IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

THE STATE OF OHIO, Plaintiff, vs. ASHLI FORD, Defendant.	Case No. 2024-CR-0091 Judge Debra L. Boros (by assignment 24JA1022) **Defendant Ashli Ford's Motion for Acquittal on Counts 10, 12, 14, and 16 of the Indictment**

I. Introduction and Motion

Defendant Ashli Ford, by and through her newly retained counsel undersigned below, hereby moves—under Crim.R. 29 and this Court's inherent authority to revise its guilty verdict prior to sentencing or the entry of final judgment—for acquittal on Counts 10, 12, 14, and 16 of the indictment. For cause, all of the conduct underlying these four counts is Ford's mere publication of a single Facebook post criticizing and requesting action from public officials, plainly political speech, that is protected from governmental sanction by the First Amendment to the U.S. and Ohio Constitutions.

The Supreme Court of Ohio has repeatedly held that where, as here, both speech and conduct [are sought to be] punished" under a criminal statute, that statute "must," "in order to pass constitutional muster," be "authoritatively construed." *Columbus v. Schwarzwalder*, 39 Ohio St.2d 61, 62–63, 313 N.E.2d 798 (1974); *See also State v. Schwing*, 42 Ohio St.2d 295, 300-301, 328 N.E.2d 379 (1975).

This State's highest Court has also properly recognized that "speech on public issues occupies the highest rung of the hierarchy of First Amendment values," and "is entitled to special protection," "even [where] the speaker or writer was motivated by hatred or ill-will." *Bey v. Rasawehr*,

161 Ohio St.3d 79, 2020-Ohio-3301, ¶ 58, 161 N.E.3d 529.

Likewise, the U.S. Supreme Court has made clear that speech is "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, 4-5, 69 S.Ct. 894, 93 L.Ed. 1131 (1949); *Whitehill v. Elkins*, 389 U.S. 54, 57, 88 S.Ct. 184, 19 L.Ed.2d 228 (1967). That is, speech may only be subject to criminal sanction when it "means to communicate" a "true threat," i.e., "a serious expression of intent to commit an act of unlawful violence to a particular person or group of individuals" (*Virginia v. Black*, 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L. Ed. 2d 535 (2003)); a threat "so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution." *New York v. Operation Rescue Natl.*, 273 F.3d 184, 196 (2d Cir.2001), citing, *inter alia*, *Terminiello*, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949). As the Court has clarified in its 2023 decision in *Counterman v. Colorado*, "[t]he 'true' in th[is] term distinguishes what is at issue from jests, 'hyperbole,' or other statements that when taken in context do not convey a real possibility that violence will follow (say, 'I am going to kill you for showing up late')." 600 U.S. 66, 74-75, 143 S.Ct. 2106, 216 L.Ed.2d 775 (2023), citing *Watts v. United States*, 394 U. S. 705, 708, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969).

The *Counterman* Court in fact raised the bar for government officials seeking to criminally punish alleged "true threats" by requiring the State to prove in such cases that "the defendant had some subjective understanding of [their] statements' threatening nature," which requires, at least, a showing that the Defendant "consciously disregarded a substantial risk that [their] communications would be viewed as threatening violence." 600 U.S. 66, 69. Importantly, the Court clarified that the reason for imposing this subjective intent requirement was to ensure that prosecution of alleged "true threats" does not have a "chilling effect" on "non-threatening expression." *Id.*, 75, citing, *inter alia*, *Philadelphia Newspapers, Inc. v. Hepps*, 475 U. S. 767, 777, 106 S. Ct. 1558, 89 L. Ed. 2d 783 (1986);

Mishkin v. New York, 383 U. S. 502, 511, 86 S. Ct. 958, 16 L. Ed. 2d 56 (1966); *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 340, 342, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974). Such protections are necessary, the Court explained, in order to "provide 'breathing room' for more valuable speech," and to ensure "the uninhibited, robust, and wide-open debate that the First Amendment is intended to protect." *Id.*, 75–78, citing, *inter alia*, *Rogers v. United States*, 422 U. S. 35, 95 S. Ct. 2091, 45 L. Ed. 2d 1 (1975); *United States v. Alvarez*, 567 U. S. 709, 717-718, 132 S. Ct. 2537, 183 L. Ed. 2d 574 (2012). Otherwise, "given the ordinary citizen's predictable tendency to steer 'wide of the unlawful zone,'" there would be a tendency to "swallow words that are in fact not true threats" in "fear of mistaking whether a statement is a threat," "[in] fear of the legal system getting that judgment wrong," "[or in] fear, in any event, of incurring legal costs." *Id.*, 77–78, citing, inter alia, *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S. Ct. 710, 11 L. Ed. 2d 686.

Here, the allegedly "intimidating" Facebook post at issue, even construed most favorably to the State, does not come close to meeting the controlling "true threat" standards required for removing Ford's speech from the "special protection" provided by the First Amendment for "speech on public issues." *Black, Bey*, *supra.*

It is indeed clear from the plain language of the post itself—which was specifically addressed to four public officials of the City of Norwalk, and specifically accused these officials of "corruption," detailing numerous instances of alleged corruption, and imploring these public officials to "do [their] jobs," "do what is right," and "follow the laws"—that Ford's message was expressly political. In this post—which was posted publicly, to Ford's heavily trafficked Facebook page, in the context of these Norwalk officials having charged Ford with falsification in the Norwalk Municipal Court in Case No. CRB2300710A—Ford specifically demands that these Norwalk officials "end this," referring to the criminal charges against her, "in a respectable manner," and states that if they do not meet this demand, she will "slowly crumble [their] reputation," and "drag

[them] through the court of public opinion." Ford even specifically refers, in this post, to an expected "uptick in voter registration" that would come from the public "gearing up for [her] to run for mayor."

In this context, Ford's statement that she will "escort [these public officials] to [their] demise more akin to Malcolm X as opposed to Martin Luther King Jr.," on which the State's entire argument for criminal liability on these charges depends—plainly refers to the alleged victims' *political* demise, and cannot possibly be reasonably construed as reflecting "a serious expression of intent to commit an act of unlawful violence" upon these men. *Black*, *supra*. This is especially so given the complete lack of any additional evidence showing that Ford displayed any other "threatening" conduct toward these officials, or intended to physically harm *anyone*.

A verdict to the contrary could not possibly reflect the "authoritative construction" of R.C. 2921.03 that Ohio Law and the First Amendment require (*Schwarzwalder, supra.*), and would undoubtedly have a prohibited chilling effect on all manner of First-Amendment-protected political discourse and other speech. *Counterman*, *et al.*, *supra*. Such a result would in fact strike at the foundation of our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *NY Times v. Sullivan*, 376 U.S. 254, 270.

For these reasons, set forth more fully below, this Court must acquit Ms. Ford on Counts 10, 12, 14, and 16 of the indictment, and uphold the First Amendment and its robust protections of political speech.

II. Statement of Pertinent and Undisputed or Undisputable Facts

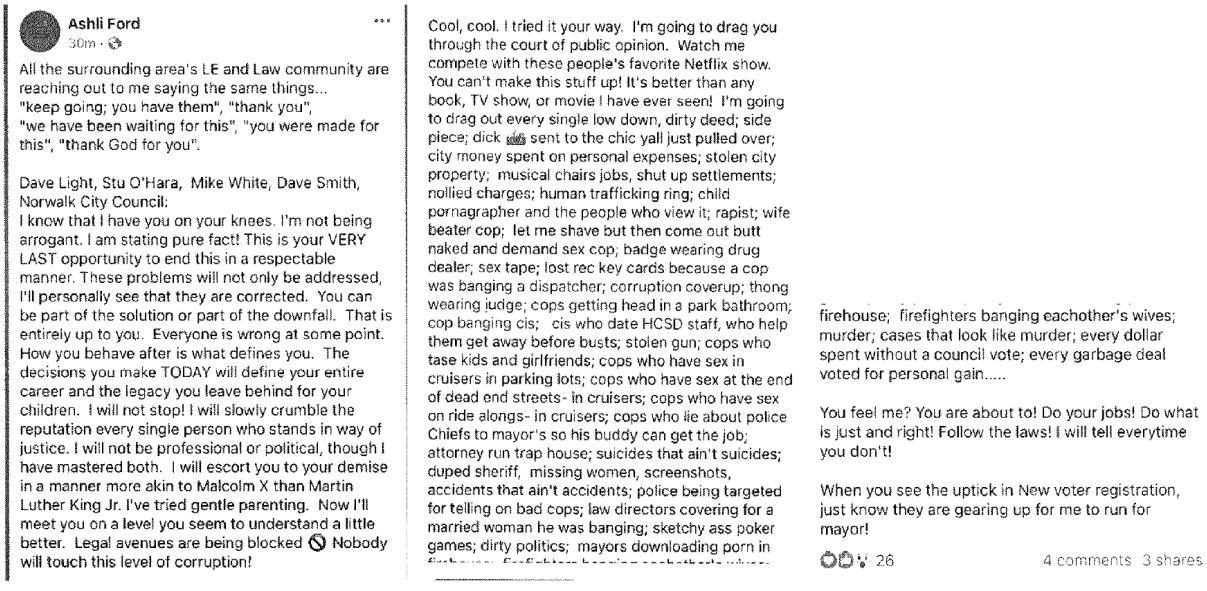
On May 22, 2025, this Court entered a verdict, after a bench trial, acquitting Defendant Ashli Ford of nine felony counts of Extortion, three felony counts of Telecommunications Fraud, and three misdemeanor counts of Falsification, while convicting Ford of four counts of Intimidation

under R.C. 2921.03, a third-degree felony.

A. The State's "intimidation" charges against Ford—a podcaster and social commentator who advocates against and comments upon corruption in local government and who has a relatively large following—depend entirely on a single post that Ford published to her Facebook page, in which she states that "she will escort [certain public officials of the City of Norwalk] to their demise in a manner more akin to Malcolm X than Martin Luther King Jr."

It is undisputed that Ms. Ford is a podcaster and social commentator who regularly advocates against and comments upon what she deems to be corruption in local government. As the State notes in its trial brief (p. 2), Ford "conducts podcasts and posts pictures, articles, comments, and other information about people and events from her home in Erie County," including on certain unsolved criminal cases. It is further undisputed that Ford has a relatively large following for her work. The State's trial brief, for example, (at p. 3) refers to one podcast that Ford had posted to Facebook having been "shared by 486 people" at Ford's request.

The factual predicate for every one of the intimidation counts on which Ford was convicted—Counts 10, 12, 14, and 16 of the indictment—was a single Facebook post, that Ford posted publicly to her page, which is reproduced, in full, as follows:



Ashli Ford
30m ·

All the surrounding area's LE and Law community are reaching out to me saying the same things...
"keep going; you have them", "thank you",
"we have been waiting for this", "you were made for this", "thank God for you".

Dave Light, Stu O'Hara, Mike White, Dave Smith, Norwalk City Council:
I know that I have you on your knees. I'm not being arrogant. I am stating pure fact! This is your VERY LAST opportunity to end this in a respectable manner. These problems will not only be addressed, I'll personally see that they are corrected. You can be part of the solution or part of the downfall. That is entirely up to you. Everyone is wrong at some point. How you behave after is what defines you. The decisions you make TODAY will define your entire career and the legacy you leave behind for your children. I will not stop! I will slowly crumble the reputation every single person who stands in way of justice. I will not be professional or political, though I have mastered both. I will escort you to your demise in a manner more akin to Malcolm X than Martin Luther King Jr. I've tried gentle parenting. Now I'll meet you on a level you seem to understand a little better. Legal avenues are being blocked 🚫 Nobody will touch this level of corruption!

Cool, cool. I tried it your way. I'm going to drag you through the court of public opinion. Watch me compete with these people's favorite Netflix show. You can't make this stuff up! It's better than any book, TV show, or movie I have ever seen! I'm going to drag out every single low down, dirty deed; side piece; dick 🍆 sent to the chic yall just pulled over; city money spent on personal expenses; stolen city property; musical chairs jobs, shut up settlements; nollied charges; human trafficking ring; child pornagrapher and the people who view it; rapist; wife beater cop; let me shave but then come out butt naked and demand sex cop; badge wearing drug dealer; sex tape; lost rec key cards because a cop was banging a dispatcher; corruption coverup; thong wearing judge; cops getting head in a park bathroom; cop banging cis; cis who date HCSD staff, who help them get away before busts; stolen gun; cops who tase kids and girlfriends; cops who have sex in cruisers in parking lots; cops who have sex at the end of dead end streets- in cruisers; cops who have sex on ride alongs- in cruisers; cops who lie about police Chiefs to mayor's so his buddy can get the job; attorney run trap house; suicides that ain't suicides; duped sheriff, missing women, screenshots, accidents that ain't accidents; police being targeted for telling on bad cops; law directors covering for a married woman he was banging; sketchy ass poker games; dirty politics; mayors downloading porn in

firehouse; firefighters banging eachother's wives; murder; cases that look like murder; every dollar spent without a council vote; every garbage deal voted for personal gain.....

You feel me? You are about to! Do your jobs! Do what is just and right! Follow the laws! I will tell everytime you don't!

When you see the uptick in New voter registration, just know they are gearing up for me to run for mayor!

26 4 comments 3 shares

Both in its trial brief (at pp. 13–15) and at trial, the State focused on Ford's statement in this

post—which was expressly directed to the City of Norwalk's leading public officials, Mayor Dave Light, Law Director and Prosecutor Stuart O'Hara, Safety & Service Director Mike White, former Police Chief Dave Smith, and "Norwalk City Council" as a group—that "I will escort you to your demise in a manner more akin to Malcolm X than Martin Luther King Jr." The State specifically noted in its trial brief (at pp. 14–15), and at trial, that "[w]hile Martin Luther King Jr. was shot by a single bullet, Malcolm X was killed after being shot 21 times." It is from this tenuous connection alone—completely divorced from the plain language of the remainder of Ford's post, and its real-world political context—that the State has asked this Court to infer that Ford's statement constituted a serious expression of intent to bring about the *literal* demise of these public officials, as opposed to their *political* demise. There was not a single piece of additional evidence entered at trial, nor does any such evidence exist, to suggest that Ford—who has no criminal record prior to this case—seriously intended to cause harm to any of these alleged victims or anyone.

B. The plain language and real-world context of Ford's allegedly "intimidating" Facebook post—which was made in response to Norwalk officials having brought dubious criminal charges against Ford in a separate case—plainly demonstrate that Ford was referring to the *political* demise of these officials, and was not expressing any true threat of harm against them. This was quintessential political speech, however "vehemently," "caustically," "foolishly," or "immoderately" expressed, that is entitled to the "highest rung" of First Amendment protection.

It is undisputed that the Facebook post at issue was published on September 22, 2023. It is further undisputed, as noted in the State's trial brief (p. 4–5) that "at the time [Ford] made the [post], she had been charged in the Norwalk Municipal Court with two counts of Falsification in Case No. CRB2300710A." Additionally, it is undisputed that "David Smith was the police chief of Norwalk when the criminal matter against Defendant was initiated and he was listed as a complainant in the matter," "Mike White was the Safety/Service Director" and the alleged "victim of the Norwalk Falsification charges," and that the other so-called "targets" of this Facebook post (*i.e.,* Mayor Light and the Council Members) "were witnesses in the [Norwalk] case." State's Trial Br. pp. 4–5.

In this context, the plain language of the post leaves no doubt that Ford is expressing her criticism of these public officials in bringing these charges against her, as well as criticizing them for other instances of alleged "corruption" that her post specifically identifies. In this post, Ford specifically demands that these Norwalk officials "end this in a respectable manner," referring to the criminal charges against her, and states that if they do not meet this demand, she will "slowly crumble [the] reputation [of] every single person who stands in [the] way of justice." It is only two sentences after this reference to "crumbling the reputation" of these officials that Ford includes the line about "escorting [them] to their demise," and only five sentences after that when Ford specifically clarifies that she is "going to drag [them] through the court of public opinion." At this point Ford references various instances of alleged corruption, including numerous instances of alleged sexual misconduct, "city money spent on personal expenses," "stolen city property," "musical chairs jobs," "dirty politics," and "dollar[s] spent without council vote." Ford then concludes her post by imploring these public officials to "do [their] jobs," "do what is right," and "follow the laws," and ends by stating to these officials that when they "see the uptick in voter registration," they should "know" that the public is "gearing up for me to run for mayor."

Thus, the political context and nature of this post could hardly be more clear. To infer that Ford's reference to the "demise" of these public officials referred to anything but their political demise, let alone that she intended to express a true and serious threat of harm to these people or anyone, would be completely contradicted by the record. It would also fly in the face of bedrock constitutional jurisprudence set forth by our State's and Nation's highest courts, as summarized below. *See e.g. Baumgartner v. United States*, 322 U.S. 665, 673-674, 64 S.Ct. 1240, 88 L.Ed. 1525 (1944) ("One of the prerogatives of American citizenship is the right to criticize public men and measures —and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation."); *Sullivan, supra* ("[W]e consider this case against our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-

open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.").

III. Law and Argument

A. The First Amendment protects both the right to petition the government for redress of grievances, and the right to criticize public officials.

The rights to "petition the government for a redress of grievances" and criticize public officials are protected activities under the First Amendment. *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217, 222, 88 S. Ct. 353, 19 L. Ed. 2d 426, (1967); *New York Times Co. v. Sullivan*, 376 U.S. 254, 273, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). "The right of the people to petition the government for a redress of grievances [is indeed] among the most precious of liberties safeguarded by the Bill of Rights and the Ohio Constitution." *Middletown v. Ferguson*, 25 Ohio St.3d 71, 83, 495 N.E.2d 380 (1986). Thus, the U.S. Supreme Court has "repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil." *United Mine Workers* at 222.

As the Sixth Circuit has explained, "[n]othing in the First Amendment itself suggests that the right to petition for redress of grievances only attaches when the petitioning takes a specific form." *Holzemer v. City of Memphis*, 621 F.3d 512, 521 (6th Cir. 2010). "Legitimate complaints [do not] lose their protected status simply because they are spoken," and "the form of expression—*i.e.*, written or oral—[does not] dictate whether constitutional protection attaches." *Id.* To "petition" is simply to "address[ ] government and ask[] government to fix what, allegedly, government has broken or has failed in its duty to repair." *Id.*, citing *San Filippo v. Bongiovanni*, 30 F.3d 424, 442, 1994 U.S. App. LEXIS 18055 (3d Cir. 1994). Mr. Ford's Facebook post criticizing Norwalk officials, in the wake of their orchestration of baseless criminal charges against her, and imploring upon them to

"follow the law" and drop their pursuit of these criminal charges, are patently within this category of protected speech.

B. Statutes criminalizing speech must be construed authoritatively to accommodate the First Amendment and may not be applied to sanction allegedly threatening, intimidating, or harassing speech even where that speech is angry, vulgar, insulting, and offensive, unless the "true threat" standards announced by the U.S. Supreme Court are met.

The Supreme Court of Ohio has repeatedly held that where both speech and conduct [are sought to be] punished" under a criminal statute, that statute "must," "in order to pass constitutional muster," be "authoritatively construed." *Columbus v. Schwarzwalder*, 39 Ohio St.2d 61, 62–63, 313 N.E.2d 798 (1974). As this State's highest court has made clear, the very "purpose of authoritative judicial construction of [such] statutes and ordinances is to narrow and refine overly broad and vague statutes and render them ... not susceptible of application to speech, although vulgar or offensive, that is protected by the First and Fourteenth Amendments." *State v. Schwing*, 42 Ohio St.2d 295, 300-301, 328 N.E.2d 379 (1975).

Likewise, the U.S. Supreme Court has made clear that speech is "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, 4-5, 69 S.Ct. 894, 93 L.Ed. 1131 (1949); *Whitehill v. Elkins*, 389 U.S. 54, 57, 88 S.Ct. 184, 19 L.Ed.2d 228 (1967). "There is no room under our Constitution for a more restrictive view," because "the alternative would lead to standardization of ideas." *Terminiello* at 4.

Thus, allegedly "threatening" or "intimidating" speech may only be subject to criminal sanction when it "means to communicate" a "true threat," *i.e.*, "a *serious* expression of intent to commit an act of unlawful violence to a particular person or group of individuals" (*Virginia v. Black*, 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L. Ed. 2d 535 (2003)); a threat "so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose

and imminent prospect of execution." *New York v. Operation Rescue Natl.*, 273 F.3d 184, 196 (2d Cir.2001), citing, *inter alia*, *Terminiello v. Chicago*, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949).

C. The U.S. Supreme Court has recently clarified the importance that courts ensure that the prosecution of alleged "true threats" does not have a "chilling effect" on "non-threatening expression," in order to "provide 'breathing room' for more valuable speech," and to ensure "the uninhibited, robust, and wide-open debate that the First Amendment is intended to protect."

As noted above, The U.S. Supreme Court, in *Counterman v. Colorado,* recently raised the bar for state officials seeking to criminally punish alleged "true threats" by requiring them to prove in such cases that "the defendant had some subjective understanding of [their] statements' threatening nature," which requires, at least, a showing that the Defendant "consciously disregarded a substantial risk that [their] communications would be viewed as threatening violence." 600 U.S. 66, 69.

Counterman was a case involving facts that are substantially more susceptible to criminal prosecution than this one. To wit, in *Counterman*, the defendant had sent "hundreds of Facebook messages" to the alleged victim, "a local singer and musician" who was "a total stranger" to him, including messages suggesting that he "might be surveilling" the victim, and "a number [of messages] in which defendant expressed anger at [the victim] and envisaged harm befalling her." *Id.*, 70–71. The defendant in *Counterman* was convicted "under a statute making it unlawful to 'repeatedly make any form of communication with another person in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person to suffer serious emotional distress." *Id.* (internal punctuation marks omitted).

Despite these facts, the Supreme Court reversed the conviction because the defendant "was prosecuted in accordance with an objective standard" whereby "the State had to show only that a reasonable person would understand his statements as threats." *Id.*, 82.

This result was required by the Court's holding that it was necessary for the State to show that the defendant was subjectively "aware[ ] on his part that the statements could be understood" to constitute a true threat, in order to ensure that prosecution of alleged "true threats" does not have a

"chilling effect" on "non-threatening expression." *Id.*, 75, citing, *inter alia*, *Philadelphia Newspapers, Mishkin, Gertz, supra.* The Court explained that this holding was necessary to ensure "'breathing room' for more valuable speech," and to ensure "the uninhibited, robust, and wide-open debate that the First Amendment is intended to protect." *Id.*, 75–78, citing, *inter alia*, *Rogers, Alvarez, supra.* Otherwise, "given the ordinary citizen's predictable tendency to steer 'wide of the unlawful zone,'" there would be a tendency to "swallow words that are in fact not true threats" in "fear of mistaking whether a statement is a threat," "[in] fear of the legal system getting that judgment wrong," "[or in] fear, in any event, of incurring legal costs." *Id.*, 77–78, citing, *inter alia*, *N.Y. Times v. Sullivan*, *supra.*

The same considerations undoubtedly apply here, where, unlike in *Counterman*, Ford's speech cannot even be objectively, let alone subjectively, viewed as constituting "true threats" under the applicable and well-developed standards set forth herein.

D. Speech directed at public officials and/or pertaining to matters of public concern are entitled to the highest degree of First-Amendment protection.

Additionally, while all allegedly "intimidating," or "threatening" criminal speech must be scrutinized under the "true threat" standard set forth in *Terminiello* and its progeny, regardless of the speech's political content, a conviction of Ford on the record at issue here would also wholly contravenes the U.S. and Ohio Supreme Courts' repeated recognition that "speech on public issues occupies the highest rung of the hierarchy of First Amendment values," and "is entitled to special protection," "even [where] the speaker or writer was motivated by hatred or ill-will." *Bey v. Rasawehr*, 161 Ohio St.3d 79, 2020-Ohio-3301, P58, 161 N.E.3d 529.

Notably, The Supreme Court of Ohio in *Bey* referred to this special protection in rejecting petitioner's arguments that respondent's speech "consist[ed] of a barrage of personal attacks blended with just enough public criticism to create an illusion of debate," was "motivated by a personal grudge," and that the alleged "attacks" "did not take place on a public street." *Id.* In reaching this result, the Court affirmed that where speech "involve[s] matters of both private and public concern,

we cannot discount the First Amendment protection afforded to that expression," and that "the First Amendment's guarantee of free speech 'does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits.'" *Id.*, ¶ 59, quoting *United States v. Stevens*, 559 U.S. 460, 470, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010). *See also Baumgartner v. United States*, 322 U.S. 665, 673-674, 64 S.Ct. 1240, 88 L.Ed. 1525 (1944) ("One of the prerogatives of American citizenship is the right to criticize public men and measures —and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation."); *Bell v. Itawamba Cty. School Bd.*, 774 F.3d 280, 302-303 (5th Cir. 2014), citing *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 926-927, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982) ("The Supreme Court has cautioned that courts should be careful to keep in mind the 'public' nature of purportedly threatening speech in assessing whether it falls outside the protections of the First Amendment."); *Bey*, 2020-Ohio-3301¶ 55, citing *Snyder v. Phelps* , 562 U.S. 443, 458 , 131 S. Ct. 1207, 179 L. Ed. 2d 172, 2011 U.S. LEXIS 1903, 79 U.S.L.W. 4135, 39 Media L. Rep. 1353, 22 Fla. L. Weekly Fed. S 836. ("[S]peech does not lose its protected character simply because it may be upsetting and cause distress or embarrassment."); *Watts v. United States*, 394 U.S. 705, 706–708, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) ("'[Protester]'s remark during political debate at small public gathering that if inducted into Army (which he vowed would never occur) and made to carry a rifle 'the first man I want to get in my sights is L.B.J.,'" was protected as 'crude political hyperbole which in light of its context and conditional nature did not constitute a knowing and willful threat'"); *Pestrak v. Ohio Elections Com.*, 926 F.2d 573, 578 (6th Cir.1991), quoting *New York Times v. Sullivan*, 376 U.S. 254, 285-86, 11 L. Ed. 2d 686, 84 S. Ct. 710 (1963) ("[T]he Supreme Court has held that no punishment may be levied in areas touching on the first amendment involving public figures without 'clear and convincing evidence.'").[1]

[1] *See also*, *e.g.*, *N.A.A.C.P. v. Button*, 371 U.S. 415, 433, 83 S. Ct. 328, 338, 9 L. Ed. 2d 405 (1963) ("First Amendment freedoms need breathing space to survive [and] government may regulate in the

E. The speech for which the State seeks to convict Ford is entitled to the highest degree of First Amendment protection and is plainly protected under the "true threat" standards set forth by the U.S. Supreme Court, consistent with the authoritative construction required by the Supreme Court of Ohio. It should not be held against Ford that her prior counsel did not direct the Court to these controlling and essential precedents.

In light of the indisputably political nature and context of Ms. Ford's Facebook post as summarized in Section II above, there is no way for any reasonable trier of fact to construe Ford's statement—that she would "escort [certain Norwalk public officials] to [their] demise"—as falling

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area only with narrow specificity."); *Woodmere v. Workman*, 2022-Ohio-71, 183 N.E.3d 579, ¶ 21-23 (8th Dist.) ("As the Supreme Court has repeatedly concluded, laws have been invalidated when they 'provide the police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them.'"); *Id.*, ¶ 26 ("As it stands, the violation of R.C. 2917.11(A) was entirely based on Workman's verbal criticism and, at times, expletive-filled challenge to the police officer's authority over his speech. That conviction cannot be sustained."); *Holzemer v. City of Memphis*, 621 F.3d 512, 529 (6th Cir.2010) ("[N]o reasonable official could possibly believe that it is constitutionally permissible to retaliate against a private citizen by frustrating the operation of his business simply because he sought help from his locally elected representative."); *Reiland v. Indep. School Dist. No. 11 of Tulsa Cty.*, N.D.Okla. No. 22-CV-484-JFH-JFJ, 2022 U.S. Dist. LEXIS 198334, at *8 (Nov. 1, 2022) ("Plaintiff's criticism of the Board's decision as 'f*cking bullsh*t,' while vulgar and arguably unnecessary, is protected speech."); *Jeffords v. Columbia Cty. Bd. of Cty. Comm'rs*, M.D.Fla. No. 3:13-cv-286-J-32PDB, 2014 U.S. Dist. LEXIS 159133, at *15-16 (Nov. 12, 2014) ("A citizen who addresses a local governmental body, such as the Columbia County Board of County Commissioners, on matters of public concern, should be able to do so free of adverse consequences from the Board or its members."); *Los Angeles Teachers Union, etc. v. Los Angeles City Bd. of Edn.*, 71 Cal.2d 551, 559, 78 Cal.Rptr. 723, 455 P.2d 827 (1969); ("The petition for redress of grievances epitomizes the use of freedom of expression to keep elected officials responsive to the electorate, thereby forestalling the violence which may be practiced by desperate and disillusioned citizens. ... Therefore, although in a particular case petitioning may pose a serious threat to a valid and compelling governmental interest because of its nonspeech aspects, making limited regulation permissible, its inherently disruptive character provides no basis for valid regulation."); *Houston v. Hill*, 482 U.S. 451, 461-463, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987) ("The freedom of individuals verbally to oppose or to challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S. Ct. 710, 11 L. Ed. 2d 686 ("The First Amendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'"); *Snyder v. Phelps*, 562 U.S. 443, 460-461, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011) ("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."); *Garrison v. Louisiana*, 379 U.S. 64, 74-75, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964) ("Truth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned. ... [S]peech concerning public affairs is more than self-expression; it is the essence of self-government.")

outside of the First Amendment's robust protections for political speech, particularly where it is to seek redress of grievances against public officials.

Yet even if it were not obvious from Ford's express statements—about "crumbling their reputation[s]," "dragging them in the court of public opinion," and running for office against them herself—that she was referring to the *political* demise of these officials, and not their literal deaths, these statements would still be protected, in the complete absence of any other evidence of Ford's intent to cause harm, as mere political hyperbole.

See, for example, the U.S. Supreme Court's landmark decision in *Watts*, where the petitioner was convicted in the trial court for having told a group at a political rally, in expressing his opposition to being conscripted into the military, that "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.," referring to then-president of the United States, Lyndon B. Johnson. 394 U.S. 705, 706–708, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969). Even this statement, which unlike anything uttered by Ford here, was in fact a direct reference to causing physical violence, specifically in the form of a gunshot wound, was held to be protected under the First Amendment as "crude political hyperbole which in light of its context and conditional nature did not constitute a knowing and willful threat." *Id.*, 708. As in *Watts*, this Court must account for the fact that "the language of the political arena" "is often vituperative, abusive, and inexact," and even "very crude" and "offensive method[s] of stating political opposition" are constitutionally protected. *Id.*

Time and time again, as in the *Counterman* and *Bey* cases discussed above, our Nation's and State's highest courts have reaffirmed the principles embodied in *Watts*, and the importance of avoiding the "substantial risk of conviction for a merely crude or careless expression[s] of political enmity." *Rogers v. United States*, 422 U.S. 35, 44, 95 S.Ct. 2091, 45 L.Ed.2d 1 (1975); *See also footnote 1, supra; Virginia v. Black*, 538 U. S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003) (criminal statute unconstitutional to the extent it provided that cross-burning was "'prima facie evidence of an intent to intimidate"); *Elonis v. United States*, 575 U.S. 723, 135 S.Ct. 2001, 192 L.Ed.2d 1 (2015) (jury

instruction requiring only negligence with respect to the communication of a threat insufficient to support a conviction).

Here, as in *Watts*, it is impossible to reasonably conclude that the Defendant did anything more than engage in, at worst, "a kind of … crude" or "offensive method of stating political opposition."

It is also impossible to imagine how there could be any "breathing space" left for the First Amendment if Ford's conviction here is allowed to stand, or how any such conviction could possibly reflect an "authoritative construction" of the Intimidation statute. *Counterman*, *Button*, *Schwarzwalder, Schwing, supra*. It is in fact difficult to imagine a case that would have a greater chilling effect on free speech than this one, if a relatively prominent critic of local governmental officials and advocate against governmental corruption could be prosecuted for the speech at issue here—in the absence of any statement that could be reasonably construed as a serious expression of intent to cause harm—where governmental officials who are the very targets of the Defendant's advocacy and criticism are alleged to be the victims. The threat to our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open" would be, itself, profound. *Sullivan*, 376 U.S. 254, 270, *supra*.

In sum, while it appears that this Court reached its decision to convict Ms. Ford on the four intimidation counts in the absence of reference to the clear, essential, and controlling precedents cited in this motion, it would constitute a severe constitutional violation and miscarriage of justice to allow these convictions to stand, and it should not be held against Ford that her prior counsel did not direct the Court to these precedents. *See also, e.g.*, *State v. Laber*, 4th Dist. Lawrence No. 12CA24, 2015-Ohio-2758, ¶ 2-3, 20–26 (defendant's statements that "he thought of shooting two company co-workers," "that he had three bombs," and "would start at the front office," were not a "true threat" when they were more akin to "the ramblings of a disgruntled employee," or "a kind of very crude offensive method of stating opposition" as in *Watts;* trial counsel deemed "ineffective" for

"not having raised the free speech and constitutionality issue") (*discretionary appeal denied* at 2015-Ohio-5468).

IV. Conclusion

For the reasons set forth above, Ms. Ford, respectfully requests that this Honorable Court uphold the First Amendment's most essential protections by acquitting her on Counts 10, 12, 14, and 16 of the Indictment.

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 2, 2025, a copy of the foregoing document was filed with the Court and emailed to the prosecuting attorney at prosecutor@eriecounty.oh.gov and kbaxter@eriecounty.oh.gov

/s/ Peter Pattakos
Attorney for Defendant Ashli Ford