

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

No. 82225-5

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF PORT ANGELES,  
  
Respondent,

MOTION TO ADD ADDITIONAL AMICI  
CURIAE TO EXISTING AMICI CURIAE  
BRIEF

v.

OUR WATER-OUR CHOICE and  
PROTECT OUR WATERS  
  
Petitioners,

v.

WASHINGTON DENTAL SERVICE  
FOUNDATION, LLC,  
  
Respondent.

This is not a motion to file an additional amicus brief but merely to allow  
addition amici to be added to an already existing brief, as will be explained below.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

A. IDENTITY AND INTEREST OF AMICI CURIAE

The proposed Amici Curiae are Audrey Adams, Linda Martin, Bill Osmunson DDS, MPH, Gerald H. Smith MD, and Fluoride Class Action. These amici were added to the 30-page brief entitled

Amici Curiae Brief of International Academy of Oral Medicine And Toxicology, Oregon Citizens For Safe Drinking Water, Fluoride Action Network, Washington Action For Safe Water, Whidbey Environmental Action Network, Audrey Adams, Linda Martin, Bill Osmunson DDS, MPH, Gerald H. Smith MD, and Fluoride Class Action,

referred to herein as the “Amicus Brief of IAOMT et al.” without a motion being filed in advance or at the same time as the Amici Brief was submitted. This motion is being filed after the fact to request that they be allowed them to join said Amici Brief as amici.

The interests of each proposed amicus are set forth in the attached Appendix A.

B. APPLICANTS’ FAMILIARITY WITH THE ISSUES AND ARGUMENT PRESENTED BY THE PARTIES

An advisor to the Applicants has been following this case since the time it was filed in superior court and has read all of the briefs filed in Superior Court, the Court of Appeals Division II, and the Supreme Court. Therefore the Applicants are well familiar with the issues and arguments presented by the parties.

C. ISSUES TO WHICH THE AMICI CURIAE BRIEF WILL BE DIRECTED

The Amici Curiae Brief addresses Issues 1 to 5 presented in the Petition for Review at 1-2.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

D. APPLICANTS' REASON FOR BELIEVING THAT ADDITIONAL ARGUMENT IS NECESSARY

The decision made by the Court of Appeals Division II in the instant case is of substantial interest to the many citizens in the City of Port Angeles who will only have an opportunity to vote on local initiatives that would regulate putting drugs in their public water systems if this Court reverses the Court of Appeals Opinion. The Applicants bring both an individual, a national, and an international perspective to this case.

This Amici Curiae Brief focuses on Issues 1-5 from the perspective that the Initiatives do not just regulate additives or contaminants in local public water supplies but rather that they prohibit or limit putting drugs in local public water supplies.

The Amici Curiae Brief addresses some of the reasons why it is impractical to meet legend drug laws when manufacturing and dispensing legend drugs in public water supplies. It then discusses some of the legend drug laws now being violated by the City when it serves the legend drug City Fluoridated Water through its municipal water supply with the intent to treat dental decay.

E. FURTHER CONSIDERATIONS

Dr. Osmunson and Dr. Smith had asked to be a part of the original proposed 20-page amicus filed January 29, and entitled

Amici Curiae Brief of International Academy of Oral Medicine and Toxicology,  
Oregon Citizens for Safe Drinking Water, and Fluoride Action Network  
in Support Of Petitioners,

but due to an editing error, they were omitted from that brief and the motion to allow that brief to be submitted.

Motion to Add Additional Amici Curiae  
To Existing Amici Curiae Brief - 3

JAMES ROBERT DEAL  
4130 166th Pl SW  
Lynnwood, WA 98037-9027  
Phone: (425) 771-1110  
Fax: (425) 776-8081

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

When the “Amicus Brief of IAOMT et al.” was prepared, their names were added to that brief, however, no motion to allow them to join that 30-page amicus brief was filed. This was an error on my part. I ask the Court to excuse this error. The opposing party and amici were not prejudiced by this error, which affected merely the amici who would be “sponsoring” the brief and not the content of the brief.

Regarding Audrey Adams, Linda Martin, and Fluoride Class Action, these individuals were proposed amici curiae for another proposed 20-page brief which was filed on January 29, 2010. A motion was made that their brief be accepted, and that motion was denied. However, in a conversation I had with Commissioner Walter Burton, I understood that it was not the content of the denied briefs which was the basis for the denial and that any subject matter from any of the five briefs could be included, provided that the new brief be not more than 30 pages in length.

Audrey Adams, Linda Martin, and Fluoride Class Action still wanted to be part of the condensed brief, so they were added as amici, however, a new motion to allow them to be amici should have been made. This was an error on my part, and I ask the Court to excuse this error. The opposing party and amici were not prejudiced by this error, which affected merely the amici who would be “sponsoring” the brief and not the content of the brief.

Therefore, it is requested in this motion that Audrey Adams, Linda Martin, Bill Osmunson DDS, MPH, Gerald H. Smith MD, and Fluoride Class Action be allowed to be amici for this combined and condensed “Amicus Brief of IAOMT et al.”

F. NOTICE OF RESIGNATION

Lynn Lohr and Oregon Citizens for Safe Drinking Water have withdrawn as amici.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Dated this 15<sup>th</sup> day of February, 2010.

Respectfully submitted,  
JAMES ROBERT DEAL PS

By: \_\_\_\_\_  
James Robert Deal  
WSBA No. 8103  
Attorneys for Amici

CERTIFICATE OF SERVICE

I certify that on the 15<sup>th</sup> day of February, 2010, I caused a true and correct copy of this certificate, the Motion to Add Additional Amici Curiae To Existing Amici Curiae Brief and the Response to Respondents' Motion to Strike to be served on the following:

Counsel for Washington Dental Service Foundation, LLC, and Water Fluoridation Science Committee:

Roger Pearce/P. Steven DiJulio  
Foster Pepper PLLC  
1111 Third Ave., Ste. 3400  
Seattle, WA 98101-3299  
By first class mail and by e-mail to [pearr@foster.com](mailto:pearr@foster.com)

Counsel for the City of Port Angeles:

William Bloor  
Port Angeles City Attorney  
321 E 5<sup>th</sup> Street  
Port Angeles, WA 98362  
By first class mail and by e-mail to [wblloor@cityofpa.us](mailto:wblloor@cityofpa.us)

Counsel for Petitioners:

Gerald Steel  
Gerald Steel PE  
7303 Young Rd. NW  
Olympia WA 98502

Motion to Add Additional Amici Curiae  
To Existing Amici Curiae Brief - 5

JAMES ROBERT DEAL  
4130 166th Pl SW  
Lynnwood, WA 98037-9027  
Phone: (425) 771-1110  
Fax: (425) 776-8081

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

By first class mail and by e-mail to [geraldsteel@yahoo.com](mailto:geraldsteel@yahoo.com)

Counsel for Association of Washington Cities:

Sheila M. Gail  
Association of Washington Cities  
1076 Franklin St. SE  
Olympia WA 98501-1346  
By first class mail and by e-mail to [sheilag@awcnet.org](mailto:sheilag@awcnet.org)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Counsel for City of Forks:

William Rodney Fleck  
City of Forks  
500 E. Division St.  
Forks WA 98331  
by first class mail and by e-mail to [rodf.forks@centurytel.net](mailto:rodf.forks@centurytel.net)

Dated this 15<sup>th</sup> day of February, 2010 at Lynnwood, Washington.

---

James Robert Deal