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11 **ARIZONA SUPREME COURT**

12 **PETITION TO AMEND RULE 12.9,
13 ARIZONA RULES OF CRIMINAL
14 PROCEDURE**

15 R-20-0041
16 MARICOPA COUNTY ATTORNEY'S
17 COMMENT IN OPPOSITION

18 The Petition seeks to eliminate Criminal Rule 12.9's requirement that challenges
19 to a grand jury presentation be filed within 45 days of the certification of the transcript
20 and minutes or within 45 days of arraignment, whichever is later. Instead, the Petition
21 would allow such a challenge to be raised at any time prior to trial. The Petition does
22 not present any reasons for this requested change other than a general reference to the
23 federal system without any citation or specific discussion.

24 The proposed change would be a complete departure from the intent of the rule
25 and would serve no purpose other than to inject delay and uncertainty into the trial
26 process. The parties, court, and victims must be able to move past the probable cause
27 process within a time certain and focus on the next steps of the case as it proceeds
28 towards trial. Recognizing that sufficient time to file a motion for remand is needed,

1 this Court increased the time to file a challenge to grand jury proceedings from 25 to
2 45 days in 2018.

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4 The purpose of a motion to remand is to challenge the probable cause finding
5 made by a grand jury. The only basis for a remand is that a defendant was denied a
6 substantial procedural right or there were irregularities regarding the number of
7 qualified jurors who voted to indict. Ariz. R. Crim. P. 12.9(a). It does not take more
8 than 45 days after receiving a transcript to determine if the limited grounds for a remand
9 exist. The grand jury's function is to determine if probable cause exists for a charge,
10 not to conduct a mini trial. Petitioner's request will inject unnecessary delay into the
11 proceedings with no corresponding benefits. The current rule provides sufficient time
12 for the parties to litigate the grand jury presentation. This Court should deny the
13 Petition.
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17 Respectfully submitted this 3rd day of May 2021.

18 ALLISTER ADEL
19 MARICOPA COUNTY ATTORNEY

20 By /s/ Kenneth N. Vick
21 KENNETH N. VICK
22 CHIEF DEPUTY
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