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

STATE OF ARIZONA,

Plaintiff,

v.

LANE MYERS,

Defendant.

Case No. CR20251060-001

**DEFENDANT'S MOTION TO DISMISS
PROBATION REVOCATION PETITION
PURSUANT TO A.R.S. §12-751**

Assigned: Hon. D. Metcalf

**DEFENDANT'S SPECIAL MOTION TO DISMISS AND MEMORANDUM OF POINTS
AND AUTHORITIES**

Defendant hereby move this honorable court for an order dismissing plaintiff's complaint with prejudice pursuant to Arizona's Anti-SLAPP statute, Arizona Revised Statutes § 12-751. This special motion is timely filed within 60 days of service of the summons and complaint as mandated by law.

As demonstrated by the accompanying Memorandum of Points and Authorities and supporting declaration, plaintiff's action is substantially motivated by a desire to deter, retaliate against, or prevent defendant from lawfully, exercising his constitutional rights. Specifically, the

1 underlying claims stem directly from defendant's exercise of the right of free speech, freedom of the
2 press, and right to petition on matters of significant public interest.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5
6 Pursuant to A.R.S § 12-751, a party may file a special motion to dismiss or quash any legal
7 action substantially motivated by a desire to deter or retaliate against the lawful exercise of
8 constitutional rights, including free speech and assembly. Once the moving party establishes *prima*
9 *facie* evidence that the legal action's targets are protected constitutional rights, the burden shifts to
10 the responding party to justify the legal action, failing which, the action must be dismissed with
11 prejudice.

12 **POINTS OF LAW:**

13
14 Arizona's current anti-SLAPP statute, A.R.S. § 12-751, was renumbered from § 12-752 and
15 amended in 2022 (effective September 24, 2022). As set forth in *Lucky's, LLC v. Berman*, No. 2
16 CA-CV 2024-0045, 2025 WL 2218597 (Ariz. Ct. App. Aug. 5, 2025), the new statute is not limited
17 to the right to petition but now encompasses the full range of enumerated constitutional rights,
18 including the right of speech, the freedom of the press, the right to freely associate, and the right to
19 peaceably assemble. The statute is located in Title 12 (Courts and Civil Proceedings), Article 15,
20 titled "Public Participation in Government." Ariz. Rev. Stat. Ann. § 12-751. However, the
21 application is not limited to civil cases.

22
23 Pursuant to § 12-751(A), in any legal action that involves a person's lawful exercise of the
24 right to petition for redress, the right of speech, the right to freedom of the press, the right to freely
25 associate, or the right to peaceably assemble pursuant to the United States Constitution or Arizona
26

1 Constitution, the person — other than a state actor or an intervenor — may file a motion to dismiss or
2 quash the action. A.R.S. § 12-751. The statute protects a broad range of constitutionally protected
3 activities. See, Ariz. Rev. Stat. Ann. § 12-751, See also, *Lucky's, LLC v. Berman*, No. 2 CA-CV
4 2024-0045, 2025 WL 2218597 (Ariz. Ct. App. Aug. 5, 2025).

5
6 The statute assigns the moving party the burden of establishing a *prima facie* case that the action
7 brought against the defendant was substantially motivated by a desire to retaliate against, deter, or
8 prevent the party's exercise of a listed constitutional right. If the moving party establishes such a
9 *prima facie* case, the burden shifts to the non-moving party to show that existing law justifies the
10 litigation.

11 A. A Probation Revocation Hearing is a Legal Action

12 Pursuant to §12-751 (J) (1) (a), a "legal action" means any of the following: (i) any
13 civil action, claim, cross-claim, or counter claim for damages, other than nominal damages;
14 (ii) any criminal prosecution, except for a drug trafficking offense include included in title 13,
15 chapter 34 or 34.1, a riot, or a serious offense or violent or aggravated felony as defined in §
16 13-706; and (iii) any written investigative demand pursuant to §38-431.06 or other
17 compulsory legal process or any regulatory or administrative action by a state actor. A.R.S.
18 §12-751.
19
20

21 Arizona courts have previously held that a probation revocation hearing is not a
22 criminal prosecution. See, *Appeal in Maricopa Cnty. Juv. Action No. J-833341-S*, 119 Ariz.
23 178, 580 P.2d 10 (Ct. App. 1978). However, the third category of "legal action", Section
24 (J)(1)(a)(iii), includes in the definition, "any regulatory or administrative action by a state
25 actor". This definition must include a probation revocation matter, because, "State Actor" is
26

1 defined in §12-751(J)(2) as: the state and any county, city, town, or political subdivision, as
2 well as any branch, department, board, bureau, commission, council, or committee thereof,
3 and any officer, employee, or other agent acting in a official capacity. A.R.S. §12-751(J)(2).
4

5 Clearly, the Office of the Couty Attorney and the Pima County Adult Probation
6 Department fall within this definition, and the state-initiated, quasi-administrative process
7 falls with the ambit of a regulatory or administrative action. See, ARS §12-751(J)(1)(a)(iii).

8 B. The state may not enjoin or lessen First Amendment protections on local internet journalism
9 simply because it is not "mainstream"

10 The state has taken the position that, despite Mr. Myers having a media company LLC,
11 he is not a journalist engaged in journalism, nor are the persons to whom he has given
12 interviews. This position constitutes prior restraint and violates *Near v. Minnesota*, 239 U.S.
13 697, 51 S.Ct. 625 (1931); *Lovell v. City of Griffin*, 303 U.S. 444, 58 S.Ct. 666 (1938), *City of*
14 *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 108 S.Ct. 2138 (1988). The
15 defendant is not a member of the broadcast media and is, therefore, immune from restrictions
16 pursuant to *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 89 S.Ct. 1794 (1969).
17 Finally, as an internet journalist, defendant is protected to the highest level of First
18 Amendment scrutiny. See, *Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S.Ct.
19 2329 (1997).
20

21
22 C. The First Amendment Protections Against Prior Restraint (As Well as Arizona's Broader
23 Protections Under Art. II, Sec. 6, Ariz. Const.) Apply to Persons on Probation.

24 Arizona courts have consistently applied a "reasonable nexus" standard when
25 evaluating probation conditions that impinge upon free speech and association rights. The
26

1 foundational rule, drawn from *State v. Davis* asks whether there is a reasonable nexus between
2 the conditions imposed and the goals to be achieved by the probation — namely,
3 rehabilitation and public safety. *State v. Davis*, 119 Ariz. 140, 579 P.2d 1110 (Ct. App. 1978),
4 In this case, the defendant was on probation and timely filed a petition to modify and clarify
5 his conditions of probation and posted videos that discussed his case. While *Davis*
6 establishes that a nexus must exist between the conditions of probation and goals of
7 rehabilitation, conditions that restrict constitutional rights receive higher scrutiny. *Id.*
8

9 Further, in examining that nexus and the restrictive effect upon the probationer,
10 Arizona's broader protections of speech in the context of probationers establishes limits. It
11 states, "something more than governmental inconvenience is necessary to support a restriction
12 on speech," and courts may not dilute speech protections "merely for reasons of
13 administrative ease, policy preference, or other regulatory convenience." *State v. Campo*, No.
14 1 CA-CR 25-0241, 2026 WL 2474010 (Ariz. Ct. App. Aug. 24, 2026). In *Campo*, the court
15 determined that, while the probationer was enjoined from recording his therapy and court-
16 related probation proceedings, the probationer remained free to communicate about his
17 therapy, the victim, and those proceedings.
18

19 The videos posted by Mr. Myers in this matter (videos discussing his many court
20 cases) are no different than the probationer's communications in *Campo*. His social media
21 posts about his case are protected speech.
22

23 ...

24 ...

25 ...
26

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

3 Where speech is Constitutionally-protected, Arizona harassment statutes do not apply.
4 A.R.S § 13-2921(C). (“this section does not apply to... Constitutionally protected *speech or*
5 *activity*” (**emphasis added**)), See also, *Gregorwicz v. Villa-Kennedy*, 1CA-CV-25-0510 FC,
6 *quoting, State v. Brown*, 207 Ariz. 231, 235 (App. 2004) (A.R.S. §13-2921 “does not apply to
7 pure First Amendment speech and instead regulates, at most, a blend of speech and conduct”).
8 Social Media posts are “pure speech”. *Gregorwicz*, at ¶14, See also, *Mahanoy Area Sch. Dist.*
9 *v. Levy ex rel. B.L.*, 594 U.S. 180, 191 (2021) (social media post is pure speech entitled to
10 First Amendment protection).
11

12 Because a social media post is pure speech, the state may not punish the defendant’s
13 words unless they fall within a “narrowly limited class of speech”. *Gregorwicz*, at ¶15,
14 *quoting, Gooding v. Wilson*, 405 U.S. 518, 522 (1972) (*quoting, Chaplinsky v. New*
15 *Hampshire*, 315 U.S. 568, 571 (1942)); see, *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171
16 (2015)(for protected speech, the state may only impose a content-based restriction when the
17 restriction furthers a compelling interest, and is narrowly tailored to achieve it). These
18 include: statements intended to incite imminent lawless action, obscenity, defamation,
19 speech integral to criminal conduct, fighting words, and true threats. None of those are present
20 in this matter.
21

22 In Arizona there is no categorical “harassment exception” to the First Amendment.
23 *Gregorwicz*, at ¶ 16, *quoting, Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir.
24 2001) “legislatures are free to punish non-speech conduct, as well as narrow categories of
25
26

1 constitutionally unprotected speech such as true threats. But they cannot label speech that
2 mentally distresses people “stalking” [or ‘harassment’] and then punish all such speech. *Id.*, at
3 ¶16.

4 This matter is no different. Mr. Myers has engaged in pure speech. There is no
5 evidence he has attempted to contact the victim, or any of her family members. His
6 complained-of conduct is, as in *Gregorwicz*, the pure speech of social media posting. None
7 of his posts implicate defamation or any other First amendment exception.
8

9
10 E. The Comments of Third Parties in reaction to Content are not the Poster’s Responsibility.

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

16 Mr. Myers is not responsible for the conduct of third parties who hear about his cases,
17 and Mr. Myers’ critiques of the process- and his public responses to his on-line detractors.
18

19 **ARGUMENT**

20 In the instant case, the defendant’s statements all constitute pure speech. Not conduct of any
21 kind, just speech. There is no conduct alleged other than speech. The speech herein references either
22 his concerns regarding the legal system and the handling of his own case(s), his advocacy for those
23 who peacefully redress their grievances, local governmental corruption, first amendment advocacy,
24 and his concerns regarding having had his name and underlying case used as a basis for changing
25
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1 the rules of court throughout Arizona, a matter of statewide public interest.

2 Every allegation brought by both state actors (the Pima County Attorney and Adult Probation
3 Office) concerns the defendant discussing: his case and his grievances with the judicial system, the
4 petition by the victim's spouse to change the rules of court for all Arizonan's and a release of two
5 interviews conducted in the underlying case with non-victims. Often, he did not mention the name
6 of the victim, referring to her as "the victim".
7

8 As to any references to his victim, they are nothing more than the defendant showing the
9 documents from his case. These are all public documents, and none are under seal. Other allegations
10 allege the defendant stated his opinions regarding the case and the victim. This is protected speech
11 under *Campo*. He is also alleged to have violated his probation by having given interviews to other
12 citizen journalists. This is likewise protected.
13

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

17 The government's other position, as it relates to conduct, is that Mr. Myers is responsible for
18 the conduct of those who hear his words and act of their own volition. This has been roundly
19 rejected by Arizona courts as discussed above, and specifically by the *Campo* court. None of Mr.
20 Myer's statements constituted implied threats, let alone "true threats" as required to restrict speech
21 under *Counterman*.
22

23 Finally, none of Mr. Myers's comments were directed at the victim. The victim was not
24 tagged in any video, nor was she invited to his channel. The victim's spouse has even testified that
25 he was notified about Mr. Myers's posts and he actively had to go looking for the videos. He
26

1 testified that he spent countless hours watching them, looking for anything that might, in his mind,
2 violate the defendant's probation conditions. This is not harassment. This is self-imposed distress by
3 uninvited attendance. Mr. Myers cannot be held responsible for the victim's gatecrashing.

4
5 Because plaintiff brought this revocation action for the sole purpose of silencing public
6 criticism of her office, and because the probation department brought this action to silence the
7 defendant at the request of the victim, immediate DISMISSAL WITH PREJUDGE along with an
8 AWARD OF ATTORNEYS' FEES AND COSTS are legally required.

9
10 RESPECTFULLY SUBMITTED this 11th day of September, 2026.

11 **RESNICK LAW GROUP, PLLC.**

12
13 By: /s/ Mark R. Resnick
14 Mark R. Resnick
15 Attorney for Defendant

16 Electronically Filed and electronically distributed to the following parties:

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