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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN DOE #1 and JOHN DOE #2,  
Plaintiffs,  
v.  
CITY OF SAN DIEGO *et al.*,  
Defendants.

Case No. 17-cv-1581-BAS-WVG  
**ORDER DENYING  
DEFENDANT'S EX PARTE  
MOTION TO HAVE  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT TAKEN  
OFF CALENDAR**  
[ECF No. 25]

18 Plaintiffs John Doe #1 and John Doe #2 have filed a motion for partial  
19 summary judgment. (ECF No. 24.) Plaintiffs seek summary judgment on the first  
20 claim in their complaint: their state law preemption claim. Defendant City of San  
21 Diego filed an ex parte motion requesting the Court take Plaintiffs' motion for  
22 summary judgment ("MSJ") off calendar. ("Ex Parte Mot.," ECF No. 25.)  
23 Defendant argues that pending legislation, State Bill 145 or SB145, will render  
24 Plaintiffs' MSJ moot. Plaintiffs oppose the ex parte motion. ("Opp'n," ECF No.  
25 26.) For the foregoing reasons, the Court **DENIES** Defendant's Ex Parte Motion.

26 **I. BACKGROUND**

27 Plaintiffs John Doe #1 and John Doe #2 are two California residents who are  
28 required to register as sex offenders ("Registrants") pursuant to California Penal

1 Code Section 290, *et seq.* (ECF No. 1, ¶ 6–7.) John Doe #1 resides in the City of  
2 San Diego and John Doe #2 intends to establish a new lawful permanent or temporary  
3 residence in the City of San Diego. (*Id.*) Therefore, John Doe #1 alleges he is subject  
4 to San Diego Municipal Code, Chapter 5, Article 8, Division 6, Sections 58.0601–  
5 58.0607 (the “Ordinance”). (*Id.*) John Doe #2 alleges the Ordinance precludes him  
6 from establishing a residence in the City of San Diego. (*Id.*) Plaintiffs challenge the  
7 constitutionality of the Ordinance on two grounds. As relevant here, Plaintiffs’ MSJ  
8 argues preemption—that “California state law preempts local governments from  
9 imposing residency restrictions on Registrants who are not serving terms of parole.”  
10 (ECF No. 24-1, at 1.) Specifically, California Penal Code section 3003.5 restricts  
11 Registrants released on parole from residing with other Registrants in a single family  
12 dwelling and makes it unlawful “for any person for whom registration is required  
13 pursuant to [California Penal Code] Section 290 to reside within 2000 feet of any  
14 public or private school, or park where children regularly gather.” Subsection (c)  
15 provides that “nothing in this section shall prohibit municipal jurisdictions from  
16 enacting local ordinances that further restrict the residency of any person for whom  
17 registration is required pursuant to Section 290.” Cal. Penal Code § 3003.5(c).

18 The Ordinance mandates additional residency restrictions for Registrants in  
19 the City of San Diego. Plaintiffs argue Penal Code section 3003.5(c) provides that  
20 while municipalities can adopt stricter laws, like the Ordinance, the laws may apply  
21 only to parolees. Defendant disagrees and states that if pending legislation SB145 is  
22 passed, it “would make it clear that the right to adopt stricter legislation found in  
23 3003.5(c) applies not only to parolees but to ‘anyone convicted of an offense  
24 requiring registration pursuant to Penal Code section 290.’” (Ex Parte Mot. at 2.)  
25 Thus Defendant asks the Court to defer ruling on Plaintiffs’ MSJ while SB145 is  
26 considered.

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1           **II.     DISCUSSION**

2           Defendant asks the Court to defer ruling on Plaintiffs’ MSJ, which is the same  
3 as asking the Court to stay the Motion.

4           The Court has inherent power to control its docket, including the discretion to  
5 stay proceedings or parts of proceedings. *See Landis v. N. Am. Co.*, 299 U.S. 248,  
6 254–55 (1936). The determination of whether to stay proceedings is best determined  
7 by weighing the competing interests of the parties and of the Court. *Id.*

8           “Among those competing interests are the possible damage which may  
9 result from the granting of a stay, the hardship or inequity which a party  
10 may suffer in being required to go forward, and the orderly course of  
11 justice measured in terms of the simplifying or complicating of issues,  
12 proof, and questions of law which could be expected to result from a  
stay.”

13 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (citing *Landis*, 299  
14 U.S. at 268).

15           As it stands now, Plaintiffs’ MSJ contests current legislation. This legislation  
16 may or may not change in the future. The issue therefore is whether the Court should  
17 stay or defer ruling on Plaintiffs’ MSJ while SB145 is considered. The problem with  
18 doing so is that the stay would be indefinite, as no party can point to a set date on  
19 which the fate of SB145 will be determined. *See Yong v. I.N.S.*, 208 F.3d 1116, 1119  
20 (9th Cir. 2000) (“If a stay is especially long or its term is indefinite, we require a  
21 greater showing to justify it.”). Defendant estimates SB145 will “be on the floor later  
22 this month” but of course, this could be delayed, and further, the date of the bill’s  
23 passage or rejection cannot be determined. Plaintiff argues that even if SB145  
24 proceeds forward, and even if the Governor signs SB145 into law after it is passed,  
25 the law would not take effect until January 1, 2020. (Opp’n at 2.) Indeed, whether  
26 the bill will be passed, whether any changes will be made to it, and exactly when all  
27 of this will occur is speculative.

28           As the reasoning behind its request, Defendant argues if the Court defers ruling

1 on the MSJ, this could “mitigate costs to the parties.” (Ex Parte Mot. at 3.) The  
2 Court agrees it is a burden on Defendant, or on any party in a lawsuit, to prepare a  
3 responsive brief to an MSJ. Defendant argues it will be burdened by responding to  
4 Plaintiffs’ MSJ which it believes will soon be mooted. But beyond the hardship in  
5 preparing a brief, Defendant will not be prejudiced if the Court denies the present ex  
6 parte motion. *See Mendez v. Optio Sols., LLC*, 239 F. Supp. 3d 1229, 1234 (S.D.  
7 Cal. 2017) (denying stay where the only hardship identified by the defendant was the  
8 possibility the parties may engage in unnecessary discovery and/or motion practice).  
9 On the other hand, Plaintiffs face potential prejudice if the Court grants the present  
10 ex parte motion. If the Court defers ruling on the MSJ, and then SB 145 is not adopted  
11 or is adopted differently than Defendant anticipates, Plaintiffs will be prejudiced by  
12 the unnecessary delay. This speculative prejudice, on both sides, does not weigh in  
13 favor of a stay. The Court also notes that Plaintiffs filed their MSJ prior to the  
14 scheduled Early Neutral Evaluation (“ENE”) conference. Plaintiffs state they hope  
15 the Court could resolve the issue in their MSJ before the ENE so that the parties will  
16 know whether the issues in the case have been narrowed by the time they sit down  
17 with the magistrate judge to discuss the case. (Opp’n at 1.) The Court agrees that  
18 leaving this issue hanging in limbo would likely make the settlement discussions at  
19 the ENE less productive.

20 After considering the competing interests, the Court finds the equities do not  
21 support staying or deferring ruling on Plaintiffs’ MSJ.

### 22 **III. CONCLUSION**

23 For the foregoing reasons, the Court **DENIES** Defendant’s ex parte motion.  
24 (ECF No. 25.) Plaintiffs’ MSJ remains on calendar.<sup>1</sup> However, going forward, the  
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26 <sup>1</sup> This case was recently transferred from Judge Moskowitz to this Court. Like the rules of Judge  
27 Moskowitz’s chambers, this Court’s chambers rules provide that the hearing date on a motion does  
28 not indicate a date when appearances are necessary; rather, it sets a briefing schedule for the motion.  
Therefore, the date of August 9, 2019 on Plaintiffs’ MSJ only sets the briefing schedule for the  
Motion and the Court will set oral argument if it deems necessary.

1 Parties **SHALL** alert the Court through a short joint motion as to any passage,  
2 relevant changes made to, or rejection of SB145.

3 **IT IS SO ORDERED.**

4 **DATED: July 12, 2019**

  
**Hon. Cynthia Bashant**  
**United States District Judge**

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