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**IN THE GOODYEAR MUNICIPAL COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

PAUL GARRETT BIXLER, JR.,

Appellee/Plaintiff,

v.

LINDSEY GRAHAM

Appellant/Defendant.

Case No.: M076PO202300008

**APPELLANT LINDSEY GRAHAM'S
MEMORANDUM IN SUPPORT OF
HER MOTION TO QUASH
APPELLEE'S INJUNCTION AGAINST
HARRASSMENT**

INTRODUCTION

It is undisputed that there is only one instance of “contact” as between Ms. Graham and Mr. Bixler. That is, when he was in the woman’s locker-room—where Ms. Graham was entitled to be. The emails offered by Mr. Bixler, as Exhibit 8 at trial, cannot constitute “harassment” as a matter of law because his mere belief that they originated from Ms. Graham is not “substantial evidence” sufficient to support an injunction. All other allegations raised by Mr. Bixler concern Ms. Graham directing her conduct toward the police as a concerned citizen, the public square via social media posts, and statements made during school board meetings—which are inarguably protected. Because Mr. Bixler failed to provide sufficient evidence showing that Ms. Graham (as opposed to independent third parties) engaged in multiple instances of “harassment” that were

1 “directed towards” Plaintiff within the past year, his complaint is legally insufficient, and this
2 injunction must be quashed as a matter of law.

3 BACKGROUND & PROCEDURAL HISTORY

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5 This case concerns an Injunction Against Harassment (“IAH”) that was originally issued,
6 *ex parte*, by Judge Maria Brewer on January 17, 2023. In his Petition For the IAH (the “Petition”),
7 Mr. Bixler falsely asserted that Ms. Graham was a “professional agitator” and explicitly requested
8 that Ms. Graham be prevented from possessing firearms. As a basis for this injunction, Mr.
9 Bixler’s Petition alleged the following:
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11 A. Mr. Bixler falsely claimed that, on **October 10, 2021**, “[a]fter exhausting her time to speak
12 during the Public Participation portion of a regularly scheduled Governing Board meeting
13 [at Liberty Elementary School District #25, where Mr. Bixler is a trustee, Ms. Graham] left
14 the podium and approached the Board president and the District Superintendent. After
15 giving each a document, [she] returned to the podium and began to verbally attack me for
16 being a transgendered woman. The Board president intervened stopping her verbal attack.”
17 Pet. at 1. Interestingly, at trial, Mr. Bixler’s Counsel moved to strike this allegation from
18 the Petition. Nevertheless, he maintained that this event—in fact—happened and that he
19 could produce evidence of such but he did not have sufficient time to do so. *See* Trial
20 Recording at 4:53.¹ However, a quick review of all publicly available information
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26 ¹ The full and accurate version of the trial Recording is attached hereto as Exhibit 1, is incorporated
27 herein by this reference, and is available here for the Court’s convenience:
28 https://www.dropbox.com/s/dik3519rqosmq1o/Courtroom%2020230213_125308_sel_15-18-46_to_16-32-21.mp4?dl=0

(including video footage and minutes) from the district’s website,² demonstrates that Mr. Bixler apparently perjured himself by wholly fabricating this incident to obtain his IAH.

B. On **November 14, 2022**, “[w]hile dressed as a cat, [Ms. Graham] used her allotted time to speak during the Public Participation portion of a regularly scheduled Governing Board meeting, to verbally attack me for being a transgendered woman. As part of her verbal attack, [Ms. Graham] promoted false accusations concerning my interactions with students while I participated in District sponsored visits to District campuses. [Ms. Graham] also promoted false accusations concerning a nonexistent ‘transgender agenda.’”

C. On **November 15, 2022**, “[d]uring a nationally broadcast program, [Ms. Graham] continued to promote the false accusations she presented during her Public Participation experiences. [Ms. Graham] also issued a call to action against me. Soon after the national broadcast of her interview, I began receiving hateful, profane, threatening emails from national and international sources. [Ms. Graham] sponsors a robust social media experience.”

D. For an event that took place on **January 14, 2023**, Mr. Bixler reported:

The description of this event is taken, in part, from three videos created by [Ms. Graham] and posted onto her, "Patriot Barbie" Instagram. [Ms. Graham] was informed that I was using the women's restroom/changing room at the gym at which

² Videos for public school board meetings at Liberty Elementary School District Number 25, during Mr. Bixler’s time as a board member, are available here:

<https://go.boarddocs.com/az/liberty25/Board.nsf/Public#> (all videos can be accessed following the link to “MEETINGS” tab and selecting for the pertinent dates). For the Court’s convenience, the undersigned has compiled true and accurate videos of just the public comments made during Mr. Bixler’s tenure (Mr. Bixler first appears during the December 14, 2020, board meeting). These videos are available using this DropBox link:

<https://www.dropbox.com/sh/fbf46pphth58a5m/AAAMnIFqEABQBm7z1mqMs9B9a?dl=0>. Per the undersigned’s ethical obligation of candor to this Honorable Court, it is hereby noted that Mr. Bixler has perjured himself (in addition to defaming Ms. Graham) by wholly fabricating the alleged incident from October 10, 2021.

1 I am a multi year member. The next day, she went to the gym and, without my
2 knowledge awaited my entry into the women's locker room. Following me into the
3 locker room, [Ms. Graham] entered a separated section within the locker room, an
4 alcove, and while my back was turned, as I was facing my locker (looking away
5 from the locker room and not knowing she was there), Ms. Graham removed her
6 upper body clothing and positioned herself so that she would easily be seen as she
7 stood in this "alcove." As I turned away from my locker and began to exit the locker
8 room, I became aware that a person was standing in the alcove. This was surprising
9 as there was no one in the alcove when I had first entered. Glancing at the figure, I
10 was surprised that the person was naked from the waist up and facing directly at me.
11 However, even though this type of event had never occurred in the entire time that
12 I had been using the women's locker room, although odd, I initially assumed that
13 this was an aspect of using a locker room. As I continued my workout, I became
14 more and more concerned that this odd event in the locker room was really an
15 ambush. After deciding to inform the gym management about my concerns with the
16 locker room incident when exiting from the gym, I continued toward the end of my
17 workout. Prior to the end of my workout, I became aware of a Goodyear police
18 officer standing near me. After discussing my use of the women's locker room, the
19 police officer approved my gathering of my personal equipment and my exit from
20 the gym. This disruption made it difficult to finish my workout even though the
21 remaining exercises contained exercises assigned by my physical therapist as a part
22 of my recovery from recent, very invasive surgery. When I asked the officer if the
23 complaining party was Lindsey Graham, the officer acknowledged the complaining
24 person's identity. I informed the officer of the continuing harassment I have endured
25 from Lindsey Graham. After gaining the officer's acceptance I continued to the
26 locker room to gather my personal belongings and to exit the gym. As I walked
27 toward the locker room I could hear Lindsey Graham loudly protesting. I believe
28 that the officers instructed [Ms. Graham] to stop creating this disturbance. Upon
exiting the locker room, I encountered a second, different Goodyear police office.
After a brief conversation, the officer reviewed my Arizona driver's license, returned
to me my driver's license and gave me permission to leave the gym. As I proceeded
to the exit at the front of the building, enraged that I was not being arrested, [Ms.
Graham] began to charge toward me and began saying in a loud voice inappropriate
statements. The officers again intervened stopping [Ms. Graham]. It appears that
[she] was unaware that the gender id of my driver's license is female and that I had
the gym management approval to use the women's locker room.

Following a contested hearing on February 13, 2023, a Hearing Order maintaining the
original IAH was signed by Judicial Officer Kevin Berger on February 15, 2023. Interestingly,

1 this Order does not identify any factual basis for maintaining Mr. Bixler’s IAH.³ At the
2 contested hearing, after initially perjuring himself, Mr. Bixler’s testimony described the
3 remaining three incidents listed above. Accordingly, Mr. Bixler specifically complained of an
4 influx of hate-mail from third persons that (in his view) seemed to follow whenever Ms. Graham
5 made public statements about him.
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7 Additionally, two exhibits were considered by the court and, although Judicial Officer
8 Kevin Berger indicated that he would give these exhibits the weight they deserved, both were
9 wrongfully accepted as a factual basis for upholding this IAH. The first, Exhibit “8”, concerns a
10 barrage of seven (7), threatening, obscene, disgusting, and despicable emails received by Mr.
11 Bixler on **February 1 and 2, 2023**. These emails originate from the account “gruffer-dawn-
12 0j@icloud.com.” Without offering anything else, Mr. Bixler testified that he “believed” these
13 emails were from Ms. Graham because—in his view—one out of seven was “signed” by the
14 “Patriot Barbie.” *See* Exhibit 1, at 37:53. When Mr. Bixler was confronted with whether he—in
15 fact—knew who sent him these emails, he unequivocally answered, “no.” *Id.* at 22:53.
16 Nevertheless, Mr. Bixler maintained his assertion that these emails came from Ms. Graham
17 because it was his “impression” that they “all” came from the “Patriot Barbie.” *Id.* This
18 conceded speculation, unfortunately, was apparently accepted as one of the alleged incidents of
19 “harassment” that purports to support this IAH.
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26 ³ This blank order arguably violates Ms. Graham’s due process rights because it is overly broad and
27 ambiguous. In effect, the Order prevents from knowing what conduct, specifically, resulted in the
28 deprivation of her rights. This ambiguity is highly prejudicial to Ms. Graham and further supports her
request for attorney’s fees—especially because it creates hours of additional billable hours for the
undersigned counsel.

1 Exhibit 17 (also admitted) concerns a social media post from Ms. Graham’s Instagram
2 account (@the.patriot.barbie) from **January 22, 2023**. This post reads as follows:

3 I have first amendment rights to speak up against an elected official in a
4 professional capacity. I also have rights to use the women’s locker room at a gym
5 I’ve used for years.

6 Paul Bixler is now attempting to file a suit against me that would prevent me from
7 using my gym, and speaking at the school board meetings.

8 The MAN who uses WOMENS and GIRLS facilities at an elementary school is
9 trying to file legal limitations against me so that he can continue to violate
10 women’s rights and prey on children without my activism.

11 I will not back down and I will not go silent and passive against these demons.

12 Paul Bixler is officially targeting, intimidating me and harassing me to the point
13 that I will be considering legal action. In the meantime, I am DEMANDING that
14 anyone else that is able to, *please take their own actions*. This just proves, that one
15 person cannot do it all and cannot do it alone. If I am silenced, *will you stand up*
16 *for yourself??! Will YOU call the police? Will YOU file a suit? Will YOU speak up*
17 *at the school board?*

18 *Will YOU find the courage to do something?* Because I may not be able to, and
19 you still have *to stand up to this demonic agenda*. With or without me. *Please*
20 *share this*, I want the world to know what Paul Bixler is doing and how evil his
21 agenda is. After coming into my gym and using MY locker room as a women, he
22 tries to slander and target my rights. No way dude. I will not stop fighting for
23 what’s right.⁴

24 **As for relevant trial testimony**, when Mr. Bixler was asked by Ms. Brien whether he
25 wanted protection from Ms. Graham “publicizing information about [him] to [her] various
26 followers,” Mr. Bixler unequivocally answered, “yes.” Record at 30:00. With respect to the
27 emails that were purportedly signed by Ms. Graham, Mr. Bixler recognized that any person,
28 including himself, could type the words “Patriot Barbie” onto an email. *Id.* at 39:15–40:00.
Referencing Exhibit 8, Ms. Graham asked Mr. Bixler whether “these emails” stated specific
threats of harm directed at Mr. Bixler. *Id.* at 43:40. In response, he stated “some do, yes.” 44:05.
Seeking clarification, Ms. Graham asked Mr. Bixler to please identify the specific emails within

⁴ https://www.instagram.com/p/Cnvwa_HI6fK/ (last visited April 24, 2023) (emphasis added).

1 which such alleged threats were made. “No,” replied Mr. Bixler, “I didn’t include those *because*
2 [indiscernible] I’m not sure if they came from you.” *Id.* (emphasis added).

3 As for specific instances of in-person threats, Mr. Bixler could not recall any. *Id.* at
4 45:28. When asked if Ms. Graham has ever had any contact with Mr. Bixler apart from the
5 women’s locker room incident, he unequivocally stated “no.” *Id.* at 45:50. As for whether Ms.
6 Graham had ever visited his home or called him, Mr. Bixler stated “I *hope* not.” *Id.* Likewise,
7 when asked if Ms. Graham had ever texted him, Mr. Bixler replied “Maybe, but I hope not.” *Id.*
8 When asked for any specific instances of alleged harassment apart from the interaction in the
9 women’s locker-room, Mr. Bixler again indicated that he believed that Ms. Graham’s statements
10 “made on the interviews [she] did was also harassment.” *Id.* at 46:47.

11 Mr. Bixler further testified that Ms. Graham issued multiple “calls to action against” him.
12 *Id.* at 26:30. Regarding specific calls to action, Mr. Bixler first claimed to have “several”
13 examples before changing his characterization to “a few.” For the first of these “few,” Mr.
14 Bixler pointed to the fact that some of Ms. Graham’s supporters were in the courtroom for the
15 trial as an example (even though Mr. Bixler also had supporters in the courtroom that day). *Id.*
16 Mr. Bixler did not explain how this alleged call to action was promulgated nor even what—
17 specifically—Ms. Graham stated to invoke said action from her supporters. During his
18 testimony, Mr. Bixler noted an additional call to action that he conceded was “issued by Turning
19 Point” (notably, not Ms. Graham) “inviting” people to “attend” the “last” board meeting. Mr.
20 Bixler then clarified that these alleged calls to action “included not only attendance, *but also*
21 *violence.*” *Id.* at 31:49 (emphasis added). Mr. Bixler did not elaborate on this claim, nor did he
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1 provide any specific examples of these purported “calls to violence” made by Ms. Graham (as
2 opposed to a third party).

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4 Finally, despite conceding in his Petition that Ms. Graham was in a vulnerable state
5 (topless) on **January 14, 2023**, (which Mr. Bixler recalls as, “although odd, *I initially assumed*
6 *that this was an aspect of using a locker room*”), and that she did not reportedly utter a sound to
7 him (or anyone), Mr. Bixler testified at trial that Ms. Graham “accosted” him in the women’s
8 locker-room. *Id.* at 31:49. Following this interaction in the locker-room, Mr. Bixler returned to
9 his workout until he was approached by law enforcement officers, which is when he first
10 became aware that Ms. Graham had called the police for his being in the female locker-room.
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12 *See* Pet. at 2

13 LEGAL STANDARDS

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15 An injunction against harassment is proper “if the court finds reasonable evidence of
16 harassment of the plaintiff by the defendant during the year preceding the filing of the petition or
17 that good cause exists to believe that great or irreparable harm would result to the plaintiff if the
18 injunction is not granted.” *LaFaro v. Cahill*, 203 Ariz. 482, 485, 56 P.3d 56, 59 (Ct. App. 2002)
19 (citing *Ariz. Dep’t of Pub. Safety v. Superior Court*, 190 Ariz. 490, 494, 949 P.2d 983, 987
20 (App. 1997). Such injunctions are reviewed “under a clear abuse of discretion standard[, and
21 misapplying] the law to undisputed facts is an example of an abuse of discretion.” *Id.* For the
22 injunction to survive this challenge, this Court must “determine if the required finding of a
23 ‘series of acts’ of harassment is supported by *substantial evidence*.” *Id.* at 486, 56 P.3d at 486
24 (emphasis added). Indeed, ““a court should not wield its injunctive power to disrupt the settled
25 rights of others *without first requiring from the applicant significant evidence that he is on*
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1 *legally solid ground.”* *Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz.
2 6, 12-13, 219 P.3d 216, 222-23 (Ct. App. 2009) (citing *P & P Mehta LLC v. Jones*, 211 Ariz.
3 505, 507, 123 P.3d 1142, 1144 (Ct. App. 2005) (emphasis added). Where, as here, a Plaintiff
4 seeks to prevent a future injury, he must establish an "actual, concrete harm" that is not "merely
5 some speculative fear." *Id.*, at 13, 219 P.3d at 223 (citing *Klein v. Ronstadt*, 149 Ariz. 123, 124,
6 716 P.2d 1060, 1061 (Ct. App. 1986)).

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8 A.R.S. § 12-1809 defines “harassment” as “a series of acts over any period of time that is
9 directed at a specific person and that would cause a reasonable person to be seriously alarmed,
10 annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and
11 serves no legitimate purpose.” Thus, to survive the test of legal sufficiency, the Record must
12 reflect that Ms. Graham engaged in (a) a series of independent acts of “harassment” and (b) such
13 acts were ““directed at a specific person,’ *i.e.*, [Plaintiff].” *LaFaro*, 203 Ariz. at 485, 56 P.3d at
14 59.

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17 Like here, the injunction against harassment at issue in *LaFaro* was granted *ex parte* on a
18 verified petition. *Id.* at 485–86, 56 P.3d 59–60. After a contested hearing, the trial court refused
19 to quash the injunction. The evidence was undisputed, and the trial court considered just two
20 instances of purported contact between the petitioner, Mr. LaFaro (the leader of a local group
21 “CRG” gathering signatures for a recall of the then Mayor of Tempe), and the respondent, Mr.
22 Cahill (a Tempe City Council Member who opposed CRG’s recall efforts).

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25 In *LaFaro*, the first incident of alleged harassment occurred on October 29, 2000, in front
26 of a public library where Mr. LaFaro was soliciting signatures for CRG’s recall effort. This
27 alleged incident concerned a public conversation (in a parking lot) between Mr. Cahill and a
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1 third party—which was reportedly overheard by Mr. LaFaro. During this conversation, Mr.
2 Cahill apparently denounced the recall efforts and described Mr. LaFaro as a "bigot," "fascist,"
3 and "homophobe."

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5 Finding that this incident did not constitute conduct that was "directed at" Mr. LaFaro,
6 the court of appeals found it critical that "Mr. LaFaro was not a party to this conversation, and
7 Cahill was not talking to LaFaro." Based on these facts, the appellate court concluded that that
8 even if "Mr. LaFaro overheard a segment of that conversation, Cahill's communication does not
9 satisfy the statutory definition of harassment, which requires a harassing act to be 'directed at'
10 the specific person claiming of harassment. While Cahill was talking about LaFaro and
11 expressing his opinion of the recall effort, his comments were 'directed at' [another], not
12 LaFaro." *Id.*

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15 The second incident described in *LaFaro* occurred on October 31, 2000. This incident
16 involved a conversation between Cahill and LaFaro that occurred while LaFaro was soliciting
17 signatures for the recall campaign. A witness to this conversation testified that Cahill called
18 LaFaro a "bigot," and LaFaro also claimed that Cahill called him a "bigot, homophobe, fascist,
19 and Nazi." Refusing to determine whether such statements constitute "harassment" under the
20 statute, the court held that "this conversation was only one act directed at LaFaro, not the 'series
21 of acts' required for injunctive relief under A.R.S. § 12-1809. At a minimum, the 'series of acts'
22 condition requires two incidents." This is because, the court explained, "A.R.S. § 12-1809 is
23 intended to address a situation in which *a person directs harassing conduct at his target*
24 *repeatedly.*" *Id.* (emphasis added)

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ARGUMENT

1. THE INJUNCTION MUST BE VACATED AS A MATTER OF LAW BECAUSE NONE OF MS. GRAHAM’S CONDUCT CONSTITUTES AN “INDEPENDENT ACT” OF “HARASSMENT” THAT WAS “DIRECTED AT” PLAINTIFF.

The facts presented in *LaFaro* are nearly identical to the situation at hand, and the same outcome—vacating the injunction as a matter of law—is also warranted here. This is because, comparatively, both injunctions comprise only one alleged instance of conduct that (conceding only for the sake of argument) could constitute “harassment” that the Ms. Graham “directed at” the Mr. Bixler. Even then, these emails, are not supported by “substantial evidence” as the record reflects only Mr. Bixler’s “beliefs” and “speculation.” No other incident from the undisputed facts (when considered as they must be—as isolated incidents) could possibly satisfy the statutory definition of “harassment” under A.R.S. § 12-1809. Thus, just as in *LaFaro*, this injunction must be quashed as a matter of law. The legal sufficiency of each alleged instance of alleged “harassment” shall be addressed below, in turn (the dates are bolded for readability).

Despite recognizing that the IAH does not prevent Ms. Graham from speaking, Mr. Bixler nevertheless claims that the **November 14, 2022**, statement by Ms. Graham made during public comments at a school board meeting (while dressed as a cat) amounted to “harassment” because she criticized his delusion that he (a man born with a penis, who has fathered children, and who is entirely comprised of cells that are stamped with XY chromosomes irrespective of whether he adorns a dress) is—somehow—a she. Clearly, Mr. Bixler was annoyed by Ms. Graham’s public comment. However, it is beyond cavil that the nature of her statement, criticizing a government school system for teaching children lies about reality under the guise of

1 “affirmation” and “inclusion” is an issue of utmost public concern. It is axiomatic that such
2 statements are protected speech and (absent incitement) cannot amount to harassment as a
3 matter of law.
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5 Article II § 6 of the Arizona Constitution states unequivocally that “[e]very person may
6 freely speak, write, and publish on all subjects, being responsible for the abuse of that right.
7 (emphasis added). The First Amendment of the United States Constitution (incorporated against
8 the states through the adoption of the Fourteenth Amendment) provides parallel protections. “As
9 a general matter . . . in public debate our own citizens must tolerate insulting, and even
10 outrageous, speech in order to provide adequate breathing space to the freedoms protected by
11 the First Amendment.” *LaFaro*, 203 Ariz. at 488, 56 P.3d at 62, (quoting *Madsen v. Women’s*
12 *Health Center*, 512 U.S. 753, 774 (1994) (quoting *Boos v. Barry*, 485 U.S. 312, 322 (1988)).
13 “Absent evidence that [Ms. Graham’s] speech [was] independently proscribable (*i. e.*, “fighting
14 words” or threats), or is so infused with violence as to be indistinguishable from a threat of
15 physical harm,” her public comments cannot possibly constitute “harassment” within the clear
16 meaning of A.R.S. § 12-1809. *Madsen*, 512 U.S. at 774 (citing *Milk Wagon Drivers Union v.*
17 *Meadowmoor Dairies, Inc.*, 312 U.S. 287, 292–93 (1941)). To the extent that Mr. Bixler claims
18 Ms. Graham’s comments during the school board meeting were offensive and annoying—he is
19 without legal recourse as a matter of law. Insofar as he claims that Ms. Graham’s statements
20 were not true, his correct recourse would lie in a claim for Defamation—not this IAH.
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25 The **November 15, 2023**, statements from Ms. Graham made during a National public
26 broadcast likewise cannot constitute “harassment” as a matter of law because these statements
27 were protected speech. Again, to the extent that Mr. Bixler claims that Ms. Graham has defamed
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1 him—his proper recourse lies elsewhere. *See* Ariz. Const. Art. II § 6. Moreover, this incident is
2 also insufficient to constitute “harassment” as a matter of law because Ms. Graham’s conduct
3 was not “directed at” Mr. Bixler. Just like Mr. Cahill speaking to another person in a parking lot
4 within the earshot of Mr. LaFaro, Ms. Graham’s statements about Mr. Bixler (even if
5 subjectively offensive to him), were “directed at” the public generally. Apart from conclusory
6 assertions, Mr. Bixler does not allege that Ms. Graham encouraged or direct any other person to
7 harass Mr. Bixler during this appearance. The fact that third parties may have acted—on their
8 own volition—to harass Mr. Bixler after hearing public statements about him made by Ms.
9 Graham is legally irrelevant to a finding of “harassment” under A.R.S. § 12-1809.
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12 Mr. Bixler also claims that Ms. Graham “harassed” him on **January 14, 2023**. Notably,
13 Mr. Bixler admitted in his Petition that the “description of this event [was] taken, in part, from
14 three videos created by [Ms. Graham] and posted onto her, ‘Patriot Barbie’ Instagram.” Thus,
15 Ms. Graham’s conduct (posting videos to her Instagram) was directed at Instagram, not at Mr.
16 Bixler. It was not until he subsequently sought out and watched these videos that Mr. Bixler
17 became offended by their content. Thus, the allegation that the locker-room incident amounts to
18 harassment is logically absurd, as it is equivalent to claiming harassment based on one’s on
19 choice to confront allegedly “harassing” conduct. The Record does not even suggest that these
20 videos directed or even encouraged others to, specifically, harass Mr. Bixler as is required by
21 A.R.S. § 12-1809. Like making a public statement to a third party in *LaFaro*, posting to social
22 media about another person (absent a clear call to harass the subject of the video) is protected
23 speech (when such is not defamatory). As for the police officers contacting Mr. Bixler, Ms.
24 Graham justifiably called the police based on what she perceived to be a legitimate threat to her
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1 safety (and to that of all females sharing this vulnerable space). Indeed, Mr. Bixler concedes this
2 point in his Petition, stating that Ms. Graham “was unaware that the gender id of my driver's
3 license is female and that I had the gym management approval to use the women's locker room.”

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5 As for the specific interaction in the locker-room, this incident is also insufficient to
6 constitute “harassment” as a matter of law because Mr. Bixler was not—in fact—offended by
7 Ms. Graham’s “conduct” (that is standing silently while topless in a place where Ms. Graham—
8 as a woman—was entitled to be), which is a prerequisite to a finding of “harassment” under
9 A.R.S. § 12-1809. Rather than being offended by the locker-room interaction, Mr. Bixler
10 seemed to enjoy his run-in with his half-naked counterpart. *See* Exhibit 1 at 40:00 (explaining
11 how, whenever he enters the female locker room, Mr. Bixler exercises “common courtesy” by
12 doing a “quick scan” so he can “assure” everyone’s privacy by “looking around” to make
13 everyone “more comfortable”). Indeed, per his own words, such run-ins were expected
14 (“although odd, *I initially assumed that this was an aspect of using a locker room*”). As
15 demonstrated by the record, Mr. Bixler only became offended by Ms. Graham’s conduct after
16 his interaction with her ended and he learned that she had justifiably called the police. Because
17 the locker-room incident borrows the element of “in fact offense” from a subsequent event, it
18 cannot constitute an independent act of “harassment” as a matter of law. *See LaFaro*, 203 Ariz.
19 at 485, 56 P.3d at 59.
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24 Finally, the emails received on **February 2 and 3, 2023**, cannot possibly constitute
25 “harassment” as a matter of law because Mr. Bixler failed to meet his evidentiary burden
26 showing that the emails originated from Ms. Graham with “substantial evidence.” Instead of
27 demonstrating that Ms. Graham, in fact, sent these emails to Mr. Bixler. His determination that
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1 these emails came from Ms. Graham was entirely based upon the fact that the words “Patriot
2 Barbie” appeared on one—out of seven emails. Indeed, Mr. Bixler even admitted that he didn’t
3 know who—in fact—owned the account. Instead of providing evidence, Mr. Bixler’s claim is
4 supported only by speculation, which is insufficient to enjoin future conduct as a matter of law.
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6 *Persons with Disabilities*, 223 Ariz. at 12-13, 219 P.3d at 222-23.

7 8 CONCLUSION

9 “[T]he plain language of A.R.S. § 12-1809 requires a finding that [Ms. Graham] engaged
10 in a ‘series of acts’ of harassment that were directed at [Mr. Bixler,]” and—each act—must
11 constitute “harassment” when considered alone. *LaFaro*, 203 Ariz. at 485, 56 P.3d at 59.
12 Because the undisputed factual record does not support “a series of acts” that constitute
13 “harassment,” when considered alone, Plaintiff’s Injunction Against Harassment should be
14 vacated in its entirety and attorney’s fees and costs should be awarded pursuant to A.R.S. § 12-
15 1809(P). *See Kimicata v. McGee*, 230 Ariz. 6, 7, 279 P.3d 631 (Ct. App. 2012).
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