



Commissioner Nick Fish
City of Portland

Oregon Supreme Court affirms Portland Arts Tax is Constitutional

September 21, 2017

Read the State Supreme Court's [media release](#) and full [opinion](#) here.

This morning, the Oregon Supreme Court affirmed the judgment of the Court of Appeals in *Wittemyer v. City of Portland* (Supreme Court Case No. S064205) and held that the Arts Education and Access Fund, commonly known as the Arts Tax, is not a prohibited “poll or head tax” under the Oregon constitution.

“We are gratified that the Supreme Court has affirmed the judgments of the Court of Appeals and the trial court,” said City Attorney Tracy Reeve, “and held that the Arts Income Tax is fully constitutional.”

The court’s decision concludes more than four years of litigation over this issue, during which the legality of the tax has been upheld at every level.

“Today’s decision is a big win for Portland’s kids,” said Commissioner Nick Fish. “Thanks to the ruling of the Oregon Supreme Court, over 30,000 Portland children will continue to have arts education in school.”

“Voters overwhelmingly approved the Arts Tax in 2012, recognizing art as fundamental to a child’s education,” Fish noted. “As of today, the legal question about this tax is settled.”

Background

November 2012: Voters approve ballot measure 26-146. This measure imposes a \$35 annual tax on every Portland resident over the age of 18.

March 2013: City Council amended the Arts Tax language, creating an exemption for individuals who earn under \$1,000 per year.

That same month, Professor Jack Bogdanski filed a lawsuit in Oregon Tax Court against the City of Portland, arguing that this tax constituted a “poll tax”.

Also in March 2013, Mr. George Wittemyer filed a lawsuit in the Oregon Circuit Court.

June 2013, the Oregon Tax Court dismissed Mr. Bogdanski’s lawsuit due to a lack of jurisdiction.

July 2013, the Oregon Circuit Court ruled against Mr. Wittemyer’s law suit, ruling that the Arts Tax does not violate the Oregon constitution, and is not a “poll tax”.

August 2013, Mr. Wittemyer appealed his lawsuit to the Oregon Court of Appeals.

June 2016, the Oregon Court of Appeals affirmed the lower court’s ruling that the Arts Tax is not a “poll tax”, and rules in favor of the City of Portland.

July 2016, Mr. Wittemyer appealed his lawsuit to the Oregon Supreme Court.

March 2017, the Oregon Supreme Court heard oral arguments *Wittemyer v City of Portland* at Lewis & Clark’s School Law School.

September 2017, the Oregon Supreme Court ruled against Mr. Wittemyer, affirming the lower court’s rulings that the Arts Tax is not a “poll tax” and is constitutional.