

1
2
3
4
5
6
7
8
9
1
0
1
1
2
1
3
1

Patrick A. Tighe, Bar No. 033885
Matthew Racioppo, Bar No. 040702
SNELL & WILMER L.L.P.
One East Washington Street, Suite 2700
Phoenix, Arizona 85004-2556
Telephone: 602.382.6000
Facsimile: 602.382.6070
Email: ptighe@swlaw.com
 mracioppo@swlaw.com

Attorneys for Plaintiff
Michelle Pettitt

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Michelle Pettitt,
 Plaintiff,

v.

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

No. 2:26-cv-00634

**PLAINTIFF’S RESPONSE
OPPOSING DEFENDANTS
LINEBERRY, DORATHY, AND
MIAMI UNIFIED SCHOOL
DISTRICT #40’S MOTION TO
DISMISS**

(Oral Argument Requested)

1
2
3
4
5
6
7
8
9
1
0
1
1
2
1
3

In their Motion to Dismiss, Defendants Glen Marvin Lineberry (“Lineberry”), Sherry Dorathy (“Dorathy”), and the Miami Unified School District #40 (the “District”) (collectively, the “Defendants”) throw everything but the kitchen sink at Plaintiff Michelle Pettitt’s Complaint to see what sticks. Their Motion, however, fails at every turn. At times, they completely ignore the well-pled factual allegations in the Complaint, and at other times, they mischaracterize those factual allegations. Making matters worse, their legal arguments are superficial and incorrect. They misconstrue the applicable legal standards, and in some places, they even invoke legal doctrines (such as *Heck* and *Rooker-Feldman*) without providing any legal analysis but which nevertheless do not apply in this case. For these reasons, and as detailed below, the Court should deny the Motion.

I. DEFENDANTS MISCONTRUE THE COMPLAINT’S WELL-PLED FACTUAL ALLEGATIONS.

“It is axiomatic that the motion to dismiss [under Rule 12(b)(6)] is viewed with disfavor and is rarely granted” because the Court must “accept[] as true all well-pleaded allegations of material fact and constru[e] those facts in the light most favorable to the non-moving party.” *Ernst & Haas Mgmt. Co., Inc. v. Hiscox, Inc.*, 23 F.4th 1195, 1199 (9th Cir. 2022) (reversing district court’s dismissal of complaint under Rule 12(b)(6)). Dismissal under Rule 12(b)(6) is permitted “only if it appears beyond doubt that the plaintiff can prove no set of facts in support of its claims which would entitle it to relief.” *Id.* (cleaned up).

Here, Defendants invite legal error because, in many places, they ignore Pettitt’s

1 well-pled factual allegations, and at other times, they misconstrue factual allegations in
2 attempt to confuse and misdirect. To clarify the record, here are the Complaint's
3 well-pled factual allegations that the Court must accept as true at the pleading stage:

4 • [On August 25, 2021, Pettitt was categorically, prospectively, and
5 indefinitely banned from all District owned property at any time. Dkt. 1 at ¶ 34-37.

6 • Pettitt was given no warning, process, notice, or appeal of any kind before
7 or after instituting this ban. Dkt. 1 at ¶ 39-41.

8 • The justifications given for the ban were false, fabricated, grossly
9 mischaracterized, or misleading. Dkt. 1 at ¶ 46.

10 • As a result of this ban, Pettitt was precluded from meeting other parents and
11 community members to discuss issues of common concern (dkt. 1 at ¶ 62), attending
12 school board meetings (dkt. 1 at ¶ 66), and attending sporting events (dkt. 1 at ¶ 67-68).

13 • Pettitt complied with this ban, including emailing the school each time she
14 sought an exception from the ban to enter District property. Dkt. 1 at ¶ 72.

15 • Pettitt's compliance with the ban upset and enraged Defendants Lineberry
16 and Dorathy, who worked together to obtain an injunction against harassment against
17 Pettitt, based on false and misleading allegations and absent exculpatory information,
18 without the District having ever authorized this legal action. Dkt. 1 at ¶ 77-79.

19 • Defendants made false reports to police in order to have criminal charges
20 brought against Pettitt. Dkt. 1 at ¶ 92-93. Based on these false reports, misdemeanor
21 harassment charges were brought against Pettitt, before later being dropped. Dkt. 1 at ¶
22 94.

1
2
3
4
5
6
7
8
9
1
0
1
1
2
1
3

• Lineberry later became enraged when he learned Pettitt entered the District’s property to vote and advocate for a school board candidate, and then made a false report to Beauchamp in order to have Pettitt prosecuted with felony harassment charges. Dkt. 1 at ¶ 109. Pettitt was ultimately prosecuted as per Lineberry’s demand. Dkt. 1 at ¶ 112.

• A grand jury indictment was issued based on the same false and fabricated allegations detailed above. Dkt. 1 at ¶ 115.

• Pettitt was ultimately acquitted of these charges after the jury deliberated for only 40 minutes. Dkt. 1 at ¶ 122.

• Despite this acquittal, Pettitt remains subject to the District’s ban, which has prevented her from attending various public events on the District’s property in 2024 and 2025. Dkt. 1 at ¶ 128.

• As a result of these actions, Pettitt suffered several types of damages including monetary, emotional, mental, physical, reputational pain, suffering, distress and other related harm. Dkt. 1 at ¶¶ 123-25.]

II. THE COURT SHOULD DENY DEFENDANTS’ MOTION TO DISMISS.

A. Counts I and IV Allege Viable Claims for Malicious Prosecution.

Pettitt’s Complaint asserts two counts for malicious prosecution under federal and Arizona law: Count I for malicious prosecution in violation of 42 U.S.C. § 1983 and Count IV for malicious prosecution under Arizona state law. Defendants argue that these claims fail because: (1) they are time barred; (2) the grand jury indictment creates a presumption of probable cause; and (3) Pettitt has not overcome the presumption of prosecutorial immunity. Dkt. 24 at 3-5. All of these arguments are unavailing.

1 First, Counts I and IV are timely. Both counts are based on Defendants’ actions “to
2 wrongfully cause the prosecution of a criminal felony action against Pettitt.” Dkt. 1 at
3 ¶¶ 137, 161. The Complaint alleges that this criminal action terminated in Pettitt’s favor
4 when she was acquitted by a jury on January 31, 2025 (*id.* at ¶¶ 138, 162), and Pettitt filed
5 this Complaint on January 28, 2026 (*id.*). Pettitt thus timely asserted these claims within
6 the 2-year limitation for her § 1983 claim (Count I) and 1-year limitation for her state law
7 claim (Count IV). *See McKee v. Peoria Unified School Dist.*, 963 F. Supp. 2d 911, 923
8 (D. Ariz. 2013) (imposing Arizona’s two-year statute of limitation for § 1983 claim); *see*
9 *also Brady v. Navajo Cnty. Child Support Enf’t.*, 2017 WL 11631018, at *6 (D. Ariz. Feb.
10 13, 2017) (applying Arizona’s two-year statute of limitations to a plaintiff’s §1983 claims
11 and A.R.S. § 12-821’s one-year statute of limitations to the plaintiff’s state law claims).

1 To the extent Defendants argue that Pettitt cannot rely on events or actions that
2 took place in 2022 (e.g., the imposition of the injunction against harassment) in support of
3 her timely-asserted malicious prosecution claims (*see* Dkt. 24 at 3-4), this argument is
4 misplaced. Pettitt is not asserting malicious prosecution claims based on the injunction
5 against harassment or the misdemeanor criminal action. Her claims are based on the
6 felony criminal action that terminated in her favor. Further, while time-barred acts may
7 not form the basis of a claim, these prior acts may nevertheless serve “as background
8 evidence in support of a timely claim.” *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S.
9 101, 113 (2002); *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058-62 (9th Cir.
10 2002) (applying *Morgan* to § 1983 claims). Pettitt’s Complaint thus may appropriately
11 rely on these prior acts in 2022 as evidence in support of her malicious prosecution claim.

1 Second, the Complaint alleges sufficient facts to rebut any presumption of probable
2 cause created by the grand jury indictment. “Among the ways that a plaintiff can rebut a
3 *prima facie* finding of probable cause is by showing that the criminal prosecution was
4 induced by fraud, corruption, perjury, fabricated evidence, or other wrongful conduct
5 undertaken in bad faith.” *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1067 (9th Cir.
6 2004). The presumption of probable cause is rebutted where the plaintiff alleges that a
7 defendant “intentionally fabricated evidence and testimony, altered records, purposefully
8 excluded or suppressed exculpatory evidence, and gave false testimony to obtain [a] grand
9 jury indictment to prosecute and convict [a plaintiff].” *Engel v. United States*, 702 F.
Supp. 3d 986, 1004 (D. Nev. 2023). Similarly, the presumption is rebutted when a plaintiff
alleges that a defendant “suppressed material exculpatory evidence.” *Pasene v. Correa*,
2023 WL 8478969, at *7 (D. Haw. Dec. 7, 2023).

1 [Here, Pettitt alleges that the criminal prosecution all stemmed from false and
2 fabricated allegations by Defendants, which ultimately led to the filing of criminal charge.
3 *See e.g.*, Dkt. 1 at ¶¶ 46-55, 78-80, 84-86. She alleges that Defendants made false reports
4 to the police with the intent of having criminal charges brought against her. *See* Dkt. 1 at
5 ¶¶ 91-94. The Complaint goes on to describe false reporting by Defendants to the Gila
6 County Attorney’s Office in order to re-prosecute Pettitt. *See* Dkt. 1 at ¶ 109-12. As to the
7 grand jury proceedings, the Complaint specifically alleges that “the State presented only
8 one witness, Deputy Winget, who presented false and misleading testimony to the grand
9 jury.” Dkt 1 at ¶¶ 116-17. Further demonstrating this point, the Complaint makes clear that
the State suppressed exculpatory evidence that would have undermined any finding of

1 harassment. Dkt. 1 at ¶ 118. These are only some of the examples of the allegations
 2 sufficient to rebut the presumption of probable cause.]

3 Third, Defendants’ reliance on the presumption of prosecutorial independence
 4 lacks merit. “The presumption of independent prosecutorial judgment in the charging
 5 decision is an evidentiary presumption applicable at the summary judgment stage to direct
 6 the order of proof; it is not a pleading requirement to be applied to a motion to dismiss,
 7 before discovery has taken place[.]” *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119,
 8 1126 (9th Cir. 2002) (reversing dismissal of malicious prosecution claims under Rule
 9 12(b)(6) based on prosecutorial independent presumption); *Mosher v. City of Mesa*, 2024
 10 WL 5046436, at *5 (D. Ariz. Dec. 9, 2024) (refusing to consider prosecutorial
 11 independent presumption under Rule 12(b)(6)). Tellingly, the only case relied upon by
 12 Defendants in their Motion—*Wheatcroft v. City of Glendale*, 2022 WL 8790066 (D. Ariz.
 13 Feb. 22, 2022)—is inapposite as it concerns consideration of this presumption at summary
 14 judgment, not under Rule 12. Dkt. 24 at 5. Thus, the Complaint is not required to allege
 15 such facts to rebut this presumption.

1 Nevertheless, the Complaint does allege sufficient facts to rebut this presumption.
 2 “The presumption of prosecutorial independence does not bar a subsequent § 1983 claim
 3 against state or local officials who improperly exerted pressure on the prosecutor,
 4 knowingly provided misinformation to him, concealed exculpatory evidence, or otherwise
 5 engaged in wrongful or bad faith conduct that was actively instrumental in causing the
 6 initiation of legal proceedings.” *Awabdy*, 368 F.3d at 1067 (finding complaint’s
 7 allegations of local officials’ knowingly false accusations sufficient rebut prosecutorial

1 independence presumption). Here, the Complaint alleges that: (a) after dismissal of the
2 criminal misdemeanor action against Pettitt, Lineberry “falsely reported that Pettitt was
3 still harassing him and the School and demanded that Beauchamp prosecute her” when
4 Pettitt visited the School to engage in her constitutional rights (i.e., to vote and lawfully
5 campaign) in November 2022 (Dkt. 1 at ¶¶ 105-109, 139(v)); (b) “Dorathy approved of,
6 ratified, and agreed with Lineberry’s demand to re-prosecute Pettitt” based on these
7 actions (*id.* at ¶ 109); and (c) Beauchamp—the county prosecutor—admitted in writing to
8 prosecuting Pettitt for a felony “at Lineberry’s request and insistence” (*id.* at ¶ 110).
9 These well-pled facts show that Lineberry and Dorathy “demanded and pressured for a
10 felony prosecution” of Pettitt. *Id.* at ¶ 139(v). Further as noted above, the Complaint also
11 alleges that Lineberry and Dorathy knowingly made false accusations and provided
12 misinformation, including to the police and county prosecutors. Dkt. 1 at ¶¶ 46-54, 80,
13 85-87, 91-93, 108-110, 119, 121.¹ Because the Court must accept these well-pled facts as
14 true, Pettit has sufficiently alleged facts to rebut this presumption. *See West v. City of*
15 *Mesa*, 128 F. Supp. 3d 1233, 1241 (D. Ariz. 2015) (denying a motion to dismiss a
16 malicious prosecution claim based on the presumption because plaintiff “alleges
17 [defendant] knowingly provided false evidence to the prosecutor and engaged in other bad
18 faith conduct during [p]laintiff’s investigation”); *Munoz v. Cnty. of Orange*, 2025 WL

19 ¹ Defendants likewise are not absolutely immune for providing false testimony
20 because, as alleged in the Complaint, Lineberry and Dorathy were complaining witnesses
21 whose false allegations served to bring about Pettitt’s prosecution. *See Harris v. Roderick*,
22 126 F.3d 1189, 1199 (9th Cir. 1997) (witnesses “are not entitled to absolute immunity for
23 false testimony when they function as complaining witnesses”); *Horohoe v. Arizona*, 2017
24 WL 6001482, at *7 (D. Ariz. Mar. 30, 2017) (denying dismissal under Rule 12 based on
25 testimonial immunity where defendant “was the complaining witness”).

1 1090961, at *6 (C.D. Cal. Mar. 12, 2025) (finding allegations that the defendant
2 “knowingly falsified [an] incident report” sufficient to “rebut the presumption of
3 prosecutorial independence and probable cause.”).

4 For all of these reasons, Counts I and IV assert viable malicious prosecution
5 claims.

6 **B. Count II Asserts A Viable Claim For First Amendment Retaliation.**

7 All of Defendants attacks on Count II fail for seven reasons.

8 First, Defendants argue that Count II can be based only on allegations that occurred
9 after January 28, 2024 because federal free speech retaliation claims are subject to a
10 two-year statute of limitations. Dkt. 24 at 5-6. This argument is incorrect for at least
11 three reasons. For one, as the sole case cited by Defendants – *Settlemeier* – recognized,
12 the “statute of limitations begins to run when the plaintiff ‘knows or has reason to know of
13 the injury which is the basis for his action.’” *Settlemeier v. Ditsch*, 2021 WL 1751306, at
14 *4 (D. Ariz. May 4, 2021) (quoting *Elliot v. City of Union City*, 25 F.3d 800, 802 (9th Cir.
15 1994)). Defendants bear the burden of this proof for this affirmative defense, *id.*, and in
16 their Motion, they make no showing whatsoever as to when Pettitt knew or should have
17 known of any injuries that serve as the basis of Count II. Defendants’ conclusory analysis
18 does not suffice. Further, a claim “cannot be dismissed unless it appears beyond doubt
19 that the plaintiff can prove no set of facts that would establish the timeliness of the claim.”
20 *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206-07 (9th Cir. 1995) (reversal
21 dismissal on Rule 12(b)(6) based on timeliness). Because nothing on the face of the
22 Complaint indicates when Pettitt knew or should have known of her injuries and because

1 such factual questions are not clearly resolved in the pleadings, Count II cannot be
2 partially dismissed based on timeliness.² Finally, as noted in Section [REDACTED], even if certain
3 acts before January 28, 2024 may be time barred and therefore cannot form the basis of
4 Count II, these prior acts may nevertheless serve “as background evidence in support of a
5 timely claim.” *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002).

6 Second, Defendants concede that part of Count II is timely asserted because it is
7 based in part on the continuing nature of the District’s ban after January 28, 2024. Dkt. 24
8 at 6. They nevertheless argue that this claim is deficient because Pettitt was never denied
9 permission to engage in First Amendment protected activities after January 28, 2024. *Id.*
10 This is wrong as a matter of fact and law. As alleged, the District prospectively and
11 indefinitely banned Pettitt from all of the District’s property, including for any public
12 events. Dkt. 1 at ¶¶ [REDACTED]. Pettitt further alleges that, “because the District’s ban is
13 indefinite,” she did not attend various public events on the District’s property, including
14 board meetings and sporting events, in 2024 and 2025 that she would have liked to attend.
15 *Id.* at ¶ 128. Critically, at this same time in 2024 and 2025, Pettitt was being criminally
16 prosecuted for a felony for allegedly harassing Defendants. *Id.* at ¶ [REDACTED]. Thus, based on the
17 District’s ban, the Complaint does allege that Pettitt was injured—she was denied

18 ² For example, Count II asserts, in part, a First Amendment
19 retaliation-by-prosecution claim. Dkt. 1 at ¶ 145(i). Pettitt’s first felony trial in July 2024
20 resulted in a criminal conviction. However, as alleged in the Complaint, the Court
21 declared a mistrial in the first trial and vacated the conviction because key evidence was
22 not provided to the jury during deliberations. Dkt. 1 at ¶ 120. Pettitt could not have
23 brought a First Amendment retaliation-by-prosecution claim until her conviction was
24 vacated on August 6, 2024. *See, e.g., Baker v. City of Chicago*, 483 F. Supp. 3d 543,
25 557-58 (N.D. Ill. 2020) (finding First Amendment retaliation-by-prosecution claim timely
26 as claim did not run until plaintiffs’ convictions were vacated).

1 permission to associate, engage in political speech, and petition at District board meetings
2 and other public events on the District’s property.

3 Defendants appear to argue that, because Pettitt never requested (and was never
4 denied) an exemption from the District’s continuing ban in 2024 and 2025, she has no
5 claim for relief. Dkt. 24 at 6. But that is not the legal standard. To prevail on Count II,
6 Pettitt “need only show that the defendant ‘intended to interfere’ with the plaintiff’s First
7 Amendment rights and that is suffered some injury as a result; [Pettitt] is not required to
8 demonstrate that [her] speech was actually suppressed or inhibited.” *Ariz. Student’ Ass’n*
9 *v. Ariz. Bd. of Regents*, 824 F.3d 858, 867 (9th Cir. 2016). In other words, the Ninth
10 Circuit has “never required a litigant, *per impossibile*, to demonstrate a *total* chilling of
11 [her] First Amendment rights . . .” because “[s]peech can be chilled even when not
12 completely silenced.” *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th Cir. 2005). “[T]he
13 proper First Amendment inquiry asks whether an official’s acts would chill *or* silence a
14 person of ordinary firmness from future First Amendment activities.” *Id.* at 569. Here,
15 based on the pleaded facts, it is entirely plausible that a jury could find that the continuing
16 nature of the District’s ban—coupled with the simultaneous criminal prosecution against
17 Pettitt for harassing the District—“reasonably likely to chill an ordinary person from
18 engaging in protected First Amendment conduct.” *O’Brien v. Welty*, 818 F.3d 920, 933
19 (9th Cir. 2016).

2 Third, Defendants argue that Pettitt cannot based her First Amendment retaliation
3 claim on the wrongfully obtained and invalid and void injunction against harassment
because such a claim is barred by *Heck*. Dkt. 24 at 6. That is wrong. *Heck* bars a claim

1 only if the claim requires proving the unlawfulness of a criminal “conviction or
2 confinement.” *Bonelli v. Grand Canyon Univ.*, 28 F.4th 948, 953 (9th Cir. 2022) (finding
3 *Heck* inapplicable to a university’s disciplinary warning proceeding as “there was no
4 conviction or confinement” and explaining that “where there is no ‘conviction or
5 sentence’ that may be undermined by a grant of relief to the plaintiffs, the *Heck* doctrine
6 has no application” (citation omitted; cleaned up)); *Roberts v. City of Fairbanks*, 947 F.3d
7 1191, 1198 (9th Cir. 2020) (“The absence of a criminal judgment here renders the *Heck*
8 bar inapplicable; the plain language of the decision requires the existence of a conviction
9 in order for a § 1983 suit to be barred.”).

8 Here, an injunction against harassment under A.R.S. § 12-1809 is a civil
9 proceeding under Arizona law that results in a civil judgment. *See Wood v. Abril*, 244
10 Ariz. 436, 438 ¶ 4 (App. 2018) (“When an injunction against harassment is not sought in
11 conjunction with a pending family law case, the Arizona Rules of Civil Procedure apply . .
12 . . .”); *LaFaro v. Cahill*, 203 Ariz. 482, 488 ¶ 22 (App. 2002) (explaining that the intent of
13 injunctions against harassment under “A.R.S. § 12-1809 [is] to provide a civil (i.e.,
14 non-criminal) method to help citizens from stalkers or perpetrators of domestic
15 violence”); *State v. Sebba*, 2012 WL 209751, at *4 ¶ 14 (Ariz. App. Jan. 24, 2012)
16 (describing an injunction against harassment under A.R.S. 12-1809 as a “*civil* injunction
17 against harassment” (emphasis added)). The imposition of an injunction against
18 harassment does not result in a criminal conviction or sentence, and the Complaint does
19 not seek to invalidate any criminal judgment or sentence stemming from the injunction
20 against harassment. In short, *Heck* does not bar Count II.

1 Fourth, Defendants contend that Count II cannot be based on the District’s decision
2 to ban Pettitt without giving her due process because she “had no procedural or
3 substantive due process rights to access school property.” Dkt. 24 at 6-7. Defendants,
4 however, misconstrue the District’s ban as detailed in the Complaint. In 2021, the District
5 prospectively and indefinitely banned Pettitt from all “District owned property,” including
6 “parking lots” and “any other property owned or controlled by [the District]” and “at any
7 time,” including “any athletic competition,” “district-sponsored event,” or “any event
8 hosted on campus by an outside organization.” Dkt. 1 at ¶¶ 34-37. The District’s property
9 is used for variety of events that are open to the public and hosted by outside
10 organizations, including school board meetings, public athletic events, voting and
11 election-related activities, and other community events. The Complaint states that the
12 “District’s ban prohibits Pettitt from accessing the District’s property for any athletic
13 event, school board meetings, . . . voting and election-related activities, community
14 functions, or any other events that are open to the public.” *Id.* at ¶ 62; *see also id.* at ¶¶
15 38, 44. And the Complaint further alleges that Pettitt did not attend some of these public
16 events, including school board meetings and public athletic events. *Id.* at ¶¶ 66-68, 128.
17 Thus, the District’s ban did not just ban Pettitt from “school property.” It banned her from
18 public fora. *Id.* at ¶ 38.

1 Here, the First Amendment “forbids a state to enforce certain exclusions from a
2 forum generally open to the public even if it was not required to create the forum in the
3 first place.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983).
4 And as the Ninth Circuit and lower district courts have long recognized, prospective and

1 indefinite bans prohibiting individuals from accessing public fora, including future public
2 meetings, is unreasonable and unconstitutional. *See Reza v. Pearce*, 806 F.3d 497, 505
3 (9th Cir. 2015) (holding that a complete, indefinite bar on individual entering limited
4 public forum “clearly exceeds the bounds of reasonableness” and finding that “[n]o cases,
5 in the Ninth Circuit or otherwise, even suggest that” the government can “indefinitely ban
6 an individual from a government building based on a single disruption”); *Miller v.*
7 *Heimueller*, 2023 WL 2474345 (D. Or. Mar. 13, 2023) (“Prospective bans from a limited
8 public forum are generally unreasonable because they are not based on actual
9 disruption.”); *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1362 (N.D.
10 Ga. 2022) (“Courts have consistently held that categorically banning individuals from
11 open school board meetings is unreasonable and unconstitutional.”). Thus, Pettitt has a
12 procedural due process right before being indefinitely banned from all District property,
13 including public fora. *See, e.g., England v. Jackson Cnty. Public Library*, 596 F. Supp.
14 1164, 1183 (S.D. Ind. 2022) (finding plaintiff’s procedural due process rights violated
15 when the government permanently banned plaintiff from public library without a hearing).

1 Fifth, Defendants contend that Pettitt’s First Amendment retaliation-by-prosecution
2 under Count II is defective because the grand jury indictment demonstrates that probable
3 cause for the prosecution existed at the time of the indictment. Again, as discussed in
4 detail in Section , the Complaint sufficiently alleges facts that rebuts the presumption of
5 probable at the pleading stage. *See Bloom v. City of Lake Stevens*, 2026 WL 1026814, at
6 *6 (W.D. Wash. Apr. 16, 2026) (refusing to dismiss first amendment retaliation claim
7 because the complaint contained allegations sufficient to rebut the presumption of
8

1 probable cause).

2 Sixth, Defendants are wrong that Count II cannot be based on Lineberry’s and
3 Dorathy’s false testimony due to testimonial immunity. Dkt. 24 at 7. Here, the Complaint
4 alleges that Lineberry and Dorathy were the complaining witnesses—that they made false
5 accusations and reports to the District, the police, and prosecutors, that they made these
6 false allegations in retaliation against Pettitt, and that their false allegations served to bring
7 about a prosecution. Dkt. 1 at ¶¶ __. The Ninth Circuit has recognized that witnesses “are
8 not entitled to absolute immunity for false testimony when they function as complaining
9 witnesses.” *Harris v. Roderick*, 126 F.3d 1189, 1199 (9th Cir. 1997) *Horohoe v. Arizona*,
2017 WL 6001482, at *7 (D. Ariz. Mar. 30, 2017) (denying dismissal under Rule 12 based
on testimonial immunity where defendant “was the complaining witness”).

1 Seventh, Lineberry and Dorathy argue they are entitled to qualified immunity
2 under Count II. Dkt. 24 at 8. “Dismissal is not appropriate unless [the Court] can
3 determine, based on the complaint itself, that qualified immunity applies.” *O’Brien*, 818
4 F.3d at 936. *See also Victoria v. City of San Diego*, 326 F. Supp. 3d 1003, 1020 (S.D. Cal.
5 2018) (declining dismissal under Rule 12(b)(6) because court “does not believe that it has
6 before it enough information to rule on every single aspect of the [defendants’] claims of
7 qualified immunity.”). Here, Count II alleges that the Defendants retaliated against Pettitt
8 for engaging in protected speech and other protected political activity, including by
9 prospectively and indefinitely banning her from all District property and criminal
10 prosecuting her for political campaigning on the District’s property. Dkt. 1 at ¶ [REDACTED]. “The
11 constitutional right to be free from retaliation was “clearly established at the time of

1 defendants' actions. Retaliation for engaging in protected speech has long been
 2 prohibited by the First Amendment." *O'Brien*, 818 F.3d at 936. Unlike *Hartzell* which
 3 concerned a ban against a parent from accessing only a single school's premises, this is
 4 not a case where Pettitt was banned from only one school property. Rather, as explained
 5 above, Pettitt was banned from all of the District's property at any time, including any
 6 public fora such as sidewalks, district board meetings, and public athletic events. Dkt. 1
 7 at ¶ [REDACTED]. The Ninth Circuit has long recognized that indefinite, categorical bans from
 8 public fora are unreasonable and unconstitutional. *See Reza*, 806 F.3d at 505 (holding that
 9 a complete, indefinite bar on individual entering limited public forum "clearly exceeds the
 10 bounds of reasonableness" and finding that "[n]o cases, in the Ninth Circuit or otherwise,
 11 even suggest that" the government can "indefinitely ban an individual from a government
 12 building based on a single disruption"); *Walsh v. Enge*, 154 F. Supp. 3d 1113, 1119
 13 (D. Or. 2015) ("What the government may not do is prospectively exclude individuals
 14 from future public meetings merely because they have been disruptive in the past.");
 15 *Miller*, 2023 WL 2474345, at *6 (D. Or. Mar. 13, 2023) ("Prospective bans from a limited
 16 public forum are generally unreasonable because they are not based on actual
 17 disruption."). Here, the Court cannot assess Lineberry and Dorathy's claims for qualified
 18 immunity based on the facts alleged in the Complaint, especially in light of long-standing
 19 Ninth Circuit law recognizing clearly established law under similar circumstances.

2 **C. Count III for Declaratory Judgment Is a Valid Claim.**

1 Count III seeks declaratory relief under both Arizona law (A.R.S. § 12-1831) and
 3 federal law (28 U.S.C. § 2201), including that: (a) the District's continuing ban "violates"

1 Pettitt’s First and Fourteenth Amendment rights and Arizona law; and (b) the District’s
 2 legal actions (e.g., petitioning for and obtaining an injunction against harassment) “are
 3 null and void” under Arizona’s open-meeting laws. Dkt. 1 at ¶¶ 157-58. Pettitt likewise
 4 seeks an injunction prohibiting the District and its agent from barring her from any public
 5 events or public meetings on the District’s property. *Id.* at ¶¶ 156, 159. All of
 6 Defendants’ argument against Count III are unavailing.

7 First, Defendants argue that Count III fails to the extent Pettitt seeks declaratory
 8 relief to adjudicate the unlawfulness of Defendants’ past conduct. Dkt. 24 at 9. Not so.
 9 Arizona has long recognized “a cause of action under the [Arizona] declaratory judgment
 10 act.” *Podol v. Jacobs*, 65 Ariz. 50, 54 (1946); *Mills v. Ariz. Bd. of Technical Registration*,
 11 253 Ariz. 415, 424 ¶ 29 (2022) (finding that plaintiff asserted three valid causes of action
 12 for declaratory judgment). And Arizona courts have long permitted parties to adjudicate
 13 the lawfulness of past conduct or events. *See, e.g., Cooper v. Commonwealth Title*, 15
 14 Ariz. App. 560, 562 (App. 1971) (“an action for declaratory judgment may be used in
 15 Arizona to attack a previous judgment as being void”); *Farmers Inv. Co. v. Ariz.*
 16 *State Land Dep’t*, 136 Ariz. 369, 375 (1982) (even if public sale had expired, claim for
 17 declaratory judgment about validity of public sale nevertheless be decided “for the
 18 guidance of public officials in the future administration of law”).³

19 Moreover, and contrary to Defendants’ suggestion, Pettitt brings Count III to

20 ³ Defendants also are incorrect that declaratory relief under 28 U.S.C. § 2201
 21 cannot be used to determine in part past violations of federal law. *See, e.g., Lippoldt v.*
 22 *Cole*, 468 F.3d 1204, 1217 (10th Cir. 2006) (“claim for declaratory relief is not moot
 23 where the district court must determine whether a past constitutional violation occurred
 24 which will in turn affect the parties’ current rights or future behavior”).

1 adjudicate continuing and future violations of federal and Arizona law. Pettitt has alleged
2 that: (1) Defendants “prospectively ban[ned] her from all of the District’s property for an
3 indefinite period of time” (Dkt. 1 at ¶¶ 34-37); (2) Pettitt “continues to be subject to the
4 District’s unlawful ban” to this day (*id.* at ¶¶ 128-129, 133); (3) “[d]ue to this ban, Pettitt
5 has not attended various public events on the School and District’s property, including
6 sporting events, board meetings, or other community events taking place in 2024 and
7 2025 that she would have liked to attend” (*id.* at ¶ 128); and (4) to avoid violating the
8 District’s ban, Pettitt still must email the District to request permission to come onto the
9 District’s Property to attend public events, including a public event held in December
10 2025 (*id.* at ¶¶ 130-134). The Court therefore has jurisdiction to grant declaratory relief
11 under 28 U.S.C. § 2201 and A.R.S. § 12-1831 because Pettitt has alleged present,
12 continuing legal violations. Because the District’s ban is continuing and ongoing,
13 resolving the District’s ban validity will affect the behavior of Defendants toward
14 Plaintiff. *See Bayer v. Neiman Marcus Grp., Inc.*, 816 F.3d 853, 868 (9th Cir. 2017)
15 (declaratory relief appropriate to settle disputes “which affects the behavior of defendant
16 toward the plaintiff” (emphasis in original)); *Grossenbach v. Ariz. Bd. of Regents*, 2026
17 WL 672925, at *4 (D. Ariz. Mar. 10, 2026) (“[D]eclaratory relief is not barred where, as
18 here, it is sought in connection with prospective injunctive relief and addresses an ongoing
19 or continuing violation of federal law.”). Defendants’ reliance on the unpublished
20 decision—*Jevons v. Inslee*, 2023 WL 5031498, at *1 (9th Cir. Aug. 8, 2023)—is improper
21 as the government action in that case had already terminated and there was no continuing
22

1 violation of federal law.⁴

2 Second, Defendants argue that Pettitt cannot seek a declaration that the injunction
3 against harassment is void due to the District’s violation of Arizona’s open-meeting laws
4 because: (a) under *Heck*, such a declaration “would necessarily imply the invalidity of the
5 conviction”; and (b) “the *Rooker-Feldman* doctrine precludes Plaintiff from asking this
6 Court to declare the injunction void.” Dkt. 24 at 9. Neither argument is availing.

7 *Heck* does not bar Count III for the same reasons set forth in Section [REDACTED]. A
8 declaration about the validity of the injunction against harassment will not imply the
9 invalidity of any conviction because the injunction is not a conviction.

10 Defendants fare no better under the *Rooker-Feldman* doctrine. “Under the
11 *Rooker-Feldman* doctrine, federal district courts lack subject matter jurisdiction over cases
12 brought by state-court losers complaining of injuries caused by state-court judgments
13 rendered before the district court proceedings commenced and inviting district court
14 review and rejection of those judgments.” *Miroth v. Cnty. of Trinity*, 136 F.4th 1141, 1144
15 (9th Cir. 2025). “Narrowness,” however, “is a hallmark of the *Rooker-Feldman* doctrine,”
16 and “the doctrine applies only in limited circumstances.” *Id.* at 1159. Most relevantly for
17 purposes of this Motion, this doctrine does not apply “where the federal plaintiff does not
18 complain of a legal injury caused by a state court judgment, but rather of a legal injury
19 caused by an adverse party” *Id.* at 1148. And it does not bar “an action in federal

20 ⁴ *Cardenas v. Anzai*, 311 F.3d 929, 936 n.4 (9th Cir. 2002) (“declaratory relief is
21 appropriate when ancillary to prospective relief”); *Grossenbach v. Ariz. Bd. of Regents*,
22 2026 WL 672925, at *4 (D. Ariz. Mar. 10, 2026) (“[D]eclaratory relief is not barred
23 where, as here, it is sought in connection with prospective injunctive relief and addresses
an ongoing or continuing violation of federal law.”).

1 court when that same action would be allowed in the state court of the rendering state.”
 2 *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 995 (9th Cir. 2002) (cleaned
 3 up).

4 Here, Count III seeks, in part, a declaration that that “the District’s legal actions
 5 (including commencing a legal action to petition for an injunction and any resulting
 6 injunction/order” are null and void *ab initio*, including under A.R.S. § 38-441.05, never
 7 existed or had any effect” because “the District violated Arizona’s open-meeting laws”
 8 when the “District’s governing board did not approve the legal action that the District
 9 commenced against Pettitt (including the petition for an injunction against workplace
 10 harassment in June 2022)” Dkt. 1 at ¶ 158. The *Rooker-Feldman* doctrine does not
 11 bar this declaratory request for at least two independent reasons. For one, Arizona law
 12 expressly authorizes “any person affected by an alleged violation” of Arizona’s
 13 open-meeting laws to “commence a suit . . . for purposes of requiring compliance with”
 14 these laws or “to determine the applicability of [these laws] to matters or legal actions of
 15 the public body.” A.R.S. § 38-431.07. Section 38-441.05 provides that “[a]ll legal action
 16 transacted by any public body during a meeting held in violation of [Arizona’s
 17 open-meeting laws] is null and void” unless timely and properly ratified. Arizona courts
 18 are thus empowered to determine if a public body, including a school district’s governing
 19 board, violated Arizona’s open-meeting laws and whether its legal action is “null and
 20 void.” *See, e.g., Desert Mountain Energy Corp. v. City of Flagstaff*, 566 P.3d 333, 339-42
 21 ¶¶ 18-43 (App. 2025) (finding that city violated the open-meeting laws and that its legal
 22 action was null and void); *Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd.*,

1 199 Ariz. 567, 568-70 ¶¶ 7-17 (App. 2000) (finding school board violated the
 2 open-meeting laws and appeal was null and void and “cease[d] to exist or have any
 3 effect”). Because Arizona law specifically authorizes such a legal challenge, Pettitt may
 4 seek such relief under Count III. *See Fontana Empire Ctr., LLC*, 307 F. at 993-94
 5 (holding that the *Rooker-Feldman* does not bar the claims “because California law
 6 specifically authorizes a separate action”).

7 Further, Pettitt is not seeking to set aside the injunction against harassment because
 8 of a legal error by the state court. Rather, she has alleged a wrongful or illegal act by the
 9 adverse party—namely, that the District violated Arizona’s open-meetings laws when the
 10 District commenced legal action against Pettitt (i.e., a petition for an injunction against
 11 harassment) and “the District’s governing board never authorized this legal action.” Dkt.
 12 1 at ¶¶ 78-79. Because Pettitt alleges that she has been harmed by the Defendants’
 13 wrongful conduct (not any legal errors by the state court), the *Rooker-Feldman* doctrine
 14 does not apply. *See Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140-41 (9th Cir. 2004)
 15 (holding the *Rooker-Feldman* doctrine inapplicable where plaintiff “is not alleging a legal
 16 error by the state court; rather, he or she is alleging a wrongful act by the adverse party”).

17 Third, Defendants recycle the same argument made against Count Two, alleging
 18 that Pettitt fails to allege an instance where she was denied permission to engage in
 19 protected First Amendment activities. Again, as stated in Section __, that is incorrect.
 20 The District’s ban bars Pettitt from all District property at any time, and she alleged that
 21 she did not attend school board meetings and public sporting events on the District’s
 22 property in 2024 and 2025 as a result. Dkt. 1 at ¶¶ [REDACTED], 128. To avoid this obvious
 23

1 conclusion, Defendants attempt to create a new pleading requirement. They suggest that
2 Pettitt’s First Amendment rights are not violated by being banned from District property at
3 any time, but only if the District refuses to make an exception to the ban. Tellingly,
4 Defendants do not cite even a single source for this requirement—which is no surprise
5 because it is not the law. A person’s rights are violated when the state takes action that
6 would chill or silence a person of ordinary firmness from future First Amendment
7 activities. *See Rhodes*, 408 F.3d at 568.

8 **D. Count Five Asserts A Valid Claim for Abuse of Process.**

9 Count Five for abuse of process seeks to recover against Defendants for initiating a
10 baseless criminal trial against Pettitt for aggravated harassment based on a null and void
11 *ad initio* injunction against harassment and testifying falsely in that second trial. Dkt. 1 at
12 ¶ 168. Defendants’ arguments for dismissal miss the mark.

13 Defendants concede that a claim for abuse of process arising from the second
14 criminal trial in January 2025 is timely. Dkt. 24 at 11. They nevertheless assert that
15 Pettitt fails to allege that they used a legal process other than for its intended use. *Id.*
16 That is wrong. In the second criminal trial, Pettitt was prosecuted for aggravated
17 harassment for purportedly violating the injunction against harassment. Dkt. 1 at ¶ [REDACTED].
18 But as alleged, the injunction against harassment was null and void *ad initio* because the
19 District failed to follow Arizona’s open-meetings laws by never voting and approving the
20 legal action against Pettitt. Dkt. 1 at ¶ [REDACTED]. Prosecuting a party for violating a void order
21 because the Defendants failed to follow the correct procedures for obtaining that order is
22 sufficient to show that the second criminal trial was not used for a process that was
23

1 intended. *See, e.g., Lacey v. Arpaio*, 2008 WL 11338496, at *12 (D. Ariz. Oct. 6, 2008)
2 (finding valid claim for abuse of process where defendant “failed to follow grand jury
3 procedures in issuing the subpoenas” and then filing a “motion for an order to show cause
4 seeking arrest warrants” based on violating invalid grand jury subpoenas), *aff’d in part,*
5 *rev’d in part and remanded sub nom. Lacey v. Maricopa Cnty.*, 649 F.3d 1118 (9th Cir.
6 2011), *on reh’g en banc*, 693 F.3d 896 (9th Cir. 2012), and *aff’d in part, rev’d in part and*
7 *remanded sub nom. Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

8 Similarly, falsely testifying during a criminal trial can support a claim for abuse of
9 process as Arizona courts recognize that the testimonial privilege does not protect
10 witnesses from liability for their improper litigation-related conduct. *See Goldman v.*
11 *Sahl*, 248 Ariz. 512, 526 ¶ 46 (App. 2020) (“To say that a participant in a judicial
12 proceeding is afforded absolute immunity from any civil liability under the common law
13 is incorrect. . . . [T]he litigation privilege does not shield the participant from his or her
14 improper litigation-related conduct.”); *Sierra Madre Dev., Inc. v. Via Entrada Townhouses*
15 *Ass’n*, 20 Ariz. App. 550, 554 (1973) (absolute privilege applies to defamation claims but
16 “nothing said herein is intended to affect the validity of any claim for relief based upon
17 malicious prosecution or abuse of process”). Defendants’ reliance on *Yeung* for the
18 absolute testimonial privilege standard is inapposite as *Yeung* concerned a lawsuit for
19 defamation. But *Sierra Madre* and *Goldman* make clear that this privilege does not
20 extend to claims for malicious prosecution and abuse of process (i.e., improper
21 litigation-related conduct). And Defendants citation to out-of-state authorities in
22 California and Texas do not apply because Arizona law holds otherwise. Thus, Count

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Five asserts a valid claim for abuse of process.

E. Count Six Is Legally Cognizable.

Pettitt's Complaints seeks to recover for violations of her rights under Art. 2, § 6 of the Arizona Constitution. Specifically, Pettitt alleges that Defendants retaliated against her for engaging in constitutionally protected activities such as speaking out, publicly criticizing school officials, filing complaints with the school board and AZDOE, peacefully assembling and associating, voting, and engaging in political speech, electioneering, and campaigning. Defendants assert that this claim must be dismissed because there is no direct damages remedy under the Arizona state constitution. This argument has no basis in Arizona law.

First, Defendants are unable to provide the Court with a single case under Arizona law which found that there is not a direct damages remedy for the alleged violations. Rather, Defendants merely cite cases from other states which, in interpreting their own constitutional provisions, found no implied damages cause of action for free speech violations. Dkt. 24 at 12. However, there are similarly other states which, in interpreting their own constitutional provisions on free speech, found such an implied damages cause of action. See *Gay L. Students Assn. v. Pac. Tel. & Tel. Co.*, 24 Cal. 3d 458, 475 (1979) (finding that a complaint stated a cause of action for alleged discrimination under the California state constitution); *Newell v. City of Elgin*, 34 Ill. App. 3d 719, 725 (1976) (permitting a cause of action for damages based on violations of the Illinois state constitution); *Widgeon v. E. Shore Hosp. Ctr.*, 300 Md. 520, 537 (1984) (holding that someone deprived of liberty or property in violation of the Maryland state constitution

1 may enforce their rights through an action for damages); *Dorwart v. Caraway*, 312 Mont.
 2 1, 22 58 P.3d 128, 141 (2002) (finding that actions for damages may be brought based on
 3 violations of the Montana constitution's right to privacy).

4 Second, permitting such a remedy is in accord with the Restatement (Second) of
 5 Torts § 874A (1979), which states:

6 When a legislative provision protects a class of persons by proscribing or
 7 requiring certain conduct but does not provide a civil remedy for the
 8 violation, the court may, if it determines that the remedy is appropriate in
 9 furtherance of the purpose of the legislation and needed to assure the
 effectiveness of the provision, accord to an injured member of the class a
 right of action, using a suitable existing tort action or a new cause of action
 analogous to an existing tort action.

1 The comments to the restatement make clear that this also includes constitutional
 2 provisions, not merely legislative material. Restatement (Second) of Torts §874A cmt. a.
 3 Article 2 Section 6 of the state constitution provides that “[e]very person may freely
 4 speak, write, and publish on all subjects, being responsible for the abuse of that right.”
 5 The protection of this right could not be clearer. Further, the utilization of a constitutional
 6 tort action in this case would be not only appropriate to further this provision but it is
 7 necessary. Without a proper remedy, citizens would have no means to enforce the rights
 8 they supposedly hold.

1 **F. Count Seven Asserts a Valid Claim for Relief.**

3 Defendants are wrong that Count Seven for intentional infliction of emotional

1 distress is time barred for any conduct “before January 28, 2025.” Dkt. 24 at 13. One
2 year from the filing of the Complaint is January 28, 2024. Thus, Pettitt may base Count
3 Seven on the second criminal trial that took place in January 2025 as well as the ongoing
4 District’s ban. Further, Defendants’ conclusory assertion that none of the conduct
5 alleged is sufficiently extreme or outrageous is incorrect. Pettitt alleges that Defendants
6 retaliated against her by maliciously prosecuting her and indefinitely banning her from the
7 District’s property. These allegations are sufficiently outrageous to support Pettitt’s claim.
8 See, e.g., *Donahoe v. Arpaio*, 869 F. Supp. 2d 1020 (D. Ariz. 2012) (denying dismissal of
9 intentional infliction claim under Rule 12(b)(6) where plaintiffs alleged retaliatory actions,
10 including malicious prosecution); *Johnson v. Perry*, 140 F. Supp. 3d 222, 227-28 (D.
11 Conn. 2015) (refusing to dismiss a claim for intentional infliction of emotional distress
12 when a parent alleged that he was banned from campus based on the content of his speech
13 that offended the defendant). Pettitt has asserted a valid claim for intentional infliction.

14 **G. Plaintiff Is Entitled to Recover Certain Damages.**

15 Pettitt’s Complaint makes clear that she is suing Lineberry and Dorathy in their
16 individual capacities, Dkt. 1 at ¶¶ 7-8, and “punitive damages are available in an
17 individual capacity suit against a State official.” *Wells v. Bd. of Trustees of Cal. State*
18 *Univ.*, 393 F. Supp. 2d 990, 999 (N.D. Cal. 2005). Further, A.R.S. § 12-820.04 only bars
19 punitive damages against public employees “acting within the scope of [their]
20 employment.” It is premature to determine at this stage whether punitive damages are
21 precluded under state law because a jury could find that Lineberry and Dorathy acted
22 outside their scope of employment. See *Bellis v. Navajo Cnty.*, 2024 WL 3202332, at *12

1
2
3
4
5
6
7
8
9
1
0
1
1
2
1
3

(D. Ariz. June 27, 2024) (denying motion to dismiss punitive damages as “premature,” noting that “to the extent [individual officers] are found to be acting outside the scope of their employment, they would not be entitled to immunity” under § 12-820.04). Finally, this case concerns a school District’s ban against a parent barring them from all District property at any time, “including from a school where her children attended[.]” Dkt. 1 at ¶4. Pettitt has alleged that Defendants’ actions, and the District’s ban, interfered with her right to direct her children’s upbringing—children who attended school in the District. Dkt. 1 at ¶¶ 21-23, 54, 61, 86, 140. Pettitt thus may be entitled to her attorneys’ fees under A.R.S. § 1-602. Dismissal of her claim for fees under this statute is premature at this juncture.

III. CONCLUSION

As detailed above, the Court should deny Defendants’ Motion. To the extent some or all of Pettitt’s claims are dismissed, she requests leave to file an amended complaint. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (“Dismissal with prejudice and without leave to amend is not appropriate . . .”).

Dated May 19, 2026.

SNELL & WILMER L.L.P.

By: *s/ draft*

Patrick A. Tighe
Matthew Racioppo
One East Washington St., Suite 2700
Phoenix, Arizona 85004-2556

Attorneys for Plaintiff Michelle Pettitt