

1 Journalism and Mass Communication at ASU. Complaint ¶ 8. Plaintiff Shandrow is
2 blind and is substantially impaired in the major life activity of seeing. *Id.*

3 In May of 2009, ASU announced that it was one of six post-secondary schools
4 that would launch a pilot program that would provide Kindle DX devices to students
5 beginning in the Fall of 2009. Complaint ¶¶ 21, 22. The Kindle DX is a lightweight,
6 portable electronic book (e-book) reader that has many functions including a text-to-
7 speech function; a rotating display; a wireless modem for downloading e-books; and
8 various search functions. Complaint ¶¶ 12-18. For the purposes of the pilot program,
9 students will receive their textbooks on a Kindle DX rather than purchasing bound text
10 books. Complaint ¶ 24. The Kindle DX is not accessible to blind individuals without
11 assistance because the menus and screen navigation do not have an audible option.
12 Complaint ¶ 19.

13 ASU's Kindle DX pilot program is a one-year program that will commence in the
14 Fall of 2009 and continue for two semesters. Declaration of Ted Humphrey ¶ 2
15 (Humphrey Declaration) which is attached as Exhibit 1.¹ The pilot program involves
16 only a single course: the Human Event. Declaration of Adrian Sannier ¶ 4 which is
17 attached as Exhibit 2. The Human Event is a course offered only to students in the
18 Barrett Honors College at ASU. Humphrey Declaration ¶ 2. There are 47 sections of
19 the Human Event offered in the 2009 fall semester. Humphrey Declaration ¶ 3. Of
20 those sections, only those three taught by Professor Ted Humphrey are participating in
21 the Kindle DX pilot program. Humphrey Declaration ¶ 4. The three sections
22 participating in the pilot program have completed enrollment and are full. Humphrey
23 Declaration ¶ 4. No blind students enrolled in the pilot sections of the Human Event or
24 sought to be enrolled. Humphrey Declaration ¶ 7.

26 ¹ Normally, a court may not look beyond the plaintiff's complaint in resolving a motion
27 to dismiss. However, when defendants bring a facial attack under Rule 12(b)(1) for lack
28 of subject matter jurisdiction, the court can consider extrinsic evidence in determining
whether it has power to hear the case. *See Roberts v. Corrothers*, 812 F.2d 1173, 1177
(9th Cir. 1978).

1 Plaintiff Shandrow has no standing to bring a suit over ASU’s participation in the
2 Kindle DX pilot program. To establish standing to sue, a plaintiff must demonstrate “a
3 sufficient personal stake in the outcome.” *Fleck and Assoc., Inc. v. Phoenix*, 471 F.3d
4 1100, 1103 (9th Cir. 2006). The plaintiff must allege “(1) [he] has suffered an ‘injury in
5 fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or
6 hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant;
7 and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by
8 a favorable decision.” *Stormans, Inc. v. Selecky*, 2009 WL 1941550 * 6 (9th Cir. July 8,
9 2009) (internal citation omitted). The first element, “injury in fact,” necessitates a
10 showing of “an invasion of a legally protected interest” that “affect[s] the plaintiff in a
11 personal and individual way.” *Fleck*, 471 F.3d at 1103 (internal citation omitted). A
12 plaintiff seeking to invoke federal court jurisdiction must plead the *he* has suffered some
13 cognizable injury to make the threshold showing of a case or controversy. *See id.*

14 Plaintiff Shandrow cannot establish an injury in fact. The Kindle DX pilot is
15 limited to the Human Event course in the Barrett Honors College. Plaintiff Shandrow,
16 like a great number of ASU students, is excluded from the Kindle DX pilot because he is
17 not a student in the Barrett Honors College. His disability was not a factor in
18 determining eligibility for the Kindle DX pilot – his status as a student in the School of
19 Journalism prevents him from being eligible. No class that Plaintiff Shandrow could
20 enroll in is participating in the Kindle DX pilot. Plaintiff Shandrow has suffered no
21 injury in fact and therefore lacks standing.

22 For the foregoing reasons, Defendants respectfully request an order dismissing
23 Plaintiff Shandrow’s claims.

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Respectfully submitted this 24th day of July, 2009.

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I certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following, if CM/ECF registrants, and mailed a copy of same to any non-registrants, this 24th day of July, 2009 to:

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