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8

9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF ARIZONA**

11 Michelle Pettitt,

12 Plaintiff,

13 v.

14 Glen Marvin Lineberry, an individual; Sherry  
Dorathy, an individual; Bradley D. Beauchamp,  
15 an individual; and Miami Unified School  
District #40,  
16

17 Defendants/Counterclaimants.

NO. CV-26-00634-PHX-JJT

**Motion to Dismiss by Defendants Lineberry,  
Dorathy and Miami Unified School District  
#40**

(Oral Argument Requested)

18 Michelle Pettitt was a junior-senior high school parent who got upset because in  
19 2021, Defendant Lineberry, the then-high school principal, (a) wrote a letter of support for the  
20 father in Pettitt’s custody dispute and (b) sent to Pettitt’s student/son copies of Pettitt’s emails to  
21 Lineberry threatening to remove the son from the football team until his academic performance  
22 improved. Pettit struck back by (a) filing a complaint against Lineberry with the Arizona  
23 Department of Education complaining that Lineberry “improperly inserted himself into Pettitt’s  
24

1 custody dispute and sided with the father” [Doc. 1, ¶ 23]; (b) repeatedly disparaging Lineberry on  
 2 Facebook [*see, e.g., id.*, ¶ 30]; and (c) sending an email to “others at the school” detailing a ten-  
 3 year-old old civil judgment against him. [*Id.*, ¶ 31.] Thereafter, to “protect the staff from  
 4 unwarranted verbal abuse, intimidation and unfounded allegations and to minimize campus  
 5 disruptions,” and to “avoid further disruption to the District’s educational or other operations”  
 6 Pettit was banned from District property except to drop off and pick up her sons or to attend an  
 7 event if she requested permission at least two days beforehand. [*Id.*, ¶¶ 34-45, 56.]

8 On January 28, 2026, Pettit filed this lawsuit against the District, former Principal  
 9 Lineberry, and former Superintendent Dorathy basically alleging that Defendants instituted the  
 10 ban and did other things to retaliate against her. [Doc. 1.] The complaint does not allege that  
 11 Pettitt was ever denied permission to come onto campus for any reason or that she ever sought or  
 12 was denied permission to attend public school board meetings.

13 Pursuant to Rule 12(b)(6), Fed.R.Civ.P., Defendants move to dismiss the complaint:  
 14 Count I (federal malicious prosecution), Count II (First Amendment Retaliation), Count III (for  
 15 declaratory judgment), Count IV (state malicious prosecution), Count V (state abuse of process),  
 16 Count VI (state free speech retaliation), and Count VII (intentional infliction).

## 17 **I. GOOD FAITH CONSULTATION CERTIFICATE**

18 Pursuant to L.R.Civ. 12.1(c), undersigned counsel certifies that she consulted by  
 19 email and telephone with counsel for Plaintiff in an attempt to resolve the foregoing defects in  
 20 Plaintiff’s complaint and to obtain dismissal, amendment, or narrow the issues. That consultation  
 21 was ineffective to do so.

## 22 **II. ALLEGED RETALIATORY CONDUCT**

23 Plaintiff’s claims arise from these alleged actions by Defendants:<sup>1</sup>

24  
 \_\_\_\_\_  
<sup>1</sup> Factual allegations in Pettitt’s complaint are taken as true only for the purpose of this motion. *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

1 (1) banning her indefinitely from District property beginning on August 25, 2021,  
2 with the exceptions noted above [Doc. 1, ¶ 34];

3 (2) on August 2, 2022, allowing Pettit to come to campus to vote, but telling her to  
4 park closest to the voting room [*Id.*, ¶ 65];

5 (3) on June 26, 2022, obtaining an injunction against harassment against Pettit,  
6 which the superior court affirmed but which Pettit now claims was invalid [*Id.*, ¶¶ 78-90];

7 (4) in July 2022 informing the Gila County Sheriff's Office of harassing emails that  
8 Pettitt was sending to Lineberry and Dorathy, which caused the Gila County Attorney's Office  
9 ("GCAO") to charge Pettitt with misdemeanor harassment on July 10, 2022—a charge the GCAO  
10 dismissed in October 2022 "in the interest of justice" with Lineberry's agreement so long as Pettitt  
11 complied with the ban [*Id.*, ¶¶ 100];

12 (5) in November 2022 giving Pettitt permission to enter District property to vote,  
13 and then complaining to Defendant Beauchamp (Gila County Attorney and volunteer coach at the  
14 high school) that Pettitt was on campus campaigning for a school board candidate [*Id.*, ¶¶ 105-  
15 109]; and

16 (6) on November 29, 2022, after a grand jury indicted Pettitt for aggravated  
17 harassment, allegedly testifying falsely against Pettitt in two criminal trials (the first having ended  
18 in a mistrial) which resulted in a not guilty verdict on January 31, 2025 [*Id.*, ¶¶ 112-122].

19 **III. COUNTS ONE (§ 1983 MALICIOUS PROSECUTION) AND FOUR (STATE**  
20 **MALICIOUS PROSECUTION) FAIL TO STATE A CLAIM**

21 The Court must look to state law when analyzing claims for malicious prosecution  
22 under § 1983; therefore, the same analysis applies for the federal § 1983 claim and the state law  
23 claim. *Kimm v. Brannan*, 2017 WL 3535015, at \*4 (D. Ariz. Aug. 17, 2017), *aff'd* 779 F. App'x  
24 439 (9th Cir. 2019). To state a malicious prosecution claim under § 1983, Plaintiff must show  
that Defendants prosecuted her: (1) with malice; (2) without probable cause; and (3) for the

1 purpose of denying her equal protection or another specific constitutional right. *Lacey v.*  
2 *Maricopa Cnty.*, 693 F.3d 896, 919 (9th Cir. 2012). She also must show that the prior proceeding  
3 terminated in such a manner as to indicate her innocence. *Awabdy v. City of Adelanto*, 368 F.3d  
4 1062, 1066 (9th Cir. 2004). Malicious prosecution actions may be brought against non-  
5 prosecutors who wrongfully cause charges to be filed. *Id.*

6 A state law malicious prosecution claim also requires (1) a criminal prosecution, (2)  
7 that terminates in favor of plaintiff, (3) with defendants as prosecutors, (4) actuated by malice, (5)  
8 without probable cause, and (6) causing damages. *Slade v. City of Phoenix*, 112 Ariz. 298, 300  
9 (1975). Probable cause to institute the prosecution is “a complete and absolute defense.” *Id.* at  
10 301; *Bird v. Rothman*, 128 Ariz. 599, 602 (App. 1981).

11 These counts are barred to the extent they are based on the June 26, 2022, injunction  
12 against harassment because as a matter of law that proceeding did not terminate in Pettitt’s favor.  
13 [Doc. 1, ¶¶ 78-90.] And to the extent the claims are based on the July-October 2022 misdemeanor  
14 harassment charge (which the GCAO dismissed in October 2022), the federal claim is barred by  
15 the two-year statute of limitations, *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9<sup>th</sup> Cir. 1999) (two  
16 year statute of limitations applies to § 1983 claims brought in Arizona), and the state claim is  
17 barred by the one-year statute of limitations applicable to claims against public entities and  
18 employees. A.R.S. § 12-821.

19 This leaves the criminal charge for harassment that ended with a not guilty verdict  
20 in 2025. A malicious prosecution claim based on this criminal charge fails to state a claim for a  
21 few reasons. First, the grand jury indictment creates a presumption of probable cause. *Merritt v.*  
22 *Arizona*, 425 F.Supp.3d 1201, 1217-19 (D. Ariz. 2019). And the complaint fails to allege any  
23 facts to rebut that presumption because it does not allege that any of these Defendants tainted the  
24 grand jury indictment. *Id.* at 1219 (plaintiff failed to show that defendants falsified evidence used  
to obtain indictment and thus failed to refute the presumption of probable cause). The complaint

1 alleges only that a sheriff's office deputy testified falsely to the grand jury and that the GCAO did  
 2 not show the harassing emails to the grand jury. [Doc. 1, ¶¶ 116-118.]<sup>2</sup> More importantly, the  
 3 complaint fails to allege facts to overcome the presumption that the prosecutor made an  
 4 independent decision to file a criminal complaint. *Awabdy*, 368 F.3d at 1067 (the presumption of  
 5 probable cause from a grand jury indictment can be rebutted if defendants improperly exerted  
 6 pressure on the prosecutor, knowingly provided misinformation, concealed exculpatory evidence  
 7 or otherwise was actively instrumental in causing the initiation of legal proceedings). While the  
 8 complaint alleges that Lineberry and Dorathy "demanded" that Pettitt be prosecuted [Doc. 1, ¶¶  
 9 109], it does not allege facts showing that Lineberry and Dorathy did anything to overcome the  
 10 prosecutor's independent decision. *See, e.g., Wheatcroft v. City of Glendale*, 2022 WL 879066  
 11 (D. Ariz. February 22, 2022) (no evidence that officers engaged in improper pressure tactics so as  
 12 to overcome presumption of prosecutorial independence). Counts One and Four should be  
 13 dismissed.

#### 14 **IV. COUNT TWO (FIRST AMENDMENT RETALIATION) FAILS TO STATE A** 15 **CLAIM**

16 To prevail on a First Amendment retaliation claim, Plaintiff must show that: (1) she  
 17 was engaged in constitutionally protected activity; (2) Defendant's actions caused her "to suffer  
 18 an injury that would chill a person of ordinary firmness from continuing to engage in that activity";  
 19 and (3) Defendant's adverse action was substantially motivated in response to Plaintiff's exercise  
 20 of constitutionally protected conduct. *Mendocino Environmental Center v. Mendocino County*,  
 21 192 F.3d 1283, 1300–01 (9th Cir.1999).

##### 22 **A. The two-year statute of limitations bars most of the claim.**

23 Federal free speech retaliation claims are subject to a two-year statute of  
 24 limitations. *Settlemyer v. Ditsch*, 2021 WL 1751306, at \*4 (D. Ariz. May 4, 2021). The

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<sup>2</sup> The validity of an indictment is "not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence." *Merritt, supra* at 1224.

1 statute of limitations therefore bars Pettitt’s claim to the extent it is based on Defendants’  
2 alleged conduct before January 28, 2024. This means that the only part of this count not  
3 time-barred would be the allegation that the ban continued after January 28, 2024. To the  
4 extent the claim is based on all other conduct listed in Section II, it is time-barred.

5 **B. The “continuing ban” claim, though not time-barred after 2024, fails to state a**  
6 **claim for First Amendment retaliation.**

7 Even though the continuing nature of the ban after January 28, 2024, is not time-  
8 barred, it still fails to state a claim to the extent Pettitt alleges the ban infringes her rights to  
9 associate, engage in political speech, petition, and vote. [See, e.g., Doc. 1, ¶¶ 63-65, 107, 140,  
10 157.] While the First Amendment clearly protects these rights, the complaint does not allege one  
11 instance in which Pettitt was denied permission to associate, engage in political speech, petition,  
12 or vote after January 28, 2024. She alleges that she did not attend events in 2024 and 2025, but  
13 she does not allege that her failure to attend was due to any refusal of a request for permission to  
14 attend. To the contrary, the one request she alleges she made to attend an event in 2025 was  
15 approved. [Doc. 1, ¶¶ 128-133.] In short, the complaint fails to allege facts supporting her claim  
16 that the continuing ban actually infringes on her First Amendment rights.

17 **C. This count fails to state a claim for additional reasons.**

18 Though most of this claim is time-barred, the following are additional reasons to  
19 dismiss. To the extent the retaliation claim is based upon Pettitt’s allegation that Defendants  
20 “wrongfully obtained an invalid and void injunction” against harassment against her on June 26,  
21 2022 [Doc. 1, ¶¶ 4.b, 145], the claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994)  
22 (claimant cannot obtain damages if a judgment in her favor would necessarily imply the invalidity  
23 of her conviction unless conviction was previously invalidated). The injunction against  
24 harassment was affirmed, not reversed. [Doc. 1, ¶ 188.]

This count also fails to state a claim to the extent Plaintiff alleges that the District  
imposed the ban without giving her due process. [Doc. 1, ¶ 39.] Pettitt had no procedural or

1 substantive due process right to access school property. *See, e.g., Ryans v. Gresham*, 6 F.Supp.2d  
2 595, 601 (E.D.Tex.1998) (“An exhaustive review of the case law pertaining to the constitutional  
3 right of parents to direct the education of their children discloses no holding even remotely  
4 suggesting that this guarantee includes a right to access to the classes in which one’s child  
5 participates.”); *Justice v. Farley*, 2012 WL 83945, at \*1, 3 (E.D.N.C. Jan.11, 2012) (“[A parent’s  
6 general constitutional right] is limited in scope and does not include the unfettered right to access  
7 school premises.... Therefore, the court concludes that plaintiff was not deprived of a life, liberty,  
8 or property interest when he was banned from the school campus [and calling or talking to school  
9 staff].”)

10 This count also fails to state a claim to the extent the retaliation claim is based upon  
11 the allegation that the Gila County Attorney’s charge was a retaliatory prosecution. As with the  
12 malicious prosecution claim, plaintiff in a retaliatory-prosecution action must show the absence  
13 of probable cause for pressing the underlying criminal charges. *Hartman v. Moore*, 547 U.S. 250,  
14 250 (2006). But for a retaliation claim, the grand jury indictment conclusively demonstrates  
15 probable cause for prosecution at the time of the indictment (absent fraud on the grand jury or  
16 some similar process flaw). *United States v. Seng Chen Yong*, 926 F.3d 582, 592 (9th Cir. 2019).  
17 And as discussed above, the complaint does not allege that Defendants tainted the grand jury  
18 process in any way or overcame the prosecutor’s independent judgment.

19 To the extent Pettitt bases this claim on Lineberry’s and Dorathy’s allegedly false  
20 testimony in the injunction against harassment and criminal cases against her [Doc. 1, ¶¶ 86, 119],  
21 the claim is barred by testimonial immunity. *See Kimm v. Brannan*, 779 Fed. Appx. 439 (9<sup>th</sup>  
22 Cir. 2019) (“Kimm’s amended complaint alleged that Haws testified before the grand jury  
23 without investigating the underlying claims, provided false or misleading testimony, and  
24 conspired to provide false or misleading testimony. Each of these acts falls squarely within  
the bounds of testimonial immunity under settled law.”).

1           **D. The individual defendants are entitled to qualified immunity.**

2           Finally, the individual Defendants are entitled to qualified immunity. Qualified  
3 immunity shields officials from civil liability so long as their conduct ‘does not violate clearly  
4 established ... constitutional rights of which a reasonable person would have known.’” *Mullenix*  
5 *v. Luna*, 577 U.S. 7, 11 (2015). The plaintiff bears the burden of proving that “the right allegedly  
6 violated was clearly established at the time of the alleged misconduct.” *Martinez v. City of Clovis*,  
7 943 F.3d 1260, 1275 (9th Cir. 2019). While there need not be a case directly on point for a right  
8 to be clearly established, the precedent must be “‘controlling’—from the Ninth Circuit or the  
9 Supreme Court—or otherwise be embraced by a ‘consensus’ of courts outside the relevant  
10 jurisdiction.” *Russell v. Lumitap*, 31 F.4th 729, 737 (9th Cir. 2022). At the time Pettitt was banned  
11 from district property in 2021, the law was not clearly established that banning her from school  
12 property for harassing behavior could violate her First Amendment rights. Indeed, this precept  
13 was not clearly established even in 2025. *Hartzell v. Marana Unified School Dist.*, 130 F.4th 722,  
14 742-43 (9th Cir. 2025) (affirming qualified immunity for school principal where parent was  
15 banned from school premises allegedly in retaliation for her protected speech). If the law was not  
16 clearly established in 2025, it was certainly not clearly established in 2021. The individuals are  
17 entitled to qualified immunity.

18           **V. COUNT THREE (DECLARATORY JUDGMENT) FAILS TO STATE A CLAIM**

19           Count Three seeks a declaration that (1) the District’s ban violates Pettitt’s First and  
20 14th Amendment rights to speech, vote, assemble, petition for grievances, due process, and to  
21 control the education of her children; (2) the injunction against harassment against Pettitt is void  
22 ab initio because the Board didn’t approve it; and (3) the District violated the open meeting laws.  
23 [Doc. 1, ¶¶ 151-158.] To obtain declaratory relief, there must be a substantial controversy between  
24 parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance  
of a declaratory judgment. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007). A

1 declaratory judgment plaintiff must demonstrate, by a totality of the circumstances, the presence  
2 of an actual or imminent injury caused by the defendant that can be redressed by judicial relief.  
3 *Teva Pharmaceuticals USA, Inc. v. Novartis Pharmaceuticals Corp.*, 482 F.3d 1330, 1338 (Fed.  
4 Cir. 2007).

5 First, this Court fails to state a claim to the extent Plaintiff seeks a declaration that  
6 Defendants’ past conduct was unlawful in any way. [Doc. 1, ¶ 157.] *Jevons v. Inslee*, 2023 WL  
7 5031498, at \*1 (9th Cir. Aug. 8, 2023) (“[A] declaratory judgment merely adjudicating past  
8 violations of federal law—as opposed to continuing or future violations of federal law—is not an  
9 appropriate exercise of federal jurisdiction.”).

10 Second, it fails to state a claim for a declaration that the injunction against  
11 harassment was void ab initio on the ground that the District violated the open meeting laws.  
12 Preliminarily, that is a past event improper for declaratory relief as noted above; and moreover, a  
13 claim that the injunction is void ab initio would necessarily imply the invalidity of the conviction,  
14 and thus is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). See *Mouzon v. Ahlin*, 599 F. App’x  
15 772, 773 (9th Cir. 2015) (applying *Heck* to declaratory relief). Furthermore, while A.R.S. § 38-  
16 431.05(A) states that legal actions “transacted . . . during a meeting held in violation” of the open  
17 meeting law are null and void, the *Rooker-Feldman* doctrine precludes Plaintiff from asking this  
18 Court to declare the injunction void. Asking this Court to declare the injunction void would  
19 constitute an improper *de facto* appeal of the injunction against harassment—something this Court  
20 cannot do. *Normandeau v. City of Phoenix*, 2012 WL 621730, at \*3 (D. Ariz. Feb. 24, 2012)  
21 (“The *Rooker–Feldman* doctrine prevents federal district courts from having subject matter  
22 jurisdiction over ‘cases brought by state-court losers complaining of injuries caused by state-court  
23 judgments rendered before the district court proceedings commenced.’”); *Horsley v. Wardwell*,  
24 2024 WL 489291, at \*1 (9th Cir. Feb. 8, 2024) (“Horsley’s challenge to state court orders as

1 legally erroneous—and his pursuit of a declaration voiding and rescinding them—is precisely the  
2 kind of appeal *Rooker-Feldman* prohibits.”).

3 Finally, this count fails to state a claim for prospective relief for the same reason the  
4 complaint fails to establish a First Amendment violation: it fails to allege one instance in the five  
5 years since the ban was instituted in which Pettitt was denied permission to associate, engage in  
6 political speech, petition, or vote after January 28, 2024. She alleges she has not attended events  
7 in 2024 and 2025, but not that she was denied permission to do so. To the contrary, in fact, she  
8 alleges that the one request she made to attend an event in 2025 was approved. [Doc. 1, ¶¶ 128-  
9 133.] And neither of her sons attend District schools any longer [*Id.*, ¶¶ 69, 127] so she has no  
10 reason to be on District property for them or to contact their teachers. In short, the complaint fails  
11 to state a claim for a declaration that the ban “violates Pettitt’s First and Fourteenth Amendment  
12 rights” and her comparable state free speech rights. [*Id.*, ¶ 157.]<sup>3</sup>

### 13 **VI. COUNT FIVE (ABUSE OF PROCESS) FAILS TO STATE A CLAIM**

14 Plaintiff bases her abuse of process claim on the second criminal trial ending in  
15 January 2025, on Defendants’ allegedly testifying falsely in this trial, and on the Defendants’  
16 obtaining the 2022 injunction against harassment. [Doc. 1, ¶ 168.] Abuse of process occurs when  
17 one uses a legal process against another primarily to accomplish a purpose for which it is not  
18 designed. RESTATEMENT (SECOND) OF TORTS, § 682; *Giles v. Hill Lewis Marce*, 195 Ariz. 358,  
19 361 (App. 1999). There is no abuse of process when the process is used for its intended purpose,  
20 even if the defendant bears an incidental motive of spite or self-benefit. Abuse of process must  
21 involve a use of a legal process for a purpose other than that for which it was designed and  
22 intended. RESTATEMENT, cmt. b.

23  
24 <sup>3</sup> This Count also fails to state a claim to the extent Plaintiff seeks a declaration that the  
ban violates her due process rights. [*Id.*] As noted earlier, Plaintiff does not have a due process  
right to be on District property. *See Ryans v. Gresham*, 6 F.Supp.2d 595, 601 (E.D.Tex.1998).

1 This count fails to state a claim for a few reasons. First, the one-year statute of  
 2 limitations bars any claim based on the June 2022 injunction against harassment, the July-October  
 3 misdemeanor harassment charge, and the first criminal charge and trial, all of which occurred  
 4 before January 28, 2025. *Cruz v. City of Tucson*, 243 Ariz. 69, 73 (App. 2017) (abuse-of-process  
 5 claim accrues when plaintiff is first aware she had been injured).

6 This leaves only the second criminal trial that the State prosecuted against Pettitt  
 7 and which ended in a not guilty verdict in 2025. To the extent Plaintiff bases her abuse of process  
 8 claim on this second trial, it fails to state a claim. Plaintiff does not allege that Defendants used a  
 9 legal process other than for its intended purpose. She alleges that Lineberry and Dorathy  
 10 “demanded” that the GCAO prosecute Pettitt [Doc. 1, ¶ 109], which is not using a judicially-  
 11 sanctioned legal process. *See Crackel v. Allstate Ins. Co.*, 208 Ariz. 252, 257 (App. 2004) (“[A]  
 12 plaintiff must prove that one or more specific judicially sanctioned processes have been abused to  
 13 establish an abuse-of-process claim.”). It then alleges that Defendants “testified falsely” at that  
 14 trial. [Doc. 1, ¶121.] Putting aside for the moment that oral testimony is not a “process,” and that  
 15 testifying for the purpose of assisting the state’s case is exactly the testimony’s intended purpose,  
 16 witnesses who testify in judicial proceedings are protected by absolute privilege. *Yeung v. Maric*,  
 17 224 Ariz. 499, 501 (App. 2010). That absolute privilege defeats an abuse of process claim based  
 18 on allegedly false testimony. *See, e.g., Rusheen v. Cohen*, 37 Cal. 4th 1048, 1058, 128 P.3d 713,  
 19 719 (2006) (litigation privilege defeats an abuse of process claim based on allegedly false or  
 20 perjurious testimony); *Labrado v. Labrado*, 2025 WL 3055129, at \*16 (Tex. App. Oct. 31, 2025)  
 21 (absolute privilege barred malicious prosecution and abuse of process claims based on statements  
 22 made in court affidavits). The abuse of process claim should be dismissed.

23 **VII. COUNT SIX (FREE SPEECH RETALIATION) FAILS TO STATE A CLAIM**

24 Count Six alleges that Plaintiff engaged in activity protected by art. 2, § 6 of the  
 Arizona Constitution and that Defendants’ actions in banning her, having her prosecuted, and

1 obtaining the injunction against harassment would chill or silence a person of ordinary firmness  
2 from free speech activities. [Doc. 1, § 173-177.] This count fails to state a claim because Plaintiff  
3 frankly has no direct damage remedy under the Arizona state constitution. While 42 U.S.C. §  
4 1983 is the remedial device through which a party can claim damages for a federal constitutional  
5 deprivation, Arizona has not enacted a state counterpart to 42 U.S.C. § 1983; and to date, no  
6 published Arizona decision has recognized an implied damage remedy for general violations of  
7 state constitutional rights. *See Degross v. Cook*, 29 Cal.4th 333, 342, 58 P.3d 360 (2002) (free  
8 speech clause did not explicitly create new cause of action for damages; (2) there was no evidence  
9 of intent to create implied right of action; and (3) recognizing constitutional tort action for  
10 damages would chill free speech); *Hunter v. City of Eugene*, 787 P.2d 881 (Or. 1990) (no implied  
11 damages remedy for violation of Oregon’s constitutional free speech provision); *City of Beaumont*  
12 *v. Bouillion*, 896 S.W.2d 143 (Tex. 1995) (“We hold there is no implied private right of action for  
13 damages arising under the free speech and free assembly sections of the Texas Constitution”);  
14 *Wooley v. Madison County, Tennessee*, 209 F. Supp. 2d 836, 844 (W.D. Tenn. 2002) (granting  
15 summary judgment on plaintiff’s state freedom of speech claim because Tennessee does not  
16 recognize an implied private cause of action for damages based upon violations of the Tennessee  
17 Constitution). Because there is no independent cause of action for damages for alleged free speech  
18 violations, this count fails to state a claim.

19 Even if there were such a claim for damages, it would be barred by the one-year  
20 statute of limitations to the extent it is based on Defendants’ conduct before January 28, 2025.

### 21 **VIII. COUNT SEVEN (INTENTIONAL INFLICTION) FAILS TO STATE A CLAIM**

22 To state a claim for intentional infliction, plaintiff must allege facts showing (1)  
23 Defendants’ conduct was extreme and outrageous, (2) Defendants either intended to cause  
24 emotional distress or recklessly disregarded the near certainty that such distress would result from  
their conduct, and (3) Defendants’ actions caused the plaintiff to suffer severe emotional distress.

1 *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43 (1987). The complaint’s allegations do not rise to the level  
2 of either extreme and outrageous conduct or severe emotional distress.

3 Preliminarily, as with the other state claims, the one-year statute of limitations bars  
4 this claim to the extent it is based upon any conduct before January 28, 2025. As such, the only  
5 basis for this claim that is not time-barred is Plaintiff’s allegation that she did not attend unnamed  
6 events on District property during 2025 (but failing to allege that she was denied permission to do  
7 so). [Doc. 1, ¶¶ 128-132.]

8 As a matter of law, the simple existence of the ban in 2025 is not extreme and  
9 outrageous conduct. To be extreme and outrageous, conduct must be “so outrageous in character,  
10 and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as  
11 atrocious and utterly intolerable in a civilized community.” *Christakis v. Deitsch*, 250 Ariz. 246,  
12 250 (App. 2020). It “must completely violate human dignity” and “strike to the very core of one’s  
13 being, threatening to shatter the frame upon which one’s emotional fabric is hung.” *Id.* The  
14 existence of a ban from District property unless they obtain permission—without any allegation  
15 that permission was ever denied—is simply not extreme and outrageous.

16 Moreover, because Plaintiff has not alleged that Defendants refused permission for  
17 her to attend any event on District property (or frankly did anything else to her in 2025), as a  
18 matter of law Plaintiff has not and cannot allege that Defendants caused her any emotional distress  
19 in 2025, let alone the kind of extreme emotional distress required to state an intentional infliction  
20 claim. Even if the damages she did allege—attorneys’ fees and “emotional, mental, physical, and  
21 reputational pain, suffering [and] distress”—had somehow related to Defendants’ 2025 conduct  
22 (not alleged) [Doc. 1, ¶¶ 123-125], that fails to allege the kind of extreme emotional distress that  
23 an intentional infliction claim requires. Plaintiff’s allegations must show that she suffered distress  
24 so extreme as to, for example, cause a heart attack, nervous exhaustion, premature death of a baby,  
extreme shock and hysteria or hospitalization; or permanent impairment. *Midas Muffler Shop v.*

1 *Ellison*, 133 Ariz. 194, 199 (App. 1982) (crying, being stressed and upset, and having occasional  
2 trouble sleeping is not enough to establish severe emotional distress). The complaint fails to allege  
3 this. For all these reasons, the intentional infliction count fails to state a claim.

4 **IX. PLAINITFF FAILS TO STATE A CLAIM FOR CERTAIN DAMAGES**

5 Plaintiff prays for [Doc. 1, p. 36] but is not entitled to several items of damages, and  
6 thus any such claim should be dismissed for failure to state a claim.

7 She is not entitled to punitive damages against the District under federal law. *City*  
8 *of Newport v. Fact Concerts*, 453 U.S. 247, 271 (1982).

9 She is not entitled to punitive damages under state law. A.R.S. § 12-820.04; *Yanes*  
10 *v. Maricopa County*, 294 P.3d 119, 125 ¶ 23 (App. 2012) (“Punitive damages are not available  
11 against public entities or employees under Arizona law.”)..

12 She is not entitled to attorneys’ fees under A.R.S. § 1-602. This statute provides  
13 that the government shall not interfere with or usurp a parent’s fundamental right to direct the  
14 upbringing, education, health care and mental health of her children. These include rights such  
15 as the right to direct the child’s education, to access his records, to direct his upbringing, to direct  
16 his moral or religious training, and to make health care decisions. See Section 1-602(A) and (E).  
17 Nothing in Plaintiff’s complaint suggests that this case has anything to do with a parent’s right to  
18 direct her child’s upbringing or with Defendants’ interference with those rights. As such,  
19 Subsection (G)’s authorization for attorneys’ fees (if the governmental entity or official fails to  
20 show that its interference with a parent’s right to raise her child was essential and narrowly tailored  
21 to accomplish a compelling government interest), is inapplicable as a matter of law.

22 She is not entitled to pre-judgment interest under state law. Pre-judgment interest  
23 is not permitted under state law where a claim is unliquidated, such as personal injury claims.  
24 *Metzler v. BCI Coca-Cola Bottling Co. of Los Angeles*, 253 Ariz. 141,144 (2014); A.R.S. § 44–

1 1201(D)(1) (“A court shall not award ... [p]rejudgment interest for any unliquidated, future,  
2 punitive or exemplary damages that are found by the trier of fact.”).

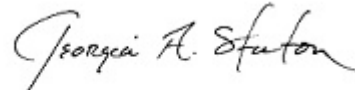
3 To the extent Plaintiff seeks the foregoing damages, the claims should be dismissed.

4 **CONCLUSION**

5 For the foregoing reasons, Defendants Lineberry, Dorathy, and Miami Unified  
6 School District #40 respectfully request the Court to dismiss Plaintiff’s complaint against them.

7 RESPECTFULLY SUBMITTED this 9th day of April, 2026.

8 JONES, SKELTON & HOCHULI P.L.C.

9 

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