

1 Alexander Kolodin (SBN 030826)
2 Christopher Viskovic (SBN 035860)
3 **KOLODIN LAW GROUP PLLC**
4 3443 N. Central Ave. Ste 1009
5 Phoenix, AZ 85012
6 Telephone: (602) 730-2985
7 Facsimile: (602) 801-2539
8 Email:
9 Alexander.Kolodin@KolodinLaw.com
10 CViskovic@KolodinLaw.com
11 Admin@KolodinLaw.com (file copies)
12 *Attorneys for Plaintiff*

9 **SUPERIOR COURT OF THE STATE OF ARIZONA**
10
11 **FOR THE COUNTY OF MARICOPA**

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

14 *Plaintiff,*

15 v.

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

27 *Defendants.*

Case no. CV2021-012160

MOTION TO CONSOLIDATE¹
Expedited Consideration Requested

(Hon. Randall Warner)

24 The instant case (“Instant Case”) is a lawsuit brought by Plaintiff Douglas Hester, a
25 teacher in the Phoenix Union High School District (“PUHSD”), against governing board
26 president Lela Alston, governing board member Steve Gallardo, and others. Plaintiff’s

27 _____
28 ¹ This Motion makes assertions regarding the Instant Case that are based on what this Court has ruled or how this Court has categorized certain issues. Plaintiff does not intend by so doing to waive any argument he has previously made (e.g. on appeal).

1 First Amended Complaint alleges that Defendants have promulgated policies and
 2 procedures that require students and staff wear masks. Plaintiff’s First Amended Complaint
 3 further alleges that and that they are “threatening” to keep this mandate in place past
 4 September 29th, 2021, in violation of a new law (A.R.S. § 15-342.05). Consequently,
 5 Plaintiff’s First Amended Complaint alleges that Defendants are “threatening not to
 6 promulgate lawful policies” on and after that date, Amended Compl. ¶¶ 40, 42, and seeks
 7 declaratory judgment as well as “preliminary and permanent” injunctive relief. *Id.* 7:13-
 8 8:5.

9 Subsequent to the filing of the Instant Case, Defendants Alston, Gallardo, and others
 10 (including an association of which their school district is a member) filed CV2021-012741
 11 (the “New Case”), currently pending before Judge Cooper. The New Case alleges that
 12 A.R.S. § 15-342.05 violates the Arizona Constitution’s equal protection and single subject
 13 provisions. If A.R.S. § 15-342.05 is unconstitutional then Defendants cannot be threatening
 14 to violate that law because the statute would be null and void.²

15 ARCP 42 provides that “**If actions before the court involve a common question**
 16 **of law or fact, the court may: (1) join for hearing or trial any or all matters at issue**
 17 **in the actions; (2) consolidate the actions[.]**” Therefore, Pursuant to ARCP 42 and other
 18 applicable law, Plaintiff hereby moves to consolidate these two cases. As the first filed
 19 case, Plaintiff believes that consolidation within this action is appropriate, but Plaintiff also
 20 would not object to consolidation before Judge Cooper if the Court feels that better serves
 21 the interests of judicial economy or is otherwise desirable.

22 Plaintiff has filed a Notice of Related Case in the New Case and has attached a copy
 23 of this Motion to that document. An additional courtesy copy has been emailed to Judge
 24 Cooper’s chambers, courtesy copies have also been emailed to counsel for parties in the
 25 New Case.

26 **I. Procedural background.**

27 **a. General background.**

28 ² As would, potentially, any other law similarly restricting Defendants’ authority.

1 On June 30th, 2021, Governor Doug Ducey signed HB 2898 into law. Amended
 2 Compl. ¶ 13. Section 12 of HB 2898 implements a new statute, A.R.S. § 15-342.05, which
 3 provides as follows:

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

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

11 Amended Compl. ¶ 14-15.

12 On July 30, 2021, Defendants in this matter disseminated policies and procedures
 13 for the Phoenix Union High School District mandating that students and staff wear masks.
 14 Amended Compl. ¶ 18. Defendants gave their reason for imposing their mask mandate as
 15 follows: “In an effort to protect our staff, students, and community, [Defendants have] a
 16 good faith belief that following guidance from the CDC and other health agencies
 17 regarding mitigation strategies is imperative.” *Id.*

18 On August 2, 2021, Plaintiff, a teacher in the Phoenix Union High School District,
 19 filed a Complaint and Motion for a Temporary restraining order against various Defendants
 20 including Phoenix Union High School District governing board president Lela Alston and
 21 member Steve Gallardo.

22 On August 4th, 2021, the Court held a return hearing. Undersigned counsel informed
 23 the Court that Defense counsel had notified him that Defendants intended to raise the
 24 argument that A.R.S. § 15-342.05 was not yet in effect and further told the Court:

25 *“We’re going to be filing an amended complaint today to assert that in the*
 26 *alternative we want the relief we seek as of 9/29[.]”*

27 **Exhibit 1** 5:4-7. The Court made clear that the TRO would be adjudicated on the basis of
 28 the claims made in Plaintiff’s original Complaint. *Id.* at 14:6-10.

1 At the return hearing, the Court also had the following exchange with Defense
2 counsel:

3 *“THE COURT: So, I want to ask you about that. Are there -- is [the effective*
4 *date] going to be the only issue or is there -- or if the law is in effect or*
5 *once the law is in effect, does your client have other defenses, arguments?*

6
7 *MS. O'GRADY: So, two points in terms of when it takes effect. I don't know*
8 *what the factual situation will be September 29th, when the law takes effect,*
9 *and so, you know, because this is based on what's going on with the*
10 *pandemic, and as we all know those things change quickly. So, **factually**, I*
11 *don't know where we'll be September 29th. As a **legal matter**, we do have*
12 *concerns about the enforceability of this statute once it takes effect*
13 *September 29th[.]”*

14 **Exhibit 1** 8:15-9:4 (emphasis supplied).

15 Later that day, Plaintiff filed the Amended Complaint. Plaintiff’s Amended
16 Complaint alleged, among other things, that A.R.S. § 15-342.05 was currently effective
17 and thus that Defendants’ mask mandate was currently in violation of the law. Plaintiff’s
18 Amended Complaint and subsequent pleadings further alleged, in the alternative, that if
19 A.R.S. § 15-342.05 was not currently effective then Defendants were threatening to
20 proceed in violation of that law when it became effective. Am. Compl. at 7:1-10.

21 On August 6, 2021, Defendants filed both a reply in opposition to Plaintiff’s request
22 for a TRO and a Motion to Dismiss Plaintiff’s **Amended** Complaint. Mot. to Dismiss 1:21-
23 22. The sole basis for these motions was the contention that under Ariz. Const. art. IV, pt.
24 1 §1(3)’s ninety-day rule, A.R.S. § 15-342.05 was not yet effective. Mot. to Dismiss at 3:8-
25 15; Ds’ Opp’n to Pl.’s Appl. for a TRO without Notice at 4:19-27. However, Defendants
26 expressly noted that, if their Motion to Dismiss was not granted, they would raise other
27 constitutional challenges to the law which it would then be necessary for this Court to
28 resolve:

1 *“Plaintiff further argues that [the Phoenix Union High School District’s]*
 2 *forthright acknowledgement that it has constitutional concerns with A.R.S. §*
 3 *15-342.05 constitutes a threat. If anything, the presence of these*
 4 *constitutional concerns suggests the Court should dismiss the case as not*
 5 *ripe so it does not have to wade into constitutional issues that may never be*
 6 *necessary to resolve.”*

7 Def.’ Rep. in Supp. Of Mot. to Dismiss 9:22-10:5. Defendants have reiterated this on other
 8 occasions as well. *See e.g. Exhibit 1* at 9:2-4 (*“As a legal matter, we do have concerns*
 9 *about the enforceability of this statute once it takes effect September 29th[.]”*).

10 In particular, Defendants have suggested that if the Instant Case were to proceed
 11 past the dismissal stage, they would challenge the constitutionality of A.R.S. § 15-342.05
 12 on the grounds that it violates the Arizona Constitution’s equal protection clause, lacks a
 13 rational basis, and that other, unspecified, procedural issues further impair the
 14 constitutionality of the statute:

15 *“All laws must, at a minimum, [must] have a rational basis, and it is hard*
 16 *to imagine something less rational than requiring schools to engage in*
 17 *conduct that they know is not safe, as plaintiff suggests the new law he seeks*
 18 *to enforce requires. This absurdity raises an issue about the constitutionality*
 19 *of the new law, but that is beyond the scope of this motion.”*

20 Mot. to Dismiss at p.5 n.6 (emphasis supplied).

21 *“I think there [are] procedural issues and I guess the type of statute I think*
 22 *there is probably a legitimate rational basis. Um standard um perhaps equal*
 23 *protection challenge and I haven’t looked at the challenges that they filed.*
 24 *But really if you have a mask prohibition and masks are a public health*
 25 *protection and the statue has no flexibility based on health care risks to*
 26 *anyone it sets that bright line prohibition without regard to health risks.”*

(emphasis supplied).³

The evening before oral arguments on the Motion to Dismiss and TRO, Defendants Lela Alston and Steve Gallardo, along with the Arizona School Boards Association (of which Defendant Phoenix Union is a member)⁴ and others, filed the New Case against the State of Arizona challenging the constitutionality and enforceability of A.R.S. § 15-342.05, even subsequent to September 29th, on equal protection and other constitutional grounds.

Exhibit 2. As of the date of this Motion it is undersigned counsel’s understanding that the State of Arizona has not yet appeared.

On August 13th, 2021, oral arguments were held on the Motion to Dismiss and Plaintiff’s motion for a TRO. Defense counsel expressly asserted at oral arguments on the Motion to Dismiss and TRO that, should Defendants’ Motion to Dismiss not be granted, whether Defendants could be required to comply with A.R.S. § 15-342.05 as of September 29th, 2021 was dependent on the resolution of the constitutional questions presented by the new case:

*“They are not entitled to that relief because the statute they’re relying on is not the law now. It is not the law now and it will not be the law assuming you know, **setting aside what may happen in that separate litigation**, but it will not be a law until September 29th.”*⁵

(emphasis supplied).⁶

On August 16th, 2021, this Court ruled on Plaintiff’s Motion for Temporary Restraining Order as well as Defendants’ Motion to Dismiss plaintiff’s amended complaint. This Court declined to enter a TRO and also denied Defendant’s Motion to Dismiss. **Exhibit 3.** Instead, the Court noted that, in light of its holding that A.R.S. § 15-

³ See *NOW: Phoenix Union High School District v. Mask Mandate Hearing*, YouTube, Aug. 13, 2021, <https://www.youtube.com/watch?v=a34qJnKZD9g> at 34:36-35:20 (last visited Aug. 17, 2021) (Transcript not yet available).

⁴ See Complaint (New Case) ¶ 10 [**Exhibit 2**].

⁵ See *NOW: Phoenix Union High School District v. Mask Mandate Hearing*, YouTube, Aug. 13, 2021, <https://www.youtube.com/watch?v=a34qJnKZD9g> at 35:39-35:54 (last visited Aug. 17, 2021) (Transcript not yet available).

⁶ Thus, Plaintiff would in any event have a right to intervene in the New Case pursuant to ARCP 24(a)(2) and permissive intervention would be appropriate under ARCP 24(b)(1)(B).

1 342.05 would not be effective until September 29th, 2021, it would prefer to adjudicate the
2 balance of that case closer to that date when it became clearer whether Defendants were
3 “threatening to proceed in violation of A.R.S. § 15-342.05” past the law’s effective date.

4 **Exhibit 3.** The Court therefore granted Plaintiff leave to file a Second Amended Complaint
5 at any time on or before September 30th, 2021. **Exhibit 3.** Thus, consistent with Defense
6 counsel’s representations to this Court at the return hearing, the remaining issues in the
7 Instant Case are:

8 **A legal question:** Whether A.R.S. § 15-342.05 can constitutionally be enforced
9 against defendants as of September 29th, 2021 *and, relatedly,*

10 **A mixed question of fact and law:** Whether the Instant Case will be ripe or moot
11 when Plaintiff files his second amended complaint.⁷

12 **c. Factual background regarding A.R.S. § 15-342.05 alleged by Gallardo**
13 **and Alston in the New Case.**

14 In the New Case, filed August 12th, 2021, Gallardo and Alston present the following
15 background with respect to their claims related to A.R.S. § 15-342.05:

16 *“The kindergarten through grade twelve budget reconciliation bill (HB*
17 *2898) . . . violates Arizona’s equal protection clause under Article II, section*
18 *13 of the Arizona Constitution.”*

19
20 *“HB 2898 bans all public and charter schools – but not private schools –*
21 *from requiring students and staff to wear masks in school to protect against*
22 *the spread of COVID-19. The Legislature passed this bill in the face of a*
23 *public health crisis, when the COVID-19 virus is mutating and spreading*
24 *rapidly across the country and this state, including among children.”*

25
26
27

⁷ Plaintiff has raised legal arguments regarding whether the fact pattern in the Instant Case is capable of repetition
28 but evading review or whether the Instant Case falls within the other exceptions to the doctrines of mootness and
ripeness asserted by Plaintiff in the Instant Case, which are expressly preserved.

1 “Despite the title limiting the scope of the act’s contents to provisions
 2 ‘relating to kindergarten through grade twelve budget reconciliation,’ HB
 3 2898 includes substantive policies that have nothing to do with the budget.”

4
 5 “First, Section 12 prohibits a ‘a county, city, town, school district governing
 6 board or charter school governing body’ from ‘requir[ing] the use of face
 7 coverings by students or staff,’ and prohibits school districts and charter
 8 schools from ‘requir[ing] a student or teacher to receive a vaccine for
 9 COVID-19 or to wear a face covering to participate in in-person
 10 instruction.’”

11
 12 “The Legislature also curiously included a retroactivity provision in Section
 13 118, stating that Section 12 “applies retroactively to from and after June 30,
 14 2021.” The Arizona Constitution provides that any legislation does not
 15 become effective until 90 days after the close of the legislative session. The
 16 effective date for legislation passed this past legislative session is September
 17 29, 2021. The Constitution provides the only means by which the Legislature
 18 can make laws immediately effective. *Ariz. Const. art. IV, pt. 1 § 1(3).*”

19 Complaint (New Case) ¶¶ 6-7, 52-55 [**Exhibit 2**]. They then go on to claim that A.R.S. §
 20 15-342.05 violates the Arizona Constitution’s equal protection and single subject
 21 provisions. The details of their claims of unconstitutionality are discussed below.

22 **II. Common questions of law or fact.**

23 Defendants cannot be threatening to violate A.R.S. § 15-342.05 if the law is
 24 unconstitutional because in that circumstance, the statute would be null and void. Thus,
 25 there exists a common question of law between the instant case and the New Case which
 26 makes consolidation appropriate. Plaintiff’s discussion below highlights additional
 27 commonalities related to the question of A.R.S. § 15-342.05’s constitutionality.

28 Further, whether the Instant Case will be ripe or moot as of September 29th, 2021

1 has a great deal to do with whether A.R.S. § 15-342.05 is constitutional. If the statute is
 2 not constitutional, the Instant Case cannot be ripe even if Defendants persist with their
 3 mask mandate. In addition, the questions of whether the case will be ripe or moot as
 4 September 29th, 2021 approaches may also turn on both whether it is appropriate to litigate
 5 over a statute that is not yet in effect as well as whether their mask mandate is likely to be
 6 in effect past that date. In the New Case, Gallardo and Alston set forth facts and argument
 7 as to both of these questions.

8 **a. The enforceability of A.R.S. § 15-342.05 as of September 29th, 2021.**

9 As alleged by Gallardo and Alston in the New Case, whether A.R.S. § 15-342.05 is
 10 enforceable against the Phoenix Union High School District as of September 29th, 2021
 11 depends on whether the law is constitutional:

12 *“Plaintiff Gallardo strives to protect the health and safety of the children*
 13 *who are entrusted to his district, as well as the faculty and staff of the*
 14 *district’s employees. The Phoenix Union High School Governing Board has*
 15 *implemented a policy requiring masks. The unconstitutionally adopted*
 16 *statutes that are the subject of this case threaten his ability to work to protect*
 17 *his district’s students and staff when the budget reconciliation bills go into*
 18 *effect on September 29, 2021. The unconstitutionally adopted statutes that*
 19 *are the subject of this case threaten Plaintiff Gallardo’s ability to exercise*
 20 *local control to protect the health and safety of his community.”*

21
 22 *“Plaintiff Alston strives to protect the health and safety of the children who*
 23 *are entrusted to her district, as well as the faculty and staff of the district’s*
 24 *employees. The Phoenix Union High School Governing Board has*
 25 *implemented a policy requiring masks. The unconstitutionally adopted*
 26 *statutes that are the subject of this case threaten her ability to work to protect*
 27 *her district’s students and staff when the budget reconciliation bills go into*
 28 *effect on September 29, 2021.”*

1 Complaint (New Case) ¶¶ 18, 20 [Exhibit 2].⁸ Gallardo and Alston ask, in the New Case,
 2 that the Court find that the statute is not constitutional. Specifically, they ask the Court to
 3 find that A.R.S. § 15-342.05 violates the single subject and equal protection provisions of
 4 the Arizona Constitution, *see, e.g. id.* at ¶¶ 135, 137, 165, 168, and thus preliminarily and
 5 permanently enjoin the law from going into effect. *Id.* 31:22-32:20 (prayers for relief A,
 6 G, and H). As part of their equal protection argument, they assert that the Legislature lacked
 7 a “rational basis” for implementing A.R.S. § 15-342.05. *Id.* at ¶ 163.⁹

8 **i. Equal protection.**

9 Gallardo and Alston argue in the new case that A.R.S. § 15-342.05 is subject to
 10 strict scrutiny and that, alternatively, it fails under the rational basis standard. This is
 11 because, as they allege, it allows private schools to protect their students by imposing mask
 12 and vaccine mandates on students and staff but does not afford public schools the same
 13 privilege. *See e.g.,* Complaint (New Case) ¶¶ 122, 162, 163 [Exhibit 2]. As noted by this
 14 Court:

15 *“Ultimately whether to implement a policy like [A.R.S. § 15-342.05] involves*
 16 *a pretty fact intensive consideration the balances of health considerations,*
 17 *how the pandemic is going, and individual freedom. But that’s the balance*
 18 *that’s at issue here[.]”¹⁰*

19 Further, on August 2nd, 3rd, and 12th, Plaintiff in the Instant Case lodged a declaration by
 20 Representative Hoffman and two declarations by Representative Parker discussing how the
 21 legislators seeking to have A.R.S. § 15-342.05 passed into law balanced these competing
 22 interests. This balancing act is also at issue in any attempt to ascertain whether A.R.S. §
 23 15-342.05 satisfies either strict scrutiny or rational basis review and thus whether it
 24 presents an equal protection violation.

25 _____
 26 ⁸ Allston and Gallardo claim to be filing their complaint in the New Case in their personal capacities, but it is clear
 from these excerpts that their concerns relate to their official duties.

27 ⁹ The New Case also challenges the constitutionality of bills besides HB 2898 under the same theories.

28 ¹⁰ *See NOW: Phoenix Union High School District v. Mask Mandate Hearing*, YouTube, Aug. 13, 2021,
<https://www.youtube.com/watch?v=a34qJnKZD9g> at 38:52-39:24 (last visited Aug. 17, 2021) (Transcript not yet
 available).

1 **ii. Single subject.**

2 In the Instant Case, Gallardo and Alston have argued that the Arizona Constitution
3 prohibits A.R.S. § 15-342.05 from becoming effective prior to September 29th because,
4 though it was included in a budget reconciliation bill (HB 2898), the statute is substantive
5 policy that has nothing to do with the budget.¹¹ Plaintiff, meanwhile, argued that, though
6 such relation is unnecessary, the statute is indeed related to budgeting purposes. *See e.g.*
7 *Pl.’s Resp. in Opp’n to Mot. to Dismiss at 9:26-10:13.*

8 In the New Case, Gallardo and Alston similarly allege “the contents of [HB 2898]
9 include substantive policy provisions that have nothing to do with the budget.” Complaint
10 (New Case) ¶ 4. On that basis they assert that A.R.S. § 15-342.05 violates the Arizona
11 Constitution’s single subject rule. *See e.g.*, Complaint (New Case) ¶ 127 (“[A.R.S. § 15-
12 342.05 is] not related to kindergarten through grade twelve budget reconciliation.”).¹²

13 **b. Ripeness.**

14 Discussed above, Defendants have acknowledged in the Instant Case that whether
15 their mask mandate **can** continue past September 29th, 2021 depends on whether A.R.S. §
16 15-342.05 is constitutional. As further discussed above, they assert in the New Case that
17 the statute violates the equal protection and single subject provisions of the Arizona
18 Constitution and that “[a]bsent the entry of an injunction” on constitutional grounds, A.R.S.
19 § 15-342.05 will become enforceable next month. Complaint (New Case) ¶ 138. Thus, the
20 resolution of those constitutional questions has a significant impact on whether the Instant
21 Case will be ripe (or moot) as to Defendants as of September 29th, 2021.

22 Defendants have asserted in the Instant Case that whether their mask mandate **will**
23 continue past September 29th depends on the status of the COVID pandemic and public
24 health guidance as of that date. Reply in Supp. of Mot. to Dismiss at 9:15-21. A section of
25 Gallardo and Alston’s complaint in the New Case is entitled “HB 2898 Bans Mask
26 Mandates – Only in Public and Charter Schools – in the Face of Public Health Crisis”.

27 _____
¹¹ *See id.* at 28:36-28:56.

28 ¹² Plaintiff disagrees that A.R.S. § 15-342.05 is required to be related to the budget in order to be enforceable after
September 29th.

1 Complaint (New Case) 22:10-11. That section provides a variety of sources regarding the
 2 current trajectory of the COVID pandemic. Complaint (New Case) ¶¶ 99-123. It alleges on
 3 the basis of these asserted facts that this trajectory will likely make it necessary for school
 4 districts to be able to impose mask mandates past September 29th, in order to “protect their
 5 students and staff.” *Id.* at ¶ 111. Unlike their position in the Instant Case, Gallardo and
 6 Alston allege in the New Case that the constitutionality issue can be resolved well in
 7 advance of that date, saying: “An actual and justiciable controversy exists regarding the
 8 constitutionality of [A.R.S. § 15-342.05] because it was signed by the Governor on June
 9 30, 2021 and becomes effective on September 29, 2021.” Complaint (New Case) ¶¶ 164.
 10 In the New Case Gallardo and Alston allege that it is sufficiently likely that they will
 11 maintain their mask mandate past September 29th, 2021 to justify a grant of injunctive relief
 12 prior to that date. *See* Complaint (New Case) ¶ 111 (“Unless HB 2898 is declared
 13 unconstitutional and enjoined, school districts’ mask mandates will be unlawful when HB
 14 2898 takes effect on September 29, and public schools could be left powerless to protect
 15 their students and staff.”). Like the resolution of the statute’s constitutionality, the
 16 resolution of these questions will also have a significant bearing on whether the Instant
 17 Case is ripe or moot as September 29th approaches (as well as when exactly it becomes ripe
 18 between now and then).

19 It is also worth noting that Gallardo and Alston appear to have filed the New Case,
 20 and filed it on the eve of oral arguments, so that they could make these inconsistent
 21 arguments without nullifying their ripeness defense in the Instant Case.

22 **III. Necessity of expedited ruling.**

23 As discussed above, in the New Case, Gallardo and Alston seek to have A.R.S. §
 24 15-342.05 enjoined on constitutional grounds prior to September 29th, 2021. Complaint
 25 (New Case) ¶ 111. Earlier today, undersigned counsel also had a call with Michael Catlett
 26 of the Arizona Attorney General’s office, who informed our office that it is his
 27 understanding that Plaintiffs in the New Case will shortly be moving for a temporary
 28 restraining order.

1 Hence, an expedited ruling is necessary to avoid prejudice to Plaintiff Hester.

2 **IV. Conclusion**

3 The Instant Case and the New Case share a common question of law: Whether
4 A.R.S. § 15-342.05 can constitutionally be enforced against defendants as of September
5 29th, 2021. The New Case also concerns the related mixed question of fact and law question
6 of when exactly such claims can and will become ripe. Both cases will be resolved on an
7 extremely expedited basis. Therefore, this Motion to Consolidate should be granted in an
8 expedited fashion.

9
10
11 WHEREFORE Plaintiff requests that this Court:

- 12 A. Give this Motion expedited consideration by ruling on it promptly and without
13 briefing (or, alternatively, after an accelerated briefing schedule).
14 B. Consolidate this matter with CV2021-012741.

15
16 Respectfully submitted this 17th day of August, 2021

17
18 By /s/Alexander Kolodin
19 Alexander Kolodin
20 Chris Viskovic

21 Attorneys for Plaintiff

22
23 I CERTIFY that a copy of the forgoing will be served on defendants electronically as
24 required by this Court's Order.

25
26 By /s/Chris Viskovic