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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;

17 *Plaintiff,*

18 v.

19 PHOENIX UNION HIGH SCHOOL
20 DISTRICT; LELA ALSTON,
21 STANFORD PRESCOTT, NAKETA
22 ROSS, STEPHANIE PARRA, LAURA
23 PASTOR, STEVE GALLARDO, and
24 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.

**MOTION FOR TEMPORARY
RESTRAINING ORDER WITHOUT
NOTICE**

25 Plaintiff hereby moves for the entry of a temporary restraining order without notice
26 pursuant to Arizona Rule of Civil Procedure 65(b).
27
28

1 The entry of a temporary restraining order without notice requires: (A) a showing
 2 that immediate and irreparable injury, loss, or damage will likely result before the adverse
 3 party can be heard in opposition and (B) a certification of any efforts made to give notice
 4 or the reasons why it should not be required. ARCP 65(b)(1).

5 **I. Immediate injury**

6 On June 30th, 2021, Governor Doug Ducey signed HB 2898 into law. **Exhibit A** to
 7 Verified Complaint. Included within HB 2898 was a new statute, A.R.S. § 15-342.05,
 8 which provides as follows:

- 9 a. *“Notwithstanding any other law or order, a county, city, town, school district*
 10 *governing board or charter school governing body may not require the use*
 11 *of face coverings by students or staff during school hours and on school*
 12 *property.”*
- 13 b. *“A school district or charter school may not require a student or teacher to*
 14 *receive a vaccine for COVID-19 or to wear a face covering to participate in*
 15 *in-person instruction.”*

16 HB 2898 was an omnibus bill, the various portions of which have different effective dates.
 17 Section 119(A) of the bill provides as follows: “Section 15-342.05, Arizona Revised
 18 Statutes, as added by this act, applies retroactively to from and after June 30, 2021. **Exhibit**
 19 **A** to Verified Complaint p 160.

20 On July 30, 2021, the PUHSD posted the following announcement on its website:

21
 22 *Our current Board-adopted policies still require masks when indoors in the*
 23 *presence of others. However, this past month, we did align our masking practices*
 24 *district-wide with the current prohibition of mask mandates. Recently, we have*
 25 *heard from our staff, students, and families that they want us to realign our*
 26 *mitigation practices with the guidelines and recommendations of national and local*
 27 *health agencies.*
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In an effort to protect our staff, students, and community, PXU has a good faith belief that following guidance from the CDC and other health agencies regarding mitigation strategies is imperative. Therefore, Phoenix Union will begin the school year on August 2 enforcing our existing Board-adopted mask requirement of universal indoor masking only, regardless of vaccination status. This masking requirement is for all staff, students, and visitors.¹

The same day, the Arizona Republic reported as follows:

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

...

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

...

At a news conference on Friday, Phoenix Union Superintendent Chad Gestson repeatedly declined to comment on whether the district was following state law. He said he has been in talks with his legal team about the mandate but reiterated that his job was about the health and safety of schools.”²

Twelve News reported more fully on Governor Ducey’s July 30th statement:

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

¹ <https://www.pxu.org/Page/28142>

² <https://www.azcentral.com/story/news/local/phoenix-education/2021/07/30/phoenix-union-high-school-district-require-masks-indoors/5431886001/>

1 ‘Gov. Ducey believes the decision by Phoenix Union requiring masks has no teeth.
2 It's not allowed under Arizona law. It's unenforceable.

3 Arizona is not anti-mask, we're anti-mask mandate. As the governor has often said,
4 mask usage is up to parents.

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

7
8 But Ducey didn't indicate that he would try to block the district's mandate.”³

9 Just three days prior, Governor Ducey had released a statement reading, in pertinent
10 part:

11 “Arizona does not allow mask mandates, vaccine mandates, vaccine passports or
12 discrimination in schools based on who is or isn't vaccinated. We've passed all of
13 this into law, and it will not change.”⁴

14 The mask mandate applies to students, faculty, and staff.⁵

15 Because PUHSD only announced this policy on July 30th and the PUHSD's first day of
16 school is August 2⁶, there is not even one full judicial day during which Defendants could
17 be heard on the merits before Defendants' unlawful policy takes effect.

18 **II. Irreparability**

19 The Arizona Supreme Court has recently held that the requirement of irreparable
20 injury is satisfied when the official acts sought to be enjoined are unlawful:

21
22 *Because Plaintiffs have shown that the Recorder has acted unlawfully and*
23 *exceeded his constitutional and statutory authority, they need not satisfy the*
24 *standard for injunctive relief. See Burton v. Celentano, 134 Ariz. 594, 596,*
25 *658 P.2d 247 (App. 1982) (“[W]hen the acts sought to be enjoined have been*

26 ³ <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>

27 ⁴ <https://azgovernor.gov/governor/news/2021/07/governor-ducey-statement-updated-cdc-guidance>

28 ⁵ https://www.azfamily.com/news/continuing_coverage/coronavirus_coverage/facemask-mandate-phoenix-union-high-school/article_df19f11e-f154-11eb-ad7a-bbadde56d83d.html

⁶ <https://www.pxu.org/calendar#calendar1/20210830/month>

1 *declared unlawful or clearly are against the public interest, plaintiff need*
 2 *show neither irreparable injury nor a balance of hardship in his favor."*
 3 *(quoting 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and*
 4 *Procedure § 2948 (3d ed. 1998)); see Current-Jacks Fork Canoe Rental*
 5 *Ass'n v. Clark, 603 F. Supp. 421, 427 (E.D. Mo. 1985) (stating that "[i]n*
 6 *actions to enjoin continued violations of federal statutes, once a movant*
 7 *establishes the likelihood of prevailing on the merits, irreparable harm to the*
 8 *public is presumed").*

9
 10 *Ariz. Pub. Integrity All. v. Fontes, 475 P.3d 303, 309 (Ariz. 2020). Here, the acts sought to*
 11 *be enjoined clearly, flagrantly, and defiantly violate A.R.S. § 15-342.05. Even if Plaintiff*
 12 *was required to show irreparable injury, she could satisfy that requirement by showing that*
 13 *she is beneficially interested in compelling Defendants to perform their legal duty. Id.*
 14 *("Nevertheless, we conclude that Plaintiffs have satisfied the standard for injunctive relief*
 15 *. . . Plaintiffs have established the requisite 'injury' by showing they are 'beneficially*
 16 *interested' in compelling the Recorder to perform his legal duty.). Here, Plaintiff is a*
 17 *teacher in the Phoenix Union High School District. Verified Complaint ¶ 1, A.R.S. § 15-*
 18 *342.05 was intended to benefit school district "staff" by ensuring that their employers could*
 19 *not require them to wear face coverings.*

20 **III. Certification of any efforts made to give notice or the reasons notice**
 21 **should not be required**

22 As set forth above, Defendants announced their unlawful policy on Friday and it is
 23 to take effect Monday. Counsel nonetheless certifies that his office is contemporaneously
 24 emailing a copy of all pleadings filed today to the publicly available email addresses for
 25 the Phoenix Union High School Governing Board.⁷

26 **IV. Conclusion**

27 The Court should enter the attached temporary restraining order without notice.

28 ⁷ <https://www.pxu.org/Page/200>

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Respectfully submitted and certified this 2nd day of August, 2021

By /s/Alexander Kolodin

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