SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

21CV002702: CHILDREN'S HEALTH DEFENSE-CALIFORNIA CHAPTER, et al. vs PIEDMONT UNIFIED SCHOOL DISTRICT, et al.
01/11/2022 Hearing on Ex Parte Application Alternative Writ in Department 23

Tentative Ruling

The Ex Parte Application EX PARTE APPLICATION FOR ALTERNATIVE WRIT OF MANDATE AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES ; DEC OF J. BARSOTTI filed by Jane Doe, Children's Health Defense-California Chapter, Protection of the Educational Rights for Kids (P.E.R.K.) on 01/04/2022 is Granted.

Petitioners' application for alterative writ of mandate is GRANTED. Parties to appear to discuss the timing of the Return.

Petitioners challenge the Piedmont Unified School District's (PUSD) recently enacted Covid-19 Vaccine mandate as violative of state law which, Petitioners assert, limits the authority to enact a new vaccine mandate to the State. They cite Health & Safety Code, § 120335, which lists 10 required vaccines, and a catch-all provision, subpart (a)(11), which authorizes the California Department of Public Health (CDPH) to add other vaccination requirements "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." They further cite § 120338 which provides that if a vaccine in addition to those listed in section 120335(a)(1)-(10) is mandated, both a medical and personal belief exemption must be provided.

PUSD adopted its Covid-19 mandate on September 22, 2021 by modifying its Administrative Regulation 5141.31 to add the Covid-19 vaccine to a list of required vaccines. The mandate appears to apply to students as young as 5 years old, and requires all such "eligible" students to be fully vaccinated by November 17, 2021 in order to participate in in-person learning or extracurricular activities. While a medical exemption is permitted, no personal belief exemption is permitted other than requests made before January 1, 2016.

The State of California does not currently require Covid-19 vaccinations for school attendance, although Governor Newsom has announced an intent to require Covid-19 vaccination for middle and high school students when the FDA has fully approved such vaccines for children. To date, the FDA has approved "emergency use" of the Pfizer vaccine for children as young as 5 years of age.

Respondents assert two procedural challenges in opposition, which the Court addresses below. Respondents do not address the dispute on the merits and, at least at this stage, it appears that PUSD lacks authority to add a new vaccine requirement. (See Health & Safety Code, § 120335, subd. (a), § 120338.)

FACTUAL BACKGROUND

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Petitioners and Plaintiffs are two California nonprofit corporations and two individuals, who bring this action pseudonymously on their behalf and on behalf of their minor children (collectively, "Petitioners"). (Verified Amended Petition, ¶¶18-25.) Petitioners challenge the requirement that students within the Piedmont Unified School District ("PUSD") be vaccinated against Covid-19 in order to attend in-person schooling. (Id. at ¶¶ 7, 8, 22.) Respondents Piedmont Unified School District ("PUSD") along with PUSD's Superintendent and Bandmembers (collectively, "Respondents") argue that Petitioners fail to establish standing and further fail to establish exhaustion of their remedies at law. (Respondents Opposition, at pp. 2-6.)

The individual petitioners—Jane Doe and Janet Doe (the "Doe Petitioners")—are Piedmont residents who purport to bring this action on their own behalf and on behalf of their minor children, who are students within the PUSD school system and subject to the challenged vaccine requirement. (Verified Amended Petition, ¶¶ 24, 25.) The children of Doe Petitioners have refused to comply with the vaccine requirement and/or have been denied an exemption. (Ibid.)

Petitioner Children's Health Defense – California Chapter ("CHD-CA") is a nonprofit organization with over 7,000 members, consisting mostly of "parents whose children have been negatively affected by environmental and chemical exposures, including unsafe vaccines." (Verified Amended Petitioner, ¶ 18.) CHD-CA alleges that its members "are either students themselves within PUSD" or "are parents with children attending school in PUSD schools." (Ibid.) In either case, the children have not complied with the vaccine requirement and/or have been denied an exemption to the requirement. (Ibid.)

Similarly, Protection of the Education Rights of Kids ("PERK," and together with CHD-CA, "Nonprofit Petitioners") is a nonprofit "whose mission is to protect children's rights to an education." (Verified Amended Petition, ¶ 20.) PERK claims to have over 15,000 members throughout California, "consisting predominately of parents of children attending school" including students or parents of students who have either not complied with PUSD's vaccine requirement or been denied an exemption thereto. (Ibid.)

LEGAL FRAMEWORK

1. Standing

A writ of mandate may be issued only upon the verified petition of a "beneficially interested" party. (Civ. Proc. Code, § 1086; see also Brown v. Crandall (2011) 198 Cal.App.4th 1, 8 [finding the beneficial interest standing requirement applies to both ordinary and administrative writs of mandate].)

To establish a beneficial interest, the petitioner must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (Carsten v. Psychology Examining Comm. (1980) 27 Cal.3d 793, 796.) "The beneficial interest must be direct and substantial." (Save the Plastic Bag Coalition v. City

of Manhattan Beach (2011) 52 Cal.4th 155, 165.) Further, the interest must fall within "the zone of interests to be protected by the legal duty asserted." (Lindelli v. Town of San Anselmo (2003) 111 Cal.App.4th 1099, 1107, citing Waste Management of Alameda County, Inc. v. County of Alameda (2000) 79 Cal.App.4th 1223, 1233-34 ("Waste Management") [disapproved in part on other grounds in Save the Plastic Bag, supra, 52 Cal.4th at pp. 160, 166-171].)

There are two prongs to establishing a beneficial interest. The first "is whether the plaintiff will obtain some benefit from issuance of the writ or suffer some detriment from its denial." (Waste Management, supra, 79 Cal.App.4th at 1233.) "The second prong of the beneficial interest test is whether the interest the plaintiff seeks to advance is within the zone of interests to be protected or regulated by the legal duty asserted." (Id. at pp. 1233-34.) Ultimately, a "petitioner has no beneficial interest within the meaning of the statute if he or she 'will gain no direct benefit from [the writ's] issuance and suffer no direct detriment if it is denied.'" (SJJC Aviation Services, LLC v. City of San Jose (2017) 12 Cal.App.5th 1043, 1053, quoting Waste Management, supra, 79 Cal.App.4th at p. 1232.)

2. Public Interest Standing

"The public interest exception 'applies where the question is one of public right and the object of the action is to enforce a public duty—in which case it is sufficient that the plaintiff be interested as a citizen in having the laws executed and the public duty enforced.'" (Rialto Citizens for Responsible Growth v. City of Rialto (2012) 208 Cal.App.4th 899, 914, quoting Waste Management, supra, 79 Cal.App.4th at pp. 1236-37.) The exception "'promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right.'" (Ibid., quoting Save the Plastic Bag, supra, 52 Cal.4th at p. 166.)

In this context, the "beneficial interest standard is so broad, even citizen or taxpayer standing may be sufficient to obtain relief in mandamus." (Doe v. Albany Unified School District (2010) 190 Cal.App.4th 668, 685, quoting Mission Hosp. Regional Medical Center v. Shewry (2008) 168 Cal.App.4th 460, 480.)

"[T]he courts balance the applicant's need for relief (i.e., his beneficial interest) against the public need for enforcement of the official duty. When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced." (Citizens for Amending Proposition L v. City of Pomona (2018) 28 Cal.App.5th 1159, 1174, quoting McDonald v. Stockton Metropolitan Transit District (1973) 36 Cal.App.3d 436, 440.) "The balancing is done on a sliding scale: 'When the public need is less pointed, the courts hold the petitioner to a sharper showing of personal need.'" (Ibid.)

3. Exhaustion of Administrative Remedies

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A writ petition "will be denied if the applicant has a plain, speedy and adequate remedy at law." (Barnard v. Municipal Court of City and County of San Francisco (1956) 142 Cal.App.2d 324, 326.) The petitioner bears the burden of showing that there is no such remedy. (Ibid.) There are several exceptions to the exhaustion of administrative remedies rule, including futility, when the controversy lies outside the administrative agency's jurisdiction, and when the aggrieved party can positively state what the administrative agency's decision in the particular case would be. (Doyle v. City of Chino (1981) 117 Cal.App.3d 673, 683 ["Futility is a narrow exception to the general rule."]; Ogo Associates v. City of Torrance (1974) 37 Cal.App.3d 830, 834 [listing exceptions].)

ANALYSIS

1. Prima Facie Evidence of Standing

As an initial matter, the parties dispute whether standing may be established through allegations in a verified writ petition. (Respondents' Opposition, at p. 5.) The Court finds standing may be established by a verified writ petition, unless contrary evidence is presented that rebuts a prima facie showing.

Standing is a jurisdictional issue that may be raised at any time. (Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 438 ["Although County did not raise these issues before the Court of Appeal, contentions based on a lack of standing involve jurisdictional challenges and may be raised at any time in the proceeding."]; Driving School Association of California v. San Mateo Union High School District (1992) 11 Cal.App.4th 1513, 1517 ["A petitioner must be able to plead and prove that it will be, or has been, aggrieved by the administrative order."].)

Finding that a petitioner either possesses or lacks standing may be based on allegations contained in a writ petition. (Braude v. City of Los Angeles (1990) 226 Cal.App.3d 83, 87 ["If the petition reveals the petitioner either lacks the right or standing to sue, it is vulnerable to a general demurrer on the ground it fails to state a cause of action."]; Kane v. Redevelopment Agency (1986) 179 Cal.App.3d 899, 904 ["Such allegations are sufficient to satisfy the liberal standing requirements for private individuals acting in the public interest to institute proceedings to enforce the provisions of CEQA."]; Taschner v. City Council (1973) 31 Cal.App.3d 48, 55 ["Insofar as standing is concerned, the allegation that petitioner was an elector, taxpayer, and owner of real property in the city was sufficient to give him standing to challenge the validity of the ordinance."], disapproved of on other grounds in Associated Home Builders, Inc. v. City of Livermore (1976) 18 Cal.3d 582.)

Alternatively, standing may be established through sworn declarations. (San Francisco Apartment Association v. City and County of San Francisco (2016) 3 Cal.App.5th 463, 473 ["We conclude the trial court's findings on the threshold issue of standing are adequately supported by evidence in the record in the form of sworn declarations submitted by three individuals on behalf of plaintiffs."].)

The Court finds that Petitioners may rely upon the allegations in their Verified Amended Petition to establish prima facie standing. Here, Respondents argue that the Nonprofit Petitioners fail to submit any "admissible evidence" that "at least one affected PUSD student is in fact a member of their organization." (Opposition, at p. 5.) However, the Verified Amended Petition makes such allegations: Both Nonprofit Petitioners allege to have "members who are either students themselves within PUSD who have not complied with" the vaccine requirement or who have been denied an exemption, or parents of such students. (Verified Amended Petition, ¶¶ 18, 20.) Further, both organizations submit declarations of their respective Executive Director attesting to the veracity of the facts alleged in the Petition. (See Young Declaration and Bohn Declaration, attached to Verified Amended Petition.)

As Respondents note in their opposition, prima facie evidence is evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced. (Opposition, at p. 3, citing People v. Skiles (2011) 51 Cal.4th 1178, 1186.) Absent contrary evidence, a verified petition, like a declaration, is submitted under oath and may be used to establish standing. Respondents are free to bring another challenge upon a more developed record if evidence that Petitioners lack standing comes to light. At this point, however, Respondents offer no evidence to rebut the allegations of the Verified Amended Petition.

2. Individual Standing

Generally speaking, minors lack legal capacity to sue in their own name; instead, litigation must be conducted through a guardian, conservator, or guardian ad litem. (Code Civ. Proc., § 372, subd. (a).) "The guardian or guardian ad litem is not a party to the action; instead, he or she is a representative of record of a party who lacks capacity to sue." (Safai v. Safai (2008) 164 Cal.App.4th 233, 245.) Because Doe Petitioners have not petitioned, nor been appointed, as guardians ad litem, the standing of Jane Doe and Janet Doe, as individuals, must be analyzed independent of the standing of their minor children.

Here, the Doe Petitioners have individual standing and, alternatively, have public interest standing. In Doe v. Albany Unified School District, the court addressed whether parents of students have sufficient standing for issuance of a writ of mandate. (Doe v. Albany Unified School Dist. (2010) 190 Cal.App.4th 668.) There, plaintiffs—a student and his parent—claimed that the school district and the district's board of education failed to comply with Education Code § 51210, which requires at least 200 minutes of physical education or physical activities for students. (Id. at p. 672.) After finding the student-plaintiff had standing, the court stated that even if the plaintiff-parent's "interest as the parent of plaintiff Doe in the latter's education is not a sufficient beneficial interest in itself, he certainly has an interest as a citizen in seeing that section 51210, subdivision (g), is properly enforced." (Id. at p. 685, citing In re Samuel G (2009) 174 Cal.App.4th 502, 509 ["Among the constitutional privileges enjoyed by parents it the right to determine how their children should be educated"]; see also Troxel v. Granville (2000) 530 U.S. 57, 66 [citing cases recognizing "the fundamental right of parents to make decisions concerning

the care, custody, and control of their children."].)

Here, Petitioners Jane Doe and Janet Doe (together, the "Doe Petitioners") both allege to bring the instant action "on behalf of herself and her minor children." (Verified Amended Petition, ¶¶ 24, 25.) Both Doe Petitioners allege to have children in the Piedmont Unified School District who have been denied exemptions from the vaccine requirement. (Ibid.) As a result, the Doe Petitioners allege their children "now face[] involuntary placement to an independent student program and denial of other in-person services and benefits provided to other PUSD students." (Ibid.) Although the Doe Petitioners do not allege that they, themselves, are subject to PUSD's vaccine requirement, the vaccine requirement impacts the Doe Petitioners' "fundamental right of parents to make decisions concerning the care, custody, and control of their children" much in the same way the Albany School District parent-petitioner's rights were implicated. This is sufficient to establish individual standing at this juncture.

Respondents cite Serrano v. Priest for the proposition that "the right to an education is held by the child, not the parents." (Opposition, at p. 3, citing Serrano v. Priest (1971) 5 Cal.3d 584.) While a true statement, a child's right to education does not foreclose the possibility that parents hold other rights implicated by PUSD's vaccine requirement. Rather, courts recognize "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." (Troxel, supra, 530 U.S. at p. 66 [citing cases]; see also Quilloin v. Walcott (1978) 434 U.S. 246, 255 ["We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."]; Washington v. Glucksberg (1997) 521 U.S. 702, 720 [holding the Due Process Clause protects a parent's right "to direct the education and upbringing of one's children"].)

Alternatively, the Doe Petitioners sufficiently allege a basis for public interest standing. Here, the public need is weighty. As the Love court acknowledged, there is a "compelling governmental interest of ensuring health and safety by preventing the spread of contagious diseases." (Love, supra, 29 Cal.App.5th at 990.) Although the Doe Petitioners personal interest may be less significant on balance, the public interest in resolving a dispute central to the regulation of public health is sufficient to confer an alternative basis for standing in this instance.

In reply, Petitioners cite two cases, neither of which apply here. First, Petitioners cite Doe v. Lincoln Unified School District (2010) 188 Cal.App.4th 758 for the proposition that the Doe Petitioners may bring this Petition pseudonymously. (Reply, pp. 6-7.) The court in Lincoln Unified however did not address standing and Respondent does not dispute Petitioners' ability to bring this action pseudonymously. (Doe v. Lincoln Unified School District, supra, 188 Cal.App.4th at p. 765 ["Thus, the question is not whether plaintiff has standing to sue but whether she may do so using a fictitious name."].) Thus, Lincoln Unified is inapposite.

Second, Petitioners cite Hector F. v. El Centro Elementary School District (2014) 227 Cal.App.4th 331 for the proposition that the Doe Petitioners have "taxpayer interest" standing. (Reply, at pp. 8-9.) In Hector F., the petitioner filed a complaint and petition for writ of mandate

to seek enforcement of California's antidiscrimination and antiharassment laws based on his son's alleged harassment in school. (Hector F., supra, 227 Cal.App.4th at pp. 335-36.) The complaint also asserted a cause of action for "waste of taxpayer funds." (Ibid.) The court held that the petitioner had standing under the public interest exception and that the "public interest in enforcing the antidiscrimination and antiharassment statutes also provides Hector with standing to bring a taxpayer action under Code of Civil Procedure section 526a." (Id. at p. 342.)

"Code of Civil Procedure section 526a permits a taxpayer to bring an action to restrain or prevent an illegal expenditure of public money. No showing of special damage to a particular taxpayer is required as a requisite for bringing a taxpayer suit." (Connerly v. State Personnel Board (2001) 92 Cal.App.4th 16, 29.) A "taxpayer suit" is different from a "citizen suit," insofar that a citizen suit requires a "legal or special interest in the result" (i.e., a beneficial interest) or public interest standing. (Ibid.) Thus, "taxpayer standing" is separate and apart from the public interest exception to the "beneficial interest" requirement and applies to suits where a taxpayer sues to restrain or prevent illegal expenditure of public money. (Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 438-40.)

Here, Petitioners make no allegation that would trigger taxpayer standing. The Verified Amended Petition makes no reference to section 526a of the Code of Civil Procedure, nor does it reference the spending of public funds or money. Thus, Petitioners cannot invoke taxpayer standing.

3. Associational Standing

"[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." (Driving School Association of California v. San Mateo Union High School District (1992) 11 Cal.App.4th 1513, 1517 [internal quotation marks omitted], quoting Brotherhood of Teamsters & Auto Truck Drivers v. Unemployment Ins. Appeals Bd. (1987) 190 Cal.App.3d 1515, 1522; see also Citizens for Amending Proposition L v. City of Pomona (2018) 28 Cal.App.5th 1159, 1177.)

In Driving School Association of California, the association-petitioner challenged the San Mateo School District's policy of charging high school students tuition to take driver training classes provided by the adult school. The court found that the association lacked a "beneficial interest in the refund of tuition payments," but "had standing under the public interest exception." (Driving School Association of California, supra, 11 Cal.App.4th at p. 1519.) "The question of the School District's authority to charge the tuition affects the 'public as opposed to private, interest' and concerns 'performance of a public duty.'" (Ibid.) Additionally, the court found relevant that a contrary finding would "effectively remove[]" the issue from judicial review, because "[h]igh school students who take this brief 24-hour class are unlikely to have the financial resources or the economic interest necessary to maintain the protracted litigation necessary to test the School

District's authority to charge tuition for the class." (Ibid.)

Here, Respondents challenge the standing of the Nonprofit Petitioners. The Nonprofit Petitioners allege to have "members who are either students themselves within PUSD" or "are parents with children attending school in PUSD schools." (Verified Amended Petition, ¶ 18, 20.) Further, the Nonprofit Petitioners claim that their members either have not complied with PUSD's vaccine requirement or have requested, and been denied, exemption from the vaccine requirement. (Ibid.) Thus, the Nonprofit Petitioners have sufficiently alleged that their members would have standing in their own right.

Second, the Nonprofit Petitioners claim to be organizations "established to advocate, including through litigation, for the protection of the health of children in California," and "whose mission is to protect children's rights to an education." (Verified Amended Petition, ¶¶ 19, 20.) The Nonprofit Petitioners allege that the PUSD's vaccine requirement will "deprive many of these California children access to superior in-person public education." (Id. at ¶ 18, 20.) Thus, the interests the Nonprofit Petitioners allege to protect are germane to the organizations' purpose.

Finally, neither the claim nor the relief requires the participation of individual members. The Verified Amended Petition requests a writ commanding Respondents to vacate their vaccine requirement, injunctive relief prohibiting implementation and enforcement of the vaccine requirement, declaratory judgment, and an award of attorneys' fees and costs. (Verified Amended Petition, Prayer for Relief.) None of the requested relief requires participation of individual members; rather, it broadly seeks to stop enforcement of the vaccine requirement and otherwise declare it unlawful or in excess of PUSD's authority. In Driving School Association of California, the petitioners requested return of tuition charge to students, which could arguably be interpreted to require individual member participation insofar individual members may be required to participate in the refund transaction. Here, even less involvement is necessary as the Petitioners seek to prevent students from receiving something (i.e., a vaccine) in the first instance. Put another way, there is no transaction to undo and, if successful, individual participation is entirely unnecessary.

Alternatively, the Nonprofit Petitioners have standing under the public interest exception to seek a writ compelling PUSD to refrain from imposing vaccine requirements upon its students. The question of PUSD's authority to impose such requirements is a public issue, as opposed to a merely private issue, because it implicates the ability of school districts throughout California to impose similar requirements. Further, like in Driving School Association of California, it is questionable whether PUSD students or individual parents would have the time and financial resources to challenge the requirement. (Driving School Association of California, supra, 11 Cal.App.4th at 1519.)

Although Petitioners cite Code of Civil Procedure, § 382 in reply, they do not contend that this is a class action or similar collective action. Therefore, section 382, which applies to standing in class action and other representative actions, and the cases interpreting it are inapplicable to

Petitioners' Petition. (In re Tobacco II (2009) 46 Cal.4th 298, 312-13 ["Code of Civil Procedure section 382 has been judicially construed as the authorizing statute for class suits in California."].)

4. Exhaustion of Administrative Remedies

Respondents contend that a procedure exists "to file an administrative complaint against a local educational agency alleging violation of state law…" (Opposition, at p. 6.) In support, Respondents request the Court take judicial notice of two PUSD policies and regulations. (See Respondents' Request for Judicial Notice ("RJN"), Nos. 1 & 2.) Respondents cite to PUSD's Board Policy 1312.3 and Administrative Regulation 1312.3, which form PUSD's Uniform Complaint Procedures. (RJN, Exs. A & B.) The Court takes judicial notice of the documents, but not the truth of the matter asserted therein. (Evid. Code, § 452, subd. (c); Warmington Old Town Associates, LP v. Tustin Unified School Dist. (2002) 101 Cal.App.4th 840, 858, n.3 [taking judicial notice of school board resolution]; Laraway v. Sutro & Co., Inc. (2002) 96 Cal.App.4th 266, 271, n.1 [same].)

In response, Petitioners argue futility. They assert that because their requests for exemptions were denied, they were not required to engage in a futile process before seeking relief. (Reply, at p. 9.)

The Uniform Complaint Procedures ("UCPs") were created to ensure that PUSD "complies with applicable state and federal laws and regulations governing educational programs." (RJN, Ex. A, at p. 29 of 66.) The UCPs "are a very specialized form of complaint…used specifically to investigate and resolve" a limited set of complaints. (Ibid.) The UCPs sets forth 12 specific types of complaints, none of which on their face appear to apply to Petitioners' challenge to PUSD's vaccine mandate. (Ibid.) Similarly, PUSD's Administrative Regulation applies to complaints concerning school facilities, teacher assignments and instructional materials, and claims of harassment and discrimination. (RJN, Ex. B, at p. 36 of 66.)

Here, the policies and regulations cited by Respondents do not, at least facially, apply to Petitioners' challenge the PUSD's vaccine mandate and therefore do not provide a remedy at law. Further, even if the procedures were applicable, Petitioners allege that they "gave notice to Respondents" challenging the vaccine mandate and that "notice went unheeded." (Verified Amended Petition, ¶ 35; see also Petitioners' Declaration of Jessica Barsotti, Ex. D [November 15, 2021 Cease and Desist Letter].) Thus, Petitioners do not have a plain, speedy and adequate remedy at law.

The Court need not address Petitioners' futility argument; however, it is unclear that being denied an exemption would be sufficient to show futility. Petitioners argue that PUSD acted beyond its authority by imposing the vaccine requirement, so requesting an exemption does not appear to sufficiently challenge PUSD's authority to establish futility.

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The Court accordingly finds that issuance of the alternative writ is appropriate. In doing so, the Court makes no ultimate finding on the merits of Petitioners' claims, nor, at this stage, consider public health concerns, which have not been raised by Respondents. The parties are directed to attend the scheduled hearing to contest, if either deem it appropriate, this Tentative Ruling, and to discuss the schedule for further proceedings in this case.