

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF MULTNOMAH

3 BIKELOUD PDX, an Oregon Non-profit  
4 Corporation; Kathryn Gavula, an  
5 Individual; Petra Whitacre, an Individual;  
6 Edward Gorman, an Individual; Douglas  
7 Eichelberger, an Individual; Allan  
8 Rudwick, an Individual; Taizz Medalia, an  
9 Individual; Robert Burchett, an Individual;  
10 Ted Whitney, an Individual; Steven Acker,  
11 an Individual; Lynda Bishop, an  
12 Individual; Shambra Jennings, an  
13 Individual; Daniel Fuller, an Individual;  
14 Mark Ontiveros, an Individual; Max  
15 Woodbury, an Individual; and Karen Frost,  
16 an Individual,

Plaintiffs,

v.

12 THE CITY OF PORTLAND, by and  
13 through its Commissioners Rene Gonzalez,  
14 Mingus Mapps, Carmen Rubio, Dan Ryan,  
15 and Mayor Ted Wheeler, in their official  
16 capacities,

Defendants.

Case No. 22CV39601

OPINION AND ORDER ON DEFENDANT  
CITY OF PORTLAND'S MOTION TO  
DISMISS PLAINTIFFS' AMENDED  
COMPLAINT

17 This matter came before the court on November 17, 2023, for Defendant City of  
18 Portland's Motion to Dismiss Plaintiff's Amended Complaint. Defendant appeared through Ms.  
19 Elsa Hagg and Ms. Naomi Sheffield. Plaintiffs appeared through Mr. James Coon and Mr. Scott  
20 Kocher. For the reasons below, the Defendant's Motion is DENIED.

21 Plaintiffs' complaint seeks a declaratory judgment that the city is not complying with  
22 ORS 366.580, colloquial known as "the bike bill," at specific locations within Portland. Plaintiffs  
23 further seek an injunction ordering the city to comply.

1 Defendant has several arguments, but the primary argument is that plaintiffs lack  
2 standing to bring their action. This opinion addresses that argument first.

3 ANALYSIS

4 A plaintiff must make three showings to establish standing under ORS 28.020. *MT & M*  
5 *Gaming, Inc. v. City of Portland*, 360 Or 544, 554-555 (2016). The first is that a plaintiff must  
6 have some “rights, status or other legal relation” affected by the challenged provision. ORS  
7 28.020, *MT & M Gaming, Inc.*, 360 Or at 554. In addition, the “interest” must be “legally  
8 recognized” not an “abstract interest in the correct application of the law.” *Foote v. State of*  
9 *Oregon*, 364 Or 558, 563 (2019).

10 ORS 366.514 mandates that cities “shall” spend “reasonable amounts” to provide  
11 footpaths and bicycle paths out of funds received from the State Highway Fund, including  
12 providing such amenities when a street is “constructed, reconstructed or relocated.” Plaintiffs  
13 allege that defendants have failed to do this at 21 separate and specific locations. Defendant  
14 argues that the plaintiffs in this case are akin to those in a number of cases where appellate courts  
15 determined no standing existed.

16 In *Foote*, no standing existed for an elected district attorney and two citizens seeking a  
17 declaration that HB 3078 was unconstitutional because it made criminal punishment for certain  
18 crimes less than what they, as voters, had previously approved in Ballot Measures 57 and 10. 364  
19 Or at 571. In holding that the plaintiffs had no standing, the Oregon Supreme Court found that  
20 these electors were not affected differently than any other citizens, and while plaintiffs might  
21 have “strong feelings” about the appropriateness of longer sentences, such feelings were  
22 irrelevant in determining a legally recognized interest. *Id.* at 565.

23

1           The *Foote* court noted that the Circuit Court had relied on *deParrie v. State of Oregon*,  
2 133 Or App 613 (1995), in reaching a difference conclusion. *Foote*, 364 Or at 564. Without  
3 opining as to whether the holding in *deParrie* was correct, the Oregon Supreme Court noted they  
4 weren't bound by the decision of a lower court. *Id.*

5           Unlike the Supreme Court, this court is bound by decisions of the Oregon Court of  
6 Appeals. In *deParrie*, plaintiffs sought a declaration invalidating ORS 659.165 for being in  
7 conflict with city ordinances, the effect being to make the ordinances unenforceable. 133 Or App  
8 at 616-617. The Oregon Court of Appeals found standing for those plaintiffs who resided in the  
9 cities that had enacted the conflicting ordinances, finding there was a "sufficient connection  
10 between the statute and [plaintiff's] electoral interests to give them standing to challenge the  
11 validity of the statute." *Id.* at 617.

12           In the present case, plaintiffs allege they live in the city of Portland and routinely use the  
13 roads and streets identified in the complaint for recreational and commuter bicycling. They  
14 alleged specific ways in which the current conditions of these roads impact their safety and  
15 ability to travel efficiently to-and-from a variety of destinations. In short, their interests are more  
16 concrete and personalized than those expressed in *deParrie*.

17           The seminal case discussing standing analysis under the Uniform Declaratory Judgment  
18 Act is *MT & M Gambling*. 360 Or 544 (2016). The facts of that case bear little in common with  
19 the present case, but the overall analysis is helpful. In defining a legally recognized interest, the  
20 Oregon Supreme Court noted that "a person who, in effect, is the statute's intended beneficiary,  
21 has standing to seek a declaration as to the statute's validity, meaning or effects." *Id.* at 562.  
22 Further, being such a beneficiary of the statute is not required to establish standing. A "[l]egal  
23 recognition [of rights] can come from a variety of sources...." *Id.* at 565.

1           ORS 366.508(1)(a) contains the legislative findings that, prior to enactment of the bill,  
2 funds were insufficient to meet goals of developing a statewide road and bridge system that  
3 would provide “...accessibility to and from commercial, agricultural, industrial, tourist and  
4 recreational facilities and enhances the highway safety, environmental quality and land use  
5 goals....”

6           Plaintiffs in the present case belong to the class of people that the bill was intended to  
7 benefit, i.e., citizens of the state of Oregon who have an interest in safe paths to access via  
8 bicycles for work and recreational purposes. They allege regular use or attempted use of the  
9 specific roads and streets they contend were “constructed, reconstructed or relocated” in a  
10 manner contrary to the requirements of ORS 366.514. Their interest is thus not an “abstract  
11 interest in the correct application of the law.” *Footte*, 364 Or at 563.

12           Plaintiffs in the present case also meet the second and third showings required to  
13 establish standing. The effect of the targeted statute is “real or probable, not hypothetical or  
14 speculative.” *See, Footte*, 364 Or at 563 (citing *Morgan v. Sisters School District #6*, 353 Or 189,  
15 195 (2013)). The allegation is that failure to comply with the statute impacts the plaintiffs’ daily  
16 lives, either by forcing them to take alternate routes or accepted an increased risk for collision  
17 with a car that would be lessened if the city complied with the statute.

18           The present case is dissimilar from those where plaintiffs asked courts to declare a law  
19 invalid or otherwise interpret what the law meant for the parties. The relief sought here is not an  
20 “advisory opinion” of the type sought in *Footte* and *Eacret v. Holmes*, 215 Or 121 (1958). The  
21 present case involves a dispute as to whether or not the city is in compliance with the statute  
22 itself, not what the statute means.

23



1 As the defendant points out, there are exemptions to the mandate that foot and bicycle  
2 paths “shall” be included whenever a street is “constructed, reconstructed or relocated.” ORS  
3 366.514(2). These exemptions are fact dependent. The sides may litigate whether or not facts  
4 support their application. A finding for the plaintiffs would have a practical effect on the rights  
5 plaintiff seek to vindicate, as the city would presumably take action to come into compliance  
6 with the statute. Further, this court disagrees with defendant’s position that the ORS 366.505(2)  
7 provides the sole “enforcement mechanism” for ORS 366.514. ORS 366.505(2) falls under the  
8 title of “Composition and Use of Highway Fund” and simply addresses the creation of a fund,  
9 outside of the General Fund, for the state to distribute monies to cities and municipalities. On its  
10 face, ORS 366.505(2) says nothing about being the enforcement mechanism for ORS 366.514.

11 As a final matter, this court is satisfied that plaintiff BikeLoud, as an entity, has also  
12 alleged sufficient facts to have standing. The Amended Complaint includes allegations of the  
13 minute percentage of Portlanders who regularly use bicycles for commuting as compared to  
14 BikeLoud’s members. This allegation shows that a ruling will impact BikeLoud’s members in a  
15 manner distinct from the general public.

16 The defendant’s motion is thus DENIED.

17 It is so ORDERED.

18 DATED December 12, 2023.

19 

20 The Honorable Christopher A. Ramras  
21 Circuit Court Judge

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