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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

OREGON-COLUMBIA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, an Oregon Non-Profit Corporation; PACIFIC NORTHWEST CHAPTER OF THE ASSOCIATED BUILDERS & CONTRACTORS, INC., an Oregon Non-Profit Corporation; UTILITY CONTRACTORS ASSOCIATION OF OREGON AND SOUTHWEST WASHINGTON dba NORTHWEST UTILITY CONTRACTORS ASSOCIATION, an Oregon Non-Profit Corporation; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, a California non-profit corporation; HP CIVIL, INC., an Oregon Corporation; HAMILTON CONSTRUCTION CO., an Oregon Corporation; K&E EXCAVATING, INC., an Oregon Corporation; INTERLAKEN INC., an Oregon Corporation; MOORE EXCAVATION, INC., an Oregon Corporation; IRON HORSE LLC, an Oregon limited liability company; HATCH WESTERN COMPANY INC., an Oregon Corporation; HYDRO-TEMP MECHANICAL, INC., an Oregon Corporation; NORTH SANTIAM PAVING CO., an Oregon Corporation; BERRIEN CONCRETE LLC, an Oregon limited liability company; AMERICAN CONCRETE COMPANY LLC, an Oregon limited liability company; KERR CONTRACTORS OREGON, LLC, an Oregon limited liability company; and EMERY & SONS CONSTRUCTION GROUP, LLC, an Oregon limited liability company,

Plaintiffs,

vs.

No.

**COMPLAINT  
(Declaratory Judgment)**

Fee Authority: ORS 21.135(2)(F)

CLAIM NOT SUBJECT TO MANDATORY ARBITRATION

1 TINA KOTEK, in her official capacity as  
2 Governor of Oregon,  
3 Defendant.

4 Plaintiffs Oregon-Columbia Chapter of the Associated General Contractors of America  
5 (“AGC Oregon”), Pacific Northwest Chapter of the Associated Builders & Contractors, Inc.  
6 (“ABC PNW”), Utility Contractors Association of Oregon and Southwest Washington dba  
7 Northwest Utility Contractors Association (“NWUCA”), National Federation of Independent  
8 Business (“NFIB”), HP Civil, Inc. (“HP Civil”), Hamilton Construction Co. (“Hamilton”), K&E  
9 Excavating, Inc. (“K&E”), Interlaken Inc. (“Interlaken”), Moore Excavation, Inc. (“MEI”), Iron  
10 Horse LLC (“Iron Horse”), Hatch Western Company Inc. (“Hatch Western”), Hydro-Temp  
11 Mechanical, Inc. (“Hydro-Temp”), North Santiam Paving Co. (“NSP”), Berrien Concrete LLC  
12 (“Berrien”), American Concrete Company LLC (“ACC”), Kerr Contractors Oregon, LLC  
13 (“Kerr”), and Emery & Sons Construction Group, LLC (“Emery & Sons”) allege as follows:

14 **INTRODUCTION**

15 1.

16 On December 18, 2024, the Governor issued Executive Order No. 24-31 (“EO 24-31”). A  
17 copy of EO 24-31 is attached to this Complaint as **Exhibit 1**. Through EO 24-31, the Governor  
18 unilaterally required that every contractor and subcontractor engaged in the construction of a  
19 public improvement project awarded by the state or for which the state has obligated funds, to  
20 negotiate or to become a party to a project labor agreement (“PLA”) with one or more labor  
21 organizations.

22 2.

23 The Governor does not have the power under Article III, Section 1 of the Oregon  
24 Constitution to require PLAs on public construction projects. The issue is ripe for adjudication  
25 because the Governor has directed all state agencies to comply with the requirements of her  
26

1 executive order immediately. EO 24-31 applies to all solicitations for contracts and contracts  
2 awarded on or after its effective date, which was December 18, 2024.

3 3.

4 EO 24-31 applies to every state-owned construction project, or construction project  
5 where the state has obligated funds, where costs of onsite labor constitutes fifteen (15) percent or  
6 more of the total construction, reconstruction, or major renovation project costs. Fundamentally,  
7 given the nature of construction work, the fifteen (15) percent total cost threshold is very low and  
8 will result in a PLA applying to nearly all state public improvement projects.

9 4.

10 According to the Governor, a PLA is a pre-hire collective bargaining agreement  
11 negotiated between construction unions and construction contractors that establish the terms and  
12 conditions of employment for construction projects.

13 5.

14 Plaintiffs bring this action because EO 24-31 is an unconstitutional exercise of power by  
15 the Governor. Under the Oregon Constitution, the Governor is not vested with the power to make  
16 law, regardless of the policy objective. The concept of separation of powers is fundamental to  
17 Oregon's form of government. Article III, Section 1, of the Oregon Constitution states:

18 The powers of the Government shall be divided into three separate branches, the  
19 Legislative, the Executive, including the administrative, and the Judicial; and no  
20 person charged with official duties under one of these branches, shall exercise any  
of the functions of another, except as in this Constitution expressly provided.”

21 Or Const, Art III, § 1. “By its terms, this provision mandates a strictly compartmentalized  
22 tripartite system of government.” Mr. C. Gregory McMurdo, 43 Op Atty Gen 205 (No. 8143  
23 June 16, 1983). “Underlying the principle of separation of powers is the recognition that the  
24 consolidation of power permits despotism and the division of power prevents it.” *Id.* EO 24-31  
25 violates the separation of powers required by Article III, Section 1, because it purports to make  
26 law, a function committed by the Oregon Constitution to the Legislative Assembly and the

1 People. Pursuant to ORS Chapter 28, Plaintiffs seek a judgment declaring Sections 1, 2, 3, 5, and  
2 6 of EO 24-31, the parts of EO 24-31 that purport to make new law, unconstitutional.

3 **PARTIES**

4 6.

5 AGC Oregon is a non-profit corporation organized under the laws of the State of Oregon.  
6 AGC Oregon's membership consists of 756 civil and commercial general and specialty  
7 contractors in Oregon and southwest Washington, representing every part of the construction  
8 industry. This includes both firms that are open-shop and firms that are union, firms that are  
9 urban and firms that are rural, as well as firms that are variously small, medium, large, vertical  
10 and horizontal contractors. A large portion of AGC Oregon's members regularly bid and perform  
11 work on public improvement projects for the State of Oregon.

12 7.

13 ABC PNW is a non-profit corporation organized under the laws of the State of Oregon.  
14 ABC PNW's membership consists of 134 general and specialty Oregon-based contractors,  
15 representing every part of the construction industry. ABC PNW's membership supports and  
16 endorses the merit shop philosophy formed on the belief that the public, the state, and the  
17 construction industry are best served if public procurements remain open and competitive. ABC  
18 PNW includes firms that are urban and firms that are rural, as well as firms that are variously  
19 small, medium, large, vertical and horizontal contractors. ABC PNW's members regularly bid  
20 and perform work on public improvement projects for the State of Oregon.

21 8.

22 NWUCA is a non-profit corporation organized under the laws of the State of Oregon.  
23 NWUCA's membership consists of contractors and subcontractors engaged in the construction  
24 of utility lines, excavation, site work, and trenchless technology. NWUCA's members regularly  
25 bid and perform work on public improvement projects for the State of Oregon.

26

1

9.

2 NFIB is a non-profit corporation organized under the laws of the state of California.  
3 NFIB's membership consists of small and independent businesses, including contractors and  
4 subcontractors, which regularly bid and perform work on public improvement projects for the  
5 state of Oregon.

6

10.

7 HP Civil is a corporation organized under the laws of the State of Oregon with its  
8 principal place of business in Salem, Oregon. HP Civil is, and at all times material to the events  
9 herein was, duly registered as a general contractor with the Oregon Construction Contractors  
10 Board and the holder of a valid and current certificate of registration, License No. 202060. HP  
11 Civil is an open-shop highway/heavy civil contractor specializing in bridges and highways across  
12 Oregon and the Pacific Northwest and regularly bids on and performs work on public  
13 improvement projects for the State of Oregon.

14

11.

15 Hamilton is a corporation organized under the laws of the State of Oregon with its  
16 principal place of business in Springfield, Oregon. Hamilton is, and at all times material to the  
17 events herein was, duly registered as a general contractor with the Oregon Construction  
18 Contractors Board and the holder of a valid and current certificate of registration, License No.  
19 13877. Hamilton is an open-shop highway/heavy civil contractor specializing in bridges and  
20 highways across Oregon and the Pacific Northwest and regularly bids on and performs work on  
21 public improvement projects for the State of Oregon.

22

12.

23 K&E is a corporation organized under the laws of the State of Oregon with its principal  
24 place of business in Salem, Oregon. K&E is, and at all times material to the events herein was,  
25 duly registered as a general contractor with the Oregon Construction Contractors Board and the  
26 holder of a valid and current certificate of registration, License No. 128542. K&E is an open-

1 shop highway/heavy civil contractor specializing in bridges and highways across Oregon and the  
2 Pacific Northwest and regularly bids on and performs work on public improvement projects for  
3 the State of Oregon.

4 13.

5 Interlaken is a corporation organized under the laws of the State of Oregon with its  
6 principal place of business in Gresham, Oregon. Interlaken is, and at all times material to the  
7 events herein was, duly registered as a general contractor with the Oregon Construction  
8 Contractors Board and the holder of a valid and current certificate of registration, License No.  
9 160018. Oregon's Certification Office for Business Inclusion and Diversity ("COBID") has  
10 certified Interlaken as a Woman Business Enterprise ("WBE"). Interlaken is an open-shop  
11 excavation contractor who regularly bids and performs work on public improvement projects that  
12 include state funding.

13 14.

14 MEI is a corporation organized under the laws of the State of Oregon with its principal  
15 place of business in Fairview, Oregon. MEI is, and at all times material to the events herein was,  
16 duly registered as a general contractor with the Oregon Construction Contractors Board and the  
17 holder of a valid and current certificate of registration, License No. 28397. MEI is an open-shop  
18 highway/heavy civil contractor specializing in highway and utility construction across Oregon  
19 and the Pacific Northwest and regularly bids on and performs work on public improvement  
20 projects for the State of Oregon.

21 15.

22 Iron Horse is a limited liability company organized under the laws of the State of Oregon  
23 with its principal place of business in Fairview, Oregon. Iron Horse is, and at all times material  
24 to the events herein was, duly registered as a general contractor with the Oregon Construction  
25 Contractors Board and the holder of a valid and current certificate of registration, License No.  
26 213253. COBID certified Iron Horse as a WBE and Disadvantaged Business Enterprise

1 (“DBE”). Iron Horse is an open-shop specialty subcontractor that specializes in rehabilitating  
2 sewer, storm, and water lines across Oregon and the Pacific Northwest. Iron Horse regularly bids  
3 and performs work on public improvement projects for the State of Oregon.

4 16.

5 Hatch Western is a corporation organized under the laws of the State of Oregon with its  
6 principal place of business in Sherwood, Oregon. Hatch Western is, and at all times material to  
7 the events herein was, duly registered as a general contractor with the Oregon Construction  
8 Contractors Board and the holder of a valid and current certificate of registration, License No.  
9 63338. Hatch Western is an open-shop specialty subcontractor who regularly bids and performs  
10 work on public improvement projects for the State of Oregon.

11 17.

12 Hydro-Temp is a corporation organized under the laws of the State of Oregon with its  
13 principal place of business in Wilsonville, Oregon. Hydro-Temp is, and at all times material to  
14 the events herein was, duly registered as a general contractor with the Oregon Construction  
15 Contractors Board and the holder of a valid and current certificate of registration, License No.  
16 63907. Hydro-Temp is an open-shop specialty mechanical contractor providing contracting  
17 services for plumbing, HVAC, and other specialty building systems. Hydro-Temp regularly bids  
18 and performs work on public improvement projects for the State of Oregon.

19 18.

20 Berrien is a limited liability company organized under the laws of the State of Oregon  
21 with its principal place of business in Salem, Oregon. Berrien is, and at all times material to the  
22 events herein was, duly registered as a general contractor with the Oregon Construction  
23 Contractors Board and the holder of a valid and current certificate of registration, License No.  
24 228954. COBID certified Berrien as a DBE, Minority Business Enterprise (“MBE”) and  
25 Emerging Small Business (“ESB”). Berrien is an open-shop, woman led and minority-owned

26

1 concrete subcontractor who regularly bids and performs work on public improvement projects  
2 for the State of Oregon.

3 19.

4 NSP is a corporation organized under the laws of the State of Oregon with its principal  
5 place of business in Stayton, Oregon. NSP is, and all times material to the events herein was,  
6 duly registered as a general contractor with the Oregon Construction Contractors Board and the  
7 holder of a valid and current certificate of registration, License No. 53247. NSP is an open-shop  
8 site development and roadway contractor who regularly bids and performs work on public  
9 improvement projects for the State of Oregon.

10 20.

11 ACC is a limited liability company organized under the laws of the State of Oregon with  
12 its principal place of business in Coburg, Oregon. ACC is, and at all times material to the events  
13 herein was, duly registered as a general contractor with the Oregon Construction Contractors  
14 Board and the holder of a valid and current certificate of registration, License No. 234547. ACC  
15 is an open-shop specialty subcontractor who regularly bids and performs work on public  
16 improvement projects for the State of Oregon.

17 21.

18 Kerr is a limited liability company organized under the laws of the State of Oregon with  
19 its principal place of business in Woodburn, Oregon. Kerr is, and at all times material to the  
20 events herein was, duly registered as a general contractor with the Oregon Construction  
21 Contractors Board and the holder of a valid and current certificate of registration, License No.  
22 227664. Kerr is a heavy civil general contractor and construction management firm that regularly  
23 bids and performs work on public improvement projects for the State of Oregon

24 22.

25 Emery & Sons is a limited liability company organized under the laws of the State of  
26 Oregon with its principal place of business in Salem, Oregon. Emery & Sons is, and at all times



1 material to the events herein was, duly registered as a general contractor with the Oregon  
2 Construction Contractors Board and the holder of a valid and current certificate of registration,  
3 License No. 221536. Emery & Sons is a heavy civil general contractor and construction  
4 management firm that regularly bids and performs work on public improvement projects for the  
5 State of Oregon.

6 23.

7 Each of the named plaintiffs are “persons” within the meaning of the Declaratory  
8 Judgment Act whose rights, status, or legal relations are directly affected by EO 24-31’s PLA  
9 mandate.

10 24.

11 Defendant Tina Kotek is the Governor of the State of Oregon who issued EO 24-31. This  
12 action is brought against her in her official capacity as Governor of Oregon.

13 **JURISDICTION AND VENUE**

14 25.

15 This Court has jurisdiction pursuant to ORS 28.010, ORS 28.020, and ORS 28.050 to  
16 declare the rights, status, and other legal relations of the parties and to declare whether any  
17 further relief is available. It also has the authority pursuant to ORS 28.080 to grant any further  
18 relief that is necessary or proper.

19 26.

20 By its own terms, EO 24-31 is effective as of its issuance and applies to all solicitations  
21 for contracts and contracts awarded on or after the effective date. The parties have an active and  
22 current dispute as to the constitutionality of EO 24-31. Therefore, this facial challenge to the  
23 constitutionality of EO 24-31 is ripe for this Court’s review.

24 27.

25 Venue is proper pursuant to ORS 14.050(2) or 14.060 because EO 24-31 was issued in  
26 Marion County and, therefore, the declaratory cause of action arose there.

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28.

Pursuant to ORS 28.110, the Oregon Attorney General is being served with a copy of this complaint.

**BACKGROUND**

**The Oregon Constitution Mandates Separation of Powers**

29.

The principle of separation of powers—*i.e.*, “that the legislative, executive, and judiciary departments ought to be separate and distinct” has long been recognized as an “essential precaution in favor of liberty” in American democracy. Federalist No. 47 (James Madison).

30.

The Oregon Constitution expressly mandates separation of powers amongst the three branches of government.

31.

Article IV, Section 1 of the Oregon Constitution sets out the official duties of the legislative branch and provides that “[t]he legislative power of the state, except for the initiative and referendum powers reserved to the people, is vested in the Legislative Assembly, consisting of a Senate and a House of Representatives.”

32.

In turn, the executive branch executes the laws passed by the Legislative Assembly (or by the People via referendum). Article V, Section 10 of the Oregon Constitution provides that the Governor “shall take care that the Laws be faithfully executed.”

**Existing Law Does Not Allow a State Agency to Require Contractors Performing Public Improvement Projects to Enter Into Project Labor Agreements**

33.

Oregon statutes impose detailed procedures and requirements on the public contract bidding process and impose express standards of responsibility on bidders who seek to be

1 awarded a public improvement contract. As an example, ORS 279C.840 requires any contractor  
2 or subcontractor on a public works project to pay not less than the prevailing rate of wage. ORS  
3 279C.830 also requires that the specifications for every public works contract include a  
4 prevailing rate of wage provision.

5 34.

6 In *Novick v. Myers*, 332 Or 493, 498, 32 P3d 890 (2001), the Oregon Supreme Court  
7 recognized that Oregon law (at least as of 2001) contained no legal authority for a public agency  
8 to demand or compel that a public works contract contain a “labor agreement” or a “project labor  
9 agreement.”

10 35.

11 Oregon law regarding PLAs remained unchanged until August 2021 when the legislature  
12 adopted ORS § 279A.803 granting a public body authority to require a contractor to enter into a  
13 PLA on certain qualifying projects. Under ORS § 279A.803, a PLA requirement could only be  
14 imposed on a project that met the following criteria: (1) the project was for capital improvements  
15 to water, sewer, broadband or transportation infrastructure; (2) the project has an estimated  
16 project cost of at least \$10 million; and (3) the project utilizes at least \$750,000 of moneys made  
17 available to the state under the America Rescue Plan Act of 2021. ORS § 279A.803(3)(g)  
18 (defining a “Qualified Project”).

19 36.

20 Since adopting ORS § 279A.803, only a single state project has included a PLA  
21 requirement. That project is the OR 18: Newberg-Dundee Bypass Phase 2 project (“Newberg-  
22 Dundee Bypass Project”).

23 37.

24 During the 2023 legislative session, the legislature considered a bill to expand the scope  
25 of public works projects that could include a PLA requirement. Senate Bill (“SB”) 850 was

26

1 introduced on February 2, 2023 but did not move out of committee. As a result, SB 850 was not  
2 adopted by the legislature.

3 **The Governor Issues Executive Order 24-31**

4 38.

5 In issuing EO 24-31, Governor Kotek performed a legislative function via executive  
6 order by unilaterally imposing a PLA requirement on nearly every public construction project in  
7 the State.

8 39.

9 The recitals of EO 24-31 state that “the State of Oregon enacted ORS 279C.308 to  
10 authorize public agencies to include specific elements in public improvement contracts.”  
11 However, ORS 279C.308 only applies to those public improvement contracts designated as  
12 community benefit contracts. Moreover, if a public agency chooses to include other provisions in  
13 a community benefit contract not otherwise set forth in ORS 279C.308, an agency must adopt  
14 those provisions by rulemaking. ORS 279C.308 does not grant the Governor the authority to  
15 bypass applicable rule-making procedures.

16 40.

17 This is the second attempt by the Oregon executive branch to bypass the ordinary rule-  
18 making processes that are imposed on it by statutory law. In October 2022, under the purported  
19 authority of ORS 279C.308, the Oregon Department of Transportation (“ODOT”) entered into a  
20 PLA, but called the Community Workforce Agreement (“CWA”), with certain labor  
21 organizations. Under the CWA, contractors would be required to assent to the terms of the CWA  
22 as a condition of bidding on certain covered projects described in the CWA. If a contractor was  
23 awarded a covered project, it would be required to, among other things, obtain the vast majority  
24 of its workforce for that project from unions in lieu of using the contractor’s own non-union  
25 workforce.

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41.

AGC Oregon filed a Petition for Review in the Oregon Court of Appeals challenging ODOT’s CWA as an invalid rule because it was not adopted pursuant to notice-and-comment rulemaking and because it exceeded ODOT’s statutory authority. Following an evidentiary hearing, the Marion County Circuit Court entered a preliminary injunction to maintain the status quo while the CWA was pending review before the Court of Appeals. The Oregon Building and Construction Trades Council (as an intervenor to the Marion County action) filed a separate mandamus action challenging the circuit court’s entry of a preliminary injunction. Both the Petition for Review and Mandamus Action were consolidated and oral argument addressing the validity of the CWA was heard by the Oregon Supreme Court on December 9, 2024.

42.

Rather than wait for the Supreme Court’s decision on ODOT’s use of a PLA on a class of highway projects, less than two weeks after oral argument, on December 18, 2024, the Governor issued EO 24-31, which expanded the PLA requirement to nearly all public improvement projects in Oregon.

43.

Section 1 of EO 24-31 purports to establish the same PLA requirements that the legislature failed to enact into law in 2023, albeit with a far lower threshold for the types of projects that must include a PLA requirement.

44.

In the recitals of EO 24-31, the Governor cites to a February 4, 2022, Executive Order by President Biden which would require PLAs on large-scale (over \$35 million) federal construction projects (the “Federal PLA Executive Order”). Yet, on January 21, 2025, the Court of Federal Claims issued an order that, in effect, invalidates the Federal PLA Executive Order. In that case, the Court determined that the mandatory PLA requirement violated the federal Competition in Contracting Act’s (“CICA”) “full and open competition” procedure by

1 disqualifying otherwise responsible contractors who do not enter into a PLA with a labor union,  
2 even though those contractors may otherwise offer the government the best value.

3 45.

4 Moreover, unlike EO 24-31, the Federal PLA Executive Order did not immediately  
5 impose a PLA requirement on large-scale federal projects and, instead, directed “the FAR  
6 council, to the extent permitted by law,” to “*propose* regulations implementing the provisions of  
7 [the Federal PLA Executive Order].” (Emphasis added). In other words, the FAR council must  
8 undertake formal rulemaking to develop PLA requirements that it sought to impose on  
9 contractors.

10 46.

11 EO 24-31 bypasses both the requirements for legislative enactments and the  
12 administrative rulemaking process by imposing laws, not found in statute, on contractors who  
13 wish to perform work on public improvement projects.

#### 14 **EO 24-31 Will Decrease Competition On Public Construction Projects**

15 47.

16 EO 24-31 states that a PLA “can ensure a construction project will have the highest  
17 standards of quality and efficiency at the lowest responsible cost[.]” In an Op-Ed published in the  
18 Oregonian, Governor Kotek further states that “[e]vidence shows that a PLA does not inherently  
19 increase costs[.]” and cites to a project in New York that included a PLA requirement and came  
20 in under budget. In making these statements, however, Governor Kotek ignores studies by her  
21 own agency reaching the opposite conclusion.

22 48.

23 In October 2022, the Oregon Department of Transportation conducted a Cost Risk  
24 Assessment (“CRA”) for the Newberg-Dundee Bypass Project to evaluate the cost and schedule  
25 risk of a PLA. The CRA concluded that “the inclusion of a PLA was strongly correlated with  
26 increased construction cost within the range of 10-20%.” This cost increase was attributed to

1 PLAs limiting the bid pool and PLAs increasing labor and/or administration cost. The CRA  
2 found “that open shop contractors do not bid on PLA projects at an alarming rate[.]” and puts  
3 “non-DBE subcontractors at a significant competitive disadvantage[.]” Regarding overall project  
4 cost, the CRA concluded that “[a] PLA will almost certainly increase the project’s construction  
5 cost; the uncertainty lies in the magnitude of increase.” In fact, only one bidder submitted a bid  
6 for the Newberg-Dundee Bypass Project, which was 22% over the State’s budget.

7 49.

8 At the same time as PLAs increase costs and reduce competition on public construction  
9 projects, many of the benefits touted by Governor Kotek in support of EO 24-31, such as  
10 protecting against labor disruption and advancing gender and racial equality, will not be achieved  
11 through a mandated PLA. The CRA found that any increase in DBE, apprentice and veteran  
12 participation as a result of a PLA was “negligible because it already occurs as a standard practice  
13 in project delivery using different mechanisms.” The CRA also did not find any evidence that a  
14 labor strike or lockout delayed any ODOT project in the previous 5 years. EO 24-31 seeks to  
15 solve problems that either do not exist or are addressed through other lawful mechanisms.

16 **CLAIM FOR RELIEF**

17 **(Declaratory and Injunctive Relief – ORS 28.010, 28.020, 28.050)**

18 50.

19 Plaintiffs incorporate paragraphs 1 through 49 as though fully set forth herein.

20 51.

21 Plaintiffs request that the Court declare the parties’ rights, status, and legal relations  
22 pursuant to ORS 28.010, 28.020, 28.050.

23 **EO 24-31 Exceeds The Governor’s Executive Authority**

24 52.

25 By issuing and implementing EO 24-31, the Governor is performing a law-making  
26 function committed by the Oregon Constitution specifically to the Oregon Legislative Assembly

1 (or the People), in violation of Article III, Section 1, and acting in excess of the authority  
2 delegated to her under Article V.

3 **EO 24-31 Violates ORS 279A.015 and ORS 279C.300**

4 53.

5 Public contracting laws seek to prevent two general dangers: (1) the moral risk in a  
6 democracy of public dollars being directed to certain entities for reasons of favoritism, political  
7 co-partisanship, collusion, and the like; and (2) the practical concern that public dollars not be  
8 wasted—that there be active competition so that the Government may receive the most  
9 advantageous contract. *Paul v. U.S.*, 371 US 245 (1963).

10 54.

11 Therefore, the basic objective of the competitive bidding process is to give all interested  
12 parties an opportunity to deal with the Government on an equal basis—with the Government  
13 reaping the benefits of full and open competition. Donald P. Arnava & William J. Ruberry,  
14 *Government Contract Guidebook* § 3-2 (2d ed. 1994).

15 55.

16 This policy objective is expressly incorporated into Oregon’s public contracting code.  
17 ORS 279A.015 states that “a sound and responsive public contracting system should...[p]romote  
18 efficient use of state and local government resources, maximizing the economic investment in  
19 public contracting within this state” and “[a]llow impartial and open competition, protecting both  
20 the integrity of the public contracting process and the competitive nature of public procurement.”  
21 ORS 279C.300 further states that “[i]t is the policy of the State of Oregon that public  
22 improvement contracts awarded under this chapter must be based on competitive bidding.”

23 56.

24 EO 24-31 violates Oregon’s requirement for open and competitive bidding because  
25 requiring contractors, subcontractors, and certain material suppliers to enter into PLAs for all  
26



1 public improvement projects has the immediate effect of both decreasing competition for public  
2 improvement contracts and increasing the costs of those projects.

3 57.

4 Plaintiffs are entitled to a judgment pursuant to ORS 28.010 and 28.050 declaring that:

5 (A) EO 24-31 is unconstitutional because it violates Article III, Section 1 of the Oregon  
6 Constitution and/or exceed the scope of authority delegated to the executive branch  
7 under Article V of the Oregon Constitution;

8 (B) EO 24-31 is unlawful because it violates the open and competitive bidding  
9 requirements of Oregon's public contracting code.

10 58.

11 Plaintiffs are further entitled to injunctive relief enjoining Defendant from implementing  
12 or enforcing EO 24-31, or from taking any other action to implement EO 24-31.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs prayer for relief as follows:

- 15 1. On its First Claim for Relief,
- 16 a. Pursuant to ORS 28.010, 28.020, and 28.050, for a declaration consistent with  
17 paragraph 57, supra,
- 18 b. For an order enjoining Defendant from implementing or enforcing EO 24-31, or  
19 from taking any other action to implement EO 24-31;
- 20 2. Awarding Plaintiffs costs and disbursements incurred herein; and
- 21 3. For all other relief as the Court deems just and equitable.

22 Dated this 21<sup>st</sup> day of February, 2025.

23 SCHWABE, WILLIAMSON & WYATT, P.C.

24 By: s/ Joshua P. Dennis  
25 Joshua P. Dennis, OSB #140774  
26 Email: [jdennis@schwabe.com](mailto:jdennis@schwabe.com)  
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2 *Of Attorneys for Plaintiffs Oregon-Columbia*  
3 *Chapter of the Associated General*  
4 *Contractors of America, HP Civil, Inc.,*  
5 *Hamilton Construction Co., K&E*  
6 *Excavating, Inc., Interlaken Inc., Moore*  
7 *Excavation, Inc., Iron Horse LLC, Hatch*  
8 *Western Company Inc., Hydro-Temp*  
9 *Mechanical, Inc., North Santiam Paving*  
10 *Co., Berrien Concrete LLC, American*  
11 *Concrete Company LLC, Kerr Contractors*  
12 *Oregon, LLC, and Emery & Sons*  
13 *Construction Group, LLC*

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*Contractors of America*



**EXECUTIVE ORDER NO. 24-31**

**ESTABLISHING PROJECT LABOR AGREEMENTS FOR STATE  
CONSTRUCTION PROJECTS**

**WHEREAS**, the State of Oregon has a compelling need to ensure that all construction project contracts awarded adhere to the highest standards of quality and efficiency at the lowest responsible cost and,

**WHEREAS**, a project labor agreement, a form of pre-hire collective bargaining agreement covering all terms and conditions of a specific construction project, can ensure a construction project will have the highest standards of quality and efficiency at the lowest responsible cost and,

**WHEREAS**, on February 4, 2022, the President of the United States declared it is the policy of the Federal Government for agencies to use project labor agreements in connection with large-scale construction projects to promote economy and efficiency in Federal procurement and,

**WHEREAS**, project labor agreements provide for peaceful, orderly and mutually binding procedures to resolve workforce issues without labor disruption which can result in significant lost time and additional expense on a construction project and,

**WHEREAS**, project labor agreements provide the State with assurance that public construction projects will be completed by highly skilled workers and,

**WHEREAS**, the use of highly skilled workers will further reduce costs over the lifetime of the completed project for repairs and maintenance, and

**WHEREAS**, a project labor agreement helps to ensure equal employment opportunity and uplift economically disadvantaged workers, and

**WHEREAS**, the State of Oregon has a unique role in the construction industry to ensure that public dollars spent benefit the community they serve and do not indirectly or passively perpetuate discrimination against minorities, women, and low-income people in the construction industry, and

**WHEREAS**, the State of Oregon enacted ORS 279C.308 to authorize public agencies to include specific elements in public improvement contracts.

**NOW, THEREFORE, I, TINA KOTEK**, Governor of the State of Oregon, by virtue of the power and authority vested in me by the Constitution and statutes of the State of Oregon, do hereby issue this order to become effectively immediately:



**EXECUTIVE ORDER NO. 24-31**  
**PAGE TWO**

**IT IS HEREBY ORDERED THAT:**

1. All state agencies awarding any contract or obligating funds in connection with a construction project as defined below shall require every contractor and/or subcontractor engaged in the construction of the project to agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.
2. A project labor agreement will be required to be negotiated and executed for public improvement projects where labor costs constitute fifteen (15) percent or more of the total construction, reconstruction, or major renovation project costs.
3. To ensure that state agencies are advancing gender and racial equity in contracting through project labor agreements, state agencies shall:
  - a. Set targets for the utilization of Certification Office for Business Inclusion and Diversity (COBID) certified firms that meet or exceed the baseline utilization rate reported in the 2023 State of Oregon Disparity Study, or an approved, agency specific disparity study.
  - b. Track the utilization of COBID and/or Disadvantaged Business Enterprise firms and report utilization data annually to the Department of Administrative Services.
  - c. Utilize a payroll system or equivalent tool to track labor data for the purpose of reporting.
4. The Governor's office will conduct a biannual review of all relevant data to assess how the state is performing against the stated goals of the order and provide recommendations for corrective measures if needed.
5. A project labor agreement required to be negotiated and executed pursuant to this order shall:
  - a. Contain guarantees against strikes, lockouts, and similar job disruptions.
  - b. Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement.
  - c. Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, and safety and health.





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**PAGE THREE**

- d. Fully conform to all Federal and State statutes, laws, rules, and regulations.
  - e. Be non-exclusionary to open-shop and local firms.
6. An agency director may petition the Governor to exempt a specific contract by not later than the solicitation date. Additionally, a project labor agreement is not required on projects:
- a. for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection, or
  - b. that constitute necessary emergency construction work, minor alterations, repairs, or maintenance necessary to preserve a public improvement, or
  - c. that are of short duration, lack operational complexity, or involve only one craft or trade.

This Order shall be effective immediately and shall apply to all solicitations for contracts and contracts awarded on or after the effective date.

Solicitations and contracts that are planned for advertisement but have not yet been awarded may exercise the exemption in Section 6 of this order through March 31, 2025.

Done at Salem, Oregon, this 18<sup>th</sup> day of December, 2024.



Tina Kotek  
GOVERNOR

ATTEST:

LaVonne Griffin-Valade  
SECRETARY OF STATE

