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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Arizona Attorneys for Criminal Justice,)
9 et al.,)
10 **Plaintiffs,**)
11 vs.)
12 Doug Ducey, et al.,)
13 **Defendants.**)
14

No. CV-17-01422-PHX-SPL

ORDER

15 In 1990, voters approved an amendment to the Arizona constitution, the Victims’
16 Bill of Rights (“VBR”), which grants crime victims twelve enumerated rights designed
17 “[t]o preserve and protect [their] rights to justice and due process.” Ariz. Const. art. II, §
18 2.1(A). In 1991, Arizona enacted the Victims’ Rights Implementation Act (“VRIA”), a
19 set of statutory amendments implementing the VBR. 1991 Ariz. Sess. Laws Ch. 229
20 (H.B. 2412) (codified at Ariz. Rev. Stat. §§ 13-4401 to 4442). Among those statutes
21 includes Arizona Revised Statute § 13-4433, which implements a victim’s right under the
22 VBR to refuse an interview. *See* Ariz. Const. art. II, § 2.1(A)(5). The statute reads in
23 relevant part:

24 A. Unless the victim consents, the victim shall not be
25 compelled to submit to an interview on any matter, including
26 any charged criminal offense witnessed by the victim and that
27 occurred on the same occasion as the offense against the
28 victim, or filed in the same indictment or information or
consolidated for trial, that is conducted by the defendant, the
defendant’s attorney or an agent of the defendant.

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B. The defendant, the defendant’s attorney or an agent of the defendant shall only initiate contact with the victim through the prosecutor’s office. The prosecutor’s office shall promptly inform the victim of the defendant’s request for an interview and shall advise the victim of the victim’s right to refuse the interview.

C. The prosecutor shall not be required to forward any correspondence from the defendant, the defendant’s attorney or an agent of the defendant to the victim or the victim’s representative.

D. If the victim consents to an interview, the prosecutor’s office shall inform the defendant, the defendant’s attorney or an agent of the defendant of the time and place the victim has selected for the interview... The victim has the right to terminate the interview at any time or to refuse to answer any question during the interview. The prosecutor has standing at the request of the victim to protect the victim from harassment, intimidation or abuse and, pursuant to that standing, may seek any appropriate protective court order.

Ariz. Rev. Stat. § 13-4433(A)-(D).

On May 8, 2017, Plaintiffs, individual criminal-defense lawyers, investigators, and non-profit organization Arizona Attorneys for Criminal Justice, filed a complaint challenging the constitutionality of Ariz. Rev. Stat. § 13-4433(B), which prohibits the defense from initiating contact with a victim. (Doc. 1 ¶ 1, 16-23.) They allege that “[c]riminal-defense lawyers and investigators have been subjected to professional discipline and criminal charges for alleged violations of A.R.S. § 13-4433(B), and these adverse actions against members of the criminal-defense community have chilled constitutionally protected speech and hindered the ability of criminal-defense teams to effectively represent criminal defendants and vindicate the rights afforded them in the criminal-justice process.” (Doc. 1 ¶ 9; *see also* Doc. 1 ¶ 53 (alleging “other defense lawyers and members of defense teams have been threatened with professional and criminal sanctions based on violations of A.R.S. § 13-4433(B)”).)

Plaintiffs bring two claims for relief under 42 U.S.C. § 1983 against Arizona Attorney General Mark Brnovich in his official capacity as “the chief legal officer of the state,” who “has general supervisory authority over county and local prosecutors,” and “is

1 responsible for the administration of the victims’ rights program, which administers a plan
2 for assisting and monitoring state and local entities that are required to implement and
3 comply with victims’ rights laws, including A.R.S. § 13-4433(B).” (Doc. 1 ¶ 25 (citing
4 Ariz. Rev. Stat. § 41-191.06).)¹ (Doc. 1.) They seek injunctive and declaratory relief,
5 asking that enforcement of Ariz. Rev. Stat. § 13-1433(B) be enjoined, and that § 13-
6 1433(B) be declared unconstitutional “on the grounds that: (1) the law is a content-based
7 restriction on constitutionally protected speech not narrowly tailored to a compelling
8 government interest, and (2) the law is overbroad, in violation of the First Amendment to
9 the United States Constitution.” (Doc. 1 ¶ 11.)

10 Pending before the Court are numerous party and non-party motions; the Attorney
11 General moves to dismiss the complaint, Plaintiffs move for preliminary injunction, and
12 several non-parties move to intervene as defendants. Finding this case is not justiciable
13 against the Attorney General,² as follows, he will be dismissed and the requests for
14 intervention and preliminary injunction will be denied.

15 **I. Legal Standard**

16 In considering a facial challenge to jurisdiction under Rule 12(b)(1) of the Federal
17 Rules of Civil Procedure, as here, the Court determines whether the allegations in the
18 complaint are insufficient on their face to demonstrate the existence of jurisdiction, and
19 dismissal is appropriate only where the plaintiff fails to allege an element necessary for
20 subject matter jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.
21 2004); *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). The material factual
22 allegations of the complaint are presumed to be true and construed in favor of the
23 complaining party. *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) (quoting

24 ¹ The complaint also names Governor Doug Ducey as a defendant, who has been
25 dismissed from this action on stipulation of the parties.

26 ² the Attorney General moves to dismiss the complaint under Rule 12(b)(1),
27 12(b)(6), and 12(b)(7) of the Federal Rules of Civil Procedure arguing: (1) *Younger v.*
28 *Harris*; (2) lack of standing; (3) sovereign immunity; (4) failure to join necessary parties
under Rule 19; and (5) failure to state a claim. (Doc. 31.) Because the Court concludes
that Plaintiffs lack standing to sue the Attorney General, it does not reach the remaining
arguments advanced.

1 *Nat'l Audubon Soc.*, 307 F.3d at 849). See *Chandler v. State Farm Mut. Auto. Ins. Co.*,
2 598 F.3d 1115, 1122 (9th Cir. 2010) (Article III standing is properly raised under
3 12(b)(1)).

4 “To state a case or controversy under Article III, a plaintiff must establish
5 standing.” *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125, 133
6 (2011). See also *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 597-98
7 (2007). The doctrine of standing encompasses both constitutional requirements and
8 prudential considerations. See *Valley Forge Christian Coll. v. Ams. United for Separation*
9 *of Church & State, Inc.*, 454 U.S. 464, 471 (1982). “The constitutional requirement of
10 standing has three elements: (1) the plaintiff must have suffered an injury-in-fact—that is,
11 a concrete and particularized invasion of a legally protected interest that is actual or
12 imminent, not conjectural or hypothetical;³ (2) the injury must be causally connected—
13 that is, fairly traceable—to the challenged action of the defendant and not the result of the
14 independent action of a third party not before the court; and (3) it must be likely and not
15 merely speculative that the injury will be redressed by a favorable decision by the court.”
16 *Catholic League for Religious and Civil Rights v. City and County of San Francisco*, 624
17 F.3d 1043, 1049 (9th Cir. 2010) (citing *Lujan*, 504 U.S. at 560-61; *Valley Forge*, 454
18 U.S. at 475-76).

19 The plaintiff bears the burden of establishing the existence of a justiciable case or
20 controversy, and “‘must demonstrate standing for each claim he seeks to press’ and ‘for
21 each form of relief’ that is sought.” *Davis v. Federal Election Comm’n*, 554 U.S. 724,
22 734 (2008) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)). “A
23 plaintiff must establish standing with the ‘manner and degree of evidence required at the
24 successive stages of the litigation.’” *Carrico v. City and County of San Francisco*, 656

25 _____
26 ³ “The constitutional component of ripeness overlaps with the ‘injury in fact’
27 analysis for Article III standing. Whether framed as an issue of standing or ripeness, the
28 inquiry is largely the same: whether the issues presented are ‘definite and concrete, not
hypothetical or abstract.’” *Wolfson v. Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010)
(citations omitted). See also *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154 (9th Cir. 2000)
(discussing ripeness).

1 F.3d 1002, 1006 (9th Cir. 2011) (quoting *Lujan*, 504 U.S. at 561). “[A]t the pleading
2 stage, the plaintiff must clearly... allege facts demonstrating each element.” *Spokeo, Inc.*
3 *v. Robins*, 136 S.Ct. 1540, 1547 (2016) (internal quotations omitted).

4 **II. Discussion**

5 **A. Injury-In-Fact**

6 The Court finds that Plaintiffs have sufficiently alleged an injury-in-fact for
7 Article III standing. Plaintiffs “have alleged ‘an intention to engage in a course of
8 conduct arguably affected with a constitutional interest’” under the First Amendment that
9 is “‘proscribed by [the] statute they wish to challenge.’” *Susan B. Anthony List v.*
10 *Driehaus*, 134 S.Ct. 2334, 2344 (2014) (quoting *Babbitt v. United Farm Workers Nat’l*
11 *Union*, 442 U.S. 289, 298 (1979)). (See Doc. 1 ¶¶ 38-47, 52.) See *Fla. Bar v. Went For It,*
12 *Inc.*, 515 U.S. 618, 634 (1995) (“speech by attorneys on public issues and matters of legal
13 representation” is constitutionally protected”); *Eng v. Cooley*, 552 F.3d 1062, 1069 (9th
14 Cir. 2009) (state action that “chill[s] an attorney’s advocacy for his or her client strikes at
15 the heart of the First Amendment.”); *In re Morrissey*, 168 F.3d 134, 140 (4th Cir. 1999).
16 By its terms, Ariz. Rev. Stat. § 13-4433(B) targets Plaintiffs - criminal-defense attorneys
17 and their investigatory agents. See *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d
18 644, 655 (9th Cir. 2011). Plaintiffs allege the type of speech they believe is
19 constitutionally protected, is necessary to the performance of their duties as advocates,
20 and is the basis upon which they may be disciplined were they to violate § 13-4433(B).
21 See *Canatella v. State of California*, 304 F.3d 843, 852–53 (9th Cir. 2002).

22 Plaintiffs’ claim of self-censorship under the threat of enforcement sufficiently
23 alleges that, in the absence of concurrent prosecution, they have sustained an injury to
24 their First Amendment rights that is concrete and actual. See *Driehaus*, 134 S. Ct. at 2342
25 (quoting *Babbitt*, 442 U.S. at 298) (where a plaintiff brings a pre-enforcement challenge,
26 he or she “satisfies the injury-in-fact requirement where he alleges ‘an intention to
27 engage in a course of conduct arguably affected with a constitutional interest, but
28 proscribed by a statute, and there exists a credible threat of prosecution thereunder.”);

1 *Libertarian Party of Los Angeles County v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013);
2 *Wolfson*, 616 F.3d at 1059 (“Self-censorship is a constitutionally recognized injury”)
3 *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1094 (9th Cir. 2003) (“In an
4 effort to avoid the chilling effect of sweeping restrictions, the Supreme Court has
5 endorsed what might be called a ‘hold your tongue and challenge now’ approach rather
6 than requiring litigants to speak first and take their chances with the consequences.”).

7 Plaintiffs’ claim that other criminal-defense attorneys and investigators have been
8 the subject of professional discipline for violating § 13-4433(B) is sufficient to allege that
9 their decision to refrain from engaging in is based on a reasonable fear of enforcement of
10 the statute. (Doc. 1 ¶ 9; Doc. 46 at 10 (citing examples of state bar disciplinary
11 proceedings). *See Driehaus*, 134 S. Ct. at 2345 (a threat of “administrative action, like
12 arrest or prosecution,” is sufficient for Article III standing); *McCormack v. Herzog*, 788
13 F.3d 1017, 1027 (9th Cir. 2015) (“a plaintiff need only ‘reasonable fear a statute would
14 be enforced against it if it engaged in certain conduct’”) (quoting *Planned Parenthood of
15 Idaho, Inc. v. Wasden*, 376 F.3d 908, 917 (9th Cir. 2004)); *Human Life of Washington
16 Inc. v. Brumsickle*, 624 F.3d 990, 1001 (9th Cir. 2010) (“self-censorship is a
17 constitutionally sufficient injury as long as it is based on an actual and well-founded fear
18 that the challenged statute will be enforced”) (internal quotations omitted); *Lopez v.
19 Candaele*, 630 F.3d 775, 786 (9th Cir. 2010) (“a threat of government prosecution is
20 credible if ... there is a history of past prosecution or enforcement under the challenged
21 statute.”) (internal quotations omitted).⁴

22 **B. Traceability**

23 Although Plaintiffs sufficiently allege an injury-in-fact, they fail to offer plausible
24 allegations from which the Court can conclude that their injury is traceable to the actions
25 of the Attorney General or the ambit of his enforcement authority. *See Lujan*, 504 U.S. at

26 ⁴ As the individual plaintiffs have sufficiently alleged an injury-in-fact for purposes
27 of Article III standing, the Court need not reach the Attorney General’s arguments
28 concerning the Arizona Attorneys for Criminal Justice. *See California ex rel. Imperial
Cnty. Air Pollution Control Dist. v. U.S. Dep’t of the Interior*, 767 F.3d 781, 789 (9th Cir.
2014).

1 560; *Culinary Workers Union, Local 226 v. Del Papa*, 200 F.3d 614, 619 (9th Cir. 1999)
2 (observing that Article III justiciability and Eleventh Amendment immunity present a
3 closely related, overlapping inquiry); *Southern Pac. Transp. Co. v. Brown*, 651 F.2d 613,
4 615 (9th Cir. 1980).

5 The source of Plaintiffs' complained injury – the restraint of protected speech – is
6 the threat of professional discipline for violating Ariz. Rev. Stat. § 13-4433(B).⁵ The
7 Attorney General, however, has no authority to prosecute, sanction, or otherwise carry out
8 the vital steps in the disciplinary process. Rather, as reflected in the cases cited by
9 Plaintiffs, the State Bar of Arizona “initiate[s]” disciplinary proceedings and the Arizona
10 Supreme Court “discipline[s] defense attorneys for violations of the statute.” (Doc. 46 at
11 9.) *See also Wolfson*, 616 F.3d at 1056–57 (“The Arizona Supreme Court Disciplinary
12 Commission has authority to impose various sanctions on members of the Arizona Bar,
13 including censure, reprimand, probation, and restitution... The Arizona Chief Bar
14 Counsel is charged with overseeing and directing the prosecution of discipline cases
15 involving members of the bar...”) (internal citations omitted). Thus, Plaintiffs' alleged
16 injuries are the result of “the independent action of some third party not before the court.”
17 *Bennett v. Spear*, 520 U.S. 154, 169 (1997).

18 It is of little consequence that the Attorney General can advise or report violations
19 of § 13-4433(B) to the state bar, because that conduct does not have a coercive effect on
20 the actions of state bar counsel who may or may not elect to pursue action, and any
21 ensuing discipline is the result of an independent decision made by the commission. *See*
22 *Novak v. U.S.*, 795 F.3d 1012, 1019 (9th Cir. 2015) (“To plausibly allege that the injury

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24 ⁵ The VRIA itself contains no civil or criminal penalties for violations of its
25 provisions, nor provides for a private cause of action to be brought against a violating
26 party. *See Lindsay R. v. Cohen*, 343 P.3d 435, 437 (Ariz. Ct. App. 2015) (“neither the
27 VBR nor the VRIA gives victims a right to control the proceedings, to plead defenses, or
28 to examine or cross-examine witnesses; the VBR and the VRIA give victims the right to
participate and be notified of certain criminal proceedings.”); *State ex rel. Montgomery v. Padilla*, 364 P.3d 479, 485 (Ariz. Ct. App. 2015) (the VRIA provides a victim with standing to seek an order in the defendant's trial or appellate proceeding to enforce a right or to challenge an order denying a right) (citing A.R.S. § 13-4437(A)); (Doc. 31 at 9).

1 was not the result of the independent action of some third party, the plaintiff must offer
2 facts showing that the government’s unlawful conduct is at least a substantial factor
3 motivating the third parties’ actions.”) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1013
4 (9th Cir. 2014)); *Salmon Spawning & Recovery Alliance v. Gutierrez*, 545 F.3d 1220,
5 1227 (9th Cir. 2008); *Guerrero v. Clinton*, 157 F.3d 1190, 1195 (9th Cir. 1998) (finding
6 no causal connection from a report that had no direct legal consequences or a
7 “determinative or coercive effect” on the actions of the injuring party); *Snoeck v. Brussa*,
8 153 F.3d 984, 987 (9th Cir. 1998).

9 The Court observes that the complaint also alleges that defense attorneys and
10 investigators face a threat of “criminal charges” for violations of Ariz. Rev. Stat. § 13-
11 4433(B). (Doc. 1 ¶ 9.) Neither the complaint nor Plaintiffs’ responsive filings however
12 set forth any basis for this allegation, and for purposes of this discussion, it is deemed
13 abandoned. Even so, the Court points out that there are no allegations which show that
14 the Attorney General prosecutes or directs the criminal prosecution of § 13-4433(B)
15 violations, nor have the parties pointed the Court to any authority which suggests the
16 Attorney General could. The statute itself contains no criminal penalties and Ariz. Rev.
17 Stat. § 41-191.06, the statutory administrative provision for the victims’ rights program to
18 which Plaintiffs cite (*see* Doc. 1 ¶ 25), provides no such authority. Rather, it states only
19 that “[t]he attorney general may employ administrative and other personnel that the
20 attorney general deems necessary to administer the victims’ rights program.” Ariz. Rev.
21 Stat. § 41-191.06(B). Nor do Plaintiffs allege that, in the absence of any apparent power to
22 do so, the Attorney General has nonetheless threatened to criminally prosecute violations
23 of § 13-4433(B). Thus the fact that “Defendant may handle any criminal prosecution in
24 Arizona” and has “the authority to influence all criminal prosecutions in the state” does
25 not draw even an attenuated line of causation between his conduct and the source of
26 Plaintiffs’ alleged injury. (Doc. 46 at 10-11 (citing Ariz. Rev. Stat. § 41-193(A).) *See*
27 *Maya*, 658 F.3d at 1070 (“To survive a motion to dismiss for lack of constitutional
28 standing, plaintiffs must establish a ‘line of causation’ between defendants’ action and

1 their alleged harm that is more than ‘attenuated.’”) (quoting *Allen v. Wright*, 468 U.S.
2 737, 757 (1984)).

3 Lastly, Plaintiffs argue that the Attorney General’s role as “the conduit between
4 defense counsel and victims in all criminal proceedings,” and authority to assert standing
5 to invoke the rights of a victim, if requested, provides the necessary causal link between
6 his responsibilities and Plaintiffs’ injury. (Doc. 46 at 11-12.) This is unavailing. It is not
7 the prospect of rejection by an intermediary individual or event that Plaintiffs claim has a
8 chilling effect on their speech – it is the “omnipresent threat of prosecution incident to a
9 violation of § 13-4433(B) that acts as the illegal and unconstitutional prior restraint and
10 First Amendment violation.” (Doc. 46 at 16.) Plaintiffs therefore fail to allege that the
11 Attorney General has the necessary causal connection with and is fairly traceable to the
12 conduct from which the alleged injuries arise.

13 **C. Redressability**

14 Because Plaintiffs set forth no facts which show that they have suffered an injury
15 as a result of some conduct of the Attorney General, it follows that it is not likely, much
16 less plausible, that an injunction against him would redress their alleged injury. *See*
17 *Lujan*, 504 U.S. at 561; *Cantrell v. City of Long Beach*, 241 F.3d 674, 679 (9th Cir.
18 2001); *United States v. City of Arcata*, 629 F.3d 986, 989 (9th Cir. 2010). As reasoned
19 above, the Attorney General has no direct involvement in or coercive effect over the
20 prosecution of disciplinary proceedings for violations of Ariz. Rev. Stat. § 13-4433(B).
21 Thus, any injunction against the Attorney General would not require him to act in any
22 way that would redress Plaintiffs’ injuries; the threat of discipline that has a chilling
23 effect on Plaintiffs’ speech would persist with full force in the hands of third parties that
24 are not before the Court. Plaintiffs therefore lack standing to pursue their claims against
25 the Attorney General. *See Massachusetts v. EPA*, 549 U.S. 497, 526 (2007)
26 (redressability for Article III standing is satisfied only where the risk of harm “would be
27 reduced to some extent if petitioners received the relief they seek”); *Shell Gulf of Mexico*
28 *Inc. v. Center for Biological Diversity, Inc.*, 771 F.3d 632, 636 (9th Cir. 2014) *Novak*,

1 795 F.3d at 1019–20; *Mayfield v. U.S.*, 599 F.3d 964, 972 (9th Cir. 2010); *ASARCO Inc.*
2 *v. Kadish*, 490 U.S. 605, 615 (1989).

3 **D. Leave to Amend**

4 Despite the Attorney General’s inherent attempt to persuade the contrary, the
5 Court cannot conclude that Plaintiffs would be unable to make a sufficient showing of
6 Article III standing to seek redress against an appropriate defendant. An injunction
7 against a defendant who has the power to prosecute or discipline violations of § 13-
8 4433(B) would redress at least some of Plaintiffs’ alleged injuries - Plaintiffs would not
9 be compelled to self-censor their speech under fear of the discipline alleged in the
10 complaint, and would be free to initiate contact with victims. *See e.g., Wolfson*, 616 F.3d
11 at 1056–57 (“The[] defendants have the power to discipline Wolfson and, if they are
12 enjoined from enforcing the challenged provisions, Wolfson will have obtained redress in
13 the form of freedom to engage in certain activities without fear of punishment... Without
14 a possibility of the challenged canons being enforced, those canons will no longer have a
15 chilling effect on speech. Wolfson will thus be able to engage in the political speech and
16 campaign activities he desires. It is true that Wolfson cannot obtain revision of the Code
17 from these defendants, but Wolfson may nevertheless obtain a form of effective redress
18 in this action.”).

19 Plaintiffs’ failure to challenge Arizona Rule of Criminal Procedure 39(b)(12)(A) is
20 immaterial. Plaintiffs do not allege in their complaint that there is some threat of
21 discipline or judicial sanction for violating Rule 39(b)(12),⁶ or that the rule otherwise has

22 ⁶ The rule reads in relevant part:

23 Notwithstanding the provisions of any other rule, a victim has and is entitled to
24 assert each of the following rights:...(12) the right to refuse an interview,
25 deposition, or other discovery request by the defendant, the defendant's
26 attorney, or other person acting on the defendant's behalf, and: (A) the defense
27 must communicate requests to interview a victim to the prosecutor, not the
28 victim; (B) a victim's response to such requests must be communicated through
the prosecutor; and (C) if there is any comment or evidence at trial regarding a
victim’s refusal to be interviewed, the court must instruct the jury that a victim
has the right under the Arizona Constitution to refuse an interview[.]

Ariz. Crim. P. 39(b)(12)(A)-(C).

1 a chilling effect on their speech. *Cf. Champlin v. Sargeant In and For County of*
2 *Maricopa*, 965 P.2d 763, 765 (Ariz. 1998) (interpreting Rule 39(b) as a limitation on a
3 trial judge’s authority to compel a witness interview, deposition, or other discovery
4 request made by the defense); *Day v. Superior Court In and For County of Maricopa*,
5 823 P.2d 82, 84 (Ariz. Ct. App. 1991) (“the court’s authority is limited by the Victim’s
6 Bill of Rights”); *State v. Lee*, 355 P.3d 621, 624 (Ariz. Ct. App. 2015). Similarly, the
7 possibility that a victim might invoke its right not to be interviewed under A.R.S. § 13-
8 4437, or that some state or federal court may continue to preclude the defense from
9 initiating contact with victims pursuant to § 13-4433(B) or Rule 39(B)(12), also is not
10 fatal; the complaint does not allege that either of these threats chill Plaintiffs’ speech.
11 And, just as the Attorney General’s ability to advise the state bar of a violation of § 13-
12 4433(B) does not establish a causal link to Plaintiffs’ alleged injury, the possibility that a
13 victim might contact the state bar or the trial court has no bearing on whether Plaintiffs
14 may obtain relief from the threat of professional discipline by the state bar. (*See* Doc. 31 at
15 12.)

16 Therefore, the complaint will be dismissed with leave to amend. *See Maya v.*
17 *Centex Corp.*, 658 F.3d 1060, 1072 (9th Cir. 2011) (dismissal without leave for lack of
18 standing is improper unless it is clear that the complaint cannot be saved by any
19 amendment).

20 **III. Conclusion**

21 Finding that Plaintiffs have failed to offer sufficient facts showing that their
22 alleged injuries are traceable to or redressable by the Attorney General, he will be
23 dismissed from this action. Plaintiffs’ request for preliminary injunction against the
24 Attorney General will therefore be denied. *See* Fed. R. Civ. P. 65(d)(2). Because the
25 Court cannot determine whether the interests of the applicants seeking intervention would
26 be adequately represented by the parties, the motion to intervene will be denied without
27 prejudice, subject to refile following the filing of a responsive pleading by an amended
28 defendant in this action. *See Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d

1 836, 841 (9th Cir. 2011) (“Failure to satisfy any one of the requirements is fatal to the
2 application”); *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)
3 (setting forth elements).

4 Lastly, the Court observes that the Arizona Prosecuting Attorneys Advisory
5 Council, Pima County Attorney’s Office, Arizona Crime Victim Rights Law Group,
6 Arizona Coalition to End Domestic Violence, and National Crime Victim Law Institute
7 have filed *amicus curiae* briefs. (Docs. 38, 40, 41.) The Court generally does not favor
8 *amicus curiae* briefs and does not permit them to be filed absent consent of all parties or
9 a substantial showing that the *amicus curiae* will present relevant matters that have not or
10 could not have been brought to the Court’s attention by the parties. Therefore, not having
11 obtained leave of Court and satisfied the above, the *amicus curiae* briefs with be stricken.
12 Any request for leave to submit an *amicus curiae* brief may be filed following the filing
13 of a responsive pleading by an amended defendant in this action. Accordingly,

14 **IT IS ORDERED:**

15 1. That the Motion to Supplement (Doc. 110), Cross Motion to Supplement
16 (Doc. 111), and Stipulation Re: Supplemental Reply (Doc. 117) are **granted** and deemed
17 admitted as filed;

18 2. That the Motion for Preliminary Injunction (Doc. 11) is **denied**;

19 3. That the Motion to Intervene (Doc. 35), Motion for Joinder (Doc. 54), and
20 Motion for Ruling (Doc. 79) are **denied without prejudice**;

21 4. That the Amicus Curiae Briefs (Docs. 38, 40, 41) are **stricken without**
22 **prejudice**;

23 5. That Attorney General Mark Brnovich’s Motion to Dismiss (Doc. 31) is
24 **granted in part** and he is **dismissed without prejudice** from this action;

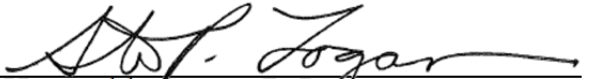
25 6. That Plaintiffs shall have until **April 20, 2018** to file an Amended Complaint
26 consistent with this Order and the local rules; and

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1 7. That if Plaintiffs elect not file an Amended Complaint in accordance with
2 this Order, this action will be dismissed without prejudice for lack of jurisdiction on
3 **April 23, 2018.**

4 Dated this 29th day of March, 2018.

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7 Honorable Steven P. Logan
8 United States District Judge
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