

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:20-cv-06472-SVW-AFM	Date	9/1/2020
Title	<i>Matthew Brach et al. v. Gavin Newsom et al.</i>		

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz  
Deputy Clerk

N/A  
Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

**Proceedings:** ORDER VACATING PRELIMINARY INJUNCTION/PERMANENT INJUNCTION HEARING AND SETTING SUMMARY JUDGMENT BRIEFING SCHEDULE

The Court believes that this matter may be appropriately resolved by summary judgment. The Court therefore vacates the hearing date currently set for Plaintiff’s Motion for Preliminary Injunction/Permanent Injunction.

The Court has the power to enter summary judgment sua sponte. *See Norse v. City of Santa Cruz*, 629 F.3d 966, 971 (9th Cir. 2010) (“District courts unquestionably possess the power to enter summary judgment sua sponte, even on the eve of trial.”). However, the Court must “giv[e] notice and a reasonable time to respond” and “identify[] for the parties material facts that may not be genuinely in dispute.” Fed. R. Civ. P. 56(f)(3); *see also Arce v. Douglas*, 793 F.3d 968, 976 (9th Cir. 2015) (internal citation and quotation marks omitted) (a district court considering summary judgment sua sponte must ensure that “the party against which summary judgment is granted has already had a full and fair opportunity to ventilate the issues.”).

In its Order Denying Plaintiffs’ Application for a Temporary Restraining Order, the Court has explained in detail its view of Plaintiffs’ likelihood of success on the merits. Dkt. 51.

As to Plaintiffs’ Due Process claim, the Court explained in its Order that Defendants are likely to prevail on a threshold legal issue – the absence of a fundamental right to minimum public education – that would preclude an injunction on this ground whatever the facts may show. *Id.* at 6-8.

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As to Plaintiffs’ Equal Protection claim, the Court has not been apprised of any dispute about the scope of in-person learning restrictions or Defendants’ asserted rationale. Accordingly, if the Court is satisfied that Defendants’ stated rationale is rationally related to their goal, then – regardless of the ultimate truth or validity of its assumptions – the Court may conclude “that plaintiffs have no chance of success on the merits ... regardless of what facts plaintiffs might prove during the course of the litigation.” *Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1087 (9th Cir. 2015). Under rational basis review, “a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” *Id.* (quoting *FCC v. Beach Commc’ns*, 508 U.S. 307, 315 (1993)); *see also id.* at 1085 (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992)) (“[A] legislative classification must be upheld [where] the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker.”). “Where there are ‘plausible reasons’ for legislative action, ‘our inquiry is at an end.’” *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir. 2004) (quoting *Beach Commc’ns*, 508 U.S. at 313-14).

The Court notes that the record provided by Defendants at this point is likely sufficient to survive rational basis review – especially in light of the deference owed in the context of a public health emergency to Defendants under *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). *See* Dkt. 51, at 4-5. It may even be appropriate at this point for the Court to conclude that Plaintiffs have failed to state a claim given the publicly asserted rationale for in-person learning restrictions. *See Angelotti Chiropractic*, 791 F.3d at 1087-88 (reversing district court’s denial of motion to dismiss Equal Protection claim based on report in legislative history); *Mayfair House, Inc. v. City of West Hollywood*, 2014 WL 12599838, at \*6-\*7 (C.D. Cal. 2014) (granting motion to dismiss Equal Protection claim based on findings explicitly incorporated into city ordinance).

However, without a legislative or administrative record that could be evaluated on a motion to dismiss, it may be necessary for the Court to consider the additional detail provided in the declarations of Dr. James Watt, Chief of the Division of Communicable Diseases at the California Department of Public Health, in adjudicating Plaintiffs’ Equal Protection claim. *See* Dkt. 35-1, 54-1. These post hoc declarations may properly be considered on rational basis review. *See RUI One Corp.*, 371 F.3d at 1155 (quoting *Beach Commc’ns*, 371 F.3d at 1155) (“[I]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”); *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 481 (9th Cir. 2014) (citing *R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980)) (explaining that “deference to post-hoc explanations [is] central to

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rational basis review”). For this reason, the Court has determined that summary judgment may be a more appropriate procedure for resolving this claim.

Similarly, the Court is unaware of any disputed facts material to the applicability of IDEA’s exhaustion requirements. Plaintiffs do not allege that they have exhausted administrative remedies. *See* Dkt. 55, at 6-12; Dkt. 40, at 9-10. Summary judgment is likely appropriate on this issue because “whether exhaustion is required under the IDEA is a question of law.” *C.C. by and through Ciriacks v. Cypress Sch. Dist.*, 2010 WL 11603053, at \*2 (C.D. Cal. 2010).

The Court recognizes its obligation under Rule 56(f) to give Plaintiffs “notice and a reasonable time to respond” before considering a sua sponte grant of summary judgment against it. Fed. R. Civ. P. 56(f). Therefore, the Court will allow Plaintiffs to file an opposition to a sua sponte grant of summary judgment within 14 days of the issuance of this Order. Defendants will have 10 days to respond. At that point, the Court will take its sua sponte consideration of summary judgment under submission along with Plaintiffs’ Motion for a Preliminary Injunction.

To ensure a “full and fair opportunity to ventilate the issues,” *Arce*, 793 F.3d at 976 (citation omitted), the parties will be permitted to supplement the record and make any arguments regarding the Court’s consideration of summary judgment to resolve Plaintiffs’ claims.

IT IS SO ORDERED.

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