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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL**

STATE OF ARIZONA,

Plaintiff,

vs.

SHAWN MAIN,

Defendant,

L ■■■ F ■■■ -E ■■■■.

Crime Victims' Representative.

Pinal County Superior Court No.
CR201503954

**CRIME VICTIM
REPRESENTATIVE'S
OBJECTION TO DEFENDANT'S
MOTION TO STAY
PROCEEDINGS PENDING
RESOLUTION OF SPECIAL
ACTION**

(Hon. Delia Neal)

Crime Victims' Representative, L ■■■ F ■■■ -E ■■■■, respectfully files this objection to the Defendant's *Motion to Stay Proceeding Pending Resolution of Special Action*.

Ms. F ■■■ -E ■■■■'s objection to any stay is rooted in the constitutional right to be treated with fairness, respect and dignity, to be free from intimidation,

harassment, and abuse, and to a speedy trial or disposition and prompt and final conclusion of the case. Ariz. Const. art. II, §§ 2.1(A)(1) & (10). Ms. F■■-E■■■■ has standing on behalf of the child-victims' to assert and enforce rights guaranteed under the Arizona Victims' Bill of Rights on their behalf. A.R.S. § 13-4437(A)(the victim has standing to seek an order to enforce or to challenge an order denying any right guaranteed to victims); A.R.S. § 13-4403(C)(if the victim is a minor, their parent or other family member may assert rights on their behalf). The present request for a stay by Defense should be denied as it violates the aforementioned rights guaranteed by the Arizona Constitution.

Additionally, Defendant's Motion to Stay fails to meet the burden set forth under Arizona law. In Arizona, a request for a stay made in conjunction with a special action should be evaluated similar to a preliminary injunction based on the following elements:

1. a strong likelihood of success on the merits;
2. irreparable harm if the stay is not granted;
3. that the harm to the requesting party outweighs the harm to the party opposing the stay; and
4. that public policy favors the granting of the stay.

Smith v. Ariz. Citizens Clean Elections Comm'n, 212 Ariz. 407, 410-11, ¶ 10 (2006) (citing *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App.1991)). In seeking a stay, the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and the

balance of hardships is heavily in favor of the moving party. *Id.*

Defense Counsel has failed to meet either burden. Defense Counsel states the need to prepare and submit a reply for a special action and “cannot adequately prepare for pending matters herein while also adequately addressing the pending special action.” Def. Mot. to Stay, page 4, lines 1-3. However, merely stating the need to reply to a motion and prepare for any further potential oral argument fails to show irreparable injury. More generally, Defendant’s motion merely states the evidence sought is material to her defense at trial. *Id.* at page 3, lines 26-27. Again, this statement fails to make any showing of how continuing other trial preparations would cause irreparable harm. In fact, Defendant’s own motion mentions that co-counsel is working on a second capital case; there is no discussion that working on presumably an equally important case is hampering the full attention of counsel in the current case.

Additionally, Defense Counsel states co-counsel will be traveling on “two back-to-back out-of-state mitigation related trips.” *Id.* at page 3, lines 14-17. Likewise, Defense states that co-counsel has “collaborated, contributed, reviewed, and made revisions on most motions filed in this matter.” *Id.* at page 3, lines 19-21. These statements provide no timetable or length of the trips or how these factors would cause irreparable harm. Given there are multiple attorneys representing Defendant, presumably the attorney tasked with handling motion practice could

prepare the motion while co-counsel is working on other issues. Lastly, the reasons listed would be more applicable to a request for extension of time in reply to the special action—not a request to stay the current proceedings.

For the reasons set forth above, Ms. F■■-E■■■■■ respectfully requests this court deny Defendant’s request for a stay of the proceedings.

Respectfully submitted this 11th day of September, 2019.

By: _____
Colleen Clase
Attorney for Ms. F■■-E■■■■■

Motion filed with the Clerk of the Court
on this 11th day of September, 2019.

Copies also e-mailed to:

The Honorable Delia Neal
Judge of the Pinal County Superior Court

Shawn Jensvold
Vince Goddard
Deputy County Attorneys

Chester Lockwood
Cody Weagant
Counsel for Defendant