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13 **SUPERIOR COURT OF THE STATE OF ARIZONA**  
14 **FOR THE COUNTY OF MARICOPA**

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

Case no. CV2021-012160

17 *Plaintiff,*

18 v.

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

**FIRST AMENDED VERIFIED  
COMPLAINT FOR A SPECIAL  
ACTION**

(Order to Show Cause Requested)

(Oral Argument Requested)

*Defendants.*

Plaintiff, hereby submits this First Amended Verified Complaint pursuant to ARCP 15(a)(1). For his First Amended Verified Complaint against the Phoenix Union High School District, the members of its governing board, and its superintendent (“Defendants”), Plaintiff alleges as follows:

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**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Douglas Hester is a teacher in the Phoenix Union High School District.
2. The Phoenix Union High School District (“PUHSD”) is a public body.
3. Defendants Alston, Prescott, Ross, Parra, Pastor, Gallardo, and Marquez are the members of PUHSD’s governing board. They are being sued in their official capacity only.
4. Defendant Gestson is PUHSD’s superintendent. He is being sued in his official capacity only.
5. Does I-X are other persons who may be responsible, in whole or in part, for the acts and omissions complained of herein.
6. All or substantially all of the acts and occurrences giving rise to this Verified Complaint occurred in Maricopa County, Arizona.
7. Pursuant to A.R.S. § 12-401(16) an action against public officers shall be brought in the county in which the officer, or one of several officers holds office.
8. Plaintiffs may proceed by special action where there is no equally “plain, speedy and adequate remedy” available. A.R.S. §§ 12-2001, 12-2021, Rules of Procedure for Special Actions (“RPSA”) 1. For the reasons set forth below, there is no equally plain, speedy, and adequate remedy available.
9. A special action may be instituted with or without an application for order to show cause why the requested relief should not be granted. RPSA 4(c). Where a show-cause procedure is used, the court must set a speedy return. *Id.* Given the imminent implementation of Defendants’ unlawful policy, further discussed below, Plaintiffs seek an order to show cause.
10. A special action may be brought in the superior court for the county that is the principal place of business for the public officer or body being sued. RPSA 4(b).

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1 11. This Court has jurisdiction to hear this matter and venue is proper pursuant to  
2 A.R.S. §§ 12-2001, 12-2021,<sup>1</sup> the Uniform Declaratory Judgments Act and other  
3 statutes governing the issuance of declaratory judgments, the Arizona Rules of  
4 Procedure for Special Actions (“ARPSA”) 1-4, and other applicable law.

5 **GENERAL ALLEGATIONS**

6 12. Plaintiff incorporates by reference the preceding allegations.

7 13. On June 30<sup>th</sup>, 2021, Governor Doug Ducey signed HB 2898 into law. **Exhibit A.**

8 14. Included within HB 2898 was a new statute, A.R.S. § 15-342.05.

9 15. A.R.S. § 15-342.05 provides as follows:

10 a. *“Notwithstanding any other law or order, a county, city, town, school*  
11 *district governing board or charter school governing body may not require*  
12 *the use of face coverings by students or staff during school hours and on*  
13 *school property.”*

14 b. *“A school district or charter school may not require a student or teacher to*  
15 *receive a vaccine for COVID-19 or to wear a face covering to participate*  
16 *in in-person instruction.”*

17 16. HB 2898 was an omnibus bill, the various portions of which have different  
18 effective dates.

19 17. Section 119(A) of the bill provides as follows: “Section 15-342.05, Arizona  
20 Revised Statutes, as added by this act, applies retroactively to from and after June  
21 30, 2021. **Exhibit A** p 160.

22 18. On July 30, 2021, the PUHSD posted the following announcement on its website:  
23 *Our current Board-adopted policies still require masks when indoors in the*  
24 *presence of others. However, this past month, we did align our masking practices*  
25 *district-wide with the current prohibition of mask mandates. Recently, we have*  
26 *heard from our staff, students, and families that they want us to realign our*

27 <sup>1</sup> To the extent, if any, that Plaintiff is expressly required to so state, included in this action is a prayer for a writ of  
28 mandamus or its equivalent under the RPSA. The special action now encompasses applications for writs of  
mandamus. RPSA 1(a-b).

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1 mitigation practices with the guidelines and recommendations of national and  
2 local health agencies.

3  
4 In an effort to protect our staff, students, and community, PXU has a good faith  
5 belief that following guidance from the CDC and other health agencies regarding  
6 mitigation strategies is imperative. Therefore, Phoenix Union will begin the  
7 school year on August 2 enforcing our existing Board-adopted mask requirement  
8 of universal indoor masking only, regardless of vaccination status. This masking  
9 requirement is for all staff, students, and visitors. At the August 5 Board meeting,  
10 District leadership and Governing Board will discuss mitigation plans, including  
11 masking policies, and consider the temporary continuation of the mask  
12 requirement until the CDC (and/or other federal, state, and local health agencies)  
13 changes their masking guidelines. <sup>2</sup>

14 19. The same day, the Arizona Republic reported as follows:

15 “Phoenix Union High School District will require masks to be worn indoors when  
16 students head back to school next week — despite an Arizona law that bans mask  
17 mandates.

18 ...

19 In a statement, Gov. Doug Ducey's office said Phoenix Union's policy is not  
20 allowed under Arizona law, calling the district's move ‘unenforceable.’

21 ...

22 At a news conference on Friday, Phoenix Union Superintendent Chad Gestson  
23 repeatedly declined to comment on whether the district was following state law.  
24 He said he has been in talks with his legal team about the mandate but reiterated  
25 that his job was about the health and safety of schools.” <sup>3</sup>

26 20. Twelve News reported more fully on Governor Ducey’s July 30<sup>th</sup> statement:

27 <sup>2</sup> <https://www.pxu.org/Page/28142>

28 <sup>3</sup> <https://www.azcentral.com/story/news/local/phoenix-education/2021/07/30/phoenix-union-high-school-district-require-masks-indoors/5431886001/>

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1 “A spokesman for Gov. Doug Ducey, a fierce opponent of any COVID-related  
2 mandates, issued a statement that declared the district was breaking the law:

3  
4 ‘Gov. Ducey believes the decision by Phoenix Union requiring masks has no teeth.  
5 It’s not allowed under Arizona law. It’s unenforceable.

6 Arizona is not anti-mask, we’re anti-mask mandate. As the governor has often  
7 said, mask usage is up to parents.

8 School administrators should be doing everything they can to encourage eligible  
9 students and staff to get vaccinated, not break state law.’

10  
11 *But Ducey didn’t indicate that he would try to block the district’s mandate.*”<sup>4</sup>

12 21. Just three days prior, Governor Ducey had released a statement reading, in  
13 pertinent part:

14 “Arizona does not allow mask mandates, vaccine mandates, vaccine passports or  
15 discrimination in schools based on who is or isn’t vaccinated. We’ve passed all of  
16 this into law, and it will not change.”<sup>5</sup>

17 22. The mask mandate applies to students, faculty, and staff.<sup>6</sup>

18 23. PUHSD’s first day of school is August 2<sup>nd</sup>, 2021.<sup>7</sup>

19 24. Accordingly, Plaintiff has no equally plain, speedy, and adequate remedy at law.

20 25. On March 11, 2020, Governor Doug Ducey issued a Declaration of Public Health  
21 State of Emergency pursuant to A.R.S. §§ 26-303 and 36-787.

22 26. Accordingly, “coordination of all matters pertaining to COVID-19 are of statewide  
23 concern rather than local concern unless otherwise determined by the director of  
24 the Arizona Department of Health Services.”<sup>8</sup>

25 <sup>4</sup> <https://www.12news.com/article/news/health/coronavirus/phoenix-union-high-school-district-to-requires-masks-indoors-regardless-of-vaccination-status/75-442922ca-3e41-465a-9971-021d4158cffd>

26 <sup>5</sup> <https://azgovernor.gov/governor/news/2021/07/governor-ducey-statement-updated-cdc-guidance>

27 <sup>6</sup> [https://www.azfamily.com/news/continuing\\_coverage/coronavirus\\_coverage/facemask-mandate-phoenix-union-high-school/article\\_df19f11e-f154-11eb-ad7a-bbadde56d83d.html](https://www.azfamily.com/news/continuing_coverage/coronavirus_coverage/facemask-mandate-phoenix-union-high-school/article_df19f11e-f154-11eb-ad7a-bbadde56d83d.html)

28 <sup>7</sup> <https://www.pxu.org/calendar#calendar1/20210830/month>

<sup>8</sup> [https://azgovernor.gov/sites/default/files/eo\\_2021-09.pdf](https://azgovernor.gov/sites/default/files/eo_2021-09.pdf)



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1 40. Further, Defendants are threatening not to promulgate lawful policies until the  
2 CDC changes its masking guidance or they feel it is otherwise safe to do so.

3 41. For example, in an August 4<sup>th</sup>, 2021 interview with the Wall Street Journal,  
4 defendant Gestson said “We don’t want a mask requirement forever either, and  
5 we’ll make a decision to change that when it’s safe to do so[.]”<sup>9</sup>

6 42. Therefore, Defendants are threatening to proceed without or in excess of their  
7 jurisdiction or legal authority.

8 43. Furthermore, CDC guidance as well as that of other authorities are highly variable,  
9 as is the state of the COVID pandemic generally. Thus, in the alternative, this case  
10 should be adjudicated as one that is capable of repetition but evading review.

11  
12  
13 WHEREFORE Plaintiff prays:

14 A. That this Court accept special action jurisdiction, issue an Order to Show  
15 Cause, and set a speedy return.

16 B. For a declaration that Defendants’ mask mandate is contrary to law *or*,  
17 *alternatively* for a declaration that Defendants’ mask mandate will be  
18 contrary to law as of September 29<sup>th</sup>, 2021.

19 C. For preliminary and permanent injunctive relief requiring Defendants to  
20 fulfill their legal duty to “Prescribe and enforce policies and procedures for  
21 the governance of the schools **that are not inconsistent with law**” by  
22 promulgating policies and procedures for the new school year, and for  
23 subsequent school years, that do not include the mask mandate. *Or*,  
24 *alternatively*, for preliminary and permanent injunctive relief requiring  
25 Defendants to, on or before September 29<sup>th</sup>, 2021, fulfill their legal duty to  
26 “Prescribe and enforce policies and procedures for the governance of the  
27

28  

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<sup>9</sup> <https://www.wsj.com/articles/some-arizona-schools-require-masks-flouting-covid-19-state-law-11628082000>

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schools **that are not inconsistent with law**” by promulgating and maintaining policies and procedures that do not include the mask mandate.

D. For attorneys’ fees and costs pursuant to A.R.S. §§ 12-2030, 12-348, 12-349, common law doctrine, and other applicable law.

E. For such other relief as this Court deems just and proper.

Respectfully submitted this 4<sup>th</sup> day of August, 2021

By /s/Alexander Kolodin

Alexander Kolodin

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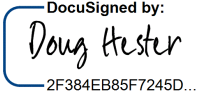
Attorneys for Plaintiff



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VERIFICATION

I declare under penalty of perjury that, to the best of my knowledge, the facts set forth above are true and accurate.

Signature:   
Printed Name: Doug Hester  
Date: 8/4/2021

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