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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

DOUGLAS HESTER, a teacher in the
Phoenix Union High School District,

Plaintiff,

vs.

PHOENIX UNION HIGH SCHOOL
DISTRICT; LELA ALSTON, STANFORD
PRESCOTT, NAKETA ROSS,
STEPHANIE PARRA, LAURA PASTOR,
STEVE GALLARDO, and AARON
MARQUEZ, in their official capacities as
members of the Phoenix Union High
School District Governing Board; CHAD
GESTSON, in his official capacity as
Superintendent of the Phoenix Union High
School District; DOES I-X,

Defendants.

No. CV2021-012160

**DEFENDANTS’ OPPOSITION TO
MOTION TO CONSOLIDATE**

(Assigned to the Honorable
Randall H. Warner)

Defendants Phoenix Union High School District, Lela Alston, Stanford Prescott,
Naketa Ross, Stephanie Parra, Laura Pastor, Steve Gallardo, Aaron Marquez, and Chad
Gestson (collectively, “PXU”) oppose Plaintiff Douglas Hester’s Motion to Consolidate
his claim with a later filed challenge to the constitutionality of several recently passed
budget reconciliation bills, *Arizona School Boards Association, Inc., et al. v. State*, No.
CV2021-012741 (Maricopa Cty. Super. Ct.) (“ASBA”). As an initial matter, PXU joins
in the arguments made by the ASBA Plaintiffs regarding the procedural inconvenience
consolidation would cause and the material differences between the two lawsuits.

1 PXU also opposes Hester’s Motion for the simple reason that there is nothing
2 presently to consolidate, and there may never be. Hester filed his lawsuit challenging
3 PXU’s policy that all students, staff, and visitors must wear masks while indoors and on
4 campus at PXU’s schools (the “Mask Policy”). (*See generally* First Am. Compl.) His
5 sole basis for his challenge was that this policy was barred by a newly passed law, A.R.S.
6 § 15-342.05 (Section 12 of HB 2898), which purports to prohibit school districts from
7 imposing mask requirements. As this Court recognized in its ruling on Hester’s
8 application for a temporary restraining order and PXU’s motion to dismiss, A.R.S. § 15-
9 342.05 is not presently the law, current law allows PXU to impose the Mask Policy, and
10 there is no ripe controversy between Hester and PXU because PXU has not decided what
11 it will do after A.R.S. § 15-342.05 is scheduled to into effect on September 29, 2021.
12 (Aug. 16, 2021 Minute Entry.) Because a ripe controversy may develop closer to that
13 date, the Court did not enter judgment for PXU and instead granted Hester leave to file a
14 new, second amended complaint should the controversy ripen.

15 The controversy has not ripened yet, and Hester does not argue that it has done so
16 in his Motion. Indeed, he filed his Motion a mere two days after the Court ruled on the
17 temporary restraining order and the motion to dismiss, apparently because he is eager to
18 litigate hypothetical defenses PXU may raise, should this controversy ever ripen. The
19 Court should decline this invitation.

20 Hester makes much of the fact that two of PXU’s governing board members are
21 plaintiffs in the ASBA case. PXU has a seven-member governing board; the fact that two
22 of its members are plaintiffs in their individual capacity in a suit challenging A.R.S. § 15-
23 342.05 does not mean that PXU has decided what it will do regarding its Mask Policy
24 after September 29, 2021, and therefore does not create a ripe controversy in this case.

25 Hester is not entitled to use consolidation as a vehicle to reopen his challenge to
26 the Mask Policy before it becomes ripe. And because Hester’s claim is unripe, there is
27 currently no common question of law or fact at issue in the two lawsuits.
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1 The Court should deny the Motion to Consolidate.

2 DATED this 23rd day of August, 2021.

3 OSBORN MALEDON, P.A.

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5 By /s/Mary R. O'Grady
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12 The Honorable Randall H. Warner
13 Maricopa County Superior Court

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/s/Karen McClain _____