posted "the same warning" on a screen in the rotunda. A copy of this "warning" which was verbally announced and posted has been provided by the prosecution through discovery and is attached to this Memorandum. The announcement asks participants to "disperse" but does not contain any demand that anyone leave the property.

The Complaint alleges that some protesters blocked an internal ring road after exiting the building, and alleges that Defendants Montgomery and Levy-Pounds participated. There are no specific allegations about the nature of this road, how any Defendants "blocked" it or created any interference or obstruction.

The Complaint finally alleges that various Defendants made statements to the media and posted on the internet about the event.

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[2] The Complaints allege that officers were spit upon from an upper level of the rotunda, but there is no identification of the perpetrator, no specific allegation that he/she was a participant in the demonstration, and no suggestion whatsoever that any Defendant participated in or in any way encouraged such an action.

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The charges include statute statutory violations of trespass, disorderly conduct, unlawful assembly, public nuisance, and aiding and abetting each of these respective offenses. Defendants Levy-Pounds and Montgomery are charged with all of these offenses and aiding and abetting them for a total of eight counts. Defendant Grimm is charged only with aiding and abetting trespass, aiding and abetting unlawful assembly, and aiding and abetting disorderly conduct. The remaining Defendants are charged with trespass, disorderly conduct, unlawful assembly, and aiding and abetting each of these defenses.

ARGUMENT

The charges against Defendants must be dismissed because they violate the free speech and assembly protections guaranteed by the United States and Minnesota Constitutions. The allegations and evidence referenced by the allegations are further insufficient to support the elements of trespass and public nuisance.

I. THE TRESPASS CHARGES VIOLATED DEFENDANTS' RIGHTS TO FREE SPEECH AND FREE ASSEMBLY, AND ARE UNSUPPORTED BY THE EVIDENCE.

Defendants cannot be charged with trespass because MOA must be deemed public property where there is right to free speech and assembly under the U.S. and Minnesota Constitutions. *See* the separate memorandum of Defendants addressing free speech at MOA and the inapplicability of State v. Wicklund.

The City further has not and cannot support all of the elements of trespass. The

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Complaint charges Defendants with violations of Minn. Stat. § 609.605(1)(b)(3), which applies to a person who intentionally "trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor." The undisputed evidence establishes that Defendants were not given a demand "to depart from the premises." Although the Complaint asserts that an MOA agent read an announcement over the public address system requesting that Defendants leave the building, the Complaint subsequently reveals that the identical announcement read over the public address system was posted on a video screen. Attached to this Memorandum is a photograph the actual announcement posted on the video screen overlooking the MOA rotunda. That announcement requests that participants in the demonstration simply "disperse." There is no request to depart from the premises. Disperse plainly does not have the same meaning as to depart from a premises. *See* www.Merriam-Webster.com/dictionary/disperse : "to go or move in different directions : to spread apart." MOA made a choice to ask people congregated in the rotunda to stop congregating, but not to actually leave the building, property or anything could be defined as its premises. *See* www.merriam-webster/dicitionary/premise: "a building and the area of land that it is on."

There is no probable cause to pursue the charges of trespass against Defendants in the absence of evidence that MOA communicated a demand for them to leave its property as required under the statutory provision and subdivision specified in the Complaint. The

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charges of trespass must be dismissed. The charges of aiding and abetting trespass must similarly be dismissed since no underlying offense of trespass occurred.

II. THE CHARGES OF DISORDERLY CONDUCT CANNOT STAND IN LIGHT OF THE CONSTITUTIONAL CONSTRAINTS ON THE INTERPRETATION OF DISORDERLY CONDUCT, WHERE NONE OF DEFENDANTS' ALLEGED STATEMENTS OR EXPRESSION CONSTITUTED FIGHTING WORDS AND THE ALLEGED LOUD CHANTING AND MARCHING CONSTITUTED POLITICAL PROTEST.

The charges of disorderly conduct cannot be supported. All of Defendants' alleged conduct is protected free speech and does not violate the charged statute based on its narrow construction under Minnesota and Federal case law.

The Complaints charge violations of Minn. Stat. § 609.72, subd. 1(3), which sets forth the offense of disorderly conduct provides:

> Whoever does any of the following in a public or private place, including on a school bus, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:
>
> * * *
>
> (3) engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.

Although Defendants conduct could be construed to have violated the broad literal language of the statute which criminalizes even boisterous or noisy conduct, appellate courts have interpreted the offense of disorderly conduct in a narrow and restricted manner in order to protect the constitutional right to free speech.

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The Minnesota supreme court has upheld the constitutionality of Minn. Stat. § 609.72, subd. 1(3) by "construing it narrowly to refer only to 'fighting words.'" In re Welfare of S.L.J., 263 N.W. 412, 419 (Minn. 1978). In order for speech to constitute "fighting words" that are not protected by the First Amendment, and therefore be subject to criminal punishment under the state statute or local ordinance, the words must not merely tend to "arouse alarm, anger, or resentment in others" based on the plain statutory language, but must also "by their very utterance inflict injury or tend to incite an immediate breach of the peace." Id. at 419 (quoting Chaplinsky v. New Hampshire, 315 U.S. 568, 572, 62 S.Ct. 766, 769 (1942)). The United Supreme Court subsequently relied on Chaplinsky in striking down a breach of the peace ordinance which prohibited "opprobrious language" without requiring that the words "by their very utterance inflict injury or tend to incite an immediate breach of the peace." Lewis v. City of New Orleans, 415 U.S. 130, 133-34, 94 S.Ct. 970, 972-73 (1974).

Minnesota appellate courts have repeatedly reversed disorderly conduct convictions based on offensive language that did not constitute fighting words. In S.L.J., the Minnesota supreme court held that a 14 year old's statement to police, "fuck you pigs," did not constitute fighting words because she directed them at two police sitting in their squad car at a distance of 15 to 30 feet so there was no reasonable likelihood that the words would "tend to incite an immediate breach of the peace or to provoke violent reaction by an ordinary reasonable person." 263 N.W.2d at 419-420. Even though the

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words were offensive and would tend to cause alarm, anger and resentment under the statutory language of Minn. Stat. § 609.72, subd. 1(3), they were still constitutionally protected speech. Id. More recent court of appeals cases have relied on S.L.J. in striking down disorderly conduct adjudications of juveniles who use hostile, vulgar, obscene, and provocative language which nevertheless failed to meet the "fighting words" standard of being likely to provoke retaliatory violence or incite imminent lawless action. In re M.A.H., 572 N.W.2d 752, 756-60 (Minn. Ct. App. 1997); In re W.A.H., 642 N.W.2d 41, 47 (Minn. Ct. App. 2002).

In the most recent and on point published Minnesota appellate case, the court reversed disorderly conduct convictions of two people protesting outside of a fur store who were looking through the window, screaming, were "very loud and very angry," yelled on and off for about a half hour until police arrived, yelled that they knew where the store owner lived and where his elderly mother lived and that they knew his vehicle license number, and they disrupted the work of an employee of an neighboring business with their noise." State v. Peter, 798 N.W.2d 552, 553-554 (Minn. Ct. App. 2011). Peter emphasized the importance of protecting political protest or speech on matters of public concern which is "at the heart of the First Amendent's protection" and is "entitled to special protection." Id. At 555 (citing Snyder v. Phelps, 131 S.Ct. 1207, 1211 (2011). It concluded that even though the speech was loud and disturbed and annoyed others, "Loud and even boisterous conduct is protected under Minnesota law, when that conduct is

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"expressive and inextricably linked to a protective message." Id. at 556 (citing Baribeau v. City of Minneapolis, 596 F.3d 465, 478 (8th Cir. 2010)). The First Amendment further protects expressive conduct which is inextricably linked with the message being communicated. Id. At 555-556. In the instant case, the alleged noisy and boisterous conduct of some Defendants or other participants, including loud chants, marching and possibly die-ins, was inextricably linked to their political message on matters of public concern, and therefore protected under the First Amendment and the Minnesota Constitution free speech provision.

In contexts other than review of disorderly conduct statutes, the Supreme Court has repeatedly affirmed the principle that the government cannot proscribe free expression except for extremely narrow categories of speech that constitute a "true threat" or somehow cause harm without any redeeming value. "Speech is often provocative and challenging.... [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Terminiello v. Chicago, 337 U.S. 1, 4, 69 S.Ct. 894, 895 (1949); see also City of Houston v. Hill, 107 S.Ct. 2502, 2510 (1987)(ordinance prohibiting verbal challenges to police action unconstitutional). True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. Virginia v. Black, 538 U.S. 343, 349 (2003). A "true threat,"

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despite being pure speech, lies outside the First Amendment's protection solely because it "play's no part in the 'marketplace of ideas.'" R.A.V. v. City of St. Paul, 505 U.S. 377, 383, 112 S.Ct. 2538 (1992). Rather than contributing to the world of opinion or ideas, a true threat is designed to inflict harm. Thus, true threats are words "which by their very utterance inflict injury." Black, 538 U.S. at 349.

The allegations against the Defendants in the instant case consist exclusively of holding signs, chanting, marching and other non-violent expressive conduct. None of this was speech likely under the circumstances or based on its content to provoke imminent lawless action or cause direct harm, and therefore did not come close to "fighting words" or "true threats" which are required to constitute criminal conduct. No reasonable jury or factfinder could find that any of Defendants' alleged speech or expression constituted fighting words.

Applicable case law does not in any way support criminalizing political speech based on the volume or tone. In addition to Peter, a federal appellate decision in this jurisdiction has recognized that it is clearly established under Minnesota law that loud and boisterous conduct is protected where the conduct "is expressive and inextricably linked to their protected message." Baribeau, 596 F.3d at 478 (8th Cir. 2010).

The wide scope of protected free expression is elucidated in State v. Machholz, 574 N.W.2d 415 (Minn. 1998), which determined that the criminal harassment statute as applied was unconstitutional and made it clear that the State of Minnesota recognizes

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broad First Amendment protection for expressive activity, which limit the reach of criminal statutes that interfere with free expression. Machholz, which involved a defendant riding a horse through a gathering of homosexuals, swinging a rope, and yelling hateful comments at the crowd, encompassed exponentially more disturbing and offensive conduct than anything in the instant case. Id. at 417-18. The Minnesota supreme court held that such words and expressive conduct were protected by the First Amendment from *any* criminal prosecution. Id. at 421-22. If such offensive conduct in Machholz is constitutionally protected, certainly Defendants' conduct in the instant case which merely consisted of chanting, marching, and pure speech and expression must be at least as protected.[3]

Defendants' conduct constituted protected speech and did not violate the disorderly conduct statute based on restrictions applied by Minnesota appellate courts. None of their alleged statements could be remotely construed as fighting words, and the manner of their speech was intertwined with their expressive conduct. The charges of disorderly conduct must be dismissed. Furthermore, the charges of aiding and abetting disorderly conduct must be dismissed because there was no underlying offense.

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[3] The Complaints claim that onlookers at MOA appeared to be frightened by the conduct of demonstrators. It is notable that prior appellate decisions did not accept observations that people were frightened by speech or expression as a grounds to render such conduct criminal. See Machholz, 574 N.W.2d at 418; Baribeau, 596 F.3d at 471, 481.

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III. THE CHARGES OF UNLAWFUL ASSEMBLY MUST BE DISMISSED BECAUSE THE ALLEGED UNDERLYING CONDUCT IS PROTECTED SPEECH.

The charges of unlawful assembly are unconstitutional to the extent that they prohibit speech or expression linked to a political message, and otherwise cannot stand for the same reasons as the disorderly conduct charges as set forth in the Argument above. The Complaints charge violations of Minn. Stat. § 609.705, which sets forth the offense of unlawful conduct provides:

> When three or more persons assemble, each participant is guilty of unlawful assembly, which is a misdemeanor, if the assembly is:
>
> (1) with intent to commit any unlawful act by force; or
>
> (2) with intent to carry out any purpose in such manner as will disturb or threaten the public peace; or
>
> (3) without unlawful purpose, but the participants so conduct themselves in a disorderly manner as to disturb or threaten the public peace.

The charging language in the Complaints only specify subsection (3), so the charge will be analyzed under that subsection.

The Minnesota Supreme Court upheld the constitutionality of the unlawful assembly charge in response to a free speech challenge by narrowly construing the statute to prohibit "three or more assembled persons from conducting themselves such a disorderly manner as to threaten or disturb the public peace by unreasonably denying or interfering with the rights of others to peacefully use their property or public facilities

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without obstruction, interference, or disturbance." State v. Hipp, 298 Minn. 81, 213 N.W.2d 610, 614 (Minn. 1973). The allegations in the Complaint do not support a conclusion that Defendants physically prevented people from using the Mall of America. It is alleged that they gathered in a rotunda area, and then marched through hallways and the exit. The Complaint alleges that at most, the demonstration might have delayed customers in passing through the rotunda or hallways. There is no allegation that any Defendant or other participant in the event intentionally prevented anyone from reaching any destination, that anyone was not able to reach their destination, or that there was substantially more obstruction than would normally occur on one of the busiest shopping days of the year in one of the busiest malls in the country.

It also must be noted that Hipp predates much of the federal and state case law upholding First Amendment protections for conduct that constitutes speech or expression. While most of the case law pertains to the charge of disorderly conduct, the same protections set forth for disorderly conduct are also applied to other statutes. Machholz, 574 N.W.2d 415, applied the same law protecting free speech when striking down as unconstitutionally overbroad on its face the portion of the criminal harassment statute that proscribed "other harassing conduct." See also City of Houston v. Hill, 107 S.Ct. 2502, 482 at 460 (striking down an ordinance making it unlawful to interrupt a police officer in the performance of duties where it must be construed to prohibit verbal interruptions.) As in Machholz, Defendants' alleged conduct constituted expression of opinions through

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speech and other conduct linked to the speech. They cannot be charged with unlawful assembly based on the speech and expression alleged in the Complaint. Hipp must either be interpreted to construe the unlawful assembly statute with the same constraints to protect free speech as disorderly conduct and other statutes, or if the construction is not deemed so narrow, the statute must be struck down as constitutionally overly broad on its face and as applied, similar to the felony harassment statute in Machholz or the interference with a police officer ordinance in City of Houston v. Hill. Under either scenario, the unlawful assembly charges must be dismissed because the alleged conduct underlying the charges was protected political speech. The aiding and abetting charges must similarly be dismissed because there is no underlying offense of unlawful assembly.

IV. THE PUBLIC NUISANCE CHARGES MUST BE DISMISSED BECAUSE THE ELEMENTS ARE NOT SUFFICIENTLY ALLEGED AND THE CONDUCT AS ISSUE IS FREE SPEECH.

The prosecution has also charged Defendants Levy-Pounds and Montgomery with Public Nuisance in violation of Minn. Stat. § 609.74, and aiding an abetting that offense. It appears from the language of the Complaints that the charge is based on subsection (2) which covers a person who intentionally "2) interferes with, obstructs, or renders dangerous for passage, any public highway or right-of-way, or waters used by the public." The Complaint alleges that the Defendants were part of a group of protesters who blocked traffic on "MOA's internal ring road." There is no allegation that this ring road is a public highway or right-of-way - either public, or a highway or public right-of-way.

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There are also no allegations supporting a conclusion that either Defendant obstructed the road intentionally as is required under the statute. The allegations set forth in the Complaint indicate that a large group of protesters had left the mall, and continued to engage in expressions that were part of the demonstration such as shouting, chanting, fist pumping and waving banners. There are no specific allegations stating or suggesting that Defendants were intentionally interfering with or obstructing traffic. Since the actions alleged in the Complaint were part of a political demonstration, and constitute solely speech and expression, they are protected free speech under the United States and Minnesota Constitutions for reasons addressed in Arguments II-III, supra. The charges of public nuisance and aiding and abetting public nuisance must therefore be dismissed.

V. THE CHARGES AGAINST DEFENDANT NEKIMA LEVY-POUNDS MUST BE DISMISSED BECAUSE THEY WERE BASED ON LEGAL ADVICE PROTECTED AS FREE SPEECH.

The Complaint against Defendant Nekima Levy-Pounds does not make any allegations that she was inside MOA during the demonstration or asked to leave mall property. She therefore could not have trespassed. There are also no allegations indicating that she engaged in disorderly conduct or unlawful assembly. The only substantive allegation is that she was with a group of people standing on the ring road, and later posted on her twitter account about the event. It appears that most of the charges against Professor Levy-Pounds are based exclusively on her presence at a planning meeting three days before the event. The Complaint does not allege that she

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was a leader or organizer. It does acknowledge that she identified as a lawyer and law professor.

Professor Levy-Pounds cannot be held criminally liable based on her role as a legal adviser in her capacity as a licensed attorney. It is well-established that prosecution of an attorney for providing legal advice within the bounds of the law violates constitutionally protected rights of expression and association in violation of the First and Fourteenth Amendments. In re Primus, 436 US 412, 432 (1978); Transportation Union v State Bar of Mich., 401 US 576, 580 (1971); Trainmen v Virginia ex rel. Virginia State Bar, 377 US 1, 7-8 (1964); NAACP v Button, 371 US 415, 429 (1963); see also Vinluan v. Doyle, 60 A.D.3d 237, 250-51, 873 N.Y.S.2d 72, 82-83 (NY Sup. Ct, App. Div. 2009). Vinluan issued a writ of prohibition against district attorney from prosecuting an attorney for legal advice that he gave to his clients, finding that "punishment for the good faith provision of legal advice is, in our view, more than a First Amendment Violation. It is an assault on the adversarial system of justice." 60 A.D.3d at 251, 873 N.Y.S.2d at 83. The decision explains that punishment of the attorney "would eviscerate the right to give and receive legal counsel with respect to potential criminal liability if an attorney could be charged with conspiracy and solicitation whenever a District Attorney disagreed with that advice." Id.

Since the Complaint does not even make allegations that Professor Levy-Pounds was even present inside MOA during the demonstration, the only basis for Counts 1-6

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could be her attendance at the December 17 planning meeting in her role as a licensed attorney providing legal advice to participants. The charges must therefore be dismissed.

VI. THE CHARGES AGAINST DEFENDANTS FOR AIDING AND ABETTING MISDEMEANOR OFFENSES VIOLATE THEIR PROTECTED RIGHTS TO FREE SPEECH.

The prosecution has charged all Defendants with aiding and abetting three to four misdemeanor violations. The Complaints do not set forth any specific grounds for charging these offenses. However, the only discernable basis for the aiding and abetting charges against most of the Defendants is their participation in planning meetings on December 17 or on December 20, 2014 before the event. It is clearly established that a person cannot be criminally liable for mere advocacy of ideas - even of violent acts, but there must be incitement to imminent lawless action. Brandenburg v. Ohio, 89 S.Ct. 1827, 1830-31, 395 U.S. 444 (1969). Unlike the klansman in Brandenburg who preached violence and hatred and was protected under the First Amendment, the Defendants in the instant case are merely accused of advocating or promoting a non-violent political protest.

The Minnesota supreme court recently held that a portion of a statute prohibiting a person from advising or encouraging another in committing suicide was an unconstitutionally overbroad restriction of free speech. State v. Melchert Dinkel, 844 N.W.2d 13, 23-24 (Minn. 2014). The decision stated, "Speech in support of suicide, however distasteful, is an expression of a viewpoint on a matter of public concern, and, given current U.S. Supreme Court First Amendment jurisprudence, is therefore entitled to

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special protection as the 'highest rung of the hierarchy of First Amendment values.' " Id. at 24 (citing Snyder v. Phelps, 131 S.Ct. at 1215). If advising or encouraging a person to commit suicide in protected free speech, certainly advising or encouraging people to participate or maintain order in a non-violent political demonstration, or in methods to promote the event, must enjoy free speech protection. While advocating violence can be protected speech, certainly speech that encourages conduct which even the state only contends to be non-violent misdemeanors cannot be criminalized. The aiding and abetting charges against the Defendants must therefore be dismissed.

CONCLUSION

For the foregoing reasons, the Defendants respectfully request that the charges against them be dismissed.

Dated: July 1, 2015

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