NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 06 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSEPH BOVA; MARLENE SCUDDER, Plaintiffs - Appellants, v. CITY OF MEDFORD, an incorporated subdivision of the State of Oregon; MICHAEL DYAL, City Manager of the City of Medford, in his official capacity, Defendants - Appellees.	No. 08-35091 D.C. No. CV-06-01369-PA MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, District Judge, Presiding

Argued and Submitted March 3, 2009
Portland, Oregon

Before: GRABER, FISHER, and M. SMITH, Circuit Judges.

Plaintiffs are two current employees of Defendant City of Medford who argue that the City's policy of denying health insurance coverage to retirees violates due process and the Age Discrimination in Employment Act of 1967.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

According to the complaint, neither Plaintiff had retired from employment with the City. We dismiss the action because their claims are unripe.

Although the parties did not raise the ripeness issue, we may raise it sua sponte because it pertains to subject matter jurisdiction. Haw. Newspaper Agency v. Bronster, 103 F.3d 742, 746 (9th Cir. 1996). In order for a case to be justiciable under Article III of the Constitution, it must be ripe for review. Am. States Ins. Co. v. Kearns, 15 F.3d 142, 143 (9th Cir. 1994). If a claim is unripe, federal courts lack subject matter jurisdiction and the complaint must be dismissed. West Linn Corporate Park LLC v. City of West Linn, 534 F.3d 1091, 1099 (9th Cir. 2008).

"A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." Texas v. United States, 523 U.S. 296, 300 (1998) (internal quotation marks omitted). Here, Plaintiffs' claim is not ripe for adjudication because it is contingent upon at least two future events: Plaintiffs' retirement from City employment and the subsequent denial of health benefits under the City's policy. One or both of these events may not occur, as Plaintiffs could change jobs or the City could change its policy before Plaintiffs suffer any damages.

DISMISSED.