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No. 102868-7

SUPREME COURT  
OF THE STATE OF WASHINGTON

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SKYCORN LTD.,

Plaintiff/Appellant,

v.

KING COUNTY, a municipal subdivision of State of  
Washington,

Defendant/Appellee.

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**KING COUNTY'S RESPONSE TO PETITION FOR  
REVIEW**

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**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. STATEMENT OF THE CASE.....	5
A. Solid waste is a governmental function.....	5
B. King County’s C&D Flow Control Ordinance.....	6
C. SkyCorp violated the C&D Flow Control Ordinance and King County issued a citation for that violation. ....	10
III. ARGUMENT IN RESPONSE TO PETITION .....	11
A. The Court of Appeal’s decision does not conflict with prior decisions of this Court.....	11
1. The Court of Appeal’s’ decision does not conflict with <i>Brown v. City of Cle Elum</i> . ....	14
2. The Court of Appeals’ decision is consistent with <i>Weden, Petstel</i> and <i>Wilson</i> . ....	15
B. SkyCorp’s Petition for Review contains no substantive argument in support of review under RAP 13.4(b)(3). ....	18
C. This case does not involve an issue of substantial public interest that has not already been decided by the Washington Supreme Court. ....	19
1. A fictitious conflict between KCC 10.30.020 and RCW 70A.205.195 does not warrant review. ....	19

2. An inapposite Federal Commerce Clause case from California does not warrant review. ....	21
3. A nonexistent constitutional right to freely dispose solid waste does not warrant review...	22
IV. CONCLUSION.....	24

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Beans v. City of Massillon</i> , 2016 WL 7492503 (N.D. Ohio Dec. 30, 2016) .....	13
<i>California Reduction Co. v. Sanitary Reduction Works</i> , 199 U.S. 306, 26 S. Ct. 100, 50 L. Ed. 204 (1905).....	1
<i>Cornelius v. City of Seattle</i> , 123 Wash. 550, 213 P. 17 (1923).....	24
<i>Daniels Sharpsmart, Inc. v. Smith</i> , 889 F.3d 608 (9th Cir. 2018).....	21, 22
<i>Lawson v. City of Pasco</i> , 168 Wn.2d 675, 230 P.3d 1038 (2010).....	20
<i>Madison v. State</i> , 161 Wn.2d 85, 163 P.3d 757 (2007).....	23
<i>McKee v. American Home Products, Corp.</i> , 113 Wn.2d 701, 782 P.2d 1045 (1989).....	18
<i>Northwestern Nat. Ins. Co. v. Fishback</i> 130 Wash. 490, 228 P. 516 (1924).....	23
<i>Petstel, Inc. v. King County</i> , 77 Wn.2d 144, 459 P.2d 937 (1969) .....	12, 15, 16, 17
<i>Rabanco v. King County</i> , 125 Wn. App. 794, 106 P.3d 802 (2005).....	4
<i>Schroeder v. Weighall</i> , 179 Wn.2d 566, 316 P.3d 482 (2014).....	23

<i>SkyCorp Ltd. v. King County</i> , 2021 WL 135846 (W.D. Wash. Jan. 19, 2021).....	13
<i>SkyCorp Ltd v. King County</i> , 543 P.3d 223 (2024).....	1, 14, 17, 18
<i>Smith v. City of Spokane</i> , 55 Wash. 219, 104 P. 249 (1909).....	1, 24
<i>Ventenbergs v. City of Seattle</i> , 163 Wn.2d 92, 178 P.3d 960 (2008).....	23, 24
<i>Weden v. San Juan County</i> , 135 Wn.2d 678, 958 P.2d 273 (1998), <i>abrogated on other grounds by Yim v. City of Seattle</i> , 194 Wn.2d 682, 451 P.3d 694 (2019) .....	11, 12, 15, 17
<i>Weyerhaeuser v. Pierce County</i> , 124 Wn.2d 26, 873 P.2d 498 (1994).....	1
<i>Wilson v. City of Mountlake Terrace</i> , 69 Wn.2d 148, 417 P.2d 632 (1966) .....	15, 16, 17, 18
<b>Statutes</b>	
KCC 10.....	7
KCC 10.08.....	3, 6, 9
KCC 10.30.....	<i>passim</i>
King County Ordinance 18166 .....	7
RCW 36.58.....	2, 4, 5, 6
RCW 70A.205 .....	<i>passim</i>

**Other Authorities**

PCC 8.30.030(A)..... 10

RAP 13.4 ..... 4, 11, 18, 24

RAP 18.17 ..... 24

SCC 7.35.125 ..... 10

SCC 8.56.165(a)..... 10

SMC 21.36.040..... 8

United States Constitution Commerce Clause ..... 21

Washington State Constitution..... *passim*

## I. INTRODUCTION

For over a century, this Court has consistently upheld the authority of counties and cities to manage solid waste. The Court of Appeals properly applied well-established law and rejected SkyCorp’s attempt to strike down county authority to control the flow of solid waste generated within their local jurisdictions. *SkyCorp Ltd v. King County*, 543 P.3d 223 (2024).

Since 1905, the United States and Washington Supreme Courts have consistently held that the regulation, handling, and disposal of solid waste are governmental functions. *See, e.g., California Reduction Co. v. Sanitary Reduction Works*, 199 U.S. 306, 26 S. Ct. 100, 50 L. Ed. 204 (1905); *Smith v. City of Spokane*, 55 Wash. 219, 104 P. 249 (1909); *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 40, 873 P.2d 498 (1994) (“The handling and disposal of solid waste is a governmental function.”). Recognizing the collection and disposal of solid waste significantly impacts public health, safety and welfare, the legislature expressly grants counties the right to regulate the

collection and disposal of solid waste generated within their jurisdictions, including the right to designate exclusive disposal sites for solid waste generated within their local jurisdictions. *See* RCW 70A.205.005(6)(c) (“it is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction source separation strategies.”); *see also* RCW 36.58.040(1) (“A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan....”).

Tasked by law with that function and express authority, King County enacted KCC 10.30.020 (the “C&D Flow Control Ordinance”) to ensure proper disposal of construction and demolition (“C&D”) waste and increase the amount of C&D recycling. The C&D Flow Control Ordinance requires all mixed and nonrecyclable C&D waste generated within the County’s local jurisdiction be delivered to County-designated facilities



specifically designed to handle mixed and nonrecyclable C&D waste. The C&D Flow Control Ordinance also makes delivery of mixed and nonrecyclable C&D waste elsewhere unlawful. *See, e.g.*, KCC 10.08.020; KCC 10.30.020; KCC 10.30.030.

Thus, the C&D Flow Control Ordinance does not regulate or prohibit the disposal of solid waste outside of King County. The C&D Flow Control Ordinance does not regulate or prohibit the operation of C&D facilities outside of King County; it does not regulate or prohibit how C&D waste is treated at C&D facilities outside of King County; and it does not regulate or prohibit how C&D waste generated outside of the County is transported, treated, or disposed of outside of the County. In fact, the C&D Flow Control Ordinance allows mixed and nonrecyclable C&D waste generated within the County system to be delivered to approved C&D facilities outside of King County (*e.g.*, facilities in Snohomish County and Pierce County); and allows recyclable C&D materials generated in the County system to be taken to any C&D recycling facility. *See, e.g.*,

KCC 10.30.020(C) (“Recyclable C&D materials may be transported to any C&D receiving facility or to a recycling market in or out of King County.”).

At the expense of the environment and public health, safety, and welfare, solid waste haulers have consistently sought to circumvent and undermine Washington’s firmly established solid waste disposal system to increase their private profits. Washington’s courts have consistently rejected these challenges for more than 100 years, including challenges to RCW 36.58.040(1) (which expressly grants counties the right to designate disposal sites for all solid waste collected within their local jurisdictions). *See, e.g., Rabanco v. King County*, 125 Wn. App. 794, 796, 106 P.3d 802 (2005) (rejecting challenge to King County’s authority under RCW 36.58.040 to designate disposal sites for solid waste generated within King County). This case is no different and does not warrant review under review under RAP 13.4.

## II. STATEMENT OF THE CASE

King County submits the following statement of the case.

### A. Solid waste is a governmental function.

Under Washington law, “it is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.” RCW 70A.205.005(6)(c). The primary responsibility for management of solid waste generated within unincorporated county areas (and areas subject to interlocal agreements with cities) thus rests with county government.

Consistent with longstanding precedent, the legislature expressly granted counties the authority to establish systems of solid waste handling for their unincorporated areas under RCW 36.58.040. Each county manages its solid waste handling system, in part, through a comprehensive solid waste management plan. *See id.*; *see also* Chapter 70A.205 RCW. Counties may designate solid waste disposal sites as the

exclusive sites for receiving solid waste (including C&D waste) collected in unincorporated county areas. *See* RCW 36.58.040(1) (“A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to Chapter 70A.205 RCW.”). Counties may also enforce these exclusive designations through local regulations, which are commonly referred to as “flow control” laws. *See* RCW 36.58.040(2).

**B. King County’s C&D Flow Control Ordinance**

To ensure proper disposal of nonrecyclable C&D waste and increase the amount of C&D recycling,<sup>1</sup> King County

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<sup>1</sup> By extracting recyclable C&D from mixed C&D, the County increases the amount of recycling and decreases the amount of recyclable material sent to the landfill. *See also* KCC 10.08.080 (“A goal for King County’s solid waste management shall be to achieve maximum feasible cost-effective reduction of solid waste going to landfills and to other processing facilities, conservation of energy and natural resources and environmental protection. The division shall develop plans and incentives for waste reduction through source separation, recycling, product

amended Title 10 KCC by Ordinance No.18166 on November 17, 2015, to create a system for authorizing designated facilities for the exclusive recycling and disposal of all mixed and nonrecyclable construction C&D waste generated within the County's local jurisdiction. Mixed and nonrecyclable C&D waste generated within the County's local jurisdiction must be delivered to one of the County-designated C&D facilities:

**10.30.020 Designation of C&D receiving facilities.**

A. Facilities either owned, operated, or both, by a person or persons with which King County has agreements for C&D handling, are designated as the receiving facilities for all mixed and nonrecyclable C&D waste generated within the county jurisdiction. All generators, handlers and collectors of mixed and nonrecyclable C&D waste generated within the county's jurisdiction shall deliver, or ensure delivery to, a designated C&D receiving facility specified by the division director, except as permitted by subsections C. and E. of this section.

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stewardship, resource conservation and other methods deemed effective by the division.”).

B. The division director shall enforce the agreements with owners of designated facilities for C&D recycling and waste handling services. If the division director determines the owner is not in compliance with the agreement, the division director may suspend that owner's right to accept mixed C&D and nonrecyclable C&D waste during the period of noncompliance.

C. Recyclable C&D materials may be transported to any C&D recycling facility or to a recycling market in or outside of King County.

D. Violations of this subsection are subject to enforcement authority under K.C.C. 10.30.030 and the enforcement actions under K.C.C. 10.30.040.

KCC 10.30.020.<sup>2</sup>

The C&D Flow Control Ordinance does not restrict the number or location of facilities that can be designated as a C&D receiving facility. The C&D Flow Control Ordinance allows

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<sup>2</sup> The County's system covers unincorporated County and most cities within the County. The City of Seattle operates a separate solid waste management system with similar solid waste controls. *See, e.g.*, Seattle Municipal Code at SMC 21.36.040 ("It is unlawful for anyone to deliver and/or deposit any solid waste that is City's Waste generated within the City at any disposal site other than a disposal, processing, or recovery site provided and/or designated by the Director of Seattle Public Utilities...").

mixed and nonrecyclable C&D generated within the County's local jurisdiction to be delivered outside the County after the C&D facility is administratively approved by the County's Solid Waste Division director. And it is only unlawful to deliver any mixed and nonrecyclable C&D waste generated within the County's local jurisdiction to facilities other than County-designated C&D facilities. *See* KCC 10.08.020.B ("It is unlawful for any person to dispose of county solid waste except at solid waste facilities and in a manner authorized under this title."); *see also* KCC 10.30.020.A ("All generators, handlers and collectors of mixed and nonrecyclable C&D waste generated within the county's jurisdiction shall deliver, or ensure delivery to, a designated C&D receiving facility specified by the director....").<sup>3</sup> Snohomish County, Spokane County, and Pierce

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<sup>3</sup> The C&D Flow Control Ordinance allows recyclable C&D waste to be transported outside of the County. *See* KCC Section 10.30.020(C) ("Recyclable C&D materials may be transported to any C&D recycling facility or to a recycling market in or out of King County.").

County codes similarly regulate and control solid waste collected within those counties.<sup>4</sup>

**C. SkyCorp violated the C&D Flow Control Ordinance and King County issued a citation for that violation.**

SkyCorp admits it violated the C&D Flow Control Ordinance by delivering mixed and nonrecyclable C&D waste generated within the County's jurisdiction to a facility that was not designated by the County. King County issued a citation to SkyCorp for violating the C&D Flow Control Ordinance by delivering mixed and nonrecyclable C&D waste generated within the County's local jurisdiction to a facility in Naches, Washington. The King County Hearing Examiner affirmed that citation and imposed a \$100 fine.

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<sup>4</sup> *See, e.g.*, Snohomish County Code at SCC 7.35.125; *see also* Spokane County Code at SCC 8.56.165(a); Pierce County Code at PCC 8.30.030(A).



### III. ARGUMENT IN RESPONSE TO PETITION

SkyCorp's Petition for Review should be denied because the Court of Appeals' decision does not conflict with any decision of this Court, SkyCorp makes no argument in support of review under RAP 13.4(b)(3), and this case does not involve an issue of substantial public interest.<sup>5</sup>

#### A. The Court of Appeal's decision does not conflict with prior decisions of this Court.

Article XI, Section 11, of the Washington State Constitution provides that "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." An ordinance complies with Article XI, Section 11 so long as: (1) the subject matter of the ordinance is local; (2) the ordinance does not conflict with some general law; and (3) the ordinance is a reasonable exercise of the County's police power. *See Weden v. San Juan County*, 135 Wn.2d 678, 692-93, 958

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<sup>5</sup> SkyCorp seeks review under RAP 13.4(b)(1), (3) and (4). Petition for Review at p. 8.

P.2d 273 (1998), *abrogated on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019). Further, “municipal legislation will not be found to violate the police power if its effects outside the county is only incidental.” *Weden*, 135 Wn.2d at 705. In *Weden*, the Court stated,

The argument that the Ordinance has some tangential effects on interests of individuals lying geographically outside of San Juan County does not mean the Ordinance is not local, nor does the existence of the incidental effects provide the appropriate “test.” If the test required an ordinance to only affect local residents, no ordinance could be local because all laws affect, at least to some degree, individuals visiting a county or city.

*Id.* at 706. *See also Petstel, Inc. v. King County*, 77 Wn.2d 144, 159, 459 P.2d 937 (1969) (incidental effects outside of King County are not sufficient to render the subject matter of regulations nonlocal).

Here, KCC 10.30.020 requires that mixed and nonrecyclable C&D waste generated locally within King County be delivered to County-designated C&D facilities. Thus, the

Court of Appeals correctly held that the subject matter of KCC 10.30.020 is local for purposes of Article XI, Section 11.

Further, SkyCorp’s inability to deliver solid waste to non-designated facilities—regardless of whether those non-designated facilities are located within or outside the County—is simply an incidental effect of the County’s regulation of solid waste generated locally within King County. The Court of Appeals correctly held that those incidental effects do not render the subject matter of KCC 10.30.020 nonlocal in nature for purposes of Article XI, Section 11. *See also SkyCorp Ltd. v. King County*, 2021 WL 135846 at \*2 (W.D. Wash. Jan. 19, 2021) (“the extraterritorial regulatory impact of KCC Section 10.30.020 is merely incidental to its local regulatory impact.”); *see also Beans v. City of Massillon*, 2016 WL 7492503 at \*9 n. 9 (N.D. Ohio Dec. 30, 2016) (“Moreover, later Washington state court cases made clear that [Article XI, Section 11 of the Washington State Constitution] did not prohibit municipalities from entering into legislatively authorized contracts with entities which are in

whole or part outside its borders to perform functions for which the municipality has authority to provide within its borders.” (internal citation and quotation omitted)).

The Court of Appeals’ ruling is consistent with prior rulings of this Court, not in conflict as SkyCorp asserts.

**1. The Court of Appeal’s’ decision does not conflict with *Brown v. City of Cle Elum*.**

As the Court of Appeals acknowledged, “SkyCorp rightly identified *Brown v. City of Cle Elum*, as a relevant case, but misapplies *Brown* to the facts here.” *SkyCorp*, 543 P.3d 223 at 234 (2024).

In *Brown*, the subject matter of a 1925 ordinance was not local because it expressly sought to prohibit all citizens from swimming, fishing, and boating in Cle Elum Lake located six miles outside of that city’s limits, and thus the regulated conduct took place entirely outside the city’s limits. *Id.* Here, by contrast, the C&D waste subject of the C&D Flow Control Ordinance is generated entirely within King County; and King County then contracts with designated C&D facilities to dispose

of that local C&D waste. Thus, the facts in this case are readily distinguishable from *Brown*.

The premise of SkyCorp's argument is also misplaced because KCC 10.30.020 does not regulate solid waste generated outside the County's local jurisdiction. Nor does it regulate C&D facilities (*e.g.*, landfills) outside of the County's local jurisdiction. Solid waste facilities are regulated and permitted by local health departments and the Department of Ecology. *See* RCW 70A.205.120; *see also* RCW 70A.205.130.

**2. The Court of Appeals' decision is consistent with *Weden, Petstel* and *Wilson*.**

In *Weden*, San Juan County passed an ordinance prohibiting the operation of motorized personal watercraft within San Juan County. 135 Wn.2d at 686. Recognizing that "municipal legislation will not be found to violate the police power if its effect outside the county is only incidental", the Court held that the ordinance was local for purposes of Article XI, Section 11. *Id.* at 705-06 ("The argument that the Ordinance has some tangential effects on interests or individuals lying

geographically outside of San Juan County does not mean the Ordinance is not local, nor does the existence of the incidental effects provide the appropriate ‘test.’”).

In *Petstel*, King County enacted an ordinance regulating employment agencies in King County by requiring bonds, licenses and records, prohibiting charges on the promise of future work, prohibiting division of fees, and establishing a schedule of maximum fees which could be charged. *Petstel*, 77 Wn.2d at 146. Recognizing that incidental effects do not render an ordinance non-local in nature for purposes of Article XI, Section 11, the Court held that the ordinance was local. *Id.* at 159 (“Its effect on business outside the county is only incidental. While it is true that county regulation may result in dissimilar market conditions throughout the state, the same effect could also result from various county licensing and standards regulations. This effect is not sufficient to render these regulations nonlocal in character.”).

In *Wilson v. City of Mountlake Terrace*, 69 Wn.2d 148,

417 P.2d 632 (1966), the City of Mountlake Terrace passed an ordinance to fluoridate the City's water which then flowed to people residing outside the City. In rejecting a challenge to the City's police power, this Court focused on the local purpose for exercising the City's police power. *Id.* at 635 (“In a very meaningful sense, the City is not exercising its police power for the purpose of fluoridating water which it will deliver to persons residing outside the city. Its purpose is to furnish fluoridated water to its own inhabitants.”).

Here, the Court of Appeals' ruling is consistent with *Weden* and *Petstel* because the subject matter of KCC 10.30.020—*i.e.*, solid waste generated locally within King County—is local in nature and incidental impacts do not change its local nature for purposes of Article XI, Section 11. As the Court of Appeals acknowledged, “[t]he fact that this regulation has the effect of prohibiting disposal at non-designated sites in more distant counties does not render it nonlocal.” *SkyCorp*, 543 P.3d at 233. The Court of Appeal's ruling is also consistent with

*Wilson* because the purpose of KCC 10.30.020 is to regulate solid waste generated locally within King County. As the Court of Appeals acknowledged, “The core purpose and effect of the regulation are to ensure the efficient and proper disposal of waste that originated in King County from the moment it is generated or collected within the county.” *Id.*

**B. SkyCorp’s Petition for Review contains no substantive argument in support of review under RAP 13.4(b)(3).**

Because SkyCorp’s Petition for Review contains no substantive argument supporting review under RAP 13.4(b)(3), the Court should not consider the issue. *McKee v. American Home Products, Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989) (“We will not consider issues on appeal that are not raised by an assignment of error or are not supported by argument and citation of authority.”). Further, the constitutional issues presented are not “significant” as required for review under RAP 13.4(b)(3) because they have already been resolved by this Court on numerous occasions, consistent with the Court of Appeals’ ruling.



**C. This case does not involve an issue of substantial public interest that has not already been decided by the Washington Supreme Court.**

Finally, SkyCorp argues the Court should accept review because this case concerns three alleged issues of substantial public interest. SkyCorp’s arguments are without merit.

**1. A fictitious conflict between KCC 10.30.020 and RCW 70A.205.195 does not warrant review.**

The Court of Appeals correctly held that KCC 10.30.020 does not conflict with RCW 70A.205.195 for purposes of Article XI, Section 11.<sup>6</sup>

RCW 70A.205.195 does not grant any affirmative right—much less an affirmative right to disregard the authority expressly granted to counties to regulate the collection and disposal of solid waste generated within their local jurisdictions. RCW 70A.205.195 simply makes it “unlawful for any person to dump or deposit or permit the dumping or depositing of any solid

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<sup>6</sup> This is not an issue of substantial public interest. It is only of interest to those unwilling to comply with established law. Petition for Review at pp. 23-27. But KCC 10.30.020 does not conflict with RCW 70A.205.195

waste onto or under the surface of the ground or into the waters of this state.” RCW 70A.205.195(1). KCC 10.30.020 requires that all “generators, handlers and collectors of mixed and nonrecyclable C&D waste generated within the county’s jurisdiction [ ] deliver, or ensure delivery to, a designated C&D receiving facility....” Thus, the Court of Appeals correctly held that KCC 10.30.020 does not conflict with RCW 70A.205.195.

Further, an ordinance only violates Article XI, Section 11, if it “directly and irreconcilably” conflicts with a statute; and if the statute and ordinance can be harmonized, there is no conflict for purposes of Article XI, Section 11. *Lawson v. City of Pasco*, 168 Wn.2d 675, 682, 230 P.3d 1038 (2010) (“Such a conflict arises when an ordinance permits what state law forbids or forbids what state law permits. An ordinance is constitutionally invalid if it ‘directly and irreconcilably conflicts with the statute.’ If the two may be harmonized, however, no conflict will be found.” (internal citation omitted). To “directly and irreconcilably” conflict with RCW 70A.205.195, an ordinance

would have to expressly permit what RCW 70A.205.195 expressly forbids: *i.e.*, the dumping or depositing of solid waste at sites other than permitted solid waste disposal sites. KCC 10.30.020 does not authorize the dumping or depositing of solid waste at sites other than permitted solid waste disposal sites. Thus, the Court of Appeals correctly held that KCC 10.30.020 does not conflict with RCW 70A.205.195.

**2. An inapposite Federal Commerce Clause case from California does not warrant review.**

The Court of Appeals also correctly held that KCC 10.30.020 is a reasonable exercise of the County's police power. SkyCorp argues that the Court of Appeals' conclusion is an issue of substantial public interest warranting review because of the Ninth Circuit's ruling in *Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608 (9th Cir. 2018). Petition for Review at pp. 27-29. But *Daniels Sharpsmart* was a California case involving the constitutionality of a California regulation under the Commerce Clause of the United States Constitution; not a Washington case involving the constitutionality of a Washington regulation under

Article XI, Section 11 of the Washington State Constitution.<sup>7</sup>

Further, the *Daniels Sharpsmart* decision did not address whether the California regulation was a reasonable exercise of police power. SkyCorp's reliance on inapposite legal authority for other jurisdictions does not serve as a basis for review.

**3. A nonexistent constitutional right to freely dispose solid waste does not warrant review.**

The Privileges and Immunities Clause in the Washington State Constitution applies to those rights which “may be said to come within the prohibition of the constitution, or to have been had in mind by the framers of that organic law.” *Ockletree*, 179 Wn.2d at 778 (citation and quotation omitted). This Court has

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<sup>7</sup> The ruling in *Daniels Sharpsmart* also only concerned a preliminary injunction; the merits were never fully litigated. 889 F.3d at 609. Moreover, the California regulation in *Daniels Sharpsmart* and the C&D Flow Control Ordinance in this case are fundamentally different: whereas the California regulation directly regulated how California medical waste must be treated by out-of-state facilities, the C&D Flow Control Ordinance does not. The California regulation directly regulated conduct wholly taking place out-of-state, but the C&D Flow Control Ordinance regulates mixed and non-recyclable C&D waste generated locally within King County.

only recognized a limited number of “fundamental rights of state citizenship” under the Privileges and Immunities Clause. *Id.* at 776 n. 5 (citation and quotation omitted. *See also, e.g., Northwestern Nat. Ins. Co. v. Fishback* 130 Wash. 490, 493, 228 P. 516 (1924) (“[t]he right of every individual to engage in any lawful business” is a fundamental right of state citizenship); *Schroeder v. Weighall*, 179 Wn.2d 566, 573, 316 P.3d 482 (2014) (“the right to pursue common law causes of action in court” is a fundamental right of state citizenship); *Madison v. State*, 161 Wn.2d 85, 95, 163 P.3d 757 (2007) (“Therefore, we conclude that the right to vote is a privilege of state citizenship, implicating the privileges and immunities clause of the Washington Constitution.”). The right to freely dispose of solid waste is not one of them. *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 101-06, 178 P.3d 960 (2008) (“Haider points to no case, however, in which we have found a right to freely dispose of solid waste.”).<sup>8</sup>

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<sup>8</sup> Notably, there is a fundamental distinction between disposal of property generally and disposal of solid waste specifically: the

#### IV. CONCLUSION

The Superior Court properly dismissed SkyCorp's claims and the Court of Appeals properly affirmed the Superior Court's ruling. The Court of Appeals' ruling does not conflict with any ruling of this Court, SkyCorp makes no argument in support of review under RAP 13.4(b)(3), and this case does not involve an issue of substantial public interest that has not already been addressed by this Court. Accordingly, SkyCorp's Petition for Review should be denied.

\* \* \*

*RAP 18.17(b) Certificate of Compliance with Word Limitations:*  
*The undersigned attorneys certify that this document contains 4,063 words, excluding the parts of the document exempted from the word count by RAP 18.17(c)(10).*

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latter inherently concerns public health, safety, and welfare. *Smith*, 55 Wash. at 221 (it is "beyond question" that the removal and disposal of solid waste promotes public health, comfort and welfare); *Cornelius v. City of Seattle*, 123 Wash. 550, 213 P. 17 (1923). Thus, while property owners may have a right to own, sell and dispose of property generally, they do not have a constitutionally protected right to freely dispose of solid waste specifically, as this Court expressly recognized in *Ventenbergs*, 163 Wn.2d at 101-06.

DATED this 10<sup>th</sup> day of April, 2024.

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**DECLARATION OF SERVICE**

I am over the age of eighteen years, not a party to this action, and competent to be a witness herein. On April 10, 2024,

I caused the foregoing document to be served as follows:

Richard M. Stephens  
STEPHENS & KLINGE, LLP  
Email: stephens@sklegal.pro  
*Attorneys for Appellant SkyCorp Ltd.*

- via hand delivery
- via first class mail,  
postage prepaid
- via e-mail
- via ECF

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate.

EXECUTED this 10th day of April, 2024, at Seattle, Washington.

*s/ Sandra D. Lonon*  
Legal Practice Assistant



**FOSTER GARVEY P.C.**

**April 10, 2024 - 11:27 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,868-7  
**Appellate Court Case Title:** Skycorp LTD v. King County  
**Superior Court Case Number:** 21-2-04570-9

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