Court of Appeals Nos. 336221 and 336239

Supreme Court No. 93788-5

IN THE SUPREME COURT
STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation,

Petitioner,

v.

VICKI HORTON, Spokane County Assessor, ROB CHASE, Spokane County Treasurer,

and

THE STATE OF WASHINGTON, by and through the Department of Revenue,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Respondents are the Spokane County Assessor and Treasurer, Washington ("County"). The County was the appellant in the Court of Appeals below; and, the defendant in the Superior Court mandamus proceedings.

II. COURT OF APPEALS DECISION

The Petitioner City of Spokane("City") seeks review of the Division III Court of Appeals decision in *City of Spokane v. Horton*, 380 P.3d 1278, 2016 WL 5342591 (2016). A copy of the decision in attached as Appendix A to the Petition for Review.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals correctly decided that the City'sOrdinance violates Article VII, Section 9 of the Washington State Constitution, which provides "all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property."

2. Whether the City's reliance on *Town of Tekoa v. Reilly,* 47 Wn. 202, 91 P. 769 (1907) is unfounded.

3. The County requests, if review is granted, the Court consider issues raised but not considered in the Court of Appeals decision.

IV. STATEMENT OF THE CASE

In November, 2014, City of Spokane voters approved a property tax "levy lid lift" for improvements of streets throughout the City. CP 99. During the proposal phase, the City represented to voters that the new tax levy would not create any new tax burdens for Spokane citizens. CP 99-101. However, in January, 2015, after the levy had already passed, it was determined that the new levy would indeed result in a minor increase in property taxes for seniors and disabled persons, in that the exemption would be calculated by the method established for regular taxes, not excess levies.[1] *Id.*

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[1] *See Supplemental Declaration of Byron Hodgson*, explaining:

> 4. The State senior citizen property tax exemption under RCW 84.36.381, *et seq.* treats a regular levy lid lift as a regular tax levy. The senior citizen property tax exemption is calculated on a regular levy, such as the one at issue, in the following manner: a) Determine assessed value. This is the lesser of the frozen values and the tax year market value. The frozen value is the market value for the year the exemption was granted; b) For a Level A exemption – use $60,000 or 60% of the assessed value – whichever is greater. This amount is exempt from the regular levy rate; c) For a level B exemption – use $50,000 or 35% of the assessed value – whichever is greater, up to a maximum of $70,000. This amount is exempt from the regular levy rate and d) For level C exemption –0% of the assessed value is exempt from the regular levy rate.
>
> 5. All Level A, Level B and Level C exempt properties are 100% exempt from the excess tax levy under the State senior citizen property tax exemption.
>
> 6. The City Ordinance requires that the senior exemption for City property owners be calculated on the basis that a regular levy lid be treated in the same manner as an excess tax levy. This results in slightly lower taxes than under the State exemption.
>
> 7. A property owner that qualifies for the State exemption would also qualify for the City exemption under the City's interpretation of the Ordinance. "

The City asserted that the levy lid lift was an excess tax levy, therefore, senior citizens would be 100% exempt from taxation on all properties qualifying for senior citizen tax exemption under RCW 84.36.379, *et. seq.* CP 99-100. The County and DOR, relying upon state law concluded, correctly, that the levy lid lift was a regular tax levy. See WAC 458-16A-100(15) (for purposes of the state senior citizen property tax exemption an excess levy "does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.") *Id.* As a result, senior citizens would not be totally exempt from the levy lid lift. CP 102. This conclusion is not being challenged.

The City then chose to create its own tax exemption by passing an emergency ordinance implementing this exemption (the "Ordinance"), which, contrary to state law, included a levy lid lift in the definition of "excess tax levies." CP 111-123.

After the City passed the Ordinance, the County sought advice from DOR as to whether the Ordinance was constitutional and within the City's taxing authority. CP 149. In a directive dated February 17, 2015, DOR stated that the Legislature has exclusive authority to create exemptions; that the Ordinance exceeded the City's authority and violated the Washington Constitution; and directed the City not to implement the Ordinance, stating, "because the City's Ordinance creates an exemption

that is not authorized under state law, it should not be implemented." CP 124-125.

The County informed the City that, pursuant to this directive, it would not implement the Ordinance. The City then filed suit, ultimately requesting the Superior Court to issue a Writ of Mandamus, compelling the County to implement the Ordinance. CP 127-128.

The Spokane County Superior Court entered the Writ of Mandamus, finding that the Ordinance was constitutional. CP 377-389. The County appealed to Division III Court of Appeals, which reversed the trial court's decision. The Court held that the Ordinance violated Article VII, Section 9 of the Washington Constitution because it created a non-uniform tax.

V. ARGUMENT

Under RAP 13.4(b), the Supreme Court will only accept review upon a showing of one of the following limited and defined circumstances:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Here, the City asserts that review is appropriate because the Court of Appeals decision erroneously abrogated *Town of Tekoa v. Reilly*, 47 Wn. 202, 91 P. 769 (1907). However, a plain reading of the Court of Appeals' decision demonstrates the contrary -- the Court of Appeals properly considered and differentiated *Tekoa*, ultimately determining that the case does not apply. As a result, review under RAP 13.4(b)(1) is unwarranted.

Petitioner also claims that review should be granted under RAP 13.4(b)(3) and (4) because clarification is needed as to whether municipalities may grant local property tax exemptions to senior citizens, disabled veterans and other low-income property owners, apparently in a manner distinct from that currently allowed under state law. However, no such clarification is needed as such an action is inconsistent with Article VII, Sections 1, 9 and 10 of the Washington State Constitution. Sections 1 and 9 clearly require conformity. Section 10 provides authority only to the Legislature to impose property tax exemption for seniors, disabled persons and veterans stating, "[t]he legislature shall have the power...to grant to retired property owners relief from property tax on the real property occupies as residence by those owners."

A. **The Decision of the Court of Appeals is Supported by Well-Established Authority Prohibiting Municipalities From Assessing and Collecting Non-Uniform Property Taxes Pursuant to Article VII, Sections 1, 9 and 10 of the Washington State Constitution.**

Review of this case is unwarranted under RAP 13.4(b)(1) because the Court of Appeals properly applied Washington law in determining that the Ordinance is unconstitutional.[2] Specifically, the Court of Appeals analyzed Article VII, sections 1, 9, and 10 of the Washington Constitution, reciting, in pertinent part:

> **SECTION 1 TAXATION.**...All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only.
>
> ...
>
> **SECTION 9 SPECIAL ASSESSMENTS OR TAXATION FOR LOCAL IMPROVEMENTS.** The legislature may vest the corporate authorities of cities...with power to make local improvements by special purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.
>
> **SECTION 10 RETIRED PERSONS PROPERTY TAX EXEMPTION.** Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax exemption shall be allowed as to real property:

[2] Furthermore, no ambiguity as to the constitutional provisions at issue exists and no public interest is at stake as the exemption at issue has nominal monetary value. As a result, RAP 13.4(3) and (4) also warrant against review.

> *The legislature shall have the power*, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners.

In applying these constitutional provisions, the Court of Appeals turned to modern precedent in emphasizing the importance of the strict uniformity requirement. The Appellant mischaracterizes the Court of Appeals' opinion by arguing that the Court "did not cite a single example of the more 'modern' cases" that favored a standard of strict application of the uniformity rule.

To the contrary, the Court explicitly explained that "Section 1's emphasis on uniformity of the taxes is 'the highest and most important of all requirements applicable to taxation under our system,'" citing *Inter Island Tel. Co. v. San Juan Ctny*, 125 Wn.2d 332, 334, 883 P.2d 1380 (1994) (quoting *Savage v. Pierce Cnty*, 68 Wn. 623, 625, 123 P. 1088 (1912) in support of this proposition. *City of Spokane v. Horton*, --- P.3d ---, 2016 WL 5342591 at *3 (2016). The Court also cited *Belas v. Kiga*, 135 Wn.2d 913, 923, 959 P.2d 1037 (1998)[3] while explaining that "[t]ax

[3] In *Belas*, the Washington Supreme Court expressly rejected application of a rational basis test, as utilized by the Court in *Tekoa*, to decide if a law violates the Washington Constitution's uniformity requirements with regard to a value averaging system to calculate *property* taxes. The Court concluded:

> Arguing that all that is required to satisfy this state's Constitution is a rational basis for classification ignores a century of this Court's cases requiring uniformity of taxation under article VII of the state Constitution and ignores our state Constitution's requirement that all real estate be one class of

uniformity requires both an equal tax rate and equality in valuing the property taxed." *Id.* Lastly, the Court cited *Boeing Co v. King Cnty*, 75 Wn..2d 160, 165, 449 P.2d 404 (1969) while affirming that "[i]f equality is lacking in either area of tax spectrum (i.e., either the rate of taxation or the assessment ratio), there will be a lack of uniformity in the tax burden." *Id.*

In this case, the Ordinance violates section 9's uniformity requirement by: 1) applying two different regular property tax rates to real property in the City; and 2) creating different tax assessment ratios between real property owned by its exempted citizens and real property not owned by its exempted citizens. In effect, the Ordinance creates an exemption that was adopted without an express grant of authority from the Legislature.

It is well-established that municipalities have no inherent authority to tax, and any such authority must be expressly granted by the Legislature. *Pac. First Fed. Sav. & Loan Ass'n v. Pierce Cnty*, 27 Wn.2d

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property. We have treated uniformity challenges very differently than equal protection challenges in taxation cases. *Compare Inter Island*, 125 Wn.2d 332, 883 P.2d 1380(1994), *with Forbes v. City of Seattle*, 113 Wn.2d 929, 785 P.2d 431 (1990). We decline the invitation to ignore our own constitutional uniformity requirement and apply only the protections provided by federal equal protection law. Referendum 47 was not an amendment to the state Constitution and cannot, therefore, abolish or alter the uniformity requirement of article VII, § 1.

347, 178 P.2d 351 (1947); *Carkonen v. Williams*, 76 Wn.2d 617, 627, 458 P.2d 280 (1969).

In *King Ctny v. City of Algona*, 101 Wn.2d 789, 681 P.2d 1281 (1984), the court found that no express authority existed to impose a tax against King County on revenues received from users of a solid waste plant, owned and operated by the County, but located within the city, was lacking.

Section 10 grants the Legislature -- and *only* the Legislature--the authority to impose non-uniform taxes on residential property owned by retired persons. In other words, the plain language of the Washington Constitution limits the authority to grant senior citizen tax exemptions to the Legislature. Nowhere in the clear language of this constitutional provision does it permit the Legislature to delegate the authority to impose non-uniform property taxes to municipal corporations.

Moreover, even if the Legislature could delegate its exemption authority to cities, property tax exemptions may only be authorized by the Legislature through clear and explicit language. *Belas*, 135 Wn.2d at 935. Notably, the Legislature has not granted cities the authority to enact their own senior citizen property tax exemption. As a result, the Ordinance enacted by City was done so without authority; and, in contravention of Sections 9 and 10 of the Washington State Constitution.

B. The City's Reliance on *Town of Tekoa v. Reilly* is Unfounded.

The City distorts the Court of Appeals' opinion by arguing that that the court "declared the City's Ordinance unconstitutional based upon its belief that a controlling decision of this Court has been silently overruled. It did so in a perfunctory footnote, without bothering to cite a single case." The City completely ignores the Court's analysis of the constitutional provisions at issue in this case and its examination of Washington case law regarding the importance of Section 1's uniformity requirement. The City's reliance on *Tekoa* is misplaced.

In the Court of Appeals decision explains that *Tekoa* does not apply to this case because: 1) *Tekoa* involved a poll tax, not a property tax, noting that these two types of taxes have been treated differently historically; 2) in *Tekoa*, the Legislature expressly authorized towns such as *Tekoa* to enact the poll tax that was enacted. Here, neither the constitution or the Legislature has expressly authorized cities to enact their own property tax exemptions; and 3) modern Washington jurisprudence has emphasized the importance of strict uniformity of property taxes, therefore, to the extent that *Tekoa* applies at all, it conflicts with modern jurisprudence and has been overruled sub silentio. *Horton*, --- P.3d ---, 2016 WL 5342591 at *3, fn. 3.

In *Tekoa*, the Washington State Supreme Court considered the constitutionality of a law passed by the Legislature in 1905:

> The city council of cities of third and fourth class in this state shall have power to impose on and collect from every male inhabitant of such city over the age of twenty-one years an annual street poll tax not exceeding two dollars, and no other road poll tax shall be collected within the limits of such city.

47 Wn. at 203. This legislation exempted females, and males under the age of 21 from payment of the poll tax. *Id.* At 204.

The Court, applying this provision to the poll tax in question, interpreted the words found in Wash. Const. art. VII, § 9 ("and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same") and concluded that a less rigorous "equal protection" or rational basis standard was applicable. *Id.* The Court reasoned as follows:

> The people of this state in adopting a constitution did not hope to attain the unattainable ... they fully understood that, if a street or road poll tax should be imposed, certain classes of persons would of necessity be exempt from the imposition.

Id. at 205. In making its decision, the Court further relied upon the fact that prior to the adoption of the Washington State Constitution, similar poll taxes were imposed exempting certain individuals, and that "nearly [all], if not, all the municipal charters granted by the territorial

Legislature authorized the imposition of a street poll tax with like exemptions." *Id.* at 206. The Court further relied upon the fact that after the adoption of the Washington State Constitution containing this uniformity requirement, the Legislature immediately imposed an annual poll tax and authorized municipalities to do the same, with no suggestion that such an act was contrary to the recently adopted constitutional provisions, cited above. *Id.* at 207.

Subsequent case law citing *Tekoa* are also dissimilar from the circumstances at issue here.

In *Nipges v. Thorton*, 119 Wn. 464, 470, 206 P. 17 (1922), the court considered a challenge to a "Poll Tax Law." In affirming the lower court's decision upholding the Law, the Court found:

> The tax in question is not a tax on property, but it is nevertheless a tax, under any proper definition of that term. It is a poll, or capitation, tax, and is so denominated both in the statute and the ordinances. It is levied for a public purpose, and is clearly a revenue measure. But its assessment is not governed by the general Revenue Law, or, strictly speaking, by §2 of Art. 7 of the state Constitution, which declares that the Legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state according to its value to money.

Nipges, 119 Wn. at 470.

The *Nipges* Court further cited to *Tekoa* for the following proposition:

> Our Constitution does not expressly mention such taxation, and, as that instrument is not a grant of power, but a limitation of power inherent in the state, independent of that instrument, it follows that this tax must be declared valid, unless the Legislature was indirectly and by necessary implication prohibited from authorized it to be levied by some provision of the Constitution.

Id.

In *MacLaren v. Ferry Cty.*, 135 Wn. 517, 238 P. 579 (1925), the Court addressed the constitutionality of legislation concerning the taxation of property for mining purposes, under Wash. Const. art. VII, §§ 1 and 2. While the court initially concluded that "our Constitution is peculiar in its wording and positive in its mandate, [which] is made very clear and forcible by its language, as this court has often recognized ... though it permits classification when that will not defeat the apparent purpose of uniformity and equality." *Id.* at 520 (*Tekoa*, 47 Wn. 202, 91 P. 769), the court continued, stating:

> What is meant by the words of the Constitution, 'a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money ...' cannot be other than what the words imply. Equality in taxation is accomplished when the burden of the tax falls equally and impartially upon all the persons and property subject to it, so that no higher rate or greater

> levy in proportion to value is imposed upon one person or species of property than upon others similarly situation or of like character. Uniformity requires that all taxable property shall be alike subjected to the tax, and this requirement is violated if particular kinds, species, or items of property are selected to bear the whole burden of the tax, while others, which should be equally subject to it, are left untaxed. Further, it is implied that each tax shall be uniform throughout the taxing district involved. A state tax must be apportioned uniformly throughout the state, a county tax throughout the county, and a city tax throughout the city.

Id. at 520.

In *Thurston Cty. v. Terino Stone Quarries, Inc.*, 44 Wn. 351, 356, 87 P. 634 (1906) (citied by *Tekoa*), the court concluded:

> It is suggested by appellants, and conceded by responding that section 9 of article 7 does not apply to the case at bar, and further there is no provision in the state Constitution requiring a poll tax to be uniform as to persons ...
>
> The character and value of the property of each has no bearing upon the question. The underlying nature and purpose of a poll tax are disassociated entirely from any consideration of property.

An examination of *Tekoa* and the cases relying upon it, without exception, demonstrates the limited application of the rationale basis standard set forth in *Tekoa*, to taxes other than property taxes, such as the poll tax at issue therein.[4]

[4] At the time *Tekoa* was decided, the legislature's authority to grant property tax exemptions under Wash. Const. art VII, § 2 was limited to property owned by public

In the case at hand, the existing applicable constitutional provisions, case law, and legislative directives require a different conclusion from that reached in *Tekoa*. It also should be noted that *Tekoa* ruled on the constitutionality of a grant of taxing authority to cities by the Legislature. *See generally, Tekoa*, 47 Wn. 202. The question was whether or not the *Legislature* could exclude certain individuals from the operation of the poll tax without violating the requirement of tax uniformity. *Id.*

Conversely, in the case at hand, by passing the Ordinance in question, the City of Spokane created a senior citizen property tax exemption at odds with the senior citizen tax exemption enacted by the Legislature. *See* RCW 84.36.381 *et seq*. The City exemption was further adopted without an express grant of authority from the Legislature.

Tekoa is clearly distinguishable from this case, and does not require the City's Ordinance to be sustained. Therefore, *Tekoa* need not be overruled. The Appellate Court also correctly concluded that to the extent *Tekoa* concludes that strict compliance with uniformity requirements are not necessary, *Tekoa* should be found to be overruled *sub-silentio*.

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agencies or quasi-public agencies. The legislature lacked authority to exempt privately-owned property from property taxes. *State ex rel Chamberlain v. Daniel*, 17 Wn. 111, 49 P.243 (1897); *see also Buchanan v. Bauer*, 17 Wn. 688, 49 P. 1119 (1897). For this reason also, *Tekoa*'s rational basis test was not intended to apply to property tax exemptions.

An earlier decision can be overruled "*sub silentio*" where there is a clear showing that an established rule is incorrect or harmful. *See Lunsford v. Saberhagen Holdings, Inc.* 166 Wn.2d 264, 280, 208 P.3d 1092 (2009). Such is the case at hand. In *Lunsford v. Sberhagen Holdings*, Inc. 166 Wn. 2d 264, 280, 208 P.3d 1292 (2009), the court stated:

> Nonetheless, Saberhagen claims we readopted selective prospectivity by implicitly overruling *Robinson.* A later holding overrules a prior holding sub silentio when it directly contradicts the earlier rule of law. *See, e.g., Safeco Ins. Co. of Am. v. Butler,* 118 Wash.2d 383, 403, 823 P.2d 499 (1992) (prior holding that "accident" is defined from the point of view of the insured was overruled sub silentio by later holding that "accident" is not a subjective term); *Indus. Coatings Co. v. Fid. & Deposit Co. of 1101 Md.,* 117 Wn.2d 511, 515–18, 817 P.2d 393 (1991) (holding that statute of limitations determination did not overrule sub silentio earlier case where basis for liability differed). Moreover, the doctrine of stare decisis applies regardless of whether we overrule a prior decision explicitly or implicitly. Therefore, we continue to require "'a clear showing that an established rule is incorrect and harmful.'

Again, the City incorrectly argues that the Court of Appeals did not cite a single example of the more "modern" cases favoring a strict standard of uniformity. Appellants focus their argument on footnote 3 of the opinion, without acknowledging the actual content of the Court's decision.

As explained above, the Court cited *Inter Island Tel. Co.*, 125 Wn.2d 332, 883 P.2d 1380(1994); *Savage*, 68 Wn. at 625; *Belas*, 135 Wn.2d at 923; and *Boeing Co.*, 75 Wn.2d at 165, as examples of modern cases that support the strict uniformity requirement. The Court correctly noted that to the extent *Tekoa* might be applied broadly to property taxes, the decision conflicts with modern jurisprudence and has therefore been overruled sub silentio. *Horton*, --- P.3d ---, 2016 WL 5342591 at *3 fn. 3 (citing *Matsyuk v. State Farm Fire Cas. Co.*, 173 Wn.2d 643, 659, 272 P.3d 802 (2012)).

C. <u>If the Court Does Accept Review, Respondent Would Request Consideration of the Following Challenges to Mandamus, Raised But Not Considered By the Court of Appeals.</u>

a. The City's Interpretation of the County's Ministerial Duties is Overbroad.

In support of its contention that the County had no choice but to enforce the Ordnance in question, the City solely relies upon the case of *State v. Turner*, 113 Wn. App. 214, 193 P. 715 (1920), and *Hindman v. Boyd*, 42 Wn. 17, 29, 84 P. 609 (1906). Both concerned a circumstance where the city provides tax rolls to the county for collection tasks which were deemed ministerial.

In the case at hand, the Ordinance in question goes far beyond the simple submission of a tax roll in that it: 1) creates an exemption inconsistent with state law; 2) requires retroactive application; and 3) requires the creation of two separate tax rolls for each taxing district, all activities governed by specific state statutes. *See Supplemental Decl. of Byron Hodgson* at ¶¶ 3-7, 14.

b. Respondent Had No Clear Duty to Implement the Ordinance.

Mandamus is only available "to compel a state officer to undertake a clear duty." *Brown v. Owen*, 165 Wn.2d 706, 724, 206 P.3d 310 (2009). Here, there is no evidence that Respondent's duty to implement the Ordinance is clear. In fact, the directive of the Department of Revenue establishes the opposite.

c. The City Had A Plain, Speedy and Adequate Remedy in the Ordinance Course of Law.

When a party has at least one viable legal remedy, a writ should not be issued. *See Zapotocky v. Dalton*, 166 Wn. App. 697, 706, 271 P.3d 326 (2012) (wherein the statutory process for contesting election results was found to be an adequate alternative remedy.) Petitioners did not seek redress under the Uniform Declaratory Judgments Act or the statutory appeals process under the State Administrative Procedures Act.

d. The City is Not a Beneficially Interested Party.

The "beneficially interested" element of issuing a writ of mandamus involves standing. *Eugster v. City of Spokane*, 118 Wn. App. 383, 403, 76 P.3d 741 (2003). To prove a beneficial interest in the outcome of the litigation, a party must demonstrate it "has an interest in the action beyond that shared in common with other citizens. *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 616, 62 P.3d 470 (2003). In this case, no taxpayer has applied for the exemption contained in the Ordinance and no taxpayer is a party to this lawsuit. Therefore, the City is unable to demonstrate how it maintains any stake in how a taxpayer received the exemption, and has no beneficial interest to advance.

e. The Writ, Even if it were Properly Issued, Exceeds the Express Requirements of the Ordinance Itself.

The Writ exceeds the scope of authority granted by the Ordinance in two specific areas. First, there is no express language in the Ordinance that it would be imposed in 2015. Second, there is no express language in the Ordinance that the exemption would be automatically granted without application or by using the statutory remedy for an error in taxes, which is a refund.

VI. CONCLUSION

For the reasons states above, Respondent respectfully requests that the Court deny Petitioner's Petition for Review.

RESPECTFULLY SUBMITTED this 23rd day of November, 2016.

ETTER, McMAHON, LAMBERSON,
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VI. CONCLUSION

For the reasons states above, Respondent respectfully requests that the Court deny Petitioner's Petition for Review.

RESPECTFULLY SUBMITTED this ____day of November, 2016.

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DECLARATION OF SERVICE

I, Kristie M. Miller, declare and say as follows:

1. I am a citizen of the United States and resident of the State of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein. My business address is 618 W. Riverside Ave., Ste. 210, Spokane, Washington 99201-5048, and telephone number is 509-747-9100.

2. On November 23, 2016, I caused to be served the forgoing on the individuals named below in the manner indicated.

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I declare under the penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 23rd day of November, 2016, at Spokane, Washington.

Kristie M. Miller, Legal Assistant