

1 **RESNICK LAW GROUP, PLLC.**
100 North Stone Avenue, Suite 801
2 Tucson, Arizona 85701
Telephone: (520) 903-9938
3 Facsimile: (520) 882-8622
4 **Mark R. Resnick, SB# 19272, PCC# 65338**
resnicklawfirm@gmail.com
mresnick@resnicklawgroup.net
5 Attorney for Defendant

6
7 **IN THE ARIZONA SUPERIOR COURT**
8 **FOR THE COUNTY OF PIMA, STATE OF ARIZONA**

9 STATE OF ARIZONA,
10 Plaintiff,

11 v.

12 LANE MYERS,
13
14 Defendant.

Case No. CR20251060-001

**DEFENDANT'S MOTION TO DISMISS
PROBATION REVOCATION PETITION**

Assigned: Hon. D. Metcalf

15
16
17 COMES NOW Defendant, LANE MYERS, by and through undersigned counsel and hereby
18 moves this honorable court to dismiss the probation revocation petition filed by the adult probation
19 office as well as the petition and amended petitions filed by the Pima County Attorney's Office in the
20 above-captioned matter. This motion is made pursuant to Art. II, § 6, Ariz. Const. and Amend. I,
21 U.S. Const. as well as the arguments set forth in the attached Memorandum of Points and Authorities.
22

23 Together, they demonstrate that the violations alleged in the petition stem directly from
24 defendant's exercise of the right of free speech, freedom of the press, and right to petition the
25 government on matters of significant public interest.
26

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARIZONA'S CONSTITUTION PROVIDES GREATER PROTECTIONS TO SPEECH THAN DOES THE U.S CONSTITUTION.

Pursuant to Article 2, Section 6 of the Arizona Constitution states: "Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right." Art. II, § 6, Ariz. Const. The protections of this language are broader than the First Amendment to the United States Constitution, which states in relevant part that "Congress shall make no law abridging the freedom of speech, or of the press; or of the right of the people to petition the government for redress of grievances." Amend I, U.S. Const. While the First Amendment "is phrased as a constraint on government," Article 2, Section 6 of the Arizona Constitution "is a guarantee of the individual right to 'freely speak, write, and publish,' subject only to constraint for the abuse of that right." *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281, ¶ 45 (2019) (quoting, *Stummer*, 219 Ariz. at 142, ¶ 14).

II. PROBATION CONDITIONS WHICH IMPLICATE ARTICLE 2 SECTION 6 OF THE ARIZONA CONSTITUTION AND/OR THE FIRST AMNDMENT TO THE US CONSTITUTION ARE SUBJECT TO HEIGHTENED SCRUTINY.

III. Probation "[c]onditions that unquestionably restrict otherwise inviolable constitutional rights may properly be subject to special scrutiny to determine whether the limitation does in fact serve the dual objectives of rehabilitation and public safety." *State v. Davis*, 119 Ariz. 140, 141–42 (App. 1978). Arizona courts have consistently applied a "reasonable nexus" standard when evaluating probation conditions that impinge upon free speech and association rights. The foundational rule, drawn from *State v. Davis* asks whether there is a reasonable nexus between the conditions imposed

1 and the goals to be achieved by the probation — namely, rehabilitation and public safety. *State v.*
2 *Davis*, 119 Ariz. 140, 579 P.2d 1110 (Ct. App. 1978),

3 In this case, the defendant was on probation and timely filed a petition to modify and clarify his
4 conditions of probation and posted videos that discussed his case. While *Davis* establishes that a
5 nexus must exist between the conditions of probation and goals of rehabilitation, conditions that
6 restrict constitutional rights receive higher scrutiny. *Id.*

7
8 Further, in examining that nexus and the restrictive effect upon the probationer, Arizona's
9 broader protections of speech in the context of probationers establishes limits. It states, "something
10 more than governmental inconvenience is necessary to support a restriction on speech," and courts
11 may not dilute speech protections "merely for reasons of administrative ease, policy preference, or
12 other regulatory convenience." *State v. Campo*, No. 1 CA-CR 25-0241, 2026 WL 2474010 (Ariz. Ct.
13 App. Aug. 24, 2026). In *Campo*, the court determined that, while the probationer was enjoined
14 from recording his therapy and court-related probation proceedings, the probationer remained free to
15 communicate about his therapy, the victim, and those proceedings.

16
17 In the instant case, the evidence deduced at the revocation hearing has shown that Mr.
18 Myers did no more than the probationer in *Campo*. All of his videos were discussions of his case and
19 his opinions about the case, his victim and the system that convicted him. This was made clear by
20 the testimony of his probation officer, his probation officer's supervisor and the victim's husband.

21
22 A. The state may not enjoin or lessen the defendant's participation in independent journalism for
23 the convenience of probation.

24 The government cannot ban speech before it occurs. This position constitutes prior
25 restraint and violates the first Amendment, See, *Near v. Minnesota*, 239 U.S. 697, 51 S.Ct.

625 (1931); *Lovell v. City of Griffin*, 303 U.S. 444, 58 S.Ct. 666 (1938), *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 108 S.Ct. 2138 (1988). The defendant is not a member of the broadcast media and is, therefore, immune from restrictions pursuant to *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 89 S.Ct. 1794 (1969). Finally, as an internet journalist, defendant is protected to the highest level of First Amendment scrutiny. See, *Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S.Ct. 2329 (1997).

As a citizen journalist, the defendant was entitled to heightened scrutiny of his speech, and the state was required to show that the probation conditions were narrowly drawn so as not to restrain that constitutionally-protected speech.

B. Posting on Social Media is not Harassment Pursuant to the First Amendment and Arizona Courts' Interpretations Thereof.

Where speech is Constitutionally-protected, Arizona harassment statutes do not apply. A.R.S § 13-2921(C). (“this section does not apply to... Constitutionally protected *speech or activity*” (**emphasis added**)), See also, *Gregorwicz v. Villa-Kennedy*, 1CA-CV-25-0510 FC, quoting, *State v. Brown*, 207 Ariz. 231, 235 (App. 2004) (A.R.S. §13-2921 “does not apply to pure First Amendment speech and instead regulates, at most, a blend of speech and conduct”). Social Media posts are “pure speech”. *Gregorwicz*, at ¶14, See also, *Mahanoy Area Sch. Dist. v. Levy ex rel. B.L.*, 594 U.S. 180, 191 (2021) (social media post is pure speech entitled to First Amendment protection).

Because a social media post is pure speech, the state may not punish the defendant’s words unless they fall within a “narrowly limited class of speech”. *Gregorwicz*, at ¶15, quoting, *Gooding v. Wilson*, 405 U.S. 518, 522 (1972) (quoting, *Chaplinsky v. New*

1 *Hampshire*, 315 U.S. 568, 571 (1942)); see, *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171
2 (2015)(for protected speech, the state may only impose a content-based restriction when the
3 restriction furthers a compelling interest, and is narrowly tailored to achieve it). These
4 include: statements intended to incite imminent lawless action, obscenity, defamation,
5 speech integral to criminal conduct, fighting words, and true threats. None of those are present
6 in this matter.
7

8 In Arizona there is no categorical “harassment exception” to the First Amendment.
9 *Gregorwicz*, at ¶ 16, quoting, *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir.
10 2001) “legislatures are free to punish non-speech conduct, as well as narrow categories of
11 constitutionally unprotected speech such as true threats. But they cannot label speech that
12 mentally distresses people “stalking” [or ‘harassment’] and then punish all such speech. *Id.*, at
13 ¶16.
14

15 This matter is no different. Mr. Myers has engaged in pure speech. There is no
16 evidence he has attempted to contact the victim, or any of her family members. His
17 complained-of conduct is, as in *Gregorwicz*, the pure speech of social media posting. None
18 of his posts implicate defamation or any other First amendment exception.
19

20 C. The Comments of Third Parties in reaction to Content are not the Poster’s Responsibility.

21 Those who produce online content are generally not responsible for the comments of
22 others in reaction to that content. See, *Campo*, at ¶71, referencing, *Shiamili v. Real Est. Grp.*
23 *of N.Y.*, 952 N.E.2d 1011, 1018-19 (N.Y. 2011). Even where the probationer “likes”
24 comments of others, this does not show the adoption of that speech, nor does it justify a
25 blanket prohibition on speech. See, *Campo*, at ¶ 71.
26

1 Mr. Myers is not responsible for the conduct of third parties who hear about his cases,
2 and Mr. Myers' critiques of the process- and his public responses to his on-line detractors.
3 To the extent that the petition seeks to hold Mr. Myers responsible for either the on-line
4 comments or emails of others, where there is no evidence that he advocated for the comments,
5 am violation cannot stand constitutional muster.
6

7 **IV. ARGUMENT**

8 In the instant case, the defendant's statements all constitute pure speech. Not conduct of any
9 kind, just speech. There is no conduct alleged other than speech. The speech herein references either
10 his concerns regarding the legal system and the handling of his own case(s), his advocacy for those
11 who peacefully redress their grievances, local governmental corruption, first amendment advocacy,
12 and his concerns regarding having had his name and underlying case used as a basis for changing
13 the rules of court throughout Arizona, a matter of statewide public interest.
14

15 Every allegation brought by both state actors (the Pima County Attorney and Adult Probation
16 Office) concerns the defendant discussing: his case and his grievances with the judicial system, the
17 petition by the victim's spouse to change the rules of court for all Arizonan's and a release of two
18 interviews conducted in the underlying case with non-victims. Often, he did not mention the name
19 of the victim, referring to her as "the victim".
20

21 As to any references to his victim, they are nothing more than the defendant showing the
22 documents from his case or satirizing his case with memes (a protected form of speech). The court
23 records are all public documents, and none are under seal. Other allegations allege the defendant
24 stated his opinions regarding the case and the victim. This is protected speech under *Campo*. He is
25 also alleged to have violated his probation by having given interviews to other citizen journalists.
26

1 This is likewise protected.

2 The crux of the state's argument is that this speech, despite not having been directed at the
3 victim, is harassing to the victim. This is clearly not the case pursuant to *Villa-Kennedy*, *Campo*,
4 and *Saxe*.

5 The government's other position, as it relates to conduct, is that Mr. Myers is responsible for
6 the conduct of those who hear his words and act of their own volition. This has been roundly
7 rejected by Arizona courts as discussed above, and specifically by the *Campo* court. None of Mr.
8 Myer's statements constituted implied threats, let alone "true threats" as required to restrict speech
9 under *Counterman*.

10
11 Finally, none of Mr. Myers's comments were directed at the victim. The victim was not
12 tagged in any video, nor was she invited to his channel. The victim's spouse has even testified that
13 he was notified about Mr. Myers's posts and he actively had to go looking for the videos. He
14 testified that he spent countless hours watching them, looking for anything that might, in his mind,
15 violate the defendant's probation conditions. This is not harassment. This is self-imposed distress by
16 uninvited attendance. Mr. Myers cannot be held responsible for the victim's gatecrashing.

17
18 Accordingly, the defendant seeks dismissal of the revocation petition.

19
20 RESPECTFULLY SUBMITTED this _15th_ day of September, 2026.

21 **RESNICK LAW GROUP, PLLC.**

22
23 By: /s/ Mark R. Resnick
24 Mark R. Resnick
25 Attorney for Defendant
26

Electronically Filed and electronically distributed to the following parties:

Clerk of the Court
PIMA COUNTY SUPERIOR COURT

The Honorable D. Metcalf
PIMA COUNTY SUPERIOR COURT

RESNICK LAW GROUP, PLLC
resnicklawfirm@gmail.com

PIMA COUNTY ATTORNEY'S OFFICE
Efile.felony@pcao.pima.gov