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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

R.J. REYNOLDS TOBACCO  
COMPANY et al.,  
  
Plaintiffs,  
  
v.  
  
XAVIER BECERRA et al.,  
  
Defendants.

Case No.: 20-CV-1990-CAB-WVG  
  
**ORDER DISMISSING CASE FOR  
LACK OF JURISDICTION**  
  
[Doc. Nos. 6, 36, 38]

In this matter, Plaintiffs ask the Court to declare that California Senate Bill 793 (“S.B. 793”) is invalid and unenforceable because it is preempted by federal law and violates the dormant Commerce Clause of the United States Constitution. On the same day they filed the complaint, Plaintiffs moved for a preliminary injunction on enforcement of S.B. 793. [Doc. No. 6.] Defendants have opposed Plaintiffs’ motion and moved to dismiss the complaint for failure to state a claim. [Doc. Nos. 36, 38.] Upon review of the record,<sup>1</sup> the Court finds that Plaintiffs’ challenge to the constitutionality of S.B. 793 is not ripe for

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<sup>1</sup> The motions had been pending before another judge. The case was recently reassigned to the undersigned.

1 resolution and that therefore the Court lacks subject matter jurisdiction. Accordingly, the  
2 motion for preliminary injunction is denied as moot, and this case is dismissed.

3 When the complaint was filed, S.B. 793 was set to go into effect on January 21,  
4 2021. In the interim, however, the California Secretary of State certified that a referendum  
5 challenging S.B. 793 has qualified to be on the ballot for the November 8, 2022 election.  
6 *See* Doc. No. 48. The parties agree that “[t]he referendum has thus ‘suspend[ed] operation’  
7 of S.B. 793 unless and until ‘it is approved by a majority of voters.’” *Id.* (quoting *Wilde v.*  
8 *City of Dunsmuir*, 9 Cal. 5th 1105, 1111 (2020)). In light of the referendum, Plaintiffs  
9 concede that their motion for a preliminary injunction is moot. [Doc. No. 43 at 3 (“[I]f the  
10 referendum qualifies, Plaintiffs’ motion for a preliminary injunction will be moot. . . .”).  
11 Accordingly, the motion for a preliminary injunction is **DENIED**.

12 Notwithstanding the foregoing, Plaintiffs still contend that the Court retains subject  
13 matter jurisdiction over their case. The Court is not persuaded. “The Article III case or  
14 controversy requirement limits federal courts’ subject matter jurisdiction by requiring . . .  
15 that claims be ‘ripe’ for adjudication.” *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598  
16 F.3d 1115, 1121–22 (9th Cir.2010) (citing *Allen v. Wright*, 468 U.S. 737, 750, 104 S.Ct.  
17 3315, 82 L.Ed.2d 556 (1984)). “[R]ipeness is a means by which federal courts may dispose  
18 of matters that are premature for review because the plaintiff’s purported injury is too  
19 speculative and may never occur.” *Id.* “If a claim is unripe, federal courts lack subject  
20 matter jurisdiction and the complaint must be dismissed.” *S. Pac. Transp. Co. v. City of*  
21 *Los Angeles*, 922 F.2d 498, 502 (9th Cir. 1990).

22 “The central concern of the ripeness inquiry is whether the case involves uncertain  
23 or contingent future events that may not occur as anticipated, or indeed may not occur at  
24 all.” *Chandler*, 598 F.3d at 1122-23. Here, although S.B. 793 has been passed by the  
25 California legislature and signed by the Governor, S.B. 793 will never be enforceable  
26 against Plaintiffs (or anyone) if it does not survive the referendum set to go forward on  
27 November 8, 2022. In other words, any purported injury to Plaintiffs caused by  
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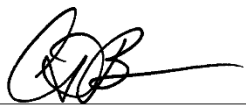
1 enforcement of S.B. 793 is contingent on the outcome of the referendum and may not occur  
2 at all.

3 Plaintiffs argue that this case is ripe because there is a “realistic danger that SB793  
4 will go into effect,” citing *Babbitt v. United Farm Workers National Union*, 442 U.S. 289  
5 (1979). *Babbitt* is distinguishable. *Babbitt* addressed whether a plaintiff who has not been  
6 subject to injury from a statute’s operation or enforcement may challenge the statute. The  
7 statute in question in *Babbitt*, however, was already in effect, and was in fact being  
8 enforced. *See Babbitt*, 442 U.S. at 293 (noting that the lower court had determined that the  
9 case was justiciable “on the basis of past instances of enforcement of the Act and in light  
10 of the imposition of criminal penalties for ‘violat[ion of] any provision of the Act.’”). The  
11 issue being considered by the Court there was whether the plaintiffs had a ripe claim even  
12 if they had not personally been subject to a criminal enforcement action, with the Court  
13 noting that “[w]hen contesting the constitutionality of a criminal statute, ‘it is not necessary  
14 that [the plaintiff] first expose himself to actual arrest or prosecution to be entitled to  
15 challenge [the] statute that he claims deters the exercise of his constitutional rights.’” *Id.*  
16 at 298 (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)). Plaintiffs face no such  
17 risk of prosecution here. Unlike *Babbitt*, there currently is no “realistic danger” that  
18 Plaintiffs will be prosecuted for violation of S.B. 793, and there will not be any such  
19 realistic danger until after November 8, 2022, if at all. Accordingly, Plaintiffs’ claims are  
20 unripe, and this Court lacks subject matter jurisdiction.

21 In light of the foregoing, it is hereby **ORDERED** that the complaint is **DISMISSED**  
22 for lack of subject matter jurisdiction. This case is **CLOSED**.

23 It is **SO ORDERED**.

24 Dated: August 6, 2021

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27 Hon. Cathy Ann Bencivengo  
28 United States District Judge