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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/06/2022 at 03:50:00 PM
Clerk of the Superior Court
By Richard Day, Deputy Clerk

LET THEM CHOOSE, an initiative of
LET THEM BREATHE, a California
nonprofit public benefit corporation,

Plaintiff,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT; and DOES 1-50,

Defendants.

Case No. 37-2021-00043172-CU-WM-CTL,
consolidated with 37-2021-00049949-CU-
MC-CTL

~~PROPOSED~~ JUDGMENT

Department: C-64
Judge: Hon. John S. Meyer

Action filed: October 12, 2021
Trial date: December 20, 2021

S.V., individually, and on behalf of J.D.,
as guardian ad litem,

Plaintiff,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT; and DOES 1 through 50,
inclusive;

Defendants.

1 The consolidated petitions for writ of mandate under Code of Civil Procedure section
2 1085 as to the Plaintiff LET THEM CHOOSE’s First, Second, and Third Causes of Action, and
3 as to S.V.’s First and Second Causes of Action, came on regularly for hearing on December 20,
4 2021, at 9:00 a.m., in Department 64 of the above-entitled Court, the Honorable John S. Meyer
5 presiding. Lee Andelin and Arie Spangler appeared on behalf of Plaintiff Let Them Choose,
6 Aaron Siri appeared on behalf of Plaintiff S.V., individually and on behalf of J.D. as guardian
7 ad litem, and Mark Bresee appeared on behalf of Defendant San Diego Unified School District.

8 After fully considering the pleadings, the briefs in support and in opposition, and other
9 written and oral submissions by the parties, **IT IS HEREBY ORDERED AND ADJUDGED**
10 **THAT:**

11 1. The petition for writ of mandate filed by Plaintiff LET THEM CHOOSE, an
12 initiative of LET THEM BREATHE, a California nonprofit public benefit corporation (“LET
13 THEM CHOOSE”), in the case numbered 37-2021-00043172-CU-WM-CTL, is GRANTED as
14 to the First, Second, and Third Causes of Action;

15 2. Plaintiff LET THEM CHOOSE has withdrawn without prejudice its Fourth,
16 Fifth, Sixth, Seventh, and Eighth Causes of Action in the case numbered 37-2021-00043172-
17 CU-WM-CTL, and those causes of action are hereby dismissed without prejudice;

18 3. The petition for writ of mandate filed by Plaintiff S.V., individually, and on
19 behalf of J.D., as guardian ad litem, in the case numbered 37-2021-00049949-CU-MC-CTL, is
20 GRANTED as to all causes of action.

21 4. All Defendants sued fictitiously as DOES 1–50 in the case numbered 37-2021-
22 00043172-CU-WM-CTL are DISMISSED.

23 5. All Defendants sued fictitiously as DOES 1 through 50, inclusive, in the case
24 numbered 37-2021-00049949-CU-MC-CTL are DISMISSED.

25 6. Judgment is hereby entered in favor of Plaintiff LET THEM CHOOSE, an
26 initiative of LET THEM BREATHE, a California nonprofit public benefit corporation, and in
27 favor of Plaintiff S.V., individually, and on behalf of J.D. The reasons for the Court’s decision,
28 order and judgment are set forth in the Minute Order issued by the court on December 20, 2021,

1 after the Court issued a tentative ruling and heard oral argument of counsel. A true and correct
2 copy of the Court’s Minute Order is attached hereto as **Exhibit A** and is incorporated into this
3 judgment by this reference.

4 7. The Governing Board of Defendant San Diego Unified School District (“Board”)
5 shall not implement or enforce its Vaccination Roadmap, approved by the Board on September
6 28, 2021.

7 8. The clerk shall issue a peremptory writ of mandate, pursuant to Code of Civil
8 Procedure section 1085, commanding that the Board shall not implement or enforce its
9 Vaccination Roadmap, approved by the Board on September 28, 2021.

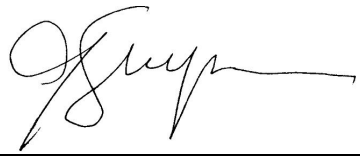
10 9. The Court retains jurisdiction to consider Plaintiffs’ applications for attorneys’
11 fees, for costs of suit, and for other and further relief as the Court may deem necessary to
12 enforce this judgment and the peremptory writ of mandate issued hereunder.

13 10. This judgment, and the peremptory writ of mandate issued hereunder, shall not
14 be stayed pending appeal.

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IT IS SO ORDERED.

DATED: 1/6/22



Hon. John S. Meyer
Judge of the Superior Court

Exhibit A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 12/20/2021

TIME: 09:00:00 AM

DEPT: C-64

JUDICIAL OFFICER PRESIDING: John S. Meyer

CLERK: Herlinda Chavarin

REPORTER/ERM: Donna E. Boulger CSR# 6162

BAILIFF/COURT ATTENDANT: T. Moore

CASE NO: **37-2021-00043172-CU-WM-CTL** CASE INIT.DATE: 10/12/2021

CASE TITLE: **Let Them Choose an initiative of Let Them Breathe vs San Diego Unified School District [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

Lee M Andelin, counsel, present for Plaintiff(s).

Aaron Siri, counsel, present for Guardian Ad Litem, Plaintiff(s).

Arie Spangler, counsel, present for Plaintiff(s).

Mark Bresee, specially appearing for counsel Amy W Estrada, present for Defendant(s).

The Court informs counsel it will read its tentative ruling and provide counsel a copy of its tentative ruling after it has been read. The Court states it will take a brief recess to allow counsel to review the tentative and then present oral argument.

The Court proceeds to read its tentative ruling on the record.

9:21 am Court is in recess.

10:20 am Court reconvenes with counsel present as noted above. The Court proceeds to hear argument by counsel on its tentative ruling.

The Court having heard argument by counsel, CONFIRMS its tentative ruling as follows:

In September 2021, Respondent San Diego Unified School District's (SDUSD) Board of Education voted to approve a "Vaccination Roadmap" (the Roadmap). The Roadmap requires all students eligible for a fully FDA approved COVID-19 vaccine to receive the vaccine in order to attend school in-person and participate in extra-curricular activities. Currently, only those students aged 16 and older fall within the mandate and must receive both doses of the vaccine by December 20, 2021. Students who do not comply will be placed into an independent study program beginning with the new semester. Petitioners Let Them Choose, an initiative of Let Them Breathe, and S.V., individually and on behalf of J.D. (collectively, Petitioners) seek a writ of mandate restraining SDUSD from implementing the Roadmap.

SDUSD "may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established." (Educ. Code, § 35160, emphasis added; see *Hartzell v. Connell* (1984) 35 Cal.3d 899, 915–916.) Petitioners contend that the Roadmap field is preempted by Education Code section 120325 et seq. and directly conflicts with both California Code of Regulations, title 17, section 6025 and provisions of Education Code section 51745 et seq.

"Under the normal rules of preemption, a local ordinance that conflicts with state law is preempted by the state law and void. . . . Pursuant to preemption law, a conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Haytasingh v. City of San Diego* (2021) 286 Cal.Rptr.3d 364, 392; see generally *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061; *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239.)

More than a century ago, the Legislature began regulating the field of school vaccination requirements. In 1890, the California Supreme Court upheld a "Vaccination Act" that required schools to exclude children who had not been vaccinated against smallpox. (*Abeel v. Clark* (1890) 84 Cal. 226, 227–228, 230.) The Court stated that vaccination, "being the most effective method known of preventing the spread of the disease referred to, it was for the legislature to determine whether the scholars of the public schools should be subjected to it." (*Id.* at p. 230, emphasis added.) The Legislature subsequently put control of smallpox under the direction of the State Department of Public Health (DPH) and provided that "no rule or regulation on the subject of vaccination shall be adopted by school or local health authorities." (Educ. Code, § 49405, emphasis added; see also Health & Saf. Code § 131052, subd. (3).) Between 1961 and 2010, the Legislature imposed a total of 10 vaccine requirements for school children-diphtheria, hepatitis B, haemophilus influenza type b, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, and varicella. (Health & Saf. Code, §§ 120325, subd. (a)(1)–(10), 120335, subd. (b)(1)–(10); see Assem. Com. on Health, Analysis of Sen. Bill No. 277 (2015–2016 Reg. Sess.) as amended May 7, 2015, p. 4.) "Each of the 10 diseases was added to the California code through legislative action, after careful consideration of the public health risks of these diseases, cost to the state and health system, communicability, and rates of transmission." (*Love v. State Department of Education* (2018) 29 Cal.App.5th 980, 987, emphasis added.) A detailed statutory and regulatory scheme has been established to implement the school vaccine mandates. (See Health & Saf. Code, § 120325 et seq.; Cal. Code Regs., tit. 17, § 6000 et seq.) The scheme included exemptions for both medical reasons and personal beliefs. (See Health & Saf. Code, § 120370; former Health & Saf. Code, § 120365.)

In 2015, in response to decreasing vaccination rates and a rise in measles, the Legislature removed the "personal beliefs" exemption to these 10 school vaccination requirements. (Sen. Bill No. 277 (2015–2016) §§ 1, 4; see generally *Love, supra*, 29 Cal.App.5th 980; *Brown v. Smith* (2018) 24 Cal.App.5th 1135.) In doing so, the Legislature considered whether "the issue of public health could be addressed by mandating vaccines on a community by community or school district [by] school district basis," but concluded that "a statewide approach is the correct approach." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 277 (2015–2016) as amended Apr. 22, 2015, p. 18.) "To provide a statewide standard, allows for a consistent policy that can be publicized in a uniform manner, so districts and educational efforts may be enacted with best practices for each district. . . . Further in consultation with various health officers, they believe a statewide policy provides them the tools to protect all children equally from an outbreak." (*Ibid.*)

Recognizing the need for additional vaccine mandates that may arise in the future, the Legislature added a "number 11" mandating that school children be vaccinated against "[a]ny other disease deemed appropriate by the [State Department of Public Health], taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians." (Health & Saf. Code, §§ 120325, subd. (a)(11), 120335, subd. (b)(11); see also *id.* at § 131051, subd. (a)(3)(J).) However, because the addition of a new mandate via this "catch all" provision "disrupts the careful balancing of the various rights involved" in the legislative process, the Legislature decided to maintain the "personal beliefs" exemption for new vaccination requirements added by the DPH. (*Id.* at § 120338; Sen. Com. on Judiciary, Analysis of Sen. Bill No. 277 (2015–2016) as amended Apr. 22, 2015, pp. 17–18.)

The DPH is charged with adopting and enforcing regulations to carry out the vaccination requirements. (Health & Saf. Code, § 120330; see Cal. Code Regs., tit. 17, § 6000 et seq.) The DPH has not added COVID-19 as a required vaccine under the "catch all" provision, which would need to include a personal belief exemption. (Cal. Code Regs., tit. 17, § 6025; see Health & Saf. Code, § 120338.) Rather, DPH regulations state that a school "shall unconditionally admit or allow continued attendance" to any student who has either received each of 10 enumerated vaccines or obtained an exemption. (*Ibid.*, emphasis added; see also *Puerta v. Torres* (2011) 195 Cal.App.4th 1267, 1272 ["The term 'shall' is mandatory"].)

Vaccination requirements do not apply to students who are enrolled in an independent study program and not receiving classroom-based instruction. (Health & Saf. Code, § 120335, subd. (f).) However, the decision to participate in independent study must be voluntary. (See Educ. Code, §§ 51747, subds. (f), (g)(8), 51749.5, subd. (a)(9), (12), 51749.6, subd. (a)(6); Cal. Code Regs., tit. 5, § 11700, subd. (d).) Thus, if students have received all 10 vaccinations, a school district cannot force or coerce them into non-classroom-based independent study.

In light of the above, it is clear that SDUSD's Roadmap attempts to impose an additional requirement in a field that the Legislature fully occupies through Health and Safety Code section 120325 et seq. The Legislature intended a statewide standard for school vaccination requirements and established a detailed scheme. The Legislature expressly contemplated the addition of new vaccine mandates without further legislative action, but assigned that responsibility to the DPH, taking into account recommendations from other relevant agencies and organizations and mandating that those new mandates include a personal belief exemption. The statutory scheme leaves no room for each of the over 1,000 individual school districts to impose a patchwork of additional vaccine mandates, including those like the Roadmap that lack a personal belief exemption and therefore are even stricter than what the DPH could itself impose upon learned consideration.

SDUSD is correct that certain statutes contemplate school districts administering vaccines in cooperation with local health officers to help prevent and control communicable diseases in school age children, including "diseases that represent a current or potential outbreak as declared by a federal, state, or local public health officer," provided the district has received parental consent. (See Educ. Code, § 49403; see also Health & Saf. Code, §§ 120375, subd. (d), 120380.) However, the Roadmap was not enacted to cooperate with the local health officer, and more to the point, those statutes do not detract from the Legislature's intent to occupy the field of mandating a specific vaccine for school age children.

SDUSD's Roadmap also attempts to impose an additional requirement that directly conflicts with California Code of Regulations, title 17, section 6025 and the above referenced provisions of Education

Code section 51745 et seq. SDUSD is required to admit students and allow their continued in-person attendance as long as they have received the 10 enumerated vaccines. SDUSD's attempt to impose an additional vaccine mandate and force students (both new and current) who defy it into non-classroom-based independent study directly conflicts with state law.

The sole function of this Court is to determine whether the Roadmap is preempted by state law. SDUSD's Roadmap appears to be necessary and rational, and the district's desire to protect its students from COVID-19 is commendable. Unfortunately, the field of school vaccine mandates has been fully occupied by the State, and the Roadmap directly conflicts with state law. The addition of a COVID-19 vaccine mandate without a personal belief exemption must be imposed by the Legislature. Accordingly, this Court is compelled to **GRANT** the petitions for writ of mandate.

IT IS SO ORDERED:



Judge John S. Meyer