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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BOATERS RIGHTS ASSOCIATION, an Oregon non-profit corporation; **SCOTT PUTNAM**, an individual; and **SHALOE PUTNAM**, an individual,

Plaintiffs,

v.

CURT MELCHER, in his official capacity as director of Oregon Department of Fish and Wildlife; **YAMHILL COUNTY SHERIFF'S OFFICE**, a local government agency; **CLACKAMAS COUNTY SHERIFF'S OFFICE**, a local government agency; **LAURA JACKSON**, in her official capacity as chair of the Oregon State Marine Board; **VAL EARLY**, in her official capacity as co-chair of the Oregon State Marine Board; **CRAIG WITHEE**, in his official capacity as a member of the Oregon State Marine Board; **COLLEEN MORAN**, in her official capacity as member of the Oregon State Marine Board; and **JORGE GUZMAN**, in his official capacity as a member of the Oregon State Marine Board,

Defendants.

No.

COMPLAINT FOR VIOLATION OF FEDERAL LAW UNDER 42 U.S.C. § 1983

DECLARATORY AND INJUNCTIVE RELIEF

NOT SUBJECT TO MANDATORY ARBITRATION

NATURE OF THE CASE

1.

In 2022, the Oregon Legislature passed SB 1589, codified at Chapter 119 of Oregon Laws 2022 (the “State Law”), attached as Ex. 1. The State Law prohibits certain recreational boating in the “Newberg Pool Congested Zone” (the “Newberg Pool”), which is a portion of the Willamette River.

2.

Historically, the Newberg Pool has been a popular and well-suited location for recreational boating, in large part because these waters are easily accessible due to boating facilities funded by the Federal Aid in Sport Fish Restoration Act, 16 U.S.C. 777 et seq (the “Act”).

3.

One of the Act’s purposes is to increase access to rivers, including the Willamette River, for recreational boating by providing federal funds to build and maintain boating facilities. All facilities funded by the Act must be available to all recreational boaters. The Ninth Circuit has ruled that the Act confers enforceable rights to recreational boating under 42 U.S.C. §1983. *Buckley v. City of Redding, Cal.*, 66 F.3d 188, 192 (1995).

4.

Several boating facilities in the Newberg Pool were funded by the Act; however, the State Law prohibits certain recreational boaters from using the waters in the Newberg Pool for

recreational boating. The Newberg Pool benefits from the facilities funded by the Act, and its waters and Act-funded facilities must be accessible to all recreational boaters.

5.

Plaintiffs seek a declaratory order that the State Law violates Plaintiffs' rights under the Act.

6.

Plaintiffs further seek to permanently enjoin Defendants from enforcing the State Law.

PARTIES

7.

Plaintiff Boaters Rights Association ("Plaintiff Boaters") is an Oregon nonprofit organization that promotes and advocates for the legal rights of recreational boaters, including boaters who wake surf and engage in towed water sports in the Newberg Pool in boats exceeding 5,500 lbs. Its principal place of business is Aurora, Oregon.

8.

Plaintiff Shaloe Putnam ("Plaintiff Shaloe") is an individual who resides on the banks of the Newberg Pool in Marion County. She bought her house located by the Newberg Pool so she and her family could easily enjoy recreational boating.

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9.

Plaintiff Scott Putnam (“Plaintiff Scott”) is an individual who resides on the banks of the Newberg Pool in Marion County. He bought his house located by the Newberg Pool so he and his family, including Plaintiff Shaloe, could easily enjoy recreational boating.

10.

Defendant Curt Melcher is the director of Oregon Department of Fish and Wildlife (“ODFW”). He is sued solely in his official capacity under the rule of *Ex Parte Young*. As director, he oversees and is responsible for allocating federal funds received from the Act, which averages \$25 million annually.

11.

Defendant Yamhill County Sheriff’s Office is a local government agency responsible for enforcing state boating laws within Yamhill County’s jurisdiction of the Willamette River, from river mile 38 - 74. Roger’s Landing is within Yamhill County.

12.

Defendant Clackamas County Sheriff’s Office is a local government agency responsible for enforcing state boating laws within Clackamas County’s jurisdiction of the Willamette River. Boones Ferry Marina and Hebb Park are within Clackamas County.

13.

Defendants Laura Jackson, Val Early, Craig Withee, Colleen Moran, and Jorge Guzman are the five members of the Oregon State Marine Board (“OSMB”). They are sued solely in

their official capacities under the rule of *Ex Parte Young*. OSMB is the state agency responsible for defining “towed watersports” by rule and enforcing the State Law’s weight limitation on boats engaging in towed watersports in the Newberg Pool. The agency contracts with county sheriff’s offices to enforce the boating laws on the Willamette River. It also coordinates the development and maintenance of boating facilities with funds from the Act. OSMB is located in Salem, Oregon. Upon information and belief, all individual defendants are citizens of the State of Oregon.

JURISDICTION AND VENUE

14.

This case presents a federal question arising under the Federal Aid in Sport Fish Restoration Act, 16 U.S.C. 777 et seq, 42 U.S.C. § 1983, and 42 U.S.C. § 1988.

15.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 2201, because this action arises under the laws of the United States.

16.

Venue resides in this district pursuant to 28 U.S.C. § 1391(b) in that, upon information and belief, all Defendants maintain offices within the district.

17.

FACTUAL ALLEGATIONS

Federal Aid in Sport Fish Restoration Act

The Act establishes a federal grant program designed to fund state and local fishery management and restoration projects and recreational boating access projects. Under the Act, receipt of federal funds is subject to certain conditions, including that a specified minimum portion of all allocated federal funds must be spent on recreational boating access projects and such projects must accommodate all recreational boaters. This is because funds from federal excise taxes on angler equipment and boat fuel purchases comprise a substantial source of funding for the program, because all recreational boaters buy boat fuel and are stakeholders, and because Congress intended that the program benefit recreational motorboat users who pay such taxes.

18.

The Boating Access sub-program, managed under the Sport Fish Restoration Grant Program, provides federal funds for facilities that create or add public access for recreational boating and improvements to waterways. Grants are provided to state fish and wildlife agencies that partner with local governments, other state agencies, or non-governmental organizations to ensure public access to state waters. Types of efforts that are funded with Boating Access grants include projects that seek to develop, renovate, maintain, or improve facilities for recreational boating access. Funded projects include boat ramps, restroom facilities, and other efforts to increase boater access to waterways. All facilities funded through the subprogram must be available to all recreational boaters.

19.

Pursuant to the Act, each state that receives funding “shall” allocate 15 percent of funds to the costs of acquisition, development, renovation, or improvement of facilities “that create, or

add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes.” Federal Aid in Sport Fish Restoration Act, 16 U.S.C. § 777(g)(b)(1). “A broad range of access facilities and associated amenities can qualify for funding, *but they must provide benefits to recreational boaters.*” 50 CFR 80.51(b)(1) (emphasis added).

20.

Defendant Melcher oversees and manages the federal funds received by ODFW from the Act, which averages \$25 million annually. Acceptance of federal funds from the Act creates the obligation to provide equal access of recreational boaters to facilities built with the federal funds. In order to maintain eligibility to receive funding from the Act, Defendant Melcher must ensure that ODFW follows requirements outlined in the Code of Federal Regulations which restricts the use of funds.

21.

Federally Funded Boating Facilities in the Newberg Pool

Several boating facilities in the Newberg Pool were funded by the Act, including facilities at Boones Ferry Marina, Hebb Park, and Roger’s Landing.

22.

Prohibition of Recreational Boating in the Newberg Pool

In 2022, the Oregon Legislature enacted a law that prohibits certain recreational boating in the Newberg Pool, which is between river mile 26.6 and 55 on the Willamette River. Specifically, the State Law prohibits recreational boaters from engaging in: 1) “towed

watersports” with boats that weigh 5,500 lbs. or more and 2) all wake surfing regardless of the boat’s weight.

23.

A violation of the State Law is a class A or class B violation, depending on whether the person in violation had a prior conviction. Violations of the State Law are punishable by imposition of: 1) a prohibition on operating a boat for one year; 2) an order to complete a boating safety course; and 3) a maximum fine of \$2,000.

24.

The State Law Violates Plaintiffs’ Rights and Interests

Plaintiffs have rights and interests in recreational boating that are affected by the State Law.

25.

Plaintiff Boaters has members who own recreational boating businesses that are damaged by the State Law and members who engage in recreational boating that is now prohibited by the State Law.

26.

Plaintiff Shaloe and Plaintiff Scott purchased their home on the Willamette River, in the Newberg Pool, so they could easily engage in recreational boating. Before the State Law was enacted, they wake surfed and engaged in towed watersports with their children in motorboats having a maximum loading weight exceeding 5,500 lbs. These activities previously enjoyed by

Plaintiffs are now prohibited in the Newberg Pool pursuant to the State Law. Plaintiffs have a desire to continue these activities.

27.

In August 2022, Plaintiff Scott Putnam received a citation in the Newberg Pool for violating the State Law. Specifically, he was fined for engaging in towed watersports without displaying a towed watersport decal on this motorboat that exceeded 5,500 lbs. Plaintiffs Scott Putnam and Shaloe Putnam no longer engage in wake surfing or other towed watersports for fear of receiving a citation. If Plaintiff Scott Putnam receives another citation for violating the State Law, he could lose his right to operate a boat for one year.

28.

A controversy exists because Plaintiffs may not exercise their rights without fear of harm and impending penalties resulting from enforcement of the State Law. Defendants are engaged in an ongoing violation of federal law.

29.

Plaintiffs' rights under the Act are violated by the State Law because it prohibits Plaintiffs from utilizing federally funded facilities constructed and operated for recreational boating access to the Newberg Pool.

30.

Congress intended Act-funded facilities to accommodate recreational boaters in order to increase access to recreational waterways, such as the Newberg Pool.

31.

Count 1- Declaratory Judgment

Violation of rights contained in the Federal Aid in Sport Fish Restoration Act

Plaintiffs reallege and incorporate all allegations set forth in paragraphs 1 - 30, above.

32.

The Act creates rights for recreational boaters to access and recreate in waters using facilities that were built with funds allocated under the Act. Because the State Law prohibits boaters from wake surfing and engaging in other recreational boating in the Newberg Pool, the State Law violates Plaintiffs' rights created by the Act.

33.

A controversy between Plaintiffs and Defendants exists. Plaintiffs Scott Putnam and Shaloe Putnam are prohibited from wake surfing and engaging in towed watersports in their boat by their home due to the State Law. Plaintiff Boaters' members are unable to wake surf and engage in towed watersports in the Newberg Pool due to the State Law.

34.

The Act confers rights enforceable through 42 U.S.C. § 1983. Plaintiffs seek reasonable attorney fees pursuant to 42 U.S.C. § 1988.

35.

Plaintiffs seek a declaration that the State Law violates their rights under federal law.

Plaintiffs also seek an injunction enjoining enforcement of the State Law.

36.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue the following relief:

- 1) a declaration Chapter 119 of Oregon Laws 2022 is invalid because it violates Plaintiffs' rights under the Federal Aid in Sport Fish Restoration Act;
- 2) injunctive relief to permanently enjoin the enforcement of Chapter 119 of Oregon Laws;
- 3) award costs and fees; and
- 4) grant such other relief as the Court deems just and proper.

DATED: March 8, 2023

s/Jill O. Gibson

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