



**CIRCUIT COURT OF OREGON  
THIRD JUDICIAL DISTRICT  
MARION COUNTY COURTHOUSE  
P.O. BOX 12869  
SALEM, OR 97309-0869**

DANIEL J. WREN  
Circuit Court Judge  
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Verified Correct Copy of 5/21/21

April 5, 2021

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Senior AAG, Department of Justice  
100 SW Market Street  
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Re: Space Age Fuel, Inc., *et al* v. Kate Brown, Governor of Oregon  
Marion County Case No. 20CV26872

Counsel:

This matter properly came before the court for a hearing on February 22, 2021 regarding Plaintiffs' Motion for Leave to File First Amended Complaint. Attorneys Joel Mullin, Stephen Galloway and Crystal Chase were present representing plaintiffs', Space Age Fuel, Inc; A&M Transport, LLC; Otley Land and Cattle, LLC; Oregon Business & Industry; Oregon Manufacturers and Commerce; Oregon Forest & Industry Council; Oregon Farm Bureau Federation; and Oregon Trucking Association. Attorney Christina Beatty-Walters was present representing defendant, Kate Brown, Governor of Oregon.

Prior to the hearing, the court reviewed Plaintiffs' Motion for Leave to File First Amended Complaint, Defendant's Response to Plaintiffs' Motion for Leave to File First Amended Complaint and Plaintiffs' Reply in Support of Motion for Leave to File First Amended Complaint. During the hearing, the court allowed counsel the opportunity to summarize and detail their arguments regarding their respective positions.

Plaintiffs' original Complaint sought judgment declaring sections 2, 3A, 4A and 4C of Governor Brown's Executive Order 20-04 (EO 20-04) unconstitutional, arguing those sections violated Article III, section I of the Oregon Constitution. Plaintiffs also requested a judgment declaring Governor Brown exceeded the executive authority delegated to her under Article V of the Oregon Constitution when issuing EO 20-04. At a hearing, held November 9, 2020, the court determined plaintiffs lacked standing under the Oregon Declaratory Judgment Act (ODJA) and ordered dismissal.

Prior to the court signing the Judgment of Dismissal, Plaintiffs' filed this motion requesting leave of the court to file a First Amended Complaint to "remedy the specific deficiencies identified by the court in its November 30, 2020 Letter Opinion." *Plaintiffs' Motion at 2*. Defendant objects.

ORCP 25A states "When a motion to dismiss ... under Rule 21 is allowed, the court *may, upon such terms as may be proper*, allow the party to amend the pleading." (*emphasis added*) When considering a motion for leave to amend, the Court will generally analyze four factors: "(1) the nature of the proposed amendments and their relationship to the existing pleadings; (2) the prejudice, if any, to the opposing party; (3) the timing of the proposed amendments and related docketing concerns; and (4) the colorable merit of the proposed amendments." *Ramsey v. Thompson, 162 Or App 139, 145 (1999)*.

For the reasons outlined below, the court denies Plaintiffs' Motion for Leave to File First Amended Complaint using the four-factor analysis found in *Ramsey*.

***Factor One:*** *The nature of the proposed amendments and their relationship to the existing pleadings.*

As stated above, this matter came before the court requesting a Declaratory Judgement finding defendant exceeded her constitutional authority enacting certain parts of EO 20-04 and that certain sections of EO 20-04 were unconstitutional. The ODJA controls the framework within which this matter is decided.

In the First Amended Complaint proposed by plaintiffs', the Department of Environmental Quality (DEQ) and Environmental Quality Commission (EQC) would be added as parties and, in addition to the Declaratory Judgement sought against the Governor, injunctive relief is sought against these newly added parties.

The nature of the proposed amendment, adding new parties and a seeking a new request for injunctive relief, would expand and dramatically alter the scope of the original pleadings. The court finds the requested amendments to the original complaint would be improper.

***Factor Two:*** *The prejudice, if any, to the opposing party.*

The court determines there would be no prejudice to defendant if the Motion for Leave to File First Amended Complaint were allowed.

***Factor Three:*** *The timing of the proposed amendments and related docketing concerns.*

The court determines the timing of the Motion for Leave to File First Amended Complaint is appropriate as it was filed after the hearing, but before any subsequent orders were

signed. Additionally, the court would have limited concern regarding the docketing of this matter if the Motion for Leave to File First Amended Complaint were allowed.

**Factor Four:** *The colorable merit of the proposed order.*

Examining the fourth factor outlined in *Ramsey*, the court has concerns regarding the colorable merit of plaintiffs' proposed amendments. The first concern is whether plaintiffs' proposed amendments address and cure the lack of standing previously found by the court after the November 9, 2020 hearing. The second concern is whether plaintiffs' have stated a valid claim against the DEQ and EQC, other than a request for injunctive relief.


The court finds that the proposed amendments do not cure plaintiffs' original standing problem. Simply adding new parties to this case and asking for injunctive relief does not change the determination that plaintiffs' have no standing relating to the Declaratory Judgment requested in the original pleading.

The court further finds that plaintiffs' proposed amendments fail to state a valid claim against the DEQ and EQC. Simply asking for injunctive relief and characterizing it as supplemental relief in connection to the declaratory judgment is not proper. If the court were to make this determination, it would effectively stop these agencies from using their statutory authority to promulgate rules. Stopping these agencies from performing their statutorily granted powers to create policy and procedure squarely falls within the authority of the Administrative Procedures Act (APA), not part of the ODJA filing before the court.

While the court determines there would be no prejudice to the opposing party (factor 2) or any timing/docketing concerns related to the proposed amendments (factor 3), the issues surrounding the nature of the proposed amendments (factor 1) and the lack of colorable merit regarding the proposed amendments (factor 4) far outweigh the considerations given to factors 2 and 3.

Consistent with this letter opinion, the court will sign the Order of Dismissal previously submitted by defendant.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Wren", with a long horizontal line extending to the right.

Daniel J. Wren  
Circuit Court Judge

DJW/cg