

1 David Chami, AZ Bar No. 027585
2 dchami@consumerattorneys.com
3 Michael Yancey, AZ Bar No. 37187
4 myancey@consumerattorneys.com
5 CONSUMER ATTORNEYS, PLC
6 8245 N. 85th Way
7 Scottsdale, Arizona 85258
8 T: (480) 626-2359

9 Attorneys for Plaintiffs

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Aída Esmeralda Campos; Amy O'Neill;
13 Autumn Byars; Beldaja Jama; Breanna
14 Broker; Emma Davis; Fatima Jabardi;
15 Guadalupe Chavez Morales; Harry Smith;
16 Ian Sherwood; José Maciel; Michaela
17 Koert; Mya Vallejo; Michael Phillips
18 Clancy; Nolan Quinn; Noor Odeh; Rachel
19 Lim; Rebecca Huang; Salam Jabaieh; and
20 Zahra Alam.,

21 *Plaintiffs,*

22 v.

23 Arizona Board of Regents d/b/a Arizona
24 State University, a constitutionally created
25 body corporate; Joanne Vogel, Lance
26 Harrop, Brian Reece, & Does I-X,

27 *Defendants.*

Case No. CV-24-00987-PHX-JJT

FIRST AMENDED COMPLAINT
JURY TRIAL DEMANDED

28 Plaintiffs Aída Esmeralda Campos, Amy O'Neill, Autumn Byars, Beldaja Jama,
Breanna Broker, Emma Davis, Fatima Jabardi, Guadalupe Chavez Morales, Harry Smith,

1 Ian Sherwood, José Maciel, Michaela Koert, Mya Vallejo, Michael Phillips Clancy, Nolan
2 Quinn, Noor Odeh, Rachel Lim, Rebecca Huang, Salam Jabaieh, and Zahra Alam (together
3 as “Plaintiffs”) bring this action against the Arizona Board of Regents (“ABOR”) (d/b/a
4 Arizona State University or “ASU”), Joanne Vogel, Lance Harrop, Brian Reece, and Does
5 I-X, and allege as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has Jurisdiction to hear this matter pursuant to 28 U.S.C. § 1331
8 and 42 U.S.C. § 1983 because Plaintiffs allege a violation of the First Amendment to the
9 United States Constitution.

10 2. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because
11 Defendant ABOR is a public Arizona entity with the capacity to sue and be sued in its
12 common name under applicable law in this Court and therefore resides in Arizona. The
13 remaining Defendants also reside in Arizona Venue is also proper here pursuant to 28
14 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the
15 claim occurred in the District.

16 **PARTIES**

17 3. Plaintiffs are students currently enrolled at Arizona State University.

18 4. Defendant ABOR is a constitutionally created body corporate established by
19 the Arizona Constitution as the governing body for Arizona’s state university system.

20 5. Defendant Joanne Vogel is the Vice President of Student Services in
21 Educational Outreach and Student Services.

22 6. Defendant Lance Harrop is the Dean of Students at Arizona State
23 University’s Tempe campus.

24 7. Defendant Brian Reece is the Associate Dean of Students at Arizona State
25 University’s Tempe campus.

26 8. Plaintiffs do not know the true names, but are informed and believe, and on
27 that basis allege, that the Defendants sued herein as Does I through X are in some manner
28 legally culpable for the damages suffered by the Plaintiffs. On such information and belief,

1 Plaintiffs allege that the list of Doe Defendants I-X includes officers, agents and employees
2 of ABOR involved in the decision to unilaterally suspend Plaintiffs from enrollment at
3 ASU following the events of April 26, 2024, and April 27, 2024.

4 9. All acts and omissions of Defendants as alleged herein are alleged to have
5 been committed through agents of Defendants acting within the course and scope of their
6 agency, including members of the ASU administration and members of the ASU campus
7 police department.

8 **FACTS**

9 10. On or about April 26, 2024, Plaintiffs joined a large group of like-minded
10 individuals in front of the conference center known as “Old Main” on the Tempe campus
11 of ASU in order to peacefully protest the United States’ involvement in current events
12 taking place in the Middle East.

13 11. The protest format was that of a “sit in”, where participants make their protest
14 known through their presence, gathering in solidarity.

15 12. At no time were Plaintiffs violent, disruptive, or dangerous.

16 13. At no time did Plaintiffs assault, harass, or otherwise intimidate anyone.

17 14. The sit in protest lasted through the evening, until at or around 11:30pm ASU
18 campus police began forcibly removing protesters and arresting any individuals who
19 refused to voluntarily leave.

20 15. Plaintiffs were among those who refused to voluntarily leave and were
21 consequently arrested on charges of trespassing.

22 16. From the outset ASU police made their intentions clear; they fully intended
23 to break up any protest, peaceful or otherwise.

24 17. In fact, at or around 9am on the 26th, Plaintiff Harry Smith was arrested for
25 no apparent reason. In fact, later that day the court and prosecutor dropped all charges
26 against Plaintiff Smith for lack of any probable cause for the arrest.

27 18. Despite the charges being dropped, Mr. Smith has faced identical boiler plate
28 charges by Defendant resulting in Mr. Smith being kicked out of his student housing

1 rendering him temporarily homeless.

2 19. On or about April 28th, Plaintiffs began receiving messages from ASU
3 administration informing them that their enrollment at the school had been suspended,
4 effective immediately.

5 20. The messages further informed Plaintiffs that they were not permitted back
6 on ASU campus grounds, on threat of arrest for trespassing.

7 21. The messages also informed Plaintiffs that they were prohibited from
8 communicating with any ASU faculty or staff, including professors.

9 22. ASU's decision to suspend Plaintiffs, ban Plaintiffs from the ASU campus,
10 and prohibit communication with Plaintiffs' professors, made just as semester finals are
11 about to be administered, has effectively made it inevitable that Plaintiffs will all fail their
12 classes this semester.

13 23. Being suspended and banned from the campus, Plaintiffs cannot attend the
14 semester finals in person.

15 24. Being prohibited from communicating with their professors, Plaintiffs
16 cannot make arrangements to take the semester finals remotely.

17 25. ASU's disciplinary actions – related to the Plaintiffs' exercise of free speech
18 – were taken without providing advanced written notice and without affording Plaintiffs
19 the opportunity to review the evidence in support of ASU's allegations, confront any
20 witnesses against them, to present a defense, or to call witnesses before an impartial person
21 or panel, in violation of A.R.S. § 15-1866.

22 26. Further, ASU's disciplinary actions were taken without providing Plaintiffs
23 the right to an appeal or the right to active assistance of counsel, in violation of A.R.S. §
24 15-1866.

25 27. ASU's decision to enact harsh, immediate disciplinary action without any
26 recourse was based solely upon the anti-Israel message being communicated by Plaintiffs'
27 protest.

28 28. There were fraternity members nearly partying, drinking, and videoing the

1 events of the protests when Plaintiffs were arrested; ASU chose to arrest and discipline the
2 protesters instead of the bystanders, demonstrating the targeted nature of ASU's actions.

3 29. ASU therefore retaliated against Plaintiffs on the basis of Plaintiffs'
4 expression of protected free speech, and – absent immediate Court intervention – ASU's
5 retaliation will have significant and detrimental effects on the Plaintiffs' academic futures
6 and livelihoods.

7 **COUNT I – FIRST AMENDMENT RETALIATION**

8 **42 U.S.C. § 1983 – U.S. CONST. AMEND. I**

9 30. Plaintiffs incorporate by reference all other paragraphs in this Complaint as
10 though fully alleged herein.

11 31. ABOR and Does I-X are persons as that term is used under 42 U.S.C. § 1983.

12 32. ABOR and Does I-X, in their individual capacity and as the final decision-
13 making authority on behalf of ASU, were acting under the color of law when engaging in
14 the actions set forth in the preceding paragraphs.

15 33. The actions set forth in the preceding paragraphs deprived Plaintiffs of their
16 right to be free from retaliation for exercising their First Amendment rights under the
17 United States Constitution.

18 34. The peaceful sit-in in which Plaintiffs engaged is a constitutionally protected
19 activity that did not involve substantial disruption of or material interference with school
20 activities.

21 35. Suspending Plaintiffs indefinitely, banning Plaintiffs from setting foot on
22 campus, and prohibiting Plaintiffs from communicating with their professors just prior to
23 the administration of final exams, all for engaging in a peaceful sit-in, would chill a person
24 of ordinary firmness from continuing to engage in the constitutionally protected activity.

25 36. The Plaintiffs' act of participating in a peaceful sit-in to bring attention to
26 politically significant actions on the part of the United States government – including
27 sending aid to Israel – was a substantial or motivating factor in Defendants' decision to
28 punish and suspend Plaintiffs from enrollment at ASU.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- by the trier of fact;
5. A declaration that Defendants violated Plaintiffs' constitutional rights;
 6. Pre-judgment and post-judgment interest;
 7. Attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
 8. Any such other and further relief as the Court deems just and proper.

Respectfully submitted this 8th day of May 2024,

/s/David Chami

David Chami, AZ Bar No. 027585

dchami@consumerattorneys.com

Michael Yancey, AZ Bar No. 37187

myancey@consumerattorneys.com

CONSUMER ATTORNEYS, PLC

8245 N. 85th Way

Scottsdale, Arizona 85258

T: (480) 626-2359

Attorneys for Plaintiffs