IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

SENATOR DENNIS LINTHICUM; REPRESENTATIVE MIKE NEARMAN; REPRESENTATIVE E. WERNER RESCHKE; and NEIL RUGGLES Plaintiffs, v. GOVERNOR KATE BROWN, in her capacity as Governor of the State of Oregon and STATE OF OREGON, Defendants.	Case No. 20CV37213 Decision and Order on Plaintiffs' Motions for Summary Judgment, Defendants' Motion to Dismiss and Defendants' Cross Motion for Summary Judgment

Plaintiffs filed a motion for summary judgment pursuant to ORCP 47 ("Motion") arguing that certain executive orders issued by Governor Kate Brown pursuant to ORS Chapter 401 violate provisions of the Oregon Constitution and are, therefore, invalid. In addition, that ORS 401.168 and 401.192 violate the Oregon Constitution, as well as the Guarantee Clause of the United States Constitution. In response, Defendants filed a motion to dismiss ("Motion to Dismiss") arguing Plaintiffs lack standing and thus this Court lacks jurisdiction. In the alternative, Defendants seek summary judgment ("Cross Motion") arguing that the executive orders and ORS Chapter 401 are constitutional. Oral arguments were heard by the Court on January 21, 2021. Because the Motion to Dismiss raises an issue of jurisdiction that is potentially dispositive, the Court first addresses the Motion to Dismiss. *See* ORCP 21G(4)("If it appears by motion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action."). For the reasons that follow, the Court grants Defendants' Motion to Dismiss.

Motion to Dismiss Standard

In reviewing a motion to dismiss, the Court must assume the facts alleged in the complaint are true and draw all reasonable inferences in plaintiff's favor. *Bailey v. Lewis Farm, Inc.*, 343 Or 276, 278 (2007). The Court, however, is not limited to the allegations of the complaint in deciding the motion. *See* ORCP 21 A (explaining that in deciding a motion to dismiss based on lack of jurisdiction, the court may consider "matters outside the pleading, including affidavits, declarations and other evidence" to "determine the existence or nonexistence of the facts supporting such defense")

Jurisdiction

Defendants argue the Court lacks jurisdiction because Plaintiffs lack standing. Motion to Dismiss at 6. Standing is based on the statute at issue, not a matter of common law, "but is, instead, conferred by the legislature." *Local No. 290, Plumbers & Pipefitters v. Oregon Dep't of Envtl. Quality*, 323 Or 559, 566 (1996). "A party who seeks judicial review of a governmental action must establish that that party has standing to invoke judicial review." *Kellas v. Dept. of Corr.*, 341 Or 471, 477 (2006). Plaintiffs seek injunctive relief and declaratory relief under ORS 28.020 "for a declaration from this Court as to the scope of their rights to an Oregon government that operates in accordance with the separation of powers as established by the Oregon Constitution." *See* Complaint ¶ 40, and page 12-13. As to ORS 28.020, Defendants argue Plaintiffs have failed to adequately allege the three standing requirements to invoke the Court's jurisdiction. Motion to Dismiss at 5.

ORS 28.020 provides:

> *Any person* interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a constitution, statute, municipal charter, ordinance, contract or franchise may have determined any question of construction or validity arising under any such instrument, constitution, statute, municipal charter, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

ORS 28.020 (emphasis added).

The Oregon Supreme Court, in *Morgan v. Sisters School Dist. No. 6*, 353 Or 189 (2013) outlines the test for standing under ORS 28.020. There are three considerations:

> The first consideration is that there must be "some injury or other impact upon a legally recognized interest beyond an abstract interest in the correct application or the validity of a law." * * * *
>
> The second consideration is that the injury must be real or probable, not hypothetical or speculative. * * * *
>
> The third and final consideration is that the court's decision must have a practical effect on the rights that the plaintiff is seeking to vindicate.

Morgan v. Sisters School Dist. No. 6, supra at 195-198.

Defendants argue the Plaintiffs fail on each element. First, Defendants' argue, Plaintiffs "have failed to allege or prove they have experienced an injury to any *legally recognized interest* caused by the statute they challenge and the Governor's current COVID-19 executive orders." Motion to Dismiss at 7 (emphasis added). With respect to the three legislator plaintiffs, Defendant argues "no Oregon authority supports a claim of injury by legislators who simply lack

the political power," as members of a minority party, "to repeal legislation, enact legislation, or pass a resolution in the Legislative Assembly. *Id*.

The Oregon Supreme Court has explained, "It is not sufficient that a party thinks an enactment or a decision of a government entity to be unlawful. The standing requirements of ORS 28.020 require that the challenged law must affect *that party's* rights, status, or legal relations." *Morgan v. Sisters School Dist. No. 6*, supra, 195 (emphasis in original). In describing what interests are "legally recognized" that would support standing under the declaratory judgement act the Oregon Supreme Court writes: "As a general proposition, legal recognition can come from many sources—statutes, constitutional provisions, regulations, local ordinances, and the historical and evolving common law." *MT & M Gaming, Inc. v. City of Portland*, 360 Or 544, 563 (2016). More than a simple "injury in fact" is required. *Id*.

For their part, Plaintiffs argue the First Cause of Action—injunctive relief—is not premised on any statute. Plaintiff's Memorandum in Opposition to Defendants Motions, and Reply in Further Support of Plaintiffs' Motion for Summary Judgment ("Memo in Opposition") at 4. Nevertheless, *citing Morgan v. Sisters School Dist. No. 6*, supra. (2013), they recognize the standing requirements in declaratory judgment actions apply to action for injunctive relief. Memo in Opposition at 5, footnote 1. The Court agrees. *See Morgan v. Sisters Dist. No. 6*, supra at 201 (explaining that no statute governs standing to seek injunctive relief and that the court has long applied the same standing requirement that applies for declaratory judgment actions.). Nevertheless, Plaintiffs advance a number of theories to establish standing, which the Court labels as (1) vindication of public rights, (2) legislator standing, and (3) *Morgan* three-part test. The Court will address each in turn.

Vindication of Public Rights

At oral argument Plaintiffs highlighted their reliance on *Kellas v. Department of Corrections*, 341 Or 471 (2006) and *Couey v. Atkins*, 357 Or 460 (2015) for the proposition that the legislator plaintiffs should have standing to bring "public actions" or cases involving "public interest." Memo in Opposition at 6. They explain, "As *Kellas* explains, the Oregon Constitution particularly allows standing to those who seek to vindicate public right to be heard in the courts of Oregon." *Id*. The Court does not find those cases support standing in this case. First, the Oregon Supreme Court in *Couey* addressed the issue of mootness in the context of ORS 14.175, which allows cases involving the constitutionality of a statutes to continue even when the decision will "have no practical effect on the party." *See Couey, supra* at 476-477. Not merely because the case at issue involved the constitutionality of a statute. ORS 14.175 specifically requires the Court to have determined, "The party had standing to commence the action." *See* ORS 14.175(1).

Second, the Oregon Supreme Court in *Kellas*, primarily addressed "statutory standing" as it related to ORS 183.400(1). They write:

> As noted, ORS 183.400(1) provides that "[t]he validity of any rule may be determined upon a petition by any person to the Court of Appeal[.]" (Emphasis added) The statute imposes no additional qualification for standing in this context.

> The legislature's policy choice regarding standing in ORS 183.400(1) is unambiguous. * * * *The remaining question is whether some other source of law—in this case, the Oregon Constitution—imposes any additional requirement or limitation regarding a party's standing to challenge an administrative rule*.

Kellas, supra at 477 (emphasis added).

While finding no constitutional limitation on the legislature to "empower citizens to initiate a judicial proceeding to vindicate the public's interest in requiring the government to respect the limits of its authority under law," the Oregon Supreme Court in *Kellas* noted an additional "practical effects requirement" exists under the Uniform Declaratory Judgment Act. *Id*. at 484 ("In reaching its contrary conclusion in *Utsey*, the Court of Appeals erroneously relied on decisions in which this court discussed a practical effects requirement in the context of distinguishable statutory standing requirements, such as those in the Uniform Declaratory Judgment Act, ORS 28.010 to 28.160.").

The Court does not find Plaintiffs reliance on *Kellas* and *Couey* helpful in supporting its argument that standing requirements apply differently because the issue before the Court is the constitutionality of a statute and executive orders. Plaintiffs are still required to establish the outcome of the case will have some "practical effect" on them, as will be addressed later.

Legislator Standing

Plaintiffs, responding to the question of their "legally recognized interest," points to cases addressing state legislator standing in federal court and under the United States Constitution. *See e.g., Coleman v. Miller*, 307 US 433, 438, 59 S Ct. 972, 975, 83 L Ed 1385 (1939)("We think that these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes. *Petitioners come directly within the provisions of the statute governing our appellate jurisdiction*. They have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect and the state court has denied that right and privilege."(emphasis added)). The Oregon Supreme Court has made it clear, however, that the federal standing standard does not apply. They write:

> [W]hen considering issues of standing under a given statute, we do not rely on general pronouncements about standing drawn from cases involving different statutes. Neither do we consider federal notions of standing that do not apply in Oregon.

MT & M Gaming, Inc. v. City of Portland, 360 Or 544, 554 (2016)

Plaintiffs next point to cases from other states, Oklahoma and Colorado. Unlike ORS Chapter 401 which grants the governor certain authority to act in the case of an emergency, the laws and actions at issue in the cases cited by Plaintiff directly impacted either the individual legislator, or the legislative body. In *Hendrick v. Walters*, 865 P2d 1232 (Oklahoma 1993), the Oklahoma Supreme Court addressed the issue of standing of a state senator to file suit to determine whether the governor had forfeited office by failing to take a statutorily required oath. *Id*. at 1235. Similar to Oregon, legislators in Oklahoma were held to have no "elevated status" as

to standing. *Id*. at 1236. In finding that the legislator had standing, the Oklahoma Supreme Court explained:

> *Legislative process* requires a substantial quantum of *interaction* by governor with legislator, whether the latter is a senator or a member of the House of Representatives. Our Constitution gives to a governor the duty (a) to call the Legislature into special session and specify the subject to be acted upon, (b) to approve or to veto an enrolled bill, (c) to approve or disapprove appropriations, (d) to communicate to the Legislature the condition of the State, and (e) to make appointments, some of which require Senate confirmation. *Governor and legislators are also linked by the former's adjournment powers and by shared pardon and parole responsibilities.* The Senator's interacting contacts vis-à-vis the Governor include (a) giving and receiving constitutionally mandated communications, (b) confirming or refusing to confirm the Governor's appointees, (c) serving on appropriations and other committees, (d) voting on bills and (e) overriding vetoes. *Whether the Senator's vote in the confirmation process or to override the Governor's veto is an exercise of futility or an effective governmental act depends upon the outcome of today's controversy*. If the office is indeed vacant by forfeiture upon Respondent's failure to take an oath in the form prescribed by * * * , *then the Senator's confirmation votes would be invited, and indeed cast, to place an imprimatur upon invalid appointments*; and his vote to override the Governor's veto would be in vain. The Senator clearly has shown *both* a plain, direct and legitimate interest in having this court's declaration upon the tendered issue *and* a personal stake in the outcome. The controversy is lively, real and the requirement of justiciability hence clearly met.

Hendrix v. Walters, supra at 1237-1238 (internal citations and footnotes omitted)(emphasis added).

ORS 401.165(1) provides: "The Governor may declare a state of emergency by proclamation at the request of a county governing body or after determining that an emergency has occurred or is imminent," and the balance of the statute goes on to address a number of issues, including how counties, cities and other local governments might prompt the governor to initiate her emergency powers. *See* ORS 401.165. ORS 401.168(1) outlines the powers of the Governor during a state of emergency. It provides:

> During a state of emergency, the Governor has complete authority over all executive agencies of state government and the right to exercise, within the area designated in the proclamation, all police powers vested in the state by the Oregon Constitution in order to effectuate the purposes of this chapter.

ORS 401.168(1)

Other provisions address the Governor's powers during a state of emergency. Only ORS 401.192 mentions the legislature and that is with respect to their ability to end the state of emergency by joint resolution. ORS 401.192 ("The powers granted to the Governor by ORS 401.185 may continue beyond the termination of the state of

emergency and shall be terminated by proclamation of the Governor or by joint resolution of the Legislative Assembly."). Nothing in ORS Chapter 401 suggests an interaction with individual members, representatives, senators or even the legislature in anyway similar to the situation in the Oklahoma case.

Unlike the situation in *Hendrix v. Walters*, ORS Chapter 401 does not imply potential impacts on individual members of the Oregon legislator in the performance of their responsibilities as members at all akin to the situation in *Hendrix v. Walters*. Nor do Plaintiffs argue that it does. Instead, Plaintiff reference a generic "right to be heard in the Legislature." *See* Memo in Opposition at 7. It is additionally important to note that this is not a case involving the validity of a joint resolution passed by the legislature to end the state of emergency.

The Colorado case is even less helpful to Plaintiffs. First, it was a suit brought by the Colorado General Assembly, not individual legislators.[1] Second, at issue was the validity of the governor's veto power. *Colorado General Assembly v. Lamm*, 704 P2d 1371, (Colo 1985). In finding that the Colorado General Assembly had standing to challenge the veto, the Colorado Supreme Court explain:

> Certainly the governor possesses legislative power to the extent of that official's ability to veto legislation. *Stong v. People ex rel. Curran*. But this gubernatorial power is confined within its constitutional limits and does not extend to vetoes of a nature impermissible under the constitution. In order to protect its ability to enact legislation by majority vote, it is essential that the legislature be able to obtain a determination whether a purported veto is within the governor's power, and therefore valid, or outside the ambit of that power, and therefore an intrusion upon the legislative domain. *We recognize standing in the general assembly to seek determination of the question whether a purported veto is invalid and therefore, if permitted to stand unchallenged, would cause injury in fact to the legislature's legally protected right and power to make appropriations by majority vote*.

Colorado Gen. Assembly v. Lamm, 704 P2d 1371, 1378 (Colo. 1985)(emphasis added).

We therefore look to Oregon law for Plaintiffs' legally recognized interest. Plaintiffs cite no Oregon case identifying common law support and no separate statute reflecting a specific legally recognized interest for legislator plaintiffs. Thus, we apply the *Morgan* three-part test.

Morgan Three Part Test - Legislators

The Oregon Supreme Court has explained that,

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[1] *Colorado Gen. Assembly v. Lamm*, 704 P2d 1371, 1374 (Colo. 1985) ("In November of 1982, the Colorado General Assembly brought suit in Denver District Court seeking a declaratory judgment that the governor's vetoes of certain provisions of the 1982 long bill and the 1981 supplemental appropriation bill were invalid because they did not encompass complete "items" and therefore were not within the power of the governor to disapprove "distinct items" in an appropriation bill.")

> [T]o have standing to seek a declaration with respect to a statute, a plaintiff must show that it has a "legally recognized interest" that is adversely affected by the statute. *Morgan*, 353 Or at 372, 301 P.3d 419. An affected interest *may* be legally recognized by the very statute at issue in the declaratory judgment action, but it also may be legally recognized by other sources.

MT & M Gaming, Inc., supra 566 (where the court found the plaintiff lacked standing "because it failed to assert or sufficiently develop an argument that its interpretation" of the statutes at issue reflected a legally recognized interest by any source.)

Arguing that the Court should liberally construe ORS 28.020, Plaintiffs argue that they meet the three-part test for standing. Memo in Opposition at 8. The Oregon Supreme Court has found legally recognized interest in Oregon for those who are intended beneficiaries of statutes, within a statute's "zone of interest," adversely affect taxpayers, and those with property and contract interests based on the common law. *See MT & M Gaming, Inc. supra*. at 563-564.

Legislator plaintiffs argue they have, "as individuals, a right to be heard in the Legislature on the important questions of public policy raised by the COVID-19 epidemic." Memo in Opposition at 7. They point to the Oregon Constitution, Article I, Sections 21[2] and 22[3], and Article IV, Sections 1[4] and 26[5]. As an initial matter, Plaintiffs provide no basis for the Court to determine Article IV, Section 26 applies in any context outside of actual legislative debate.[6] Thus, the Court finds Article IV, Section 26 does not reflect a legally recognized interest for a legislator to challenge the constitutionality of ORS Chapter 401. None of the other constitutional provisions speak to a legally recognized right of an individual member of the Legislative Assembly. Instead, each refers to the role or function of the Legislative Assembly, House and Senate, as bodies; not those of individual members. Thus, plaintiff legislators have failed to allege and prove a legally recognized interest to support standing to challenge the provisions of ORS Chapter 401 and the Governor's executive orders issued pursuant thereto.

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[2] "No *ex-post facto* law, or law impairing the obligation of contracts shall ever be passed, *nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution*; provided, that laws locating the Capitol of the State, locating County Seats, and submitting town, and corporate acts, and other local, and Special laws may take effect, or not, upon a vote of the electors interested." Or. Const. Art. I, § 21 (emphasis added).

[3] "The operation of the laws shall never be suspended, except by the Authority *of the Legislative Assembly*. Or. Const. Art. I, § 22 (emphasis added).

[4] "The legislative power of the state, except for the initiative and referendum powers reserved to the people, *is vested in a Legislative Assembly*, consisting of a Senate and a House of Representatives." Or. Const. Art. IV, § 1(1)(emphasis added).

[5] "Any member of either house, shall have the right to protest, and have his protest, with his reasons for dissent, entered on the journal." Or. Const. Article IV, Section 26.

[6] *See* 1 Sutherland Statutory Construction § 14:7 (7th ed.)("The constitutions of some states provide that any member of either house of the legislature shall have liberty to dissent or protest against any act or resolution which he may think injurious to the public or to an individual, and to have the reason for dissent entered on the journal. *This privilege extends to any legislative proceeding on which a vote has been favorably taken; but the time for, nature of, and extent of the protest probably are determined by the rules of the respective houses*.")(emphasis added).

Accordingly, Defendants Motion to Dismiss with respect to legislator plaintiffs is hereby granted.

Morgan Three Part Test Applied-Plaintiff Ruggles

With respect to Plaintiff Ruggles, Plaintiffs allege and argue, "He has suffered financial losses, and has lost a martial arts practice that for thirty years provided him with physical, social, and mental health benefits, by reason of the Governor's unlawful and unconstitutional orders challenged herein." Amended Complaint ¶ 4. The Court will address each of these separately.

Tutoring Business Interest

Plaintiffs argue "it is all but axiomatic that financial loss, even that caused by regulation of a third party, is sufficient to constitute an adversely affected right in Oregon." Memo in Opposition at 9. They argue Plaintiff Ruggles' livelihood in tutoring students "was destroyed by the Governor's orders and their impact upon public schools, whose operations generate the need for his livelihood." *Id*.

In his declarations, Plaintiff Ruggles explains:

> I have suffered financial losses, and have lost the opportunity to practice martial arts that for thirty years provided me with physical, social, and mental health benefits, by reason of the Governor's unlawful and unconstitutional orders challenged herein.

Ruggles Declaration at ¶ 2.

He adds in his supplemental declaration:

> 2. I have worked as an in-person private tutor since 2002. *I tutor mostly mathematics and mostly at the high school level*. * * * *I regularly received tutoring inquiries during each school year because I was listed as a tutor*. In addition, I regularly received referrals from satisfied clients, and I regularly tutored siblings of prior students.
>
> * * * *
>
> 4. Unlike many people, I have not and do not use a cell phone, which is a key tool for online tutoring. *This has never presented a problem with any pre-pandemic client.* Whether I were to purchase a cell phone to support online tutoring, or forgo tutoring for want of such a phone, there is a cost incurred that directly relates to the switch to online schooling.
>
> * * * *

> 11. Until the Governor destroyed my business, I tutored mainly high school students with an occasional college or late middle school student. I lack experience teaching elementary mathematics or other subjects.
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> 12. It is possible that online schooling has created opportunities for online tutors. However, many of the new opportunities require significant technology investments. The articles provided to the court refer to language apps, video conferencing tools, collaboration tools and virtual tutoring. These tools described would require investment in both technology and training in order to become proficient enough to charge for tutoring using such tools.
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> 13. *The computer equipment I own has been adequate to support my pre-pandemic business*, and is NOT sufficient to support online tutoring because he I lack the means effectively to show my own work to students while I am doing it.

Supplemental Declaration of Neil Ruggles ("Ruggles Supp. Decl.") ¶ 2, 4 and 11-13(emphasis added).

Plaintiffs argue that with the December 17, 2020, Executive Order No 20-67, the declaration of emergency will remain in effect until March 3, 2021. Memo in Opposition at 11. Assuming, as we must, the truth of the facts alleged in the Amended Complaint, Plaintiff Ruggles had a business interest in tutoring high school students. Again, that interest, Plaintiffs argue has been impacted by the Governor's "unlawful and unconstitutional orders." Amended Complaint ¶ 4. Thus, they argue, striking down the challenged Executive Orders would redress the injuries identified by Plaintiffs, meeting two of the three *Morgan* considerations. Memo in Opposition at 12.

Defendants argue Plaintiff Ruggles' alleged injury to his tutoring business can no longer be rectified by a decision of the Court because reopening of schools is entirely the decision of the school boards and private school administrations. Reply in Support of Motion to Dismiss at 7. "Unless the relief that the plaintiff seeks would 'redress the injury that is the subject of the declaratory judgment action,' a court cannot enter a declaratory judgment in the plaintiff's favor, because such a declaration would 'amount to no more than an advisory opinion.'" *Childers Meat Co. v. City of Eugene*, 296 Or App 668, 685, *review denied*, 365 Or. 556 (2019)(*quoting Morgan, supra*).

As the Court understands it, Executive Order 20-29 imposed restrictions on in-person learning. It provides:

> 2. In-person Classroom Instruction. It is ordered that the conduct of in-person instruction at public schools and private schools shall be subject to restrictions, effective July 1, 2020. *Namely, in-person instruction may only take place if it complies with the guidance* described in paragraph 3 of this Executive Order, as well as such administrative rules as may be promulgated by the State Board of Education and the Teacher Standards and Practices Commission pursuant to paragraph 8 of this Executive Order, and the directives of this Executive Order.

Exhibit 23 to Ruggles Decl. (emphasis added).

Defendants specifically identify a December 23, 2020 Governor's Office press release as evidence that school closings are no longer mandatory pursuant to the Governor's executive orders. *See* Exhibit D to Beatty-Walters Decl. That press release includes a link to the Governor's letter of the same date explaining the following:

> [E]ffective January 1, 2021, Oregon's COVID-19 Health Metrics for *Returning to In-Person Instruction will become advisory rather than mandatory*. Moving forward, *the decision to resume in-person instruction must be made locally, district by district, school by school*. In addition to schools continuing to adhere to required health and safety protocols and working in close consultation with their local public health authority in understanding and considering the metrics, teachers, school staff, parents and students should be engaged in this decision-making process to allow schools to make the best choice for their community and their students.

Oregon Governor's Letter to Pat Allen, Director, Oregon Health Authority, and Colt Gill, Director, Oregon Department of Education, dated December 23, 2020, page 3 (emphasis added)

Pursuant to ORS 40.090, the Court takes judicial notice of the *Ready Schools, Safe Learners Guidance for School Year 2020-21*, Version 5.5.0, dated January 19, 2021. *See* https://www.oregon.gov/ode/students-and-family/healthsafety/documents/ready%20schools%20safe%20learners%202020-21%20guidance.pdf (Last Accessed Feb. 5, 2021) ("The Oregon Department of Education (ODE), in coordination with the Oregon Health Authority (OHA), is updating the Ready Schools, Safe Learners guidance for the 2020-21 School Year in accordance with Governor Brown's Executive Order 20-29 and Governor Brown's December 23, 2020 decision *to transition to advisory metrics* for local decision-making for returning to in-person instruction."(emphasis added)).

Based on the December 23rd letter and revised guidance, the Court finds schools are no longer closed by order of the Governor. Assuming, for the sake of argument, Ruggles has a legally recognized interest in his tutoring business to challenge the constitutionality of the Governor's executive orders preventing in-person instruction in schools, an order from the Court would not redress Plaintiff Ruggles' injury and would only serve as an advisory opinion.[7]

Plaintiff Ruggles Aikido Interest

Plaintiff Ruggles also alleges an injury to his recreational practice of aikido arguing "his loss of the opportunity to continue his longstanding practice of aikido, is an interest no less protectable than" the right to visit Oregon's forests. Memo in Opposition at 10. Plaintiffs

[7] Plaintiffs do not ask the Court to consider the case under ORS 14.175 and the Court does not exercise its discretion to do so. *See Penn v. Bd. of Parole & Post-prison Supervision*, 365 Or 607, 624, (2019) (explaining that the court has discretion under ORS 14.175 to continue the case and issue a judgment).

provide no authority for the proposition that a person has a legally recognized interest in the practice of martial arts, including aikido. The Court does not find the notion of a right to practice aikido, in the way described by Plaintiff Ruggles, analogous the right to access public land as discussed in *Cascadia v. Or. Dept of State Lands*, 293 Or App 127 (2018)(finding standing based on injuries alleged to petitioner's use and enjoyment of land as "injury to a substantial interest" as an "aggrieved" person within the meaning of ORS 183.480(1)). As noted by Defendants, Plaintiffs fail to even identify the specific studio where he practices, or its location within the state. Reply in Support of Motion to Dismiss at 7 ("Notably, Mr. Ruggles does not identify the studio where he practices, so it is impossible to verify or test his allegations."). The Court, therefore, finds that plaintiff Ruggles lacks standing to challenge the Governor's executive order as unconstitutional and grants Defendant Motion to Dismiss.

Accordingly, the Court hereby grants Defendants' motion to dismiss the Amended Complaint in its entirety

IT IS SO ORDERED

Signed: 2/17/2021 11:50 AM

Dated: February 17, 2021

Hon. Melvin Oden-Orr
Circuit Court Judge

Circuit Court Judge Melvin Oden-Orr