

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 22, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN STOCKTON, RICHARD  
EGGLESTON, M.D., THOMAS T.  
SILER, M.D., DANIEL  
MOYNIHAN, M.D., CHILDREN’S  
HEALTH DEFENSE, a not-  
for-profit corporation, and JOHN  
AND JANE DOES, M.D.s 1-50,

Plaintiffs,

v.

ROBERT FERGUSON, in his official  
capacity as Attorney General of the  
State of Washington, and KYLE S.  
KARINEN, in his official capacity as  
Executive Director of the Washington  
Medical Commission,

Defendants.

NO. 2:24-CV-0071-TOR

ORDER GRANTING MOTION TO  
DISMISS AND DENYING  
PRELIMINARY INJUNCTION

BEFORE THE COURT are Plaintiffs’ Motion for Preliminary Injunction  
(ECF No. 15) and Defendants’ Motion to Dismiss (ECF No. 17). Plaintiffs request  
oral argument. ECF No. 23. Pursuant to LCivR 7(i)(3)(B)(iii), the Court

1 determines oral argument is unwarranted. The Court has reviewed the record and  
2 files herein, the completed briefing, and is fully informed. For the reasons  
3 discussed below, Plaintiffs’ Motion for Preliminary Injunction, ECF No. 15, is  
4 DENIED and Defendants’ Motion to Dismiss, ECF No. 17, is GRANTED.

### 5 **BACKGROUND**

6 This case arises out of Plaintiffs’ challenge to the Washington Medical  
7 Commission’s (“the Commission”) investigations of two licensed medical  
8 professionals who published false information about the SARS-CoV-2 virus  
9 (“COVID-19”) in print news media and online. Plaintiffs filed the operable First  
10 Amended Complaint (“FAC”) on April 9, 2024. ECF No. 14. The FAC raises  
11 four causes of action requesting: (1) declaratory judgment that Defendants’ future  
12 investigations, prosecutions, and sanctions violates Plaintiffs’ First Amendment  
13 Rights; (2) declaratory judgment that Defendants’ current investigations,  
14 prosecutions, and sanctions violates Plaintiffs’ First Amendment Rights; (3)  
15 declaratory judgment that RCW 18.130.180(1) and (13) are facially  
16 unconstitutional and unconstitutionally overbroad and/or vague; and (4)  
17 declaratory judgment that the Commission’s interpretation of its laws violates  
18 Plaintiffs Eggleston, Siler and Moynihan’s Fifth and Fourteenth Amendment Due  
19 Process rights. *Id.*

1 Plaintiff John Stockton is actively involved in matters of public interest and  
2 co-hosts a podcast dealing with various topics including COVID-19. He is not a  
3 doctor nor subject to the regulations or procedures of the Commission. He  
4 contends that he has a right to hear licensed physicians who disagree with the  
5 “mainstream COVID narrative.” ECF No. 14 at 5-6, ¶¶ 9-10; *see also* ECF No.  
6 15-1.

7 Plaintiff Richard Eggleston is a retired ophthalmologist and is currently the  
8 subject of an administrative proceeding by the Commission. That proceeding has  
9 not been finalized. ECF No. 14 at 6, ¶¶ 11-12; *see also* ECF No. 15-2.

10 Plaintiff Thomas T. Siler is a retired physician who is currently the subject  
11 of an administrative proceeding by the Commission. That proceeding has not been  
12 finalized. ECF No. 14 at 6, ¶ 13; *see also* ECF No. 15-3.

13 Plaintiff Daniel Moynihan is a retired family medicine physician who is not  
14 subject of any administrative proceeding but complains that his speech is chilled  
15 by the Commission’s actions and that he would like to hear from other physicians  
16 speaking out against the mainstream COVID narrative. ECF No. 14 at 6-7, ¶ 14;  
17 ECF No. 15-4.

18 Plaintiffs’ counsel does not know who John and Jane Does 1-50 are and  
19 therefore does not represent them. Plaintiffs’ counsel alleges that the Doe  
20 Plaintiffs are licensed Washington physicians currently subject to the

1 Commission’s investigations and prosecutions. ECF No. 14 at 7, ¶ 15.

2 Plaintiff Children’s Health Defense (“CHD”) is a non-profit corporation  
3 whose mission is to end childhood health epidemics. Its mission includes  
4 advocating for medical freedom, bodily autonomy, and an individual’s right to  
5 receive the best information available based on a physician’s best judgment. *Id.* at  
6 7-9, ¶¶ 16-24. CHD asserts that its physician members are chilled from speaking  
7 out about the risk profile of the COVID vaccines and that its lay members have a  
8 right to receive such nonconforming opinions. *Id.* at 8, ¶ 19; *see also* ECF Nos.  
9 15-5.

10 Defendant Robert Ferguson is the Washington State Attorney General. His  
11 office and staff represent the Commission in its prosecution of physicians in  
12 disciplinary cases. *Id.* at 10, ¶¶ 25-26.

13 Defendant Kyle S. Karinen is the Commission’s Executive Director and  
14 oversees the investigations and prosecutions of physicians for misconduct. *Id.* at ¶  
15 28.

16 The Commission regulates physicians to assure accountability and public  
17 confidence in the practice of medicine. ECF No. 17 at 5. It investigates “all  
18 complaints or reports of unprofessional conduct” against licensed physicians.  
19 RCW 18.130.050(2). This includes, as relevant here, complaints alleging “moral  
20 turpitude, dishonesty, or corruption relating to the practice of” medicine, and

1 “[m]isrepresentation or fraud in any aspect of” the practice of medicine. RCW  
2 18.130.180(1), (13).

3 The Commission’s response to complaints received about licensed  
4 physicians is guided by the Uniform Disciplinary Act (UDA), RCW 18.130 *et seq.*  
5 Under the UDA, each complaint received by the Commission is reviewed by a  
6 panel of three commissioners. ECF No. 18 at 3, ¶ 8. The panel determines  
7 whether to initiate an investigation or close the complaint. *Id.* If an investigation  
8 is authorized, the complaint will be assigned to an investigator, who undertakes  
9 discovery and prepares an objective report. *Id.* at ¶¶ 9-10. The objective report is  
10 forwarded to a reviewing commissioner and a panel of at least three  
11 commissioners. *Id.* at ¶ 10. The panel may elect to (1) close the case, (2)  
12 investigate further, (3) offer a stipulation to informal disposition, or (4) issue a  
13 Statement of Charges. *Id.* If the panel decides to issue a Statement of Charges,  
14 then an Assistant Attorney General will review the file and sign off on the Charges  
15 before service is made on the respondent physician. *Id.* at 4, ¶ 12. Service of the  
16 Statement of Charges formally commences the administrative adjudicative process.  
17 *Id.* at ¶ 13. When a respondent timely requests a hearing to contest the charges  
18 issued against him, a formal hearing is held in front of a panel of three  
19 commissioners with a health law judge acting as the presiding officer. *Id.* at ¶ 14.  
20 Both sides are entitled to present opening and closing statements, evidence, and

1 witnesses. *Id.* at ¶ 15. At the termination of the adjudicative proceeding, the panel  
2 determines whether to take disciplinary action against the respondent and issues a  
3 written order. *Id.* at 5, ¶ 16. A respondent who disagrees with the panel’s final  
4 disposition of his case may seek reconsideration from the panel or direct judicial  
5 review in a Washington state superior court or court of appeals. *Id.* at ¶ 17.

6 The Commission issued a Statement of Charges against Dr. Eggleston on  
7 August 3, 2022 concerning newspaper articles he wrote about COVID-19. ECF  
8 No. 17 at 7. Dr. Eggleston’s articles minimized deaths from the SARS-CoV-2  
9 virus, incorrectly asserted that PCR tests for a COVID diagnosis are inaccurate,  
10 and falsely stated that COVID-19 vaccines and mRNA vaccines are harmful or  
11 ineffective and that ivermectin is a safe and effective treatment for COVID-19.  
12 *See, e.g.*, ECF No. 20-2 at 4-21. A full and final hearing by the Commission has  
13 not been conducted at this time and no penalties have been imposed. ECF No. 18  
14 at 5-6, ¶ 19.

15 The Commission issued a Statement of Charges against Dr. Siler on October  
16 25, 2023, after it received complaints about Internet blog posts by Dr. Siler. Dr.  
17 Siler wrote false statements about the risks of contracting COVID-19, the  
18 effectiveness of hydroxychloroquine and ivermectin as treatments for COVID-19,  
19 the transmissibility of COVID-19 from children, and the safety of COVID-19  
20 vaccines. *See, e.g.*, ECF No. 20-2 at 42-61. A full and final hearing has not been

1 conducted at this time and no penalties have been imposed. ECF No. 18 at 5-6, ¶  
2 19.

### 3 DISCUSSION

4 Plaintiffs move for a preliminary injunction. ECF No. 15. Defendants  
5 oppose Plaintiff's motion and move to dismiss. ECF No. 17. The Court grants the  
6 motion to dismiss because Plaintiff's claims are unripe, the *Younger* doctrine  
7 requires abstention, Plaintiffs have not stated a plausible as-applied First  
8 Amendment challenge, and Plaintiffs' First Amendment and Due Process  
9 challenges are without merit. The Court declines to award attorneys' fees.

#### 10 I. Legal Standard

11 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may  
12 move to dismiss a complaint for "failure to state a claim upon which relief can be  
13 granted." A Rule 12(b)(6) motion will be denied if the plaintiff alleges "sufficient  
14 factual matter, accepted as true, to 'state a claim to relief that is plausible on its  
15 face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*  
16 *Twombly*, 550 U.S. 544, 570 (2007)). While the plaintiff's "allegations of material  
17 fact are taken as true and construed in the light most favorable to the plaintiff," the  
18 plaintiff cannot rely on "conclusory allegations of law and unwarranted inferences  
19 . . . to defeat a motion to dismiss for failure to state a claim." *In re Stac Elecs. Sec.*  
20 *Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996) (citation and brackets omitted). That is,

1 the plaintiff must provide “more than labels and conclusions, and a formulaic  
2 recitation of the elements.” *Twombly*, 550 U.S. at 555.

3 When deciding a motion to dismiss, the Court’s review is limited to the  
4 complaint, documents incorporated into the complaint by reference, and matters  
5 subject to judicial notice. *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d  
6 1049, 1061 (9th Cir. 2008).

### 7 **A. Ripeness**

8 Ripeness is a justiciability doctrine designed “to prevent the courts, through  
9 avoidance of premature adjudication, from entangling themselves in abstract  
10 disagreements over administrative policies, and also to protect the agencies from  
11 judicial interference until an administrative decision has been formalized and its  
12 effects felt in a concrete way by the challenging parties.” *Nat’l Park Hosp. Ass’n v.*  
13 *Dep’t of Interior*, 538 U.S. 803, 807–08 (2003) (citations omitted). The ripeness  
14 doctrine is “drawn both from Article III limitations on judicial power and from  
15 prudential reasons for refusing to exercise jurisdiction[.]” *Id.* at 808 (citation  
16 omitted); *see also Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134,  
17 1138 (9th Cir. 2000) (“[T]he ripeness inquiry contains both a constitutional and a  
18 prudential component.”) (internal quotations and citations omitted).

19 The constitutional aspect of ripeness collapses with the injury-in-fact prong  
20 of standing. *Id.* “Whether framed as an issue of standing or ripeness, an injury[-



1 in-fact] must involve ‘an invasion of a legally protected interest that is (a) concrete  
2 and particularized, and (b) actual or imminent, not conjectural or hypothetical.’”  
3 *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022) (quoting *Lujan v. Defs.*  
4 *of Wildlife*, 504 U.S. 555, 560 (1992)).

5 By contrast, prudential ripeness requires courts to evaluate “the fitness of the  
6 issues for judicial decision and the hardship to the parties of withholding court  
7 consideration.” *Wolfson v. Brammer*, 616 F.3d 1045, 1060 (9th Cir. 2010)  
8 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). “A claim is fit for  
9 decision if the issues raised are primarily legal, do not require further factual  
10 development, and the challenged action is final.” *Id.* (internal quotations and  
11 citations omitted).

12 Plaintiffs’ claims are constitutionally unripe because they fail to allege a  
13 cognizable injury with concreteness and particularity. Plaintiffs Eggleston, Siler,  
14 and the unknown Doe physicians have not been sanctioned for their speech by the  
15 Commission. *See Twitter*, 56 F.4th at 1173-74 (although the requirements of  
16 ripeness are applied “less stringently in the context of First Amendment claims,” a  
17 plaintiff may not “nakedly assert[ ] that his or her speech was chilled”) (internal  
18 quotations and citations omitted). While Plaintiffs allege that the Commission’s  
19 actions have a chilling effect, Plaintiffs have in fact continued to press their  
20 narratives about COVID-19 while Commission proceedings have been ongoing.

1 See ECF No. 17 at 13 (describing how Dr. Eggleston continued to publish false  
2 claims about COVID after the filing of the Statement of Charges against him).

3 This tends to cut against any argument that the Commission’s investigations have  
4 actually chilled Plaintiffs’ speech. Plaintiffs’ argument that the Commission’s  
5 investigations or imposition of sanctions might chill their speech in the future is  
6 likewise impermissibly speculative.

7 Plaintiffs Stockton, Moynihan, and CHD’s and its members’ claims are also  
8 based on speculation and conjecture. The remaining Plaintiffs claim they are  
9 injured by the alleged chill of licensed physicians presenting an alternative  
10 narrative about COVID. But Plaintiffs have not shown that they are impeded from  
11 otherwise accessing this information, or that Drs. Eggleston and Siler’s speech has  
12 been or will likely be chilled by the Commission’s actions.

13 Plaintiffs’ claims are also prudentially unripe. Plaintiffs seek to enjoin non-  
14 final agency actions that are contingent upon future factual developments, and  
15 Plaintiffs have not otherwise established that hardship would result from the Court  
16 declining to exercise jurisdiction as those proceedings are ongoing. In evaluating a  
17 claim of hardship, a court must consider whether abstaining from reviewing would  
18 “require[ ] an immediate and significant change in plaintiffs’ conduct of their  
19 affairs.” *Wolfson*, 616 F.3d at 1060 (internal quotations and citations omitted).  
20 Plaintiffs have not established that their conduct has changed in the interim of

1 Commission proceedings or that their behavior is likely to change otherwise.

2 Accordingly, Plaintiffs' claims are nonjusticiable.

3 **B. *Younger* Abstention**

4 The *Younger* abstention doctrine also requires this Court to abstain from  
5 considering Plaintiffs' claims. Under *Younger*, a court may not hear claims for  
6 equitable relief while state proceedings are pending. *Younger v. Harris*, 401 U.S.  
7 37, 41 (1971). In the Ninth Circuit, *Younger* requires federal courts to abstain from  
8 hearing claims for equitable relief when:

9 (1) [T]here is an ongoing state judicial proceeding; (2) the proceeding  
10 implicates important state interests; (3) there is an adequate opportunity  
11 in the state proceedings to raise [federal] constitutional challenges; and  
12 (4) the requested relief seeks to enjoin or has the practical effect of  
13 enjoining the ongoing state judicial proceedings.

14 *Page v. King*, 932 F.3d 898, 901-02 (9th Cir. 2019) (citation omitted). Further,  
15 “even if *Younger* abstention is appropriate, federal courts do not invoke it if there  
16 is a ‘showing of bad faith, harassment, or some other extraordinary circumstance  
17 that would make abstention inappropriate.’” *Id.* (citation omitted). Additionally,  
18 there is a recognized “irreparable harm” exception to *Younger*, under which courts  
19 may refrain from abstention in “extraordinary circumstances where the danger of  
20 irreparable loss is both great and immediate.” *World Famous Drinking Emporium,  
Inc. v. City of Tempe*, 820 F.2d 1079, 1082 (9th Cir. 1987).

Plaintiffs' arguments that the threshold *Younger* elements are not met in this

1 case contravene caselaw directly on point. *See Alsager v. Bd. of Osteopathic Med.*  
2 *& Surgery*, 945 F. Supp. 2d 1190 (W.D. Wash. 2013), *aff'd*, 573 F. App'x 619 (9th  
3 Cir. 2014); *see also Amanatullah v. Colorado Bd. of Med. Examiners*, 187 F.3d  
4 1160 (10th Cir. 1999). As those cases make plain, active state medical board  
5 investigations and hearings are ongoing state judicial proceedings; the regulation  
6 of medical practice is an important state issue; and federal constitutional challenges  
7 to medical board determinations may be raised on appeal in state court. *Alsager*,  
8 945 F. Supp. 2d at 1195–96.

9 All *Younger* elements are met here. Medical disciplinary board hearings  
10 constitute state proceedings, and since none of the Plaintiffs have completed the  
11 hearing process, the proceedings are ongoing; medical board disciplinary  
12 proceedings clearly implicate an important state interest in ensuring adequate  
13 healthcare; and Washington law provides Plaintiffs with an opportunity to raise  
14 federal constitutional challenges on appeal to Washington state courts. *See RCW*  
15 *18.130.140*. Additionally, a hearing on the merits of Plaintiffs' claims would  
16 enjoin the ongoing state proceedings, which would violate the Ninth Circuit's  
17 implied fourth element to the abstention doctrine. *AmerisourceBergen Corp. v.*  
18 *Roden*, 495 F.3d 1143, 1148–49 (9th Cir. 2007) (citation omitted).

19 Plaintiffs' claims to the *Younger* irreparable harm exception are also without  
20 merit. The Ninth Circuit has applied the exception only where a person's physical

1 liberty will not be vindicated after trial. *See Bean v. Matteucci*, 986 F.3d 1128,  
2 1133–34 (9th Cir. 2021). Plaintiffs’ claims of harm are insufficient to establish the  
3 extraordinary circumstances required to apply the exception.

4 Moreover, this Court has already ruled that Dr. Eggleston’s effort to  
5 terminate the Commission’s investigation of him was precluded by the *Younger*  
6 abstention doctrine. *Wilkinson v. Rodgers*, 1:23-CV-3035-TOR, 2023 WL  
7 4410936 (E.D. Wash. July 7, 2023). Thus, Dr. Eggleston is collaterally estopped  
8 from arguing otherwise in this proceeding.

9 Consequently, this Court would be required to abstain from exercising  
10 jurisdiction.

### 11 **C. Failure to State Plausible Claim**

12 Plaintiffs have also failed to state a plausible as-applied First Amendment  
13 claim based on the Commission’s investigations into any physicians. The  
14 Commission’s investigations regulate professional conduct, with only an incidental  
15 impact on speech. Although Plaintiffs’ challenges to the investigations arise out of  
16 the COVID-19 pandemic, it is within the State’s long-recognized authority to  
17 regulate medical professionals, and that authority does not run afoul of the First  
18 Amendment. Critically, “States may regulate professional conduct, even though  
19 that conduct incidentally involves speech.” *Tingley v. Ferguson*, 47 F.4th 1055,  
20 1074-75 (9th Cir. 2022) (citation omitted).

1 While the Commission’s investigations and prosecutions are ongoing, there  
2 is nothing for this Court to review. The Commission’s investigations are narrowly  
3 tailored to achieve the compelling government interest in regulating medical  
4 professionals and protecting the public health. Thus, Plaintiffs have failed to state  
5 a plausible claim.

6 **D. First Amendment Challenges**

7 Even if the ripeness and abstention doctrines did not create a barrier to  
8 judicial review and Plaintiffs had presented a plausible as-applied First  
9 Amendment challenge, this Court still could not grant them relief on their First  
10 Amendment claims.

11 As discussed above, the Commission may fully regulate professional  
12 conduct of physicians licensed to practice in this state. States may regulate  
13 professional conduct, even though that conduct incidentally involves speech.  
14 *Tingley v. Ferguson*, 47 F.4th 1055, 1074 (9th Cir. 2022). “[C]onduct may  
15 indicate unfitness to practice medicine if it raises reasonable concerns that the  
16 individual may abuse the status of being a physician in such a way as to harm  
17 members of the public, or if it lowers the standing of the medical profession in the  
18 public's eyes.” *Haley v. Med. Disciplinary Bd.*, 117 Wash. 2d 720, 733 (1991).  
19 The Commission’s regulation of medical professionals does not violate the First  
20 Amendment. Accordingly, Plaintiffs’ First Amendment facial challenges or as-

1 applied challenges to the Commission’s authority must fail.

2 As discussed in the preceding sections, the other Plaintiffs who are not  
3 subject to the Commission have also failed to articulate a First Amendment  
4 violation. The State has not prevented them from hearing what they want to hear.  
5 As such, Plaintiffs’ First Amendment claims must be dismissed.

6 **E. Due Process Challenges Fail**

7 Plaintiffs contend that it violates their procedural and substantive due  
8 process rights that: (1) they cannot raise a constitutional challenge to the  
9 Washington Medical Commission’s disciplinary rules until a state court reviews  
10 the proceedings; and (2) state courts have declined to enjoin their ongoing  
11 disciplinary proceedings. ECF No. 14 at ¶¶ 20-22, 62–71.

12 Numerous cases hold that “judicial review of state agency decisions  
13 provides a sufficient opportunity to raise federal claims, even when the state  
14 agency may not consider those claims in the first instance.” *See e.g., Alsager v.*  
15 *Bd. of Osteopathic Med. & Surgery*, 573 Fed. App. 619, 620–21 (9th Cir. 2014).

16 Plaintiffs have failed to show any due process violation. Plaintiffs’ citation to  
17 certain cases are inapposite and do not apply to the issue before the Court.  
18 Plaintiffs’ due process challenges therefore fail and must be dismissed.

19 **F. Not Entitled to Preliminary Injunction**

20 To prevail on their motion for a preliminary injunction, Plaintiffs must

1 demonstrate (1) a likelihood of success on the merits, (2) a likelihood of  
2 irreparable injury if the injunction does not issue, (3) that a balancing of the  
3 hardships weighs in their favor; and (4) that a preliminary injunction will advance  
4 the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008)  
5 (citation omitted).

6 Plaintiffs have failed to satisfy the four prerequisites for a preliminary  
7 injunction, even if this Court had jurisdiction to proceed. The request for an  
8 injunction is therefore denied.

## 9 II. Amendment

10 Federal Rule of Civil Procedure 15(a) provides that “a party may amend its  
11 pleading only with the opposing party’s written consent or the court’s leave,”  
12 which “[t]he court should freely give . . . when justice so requires.” Fed. R. Civ. P.  
13 15(a)(2). The Ninth Circuit has directed that this policy be applied with “extreme  
14 liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.  
15 2003) (citation omitted). In ruling upon a motion for leave to amend, a court must  
16 consider whether the moving party acted in bad faith or unduly delayed in seeking  
17 amendment, whether the opposing party would be prejudiced, whether an  
18 amendment would be futile, and whether the movant previously amended the  
19 pleading. *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011).  
20 “Absent prejudice, or a strong showing of any of the remaining [ ] factors, there



1 exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *C.F.*  
2 *ex rel. Farnan v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 985 (9th Cir. 2011)  
3 (citation omitted) (emphasis in original).

4 Here, Plaintiffs’ FAC fails to address any of the deficiencies identified by  
5 the Court. Additionally, further amendment would be futile given the stage of the  
6 underlying administrative proceedings. Therefore, Plaintiffs are not granted leave  
7 to amend, and the FAC must be dismissed with prejudice.

### 8 **III. Attorneys’ Fees**

9 Defendants seek attorneys’ fees under 42 U.S.C. § 1988(b). Under that  
10 statute, the court, in its discretion, may allow the prevailing party reasonable  
11 attorney’s fee as part of the costs. But attorneys’ fees should only be awarded to a  
12 prevailing defendant when the court finds that the plaintiffs’ action “was frivolous,  
13 unreasonable, or without foundation, even though not brought in subjective bad  
14 faith.” *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978). Here,  
15 the Court finds this lawsuit is unwarranted given the stage of the administrative  
16 proceedings, but does not find it frivolous, unreasonable, or without foundation.

17 Accordingly, attorneys’ fees are denied.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion for Preliminary Injunction, ECF No. 15, is **DENIED**.

3 Plaintiffs' First Amended Complaint is dismissed with prejudice.

4 2. Defendants' Motion to Dismiss, ECF No. 17, is **GRANTED**.

5 The District Court Executive is directed to enter this Order, enter Judgment  
6 in favor of Defendants, furnish copies to counsel, and **CLOSE** the file.

7 DATED May 22, 2024.



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*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge