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

11 *Arizona Broadcasters Association, et al.,*
12 Plaintiff,
13 v.
14 *Mark Brnovich, et al.,*
15 Defendants.

Case No: CV-22-01431-PHX-JJT

**NOTICE OF NON-OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

16 Defendant Mark Brnovich, in his official capacity as Attorney General for the
17 State of Arizona (the "Attorney General"), hereby files this Notice of Non-Opposition to
18 Plaintiffs' Motion for Preliminary Injunction (Dkt. 24).

19 This case is a pre-enforcement challenge to House Bill 2319 ("HB2319"), which
20 was enacted by the Arizona Legislature in its 2022 regular session. *See* 2022 Ariz. Sess.
21 Laws ch. 376 (2d Reg. Sess.), <https://www.azleg.gov/legtext/55Leg/2R/laws/0376.pdf>.
22 HB2319 adds a new § 13-3732 to the Arizona Revised Statutes, titled "Unlawful video
23 recording of law enforcement activity; classification; definition." Subsection A defines
24 certain unlawful conduct, which subsection D provides is a class 3 misdemeanor. This
25 law will become effective on September 24, 2022.¹

26 Plaintiffs' Complaint (Dkt. 1) contains only the most bare-bones allegations
27 against the Attorney General. It alleges that he is the "chief law enforcement officer of
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¹ *See* <https://www.azleg.gov/general-effective-dates/>

1 the State of Arizona.” Complaint ¶18 (citing A.R.S. § 41-192(A)). It also says that “[b]y
2 virtue of this position, Mr. Brnovich has the authority to enforce all of the laws of the
3 State of Arizona, including HB2319.” *Id.* Plaintiffs’ Motion for Preliminary Injunction
4 and the supporting declarations make no mention of the Attorney General. *See generally*
5 Dkt. 24 through 24-5.

6 The Attorney General’s powers and duties are those that are set forth by statute.
7 Plaintiffs have come nowhere close to establishing that there is any sort of threat of
8 enforcement by the Attorney General. *See, e.g., Gershon v. Broomfield*, 131 Ariz. 507,
9 508 (1982) (“The Attorney General has no common law powers; whatever powers are
10 possessed by the holder of that office must be found in the Arizona Constitution or in the
11 Arizona statutes.”); *Smith v. Superior Ct. In & For Cochise Cnty.*, 101 Ariz. 559, 560
12 (1967) (“[T]he primary responsibility for prosecuting criminal actions at the trial court
13 level rests with the county attorney”). Here, the state grand jury statute does not
14 cover misdemeanors such as that created by future § 13-3732. *See* A.R.S. § 21-
15 422(B)(1)-(7), and it is speculative that the Attorney General would accept a referral of
16 “criminal wrongdoing” under § 21-422(B)(8).

17 In any event, the Attorney General does not oppose entry of a preliminary
18 injunction in this matter. The Attorney General is not the proper party to defend the
19 merits of A.R.S. § 13-3732. The Attorney General will provide notice to the President of
20 the Arizona State Senate and the Speaker of the Arizona House of Representatives that
21 local and county prosecutors are the proper entities to defend this statute. The Attorney
22 General will oppose any award of attorneys’ fees or costs against him in any capacity
23 given that he is not litigating the constitutionality of the statute, Plaintiffs have provided
24 no basis to name him as a defendant, and Plaintiffs did not provide any notice or ask him
25 for his position before filing this suit and preliminary injunction.
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RESPECTFULLY SUBMITTED this 1st day of September, 2022.

MARK BRNOVICH
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for parties that are registered CM/ECF users will be served by the CM/ECF system pursuant to the notice of electronic Filing.

/s/ Brunn W. Roysden III

*Attorney for Defendant Mark Brnovich,
in his official capacity as Arizona
Attorney General*