

1 Roopali H. Desai (024295)  
D. Andrew Gaona (028414)  
2 Kristen Yost (034052)  
**COPPERSMITH BROCKELMAN PLC**  
3 2800 North Central Avenue, Suite 1900  
Phoenix, Arizona 85004  
4 T: (602) 381-5478  
rdesai@cblawyers.com  
5 agaona@cblawyers.com  
6 kyost@cblawyers.com

7 Daniel J. Adelman (011368)  
8 **ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST**  
352 East Camelback Road, Suite 200  
9 Phoenix, Arizona 85012  
10 T: (602) 258-8850  
danny@aclpi.org

11 *Attorneys for Plaintiffs*

12 **ARIZONA SUPERIOR COURT**  
13 **MARICOPA COUNTY**

|  |   |                                       |
|--|---|---------------------------------------|
| 14 ARIZONA SCHOOL BOARDS                   | ) | No. CV2021-012741                     |
| 15 ASSOCIATION, INC., an Arizona nonprofit | ) |                                       |
| 16 corporation, et al.,                    | ) | <b>MOTION FOR PRELIMINARY</b>         |
|  | ) | <b>INJUNCTION</b>                     |
| 17 Plaintiffs,                             | ) |                                       |
|  | ) | (Tier 2)                              |
| 18 v.                                      | ) |                                       |
| 19 STATE OF ARIZONA, a body politic,       | ) | (Expedited Consideration Requested)   |
| 20 Defendant.                              | ) |                                       |
|  | ) | (Assign to the Hon. Katherine Cooper) |
|  | ) |                                       |

1 ***“Due to the circulating and highly contagious Delta variant, CDC recommends universal***  
2 ***indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12***  
3 ***schools, regardless of vaccination status.”***

~ Centers for Disease Control and Prevention (August 5, 2021)

4 ***“I’m not an attorney, but it seems cut and dried. What I find especially egregious***  
5 ***were all the bills that died and came back in the budget.”***

~ Sen. Paul Boyer R-Glendale<sup>1</sup>

### 6 **Introduction**

7 The Arizona Constitution protects our representative democracy in two critical ways. It  
8 requires that laws passed by the Legislature: (1) cover only one subject; and (2) give adequate  
9 notice of the bill’s contents in the title. Ariz. Const. art. IV, pt. 2, § 13.

10 Yet in the closing days of the 2021 legislative session, the Legislature ignored the clear  
11 dictates of our Constitution, and crammed a hodgepodge of substantive law provisions into what  
12 are known as “budget reconciliation” bills. In doing so, the Legislature ignored not only the  
13 Constitution, but also explicit and repeated rulings of the Arizona Supreme Court, which caution  
14 that lumping such unrelated provisions “in the same bill tends to undermine the legislative  
15 process by stifling valuable debate within government’s most important forum of persuasion and  
16 policymaking, the legislature.” *Bennett v. Napolitano*, 206 Ariz. 520, 528 ¶ 38 (2003).

17 The Legislature has disregarded these constitutional limits. First, they passed three bills  
18 (HB2898, SB1824, and SB1825) with titles claiming that the contents of the act relate to “budget  
19 reconciliation,” yet the contents of each bill include substantive policy provisions that plainly  
20 are not related to “budget reconciliation” and are not tied to general appropriations as set forth  
21 in the “feed” bill. They also passed a bill (SB1819) with a title claiming that its contents relate  
22 to “budget procedures” and “budget reconciliation,” but it likewise includes substantive policy  
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24 <sup>1</sup> Pitzl, Mary Jo, *Mask mandates, election changes don’t belong in budget bill lawsuit claims*,  
25 The Ariz. Republic, Aug. 13, 2021 (<https://www.azcentral.com/story/news/local/arizona-education/2021/08/13/arizona-school-mask-law-covid-19-challenged-court-education-coalition/8119478002/>).  
26

1 legislation that has nothing to do with the budget. Second, SB1819 covers a hodgepodge of  
2 completely unrelated subjects in violation of the single subject rule. The medley of laws in  
3 SB1819 are precisely the type of “log-rolling” the single subject rule is intended to prevent.  
4 *Arizona Chamber of Com. & Indus. v. Kiley*, 242 Ariz. 533, 541 ¶ 30 (2017). The Court should  
5 enjoin these laws, which undermine our democracy.

6 One of the so-called budget reconciliation bills (HB2898) also blatantly violates  
7 Arizona’s equal protection clause under Art. II, section 13 of the Arizona Constitution. HB2898  
8 bans all public school districts and charter schools – but not private schools – from requiring  
9 students and staff to wear masks in school to protect against the spread of COVID-19. This  
10 arbitrary distinction unfairly discriminates against Arizona’s public district and charter school  
11 students as compared to their private school peers about their right to a safe education, a  
12 fundamental right under Arizona law.

13 Worse yet, the Legislature passed these unconstitutional bills prohibiting COVID-19  
14 mitigation measures while Arizona is firmly in the grips of the deadly Delta Variant of the  
15 pandemic. Without the ability to impose proven, science-based safety measures, students and  
16 teachers will get sick, and some may die. Unless the Court enjoins these dangerous laws,  
17 Plaintiffs and all Arizonans will suffer irreparable harm.

### 18 **Background**

#### 19 **I. The Title and Single Subject Dictates of the Constitution.**

20 Article IV, part 2, § 13 of the Arizona Constitution requires that every act passed by the  
21 Legislature “shall embrace but one subject and matters properly connected therewith, which  
22 subject shall be expressed in the title[.]” This provision has two distinct constitutional mandates:  
23 (1) legislation may only embrace one subject, and (2) the subject of the legislation must be  
24 properly addressed in the title of the act.  
25  
26

1           **A.     The title requirement.**

2           The title requirement in Article IV, part 2, § 13 “was designed to enable legislators and  
3 the public upon reading the title to know what to expect in the body of the act so that no one  
4 would be surprised as to the subjects dealt with by the act.” *State v. Sutton*, 115 Ariz. 417, 419  
5 (1977) (quotations omitted). The “act’s title need not be a synopsis or a complete index of the  
6 act’s provisions,” *Hoyle v. Superior Ct. In & For Cty. of Maricopa*, 161 Ariz. 224, 230 (App.  
7 1989), but the “title must be worded so that it puts people on notice as to the contents of the act,”  
8 *Sutton*, 115 Ariz. at 419. A title may not “mislead” but must fairly “apprise legislators, and the  
9 public in general, of the subject matter of the legislation.” *Am. Estate Life Ins. Co. v. State, Dept.*  
10 *of Ins.*, 116 Ariz. 240, 242 (App. 1977) (citation omitted).

11           When the title of an amendatory act “particularizes some of the changes to be made by  
12 the amendment[s], *the legislation is limited to the matters specified and anything beyond them*  
13 *is void, however germane it may be to the subject of the original act.*” *Hoyle*, 161 Ariz. at 230  
14 (emphasis added).

15           **B.     The single subject rule.**

16           The “single subject rule” of the Arizona Constitution, Art. 4, Pt. 2, § 13, provides that  
17 “[every act shall embrace but one subject and matters properly connected therewith.” The rule  
18 “was intended to prevent the pernicious practice of ‘logrolling.’ . . . A bill that deals with  
19 multiple subjects creates a serious ‘logrolling’ problem because an individual legislator ‘is thus  
20 forced, in order to secure the enactment of the proposition which he considers the most  
21 important, to vote for other of which he disapproves.’” *Bennett*, 206 Ariz. at 528 ¶ 37; *Kiley*, 242  
22 Ariz. at 541 ¶ 30. For purposes of the single subject rule, the “subject” of legislation includes  
23 “all matters having a logical or natural connection.” *Litchfield Elementary Sch. Dist. No. 79 of*  
24 *Maricopa Cty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980) (“[A]ll matters treated of should fall  
25 under some one general idea, be so connected with or related to each other, either logically or in  
26 popular understanding, as to be parts of, or germane to, one general subject.”).

1 **II. The Budget Reconciliation Bills.**

2 Before analyzing why each of the budget reconciliation bills (“BRBs”) violates either or  
3 both of the requirements of Article 4, Pt. 2, Section 13, it is helpful to understand the intended  
4 and appropriate use of BRBs.

5 **A. “Budget reconciliation” bills are necessary because the Constitution**  
6 **prohibits putting substantive law in the general appropriations bill.**

7 When the Legislature adopts a budget each year, a key part of the process involves the  
8 appropriation of money. Specifically, each year the Legislature enacts a general appropriations  
9 bill, which sets forth the many appropriations the Legislature makes for the upcoming fiscal year.  
10 This general appropriations bill (also commonly referred to as the “feed bill”) is governed by a  
11 separate provision of our constitution, Art. IV., Pt. 2, § 20, which mandates that “The general  
12 appropriation bill shall embrace nothing but appropriations . . . . All other appropriations shall  
13 be made by separate bills, each embracing but one subject.” (Emphasis added.) Arizona courts  
14 have long held, “the general appropriation bill is not in the true sense of the term legislation; it  
15 is, as the language implies, merely a setting apart of the funds necessary for the use and  
16 maintenance of the various departments of the state government . . . .” *Caldwell v. Board of*  
17 *Regents of University of Arizona*, 54 Ariz. 404, 408 (1939) (citations omitted).

18 Arizona law is clear that the Legislature may not include general, substantive legislation  
19 in the appropriations bill, and “any attempt at any other legislation in the bill is void.” *Id.* As the  
20 supreme court presciently explained, “[i]f the practice of incorporating legislation of general  
21 character in an appropriation bill should be allowed, then all sorts of ill conceived, questionable,  
22 if not vicious, legislation could be proposed with the threat, too, that if not assented to and passed,  
23 the appropriations would be defeated.” *Id.*

24 Thus, under our Constitution, any changes in substantive law that are necessary to  
25 “effectuate” appropriations in the budget must be made in separate bills. Put differently, BRBs  
26 exist for the specific purpose of providing the substantive law that is necessary to implement or

1 carry out the appropriations made in the general appropriations bill. [See Declaration of Chris  
2 Kotterman, attached as Ex. 1; Declaration of David Lujan, attached as Ex. 2]

3 To illustrate, a substantive change to the computation of Average Daily Membership for  
4 schools or a clarification of some funding formula may be included in a BRB because these  
5 provisions have an impact on the flow of funding to school districts and charter schools.  
6 [Kotterman Decl. ¶ 21]. And another example, the “environment” BRB passed this session  
7 includes a provision describing how the state forester will pay claims to rural fire districts,  
8 “subject to legislative appropriation.” Section 37 of the general appropriations bill in turn  
9 includes a \$2,500,000 appropriation for this purpose. The Department of Forestry section in the  
10 Appropriations Report explains how the BRB effectuates this line item in the budget: “Pursuant  
11 to a provision in the Environment Budget Reconciliation Bill (BRB), these funds are available  
12 to assist fire districts with a population of less than 5,000, for expenses incurred providing  
13 emergency medical services on federal land.” Ariz. FY22 Approp. Rep. at 198,  
14 <https://www.azleg.gov/jlbc/22AR/FY2022AppropRpt.pdf> (last visited Aug. 18, 2021).<sup>2</sup>

15 The legislature knows this is the appropriate function of the BRBs. According to the  
16 Legislative Council’s Arizona Legislative Manual, BRBs “are used for statutory adjustments  
17 that must be implemented to carry out the adopted budget.” [Compl. Ex. A] Senate fact sheets  
18 from this legislative session also warn: substantive law changes are not permissible in the general  
19 appropriations bill, but “it is often necessary to make statutory and session law changes *to*  
20 *effectuate the budget*. Thus, separate bills called budget reconciliation bills (BRBs) are  
21 introduced to *enact these provisions*.” E.g., HB2898 Senate Fact Sheet, 55th Leg., 1st Reg. Sess.  
22 (Ariz. June 30, 2021) <https://www.azleg.gov/legtext/55leg/1R/summary/S.2898>  
23

24  
25 \_\_\_\_\_  
26 <sup>2</sup> Notably, in the Appropriations Report, there are no line items in the budget or BRB descriptions  
tying the challenged provisions in this lawsuit to an appropriation.

1 [APPROP ASPASSEDCOW.pdf](#) (emphasis added). A true and correct excerpt is attached as Ex.  
2 3.

3 Yet here, the Legislature stuffed into the various BRBs provisions that have nothing to  
4 do with “effectuating the appropriations in the budget.” Rather, the Legislators crammed into  
5 the BRBs laws prohibiting mask mandates and other COVID mitigation measures, as well as  
6 enacting numerous other pet interests of various legislators that have nothing to do with “budget  
7 reconciliation.” In doing so, the Legislature violated the clear dictates of article IV, part 2, § 13.

8 **B. All of the Challenged BRBs Contain Provisions that are Not “Properly  
9 Reflected in the Title,” and SB1819 Contains a Hodgepodge of Completely  
10 Unrelated Subjects.**

11 **1. HB2898 (kindergarten through grade twelve budget reconciliation).**

12 HB2898’s title is: “an act amending [listing approximately 100 statutes by number only];  
13 appropriating monies; *relating to kindergarten through grade twelve budget reconciliation.*”  
14 (Emphasis added.) Despite the title limiting the scope of the act’s contents to provisions “budget  
15 reconciliation,” HB2898 includes substantive legislation that has nothing to do with effectuating  
16 or implementing the budget.

17 First, Section 12 prohibits “a county, city, town, school district governing board or charter  
18 school governing body” – but not private schools – from requiring students and staff to wear  
19 masks or to get a COVID-19 vaccine. [Compl. ¶ 53]

20 Second, Section 21 prohibits “a teacher, administrator or other employee of a school  
21 district, charter school or state agency who is involved with students and teachers in grades  
22 preschool through the twelfth grade” from teaching curriculum “that presents any form of blame  
23 or judgment on the basis of race, ethnicity or sex.” This section goes on to vaguely prohibit  
24 teaching various “concepts,” including the idea that an individual “should feel discomfort, guilt,  
25 anguish, or any other form of psychological distress because of the individual’s race, ethnicity  
26

1 or sex.” And it authorizes “disciplinary action” and enforcement action against a teacher who  
2 violates this section. [Compl. ¶¶ 57-58]

3 Third, Section 50 of HB2898 authorizes the Attorney General to initiate civil actions  
4 against a “public official, employee or agent of this State” who uses public resources to  
5 “organize, plan or execute any activity that impedes or prevents a public school from operating  
6 for any period of time,” and against any teacher or other employee “whose violation of [Section  
7 21] resulted in an illegal use of public monies.” [Compl. ¶ 59]

## 8 **2. SB1825 (budget reconciliation for higher education).**

9 SB1825’s title is “an act amending [listing approximately 12 statutes by number only];  
10 appropriating monies; *relating to budget reconciliation for higher education.*” (Emphasis  
11 added.) Consistent with this title, the stated purpose of SB1825 is to “[m]ake[] statutory and  
12 session law changes relating to higher education necessary to implement the FY 2022 state  
13 budget.” SB1825 Senate Fact Sheet, 55th Leg., 1st Reg. Sess. (Ariz. June 22, 2021)  
14 [https://www.azleg.gov/legtext/55leg/1R/summary/S.1825APPROP\\_ASPASSED\\_COW.pdf](https://www.azleg.gov/legtext/55leg/1R/summary/S.1825APPROP_ASPASSED_COW.pdf). A  
15 true and correct excerpt is attached as Ex. 4. Despite the title limiting the scope of the act’s  
16 contents to provisions “relating to budget reconciliation for higher education,” SB1825 includes  
17 substantive legislation that is not necessary to effectuate or implement the budget.

18 Specifically, in Section 2 (A.R.S. § 15-1650.05), subject to limited exceptions,  
19 “universities and community colleges may not require that a student obtain a COVID-19  
20 vaccination or show proof of receiving a COVID-19 vaccination or implement other mitigation  
21 measures that differentiate based on vaccine status.

## 22 **3. SB1824 (health budget reconciliation).**

23 SB1824’s title is “an act amending [listing approximately 21 statutes by number only];  
24 appropriating monies; *relating to health budget reconciliation.*” (Emphasis added.) Consistent  
25 with this title, the stated purpose of SB1824 is to “[m]ake[] statutory and session law changes  
26 relating to health necessary to implement the FY 2022 state budget.” SB1824 Senate Fact Sheet,



1 55th Leg., 1st Reg. Sess. (Ariz. June 22, 2021), [https://www.azleg.gov/legtext/55leg/1R/summary/S.1824APPROP\\_ASPASSED\\_COW.pdf](https://www.azleg.gov/legtext/55leg/1R/summary/S.1824APPROP_ASPASSED_COW.pdf). A true and correct excerpt  
2 is attached as Ex. 5. Despite the title limiting the scope of the act’s contents to provisions  
3 “relating to health budget reconciliation,” SB1824 includes substantive legislation that has  
4 nothing to do with effectuating or implementing the budget.  
5

6 First, Section 12 provides that an immunization that has an FDA emergency use  
7 authorization cannot be required for school attendance, and that immunizations cannot be  
8 required for school attendance unless set forth in a rule by the Director of the Department of  
9 Health Services. [Compl. ¶ 67]

10 Second, Section 13 prohibits the State or any city, town, or county “from establishing a  
11 COVID-19 vaccine passport,” or requiring that any person “be vaccinated for COVID-19” or  
12 that any business obtain “proof of the COVID-19 vaccination status of any patron entering the  
13 business establishment.” [Compl. ¶ 68]

#### 14 **4. SB1819 (budget procedures).**

15 SB1819’s title is “an act amending [listing approximately 31 statutes by number only];  
16 appropriating monies; *relating to state budget procedures.*” (Emphasis added.) Consistent with  
17 this title, SB1819’s stated purpose is to “[m]ake[] statutory and session law *changes relating to*  
18 *budget procedures* necessary to implement the FY 2022 state budget.” SB1819 Senate Fact  
19 Sheet, 55th Leg., 1st Reg. Sess. (Ariz. June 23, 2021), [https://www.azleg.gov/legtext/55leg/1R/summary/S.1819APPROP\\_ASPASSED\\_COW\\_REVISED.pdf](https://www.azleg.gov/legtext/55leg/1R/summary/S.1819APPROP_ASPASSED_COW_REVISED.pdf). A true and correct  
20 excerpt is attached as Ex. 6. Despite the title limiting the scope of the act’s contents to provisions  
21 “relating to state budget procedures,” SB1819 includes substantive policy legislation that has  
22 nothing to do with budget procedures.  
23

24 For example, Section 5 sets forth various requirements for “fraud countermeasures” used  
25 in ballots. In Section 33, the Legislature grants the Attorney General the authority to defend  
26

1 election laws and “speak[] for this state” in election litigation “through January 2, 2023.”  
2 [Compl. ¶¶ 71-73]

3 Section 35 provides that the Secretary of State must request that the United States election  
4 assistance commission include Arizona’s proof of citizenship instructions on the federal voter  
5 registration form. In Section 39, the bill prohibits a “county, city or town” from adopting “any  
6 order, rule, ordinance or regulation related to mitigating the COVID-19 pandemic that impacts  
7 private businesses, schools, churches or other private entities,” including mask requirements.

8 Section 47 establishes a “special committee” on the Senate’s “audit” of the 2020 General  
9 Election in Maricopa County.

10 Even more, SB1819 also violates the single subject rule, because it contains legislation  
11 on multiple, unrelated subjects that have no logical connection to each other. Among other  
12 subjects, – and in addition to those described above – SB1819 covers: dog racing permitting;  
13 requirements for the Arizona Game and Fish Dept. to assist with voter registration; amending  
14 the definition of a “newspaper” under Arizona law; local authority to pass COVID mitigation  
15 measures; amending the study committee on missing and indigenous peoples; the creation of a  
16 “special committee” to review the election “audit”; and requirements for the agreement of unit  
17 owners to terminate a condominium.

18 It is difficult to conceive of more blatant violations of the requirements of both the title  
19 and the single subject requirements of the Arizona Constitution.

20 **Argument**

21 A party seeking a preliminary injunction must establish that (1) there is a strong  
22 likelihood of success at trial on the merits, (2) the possibility of irreparable harm that is not  
23 remedied by monetary damages, (3) the balance of hardships tips in its favor, and (4) public  
24 policy favors the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Courts consider the  
25 likelihood of success on the merits and the possibility of irreparable harm on a sliding scale, and  
26 they will grant an injunction when the balance of hardships tips sharply in the movant’s favor

1 with less likelihood of success, and vice versa. *Smith v. Ariz. Citizens Clean Elections Comm'n*,  
2 212 Ariz. 407, 411 ¶ 10 (2006). Plaintiffs are entitled to a preliminary injunction under either  
3 formulation of the rule. They have a strong likelihood of the success on the merits, and the  
4 consequences of these unconstitutional laws will cause an irreparable hardship that tips strongly  
5 in favor of Plaintiffs and the public.

6 **III. Plaintiffs Are Likely to Succeed on Their Claims.**

7 While Section 13's single subject rule and title requirement are "interpreted liberally so  
8 as not to impede or embarrass the legislature in its business," they shouldn't be interpreted "so  
9 foolishly liberal as to render the constitutional requirements nugatory." *Litchfield Elementary*,  
10 125 Ariz. at 224 (quotations omitted). Here, the violations of Section 13 are egregious. To uphold  
11 these laws would render the crucial protections in the Constitution "nugatory."

12 **A. The BRBs violate the title requirement.**

13 Arizona courts have repeatedly struck down legislative acts that violate the title  
14 requirement of Article IV, part 2, § 13. *See, e.g., State v. Sutton*, 115 Ariz. 417, 419 (1977);  
15 *White v. Kaibab Rd. Improvement Dist.*, 113 Ariz. 209 (1976); *Am. Estate Life Ins. Co. v. State*,  
16 *Dept. of Ins.*, 116 Ariz. 240 (App. 1977). As the Supreme Court in *Sutton* explained, the title  
17 provision "was designed to enable legislators and the public upon reading the title to know what  
18 to expect in the body of the act so that no one would be surprised as to the subjects dealt with by  
19 the act." *Sutton*, 115 Ariz. at 419 (quotation omitted). "By confining the legislation to the subject  
20 contained in the title, neither the members of the legislature nor the people can be misled to vote  
21 for something not known to them or intended to be voted for." *White*, 113 Ariz. at 212. While  
22 the "act's title need not be a synopsis or a complete index of the act's provisions," *Hoyle v.*  
23 *Superior Ct. In & For Cty. of Maricopa*, 161 Ariz. 224, 230 (App. 1989), the "title must be  
24 worded so that it puts people on notice as to the contents of the act." *White*, 113 Ariz. at 211.<sup>3</sup>  
25

26 <sup>3</sup> The Legislature is well-aware that the title requirement in Section 13 applies to all legislation  
it passes, including BRBs. [Compl. Ex. B at 9] *See* 2020 Bill Drafting Manual at 9,

1 “The courts cannot enlarge the scope of the title; they are vested with no dispensing power. The  
2 Constitution has made the title the conclusive index to the legislative intent as to what shall have  
3 operation. It is no answer to say that the title might have been made more comprehensive, if in  
4 fact the legislature have not seen fit to make it so.” *White*, 113 Ariz. at 212 (citations omitted).

5 Here, the BRB’s titles list various statutes that are amended, and then states the  
6 bills/amendments are for “budget reconciliation.” For example, HB2898 lists *over 100 statutes*  
7 *that will be amended*, but says that the bill is “relating to kindergarten through grade twelve  
8 budget reconciliation.” This is crucial because, when the title of an amendatory act  
9 “particularizes some of the changes to be made by the amendment, the legislation is limited to  
10 the matters specified and anything beyond them is void, however germane it may be to the  
11 subject of the original act.” *Hoyle*, 161 Ariz. at 230; *Sutton*, 115 Ariz. at 419-20. Here, by stating  
12 that the measures related “to budget reconciliation,” the title “particularizes some of the changes  
13 to be made” and must “be limited to the matters specified.” Anything beyond that is “void.”

14 In similar circumstances the courts have struck down as void any provisions that are not  
15 set forth in the narrative description, even where specific statute numbers were referenced. For  
16 example, in *American Estate*, the title of the statute under review explicitly identified a series of  
17 statutes that would be amended, and also explained in narrative terms what the act addressed.  
18 116 Ariz. at 242. The narrative terms did not, however, describe a new tax that appeared in the  
19 act. The court held that a title may not “mislead” but must fairly “apprise legislators, and the  
20 public in general, of the subject matter of the legislation.” *Id.* The court rejected the State’s  
21 argument that the title included the term “insurance,” which was broad. *Id.* Instead, it struck  
22 down the law as unconstitutional because “the title to the act fails to give adequate notice within  
23

24 [https://www.azleg.gov/alisPDFs/council/2021-2022\\_bill\\_drafting\\_manual.pdf](https://www.azleg.gov/alisPDFs/council/2021-2022_bill_drafting_manual.pdf) (noting that the  
25 “title is a constitutional requirement of every bill,” and it “must state the subject of the  
26 legislation with sufficient clarity to enable persons reading the title to know what to expect in  
the body of the act.”).

1 the contents of the act that there is a new tax placed on ‘orphan premiums.’” *Id.* at 243. *See also*  
2 *Sutton*, 115 Ariz. at 419-20 (where title of statute listed some changes to credit card theft statute  
3 but not others, court struck down provisions not referenced in title); *State Board of Control v.*  
4 *Buckstegge*, 18 Ariz. 277 (1916) (even giving liberal construction, title “should not be so meager  
5 as to mislead or tend to avert inquiry into the contents thereof”; court struck down statute where  
6 title said “providing for old age and mothers’ pension and making appropriation therefor”  
7 because title provided “no suggestion” that bill also abolished existing poor houses).

8       Comments from numerous legislators make clear that inclusion of substantive policy  
9 changes in the BRBs was not to effectuate the budget (i.e. “budget reconciliation”), but were  
10 required to “buy” their votes for the entire budget. [Kotterman Decl. ¶ 16; *see also* Compl. ¶¶  
11 89-92, Exhs. C-E; *see also* Complaint at ¶¶ 89-93 (collecting public statements of legislators)]  
12 One legislator recently conceded that the practice is illegal: “Sen. Paul Boyer, R-Glendale,  
13 questioned how the Legislature would defend itself when, in his view, the process so clearly  
14 violates the state Constitution.” Pitzl, Mary Jo, *Mask mandates, election changes don’t belong*  
15 *in budget bill lawsuit claims*, The Ariz. Republic, Aug. 13, 2021  
16 [https://www.azcentral.com/story/news/local/arizona-education/2021/08/13/arizona-school-](https://www.azcentral.com/story/news/local/arizona-education/2021/08/13/arizona-school-mask-law-covid-19-challenged-court-education-coalition/8119478002/)  
17 [mask-law-covid-19-challenged-court-education-coalition/8119478002/](https://www.azcentral.com/story/news/local/arizona-education/2021/08/13/arizona-school-mask-law-covid-19-challenged-court-education-coalition/8119478002/).

18       There can be no doubt that the challenged provisions—most of which relate to COVID  
19 mitigation policies—do not relate to “budget reconciliation.” Yet that is the misleading title that  
20 was slapped on each of the BRBs. Each of the BRBs violates the title requirement of the  
21 Constitution. For example:

- 22       • The title of HB2898,<sup>4</sup> provides no suggestion that the bill would: (1) ban public schools  
23       from implementing mask mandates; or (2) ban teaching vague concepts relating to race  
24       and providing penalties and enforcement mechanisms.

25 <sup>4</sup> The inclusion of the words “appropriating moneys” does not save these provisions. None of  
26 these provisions appropriate money. As Judge Warner recently ruled regarding the mask  
mandate: “The statute is not an appropriation measure, it is a regulation of school districts.”

- 1 • The title of SB1825, provides no notice that the bill would prohibit universities and  
2 community colleges from requiring vaccinations and alternative COVID mitigation  
3 measures for those who were unvaccinated.
- 4 • The title of SB1824, provides no suggestion that it would include provisions (1) providing  
5 that an immunization that has an FDA emergency use authorization cannot be required  
6 for school attendance; (2) that immunizations cannot be required for school attendance  
7 unless set forth in a rule by the Director of the Department of Health Services; or (3) that  
8 no city or town can establish “a COVID-19 vaccine passport” or require business to obtain  
9 proof of vaccination status.
- 10 • The title of SB1819, provides no notice that it would include provisions (1) requiring the  
11 Secretary of State to give access to the statewide voter registration database to any “person  
12 or entity that is designated by the legislature” to review voters who are registered to vote  
13 for federal only races, (2) that it would establish “fraud countermeasures” to be used in  
14 paper ballots; (3) or make any of the other changes itemized in § II (B)(4) above.

15 Each of these measures violates the Constitution’s title requirement, and each of the  
16 offending provisions should be declared unconstitutional and enjoined from taking effect. Ariz.  
17 Const. art. IV, pt. 2, § 13. *See Sutton*, 115 Ariz. at 419.

18 **B. SB1819 also violates the single subject rule.**

19 The single subject rule mandates, that “[e]very act shall embrace but one subject and  
20 matters properly connected therewith.” Ariz. Const. art. 4, Pt. 2, § 13. The “subject” of legislation  
21 includes “all matters having a logical or natural connection.” *Litchfield Elementary*, 125 Ariz. at  
22 224 (citation omitted). Thus, to comply with the single subject rule, “all matters treated of should  
23 fall under some one general idea, be so connected with or related to each other, either logically  
24 or in popular understanding, as to be parts of, or germane to, one general subject.” *Id.*; *see also*  
25 *Hoffman v. Reagan*, 245 Ariz. 313, 317 ¶ 16 (2018) (the single subject rule requires that a bill’s  
26 provisions be reasonably related).

As explained above, SB1819, the “budget procedures” BRB, blatantly violates this  
constitutional mandate. It is a hodgepodge of completely unrelated subjects, from dog racing

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*Hester v. Phoenix Union High Sch. Dist. et al.*, Maricopa County Superior Court No. CV2021-012160, Aug. 16, 2021 Minute Entry. A true and correct copy is attached as Ex. 7.

1 permitting to voter registration; the Governor’s emergency powers; the definition of a  
2 “newspaper”; local authority to pass COVID-19 mitigation measures; the study committee on  
3 missing and indigenous peoples; the practices of social media platforms and internet search  
4 engines relating to political contributions; the creation of a “special committee” to review the  
5 Maricopa County election “audit”; requirements for the agreement of unit owners to terminate a  
6 condominium; and so on. None of these subjects have any logical connection to each other or  
7 “fall under some one general idea.” *Litchfield Elementary*, 125 Ariz. at 224.

8 Like the provisions in *Litchfield Elementary* relating to an “executive aircraft for the  
9 Department of Public Safety, a mobile dental clinic to be operated by the Dental Health Bureau,  
10 an apparently operational grant to the Board of Dental Examiners, an historical data based cross-  
11 reference index for the Incorporating Division of the Corporation Commission, and a capital  
12 appropriation to the Department of Corrections for a variety of purposes,”  
13 SB1819’s provisions simply have no “realistic commonality.” *Id.* at 225. Indeed, the Arizona  
14 Supreme Court has noted – without deciding because the parties did not raise the issue – that  
15 similar BRBs appeared to violate “the single subject rule in the legislative process.” *Bennett*, 206  
16 Ariz. at 528 ¶ 39 & n. 9 (describing similar hodgepodge in a reconciliation bill).

17 SB1819 also undermines the purpose of the single subject rule. This constitutional is  
18 “designed to prevent the evils of omnibus bills, surreptitious and ‘hodgepodge’ legislation.”  
19 *Litchfield Elementary*, 125 Ariz. at 223–24. For that reason, when a bill violates the single  
20 subject rule, it is “infected by reason of the combination of its various elements rather than by  
21 any invalidity of one component,” so “the entire act must fall.” *Id.* at 226.

22 “A bill that deals with multiple subjects creates a serious ‘logrolling’ problem because an  
23 individual legislator is thus forced, in order to secure the enactment of the proposition which he  
24 considers the most important, to vote for others of which he disapproves.” *Bennett*, 206 Ariz. at  
25 528 ¶ 37 (quotations and citations omitted). That is exactly what the Legislature did here.  
26

1           Republicans hold a majority by only one vote in each chamber of the Legislature, and  
2 they were having a difficult time gathering enough votes to pass the budget this year. To put  
3 pressure on the Legislature to pass the budget, Governor Ducey vetoed 22 bills, and announced  
4 that he would not sign any legislation until the Legislature passed the budget. Running out of  
5 time, lawmakers shoved a hodgepodge of substantive policy legislation into the budget to get  
6 the votes they needed.

7           Never before has the legislature so ignored the normal process and procedure for enacting  
8 laws as they did this session. [Lujan Decl. ¶¶ 16-19]. Lawmakers openly admitted that they were  
9 withholding their votes on the budget unless they could include their own pet policies, including  
10 ones that already died during the session. [Kotterman Decl. ¶ 16; Compl. ¶¶ 89-95] That is  
11 textbook “logrolling,” and the very evil the single subject rule is designed to prevent.<sup>5</sup>

12           The Court should enforce the dictates of the Arizona Constitution before article IV, part  
13 2, § 13 is rendered wholly meaningless.

14           **C.     HB2898 violates public school students’ equal protection rights.**

15           The ban on mask mandates also unlawfully discriminates against Arizona’s public and  
16 charter school students in violation of article II, section 13 of the Arizona Constitution. That  
17 provision provides that “[n]o law shall be enacted granting to any citizen, class of citizens, or  
18 corporation . . . which, upon the same terms, shall not equally belong to all citizens or  
19 corporations.” No matter what test the Court applies, HB2898 violates equal protection.

20           When a statute treats two classes differently in a way that burdens a “fundamental right,”  
21 courts “subject it to strict scrutiny and will only uphold it if it is necessary to promote a  
22 compelling state interest.” *Big D Const. Corp. v. Ct. of Appeals for State of Ariz., Div. One*, 163  
23 Ariz. 560, 566 (1990); *see also Charfauros v. Bd. of Elections*, 249 F.3d 941, 952 (9th Cir. 2001)

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25  
26 <sup>5</sup> If SB1819 is considered an appropriations bill, it fails for the same reason. Ariz. Const. art. IV,  
pt. 2, § 20; *Litchfield*, 125 Ariz. at 226.



1 (courts apply strict scrutiny to a statutory classification that “significantly interferes with the  
2 exercise of a fundamental right”) (quoting *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978)).

3 Education is a fundamental right in Arizona. *Shofstall v. Hollins*, 110 Ariz. 88, 90 (1973);  
4 *Magyar By & Through Magyar v. Tucson Unified Sch. Dist.*, 958 F. Supp. 1423, 1442 (D. Ariz.  
5 1997) (“[T]he Arizona Constitution establishes education as a fundamental right of students  
6 between the ages of six and twenty-one years.”) (citing *Shofstall*).<sup>6</sup> Indeed, an entire article in  
7 the Arizona Constitution covers “education” (Article XI), including the requirement that the  
8 Legislature “provide for the establishment and maintenance of a general and uniform public  
9 school system.” Ariz. Const. art. XI, § 1. Other states with express constitutional provisions like  
10 Arizona’s have held that education is a fundamental right under state law. *See, e.g., Claremont*  
11 *Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997). A basic component of the fundamental  
12 right to education, of course, is the right to a safe educational setting. *Cf. Abbeville Cty. Sch.*  
13 *Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999) (finding that “adequate and safe facilities” were  
14 minimum requirements for similar constitutional provision).

15 To be sure, not every distinction between public and private school students regarding  
16 education will trigger strict scrutiny. But when, as here, a law substantially interferes with the  
17 right to an education in a reasonably safe setting that complies with CDC and all public health  
18 guidance for only one class of students, it can be upheld only if it is necessary to serve a  
19 compelling state interest. HB2898’s distinction between Arizona’s public schoolchildren and  
20

21 \_\_\_\_\_  
22 <sup>6</sup> Though the Supreme Court expressly held in *Shofstall* that education is a fundamental right,  
23 *id.* (“We hold that the constitution does establish education as a fundamental right of pupils  
24 between the ages of six and twenty-one years.”), the court inexplicably applied the rational basis  
25 test to the equal protection claim. But *Shofstall* relied on *San Antonio Indep. Sch. Dist. v.*  
26 *Rodriguez*, 411 U.S. 1, 55 (1973), which found that education is not a fundamental right under  
the federal constitution. In a subsequent case noting this “conundrum,” Justice Feldman noted  
that the court in *Shofstall* simply failed to apply “the proper strict scrutiny analysis.” *Roosevelt*  
*Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 244 (1994) (Feldman, J., concurring).

1 private schoolchildren regarding their physical safety in school no doubt fails that test.

2 There is simply no conceivable state interest (let alone a compelling one) in forcing public  
3 and charter school students into unsafe educational environments, while allowing students who  
4 can access private education to get adequate protection.<sup>7</sup> In the midst of a public health  
5 emergency, HB2898 bans evidence-based masking measures for public schoolchildren that  
6 reduce transmission of a deadly airborne virus. [See Declaration of Sean Elliott, MD, attached  
7 as Ex. 8; Declaration of Cadey Harrel, MD, attached as Ex. 9]. What interest could the State  
8 possibly have in prioritizing the health and safety of Arizona’s private school students over  
9 public school students? There isn’t one. To the contrary, HB2898 undermines commonly raised  
10 government interests, including public safety and preserving local and control.

11 To the extent the State has an interest in giving parents the option whether to take  
12 reasonable precautions to protect their own children from COVID-19, distinguishing between  
13 public and private school students isn’t necessary to achieve that goal. All children have a right  
14 to be physically safe while they attend school, not just students with access to private schools.  
15 *Cf. Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626 (1969) (law granting the  
16 fundamental right to vote in school board elections “to residents on a selective basis” couldn’t  
17 survive strict scrutiny).<sup>8</sup> At bottom, no state interest justifies HB2898’s distinction between the  
18 health and safety of children in public and private schools.

19 \_\_\_\_\_  
20 <sup>7</sup> Notably, the Legislature includes private schools in other statutes about the physical safety of  
21 schoolchildren. *E.g.*, A.R.S. § 15-871 (article governing school immunization requirements  
22 applies to public and private schools); A.R.S. § 15-151 (requiring eye protective gear when  
students in private or public schools are exposed to certain materials).

23 <sup>8</sup> The Supreme Court of California has analogized the fundamental right to education to another  
24 fundamental right: the right to vote. *Serrano v. Priest*, 487 P.2d 1241, 1258 (Cal. 1971). That’s  
25 because education and voting “are crucial to participation in, and the functioning of, a  
26 democracy,” and “education makes more meaningful the casting of a ballot. More significantly,  
it is likely to provide the understanding of, and the interest in, public issues which are the spur  
to involvement in other civic and political activities.” *Id.*

1 Even if a rational basis standard applied (it doesn't), Section 12 of HB2898's arbitrary  
2 distinction between Arizona's public and private schoolchildren does not have a  
3 "conceivable rational basis to further a legitimate governmental interest." *State v. Arevalo*, 249  
4 Ariz. 370, 375 ¶ 15 (2020) (quotations omitted). The law irrationally bans reasonable safety  
5 measures to protect children from a highly contagious virus, but only in public schools. Again,  
6 there is simply no legitimate state interest supporting this unfair and unprincipled distinction. An  
7 Arkansas court recently enjoined a similar ban on mask mandates in public schools on equal  
8 protection grounds, holding that the law "facially violates the equal protection provisions of  
9 Article 2 of the Arkansas Constitution, in that it discriminates, without a rational basis, between  
10 minors in public schools and minors in private schools." *McClane et al. v. Arkansas et al.*,  
11 Pulaski County Circuit Court, No. 60cv-214692 (Ark. Aug. 6, 2021), [https://  
12 wehco.media.clients.ellingtoncms.com/news/documents/2021/08/06/Fox\\_Mask\\_Order.pdf](https://wehco.media.clients.ellingtoncms.com/news/documents/2021/08/06/Fox_Mask_Order.pdf) (last  
13 visited Aug. 16, 2021). So too here.

14 The Court should declare that HB2898, Section 12 violates equal protection.

#### 15 **IV. Plaintiffs Will Suffer Irreparable Harm Without an Injunction.**

##### 16 **A. Legislature Bans COVID-19 Mitigation in the Face of Public Health Crisis.**

17 Across the country and in Arizona, the number of COVID-19 cases is climbing, including  
18 among children. [See Elliott Decl. ¶¶ ; Harrel Decl. ¶¶ ]. The present surge is a result of the  
19 Delta variant, which is far more contagious than the original strains of the virus. [Elliott Decl. ¶  
20 3] Alarmingly, the Delta variant is affecting more and more young individuals, including  
21 children. [*Id.*; Harrel Decl. ¶ 6] The Delta variant produces a significantly higher viral load (the  
22 amount of virus in a person), especially in the nasopharynx. This leads to more spreading in the  
23 air. [Declaration of Jeremy Feldman ¶ 4, attached as Ex. 10] The net effect of this is that a shorter  
24 exposure to an infected person is needed to infect others, even with just speaking and breathing.  
25 [Harrel Decl. ¶ 6; Feldman Decl. ¶ 4] The viral load peaks during the pre-symptomatic stage of  
26

1 the disease, meaning the person spreading the virus is often unlikely to even know they are  
2 infected. [Harrel Decl. ¶ 6; Declaration of Ruth Franks Snedecor ¶¶ 3-5, attached as Ex. 11]

3 Not only are more children becoming infected, more are suffering serious illness requiring  
4 hospitalization. [Elliott Decl. ¶ 3, 6] More and more children are experiencing significantly  
5 symptomatic disease and many pediatric health care centers are becoming overwhelmed with  
6 severely ill COVID-19 pediatric patients. [Feldman Decl. ¶ 3] The Delta variant also has now  
7 demonstrated increased infectivity from pediatric patients to all others, including susceptible  
8 adults. [Elliott ¶ 4] This is a “game changer” that makes children particularly capable of  
9 becoming super spreaders, among their peers, their teachers, and their families. *Id.* While  
10 vaccines provide significant protection, there are many unvaccinated people in Arizona, and the  
11 vaccine provides only partial protection if people have immunodeficiencies or have received  
12 immunosuppressive medications. *Id.* ¶6.<sup>9</sup> There is a growing number of even fully vaccinated  
13 people who are infected with the Delta variant in the hospital, and even young, fully vaccinated  
14 adults are dying from COVID. [Feldman Decl. ¶ 4] Additionally, children under 12 cannot be  
15 vaccinated. Further, among those in the 12 to 20 age group, the vast majority are not vaccinated.  
16 [Elliott Decl. ¶ 9]

17 Also, with the Delta variant it has been proven that vaccinated individuals can carry an  
18 equal amount of virus in their nasopharynxes as other who are exposed to COVID-19. This  
19 means that even fully vaccinated people who are exposed to the Delta variant now pose the same  
20 risk of carrying it to susceptible, unvaccinated people (including children) as those who are not  
21 vaccinated. [Elliott Decl. ¶ 6; Franks Decl. ¶ 3-4]

22  
23 \_\_\_\_\_  
24 <sup>9</sup> The fact that vaccines offer significant protection and the best way to protect all those in a  
25 community bear directly on the risk of irreparable harm from the unlawful COVID mitigation  
26 prohibitions improperly included in the higher education budget reconciliation bill affecting  
universities and community colleges (SB1825), the health reconciliation bill (SB1824), and the  
budget procedure reconciliation bill (SB1819). [See, e.g., Elliott Declaration at ¶ 6]

1 Alarminglly, Arizona is the worst, or is among the very worst states in the country in child  
2 hospitalizations due to COVID-19, pediatric cases per 100,000 residents, total pediatric deaths,  
3 and deaths per capita. [Elliott Decl. ¶ 10; Harrel Decl. ¶ 8; Franks Decl. ¶5]

4 In a recent research report by Dr. Joe Gerald of the University of Arizona, COVID-19  
5 rates in Arizona have been increasing for eight straight weeks, signaling that a “substantial surge  
6 is imminent in the coming weeks.” *Joe Gerald, MD, Ph.D., Weekly Arizona COVID-19 Data*  
7 *Report: Researcher Analyzes Arizona COVID-19 Spread Models for Decision-Makers, Univ. of*  
8 *Ariz., Aug. 6, 2021, <https://publichealth.arizona.edu/news/2021/covid-19-forecast-model>. In*  
9 *sum, due to the nature of the Delta variant nationally and specifically in Arizona, the risk to and*  
10 *by Arizona School-children for an explosion of COVID-19 cases is extreme. [Elliott Decl. ¶ 10]*  
11 *And the risk of secondary spread to Arizona communities from infected and exposed,*  
12 *unvaccinated school children is also extreme. [Id.]*

13 Importantly, the consequences for those who will be infected and become ill are often not  
14 short term problems, even for those who make it through the acute stage of the illness. A large  
15 number of those infected will demonstrate symptoms of “long COVID.” This can encompass  
16 anything from COVID related heart failure, chronic blood clots, pulmonary disease from damage  
17 to lung tissue, brain fog, and depression or other mood disorders. [Harrel Decl. ¶ 5] Even in  
18 patients who did not require hospitalization, a very large percentage will experience long COVID  
19 symptoms. [Id.] Young people are susceptible to long COVID symptoms. [Id.]

20 **B. The Ability to Implement Mask Mandates and to Use Other COVID**  
21 **Mitigation Measures Are Critical to Prevent Irreparable Harm.**

22 Universal masking is a proven public health disease mitigation tool, and is one of the only  
23 tools available to protect children. [Harrel Decl. ¶ 7; Feldman Decl. ¶ 5] *The CDC and nearly*  
24 *every single public health and medical guiding body recommends universal masking in schools*  
25 *and other indoor settings. The “CDC recommends universal indoor masking for all teachers,*  
26 *staff, students, and visitors to schools, regardless of vaccination status.” CDC, *Interim Public**

1 *Health Recommendations for Fully Vaccinated People*, July 28, 2021, [https://www.cdc.gov](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html)  
2 [/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html). [See also Feldman Decl. ¶ 5]

3       Masks have proven very effective with *no proven harmful effects*. [Elliott Decl. ¶ 7]  
4 However, to realize the societal and protective effects of mask-wearing, nearly everyone in that  
5 setting must wear a mask. Only with universal masking in schools can all people be protected  
6 against acquiring the virus and infecting others. Even if an individual child wears a mask, that  
7 protects that child from infecting others. However, if that same, masked child is surrounded by  
8 others who are not wearing mass, the risk to the masked child from acquiring COVID-19  
9 increases significantly. [Elliott Decl. ¶ 8; Harrel Decl. ¶ 7; Franks Decl. ¶ 6] Simply masking  
10 only one child, or even a few, is not effective, since others who are unmasked will continue to  
11 spread and become infected with the disease. Critically, those people who are unvaccinated and  
12 have risk factors for serious COVID-19 must be protected by everyone around them wearing a  
13 mask. [Elliott Decl. ¶ 8] Mask mandates in school are the only accessible, effective, and  
14 evidence-proven intervention likely to prevent the expected explosion of Delta variant COVID-  
15 19 related to school activities. [*Id.*; see also Declaration of Beth Lewis ¶¶ 6-20, attached as Ex.  
16 12 (explaining risks to teachers and students, and her inability to physical distance in her  
17 classroom)] Moreover, there is compelling data that if the entire class is wearing a mask, there  
18 will be far less need for quarantines, meaning mask mandates help keep children in school  
19 learning. [Feldman Decl. ¶ 5] The only available way to keep our children and teachers safe is  
20 to allow schools to require masking. Any other path will lead to countless unnecessary COVID  
21 cases and deaths in our community. [*Id.* ¶ 7]

22       Several Arizona school districts have adopted mask mandates in line with this expert  
23 guidance, including (among others) Phoenix Union High School District, Madison Elementary  
24 School District, Alhambra Elementary School District, Roosevelt Elementary School District,  
25 and Phoenix Elementary School District, and Tucson Unified School District.

1 HB2898’s design to prevent mask mandates defies the scientific evidence of pandemic  
2 response and causes extreme potential for irreparable harm to Arizona and her people. Unless  
3 HB2898 is declared unconstitutional and enjoined, school districts’ mask mandates will be  
4 unlawful when HB2898 takes effect on September 29, and public schools could be left powerless  
5 to protect their students and staff. Even more, they are at risk of adverse action being taken  
6 against them, as urged by Republican lawmakers. *See* Compl. Ex. F (urging retribution against  
7 Districts issuing policies requiring masks).<sup>10</sup>

8 According to Dr. Gerald, “[r]esumption of in-person instruction (K-12 and universities)  
9 in the face of high community transmission, low vaccination rates, prohibition of universal  
10 masking, lack of surveillance testing, and minimal physical distancing will undoubtedly lead to  
11 frequent school-related outbreaks and accelerating community transmission.” *Joe Gerald, MD,*  
12 *PhD, Weekly Arizona COVID-19 Data Report: Researcher Analyzes Arizona COVID-19*  
13 *Spread Models for Decision-Makers, Univ. of Ariz., Aug. 6, 2021, [https://](https://publichealth.arizona.edu/news/2021/covid-19-forecast-model)*  
14 *[publichealth.arizona.edu/news/2021/covid-19-forecast-model](https://publichealth.arizona.edu/news/2021/covid-19-forecast-model).* [*See also* Elliott Decl.; Harrel  
15 Decl.; Feldman Decl.; Franks Decl.]

16 Indeed, many schools are already reporting COVID outbreaks. [Compl. ¶¶ 118-122]

17 **V. Without an Injunction, The BRBs Will Cause Irreparable Harm.**

18 A violation of the Arizona Constitution constitutes irreparable harm, and an injunction is  
19 Plaintiffs’ only available remedy to prevent enforcement of these unconstitutional laws. *See,*  
20 *e.g., Goldie’s Bookstore, Inc. v. Superior Ct. of State of Cal., 739 F.2d 466, 472 (9th Cir. 1984)*  
21

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22 <sup>10</sup> Private schools, on the other hand, will be unaffected by HB2898 and may continue to  
23 require masks to keep students and staff safe. Brophy College Preparatory and Phoenix  
24 Country Day School, for example, have mask mandate for students and staff, and will be able  
25 to maintain those policies even if HB2898 takes effect. Letter from the Brophy Principal’s  
26 Office, Aug. 4, 2021,  
<https://brophyprep.myschoolapp.com/podium/push/default.aspx?i=435655&s=750&snd=8a1d17dc-bce7-442e-ac99-633ceceb5911> (last visited Aug. 12, 2021) [Compl. Ex. G].

1 (“An alleged constitutional infringement will often alone constitute irreparable harm.”) (citing  
2 Wright & Miller, 11 Fed. Prac. and P. § 2948 at 440 (1973)).

3 What’s more, Plaintiffs face imminent irreparable harm if the challenged BRBs become  
4 effective. If the Court does not enjoin HB2898, the teacher Plaintiffs will lose their ability to  
5 work in a reasonably safe environment or to have a classroom that is safe for their students. [See  
6 Lewis Decl. ¶ 6] They are also at risk of potential disciplinary sanctions – including loss or  
7 suspension of their teaching licenses – or civil enforcement actions if they are found to be  
8 teaching vaguely described “concepts” that the Legislature has apparently found too  
9 controversial. [*Id.* ¶ 7]

10 If HB2898 goes into effect, schools that currently require masks will lose that ability to  
11 protect students and staff from a deadly airborne virus. [*Id.* ¶¶ 8-21] If that happens, the minor  
12 children of the parent Plaintiffs are at risk of contracting a highly contagious virus. [*Id.*] Dr.  
13 Harrel has three children in public schools. One of her children has an IEP, and she wants that  
14 child (and all her children) to benefit from in-person learning. She was faced with the difficult  
15 choice of her children’s physical safety and their academic success. She recently made the  
16 difficult decision to move her children to a school district that implemented a mask mandate  
17 despite the threats outlined above. [Harrel Decl. ¶ 9] But if HB2898 is permitted to take effect,  
18 she will lose that ability, and she and her children will be irreparably harmed. *Id.* All of the  
19 plaintiff parents face the same risk of harm. [*E.g.*, Lewis Decl. at ¶ 8-15; Franks Decl. ¶¶ 7-8]

20 Likewise, if the COVID mitigation prohibitions of SB1825 are permitted to go into effect,  
21 the students, faculty, and staff at our higher education institutions will suffer irreparable harm.  
22 For example, Plaintiff Newhauser is a professor at ASU, who must conduct in-person teaching.  
23 [Declaration of Richard Newhauser ¶¶ 2-3, attached as Ex. 13] He is at increased risk for serious  
24 illness from COVID because of his age and an underlying health condition. [*Id.* ¶ 4] In June,  
25 ASU announced a policy that put in place significant mitigation measures to protect the students,  
26 faculty, and staff at ASU. [*Id.* ¶ 5] The governor issued an executive order banning these



1 measures, which will be rescinded at the end of September. [*Id.*] But if SB1825 goes into effect,  
2 ASU and other higher educational institutions will be permanently prohibited from implanting  
3 those mitigation policies. If allowed to stand, the faculty, staff and students will be exposed to a  
4 higher risk of contracting COVID. Even ASU’s recent implementation of a mask mandate will  
5 not prevent the increased risks from implantation of SB1825. [*Id.* ¶¶ 8-9; *see also* Elliott Decl.  
6 at 5-6 (discussing importance of vaccine in limiting spread of illness)]

7         The risk of irreparable harm caused by SB1825 affects large groups of people, including  
8 students, faculty, and staff whose ages range from young adults to professors in their 70’s and  
9 80’s. [Declaration of Laurie Stoff ¶¶ 2-6, attached as Ex. 14] Many of these individuals care for  
10 and live with their spouses and children and others care for or live with elderly parents. Some  
11 faculty and staff have health conditions that put them at increased risk of harm or death from  
12 COVID, such as those undergoing chemotherapy, and some live with or care for family members  
13 with similar conditions. [*Id.* ¶ 6] ASU and UA are returning to a great extent to in-person  
14 learning. In many of their classrooms it is not possible to physically distance. [*Id.* ¶ 7] If the  
15 challenged portion of SB1825 takes effect the faculty and staff, our students, our families, and  
16 the larger communities where they work and live, will be exposed to a greater risk of contracting  
17 COVID. [*Id.*]

18         Allowing SB1819 to become effective would also irreparably damage Plaintiffs’ ability  
19 to participate in our political system. Many Plaintiffs are active participants in the legislative  
20 process. [*E.g.*, Compl. ¶¶ 9-21; Lewis Decl. ¶ 3; Declaration of Joel Edman ¶ 10, attached as Ex.  
21 15] Plaintiff AZAN’s core mission, for example, will be harmed by the Legislature’s conduct of  
22 improperly including various unrelated policies in the budget reconciliation bills instead of  
23 through proper legislative channels. [Edman Decl. ¶ 4] A cornerstone of our democracy is that  
24 political decisions are driven by voters and that laws are passed in the open, after robust public  
25 debate. [*Id.* ¶ 8] That legislators “sold” their votes behind closed doors in exchange for getting  
26

1 pet policies added to budget reconciliation bills is antithetical to AZAN’s mission and many  
2 Plaintiffs’ work in the Legislature. [*Id.* ¶¶ 11-13] *See Bennett*, 206 Ariz. at 528 ¶ 38.

3 **VI. The Balance of Hardships and Public Interest Favor an Injunction.**

4 Lastly, the balance of hardships and public interest weigh heavily in Plaintiffs’ favor.  
5 Upholding the foundation of our representative democracy serves the public interest. An  
6 injunction would safeguard that interest against unconstitutional conduct by the Legislature and  
7 preserve the proper legislative process. And because the BRBs violate the Arizona Constitution,  
8 “public policy and the public interest are served by enjoining [this] unlawful action.” *Arizona*  
9 *Pub. Integrity All. v. Fontes*, 250 Ariz. 58 ¶ 27 (2020). Beyond that, Plaintiffs face grave  
10 hardships caused by these laws. As detailed above, the many Plaintiffs and their families will be  
11 at risk of contracting COVID-19 because the BRBs will prohibit safety measures that will keep  
12 employees and children reasonably safe at work or school.

13 **Conclusion**

14 The Legislature has been pushing the envelope for years, and this time they have gone  
15 too far. They buried substantive policies in the budget with no adequate notice to the public, and  
16 filled a “budget procedures” bill with multiple, unrelated subjects. The constitution doesn’t allow  
17 that. It also doesn’t allow the Legislature to arbitrarily discriminate against public school students  
18 and their right to be physically safe at school.

19 The Court should declare HB2898, Sections 12, 21, and 50; SB1825, Section 2 (A.R.S. §  
20 15-1650.05); SB1824, Sections 12 and 13; and SB1819 unconstitutional, and enjoin the State  
21 and its agents from implementing or enforcing them. The Court should also award Plaintiffs their  
22 attorneys’ fees and costs under the private attorney general doctrine and any other applicable  
23 statute or equitable doctrine.

1 RESPECTFULLY SUBMITTED this 18th day of August, 2021.  
2

3 **COPPERSMITH BROCKELMAN PLC**

4 By /s/ Roopali H. Desai

5 Roopali H. Desai

6 D. Andrew Gaona

7 Kristen Yost

8 **ARIZONA CENTER FOR LAW IN THE  
9 PUBLIC INTEREST**

10 Daniel J. Adelman

11 *Attorneys for Plaintiffs*

12 ORIGINAL served via electronic means  
13 this 18th day of August, 2021, upon:

14 Brunn W. Roysden III (beau.roysden@azag.gov)

15 Michael S. Catlett (michael.catlett@azag.gov)

16 2005 North Central Avenue

17 Phoenix, Arizona 85004

18 *Attorneys for Defendant State of Arizona*

19 /s/ Diana J. Hanson  
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# **EXHIBIT 1**

1 **Declaration of Chris Kotterman**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4 2. I am the Director of Governmental Relations of Arizona School Boards  
5 Association (“ASBA”), and I am authorized to make this declaration on its behalf.

6 3. ASBA is a private, non-profit, non-partisan organization that provides training,  
7 leadership and essential services to public school governing boards statewide. More than 240  
8 governing boards, representing nearly 1 million Arizona students, are members of ASBA.

9 4. I am familiar with the mission and goals of ASBA, as well as our members’  
10 priorities and concerns.

11 5. I have personal knowledge of the matters set forth in this Declaration. Except  
12 where described otherwise, my personal knowledge is based on my personal participation in or  
13 observation of the matters set forth herein.

14 6. ASBA’s vision is: “The best schools in every community.” Its mission is to  
15 “cultivate excellence in locally-governed school districts.” In its advocacy, ASBA strives to be  
16 the most influential voice for public education in Arizona.

17 7. As an organization, ASBA is deeply concerned about the erosion of public  
18 education in Arizona. As a registered lobbyist for ASBA, I engage in the Legislative process on  
19 behalf of ASBA member districts, which currently includes every school district in the state.  
20 ASBA’s primary goal is to advocate for adequate funding to support high quality district public  
21 schools, and protecting and preserving local control/district autonomy. Chief among the  
22 concerns regarding local control are the preservation of district authority regarding curriculum  
23 and instruction, oversight of district employees, and authority over the management of student  
24 conduct to preserve a safe and secure school/educational environment.

25 8. The budget process during the last legislative session, including the passage of  
26 budget reconciliation bills (“BRBs”) containing non-budget related substantive enactments

1 restricting school districts, schools, and teachers, has frustrated ABSA's mission and advocacy  
2 goals, and forced it to divert resources in response.

3 9. The budget process, perhaps more than any other legislative process, is conducted  
4 with minimal public input, and in modern times has been controlled entirely by the party holding  
5 the majority in the state Legislature. This is because the majority party shapes a budget largely  
6 out of public view, meeting with small groups of legislators that do not constitute a majority of  
7 the caucus, shaping a proposal that can secure the necessary votes from the majority caucus.  
8 Then and only then is the proposal drafted into bills and presented for a public hearing before  
9 the appropriations committee. This step is merely a formality, however, because the deal has  
10 already been struck. The members who have agreed to the deal vote yes, and those who do not  
11 agree vote no (usually the minority), and the budget passes within a day if not hours. Any  
12 attempts at persuading members to refuse to vote for the budget over some objections they may  
13 have are usually futile, as they are told by their leadership that they are holding up the budget.

14 10. Contrast this to the typical bill process, where there is an opportunity to lobby  
15 members on the policy involved, and the bill stands on its own merits without leadership having  
16 the additional leverage to blame members for withholding support for the entire state budget.  
17 Politics are still involved, but ultimately, voting against a bill is possible because it is not  
18 packaged with other provisions (such as education funding) that the member may care about.

19 11. ASBA was deprived of meaningful participation in the budget process this past  
20 legislative session because policies that ASBA opposes were added in HB 2898, a 200-plus page  
21 floor amendment that was released with less than 60 minutes' notice before members were  
22 expected to vote on it, while members of the House of Representatives were already on the floor  
23 of the House. The public was not permitted access to the floor of the House, and thus  
24 Representatives were inaccessible to those wishing to plead their case. Further, after HB 2898  
25 was passed out of the House, the Senate majority suspended the rules of the Senate requiring a  
26 hearing on all legislative matters (Senate rule 2J), depriving myself as the organizational

1 representative, ASBA members, and the public of the ability to give public comment on the bills  
2 as amended which contained the objectionable provisions.

3 12. It is my opinion that that ASBA could have blocked objectionable policies, such  
4 as the prohibition on certain curriculum and instruction, had they not been logrolled into a BRB.

5 13. Indeed, SB 1532 was the original bill that was amended in the House of  
6 Representatives to include the prohibited curriculum and instruction provisions. After it passed  
7 the House and went to the Senate, ASBA spoke to Sen. Paul Boyer about its opposition to the  
8 bill. Sen. Boyer voted against SB 1532 on May 27, 2021, and the bill failed. Substantially the  
9 same provisions from SB 1532 later reappeared in a BRB, HB 2898.

10 14. The BRB provisions challenged by ASBA in this lawsuit are not related to budget  
11 reconciliation. They are not statutory and session law changes necessary to effectuate the budget.

12 15. The House conducted a final vote on HB 2898 later the same day, with no  
13 meaningful opportunity to engage with sympathetic House members on the policy changes. This  
14 time, Sen. Boyer's vote was secured on the budget by adding Empowerment Scholarship  
15 Account provisions to HB 2898.

16 16. Several legislators made no secret about the fact that they would leverage their  
17 votes on the budget, particularly to prohibit masks in schools. For example, Representative  
18 Chaplik affirmatively stated that he would not agree to any budget that does not strip authority  
19 from districts to issue mask mandates.

20 17. Ultimately, despite having zero budget impact whatsoever, substantive policy  
21 provisions prohibiting public school district mask mandates and prohibiting certain curriculum  
22 and instruction were added to a BRB, HB 2898, to garner the votes of all the Republicans to pass  
23 the budget.

24 18. ASBA expends significant resources to influence public policy according to the  
25 member-driven agenda, including preventing the passage of laws it deems objectionable and  
26 challenging those that are worthy of legal challenge. Any time and effort spent on defending

1 districts from objectionable and unconstitutional laws is time and effort ASBA cannot spend  
2 proactively advancing the interests of its members.

3 19. Prior to working for ASBA, I was a member of the staff at the Legislature serving  
4 on the Democratic staff of the House and Senate for a combined total of seven years. For six of  
5 those years, I was the K-12 committee analyst for the House and Senate Democrats and handled  
6 the K-12 aspects of the budget. For four of those years, I also served as the lead appropriations  
7 analyst for House Democrats as well, covering every aspect of the budgeting process except for  
8 Health and Human Services.

9 20. The practice of using BRBs is relatively new. But even as the practice has become  
10 more common, it is still required that all provisions must be “germane.”

11 21. Importantly, therefore, every provision in a BRB must relate to something in the  
12 general appropriations (aka “feed”) bill. In other words, for an item to be included in a budget  
13 bill, including in a BRB, it must have some connection to a specific appropriation. For example,  
14 a substantive change to the computation of Average Daily Membership for schools or a  
15 clarification of some funding formula may be included in a BRB because these provisions have  
16 an impact on the flow of funding to school districts and charter schools.

17 22. Combining other substantive policy enactments into budget bills is misleading to  
18 the public because the provisions are not “germane” and there is no adequate notice that policy  
19 changes are contained in the budget bill.

20 23. This is especially true if the policy provisions were introduced but defeated in the  
21 normal legislative process. For example, the prohibited curriculum and instruction provisions  
22 were adopted as a floor amendment to a bill that was originally a transportation bill and was  
23 amended to be an education-related bill via a strike-everything amendment in the Transportation  
24 Committee. Until the bill was up for 3rd read to pass out of the House, the bill appeared in the  
25 public information system as “county transportation planning assistant.”





# **EXHIBIT 2**

1 **Declaration of David Lujan**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4 2. I am President and CEO of Children’s Action Alliance (“CAA”), and I am  
5 authorized to make this declaration on its behalf.

6 3. CAA is a private, non-profit, non-partisan organization that provides an  
7 independent voice for Arizona children at the state capitol and in the community.

8 4. I am familiar with the mission and goals of CAA.

9 5. I have personal knowledge of the matters set forth in this Declaration. Except  
10 where described otherwise, my personal knowledge is based on my personal participation in or  
11 observation of the matters set forth herein.

12 6. CAA’s vision is: “An Arizona where all children and families thrive.” CAA’s  
13 mission is to be “an independent voice that identifies and eliminates barriers to the well-being  
14 of children and families and creates opportunities through partnerships and policy solutions.”

15 7. The primary manner in which CAA carries out its mission of creating an Arizona  
16 where all children and families thrive is through advocating for policies and legislation at the  
17 State Capitol. Fifteen out of 19 of CAA’s employees are policy and communications experts  
18 and their job responsibilities include researching and analyzing legislation and building  
19 coalitions throughout Arizona to mobilize and engage those coalitions to support and/or oppose  
20 legislation at the legislature. They also assist in writing legislation and amendments to  
21 legislation. They regularly meet with lawmakers, testify in committees and prepare updates to  
22 keep the public aware of the status of legislation CAA cares about at the State Capitol.

23 8. One of the main focus areas of CAA’s advocacy work is children’s health. The  
24 policy to prohibit school districts and localities from mandating masks in their schools is one  
25 that CAA is deeply interested in especially as the number of COVID cases are increasing in  
26 Arizona. Had the policy enactments moved through the process as stand-alone bills, there would

1 be a period of several weeks from the time the bill was introduced, then scheduled for its initial  
2 hearing, then Rules and caucus and then committee of the whole and 3<sup>rd</sup> read in its initiating  
3 chamber. If it passed that chamber, it would then go through the same process in the other  
4 chamber. Throughout that time period, CAA would have been able to produce data, research  
5 and other written material to inform the public, media and lawmakers why they should oppose  
6 the legislation. CAA would have been able to schedule time to meet with lawmakers and testify  
7 in the committees in opposition to the legislation. CAA would have had time to make people  
8 aware of the legislation and inform them on the various ways they could engage in the legislative  
9 process to oppose the legislation (call their legislators, testify in committee, email their  
10 legislators, etc.).

11 9. The provisions challenged in this lawsuit were inserted into budget reconciliation  
12 bills (“BRBs”) and, therefore, CAA was denied meaningful notice and participation in the  
13 regular legislative process. Budget bills are introduced in an expedited manner, with very little  
14 time between when they are introduced and the time they are enacted.

15 10. Inserting substantive law changes, like the prohibition on mask mandates, into  
16 BRBs with dozens of other unrelated policies completely changes the ability to effectively  
17 advocate for a particular issue. Instead of lawmakers and the public considering the policy on its  
18 own individual merits, the policy must now compete with all the other unrelated policies  
19 contained in the legislation. Instead of lawmakers either supporting or opposing the policy on  
20 the merits, they now must weigh whether their support or opposition for that policy is  
21 outweighed by their support or opposition to any of the other policies contained in the budget  
22 bill.

23 11. Because the Legislature inserted dozens of policy issues unrelated to the budget  
24 into the budget bills, CAA’s mission has been frustrated and it has been forced to divert resources  
25 in response. In just the past two months, I estimate that we have spent 50 hours of staff time  
26 (totaling thousands of dollars) reacting and responding to the BRB enactments.

1           12. I have worked or served in the legislature for more than 20 years in various  
2 capacities. As an Assistant Attorney General from 1998 to 2002, I represented the Arizona  
3 School Facilities Board and was also the attorney in the AG's office taking the lead on school  
4 finance matters. In this capacity, I was often asked to weigh-in on budget and assist in drafting  
5 provisions in the budget related to school finance or the school facilities board.

6           13. From 2003 to 2004 I worked in the State Senate as a Research Analyst/Attorney  
7 for the Senate Judiciary Committee. In this position I participated in drafting legislation and  
8 needed to be familiar with the state budget. I also went through training through Arizona  
9 Legislative Council on proper bill drafting procedures.

10          14. I served in the Arizona House of Representatives from 2005 to 2011 and in the  
11 Senate from 2012-2013. I was the House Minority Leader in 2009 and 2010. I served on the  
12 House Appropriations Committee from 2007 to 2008. As a state lawmaker, particularly serving  
13 on the Appropriations committee and in leadership, I was very involved in the state budget  
14 process and was aware of how budget bills are drafted.

15          15. I have been employed with CAA and its affiliate the Arizona Center for Economic  
16 Progress since April 2016. During that time, I have closely followed and participated as an  
17 advocate/registered lobbyist on six budgets.

18          16. Budget bills, commonly known as BRBs, include only the statutory changes  
19 necessary to achieve the spending levels of the fiscal year budget that were appropriated in the  
20 general appropriations (aka "feed") bill. Put differently, a statutory change or session law is only  
21 properly inserted in a BRB if it is necessary to effectuate the budget.

22          17. Where, as is the case with the challenged BRB provisions, there is no direct tie to  
23 the "feed" bill, the substantive law changes are not related to budget reconciliation. Furthermore,  
24 because the challenged BRB provisions are not related to budget reconciliation, the title of the  
25 BRBs are misleading and do not provide adequate notice of the policy changes.



# **EXHIBIT 3**



**ARIZONA STATE SENATE**  
*Fifty-Fifth Legislature, First Regular Session*

**AMENDED**  
FACT SHEET FOR H.B. 2898

K-12 education; budget reconciliation; 2021-2022.

Purpose

Makes statutory and session law changes relating to K-12 education necessary to implement the FY 2022 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

S.B. 1826 contains the budget reconciliation provisions for changes relating to K-12 education.

Provisions

***Basic State Aid***

1. Increases the base level for FY 2022 from \$4,305.73 to \$4,390.65.
2. Adjusts, effective July 1, 2022, the basic state aid apportionment schedule to provide payments on the 15th business day, instead of the 1st business day of each month.

***Charter Schools***

3. Increases the Charter Additional Assistance (CAA) amount per student count for FY 2022:
  - a) from \$1,875.21 to \$1,897.90, for students in preschool programs for children with disabilities, kindergarten programs and grades 1 through 8; and
  - b) from \$2,185.53 to \$2,211.97, for students in grades 9 through 12.

***Transportation Funding***

4. Increases the transportation support level per route mile formula amount for FY 2022:
  - a) from \$2.74 to \$2.77 for 0.5 or less approved daily route mileage per eligible student transported;
  - b) from \$2.24 to \$2.27 for more than 0.5 to 1.0 approved daily route mileage per eligible student transported; and
  - c) from \$2.74 to \$2.77 for more than 1.0 of approved daily route mileage per eligible student transported.



# **EXHIBIT 4**



**ARIZONA STATE SENATE**  
*Fifty-Fifth Legislature, First Regular Session*

**AMENDED**  
FACT SHEET FOR S.B. 1825

higher education; budget reconciliation; 2021-2022

Purpose

Makes statutory and session law changes relating to higher education necessary to implement the FY 2022 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

S.B. 1825 contains the budget reconciliation provisions for changes relating to higher education.

Provisions

***Agricultural Workforce Development Program (Effective January 1, 2022)***

1. Requires the University of Arizona cooperative extension office (cooperative extension office) to establish the Agricultural Workforce Development Program (Development Program) to provide incentives to food-producing agricultural organizations to hire apprentices by partially reimbursing apprenticeship costs.
2. Allows, subject to legislative appropriation, the cooperative extension office to reimburse a participating food-producing agricultural organization up to the actual cost of employing an apprentice.
3. Requires the Director of the cooperative extension office (Director) to adopt rules for the Development Program that, at a minimum, establish:
  - a) qualifications for food-producing agricultural organizations to participate in the Development Program, including need, the ability to supervise apprentices and the ability to provide meaningful, food production-focused work experience;
  - b) preferences for food-producing agricultural organizations owned or operated by farmers and ranchers located in rural areas, tribal areas or historically underserved areas;
  - c) a requirement that participating food-producing agricultural organizations pay apprentices an hourly wage rate that is at least the Arizona minimum wage rate;

# **EXHIBIT 5**



**ARIZONA STATE SENATE**  
*Fifty-Fifth Legislature, First Regular Session*

**AMENDED**

FACT SHEET FOR S.B. 1824

health; budget reconciliation; 2021-2022

Purpose

Makes statutory and session law changes relating to health necessary to implement the FY 2022 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

S.B. 1824 contains the budget reconciliation provisions for changes relating to health.

Provisions

*Arizona Long-Term Care System (ALTCS)*

1. Outlines the following FY 2022 county contributions for ALTCS:

| County     | Contribution  |
|------------|---------------|
| Apache     | \$662,900     |
| Cochise    | \$4,551,700   |
| Coconino   | \$1,990,00    |
| Gila       | \$2,327,100   |
| Graham     | \$1,32,000    |
| Greenlee   | \$0           |
| La Paz     | \$375,100     |
| Maricopa   | \$184,272,900 |
| Mohave     | \$9,154,300   |
| Navajo     | \$2,744,100   |
| Pima       | \$44,073,400  |
| Pinal      | \$12,109,900  |
| Santa Cruz | \$2,242,800   |
| Yavapai    | \$9,074,300   |
| Yuma       | \$9,701,600   |

# **EXHIBIT 6**



**ARIZONA STATE SENATE**  
*Fifty-Fifth Legislature, First Regular Session*

**REVISED**

**AMENDED**

**FACT SHEET FOR S.B. 1819**

budget procedures; budget reconciliation; 2021-2022

Purpose

Makes statutory and session law changes relating to budget procedures necessary to implement the FY 2022 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

S.B. 1819 contains the budget reconciliation provisions for changes relating to budget procedures.

Provisions

***Defense of State Elections Laws***

1. Asserts, through January 2, 2023, the AG speaks for Arizona and must be allowed to intervene on behalf of the state in any proceedings in which the validity of a state election law is challenged if the AG determines that intervention is appropriate.
2. Exempts court challenges to the validity of the Clean Elections Act from language asserting the AG speaks for Arizona and must be allowed to intervene in proceedings in which the validity of a state election law is challenged.
3. Asserts that among state officials, the AG has sole authority to direct the defense of state election law or laws being challenged.
4. Allows the AG to intervene at any state of a proceedings, including to appeal or petition any decision, regardless of whether any state agency, political subdivision or officer or employee thereof is or seeks to become a party.

# **EXHIBIT 7**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV2021012160

08/16/2021

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT  
P. McKinley  
Deputy

DOUGLAS HESTER

ALEXANDER M KOLODIN

v.

PHOENIX UNION HIGH SCHOOL DISTRICT,  
ET AL.      MARY R O'GRADY

JUDGE WARNER

MINUTE ENTRY

Plaintiff's August 2, 2021 Motion for Temporary Restraining Order, and Defendants' August 6, 2021 Motion to Dismiss, are under advisement following argument.

**1. Temporary Restraining Order.**

A.R.S. § 15-342.05 was enacted during the COVID-19 pandemic to prohibit school districts from requiring students and teachers to wear masks. Phoenix Union High School District cites no legal authority that this statute is beyond the Legislature's power. Indeed, Arizona law expressly limits school districts' authority to policies that "are not inconsistent with law." A.R.S. § 15-341(A)(1).

But A.R.S. § 15-542.05 has not yet become effective. Under Arizona law, new laws are effective 90 days after the legislative session ends, which is September 29 this year. Ariz. Const. Art. IV, Pt. 1, § 1. Although there is an exception for emergency measures, they require a two-thirds vote and this statute was not approved by a two-thirds majority.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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Plaintiff argues that the statute's retroactivity clause makes it effective immediately. A retroactivity clause is not an emergency clause, and cannot be used to avoid the two-thirds vote requirement needed to make a statute immediately effective.

Plaintiff further argues that A.R.S. § 15-342.05 is an appropriations measure, which does not require an emergency clause and a two-thirds vote to be immediately effective. *See Garvey v. Trew*, 64 Ariz. 342, 354, 170 P.2d 845, 853 (1946) (requirements for emergency measure do not apply to appropriation measures). The statute is not an appropriation measure, it is a regulation of school districts. The inclusion of A.R.S. § 15-342.05 in a bill that also includes appropriations does not make the statute itself an appropriation measure.

Plaintiff argues in Reply that the District's mask policy violates existing law even without A.R.S. § 15-342.05. It does not. Arizona law gives school boards the authority to protect students and ensure the orderly operation of schools, subject to statutory limitations imposed by the Legislature. A.R.S. § 15-341(A)(1); *see also Pendley v. Mingus Union High Sch. Dist. No. 4 of Yavapai Cty.*, 109 Ariz. 18, 22, 504 P.2d 919, 923 (1972) ("There must, of course, be some authority to operate a school on a day-today basis and this statute amply supports the authority of the school board to pass reasonable rules and regulations for the orderly operation of the school."); *Kelly v. Martin*, 16 Ariz. App. 7, 9, 490 P.2d 836, 838 (1971) ("the legislature has delegated to the governing board of a high school district the control of the affairs of the district, subject to certain statutory controls").

**IT IS ORDERED** denying Plaintiff's August 2, 2021 Motion for Temporary Restraining Order.

**2. Motion to Dismiss.**

Because A.R.S. § 15-342.05 is not yet effective, the District argues that this lawsuit is premature and, therefore, should be dismissed. Plaintiff responds that he does not have to wait until A.R.S. § 15-341.05 becomes effective to challenge a policy that violates it. He notes that the Rules of Procedure for Special Action permit relief when a public body is "threatening to proceed" unlawfully. Ariz. R.P. Spec. Act. 3(b). He also argues that it is inevitable the law will come into effect on September 29, 2021 and that the mask policy will be illegal at that time.

Plaintiff is not required to wait until the day the statute becomes effective to seek relief. But its effective date is weeks away, and many things could change in that time. This far from the effective date, it cannot be said that a justiciable issue is inevitable, or that the District is threatening to proceed in violation of A.R.S. § 15-341.05.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV2021012160

08/16/2021

The Court will not dismiss the case, however, without giving Plaintiff the opportunity to amend the complaint. *See Wigglesworth v. Mauldin*, 195 Ariz. 432, 439, 990 P.2d 26, 33 (App. 1999) (“Before the trial court grants a Rule 12(b)(6) motion to dismiss, the non-moving party should be given an opportunity to amend the complaint if such an amendment cures its defects.”). This will make a new lawsuit unnecessary in the event Plaintiff needs to challenge the policy once A.R.S. § 15-341.05 becomes effective.

**IT IS ORDERED** denying Defendants’ August 6, 2021 Motion to Dismiss, and granting Plaintiff leave to file a second amended complaint within 45 days.

# **EXHIBIT 8**

1 **Declaration of Sean Elliott, MD**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4 2. I am a medical doctor. I am board certified in pediatrics and in the subspecialty of  
5 pediatric infectious disease. I have served at the University of Arizona as a Professor of  
6 Pediatrics, and the Associate Chair for the Department of Pediatrics, and the Director of Infection  
7 Prevention for Banner University Medicine – Tucson. I retired from the University of Arizona  
8 College of Medicine and provide pediatric subspecialty clinical care. I have consulted with  
9 numerous healthcare systems in Arizona regarding COVID-19. I have expertise and knowledge  
10 about the current science and medicine that affects the efficacy of COVID-19 mitigation  
11 measures, and about the Delta Variant of COVID-19.

12 3. As with the rest of the U.S., Arizona currently has entered yet another surge in  
13 COVID-19 cases, 93% of which are caused by the Delta variant (B.1.617.2) originally described  
14 in India. The Delta variant represents a significant change in the patterns so far identified for the  
15 pandemic. It is significantly more contagious than the prior, primary variant in the U.S. (Alpha  
16 variant, B.1.1.7) and is causing disease in much younger people than previously. Likely  
17 associated with both factors, there has been a significant increase in symptomatic pediatric  
18 COVID-19 and a related increased hospitalization rate of children with SARS-CoV-2 infection.  
19 The principal reasons for this increased infectivity lie in the new mutations that have evolved in  
20 the Delta variant, making it both more successful in attaching to its target cells in the human  
21 nasopharynx and in causing invasive, symptomatic disease. These same factors also increase the  
22 ability of the variant to shed in respiratory droplets between humans and thus make the Delta  
23 variant the most successful variant to date in spreading between humans.

24 4. Additionally, and for the first time, the Delta variant now has demonstrated  
25 increased infectivity from pediatric patients to all others, including susceptible adults. Thus, the  
26 COVID-19 pandemic has entered a new, “game changer” phase in which children and

1 adolescents are, for the first time, as likely if not more likely to spread the virus to others. In this  
2 regard, the Delta variant now behaves just like Influenza, Respiratory Syncytial Virus,  
3 Rhinovirus, and many others in which children are known to be the super-spreaders from schools  
4 to their families every year.

5         5. Fortunately, the currently-approved vaccines in the U.S. (Pfizer, Moderna and, to  
6 a lesser extent, Johnson&Johnson) retain protective efficacy against all SARS-CoV-2 infection,  
7 including that caused by the Delta variant. These vaccines are highly protective against severe  
8 COVID-19 caused by the Delta variant and have demonstrated superior efficacy at preventing  
9 hospitalizations and Intensive Care Unit admissions. Ideally, every human should be vaccinated  
10 fully and immediately to realize this significant protective effect and prevent further infections.  
11 Sadly, the current reality is far from ideal, and many adults choose not to be vaccinated. Still  
12 others remain only partially protected by their full vaccine series due to their underlying  
13 immunodeficiencies or receipt of immunosuppressive medications. Importantly, children under  
14 age 12 years are currently unable to be vaccinated.

15         6. The disparities in vaccine coverage in the U.S. have several important  
16 implications. First, any unvaccinated adult or child has a high risk of acquiring COVID-19,  
17 becoming severely symptomatic and requiring hospitalization, followed by yet further risks of  
18 death related to COVID-19. Children, once thought to suffer only mild or even asymptomatic  
19 COVID-19, now are experiencing significantly symptomatic disease, and many pediatric health  
20 care centers across the country are overwhelmed with severely ill, COVID-19 pediatric patients.  
21 The same risks of death and prolonged health impact seen in adults now can be anticipated in  
22 children. Second, the Delta variant now has been shown to cause equal numbers of viral load  
23 (numbers of viruses present) in the nasopharynxes of all people exposed to COVID-19,  
24 regardless of vaccine status. Sadly, this means that even fully vaccinated people who are exposed  
25 to the Delta variant now pose the same risk of carrying it to susceptible, unvaccinated people as  
26 those who are unvaccinated. This finding now applies especially to young adults, adolescents,

1 and children due to the high-infectivity patterns of the Delta variant described previously. Third,  
2 any person who is actively infected with the Delta variant expresses far greater viral load in their  
3 nasopharynx and thus poses even greater risk of infecting others around them. Because  
4 vaccination remains highly successful in preventing active infection, this means that  
5 unvaccinated people who acquire COVID-19 pose a huge risk in being contagious to others.  
6 Again, this fact has disproportionate negative impact on children younger than age 12 years,  
7 since they remain unable to receive a COVID-19 vaccine.

8         7. To summarize the preceding points: the Delta variant is a game-changer due to  
9 significantly increased infectivity which poses extreme risk for severe, symptomatic COVID-19  
10 in unvaccinated people including children and adolescents. The baseline risk of infectivity from  
11 the Delta variant is much higher than any previous variant, and becomes even higher when an  
12 unvaccinated person acquires infection with the variant. This risk exists regardless of how  
13 symptomatic a COVID-19 patient is or isn't. Because children and adolescents now carry a  
14 higher risk of infectivity due to the Delta variant's mutations, this group of young people are a  
15 source of significant exposure to unvaccinated people, as well as vaccinated people who have  
16 only partial protection as a result of immunodeficiencies or receipt of immunosuppressive  
17 medications in the U.S. and elsewhere.

18         8. Fortunately, other interventions exist to mitigate the risk of transmission of the  
19 SARS-CoV-2 virus between humans. Masks have proven highly protective in this endeavor with  
20 *no proven harmful effects*. Far more effective than social distancing, temperature checks, spot-  
21 check COVID-19 screening tests, and other important pandemic mitigation measures, effective  
22 wearing of a mask is the most-effective and easiest intervention to implement in preventing  
23 COVID-19 societal transmission. However, to realize the societal AND personal protective  
24 effects of mask-wearing, nearly everyone must wear the mask properly. Only with universal  
25 mask-wearing can all people, vaccinated and unvaccinated, be protected from acquiring SARS-  
26 CoV-2 colonization of their nasopharynxes and posing contagious risk to their secondary

1 contacts (e.g. family members, co-workers, service-industry workers, etc.) An individual child  
2 who wears a mask is very unlikely to infect or expose others to COVID-19. However, if that  
3 same, masked child is surrounded by others who are not wearing masks, the risk to the masked  
4 child for acquiring COVID-19 increases significantly. Critically, those people who are  
5 unvaccinated and have risk factors for serious COVID-19 must be protected by everyone around  
6 them wearing a mask. If some people are not masked, the potential for COVID-19 transmission  
7 to the susceptible person via creation of a cloud of airborne Delta variant is significant. That risk  
8 extends also to all secondary contacts as noted above.

9       9. While important national organizations agree that a return to in-person school is  
10 critical for the mental, emotional, physical and educational health of schoolchildren in the U.S.,  
11 it is also true that schools now represent a venue of extreme risk for transmission. This is due to  
12 the increased infectivity of Delta variant in school-children and adolescents and the extreme risk  
13 of those children and adolescents taking active COVID-19 contagiousness home to their  
14 susceptible family members, followed by still further secondary spread to those family members'  
15 co-workers, classmates, etc. To prevent this cascade of events from occurring, the most-ideal  
16 intervention of course is to fully vaccinate everyone. However, school children under age 12  
17 years cannot be vaccinated and thus remain at high risk both for personal infection and for  
18 triggering the above-described cascade of societal infectious outbreak. As well, the vaccination  
19 rate of adolescents ages 12 years – 19 years is barely 10% in many parts of the U.S. and in  
20 Arizona. Thus, supporting vaccination of school-children, while important, is not an effective  
21 intervention. Instead, universal masking via a mask-mandate in school is the only accessible,  
22 effective, and evidence-proven intervention likely to prevent the expected explosion of Delta  
23 variant COVID-19 related to school activities. Already, there is ample evidence of multiple  
24 outbreaks of COVID-19 directly associated with in-person school activities in schools and  
25 school districts which have not implemented a mask mandate. Historically, the same evidence  
26 exists in the annual influenza epidemic experienced in the U.S. and related directly to school-

1 associated transmission. Importantly, those schools which have implemented mask mandates  
2 have NOT suffered the same numbers of cases and outbreaks. From a population-data  
3 perspective, this difference in outcome is quite significant.

4 10. Specific to Arizona, the state's experience with COVID-19 has been extreme.  
5 Arizona has been the worst state in the country (and even the world) for more than several weeks  
6 due to its high attack rate of COVID-19. Arizona is nowhere near the identified 70% vaccination  
7 goal set previously for last July for the U.S., meaning that a significant number of Arizona  
8 residents and workers are still unprotected from possible introduction of COVID-19 into their  
9 communities by infected school children. Arizona has been the in top 5 worst states in the U.S.  
10 since the start of the pandemic due to its attack rate of COVID-19 in children, based on  
11 cases/100,000 data submitted bi-weekly to the American Academy of Pediatrics. Arizona is the  
12 2<sup>nd</sup> worst state in the U.S. for total pediatric deaths due to COVID-19, following only Texas  
13 which has a much larger pediatric population. In mortality rates per 100,000 children, Arizona  
14 is the worst.

15 11. These facts suggest that the risk to and by Arizona school-children for an explosion  
16 of COVID-19 cases due to school activities is extreme. Follow this risk with the equally extreme  
17 risk of secondary spread to Arizona communities from infected and exposed, unvaccinated  
18 Arizona school-children, and the personal and societal potential impact of the Delta variant on  
19 all Arizonans is potentially catastrophic. Fortunately, a simple, cheap, safe, and effective  
20 intervention with ample power to prevent this human disaster exists: mask mandates in schools  
21 have huge potential to protect all Arizonans from school-associated COVID-19 outbreaks with  
22 their attendant extreme morbidity and mortality. Any executive order or legislation designed to  
23 prevent such mask mandates directly defies the scientific evidence of pandemic response and  
24 also causes extreme potential for irreparable harm to Arizona and her people.



1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on August 18, 2021.

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4 \_\_\_\_\_  
5 Sean Elliott, MD

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# **EXHIBIT 9**



1 of Sars-CoV-2 at 30 days post-infection was 68%. Additionally, [another study published](#) recently  
2 in *the Lancet* looked at over 80,000 recovered individuals, some with long COVID symptoms  
3 and some without any symptoms at all. This study showed that participants exhibited significant  
4 cognitive deficits versus controls when controlling for age, gender, education level, income,  
5 racial-ethnic group, pre-existing medical disorders, tiredness, depression and anxiety. These  
6 studies included young people, and indeed, we see long-COVID in children as well. One young  
7 child I care for still has yet to recover a normal sense of taste and smell eight months out from  
8 acute infection, and as a result, has been struggling with a food aversion and normal weight gain  
9 during a critical period of development. Everything for this child tastes like burnt orange peel,  
10 and he has lost weight and is requiring regular visits, including with a gastroenterologist who is  
11 now entertaining the need for tube feeding.

12 6. Now with the Delta Variant, more and more young individuals in our communities  
13 are being infected. This is partly due to the documented [higher “R nought” of the mutated virus](#),  
14 which is the number of people a sick person will infect if the entire population is vulnerable to  
15 the virus. But it is also due to inconsistent mask wearing due to the new legal restrictions, since  
16 we know that, while universal masking will not prevent all cases of transmission, [it significantly](#)  
17 [reduces the rate of transmission](#) and the viral load that those who do become infected are exposed  
18 to. In schools, since the majority of children are NOT vaccinated, this will lead to a higher rate  
19 of infectivity than seen with the alpha variant, as well as a higher viral load, which is the  
20 concentration of virus active in the body. The [higher viral load of the delta variant](#) means that a  
21 shorter duration of exposure to an infected person is needed to be exposed and infected due to a  
22 higher concentration of the airborne virus even just with speaking and breathing. The viral load  
23 of the virus, as with many, also peaks during the pre-symptomatic stage of the disease, meaning  
24 the person spreading the virus is unlikely to even know they are infected since they feel fine.

1           7.       This is why universal masking is a proven public health disease mitigation tool,  
2 and one of the only tools we have right now until children can be vaccinated. *The CDC, Arizona*  
3 *Department of Health Services, and nearly every single public health and medical guiding body*  
4 *recommends universal masking in schools and other indoor settings.* Simply masking only one  
5 child, or even a few, is not effective enough, since others who are unmasked will continue to  
6 spread and become infected with the disease. In fact public health modeling based on viral  
7 transmissibility has demonstrated that at [levels of masking around 80% or greater significantly](#)  
8 [reduce disease transmission](#), and could even eliminate transmission over time, even when  
9 wearing non-medical grade masks. However, the same study found that when 50% or less of the  
10 population is masking, there is minimal impact on disease transmission. Observational studies  
11 made throughout the pandemic have validated the need for universal masking, with [countries,](#)  
12 [states, and work places requiring masks](#) seeing far fewer clusters of disease than those without.

13           8.       Arizona is already in the top three states in the nation for both pediatric related  
14 [COVID-19 hospitalizations and deaths](#). This will only continue to increase now that schools are  
15 back in session, and schools are unable to require proven public health prevention tools. Given  
16 that we are still learning whether the delta variant causes more severe disease in unvaccinated  
17 people, especially children, we are placing our children in the middle of a dangerous medical  
18 experiment without masking in schools. But we do know they can get sick and die, and that the  
19 long-COVID outcomes do not discriminate in children.

20           9.       As a parent of three children, and a family medicine physician who has dedicated  
21 my career to maternal and child health and reducing health disparities, I recently made the  
22 difficult decision to unenroll my children from a school that did not require masks due to  
23 concerns about their safety. I have witnessed firsthand the devastating toll of this virus, and have  
24 spent the entire pandemic taking extreme precautions to prevent becoming infected and  
25 transmitting this virus to my own family. One of my children has an IEP for a learning disability,  
26 and last year, fell behind with a lack of support on remote learning. All children learn best when

1 in the classroom, but this is even more important for many children with IEPs. I was faced with  
2 the choice of my children’s physical safety and academic success. I decided to enroll them in a  
3 school district that currently requires masks. However, this places a burden on my family due to  
4 out of district transportation, and also the emotional toll on my children being in an unfamiliar  
5 learning environment without any of their friends and familiar support systems. My ability to  
6 have my minor children attend their school in a reasonably safe environment is being impeded  
7 and threatened by the unconstitutional laws that are the subject of this action.

8  
9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed on August 17, 2021.

11 

12 —  
13 Mary Catherine “Cadey” Harrel, MD

# **EXHIBIT 10**

1 **Declaration of Jeremy Feldman, MD**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4 2. I am a medical doctor. I am board certified in internal medicine, pulmonary  
5 medicine, and critical care. I have extensive experience treating patients with COVID-19. I  
6 served as an expert for Governor Ducey early in the pandemic in support of COVID mitigation  
7 measures the Governor had ordered and have been advising major companies in the state and  
8 nationally. My team and I have cared for over 6,000 patients hospitalized with COVID over  
9 the past 18 months and we continue to care for patients both in the hospital and in the office.

10 3. Arizona is in a major health crisis. The hospitals are at or above operating capacity  
11 in many respects due to the present surge, and our younger children are unable to be vaccinated.  
12 Hospitals around the state are unable to accept critically ill patients in transfer in a timely fashion  
13 due to the COVID surge. The emergence of Delta variant is the engine driving this crisis  
14 combined with poor public health policy. Early literature suggested that COVID was less likely  
15 to affect children and less likely to be transmitted by children. More recent data strongly  
16 contradicts the notion that COVID is not a concern for children. To the contrary, across the  
17 country and around the state children's hospitals are caring for critically ill children with  
18 COVID. Recent studies confirm that children are susceptible hosts and excellent at spreading  
19 the infection.

20 4. Why is Delta variant different? First, Delta variant is much more infectious. The  
21 virus spreads more easily. In comparison to Alpha variant, people infected with Delta have much  
22 more virus in the nose and back of the throat. This leads to more virus spreading in the air.  
23 Second, fully vaccinated people are susceptible to getting infected and are able to spread Delta  
24 variant to others. This is a very different from Alpha variant. For Alpha, vaccinated people  
25 were not felt to be able to spread the infection. Although the majority of fully vaccinated people  
26 who get infected with Delta will have mild to moderate symptoms, we are now seeing between



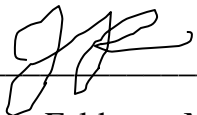
1 2-5% of the patients in the hospital with COVID are fully vaccinated. We are seeing young fully  
2 vaccinated adults dying from COVID. Third, many older people are now more than six months  
3 from their second dose of vaccine. Data from Israel shows that in the presence of Delta, vaccine  
4 protection wanes after six months.

5 5. Mandatory masking in schools is the most effective public health measure to slow  
6 the spread of COVID and prevent children and adults from becoming ill. Every major public  
7 health organization recommends that children wear masks at school. This protects children from  
8 getting sick and infecting their classmates, families and teachers. Furthermore, the primary  
9 objective of schools is to teach children in school. There is compelling data that if the entire  
10 class is wearing a mask, we will not have to quarantine the entire class when a single child tests  
11 positive. Not only do masks limit transmission, they keep our children learning in school.

12 6. As to the argument that wearing masks is a hardship—this is a rationalization that  
13 places politics over public health. Last year our students wore masks at school without any  
14 significant problems. From a medical and public health perspective, the only way to keep our  
15 children and teachers safe is to allow schools to require masking. Any other path is reckless and  
16 will unequivocally lead to countless unnecessary COVID cases and deaths in our community.

17  
18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on August 18, 2021.

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22 \_\_\_\_\_  
23 Jeremy Feldman, MD

# **EXHIBIT 11**

**Declaration of Ruth Franks Snedecor, MD**

1  
2 1. I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4 2. I am a medical doctor. I am board certified in internal medicine. I provide care to  
5 hospitalized patients and train physicians to do the same and am an Academic Hospitalist and a  
6 Clinical Assistant Professor at University of Arizona College of Medicine-Phoenix. I have  
7 extensive experience caring for patients with COVID-19. I have cared for patients with COVID  
8 from the outset of the pandemic until today. I have advised a public school district about COVID  
9 mitigation measures since June of 2020 to present.

10 3. I have seen firsthand the terrible toll that the Delta variant is causing in Arizona.  
11 This variant is far more contagious, and infected individuals carry drastically higher viral loads  
12 than those infected with the earlier dominant COVID-19 strain. The higher viral load that  
13 infected people carry means that there is a higher risk of that person infecting other people. The  
14 higher the viral load delivered upon infection, the worse the severity of illness.

15 4. Vaccinated individuals and formerly infected individuals can have a significant  
16 viral load, even when completely asymptomatic, and can transmit the virus to others for many  
17 days (and unvaccinated individuals are contagious for even longer) with the Delta variant which  
18 is the dominant strain currently impacting Arizona. Exposing people to unmasked individuals,  
19 even if vaccinated or previously infected, presents a serious risk especially since most of the  
20 children in school are too young to be vaccinated and carry no immunity.

21 5. The science is clear that children can be infected with COVID, and that they can  
22 and do become sick and some will die. It is clear that they can and do spread the virus to others,  
23 including their family members and friends, and particularly those who are unvaccinated or are  
24 immunocompromised. Children are far more impacted with severe illness than previous  
25 COVID-19 strains or variants. Arizona is currently among the worst in the nation for COVID-  
26 19 infections in children.

1           6.     Mask mandates are the proven most effective currently available method of  
2 protecting children in schools. Several studies last year have shown that masking strategies  
3 significantly reduced spread of COVID-19 in the classroom and that children tolerate masking  
4 extremely well. It is not sufficient to say that each person can decide for themselves whether to  
5 wear a mask, because it is when masks are worn by nearly all individuals then infected  
6 individuals will be far less likely to transmit the disease to others. An unmasked COVID-19  
7 positive child/staff member still poses a significant health risk to masked children/staff around  
8 them considering the previously mentioned reasons, more contagious and higher viral load. In  
9 other words, my child’s mask protects other children, and their mask protects my child.

10           7.     I am also a parent with children. Through the pandemic, I have done all I could to  
11 keep my children safe. We have given up playing sports, seeing family members, attending  
12 birthday parties or playdates with friends, and even dining out or going to places of amusement.  
13 Despite these sacrifices and my best efforts over the past 18 months, they could potentially sit  
14 next to an unmasked child or staff member in the classroom and contract COVID-19. One of  
15 my children has severe asthma and is followed by a lung specialist and has been hospitalized.  
16 She is on three asthma controlling medications daily. She is at greater risk of suffering serious  
17 complications from COVID if she contracts it. Only one of my children is old enough to be  
18 vaccinated (and has been). My girls are too young to be eligible. My children attend school in  
19 the Madison School District, which currently has a mask mandate.

20           8.     However, I am aware that the laws being challenged in this case seek to ban school  
21 districts from using this life saving public health tool. My ability to have my children attend  
22 school in a reasonably safe environment is being seriously threatened if this law is permitted to  
23 go into effect.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 18, 2021.

DocuSigned by:  
*Ruth Franks Snedecor*  
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Ruth Franks Snedecor, MD

# **EXHIBIT 12**

1 **Declaration of Beth Lewis**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4 2. I am a public school teacher in the Tempe Elementary School District and the  
5 parent of minor children who attend public schools.

6 3. As an active participant in the legislative process, the budget reconciliation bills  
7 (BRBs) as written this legislative session deprived me of my ability to engage and participate as  
8 I normally would.

9 4. The inclusion of other legislative pieces unrelated to the budget led to horse trading  
10 within the legislature that arguably removed citizens from the process of advocating for a better  
11 budget. Backroom deals were made in order to sell the budget by adding ideas from bills that  
12 legislators attempted to move through the legislative process, but did not have the votes to pass  
13 for the entire legislative session.

14 5. As an Arizona educator and parent, these BRBs pose immense personal risk of  
15 harm to myself, my unvaccinated children, and my unvaccinated students.

16 6. If the challenged provisions in HB 2898 go into effect on September 29, educators  
17 in schools that currently require masks will lose that protection and be forced to be exposed to a  
18 deadly airborne virus. If an injunction is not granted, as a classroom teacher I will lose my ability  
19 to work in a reasonably safe environment or to have a classroom that is safe for my students.

20 7. As an educator, I am also at risk of potential disciplinary sanctions, including loss  
21 or suspension of my teaching license, or civil enforcement actions if I am found to be teaching  
22 vaguely described “concepts” that the legislature has apparently deemed “too controversial.”

23 8. As a parent, because of certain provisions in HB 2898, I am unable to both keep  
24 my children safe and choose in-person learning.

25 9. At the time I filed the complaint in this case, the district where my children attend  
26 school said everyone is “expected” to wear masks, but there is no enforcement of this

1 expectation. I can attest, based on information and belief, that the district was reluctant to  
2 mandate masks because of the BRB. According to this article,  
3 [https://www.12news.com/article/news/health/coronavirus/tempe-school-district-urges-arizona-](https://www.12news.com/article/news/health/coronavirus/tempe-school-district-urges-arizona-lawmakers-to-allow-mask-mandates-to-slow-the-spread-of-covid/75-3fa95ab2-30ca-47f0-9fc7-c41cfce04b10)  
4 [lawmakers-to-allow-mask-mandates-to-slow-the-spread-of-covid/75-3fa95ab2-30ca-47f0-](https://www.12news.com/article/news/health/coronavirus/tempe-school-district-urges-arizona-lawmakers-to-allow-mask-mandates-to-slow-the-spread-of-covid/75-3fa95ab2-30ca-47f0-9fc7-c41cfce04b10)  
5 [9fc7-c41cfce04b10](https://www.12news.com/article/news/health/coronavirus/tempe-school-district-urges-arizona-lawmakers-to-allow-mask-mandates-to-slow-the-spread-of-covid/75-3fa95ab2-30ca-47f0-9fc7-c41cfce04b10), the district urged lawmakers to reconsider the law, and expressed that they  
6 would like to have control over the decision to require masks.

7 10. After another court held that HB 2898 is not currently in effect, my district adopted  
8 a mask mandate. But that mandate will no longer be legal if the challenged provisions in HB  
9 2898 go into effect on September 29.

10 11. I can attest, upon information and belief, that districts in the area are worried that  
11 their insurance trust will hold them liable if they mandate masks, and some district board  
12 members worry they will be sued personally.

13 12. Significantly, districts are being threatened with defunding if they mandate masks.  
14 Representative Hoffman penned a letter asking the Governor to “withhold the federal funding  
15 currently under the Governor’s management from any school district that is non-compliant with  
16 state law” and to “authorize temporary Empowerment Scholarship Accounts (ESAs) for all  
17 students trapped within any school district that is non-compliant with state law.”  
18 <https://www.azleg.gov/press/house/55LEG/1R/210811HOFFMAN.pdf>. To date, 25 other  
19 lawmakers have signed on to this letter.

20 13. Days after Representative Hoffman issued his press release, Governor Doug  
21 Ducey announced a program that offers grant funding to schools that comply with the ban on  
22 mask mandates, [https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-](https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-nearly-65-million-expand-learning-programs)  
23 [nearly-65-million-expand-learning-programs](https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-nearly-65-million-expand-learning-programs), and to families who face “barriers” from “closures  
24 and school mandates . . . that are not in compliance with the provisions set forth in state law.”  
25 [https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-relief-program-k-](https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-relief-program-k-12-students-families)  
26 [12-students-families](https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-relief-program-k-12-students-families).



1           14. This action by the Governor, relying on the unconstitutional laws challenged in  
2 this case, ignores the worsening public health crisis and the importance of safe in-person  
3 learning, and it puts children and teachers at risk.

4           15. As a parent and an educator, I am extremely concerned about the levels of  
5 community transmission and the fact that certain provisions in HB 2898 seek to prohibit school  
6 districts from implementing the most effective mitigation strategy.

7           16. Current case counts in Tempe Elementary School District are 67 (as of August 12,  
8 8 days after school started) and growing. [https://www.tempeschools.org/parents/return-to-](https://www.tempeschools.org/parents/return-to-school-2021-22-school-year/covid-19-dashboard)  
9 [school-2021-22-school-year/covid-19-dashboard](https://www.tempeschools.org/parents/return-to-school-2021-22-school-year/covid-19-dashboard). As these numbers climb, once the challenged  
10 provisions in HB 2898 go into effect, the district will have no ability to impose proven, science-  
11 based mitigation measures to protect my children.

12           17. Both of my children are under the age of 12 and are therefore not eligible to be  
13 vaccinated. I have serious concerns about what will happen to them if they contract a deadly  
14 virus, particularly as child hospitalizations increase under the Delta variant.

15           18. The Maricopa County Health dashboard for schools gives a broader context of  
16 community spread and shows Tempe Elementary School District in “High” transmission rates  
17 (over 100 cases per 100,000).

18           19. As of August 7 (only 3 days after the start of school), case rates rose from 206 per  
19 100,000 the week prior to 260 per 100,000. According to the CDC and Maricopa County Health  
20 dashboard, elementary schools in communities with high transmission should be in “hybrid  
21 learning mode or reduced attendance with physical distancing of 6 feet or more, to the greatest  
22 extent possible,” but our schools are not in hybrid mode.

23           20. As an educator, I cannot distance kids more than 2-3 feet because I have 25  
24 students in my relatively small classroom.

1 21. As a parent who is spending my days in the classroom, I do not believe  
2 we can keep our children safe unless the challenged provisions in HB 2898 are  
3 invalidated. I have serious concerns about the impact on the health and safety of my own  
4 children and my students.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed on August 18, 2021.

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9 \_\_\_\_\_  
Beth Lewis

# **EXHIBIT 13**



1 inability of the University to implement the other mitigation measures that were announced in  
2 its June 14th policy. Further, the mask “mandate” does not apply to all indoor areas at ASU. If  
3 I go to the library (which I do as part of my job), or to the student union, I will be surrounded by  
4 people that are not subject to the mask requirements.

5 9. I am not only worried about my own health and safety. I have close friends, good  
6 colleagues, and graduate students with whom I work closely. None of them should be faced  
7 with the prospect of working in a riskier environment due to the unconstitutional law that was  
8 included as part of a budget reconciliation bill. Nor should my colleagues, co-workers, and  
9 friends be faced with the prospect of bringing infection home to their spouses, children, or aged  
10 parents.

11  
12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed on August 17, 2021.

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16 Richard Newhauser, Ph. D.  
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# **EXHIBIT 14**

**Declaration of Laurie Stoff, Ph.D.**

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2           1.     I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4           2.     I am a Principal Lecturer and Honors Faculty Fellow at Arizona State University,  
5 where I have been on faculty since 2014.

6           3.     I have an office on the campus of ASU. I also am teaching in-person classes at  
7 ASU during the 2021 fall semester.

8           4.     I am a member and have a leadership role in the United Campus Workers of  
9 Arizona (UCWAZ) labor union. I have been authorized by the Union to submit this declaration  
10 in support of this case.

11          5.     The membership of UCWAZ includes faculty, staff, graduate student workers, and  
12 undergraduate student workers. We have a diverse membership that includes positions that  
13 range from senior professors to custodial workers. A primary mission of UCWAZ is to advocate  
14 for a safe work environment for all those who work at Arizona's university campuses.

15          6.     UCWAZ's membership includes a broad range of ages, from young adults, and  
16 parents with young children, to older professors in their 70's and 80's. Many of our members  
17 care for and live with their spouses and children, and still others live with or care for their elderly  
18 parents. I am aware of members who have health conditions that put them at increased risks of  
19 harm or death from COVID (such as those undergoing chemotherapy), and members who live  
20 with or care for family members at increased risk from similar conditions. I personally am aware  
21 of many workers on ASU's campus who have been diagnosed with COVID-19.

22          7.     ASU and the University of Arizona are returning to a great extent to in-person  
23 learning. The ability to provide accommodation for remote teaching is quite limited and I and  
24 most of my colleagues would not qualify for accommodation. Faculty and graduate student  
25 workers have been told that they must teach in person with no ability to switch to remote  
26 instruction regardless of the degree of spread of the virus on campus or in our classrooms. I

1 know from my own experience that it is not possible to physically distance in many of our  
2 classrooms. I will be teaching this fall semester in classrooms where physical distancing will be  
3 impossible. As a lecturer in Barrett, the Honors College at ASU, I (along with all of my  
4 colleagues) teach in smaller classrooms that will be filled to capacity. Many of my colleagues  
5 throughout the University face similar circumstances. Further, the inability to physical distance  
6 applies not only in classrooms, but also in many of the offices for faculty and staff at ASU.

7 8. On June 14th, ASU announced a policy that put in place significant mitigation  
8 measures to protect people like myself, as well as other members of the faculty, students, and  
9 the enormous non-faculty staff at ASU. (June 14, Update on Student Vaccine Expectations  
10 (available at <https://eoss.asu.edu/health/announcements/coronavirus#covid-archive>)). The  
11 Governor immediately issued an executive order banning ASU and other higher education  
12 institutions from implementing this policy. In response, ASU rescinded the policy. The  
13 executive order will be rescinded at the end of September.

14 9. I am aware that the legislature passed a law that will ban the sort of mitigation  
15 measures that ASU originally announced as being necessary for the safety of students, staff, and  
16 faculty at ASU. Unless stopped by the court, this law will go into effect at the end of September.

17 10. If this legislation is permitted to stand, I, along with the membership of UCWAZ,  
18 the other faculty and staff at our Universities, our students, as well as our families, and the larger  
19 communities where we work and live, will be exposed to a higher risk of contracting COVID-  
20 19. Many will be at risk of serious illness or death.

21 11. I am aware that ASU has instituted a mask requirement for in-person classes and  
22 in limited other indoor settings. Even with this requirement, we are still at increased risk due to  
23 the inability of the University to implement the other mitigation measures that were announced  
24 in its June 14th policy.

25 12. On behalf of myself and UCWAZ, I ask the court to consider the irreparable harm  
26 that will result from the implementation of Section 2 of SB 1825. The faculty and staff of our



Signature:

  
Laurie Stoff (Aug 18, 2021 15:25 PDT)

Email: ffots1@gmail.com

1 universities should not be placed in a riskier environment due to the unconstitutional law that  
2 was included as part of a budget reconciliation bill.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on August 18, 2021.

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**Laurie Stoff**

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Laurie Stoff, Ph.D.

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# **EXHIBIT 15**

1 **Declaration of Joel Edman**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4 2. I am the Executive Director of the Arizona Advocacy Network (“AZAN”), and I  
5 am authorized to make this declaration on its behalf.

6 3. AZAN is a non-profit organization dedicated to defending and deepening  
7 Arizona’s commitment to democracy.

8 4. AZAN’s mission, including allowing citizen participation in the legislative  
9 process, is frustrated by the legislature’s conduct of improperly including various provisions in  
10 the budget reconciliation bills in violation of the constitution as explained in this lawsuit.

11 5. We are committed to preserving a truly representative political system in which all  
12 Arizonans make their voices heard. Ensuring Arizonans’ right to vote and sanctity and privacy  
13 of its voter information is a core mission of AZAN.

14 6. We have diverted significant time and resources analyzing the impact of various  
15 election-related provisions in the budget reconciliation bills this legislative session. This  
16 legislative session, two full time AZAN staff were devoted to jointly working with coalition  
17 partners to block legislative attacks on voting rights and democracy through advocacy,  
18 education, and organizing.

19 7. Our ability to advocate for and defend a truly representative political system was  
20 impeded this session by the policies passed through budget reconciliation bills as part of larger  
21 effort by Republican lawmakers to undermine Arizona’s democracy.

22 8. One of the cornerstones of our democracy is that political decisions are driven by  
23 voters, and AZAN is committed to preserving citizen participation in the legislative process.

24 9. Another cornerstone of our democracy is that the legislative process is open to the  
25 public and laws should be made in the open, after fulsome public debate, rather than in secret.  
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