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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRAVIS WISE, et al.,

Plaintiffs,

v.

GOVERNOR JAY INSLEE, et al.,

Defendants.

NO. 2:21-CV-0288-TOR

ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING
ORDER/PRELIMINARY
INJUNCTION

BEFORE THE COURT is Plaintiffs’ Motion for Temporary Restraining Order/Preliminary Injunction (ECF No. 13). This matter was submitted for consideration with oral argument on October 22, 2021. Milton Rowland and Grant Wolf appeared on behalf of Plaintiffs. Andrew Hughes appeared on behalf of the State Defendants and Chad Mitchell, Liz Kennar and David Smith appeared on behalf of Defendant Schaeffer. The Court has reviewed the record and files herein, considered the parties oral arguments, and is fully informed. For the reasons discussed below, Plaintiffs’ Motion for Temporary Restraining Order (ECF No. 13) is DENIED.

BACKGROUND

1
2 This matter relates to Governor Inslee’s Proclamation 21-14 *et seq.* (the
3 “Proclamation”), concerning mandatory vaccination for educators, healthcare
4 workers, and state employees and contractors. The Proclamation prohibits affected
5 employees from performing work after October 18, 2021, if they are not fully
6 vaccinated. ECF No. 45-5 at 5. The Proclamation does not create freestanding
7 exemptions but acknowledges that antidiscrimination statutes permit certain
8 individuals to avoid the vaccination requirement if they are entitled to “disability-
9 related accommodations” or “sincerely held religious belief accommodations.” *Id.*
10 (citing the Americans with Disabilities Act of 1990 (“ADA”), the Rehabilitation
11 Act of 1973, Title VII of the Civil Rights Act of 1964, the Washington Law
12 Against Discrimination, and any other applicable law).

13 The Proclamation currently affects approximately 681,000 workers in
14 Washington State. ECF No. 38 at 12. Proclamation 21-14 was initially issued on
15 August 9, 2021 and applied to certain state agency and healthcare workers. *Id.*
16 Subsequent Proclamation 21-14.1 was issued on August 20, 2021 and extended the
17 vaccination requirement to workers in educational settings. *Id.* Proclamation 21-
18 14.2 was issued on September 27, 2021 and further extended the vaccination
19 requirement to on-site contractors working with certain state entities. *Id.*

1 The named Plaintiffs in the present litigation are employed by various
2 entities affected by the Proclamation, including multiple state agencies, a local
3 government entity, and a healthcare provider. ECF No. 26 at 4–6, ¶¶ 2.5.2–2.5.23.
4 Generally, Plaintiffs oppose the vaccine requirement, although their individual
5 reasons for opposition vary. *See e.g.*, ECF Nos. 18 at 3, ¶ 3; 23 at 2, ¶ 5. Plaintiffs
6 filed a Complaint on October 6, 2021, alleging the Proclamation violates state and
7 federal law. ECF No. 1. Plaintiffs filed an Amended Complaint on October 15,
8 2021, which is the operative complaint. ECF No. 26. Plaintiffs filed the present
9 Motion for Temporary Restraining Order/Preliminary Injunction on October 15,
10 2021, seeking to enjoin the Proclamation. ECF No. 13. Due to the procedural
11 posture of the case at the hearing on October 22, 2021, the Court adjudicated both
12 the temporary restraining order and the preliminary injunction.

13 DISCUSSION

14 I. TRO Standard

15 Pursuant to Federal Rule of Civil Procedure 65, a district court may grant a
16 TRO in order to prevent “immediate and irreparable injury.” Fed. R. Civ. P.
17 65(b)(1)(A). The analysis for granting a temporary restraining order is
18 “substantially identical” to that for a preliminary injunction. *Stuhlbarg Int’l Sales*
19 *Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). It “is an
20 extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council*,

1 *Inc.*, 555 U.S. 7, 24 (2008).

2 To obtain this relief, a plaintiff must demonstrate: (1) a likelihood of success
3 on the merits; (2) a likelihood of irreparable injury in the absence of preliminary
4 relief; (3) that a balancing of the hardships weighs in plaintiff’s favor; and (4) that
5 a preliminary injunction will advance the public interest. *Winter*, 555 U.S. at 20;
6 *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012). Under the *Winter* test, a
7 plaintiff must satisfy each element for injunctive relief.

8 Alternatively, the Ninth Circuit also permits a “sliding scale” approach
9 under which an injunction may be issued if there are “serious questions going to
10 the merits” and “the balance of hardships tips sharply in the plaintiff’s favor,”
11 assuming the plaintiff also satisfies the two other *Winter* factors. *All. for the Wild*
12 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“[A] stronger showing of
13 one element may offset a weaker showing of another.”); *see also Farris v.*
14 *Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (“We have also articulated an
15 alternate formulation of the *Winter* test, under which serious questions going to the
16 merits and a balance of hardships that tips sharply towards the plaintiff can support
17 issuance of a preliminary injunction, so long as the plaintiff also shows that there is
18 a likelihood of irreparable injury and that the injunction is in the public interest.”
19 (internal quotation marks and citation omitted)).

1 **A. Likelihood of Success on the Merits**

2 Plaintiffs’ Amended Complaint alleges various constitutional and statutory
3 violations resulting from Governor Inslee’s Proclamation 21-14 regarding vaccine
4 requirements for state employees and contractors, healthcare workers, and
5 teachers. ECF No. 26 at 15–37, ¶¶ 4.1–14.24. To obtain injunctive relief, Plaintiff
6 must show that there are “serious questions going to the merits” of its claim, and
7 that it is likely to succeed on those questions of merit. *Cottrell*, 632 F.3d at 1131;
8 *Farris*, 677 F.3d at 865.

9 1. *Religious Freedom*

10 Plaintiffs appear to argue Proclamation 21-14 is facially neutral but not
11 generally applicable because it essentially creates “an unlawful faith-based barrier
12 to gainful employment.” ECF No. 13 at 16. Plaintiffs further argue the
13 Proclamation is unconstitutional because it cannot survive strict scrutiny. *Id.* at 18.
14 Defendants argue Plaintiffs’ claims present facial challenges to the Proclamation
15 because the remedy Plaintiffs are seeking includes a declaration the entire
16 Proclamation is unconstitutional. ECF No. 38 at 16.

17 As an initial matter, the Court notes that Plaintiffs rely almost entirely on
18 Washington caselaw for their free exercise claim, despite also alleging challenges
19 to the federal Constitution. ECF No. 13 at 16–20. While this Court may exercise
20 supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367, the

1 decision is discretionary. *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000 (9th Cir.
2 1997), *supplemented*, 121 F.3d 714 (9th Cir. 1997), *as amended*, (Oct. 1, 1997). In
3 the interests of judicial economy, convenience, fairness, and comity, the Court
4 declines supplemental jurisdiction over Plaintiffs’ state law claims and will address
5 only the challenges to federal law.

6 The Supreme Court has long endorsed state and local government authority
7 to impose compulsory vaccines. *See Jacobsen v. Commonwealth of*
8 *Massachusetts*, 197 U.S. 11 (1905); *Prince v. Massachusetts*, 321 U.S. 158 (1944)
9 (“The right to practice religion freely does not include liberty to expose the
10 community or the child to communicable disease or the latter to ill health or
11 death.”). As the contours of judicial review for constitutional cases developed,
12 courts continue to assess which level of scrutiny is applicable in vaccine mandate
13 cases. *See, e.g., Klaassen v. Trustees of Indiana Univ.*, --- F. Supp. 3d ---, No.
14 1:21-CV-238 DRL, 2021 WL 3073926, at *20 (N.D. Ind. July 18, 2021). Federal
15 courts have routinely analyzed such cases using rational basis and regularly reject
16 cases similar to this one that challenge vaccine mandates based on free exercise of
17 religion. *See, e.g., Phillips v. City of New York*, 775 F.3d 538 (2d Cir. 2015) (per
18 curium); *Whitlow v. California*, 203 F. Supp. 3d 1079 (S.D. Cal. 2016).

19 While challenges to free exercise of religion are traditionally subject to strict
20 scrutiny, facially neutral and generally applicable state regulations need only

1 support rational basis, even if they incidentally burden religious practices. *Church*
2 *of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993);
3 *Klaassen*, 2021 WL 3073926 at *25. Defendants argue Plaintiffs’ claims allege a
4 facial challenge to the Proclamation; however, Plaintiffs concede the Proclamation
5 is facially neutral. ECF No. 13 at 18. Therefore, the Court will focus only on
6 whether the Proclamation is generally applicable.

7 A law is not generally applicable if the record before the court “compels the
8 conclusion” that suppression of religion or religious practice is the object of the
9 law at issue. *Lukumi*, 508 U.S. at 534. Here, the object of the Proclamation is
10 clear: slow the spread of COVID-19. ECF No. 45-4. There is no discriminatory
11 animus or objective. Moreover, the Proclamation applies with equal force to all
12 educators, healthcare workers, and state employees and contractors, regardless of
13 religious affiliation—or lack thereof. Finally, the Proclamation recognizes
14 exemptions for those who qualify for accommodations due to their sincerely held
15 religious beliefs. ECF No. 45-4 at 6.

16 As Defendants rightly indicate, because there are no exemptions for
17 political, personal, or other objections, if anything, the Proclamation encourages
18 religious practice. *See Listecky v. Off. Comm. of Unsecured Creditors*, 780 F.3d
19 731, 744 (7th Cir. 2015) (“A benefit to religion does not disfavor religion in
20 violation of the Free Exercise Clause.”). Indeed, many of the named Plaintiffs

1 applied for and received an exemption based on their sincerely held religious
2 beliefs. ECF Nos. 16 at 1, ¶ 4; 17 at 3, ¶ 12; 18 at 3, ¶ 3; 19 at 3, ¶ 3; 20 at 3, ¶ 2;
3 21 at 3, ¶ 6; 22 at 3, ¶ 6; 23 at 2, ¶ 7; 24 at 3, ¶ 3; 25 at 3, ¶ 4. Plaintiffs cannot
4 demonstrate a discriminatory application solely because they disagree with the
5 availability of accommodations. Plaintiffs have failed to demonstrate how the
6 Proclamation is not generally applicable.

7 Next, the Court turns to the applicable standard that should be applied to
8 determine constitutionality of the Proclamation. As previously noted, federal
9 courts have routinely applied rational basis when evaluating challenges to vaccine
10 mandates based on free exercise claims. Nonetheless, for the purposes of the
11 present motion, the Court need not decide which standard should apply because the
12 Proclamation survives both strict scrutiny and rational basis. First, Plaintiffs
13 acknowledge the State has a “compelling” interest in preventing the spread of
14 COVID-19. ECF No. 13 at 19. Indeed, the Supreme Court has endorsed this same
15 “compelling” interest. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63,
16 67 (2020). The Proclamation is narrowly tailored in that it applies to specific
17 sectors whose employees are essential to combatting COVID-19 and who come
18 into regular contact with vulnerable segments of the public.

19 Moreover, the State has a legitimate government interest in preventing the
20 spread of COVID-19, as endorsed by the Ninth Circuit. *Slidewaters LLC v.*

1 *Washington State Dep't of Lab. & Indus.*, 4 F.4th 747, 758 (9th Cir. 2021). The
2 Proclamation is rationally related to that interest because it is based on
3 overwhelming evidence that the vaccines are safe and effective, and increasing
4 vaccination rates among those employees who come into regular contact with
5 vulnerable populations (e.g., those who are immunocompromised, who cannot get
6 vaccinated—like children under age 12, and those who must interact with public
7 employees—like prisoners) is a rational action to reduce the spread of COVID-19.

8 Plaintiffs' objections to the Proclamation relate primarily to their
9 disagreement with Defendants' judgment regarding public health, which is
10 insufficient to overcome the constitutionality of Defendants' actions in enacting
11 and promulgating the Proclamation, regardless of which level of scrutiny is
12 applied. Plaintiffs have failed to demonstrate there are serious questions going to
13 the merits of their free exercise claim, and that they are likely to succeed on those
14 questions of merit.

15 2. *Americans with Disabilities Act*

16 Plaintiffs' ADA claim appears to challenge only their employers' alleged
17 failure to provide reasonable accommodations. ECF No. 13 at 22. It is unclear
18 which Plaintiffs are alleging disability discrimination. Other than Mr. Wolfe,
19 whose insubstantial argument rests on his own description of a proposed
20 accommodation that was allegedly rejected by his employer, neither the Amended

1 Complaint nor the preset motion contain facts relating to disability discrimination.
2 In any event, Plaintiffs cannot demonstrate a likelihood of success on the merits or
3 that there are serious questions going to the merits of their ADA claim because
4 they have failed to satisfy the threshold requirement for filing an ADA claim in
5 federal court.

6 To sustain an ADA claim in federal court, a plaintiff must first file a timely
7 EEOC complaint against the alleged discriminatory party. *Josephs v. Pacific Bell*,
8 443 F.3d 1050, 1061 (9th Cir. 2006); *Gobin v. Microsoft Corp.*, No. C20-1044
9 MJP, 2021 WL 148395, at *4 (W.D. Wash. Jan. 15, 2021) (citing 42 U.S.C. §
10 12117(a) and *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000),
11 *overruled on other grounds*). Based on the current record, not a single Plaintiff has
12 filed a complaint with the EEOC. Plaintiffs seem to believe the exhaustion
13 requirement does not apply to them because the remedy they seek is unavailable.
14 Plaintiffs misunderstand the law. That particular exemption to the exhaustion
15 requirement only applies if “the hearing officer lacks the authority to grant the
16 relief sought.” *Paul G. v. Monterey Peninsula Unified Sch. Dist.*, 933 F.3d 1096,
17 1100 (9th Cir. 2019). Plaintiffs’ ADA claim rests entirely on the theory that their
18 employers failed to provide reasonable accommodations. However, reasonable
19 accommodation is precisely the remedy an ADA administrative officer is
20 empowered to provide. Plaintiffs were required to exhaust their administrative

1 remedies prior to filing their ADA claims in federal court and they failed to do so.

2 Consequently, the Court need not address the prima facie elements necessary
3 for an ADA claim as Plaintiffs have failed to satisfy the law’s threshold
4 requirement. Plaintiffs have failed to demonstrate there are serious questions
5 going to the merits of their ADA claim, and that they are likely to succeed on those
6 questions of merit.

7 3. *Contract Clause*

8 Plaintiffs argue the Proclamation violates the Contract Clause of the U.S.
9 Constitution because it is “a substantial modification of contracts” that “imposed a
10 new qualification for employment, and a new job requirement.” ECF No. 13 at 24;
11 U.S. Const. art. I, § 10, cl. 1. To state a claim for a violation of the Contract
12 Clause, plaintiffs must satisfy a two-part inquiry. *Sveen v. Melin*, 138 S.Ct. 1815,
13 1821 (2018). First, plaintiffs must show the law at issue “operated as a substantial
14 impairment of a contractual relationship.” *Id.* at 1821–22. To determine whether
15 there was a substantial impairment, courts look to “the extent to which the law
16 undermines the contractual bargain, interferes with a party’s reasonable
17 expectations, and prevents the party from safeguarding or reinstating his rights.”
18 *Id.* at 1822. If there is a substantial impairment, courts next turn to whether the law
19 at issue “is drawn in an appropriate and reasonable way to advance a significant
20 and legitimate public purpose.” *Apartment Ass’n of Los Angeles Cty., Inc. v. City*

1 *of Los Angeles*, 10 F.4th 905, 913 (9th Cir. 2021). When the government is a party
2 to a contract, a heightened scrutiny is applied. *Id.*

3 Here, Plaintiffs have not provided copies of the collective bargaining
4 agreements at issue or stated the material provisions that have allegedly been
5 modified. Nevertheless, the Court need not decide whether the Proclamation is a
6 substantial impairment of contractual relations because there is no doubt that it is
7 an appropriate and reasonable way to advance a significant and legitimate public
8 purpose, which is curbing the spread of COVID-19. *Id.* (declining to decide
9 whether an eviction moratorium during the COVID-19 pandemic constituted a
10 substantial impairment because the moratorium was appropriate and reasonable
11 under the circumstances); *see also Slidewaters LLC*, 4 F.4th at 758. Even applying
12 a heightened scrutiny, the Proclamation serves the State’s compelling interest in
13 reducing COVID-19 infections. *See Roman Cath. Diocese of Brooklyn*, 141 S. Ct.
14 at 67 (“Stemming the spread of COVID–19 is unquestionably a compelling
15 interest.”). As Defendants note, the Proclamation is well-supported by extensive
16 medical evidence, recommendations by professional organizations, and aligns with
17 other measures already in place in other governmental settings. ECF No. 38 at 36.
18 Conversely, Plaintiffs cite to no authority or evidence in the record to support their
19 contention that the Proclamation is unreasonable.

20 Plaintiffs have failed to demonstrate they will succeed on the merits of their

1 Contracts Clause claim and that there are serious questions going to the merits of
2 the claim.

3 4. *Procedural Due Process (Loudermill)*

4 Plaintiffs’ two-sentence argument regarding their entitlement to procedural
5 due process under *Cleveland Board of Education v. Loudermill*, 470 U.S 532
6 (1985) is undeveloped and devoid of any facts or evidence to support their
7 assertion. ECF No. 13 at 25. Consequently, the Court finds Plaintiffs have failed
8 to show they are likely to succeed on the merits of their due process claim and that
9 there are serious questions going to the merits of the claim.

10 5. *42 U.S.C. § 1983*

11 Plaintiffs cannot succeed on their claim for relief under 42 U.S.C. § 1983
12 because they have not established any constitutional violations. “By its terms, . . .
13 the statute creates no substantive rights; it merely provides remedies for
14 deprivations of rights established elsewhere.” *City of Oklahoma City v. Tuttle*, 471
15 U.S. 808, 816 (1985); *Weiner v. San Diego Cty.*, 210 F.3d 1025, 1032 (9th Cir.
16 2000) (affirming summary judgment on § 1983 claim where plaintiff failed to
17 establish a violation of a constitutionally protected right). Therefore, Plaintiffs
18 have failed to demonstrate there is a likelihood of success on the merits of their
19 Section 1983 claim and that there are serious questions going to the merits of that
20 claim.

B. Irreparable Harm

1

2 It is difficult to decipher the irreparable harm Plaintiffs allege they will

3 suffer. ECF No. 13 at 25–26. A plaintiff seeking injunctive relief must

4 “demonstrate that irreparable injury is *likely* in the absence of an injunction.”

5 *Winter*, 555 U.S. at 22 (emphasis in original) “Issuing a preliminary injunction

6 based only on a possibility of irreparable harm is inconsistent with [the Supreme

7 Court’s] characterization of injunctive relief as an extraordinary remedy that may

8 only be awarded upon a clear showing that the plaintiff is entitled to such relief.”

9 *Id.* “Irreparable harm is traditionally defined as harm for which there is no

10 adequate legal remedy, such as an award of damages.” *Arizona Dream Act*

11 *Coalition v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

12 First, Plaintiffs’ generalized and unsupported statement that they have rights

13 under the First and Fourteenth Amendments, the Contracts Clause, and the Equal

14 Protection Clause that “cannot be quantified with precision” does not establish

15 irreparable harm. ECF No. 13 at 26. To the extent Plaintiffs attempt to assert there

16 is a presumption of irreparable harm when constitutional violations are alleged, the

17 presumption does not apply where the party seeking injunctive relief fails to

18 demonstrate a likelihood of success on the merits and that there are serious

19 questions going to the merits of the constitutional claims. *A. v. Hochul*, --- F.

20 Supp. 3d ---, No. 1:21-CV-1009, 2021 WL 4734404, at *4 (N.D.N.Y. Oct. 12,

1 2021); *Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1282 (N.D. Cal. 2014),
2 *aff'd sub nom. Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015); *Associated Gen.*
3 *Contractors of California, Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th
4 Cir. 1991). Thus, Plaintiffs are not entitled to the presumption of irreparable harm.

5 Moreover, it is well settled that loss of employment does not constitute
6 irreparable harm. *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974) (absent a
7 “genuinely extraordinary situation,” employment loss is not irreparable harm);
8 *Massachusetts Correction Officers Federated Union v. Baker*, --- F. Supp. 3d ---,
9 No. 21-11599-TSH, 2021 WL 4822154, at *7 (D. Mass. Oct. 15, 2021); *Beckerich*
10 *v. St. Elizabeth Med. Ctr.*, --- F. Supp. 3d ---, No. CIV 21-105-DLB-EBA, 2021
11 WL 4398027, at *6 (E.D. Ky. Sept. 24, 2021).

12 Finally, Plaintiffs’ delay in both instituting this action and filing the present
13 motion cuts against their claim of irreparable harm. Plaintiffs filed their initial
14 Complaint on October 6, 2021, nearly two months after at least some Plaintiffs
15 became aware of the vaccination requirement, and two days after the deadline for
16 affected employees to have received their final vaccine dose. ECF Nos. 1; 26 at 6,
17 ¶ 3.4, at 10, ¶ 3.28. Then, Plaintiffs waited until October 15, 2021 to file their
18 present motion seeking emergency injunctive relief. ECF No. 13. Plaintiffs’
19 dilatory filings “implies a lack of urgency and irreparable harm.” *Oakland Trib.,*
20 *Inc. v. Chron. Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985). The Court finds

1 Plaintiffs have not carried their burden to demonstrate irreparable harm absent a
2 temporary restraining order.

3 **C. Balancing of Equities and Public Interest**

4 Plaintiffs argue the hardships from the loss of their employment outweighs
5 any benefits gained by implementing the Proclamation. ECF No. 27. Plaintiffs
6 further argue the public interest would be served by delaying implementation of
7 the Proclamation to avoid “immediate and irreparable harm” and to allow the
8 parties to further develop the record and to fully brief the issues. ECF No. 13 at
9 27.

10 “When the government is a party, these last two factors merge.” *Drakes Bay*
11 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). “In each case, courts
12 must balance the competing claims of injury and must consider the effect on each
13 party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at
14 24 (quotation marks and citation omitted). The Court must balance the hardships
15 to the parties should the *status quo* be preserved against the hardships to the parties
16 should Plaintiffs’ requested relief be granted. “In exercising their sound discretion,
17 courts of equity should pay particular regard for the public consequences in
18 employing the extraordinary remedy of injunction.” *Id.* (quotation omitted). “The
19 public interest inquiry primarily addresses impact on non-parties rather than
20 parties.” *League of Wilderness Defs./Blue Mountains Biodiversity Project v.*

1 *Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014) (citation omitted). Regardless,
2 the Court will not grant a preliminary injunction unless the public interests in favor
3 of granting an injunction “outweigh other public interests that cut in favor of *not*
4 issuing the injunction.” *Cottrell*, 632 F.3d at 1138 (emphasis in original).

5 Here, the balancing of equities tips heavily in favor of the evidenced-backed
6 decisions of the government regarding public health and safety measures, as
7 compared to Plaintiffs’ personal beliefs and accommodation preferences. While
8 the Court is sensitive to the potential economic hardships Plaintiffs face should
9 their employment status change, the balancing of harm and equities weighs in
10 favor of Defendants because there is a “legitimate and critical public interest in
11 preventing the spread of COVID-19 by increasing the vaccination rate.” *Baker*,
12 2021 WL 4822154, at *8. Moreover, the public interest in reducing the dangers
13 and spread of COVID-19 would not be served by enjoining the Proclamation.
14 District courts across the country have come to the same conclusion. *See, e.g.*,
15 *Does 1-6 v. Mills*, --- F. Supp. 3d ---, No. 1:21-CV-00242-JDL, 2021 WL 4783626,
16 at *17 (D. Me. Oct. 13, 2021), *aff’d*, No. 21-1826, 2021 WL 4860328 (1st Cir. Oct.
17 19, 2021) (collecting cases). As one court noted “[w]eakening the State’s response
18 to a public-health crisis by enjoining it from enforcing measures employed
19 specifically to stop the spread of COVID-19 is not in the public interest.”
20 *Bimber’s Delwood, Inc. v. James*, 496 F. Supp. 3d 760, 789 (W.D.N.Y. 2020).

1 Therefore, the Court finds the balance of equities tips in favor of Defendants and
2 that the public interest would not be served by enjoining the Proclamation.

3 **CONCLUSION**

4 The Court finds that Plaintiffs have failed to satisfy either the *Winter* test or
5 the *Cottrell* sliding scale test. Therefore, Plaintiffs are not entitled to a temporary
6 restraining order or a preliminary injunction.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

8 Plaintiffs’ Motion for Temporary Restraining Order/Preliminary Injunction
9 (ECF No. 13) is **DENIED**.

10 The District Court Executive is directed to enter this Order and furnish
11 copies to counsel.

12 DATED October 25, 2021.



13 *Thomas O. Rice*

14 THOMAS O. RICE
15 United States District Judge