

40th JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

NO. C-85336

DIV. A

RURAL ROOTS LOUISIANA, HARRY JOSEPH SR.,
and LOUISIANA BUCKET BRIGADE,

St. John The Baptist
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C-85336
A

Plaintiffs,

VERSUS

THE PORT OF SOUTH LOUISIANA,

Defendant.

**PLAINTIFFS’ REPLY IN SUPPORT
OF THEIR MOTION TO SUPPLEMENT THE PETITION**

NOW INTO COURT, through undersigned counsel, come Rural Roots Louisiana, Harry Joseph Sr., and the Louisiana Bucket Brigade (collectively, “Plaintiffs”), who respectfully submit this reply brief in support of their Motion to Supplement the Petition:

SUMMARY

If this Court were to deny Plaintiffs’ motion to supplement as the Port suggests, this matter would be forced to proceed on the basis of an operative petition premised on a fact that everyone now knows is false.

Plaintiffs filed this action challenging the Port’s notice of its August 5, 2025, preliminary bond authorization to fund the construction of a major dock in Ascension Parish, based upon an affidavit attesting that notice of that proceeding had been published. It was not. Once Plaintiffs discovered that there had been no publication at all, they promptly sought leave to supplement their Petition to conform their allegations to the facts.

The Port does not dispute these facts; instead, it asks this Court to prohibit Plaintiffs from pleading them, and the legal consequences that flow from them. According to the Port, Plaintiffs proposed supplemental pleadings are both too late, and thus preempted, *and* too early, and thus premature. Somehow, Plaintiffs should have challenged a failure of publication they did not know had occurred within a period during which the Port’s own records represented that publication had

occurred. At the same time, the Port maintains that the decision rendered at the August 5, 2025 meeting was a “preliminary” authorization so Plaintiffs somehow jumped the gun in questioning where, when, and how notice must be published, without explaining why a preliminary authorization would be exempt from the rules governing notice applicable to the Port. Port Brief at 11. Meanwhile, people living in the community of Modeste near where this major industrial dock would be built still have not been provided with any notice of this decision.

The result the Port seeks would make a mockery of the very notice requirements at issue in this case, and that are the foundational legal cornerstones intended to enable the people to advocate for themselves in this representative democracy.

There are two facts in the proposed pleading worth emphasizing:

1. It was only after Plaintiffs moved to supplement that the Port caused the missing proceedings to be published in *L’Observateur*, which was nearly a year after the decision had been made.
2. To date, even after the very belated publication, *no one in Ascension Parish* has received any legal notice whatsoever of the Port’s decision to authorize \$400 million in bonds to fund the construction of a major deepwater dock in the community of Modeste.

In its opposition, the Port argues that none of this matters, neither for the motion to supplement, nor for this case more broadly:

- not the fact of an affidavit of publication that turned out to be false;
- not the fact that there was no publication of notice of the decision at all until nearly a year after the decision was made;
- and not the fact that no one in Ascension Parish has ever been provided with notice of a decision to authorize a bond issuance worth hundreds of millions of dollars to fund construction of a major deepwater dock in the community of Modeste.

That means that a public entity could fail to provide legally required notice, obtain the benefit of a preemptive period notwithstanding that failure, publish the notice nearly a year later after the failure was discovered (and not in the jurisdiction affected by the bond-funded project), then invoke that belated publication to moot, or render futile, litigation questioning where, when, and how notice must be made in situations like this. But these are questions that should be addressed in the context of exceptions or at a merits stage – not on a motion for leave to supplement

a petition with facts and a claim directly related to the those in the original petition. Plaintiffs respectfully ask this Court to grant their motion.

LAW AND ARGUMENT IN REBUTTAL

I. Plaintiffs' Motion Should be Granted Because It Is Brought in Good Faith, Will Not Cause Delay and Does Not Unduly Prejudice the Defendant.

By its own terms, La C.C.P. art. 1155 explicitly permits a supplemental pleading setting forth causes of action that have become exigible after filing and that are “related to or connected with” those originally asserted. La. C.C.P. art. 1155. The decision whether to permit amendment or supplementation lies within the trial court's sound discretion and will not be disturbed on appeal except where an abuse of discretion has occurred and indicates a “possibility of resulting injustice.” *Turner v. Allstate Ins. Co.*, 26-226, p. 2 (La.App. 5 Cir. 5/26/26); 2026 WL 1471158 citing *Parker v. State Through Dep't of Transp. & Dev.*, 23-588 (La. App. 5 Cir. 3/13/24), 385 So.3d 354, 357 (overturning trial court’s denial of plaintiff’s motion to amend the petition with facts and a cause of action that arose after she filed her initial petition). In exercising that discretion, courts consider whether the movant acts in good faith, whether amendment is sought for delay, whether the opponent will suffer undue prejudice, and whether trial will be unduly delayed. *Id.* See also, *Cemo v. State Farm Mut. Auto. Ins. Co.*, 21-731, p. 2 (La.App. 5 Cir. 2/18/22); 2022 WL 533347, at *2 (applying factors when reversing trial court’s denial of motion for leave to file a supplemental and amending pleading).

Plaintiffs seek to conform their Petition to a material fact subsequently discovered and now admitted by the Port that is directly and intimately “related to and connected with” the claims in the original petition. Every consideration weighs in favor of granting leave to supplement. “Good faith” in this context is “a reasonable belief that the facts alleged in the proposed amendment are true.” *Turner, supra* at *2. Here, it is not disputed that the facts alleged in the supplemental petition are true. Second, there has been no delay between when Plaintiffs confirmed the fact of nonpublication and sought leave to supplement their Petition. And there is no undue delay of the proceedings or trial as there has not even been a hearing yet on Defendant’s exceptions. Finally, the Port has not explained how it would be unduly prejudiced. Rather, it is Plaintiffs who would

suffer a far greater injustice being forced to proceed in this litigation on the basis of an operative petition premised upon a fact everyone now knows is false.

II. The Supplemental Pleadings Are Not ‘Futile’; The Port Improperly Seeks to Argue Exceptions to a Supplemental Petition That Has Not Yet Been Filed.

The Port does not contend that the supplemental allegations are factually false. It admits the central allegation. Instead, the Port argues that supplementation is futile and in doing so urges this Court to resolve the merits of the very claims Plaintiffs seek leave to plead. The Fifth Circuit has reversed a denial of leave on precisely that basis, holding that the district court erred by “consider[ing] the merits” of proposed supplemental claims and making determinations concerning a matter “not yet properly before it.” *Cemo v. State Farm Mut. Auto. Ins. Co.*, 21-C-731 (La. App. 5 Cir. 2/18/22); 2022 WL 533347, at *2. *See also, Terry v. Schroder*, 2021-1311, p. 8 (La.App. 1 Cir. 6/3/22); 342 So.3d 1003, 1009 (vacating trial court’s denial of motion for to file supplemental and amended petition on grounds that it would have been “futile”).

Again, this is a motion for leave to supplement the Petition. Among the highly contentious merits issues the Port asks this Court to improperly resolve at this stage are: the effect of a violation of the requirement in La. R.S. 43:171 of publication of proceedings in an official journal; whether a claim under the Open Meetings Law (“OML”) is preempted; whether publication of notice nearly a year after the fact renders a claim or claims moot; when the Bond Validation Act is applicable to such decisions; whether this entire litigation is premature, and whether, when, and how the provisions of La. Const. art. VI, Sec. 35, which apply to local government units, or art. VII, Sec. 8(C) apply to the Port, as a state-created entity, with a super-majority of commissioners appointed by the governor with terms that run concurrent with governor’s and whose jurisdiction spans three parishes.

The existence of these substantial legal disputes demonstrates why the claims should be supplemented and pleaded at this stage and subsequently adjudicated – not why Plaintiffs should be prohibited from pleading them. As shown above, Plaintiffs proposed supplemental pleading meets all of the criteria courts apply to determine whether to allow the amendment or supplement. As its only authority for the argument that supplementing would be futile,

Defendant attempts to invoke an inapplicable and clearly distinguishable case that offers nothing to guide this Court at this stage.

Defendant cites *Arvie v. Washington*, 23-563 (La. App. 3 Cir. 5/1/24), 388 So. 3d 441, 454, for the proposition that amendment of a petition may be refused when it would be a “vain and useless act.” Port Brief at 6. The Port fails to explain, however, that denial of leave to amend in *Arvie* came *after* an exception of no cause of action had already been sustained and thus was at the stage contemplated in La. C.C.P. art. 934, which mandates that plaintiffs be allowed to amend their petitions after a peremptory exception has been sustained if the grounds for the exception can be removed by amendment. Even at that stage – after exceptions have been heard and sustained – the Louisiana Supreme Court has held that a party must be given an opportunity to amend where there is a “conceivable possibility” that a cause of action may be stated. *Alexander & Alexander, Inc. v. State, Div. of Admin.*, 486 So.2d 95, 100 (La.1986) (remanding with order permitting plaintiffs to amend their petition).

Indeed, cases in which courts have found amendments would be “vain and useless” show how different the posture and situation is in this litigation and why leave to supplement must be granted here. In *Deal v. Haney*, 14-1232 (La. App. 3 Cir. 11/25/14), 158 So. 3d 35, 39, the plaintiff could not cure a qualification requirement because she had not been admitted to practice law for the constitutionally required eight years. No factual allegation could change that historical fact, and no amendment pursuant La.C.C.P. art. 934 could state a cause of action. In *Thompson v. Harrington*, 99-571 (La. App. 3 Cir. 10/13/99), 746 So. 2d 652, the plaintiff could not cure the absence of the attorney-client relationship necessary to his malpractice claim. Amendment, again, under La.C.C.P. art. 934, could not create the missing legal relationship.

As shown herein, there are important and substantial legal disputes that remain to be resolved in this litigation and the newly discovered facts in the petition only serve to reinforce and emphasize the need for judicial review. The Port has not shown there is no “conceivable possibility” that a cause of action can be stated, as the Louisiana Supreme Court has instructed in *Alexander*. Rather, the Port effectively asks the court to sustain exceptions to a supplemental petition that has not even been allowed to be filed yet.

A. In Their Proposed Pleading, Plaintiffs Properly Seek Declaratory Judgment as to the Legal Effect of the Failure to Publish Notice of the Port's Proceedings in Violation of La. R.S. 43:171.

Plaintiffs properly bring this action for a declaratory judgment under La. C.C.P. art. 1871 which endows this Court with the authority to declare the “rights, status, and other legal relations whether or not further relief is or could be claimed.” *See* Original Petition at 2 (Jurisdiction and Venue). Art. 1875 of the state’s Declaratory Judgment Act makes clear that the enumeration of actions in articles 1872-1874 is not intended to “limit or restrict the exercise of the general powers conferred by Article 1871 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.” La. C.C.P. art. 1874. Further, art. 1881 makes clear that the purpose of La. C.C.P. art. 1871 *et seq.* is “to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and they are to be liberally construed and administered.” La. C.C.P. art. 1881. That is precisely what Plaintiffs seek to do in this litigation as furthered by the proposed supplemental petition.

Contrary to the Port’s suggestion, Plaintiffs do not ask this Court to invent a statutory damages remedy under La. R.S. 43:171. That statute requires that certain government entities, including the Port, “shall have the proceedings of their board... published in a newspaper.” La. R.S. 43:171. The Port attempts to brush this foundational legal requirement aside as meaningless and unenforceable. The cases cited by the Port are not helpful for this Court as they involved disputes between private entities who were not seeking declaratory judgments about whether governmental conduct was lawful. Here, Plaintiffs need not establish that La. R.S. 43:171 creates an implied cause of action. The statute itself is the mandatory substantive rule, and La.C.C.P. art. 1871 *et seq.* is the procedural mechanism through which this Court may declare “rights, status, and other legal relations whether or not further relief is or could be claimed.”

This is exactly the kind of case “in which a judgment or decree will terminate or remove an uncertainty.” *See, e.g., Times Picayune Pub. Corp. v. City of New Orleans*, 1999-1685, p. 19 (La.App. 4 Cir. 2/23/00); 760 So.2d 375, 386, *writ denied sub nom. Times Picayune Publ'g Corp. v. City of New Orleans*, 2000-1842 (La. 10/6/00); 771 So.2d 84 (clarifying, on rehearing,

that exceptions for Orleans Parish in one part of the statute governing official journals did not apply to La. R.S. 43:171). In *Times Picayune*, the newspaper sought declaratory and injunctive relief seeking to nullify sections of the New Orleans City Code it asserted violated state law requirements for official journal publications. The court adjudicated the claims but ultimately denied the relief sought by the newspaper. There was no question that the court there could adjudicate the claims and interpret and apply the substantive law as it deemed just and proper.

This Court has the clear authority to do the same in this matter.

B. The Port Cannot Use a Notice-Triggered Peremptive Period to Insulate Its Failure to Provide the Notice Necessary to Enable a Timely Challenge Under the Open Meetings Law.

In another attempt to create a “futility,” Defendant suggests that any challenge to the Port’s August 5, 2025, preliminary bond authorization is perempted under La. R.S. 42:24, which requires that a suit to “void any action” must be filed within 60 days “of the action.” But the Port’s argument collapses separate and distinct provisions of the OML and depends upon an unsupported premise, which is that the 60-day period in La. R.S. 42:24 began on August 5, 2025, when the resolution was adopted. But Plaintiffs’ supplemental OML claim does not allege that the Port violated the OML by adopting the resolution on August 5th. It alleges a violation of La. R.S. 42:20(B), along with La. R.S. 43:171, arising from the Port’s subsequent failure to publish the written minutes of that meeting, which would have provided public notice of the decision. Proposed Supplemental Petition ¶ 36. That statutory obligation necessarily arose after the meeting, and the failure to satisfy it could not have occurred on August 5th.

The Port’s authorities do not address this circumstance or help its argument on this point. In *Descendants Project v. Port of South La.*, the allegedly unlawful action was the vote taken at the challenged meeting itself, such that the “action” and alleged OML violation were one and the same. 24-121 (La.App. 5 Cir. 6/20/2024), 391 So.3d 777, 783, *writ denied*, 2024-00926 (La. 2024), 395 So.3d 1172. Here, by contrast, Plaintiffs allege a distinct, post-meeting violation of the OML’s statutory requirements governing publication of minutes of proceedings. The Port cannot be allowed to capitalize on a failure to follow and publish any notice of proceedings whatsoever, and then claim that a challenge to that failure of public notice is perempted. The very question at issue

establishes that supplementation would not be a “vain and useless act,” but is a serious and live issue.

The Port also attempts to invoke *Rushing v. Southeastern La. Univ.*, 2022-0032 (La. App. 1 Cir. 9/15/2022), 2022 WL 4286824, for its argument that Plaintiffs’ supplemental OML claim is preempted. But *Rushing* only holds that relation back cannot revive an OML cause of action after the applicable preemptive period has expired. Unlike *Rushing*, however, Plaintiffs’ supplemental claim alleges a *post*-meeting violation arising from the Port’s failure to satisfy statutory obligations concerning publication of the minutes. Likewise, *Hoffpauir v. State*, adds nothing for Defendant as it merely holds that the 60-day period for an OML action is preemptive and not prescriptive in a challenge to the governmental action. 1999-1089 (La. App. 1 Cir. 6/23/2000), 762 So.2d 1219, writ denied, 772 So.2d 652 (La. 2000). It did not address a post-meeting violation that had not yet occurred when the underlying action was taken. Finally, *Delta Development* offers no support for the Port’s argument as it only holds that a voided decision constituting an OML violation can subsequently be ratified if it is not an absolute nullity. *Delta Dev. Co. v. Plaquemines Par. Comm’n Council*, No. 1927 (La. App. 4 Cir. 5/24/1984), 451 So.2d 134, 137, writ denied, 456 So.2d 172 (La. 1984). The Port points to no authority holding that the sixty-day period for a claim like that pleaded in the supplemental petition begins on the date of the underlying meeting, which was before the alleged post-meeting violation could have occurred.

C. This Matter Is Not Moot: The Port’s Extraordinarily Belated Publication of the Proceedings Not Only Does Not Cure the Violation, It Adds Another Legal Question for This Court to Resolve.

The Port’s argument that its publication of the August 5, 2025, proceedings ten months after the fact moots this litigation fails. Not only does the very belated publication not cure the defect and resolve the legal questions Plaintiffs have posed in this case concerning where, when, and how publication of such decisions by the Port should be made, it adds another legal question for this Court to resolve: i.e., whether publication nearly a year after this decision was made violates the requirements of the OML and La. R.S. 43:171 requiring publication in an official journal. The Louisiana Supreme Court has made clear that a party may not attempt to “create[e] a technical mootness as a sham to deprive the court of jurisdiction.” *Cat’s Meow, Inc. v. City of New Orleans Through Dep’t of Fin.*, 98-0601, p. 9 (La. 10/20/98); 720 So.2d 1186, 1194. The

Court has thus repeatedly instructed that an issue is only “moot when a judgment or decree on that issue has been deprived of practical significance or made abstract or purely academic.” *Id.* at 1193. (internal quotations omitted); *see also, Comeaux v. Louisiana Tax Commission*, 20-01037 (La. 5/20/21), 320 So. 3d 1083 (reiterating that a defendant's voluntary cessation of a challenged practice does not necessarily deprive the court of jurisdiction).

Here, the questions now posed by the failure to publish notice at all, as alleged in the proposed supplemental Petition, and the belated publication of said notice as stated by the Port in its opposition, demonstrates that a ruling from this Court is necessary, and that a ruling would not be deprived of practice significance or be purely academic. The belated publication in *L’Observateur* does not resolve the question of whether, when, or how notice must be provided to the people in Ascension Parish where the bond-funded project would be located. Nor does it resolve the question of whether such an extensive delay in publishing notice violates the requirements of the OML and La. R.S. 43:171, and if so, what is the legal effect of such a violation. The questions before the Court are very much alive and consequential.

D. This Matter Is Not Premature and the Bond Validation Act Does Not Apply to Bar This Action: The Port Cannot Claim That Plaintiffs’ Supplemented Pleadings Are Both Too Late, and Therefore Perempted, and Too Early, and Therefore Premature.

At the same that the Port argues that Plaintiffs’ action is perempted because it should have been brought within 60 days of the August 5, 2025, meeting, the Port also argues that the action is premature because the decision “serves only as ‘preliminary approval’ to a possible bond issuance, and no resolution authorizing the actual issuance of bonds has been adopted by the Port.” Port Brief at 11. The Port then quotes La. Const. art. VI, § 35 as requiring publication of proceedings “authorizing the issuance of bonds” and concludes that Plaintiffs’ publication claims remain premature because the Port has not yet adopted such a resolution. In a footnote, the Port suggests Plaintiffs were already required to invoke the special statutory mechanism for challenging its bond publication, while simultaneously maintaining that the relevant bond authorization has not yet occurred.

Again, the Port does not explain how, on the one hand, Plaintiffs would have been on notice of the triggering of a 60-day preemptive period to contest the decision when the proceedings had

not been published at all – much less in the jurisdiction where the activities would be taking place. Nor does the Port does explain how a “preliminary” approval would not be subject to the same notice requirements of the OML and La. R.S. 43:171. The Port’s opposition brief demonstrates more than anything that there are live legal questions that need this Court’s attention and consideration.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant their Motion for Leave to Supplement the Petition.

Respectfully submitted,



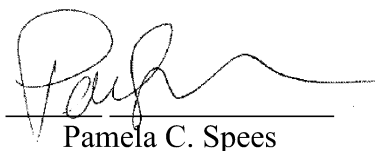
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all known counsel of record by electronic mail on this 27th day of August, 2026.


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