

IN THE SUPREME COURT OF THE STATE OF OREGON

GEORGE WITTEMYER,)	
)	
Plaintiff-Appellant,)	Trial Court Case No. 130304234
)	
versus)	Court of Appeals Case No.
)	A154844
CITY OF PORTLAND,)	
State of Oregon,)	Supreme Court Case No. S064205
)	
Defendant-Respondent.)	

**BRIEF OF *AMICUS CURIAE* JOHN A. BOGDANSKI
IN SUPPORT OF PETITION FOR REVIEW**

**Petition for Review of Decision of Oregon Court of Appeals Affirming
Judgment of Circuit Court for Multnomah County,
Honorable Kelly Skye, Judge**

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ARGUMENT IN SUPPORT OF PETITION FOR REVIEW

This case deserves discretionary review by this Court because it meets a compelling majority of the criteria for such review set forth in ORAP 9.07.

The case:

- presents the interpretation of a provision of the Oregon Constitution, and the constitutionality of a municipal ordinance (ORAP 9.07(1));
- presents an issue that appears likely to recur, as taxing jurisdictions other than the City of Portland seem likely to consider adoption of taxes similar to the Portland arts tax (ORAP 9.07(2));
- affects hundreds of thousands of residents of the City of Portland (ORAP 9.07(3));
- presents an issue of state law (ORAP 9.07(4));
- presents an issue of first impression for this Court (ORAP 9.07(5));
- properly reserves the legal issue, free of factual disputes and procedural obstacles (ORAP 9.07(7));
- is based on a record that clearly presents the legal issue (ORAP 9.07(8));
- includes a written opinion by the Court of Appeals (ORAP 9.07(11));

- was well briefed in the Court of Appeals, and can be expected to be well briefed before this Court (ORAP 9.07(15)); and
- includes the undersigned *amicus curiae*, available to advise the Court (ORAP 9.07(16)).

Additionally, the case merits discretionary review because the decision of the courts below is wrong (ORAP 9.07(14)). In particular, the Court of Appeals has announced a “contemporaneous common usage and historical legal context” for the term “poll or head tax” that are fundamentally at odds with the actual history of the Oregon constitutional provision at issue. Among several mistakes, the Court of Appeals finds that the historical poll taxes in Oregon were “of universal, or near-universal, application.” (278 Or App at 754.) Additionally, the Court of Appeals erroneously finds that the Portland arts tax “yield[s] diverse, income-predicated applications.” (*Id.*) Finally, the Court of Appeals, purportedly based on its earlier decision in City of Portland v. Cook, 170 Or App 245, 12 P3d 70 (2000), rev den, 332 Or 56 (2001), adopts a strained two-part test for a “poll or head tax” that is inconsistent with both the language of the constitutional provision and the intent of the voters who enacted it. Although the error could conceivably be corrected by the City of Portland, the City of Portland has shown no inclination to repeal the arts tax or to amend it in a way that would cure its constitutional infirmity.

CONCLUSION

Amicus curiae urges this court, for all of the foregoing authority, argument, and reason, to grant the petition of Plaintiff-Appellant George Wittemyer and to review the decision of the Court of Appeals.

Respectfully submitted,

John A. Bogdanski, *pro se*

Professor of Law

Amicus curiae

CERTIFICATE

I hereby certify that the foregoing copy of Brief of *Amicus Curiae* John A. Bogdanski in Support of Petition for Review is a correct copy of the original.

Dated this 11th day of July, 2016.

John A. Bogdanski, *pro se, amicus curiae*

CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief length

I hereby certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b), and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 443 words.

Type size

I hereby certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

John A. Bogdanski, *pro se, amicus curiae*

CERTIFICATE OF SERVICE BY MAILING

I hereby certify that I served the foregoing Brief of *Amicus Curiae* John A. Bogdanski in Support of Petition for Review on the 11th day of July, 2016, by mailing two certified true copies thereof in sealed envelopes, by first-class mail, to each of:

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Dated this 11th day of July, 2016.

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