

Jennifer M Harrison, *Pro Per*



Lesa Anone, *Pro Per*



Jeremy Bronaugh, *Pro Per*



Russell Jaffe, *Pro Per*



Arizona Superior Court  
Maricopa County

Jennifer Harrison, Lesa Antone, Russell Jaffe, Jeremy Bronaugh (Individuals)  Plaintiffs,  VS  Katie Hobbs (Individual)  Defendant	<b>MOTION TO REQUEST EVIDENTIARY HEARING (Honorable Pamela Gates)  CASE NO. CV2018-006623</b>
---	---

Plaintiffs Jennifer M Harrison (“Harrison”), Lesa Antone (“Antone”), Russell Jaffe (“Jaffe”) and Jeremy Bronaugh (“Bronaugh”) hereby make a request for an evidentiary hearing for the purpose of presenting evidence to the Court of Ms. Hobbs’ defamation, present witnesses to support the claim, and to question the defendant as to the veracity of her claims in the motion to dismiss.

**Introduction**

This is a defamation lawsuit that stems from a Tweet made by Katie Hobbs, Minority Leader of Arizona Senate at the time of the Tweet, in which she maliciously makes a knowingly false claim that the “A-OK” sign is a symbol made by white supremacists. Ms. Hobbs posted this Tweet in a public forum in an effort to cause harm to Governor Ducey and the individual plaintiffs in this suit. Ample evidence exists to support that the hand gesture is in fact not a

symbol of white supremacy and for the Defendant to make the assertion as fact is sufficient cause for the defamation claim.

### Argument

In the Defendant's motion to dismiss the Defendant makes several claims that at best require further investigation by the Court through an evidentiary hearing and at worst demonstrate significant inconsistency and will be countered in this motion:

1. The Defendant claims that the individual plaintiffs have disrupted the peace and tranquility of the Legislature's place of business. The Defendant claims that the plaintiffs exercising of their Amendment 1 right to peacefully assemble and to redress grievances was disruptive to the Legislature, however, the fact is that the plaintiffs have every right to do so. By imploring the Governor to disavow peaceful actions monitored by Capitol Police is an infringement of those individual rights. Additionally the Defendant demonstrated significant inconsistency in her concern for the peace and tranquility of the Legislature's workplace as she took photographs and Tweeted support for the Red4Ed protestors who took over and significantly disrupted the "peace and tranquility" of the Legislature at the time of her defamatory Tweets. The Defendant's inconsistent concern for the peace and tranquility of the Legislature demonstrates her political motivation to only allow speech that fits with her specific agenda.
2. The Defendant claims that her statement "this woman is flashing a white supremacist sign" is not a provably false statement but instead "reflects Senator Hobbs' opinion on a matter of public significance". Is is clear from reading her statement that the Defendant did not intend to state her opinion but instead intended to make a statement of fact. The statement is not in any way made as though it is an opinion. Opinion statements are made with clear language identifying opinion. This statement did not use any language prefacing her statement as an opinion. In fact the choice of words "I hope you know ..." would indicate clearly she intended to make a statement of fact. Further evidence of this is entered showing a follow up Tweet in which the Defendant states the "Governor is palling around with white supremacists". This statement furthers the defamation as it clarifies her intended statement of fact that the "A-OK" is a symbol of white supremacy and her assertion that the mere presence of this hand gesture is proof that the plaintiffs are white supremacists. Additionally there is sufficient publication easily found on internet searches to support the assertion that the "A-OK" sign as a symbol of white power or white supremacy is provably false. The Anti Defamation League and the Southern Poverty Law Center have both written on the hoax of the "A-OK" gesture, known as "Operation A-OKKK", and that the gesture has since been at most used as trolling mechanism to "trigger liberals". Even in this function it is not in fact a white supremacy

gesture. While the Defendant may have felt triggered by the gesture it does not change the knowingly malicious defamation associated with publicly and with intended malice declaration that the plaintiffs are white supremacists. Arizona State Law is clear that defamation requires the defendant to have made a false statement of fact. It is clear that in stating the “A-OK” sign is a white supremacist sign the defendant’s statement meets this threshold.

3. The Defendant claims she was acting in her capacity as Senate Minority Leader and thus immune from liability under the debate clause of the US and Arizona Constitution.. This assertion is inconsistent with the protection. The Defendant claims she was acting in her capacity as Senate Minority Leader. This was never stated in the complaint. Instead the complaint clearly states she was “representing” herself as the Senate Minority Leader. In this representation in a public forum such as Twitter her words lend themselves to be presumed credible. This is a clear distinction from acting in her official capacity. In fact she was not using the Twitter account of the AZ Legislature (@AZ lawmakers ) or even Arizona Senate Democrats (@azsenatedems) as would reasonably be expected of official business, but instead her individual verified account thus leveraging her official role but not acting in its capacity. The Plaintiffs are confident the Defendant had at the time numerous methods available to her to voice her concerns to the Governor including but not limited to face to face discussion, telephone conversations and AZ Leg email but instead chose social media. The intent of this method was not to “warn the Governor” but instead to intentionally and maliciously harm the Governor and the plaintiffs. Not only did the Defendant choose to use a public social media forum but additionally she chose to “tag” in a reporter for the Arizona Republic (@rueleswritings) in a successful effort to further the malice in an act called the “wrap up smear”. In further evidence of the fact that the Defendant was not acting in any official capacity, it must be noted that a Senate Ethics Complaint was filed against the Defendant related to the same Tweet. In the Ethics response, then Chair Kimberly Yee stated that it was not a matter that the Senate would be able to take up and instead recommended filing a defamation complaint to seek remedy.
4. The Defendant claims she has legislative immunity for “statements made in speech or debate in the legislature”. Senator Hobbs claim of legislative immunity is on its face reprehensible. She was not in speech or debate in the legislature. The defendant's explanation of the extension of legislative immunity clearly does not allow for protection for this occurrence. The defendant states that the privilege “extends to matters beyond pure speech or debate in the legislature ONLY (*emphasis added*) when such matters are an integral part of the deliberative and communicative processes relating to proposed legislation or other matters placed within the jurisdiction of the legislature, and when necessary to prevent indirect impairment of such deliberation”. At no time did either party claim the Tweet was in reference to any deliberative or communicative processes

relating to proposed legislation. Her Tweet was explicitly voicing concern that the Governor took a photo with political enemies at a fundraising event in Mohave County. Any claim that the mere existence of this photo had any direct or indirect impact on proposed legislation is laughable. Thusly for Senator Hobbs to claim blanket immunity after the fact for this or any statement made in public is ludicrous and should strike fear into the hearts of any constituent.

### Conclusion

The plaintiffs thusly and respectfully ask the Court for a hearing to present evidence of the defamation and the damages resulting, present witnesses to support the complaint and question the Defendant as to her assertions in the Tweet and in the motion to dismiss. It is clear that the motion to dismiss does not meet the threshold for dismissal as the Defendant clearly acted recklessly and with intended malice in posting the knowingly false statements in her Tweet and in "tagging" the Arizona Republic reporter in an effort to further the malicious Tweet. The Defendant either knew or with minimal effort would have learned that the "A-OK" gesture as a white supremacy gesture is a well known hoax. Additionally the claims of legislative immunity are without justification. The Defendant was clearly not acting in any official capacity. The Defendant could have chosen any method of private communication to "warn the Governor" of her concern with the plaintiffs. Instead the Defendant made a very public social media Tweet with the intent of causing harm to both the Governor and the plaintiffs. She intended through this Tweet to hurt the Governor in his re-election bid and to hurt the plaintiffs in preventing them from being able to exercise their Amendment 1 rights at the Legislature. This type of personal and malicious attacks for political gain must be held in check, especially in the current environment of attacks on political conservatives seen in public restaurants, private residences and even the hallowed halls of the United States Senate. The plaintiffs ask the Court to do its part by allowing this defamation suit to proceed.

Dated: 11/19/2018

Plaintiff Jennifer Harrison Jennifer Harrison

Dated: 11/19/2018

Plaintiff Lesa Antone Lesa Antone

Dated: 11/19/2018

Plaintiff Jeremy Bronaugh Jeremy Bronaugh

Dated: 11/19/2018

Plaintiff Russell Jaffe Russell Jaffe

Certificate of Service

We certify that on the 19th day of November 2018, Plaintiff Harrison electronically transmitted a PDF copy of this motion to the office of the Clerk of the Superior Court in Maricopa County via Efile using the AZTurboCourtSystem. A complete copy of the foregoing document sent via email this same date to the following:

Roy Herrera Jr.  
1 E Washington Street, Suite 2300  
Phoenix, AZ 85004-2555  
[herrerar@ballardspahr.com](mailto:herrerar@ballardspahr.com)

Daniel A Arellano  
1 E Washington Street, Suite 2300  
Phoenix, AZ 85004-2555  
[arellanod@ballardspahr.com](mailto:arellanod@ballardspahr.com)