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

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9 National Association for the Advancement  
10 of Multijurisdiction Practice; Allison  
Girvin; and Mark Anderson,

11 Plaintiffs,

12 v.

13 Arizona Supreme Court; Hon. Rebecca  
14 White Berch, Chief Justice; Hon. W. Scot  
Bales, Vice Chief Justice; Hon. John  
Pelandar; Hon. Robert M. Brutinel,

15 Defendants.

No. CV-12-01724-PHX-GMS

**ORDER**

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17 Pending before the Court are Defendants' Motion to Dismiss (Doc. 19), Plaintiffs'  
18 Motion to Amend (Doc. 21), Defendants' Motion to Stay Plaintiffs' First Motion for  
19 Summary Judgment (Doc. 29) and Defendants' Motion for Extension of Time (Doc. 31).  
20 For the reasons discussed below, Defendants' Motion to Dismiss is denied as moot,  
21 Plaintiffs' Motion to Amend is granted, Defendants' Motion to Stay is denied and  
22 Defendants' Motion for Extension of Time is granted.

23 **I. Motion to Amend**

24 Under Rule 15(a)(2), if a party has already amended its pleading once, any  
25 subsequent amendments may be made only with the opposing party's written consent or  
26 the court's leave. Fed. R. Civ. P. 15(a)(2). However, "[t]he court should freely give leave  
27 when justice so requires." *Id.*; see also *Universal Mortg. Co. v. Prudential Ins. Co.*, 799  
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1 F.2d 458, 459 (9th Cir. 1986). Leave to amend should be denied only if “the proposed  
2 amendment either lacks merit or would not serve any purpose because to grant it would  
3 be futile in saving the plaintiff’s suit.”

4 Defendants contend that leave to amend should be denied because the amendment  
5 would be futile in saving Plaintiffs’ suit. (Doc. 22 at 4.) However, Plaintiffs’ proposed  
6 Second Amended Complaint appears to add at least one claim that would not be  
7 dismissed by Defendants’ pending Motion to Dismiss. (Doc. 21-1 at ¶¶ 73–76.) Plaintiffs  
8 allege that Defendants retaliated against Plaintiff Allison Girvin for exercising her First  
9 Amendment right to petition the courts for redress by failing her by one point on the July  
10 2012 Arizona Bar Exam. (*Id.*) Defendants argue that this does not state a claim and that  
11 this is a false allegation. (Doc. 22 at 8.) However, state actions designed to retaliate  
12 against the exercise of First Amendment rights are actionable under § 1983. *Soranno’s*  
13 *Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989). Defendants’ counsel’s  
14 declaration that these allegations are false do not cause this proposed claim to fail. As  
15 such, Plaintiffs’ proposed amendment is not entirely futile. The Court therefore grants  
16 Plaintiffs leave to file their Second Amended Complaint.

17 Defendants’ Motion to Dismiss is dismissed without prejudice to Defendants filing  
18 another Motion to Dismiss Plaintiffs’ Second Amended Complaint. Furthermore,  
19 Defendants’ Motion to Stay is denied. Defendants are ordered to respond to Plaintiffs’  
20 Motion for Summary Judgment.

21 **IT IS THEREFORE ORDERED:**

- 22 1. Defendants’ Motion to Dismiss (Doc. 19) is **DENIED AS MOOT**.
- 23 2. Plaintiffs’ Motion to Amend (Doc. 21) is **GRANTED**. Plaintiffs are  
24 directed to file and serve the Second Amended Complaint within fourteen (14) days of  
25 the date of this Order.
- 26 3. Defendants’ Motion to Stay (Doc. 29) is **DENIED**.
- 27 4. Defendants’ Motion for Extension of Time (Doc. 31) is **GRANTED**.
- 28 Defendants shall have to and including **January 18, 2013**, in which to respond to

1 Plaintiffs' Motion for Summary Judgment (Doc. 28).

2 Dated this 18th day of December, 2012.

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5 G. Murray Snow  
6 United States District Judge  
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