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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN DOE, et al.,

Plaintiffs,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT, et al.,

Defendants.

Case No.: 21cv1809-LL-MDD

**ORDER DENYING PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION**

[ECF No. 35]

Pending before the Court is Plaintiffs’¹ Motion for Preliminary Injunction. ECF No. 35. Plaintiffs seek to prevent Defendants, including the San Diego Unified School District (“SDUSD”), from enforcing their COVID-19 vaccine mandate. *Id.* The Motion has been fully briefed and is suitable for submission without oral argument. For the reasons set forth below, the Motion is **DENIED**.

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¹ The Plaintiffs as set forth in the First Amended Complaint (“FAC”) are three sets of parents and four students: John and Jane Doe and their child Jill Doe, Tiffany Roe and her children Terry and Taylor Roe, and Andrew Poe and his child Adrian Poe. ECF No. 34 ¶¶ 12-14, 15-17, 18-19.

1 **I. BACKGROUND**

2 **A. SDUSD’s Vaccination Roadmap and Related Procedural History**

3 On September 28, 2021, Defendant San Diego Unified School District (“SDUSD”)
4 adopted, via a document called a Vaccination Roadmap, a requirement that all students
5 eligible for a fully FDA-approved COVID-19 vaccine receive all required doses of that
6 vaccine by December 20, 2021, to attend school in-person and participate in extra-
7 curricular activities. ECF No. 1 ¶¶ 31-34; ECF No. 34 ¶¶ 42-45.

8 A lawsuit was filed by the Doe Plaintiffs on October 22, 2021 challenging the
9 Vaccination Roadmap. ECF No. 1. On November 1, 2021, the Doe Plaintiffs filed an Ex
10 Parte Motion for Temporary Restraining Order and Order to Show Cause re: Preliminary
11 Injunction; and for Leave to Proceed Pseudonymously. ECF No. 7. On November 18, 2021,
12 District Judge Bencivengo denied Plaintiffs’ motion, finding that Plaintiffs lacked standing
13 and that they had not established a likelihood of success on the merits or that they would
14 suffer irreparable harm if the Court did not issue a TRO. *Doe v. San Diego Unified School*
15 *District (“Doe I”)*, 2021 WL 5396136 (S.D. Cal. 2021). Plaintiffs appealed, and sought an
16 injunction pending appeal. ECF No. 21. On December 4, 2021, a majority panel on the
17 Ninth Circuit reached the same conclusion as District Judge Bencivengo finding that
18 Plaintiffs “have not carried their burden to establish a likelihood of success on the merits,
19 or that they will suffer irreparable harm if this Court does not issue an injunction, or that
20 the public interest weighs in their favor.” *Doe v. San Diego Unified School District (“Doe*
21 *II”)*, 19 F.4th 1173, 1182 (9th Cir. 2021). The Ninth Circuit also found that Plaintiffs “have
22 not demonstrated a sufficient likelihood of success in showing that the district court erred
23 in applying rational basis review, as opposed to strict scrutiny, to the student vaccination
24 mandate.” *Id.* at 1177. Plaintiffs then filed an emergency application for an injunction
25 pending appeal with the Supreme Court, and a motion for rehearing en banc, but both were
26 denied. *Doe v. San Diego Unified School District*, 142 S.Ct. 1099 (2022); *Doe v. San Diego*
27 *Unified School District (“Doe III”)*, 22 F.4th 1099 (9th Cir. 2022). The Supreme Court
28 denied Plaintiffs’ application for emergency injunctive relief stating “because [the School

1 District] ha[s] delayed implementation of the challenged policy, and because they have not
2 settled on the form any policy will now take, emergency relief is not warranted at this
3 time.” 142 S.Ct. at 1099. The Supreme Court also denied Plaintiffs’ “alternative request
4 for a writ of certiorari before judgment and a stay pending resolution.” *Id.*

5 SDUSD has delayed the implementation of the student vaccination requirement
6 multiple times including in December 2021. ECF No. 38-2, Declaration of Lamont Jackson
7 (“Jackson Decl.”) ¶ 3 and Ex. A. On February 22, 2022 and on March 8, 2022, the SDUSD
8 Board approved revisions to the student vaccination requirement including the
9 implementation dates. Jackson Decl. ¶ 4 and Ex. A. The student vaccination requirement
10 continued to apply to all students unless medically-exempted, but remained applicable to
11 students sixteen and older because full FDA approval of a COVID-19 vaccine has not yet
12 occurred for younger age groups. Jackson Decl. ¶ 4 and Ex. A. On May 24, 2022, the
13 SDUSD Board postponed the vaccination plan to at least July 2023. Jackson Decl. at ¶ 5
14 and Ex. A. The SDUSD superintendent, whose duties include oversight of the planning,
15 attainment, and implementation of a requirement that all district students and staff be
16 vaccinated against the COVID-19 virus, stated in a signed declaration on June 1, 2022 that
17 “[b]ased on the action of the Board of Education on May 24, 2022, [] there is no student
18 vaccination requirement in the San Diego Unified School District, it is undetermined
19 whether there will ever be a student vaccination requirement in the San Diego Unified
20 School District, if there is ever a student vaccination requirement it will not be implemented
21 prior to July, 2023 [and] the nature and scope of the requirement will be based on the data
22 and the conditions at the time of implementation.” Jackson Decl. ¶¶ 1, 6.

23 **B. Operative Complaint**

24 Plaintiffs’ original complaint in this case was filed on October 22, 2021 and
25 contained one claim under 42 U.S.C. § 1983 – that the Vaccination Roadmap violates the
26 Free Exercise Clause of the First Amendment to the U.S. Constitution. ECF No. 1. The
27 operative complaint is Plaintiffs’ First Amended Complaint (“FAC”) and contains five
28 claims. ECF No. 34. Even though Plaintiffs’ FAC added additional Plaintiffs and claims,

1 all five claims still allege that the Vaccination Roadmap violates the Free Exercise clause
2 of the First Amendment to the United States Constitution. *Id.* at 21-30.

3 The challenged Vaccination Roadmap is also substantively the same as what was
4 previously challenged, with the exception that it has been postponed until at least July 2023
5 and that in the event it is reinstated at that time, the specifics of the policy will be based on
6 data and conditions at that time. Jackson Decl. ¶ 6. In fact, Plaintiffs’ Motion for
7 Preliminary Injunction concedes that the mandate is substantively the same, with the
8 exception of the new timeline for its implementation. *See, e.g.*, Motion at 10 (“On Monday,
9 February 22, 2022, SDUSD’s Board of Education discussed re-imposing a virtually
10 identical mandate, with only a few minor tweaks, simply delayed from the Spring semester
11 to the Summer semester.”); Motion at 13 (“Substantively, the new COVID-19 vaccine
12 mandate is largely the same as before, with its excessive holes and exemptions – it just has
13 a new implementation timeline.”); Motion at 15 (“...[O]n March 8, 2022, SDUSD set a
14 new timeline for its implementation [of the vaccine mandate] without significant
15 modification.”).

16 The relief sought in the FAC is as follows:

- 17 A. An order and judgment declaring that the Vaccination Roadmap, facially
18 and as applied to Plaintiffs, violates the First Amendment to the U.S.
19 Constitution;
20 B. An order temporarily, preliminarily, and permanently enjoining and
21 prohibiting Defendants from enforcing their unlawful policies against
22 Plaintiffs, and from engaging in any practices or conduct that chills
23 Plaintiffs’ free exercise of religion;
24 C. Nominal and actual damages;
25 D. Attorneys’ fees and costs; and
26 E. Such other and further relief as the Court deems appropriate and just.

27 FAC at 31, Prayer for Relief.

28 **II. LEGAL STANDARD**

The party seeking a preliminary injunction must establish that (1) he is likely to
succeed on the merits, (2) he will likely suffer irreparable harm in the absence of
preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in

1 the public interest. *City & Cty. of San Francisco v. United States Citizenship & Immigr.*
2 *Servs.*, 944 F.3d 773, 789 (9th Cir. 2019) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555
3 U.S. 7, 20 (2008)). In the Ninth Circuit, the court may apply a sliding scale test in which
4 “serious questions going to the merits” and a balance of hardships that tips sharply toward
5 the moving party can support the issuance of a preliminary injunction, as long as there is
6 also a showing of a likelihood of irreparable injury and that the injunction is in the public
7 interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

8 “[A] preliminary injunction is customarily granted on the basis of procedures that
9 are less formal and evidence that is less complete than in a trial on the merits.” *Univ. of*
10 *Texas v. Camenisch*, 451 U.S. 390, 395 (1981). “The Court is permitted to consider
11 inadmissible evidence in deciding a motion for a preliminary injunction.” *Disney*
12 *Enterprises, Inc. v. VidAngel, Inc.*, 224 F. Supp. 3d 957, 966 (C.D. Cal. 2016), *aff’d*, 869
13 F.3d 848 (9th Cir. 2017) (citation omitted). “While district courts may consider
14 inadmissible evidence in the context of a preliminary injunction, this does not mean that
15 evidentiary issues have no relevance to this proceeding. Such issues, however, properly go
16 to weight rather than admissibility.” *Id.* (citation omitted).²

17 III. DISCUSSION

18 Plaintiffs contend that “SDUSD’s COVID-19 vaccine mandate is unconstitutional,
19 both facially and as applied, and is causing real harm to real students – including Plaintiffs
20 Terry Roe, Taylor Roe, and Adrian Poe – with no justification for why their religious
21 beliefs cannot be accommodated.” Motion at 11. Plaintiffs further contend that “SDUSD’s
22 COVID-19 vaccine mandate is both subject to, and cannot survive, strict scrutiny. But even
23 under rational basis review, in the unique context of this case, refusing to extend an
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26 ² Plaintiffs make numerous evidentiary objections in support of their Motion. ECF No. 39.
27 It is not necessary for the Court to determine the admissibility of evidence in the context
28 of a request for injunctive relief, but where the Court has expressly relied on evidence that
is subject to an evidentiary objection, the Court has overruled the objection.

1 exemption to Plaintiffs lacks any rational connection to a legitimate government interest.”
2 *Id.* at 16. In sum, Plaintiffs argue that the injunction factors are satisfied, and also that Court
3 should dispense with a bond requirement and deny any stay of its order pending appeal. *Id.*
4 at 16-34.

5 Defendants argue that “the student vaccination requirement they seek to enjoin no
6 longer exists” because of the May 24, 2022 Board decision to “postpone any student
7 vaccination requirement until at least July, 2023 and in the event the requirement is
8 reinstated in or after July, 2023, the specifics and parameters of that requirement will be
9 based on data and conditions at that time.” *Oppo.* at 8. Defendants further argue that “given
10 that all but one student Plaintiff will no longer be a student in the District in and after July,
11 2023, these Plaintiffs and their parents lack standing.” *Id.* Defendants also argue that “*Doe*
12 *I, Doe II, and Doe III* remain as guidance for this Court” noting that “[o]n December 4,
13 2021 a majority panel reached the same conclusion [as Judge Bencivengo], concluding
14 Plaintiffs ‘have not raised a serious question as to whether the mandate is neutral,’ ‘have
15 not raised a serious question as to whether the mandate is generally applicable,’ and ‘have
16 not established that the public interest tilts in favor of granting’ extraordinary relief.” *Id.*
17 at 18 (citing *Doe II*, 19 F.4th at 1177-1181).

18 This Court already previously denied Plaintiffs’ motion for injunctive relief
19 challenging a similar vaccination policy, and the Ninth Circuit affirmed and then denied
20 en banc review. *See Doe I, Doe, II, and Doe III.* Even Plaintiffs concede that substantively,
21 the new COVID-19 vaccinate mandate is largely the same as before, with a new
22 implementation timeline. Motion at 10, 13, 15. Plaintiffs’ new claims in the FAC are still
23 premised on violations of the Free Exercise Clause, just as the claim in the original
24 complaint was. Accordingly, the Court is bound by the law of this case. Specifically, on
25 November 18, 2021, Judge Bencivengo denied Plaintiff’s Motion for Temporary
26 Restraining Order and Order to Show Cause re: Preliminary Injunction challenging an
27 almost identical vaccination mandate with a different implementation timeline by alleging
28 violation of the Free Exercise Clause. *Doe I.* Judge Bencivengo found that Plaintiffs lacked

1 standing, failed to establish a likelihood of success on the merits, and rejected all of
2 Plaintiffs’ arguments. *Id.* Plaintiffs appealed, and on December 4, 2021, a majority panel
3 on the Ninth Circuit reached the same conclusion in a well-reasoned opinion. *Doe II.*
4 Subsequently, Plaintiffs’ emergency motion for an injunction pending appeal with the
5 Supreme Court and a motion for rehearing en banc were also denied. *Doe III.* These orders
6 are controlling law in this case, and the Court declines to reiterate their respective reasoning
7 and holdings. In light of these orders, the similarity between the challenged vaccination
8 policies, and the same alleged constitutional violation of the Free Exercise Clause, this
9 Court finds that Plaintiffs have not established a likelihood of success on the merits nor
10 met any of the other preliminary injunction factors.

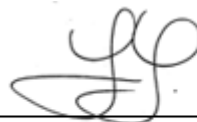
11 Additionally, the Court finds Plaintiffs’ Motion to be unnecessary to preserve the
12 status quo because it is unclear if and when the challenged vaccination policy will be
13 implemented and what the specifics and parameters of its requirements will be. The Court
14 is unpersuaded by Plaintiffs’ argument that “there is nothing precluding the District from
15 moving its COVID-19 vaccine plans up a semester or two.” Reply at 8.

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court finds that Plaintiffs have not met any of the
18 preliminary injunction factors. Accordingly, Plaintiffs’ Motion for Preliminary Injunction
19 is **DENIED**. For the same reasons, an injunction pending any appeal of this ruling is not
20 warranted.

21 **IT IS SO ORDERED.**

22 Dated: June 21, 2022



23
24 Honorable Linda Lopez
25 United States District Judge
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