Jason M. Groth (16683)
Abigail Cook (19781)
Attorneys for Defendant
American Civil Liberties Union of Utah
311 S. State. St. Suite 310
Salt Lake City, Utah 84111
jgroth@acluutah.org
acook@acluutah.org
Telephone: (801) 521-9862

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. ELIZABETH DEFRIEZ MARYON, Defendant.	Supplemental Briefing in Support of Preliminary Hearing Argument Case No. 251900693 Judge Diana Gibson

As requested by the Court at the Preliminary Hearing on June 26, 2025, Ms. Elizabeth Maryon herein submits this Supplemental Briefing in Support of Preliminary Hearing Argument.

ARGUMENT

The evidence presented at the preliminary hearing is not sufficient to support a reasonable belief that Ms. Maryon engaged in any unlawful activity. Rather, it demonstrates that she was exercising her constitutional rights in a manner consistent with long-established protections under the First Amendment.

A. Count One: Failure to Stop at the Command of a Peace Officer

For the first Count, failure to stop at the command of a peace officer, Utah Code 76-8-305.5, the State has failed to provide any evidence to show that Ms. Maryon had the requisite mens rea. To the contrary, the evidence showed that she was on a public forum, at a peaceful protest, approached by an officer who recognized her from other protests but had no reason to arrest her. No reasonable person in that situation would believe they were at risk for arrest.

Failure to stop is not a strict liability offense. The State must show that Ms. Maryon "thought [she] was at risk for arrest" and that fear motivated her flight. *Salt Lake City v. Gallegos*, 2015 UT App 78, ¶ 7, 347 P.3d 842. Presence at the scene of a crime in addition to flight is not sufficient, the State must show "consciousness of guilt and therefore guilt itself." *Id*. (citation omitted).

At the moment Lt. Woolridge approached Ms. Maryon, she had no reason to believe she would be arrested because she was lawfully standing on a public forum engaging in her First Amendment protected speech. Public streets are the quintessential public forum—the Supreme Court of the United States has called them the "the archetype of a traditional public forum." *Frisby v. Schultz*, 487 U.S. 474, 480 (1988) (collecting cases). The Tenth Circuit has found medians abutted on either side by public streets are clearly traditional public forum as well. *McCraw v. City of Oklahoma City*, 973 F.3d 1057, 1067–1069 (10th Cir. 2020). The testimony elicited at the preliminary hearing was that Ms. Maryon was on the median in the middle of 300 South. Lt. Woolridge testified that the median on 300 S between Caputo's and Pioneer Park is very large, about the size of a lane of traffic and there were a number of other protestors and police officers present on the median as well.

And at that moment Lt. Woolridge approached her, Ms. Maryon was walking back toward Pioneer Park, another public forum. The police officers had closed 300 S to traffic for the safety of the protestors and officers. For all these reasons, Ms. Maryon had no reason to believe that she would be arrested for being on that median in the middle of 300 S.

Further, the evidence elicited at the preliminary hearing showed that Ms. Maryon was at a peaceful protest that was never declared unlawful. She was marching on the street with hundreds of other people—none of whom were arrested—at a peaceful protest that happens all the time here in Salt Lake City. There was no order to disperse, no tear gas, no riot gear, no reason for Ms. Maryon to believe that the protest was anything but lawful, constitutionally protected conduct.

And finally, Lt. Woolridge testified that the reason he tried to initiate contact with Ms. Maryon was because he recognized her from other protests, not because he intended to arrest her in that moment. He did not tell her that she was under arrest or detained. He gave her no reason to believe that she was under arrest. It's not uncommon for police officers to try to engage people in consensual communications—as Lt. Woolridge testified he had attempted to do with Ms. Maryon at prior protests. Ms. Maryon had no reason to believe that this was anything other than another attempt for him to have a consensual conversation for which she was under no obligation to engage.

The State also introduced no evidence that Ms. Maryon had a warrant out for her arrest or any other reason why she might believe that she was at risk for being arrested.

Even as a counterfactual, if Ms. Maryon was engaging in some minor infraction, a person in her position would have no reason to believe that a minor infraction would put her at risk for arrest. There is caselaw saying being drunk in public, *Gallegos*, 2015 UT

App 78, ¶ 11, 347 P.3d 842, kayaking without a life vest, *State v. Nelson*, 2024 UT App 75, ¶ 17 & n.4, 550 P.3d 495, and even walking on the road where a sidewalk is available, *State v. Clegg*, 2025 UT App 61, ¶ 26, are not the type of conduct that would lead someone to believe they would be arrested. The Court of Appeals recently addressed this issue last month in *State v. Clegg*, 2025 UT App 61. They wrote that even if Mr. Clegg had been committing an infraction by walking on the road or even in the middle of the road, "it may not be obvious to him at the time that he was violating the law" and thus the state had not shown consciousness of guilt to evade arrest. *Id*. at ¶ 23. It highlighted that the common experience for these types of infractions do not result in arrest and therefore do not incite that type of fear of arrest required for a failure to stop charge. *Id*. at ¶ 25. For all the same reasons, Ms. Maryon would not have known she was at risk for arrest and the State has failed to show this mens rea element to bind this charge over.

B. Count Two: Pedestrian Walking in Road with Sidewalk Available

For the Second Count, Pedestrian walking in road with sidewalk available, Utah Code 41-6A-1009(1), the State has put forward no evidence to show that this was not a temporary, spontaneous demonstration excepted in section 4(h) which states that "[n]othing in this section prohibits a temporary spontaneous demonstration."

The terms "temporary" and "spontaneous" reflect the legislature's intent to protect a specific category of public expression—one that arises quickly and organically in response to current events. To ban being in the street permanently would be wholly unconstitutional, and this statute would have been wholly unconstitutional without the 4(h) exception for spontaneous protests.

There is a long line of cases discussing the unconstitutionality of advance notice requirements for demonstrations that do not account for the possibility of spontaneous protest. *See McDonnell v. City & Cnty. of Denver*, 238 F. Supp. 3d 1279 (D. Colo. 2017), rev'd in part, 878 F.3d 1247 (10th Cir. 2018) (collecting cases) (overturned on other grounds for the misapplication of cases involving public fora as opposed to non-public). On the shorter end of the range of advance notice requirements, the Eighth Circuit found a mere five-day notice requirement for a public forum unconstitutional as it restricted an impermissible amount of speech. *Douglas v. Brownell*, 88 F.3d 1511, 1523–24 (8th Cir. 1996). In fact, the only ones that have been upheld are one, two, and three day notice requirements. *Id*.

The evidence elicited at the preliminary hearing showed that this protest was both temporary and spontaneous. Lt. Woolridge testified that the protest lasted no longer than three hours, and there was no evidence submitted that this protest was anything but spontaneous. The State pointed out that there was no demonstration permit submitted 14 days in advance as required by the City, but this is precisely the reason the 4(h) exception exists. To allege that this protest was not lawful because there was no permit submitted would negate 4(h) entirely. And to require spontaneous protests to apply for a permit no later than 14 days in advance would be unconstitutional. *See Douglas v*, 88 F.3d at 1523–24.

Rather, this Court could take judicial notice of a number of news stories from just one or two days prior that could have spurred this protest. Most notable there was an

ongoing war in Gaza with breaking news daily.[1] That week President Biden approved more than one billion dollars in new weapons to Isreal.[2] And locally here in Utah, Governor Cox issued a statement praising the University of Utah for its handling of the encampment protest in the weeks earlier.[3]

To interpret this statute as criminalizing Ms. Maryon's conduct would render the 4(h) exception meaningless. The legislature could have required permits or notice for all public demonstrations—but it didn't because that would have been unconstitutional. Instead, it explicitly acknowledged that the democratic process requires space for spontaneous expression, and Ms. Maryon's conduct is precisely the type of civil action the Legislature considered when drafting exception 4(h). For this reason, the State has failed to submit sufficient evidence to bind this charge over for trial.

C. Count Three: Disorderly Conduct

For the Third Count, Disorderly conduct, Utah Code 76-9-102, the State has not clearly stated which conduct it is attaching to this charge, and whatever conduct it could possibly point to would be constitutionally protected activity.

At best, the State could argue Ms. Maryon refused to comply with Lt. Woolridge's command to stop but—based on previous argument in section A—he did not have probable cause to stop her and therefore there was no lawful order for Ms. Maryon to ignore.

For all the reasons listed in the above two sections, any of the conduct Ms. Maryon was engaging in was First Amendment protected activity, on a public forum, in a peaceful

---

[1] https://apnews.com/article/mideast-wars-israel-gaza-hamas- hostages-05-16-2025-fb5e3b08af46a55b6faeead7b8647dc6.

[2] https://www.nytimes.com/2024/05/14/us/politics/biden-arms-sale-israel.html.

[3] https://www.sltrib.com/news/education/2024/05/16/gov-spencer-cox-says-hes-just-so/.

protest that was never declared unlawful. To charge Ms. Maryon for any of that conduct would render the application of the statute in this context unconstitutional. Thus, the state has not sufficiently identified the conduct attached this this charge or have they put forward sufficient evidence to bind it over for trial.

CONCLUSION

In conclusion, the State has failed to put forward sufficient evidence to support a reasonable belief that Ms. Maryon engaged in any unlawful activity on any count. And the activity that it may try to point to is constitutionally protected First Amendment conduct. The evidence paints a picture of a peaceful, spontaneous protest that was never declared unlawful. An officer who knew Ms. Maryon from previous interactions approached her with no reason to arrest her but demanded that she stop anyways. Ms. Maryon had no reason to believe that she was at risk of being arrested when she walked away from the officer because she had been engaging in First Amendment protected conduct throughout the entirety of this protest. The fact that the State is attempting to criminalize that conduct is exactly why we have these protections. For all these reasons, we respectfully submit that this Court should not bind any of these charges over for trial

DATED this 27 day of June 2025.

/s/ Abigail Cook
Abigail Cook
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Discovery was sent, via the Court's electronic filing system, to the Salt Lake District Attorney's Office, this 27 day of June, 2025.

/s/ Samantha Cypert
Samantha Cypert