No. 93788-5

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation located in the County of Spokane, State of Washington,

Petitioner,

v.

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

and,

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

Respondents.

DEPARTMENT OF REVENUE'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Washington Constitution expressly mandates that all property taxes be uniform. Const. art. VII, §§ 1 and 9. A uniform property tax requires an equal tax rate and equal assessment ratio within the geographical confines of the authority levying the tax. *Covell v. City of Seattle*, 127 Wn.2d 874, 878, 905 P.2d 324 (1995). The Constitution, however, also permits the Legislature to deviate from Section 1's uniformity requirements in limited circumstances. Specifically, Section 10 permits the *Legislature* to pass nonuniform partial tax relief for retired persons through property tax exemptions without violating Section 1. But nothing authorizes *municipalities* to do the same.

Nevertheless, the City contends that it may pass its own partial property tax exemption. The crux of the City's argument concerns RCW 35A.11.020, where the Legislature granted "all powers of taxation" to code cities. The City reads the statute as granting it the same authority to create exemptions as Section 10 grants exclusively to the Legislature. But the Legislature explicitly required the local taxation powers to be "[w]ithin constitutional limitations." RCW 35A.11.020. The Court of Appeals correctly held that uniformity is a constitutional restriction on local property taxation, and it held the plain meaning RCW 35A.11.020 does not include granting municipalities special authorization to violate

uniformity for senior citizens or anyone else. As a result, the City's Ordinance violates both the statute and the Constitution. *City of Spokane v. Horton*, ___ Wn. App. ___, 380 P.3d 1278 (2016).

The City relies on the dissenting judge's opinion to argue that the Court of Appeals' decision conflicts with a 1907 case, *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 P. 769 (1907), and should be reviewed. But the majority correctly held *Tekoa* does not apply. *Horton*, 380 P.3d at 1281, n.3. The *Tekoa* decision concerned a poll tax, not a property tax, and thus a different analysis applies. Moreover, this case concerns municipal authority to partially exempt property from taxes in the absence of express constitutional or statutory authority, whereas *Tekoa* concerned the imposition of a tax expressly authorized by the Legislature.

The City's arguments regarding the public interest implications of this case are misplaced. This case arose out of a mistake the City made in its assumptions regarding a levy lid lift, which it attempted to fix by ordinance. Unfortunately, the City's Ordinance causes nonuniform property taxes in contravention of the Constitution. That the City inadvertently replaced one problem with another in an ordinance of limited geographic application does not create an issue of substantial public interest. In contrast, adopting the City's interpretation of Article VII and RCW 35A.11.020 would negatively impact Washington's property tax

system. Not only would it expand first-class cities' roles beyond what the Legislature authorized, but it would disrupt the system, causing an imbalance in tax revenue for the counties and other tax districts.

For these reasons, this Court should deny the City's petition for review.

II. IDENTITY OF RESPONDENT

Respondent is the State of Washington, Department of Revenue.

III. COUNTERSTATEMENT OF THE ISSUES

1. Does Spokane's Ordinance partially exempting low-income seniors' property from property taxes violate the requirement in Article VII, Section 9 that municipal property taxes be uniform?

2. When the Legislature granted code cities powers of taxation "within constitutional limitations" in RCW 32A.11.020, did it intend that cities remain subject to constitutional requirements of uniform property taxation?

IV. COUNTERSTATEMENT OF THE CASE

Cities, like many taxing districts, use the State system of property taxes to raise revenue for governmental purposes. RCW 84.52.010. There are several types of levies cities use to raise revenue. Cities may annually impose regular property tax levies on real and personal property within their geographic limits for their budgeted government operations, subject

to certain limitations. RCW 84.36.005; RCW 84.52.010-.020. One of these limitations, called a "levy lid," restricts the taxing districts' ability to increase its regular levy from year-to-year. RCW 84.55.010. Under the levy lid, taxing districts may levy only as much as in the preceding year (accounting for inflation), plus an amount for new construction and improvements to property and increases in the value of state-assessed property. RCW 84.55.010.[1]

Cities also have authority to impose additional property taxes over and above the regular levies called an "excess levy." *See* Const. art. VII, § 2(a)-(b); RCW 84.52.052. While excess levies have different requirements, such as supermajority voter approval, they are not subject to monetary limitations imposed on a district's regular levies. *See* Const. art. VII, § 2; RCW 84.52.054.

In this case, the City of Spokane desired extra capital funding to repair and improve city streets. In 2004, the Spokane City Council obtained voter approval to take out a $117 million street bond to pay for street projects. The initial plan was to complete the street projects over ten years and then fully retire the street bond, plus interest, under a 20-year bond retirement levy, a type of excess levy. CP 27; RCW 84.52.056.

[1] In addition to the levy lid, regular levies are also subject to other statutory and constitutional limitations, including a "constitutional one percent limit," constitutional uniformity, the "statutory dollar rate limit," and a "statutory aggregate dollar rate limit." WAC 458-19-005; *See* Const. art. VII, §§ 1, 2, 9; RCW 84.52.043, .050.

In 2014, the City completed the planned projects, but still had ten more years to pay off the $84 million in remaining bond debt and interest. Instead of retiring the bond debt using the 2004-approved excess levy, City leaders proposed a new strategy to pay off the bonds, as well as to extend the City's street program for another eleven years. CP 27. Specifically, the City proposed swapping out the $0.57 per $1,000 assessed value imposed under the City's excess levy with an equivalent increase in the City's regular property tax rate. CP 27; VRP 8:3-18. To significantly increase the regular levy amount, the City needed to raise the regular property tax levy by more than the statutory limitation on increases normally allowed (*see, e.g.*, RCW 84.55.010, .050). It therefore referred a levy lid lift proposition to its voters ("Proposition One"). Proposition One would permit the City Council to pass budgets that were higher than the levy lid allowed, and to use this additional revenue capacity to pay off the bond debt and to pay for new transportation projects. CP 26-27.[2]

When the City referred Proposition One to voters, City officials promised voters that approving it would not cause a net increase in their total property taxes for 2015. CP 27. Unfortunately, the City did not

[2] The City incorrectly asserts that levy lid lifts are a means of "collecting property taxes in excess of constitutional… limits." Pet. at 2, n.1. Levy lid lifts have nothing to do with constitutional restrictions, nor do they permit a city to exceed the statutory dollar or aggregate dollar rate limitations. RCW 84.52.043-.050. It is simply a means of exceeding year-to-year limitation on increasing the regular levy. RCW 84.55.010.

forecast the specific effects of increasing the regular levy on low-income retired persons who qualified for statutory tax relief under RCW 84.36.381 (hereafter "Seniors"). Seniors are entirely exempt from "excess levies" on their primary residence, but are required to pay regular property taxes. RCW 84.36.381(5)(a)-(b), (6); WAC 458-16A440(2). Consequently, when the City passed its 2015 budget it caused Seniors' total property taxes to increase. CP 64; CP 274; Supp. Decl. of Byron Hodgson at 3 (Div. III, Oct. 16, 2016) ($14.22 to $63.45 depending on income).

City voters approved Proposition One on November 4, 2014. CP 64. Two months later, the City realized Seniors' 2015 property taxes were going up despite City officials' statements to the contrary. CP 28, 64-65; CP 164, 306; VRP 9:13-19. In February 2015, the Spokane City Council passed emergency Ordinance C-35231. CP 6, 10, 28. This Ordinance sought to exempt Seniors from the portion of the City's regular levy constituting voter approved levy lid lifts under RCW 84.55.050. *See* CP 66, 100; VRP 48:10-16; 55:4-8. The City Ordinance also includes an appeals process independent of the statutory appeals process for reviewing exemption application denials for the State exemption program. CP 21.[3]

[3] The City claims that "in a nutshell" it qualified anyone who qualified for the state exemption, including "taxpayers with an annual income of less than $35,000." Petition at 1-2. However, the ordinance expressly applies only to Seniors who make less than $30,000. CP 12-13.

After passing the Ordinance, the City requested the Spokane County Assessor and Treasurer to refrain from mailing tax statements showing an increase in taxes, and to reprint them to reflect the changes made by applying its Ordinance. CP 67; CP 126-27. The County contacted the Department of Revenue for an opinion as to the City's Ordinance. CP 149, 256; VRP 10:12-14. The Department advised the County officials that the City Ordinance violated uniformity requirements. CP 124-25.

The City filed this action and later amended its suit to seek a writ of mandamus compelling the County Assessor and Treasurer to implement the Ordinance. CP 5-7; CP 58-59, 61. The Spokane Superior Court found the Ordinance constitutional, granted the City's request, and issued a writ of mandamus. CP 319-22, 486. Among other things, the writ expressly requires the County Assessor to apply different tax rates for the regular levy: "1. Implement City of Spokane Ordinance No. C-35231 by creating *separate mill rates* for the City's voted and non-voted regular property tax levies and applying the exemption set forth in Ordinance No. C-35231 . . . ." CP 486 (emphasis supplied). The superior court also made the Department of Revenue a party to the mandamus proceeding for purposes of appeal. CP 561. The County and the Department timely filed appeals of the order and writ. CP 434-35; 469-70. In November 2015, the Court of Appeals stayed the superior court's decision pending review.

In an opinion issued on September 22, 2016, the Court of Appeals reversed the superior court with a 2-1 majority. *Horton*, 380 P.3d at 1279. The Court recited the constitutional language at issue:

> **SECTION 1 TAXATION.** ... All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax ....
>
> **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 assessment, or by special taxation of property benefited. For all corporate 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:
>
> *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.

Id. at 1280-81 (quoting Const. art. VII, §§ 1, 9, § 10) (emphasis in opinion).

The Court of Appeals held that the City's Ordinance violated the uniformity requirement in Section 9. *Id.* at 1279. The Court also rejected the City's argument that the Legislature, by enacting RCW 35A.11.020, intended to grant code cities the same powers the Constitution grants the

Legislature with respect to creating property tax exemptions. *Id.* at 1281. The Court held that Section 9 expressly prohibits municipalities from assessing and collecting nonuniform property taxes. *Id.* at 1282. The Court also held that the clear language in Section 10 "is not susceptible to allowing the legislature to 'confer' section 10's authority on municipal corporations." *Id.* Noting that the Legislature "cannot accomplish by statute what the Washington Constitution" prohibits, the Court also concluded that the Legislature did not intend that result because it "explicitly qualified RCW 35A.11.020 with the caveat, 'within constitutional limitations.'" *Id.*

Judge Fearing dissented, relying on *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 P. 769 (1907), a poll tax case, for the proposition that a municipality may enact reasonable property tax exemptions. *Horton*, 380 P.3d at 1283-85 (Fearing, J., dissenting). The majority disagreed that *Tekoa* was applicable or required affirming the City's Ordinance. *Id.* at 1281, n.3. The City now petitions this Court for review.

V. REASONS WHY THE COURT SHOULD DENY REVIEW

The City's property tax must be uniform. "Tax uniformity requires both an equal tax rate and equality in valuing the property taxed." *Belas v. Kiga*, 135 Wn.2d 913, 923, 959 P.2d 1037 (1998). The City's Ordinance intentionally causes nonuniformity. The Ordinance causes a different

regular tax rate and results in a different assessment ratio for real property within the City. The Court of Appeals reached the only reasonable conclusion: The Ordinance is unconstitutional. Review is not warranted.

A. The Court Of Appeals Decision Does Not Raise Significant Questions of Law Under The Washington Constitution.

The Court of Appeals reached the correct result when it decided what the Legislature intended by: "*within constitutional limitations*, legislative bodies of code cities shall have within their territorial limits *all powers of taxation* for local purposes. . . ." RCW 35A.11.020. *Horton*, 380 P.3d at 1282. The Court's interpretation was the only reasonable interpretation because it gave meaning to all words within the statute. *See In re Parentage of J.M.K.*, 155 Wn.2d 374, 393, 119 P.3d 840 (2005) (cannot ignore terms in statute). And it is consistent with the constitutional restrictions on granting local taxation powers and uniform taxation of property. Const. art. VII, §§ 1 and 9.

To reach the meaning of RCW 35A.11.020, the Court of Appeals held that Article VII, Section 9 required that all municipal property taxes "shall be uniform in respect to persons and property." *Horton*, 380 P.3d at 1281. And while Article VII, Section 10 gives the Legislature special authorization to enact RCW 84.36.381 (a partial property tax exemption for low-income retired persons), the Court of Appeals rejected the City's

argument that Section 10 implies that it too had authority to enact its own partial exemption. *Id.* at 1281-82.

The City characterizes the Court of Appeals decision as erroneously requiring "mathematical" or "perfect" uniformity and creating a "new rule of law." Petition at 6-8. But this Court has consistently held that local property taxes must be uniform to be constitutional. *See Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls Library Capital Facility Area*, 134 Wn.2d 825, 833-36, 953 P.2d 1150 (1998) (applying Article VII, Sections 1 and 9). This Court has also repeatedly struck down municipal ordinances, including ordinances of first-class cities, where the municipality caused a nonuniform property tax. *See Okeson v. City of Seattle*, 150 Wn.2d 540, 554, 78 P.3d 1279 (2003); *Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 815–16, 23 P.3d 477 (2001); *Harbour Vill. Apts. v. City of Mukilteo*, 139 Wn.2d 604, 989 P.2d 542 (1999); *Heavens v. King County Rural Library Dist.*, 66 Wn.2d 558, 563, 404 P.2d 453 (1965), *State ex. rel. Nettleton v. Case*, 39 Wash. 177, 180, 81 P. 554 (1905).

Finally, this Court has already explained what local property tax uniformity requires. A uniform property tax has two required components: (1) the application of an equal tax rate, and (2) equality in valuing the property being taxed. *See Covell*, 127 Wn.2d at 878 (nonuniform where

Seattle's tax rate "on a $60,000 house is 40 times higher than the rate on a $2,400,000 mansion"). And under Sections 1 and 9 in Article VII, property taxes must "be uniform on the same class of property within the geographical limits of the authority levying the tax." *Pierce County v. Taxpayers of Lakes Dist. Recreation Serv. Area*, 70 Wn.2d 375, 382, 423 P.2d 67 (1967); *see also* Alfred E. Harsch & George A. Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 Wash. L. Rev. 225, 263-64 (1958) (observing that Section 9 on its own at least requires geographic uniformity). The Court of Appeals' decision is entirely consistent with these prior decisions concerning uniformity requirements.

The City's ordinance undisputedly causes a nonuniform property tax. The City applied different tax rates and had different assessment ratios for real property within the geographic limits of the City. The very intent of the Ordinance, while well-meaning, was to treat similarly situated property owned by Seniors differently than other property located within the City's taxing jurisdiction. While the City does not dispute that its ordinance creates nonuniformity, it repeatedly contends that nonuniformity is of "no moment" because it has "all powers" of taxation. Pet. at 14; *see also* City's Response Brief at 23.

But uniformity is a concern, especially with partial exemptions like the one the City seeks to implement.[4] An express constitutional amendment has been required for each exception to the uniformity requirement to allow the Legislature to enact property tax exemptions or other tax preferences without violating the constitutional requirement. *See Belas*, 135 Wn.2d at 931; *State ex rel. Mason County Logging Co. v. Wiley*, 177 Wash. 65, 70, 31 P.2d 539 (1934). Relevant here, Amendment 47 (Article VII, Section 10) permitted the Legislature to enact a special exemption for retired persons, allowing the Legislature to supersede the requirements in Article VII, Sections 1 and 2. *See* RCW 84.36.381; *see also* RCW 84.38 (senior tax deferral program).

The City claims that via RCW 35A.11.020, it enjoys the same authority under Article VII, Section 10 as the Legislature, allowing its Ordinance to locally "pattern off of" the State's exemption. *See* Pet. at 9-11 & n.7. The Court of Appeals appropriately rejected the City's

[4] The dissenting judge did not see an important distinction between partial and full exemptions. Exemptions are exceptions from the uniformity requirement whose authority must be expressly stated in the Constitution. With respect to the differences between full and partial exemptions, this Court recognized the Legislature can wholly exempt property by "general laws" because of the express language of Amendment 14. *See State ex. rel. Atwood v. Wooster*, 163 Wash. 659, 664–65, 2 P.2d 653 (1931) (discussing Amendment 14). However, the creation of exemptions by "general laws" did not permit partial exemption of similarly situated real property or a preferential assessment method. Each of these "partial exemptions" or other tax preferences still required a special exception. *See Belas*, 135 Wn.2d at 931; *Bates v. McLeod*, 11 Wn.2d 648, 654, 120 P.2d 472 (1941); *see also, e.g.,* Amendments 3 and 81 (homestead credit), Amendment 14 (alternative yield tax scheme for mines resources), Amendment 53 (open space tax preference).

interpretation in light of the language in Article VII, Sections 9 and 10. *Horton*, 380 P.3d at 1281-82.

First, Section 10 states "*[t]he legislature* shall have the power . . . ." (emphasis added). The Court of Appeals recognized that Section 10 applies only to the Legislature and not to municipal corporations. *Id.* at 1282. In addition, the language of Section 10 is not susceptible to an interpretation conferring this authority to municipal corporations. *Id.*

Likewise, the Court of Appeals recognized that the uniformity requirements applying to the Legislature's imposition of property taxes (Article VII, Section 1) are different than the requirements applied to the Legislature when they invest municipal corporations with authority to tax (i.e., Section 9). *See id.* And that language in Article VII, Section 9 contains no express exceptions. *See id*. The Court of Appeals' recognition of the plain language is wholly consistent with this Court's holdings that courts may not create exceptions from constitutional requirements, no matter how desirable or expedient such an exception might seem. *City of Bothell v. Barnhart*, 172 Wn.2d 223, 229, 232, 257 P.3d 648 (2011).

The Court of Appeals also rejected implying additional language into Section 10 to supersede Section 9's requirements. *Horton*, 380 P.3d at 1281-82. This is consistent with this Court's holdings that courts may not "engraft" or imply language into the Constitution. *See Larson v. Seattle*

Popular Monorail Auth., 156 Wn.2d 752, 757-58, 131 P.3d 892 (2006). It also should go without saying that the Legislature cannot accomplish by statute what the Washington Constitution prohibits. *See State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 180, 492 P.2d 1012 (1972). Without an express statement in Section 10 allowing the Legislature to extend the legislative authority granted there to cities, the Legislature could not decide on its own to allow cities to create their own partial exemptions for seniors. Thus, interpreting RCW 35A.11.020 as the City does is unreasonable and contrary to express legislative intent. The Legislature did not use empty words when it said "within constitutional limitations," and the Court of Appeals properly ascribed meaning to that phrase. *See Horton*, 380 P.3d at 1282.

B. The Court Of Appeals Decision Is Not In Conflict With Any Decision Of This Court.

The Court of Appeals decision is not in conflict with property tax cases, and it also is not in conflict with *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 P. 769 (1907). *Tekoa* concerned a statute authorizing municipalities to impose a poll tax on the subjects identified by the Legislature. Unlike in this case, *Tekeo* did not concern the issue of a nonuniform property tax or whether a municipality could, on its own, wholly or partially exempt property from property taxation. Judge Fearing

nevertheless argued in dissent that *Tekoa* is controlling of this case. *Horton*, 380 P.3d at 1284. (Fearing, J., dissenting). The majority disagreed, giving three reasons: *Tekoa* concerned a poll tax, it did not concern authorizing cities to enact their own tax exemptions, and modern jurisprudence emphasizes the importance of strict uniformity in the application of property tax. *Id*. at 1281, n.3. The majority is correct, and its decision is not in conflict with *Tekoa*.

This Court frequently begins with identifying the type of tax, fee or charge before applying constitutional standards. *See, e.g., Harbour Vill. Apts.*, 139 Wn.2d at 607-08; *Covell*, 127 Wn.2d at 879. In the constitutional sense, a poll tax is considered to be an excise tax and not a property tax. A.E. Harsch & G.A. Shipman, 33 Wash. L. Rev. at 284. Like an excise tax, which is imposed on a transaction or privilege, the subject of poll taxes was historically tied to the right to vote. *Thurston County v. Tenino Stone Quarries*, 44 Wash. 351, 355, 87 P. 634 (1906). If the Court identifies a tax as a "property tax," the Court imposes the uniformity standard discussed above. *See, e.g., Covell*, 127 Wn.2d at 891. If the Court identifies the tax as an "excise tax," it is not subject to the uniformity requirement. *Black v. State*, 67 Wn.2d 97, 100, 406 P.2d 761 (1965).

Tekoa concerned a street poll tax, which is more akin to an excise tax than a property tax. *Tekoa*, 47 Wash. at 203. In fact, the Court's chief

criticism of a prior ruling in a poll tax case was its reliance on an Illinois property tax case and its failure to consider cases addressing the uniformity requirement in the context of poll taxes. *Tekoa*, 47 Wash. at 207 (overruling *State v. Ide*, 35 Wash. 576, 77 P. 961 (1904)). Because poll taxes and property taxes have historically been treated differently, the Court of Appeals correctly declined to apply *Tekoa* in this case.

The Court of Appeals also correctly recognized that *Tekoa* did not concern the issue of whether a city could wholly or partially exempt property from taxation. *Horton*, 380 P.3d at 1281, n.3. The Legislature authorized cities "to impose on and collect from every male inhabitant of such city over the age of 21 years of age an annual street poll tax not exceeding two dollars." Laws of 1905, ch. 75, § 1. This is precisely what the town of Tekoa did; it imposed the poll tax on the persons expressly authorized by the Legislature. *Tekoa*, 47 Wash. at 203. The Town did not attempt, for example, to create an additional exemption for men over 50 years of age or to create a preferential class of citizens who paid a different rate. *Tekoa* does not concern the question here, whether a municipality is acting within its statutory or constitutional authority, and therefore it is not an authority of significance.

The City also mischaracterizes *Tekoa*'s discussion on territorial charter cities as evidence that cities had their own pre-statehood authority

to select the subjects of poll taxation. *See* Pet. at 10, n.4, 12-13 (quoting *Tekoa*, 47 Wash. at 206). The "territorial Legislature" exempted more persons in its road poll tax (Code of 1881, § 2863) than what the State Legislature had done in Laws of 1905, ch. 75, § 1. 47 Wash. at 203, 206-07. And as *Tekoa* qualifies, "the Legislature," not the charter cities, decided the subjects of local poll taxes in the territorial charters. *Id.*[5]

Either of the foregoing reasons provided the Court of Appeals a solid basis for that Court to conclude that *Tekoa* was distinguishable, and thus not controlling in this case. The Court also added a third reason, which was that the analysis in *Tekoa* was inconsistent with the analysis in later property tax cases. The City claims this was in error, arguing that *Tekoa* has not, in fact, been overruled sub silentio. Pet. at 6-7. But whether *Tekoa* has been overruled sub silentio for property tax purposes, or is merely distinguishable and inapplicable, makes little difference. There is no question, as even the dissenting judge below acknowledged, that this Court interprets Article VII, Sections 1 and 9 to require uniformity in property taxes, in the absence of express authority stating otherwise. *Horton*, 380 P.3d at 1283-84.

[5] In each charter the Legislature authorized cities to impose a road poll tax on all males between 21 and 50, and excluded other individuals (varies slightly in each charter); but none of these charters authorized the municipality to create its own exemptions. *See* Laws of 1885 at pp 196, 241, 275-76, 302-03, 326, 353, 376 and 397.

C. The Petition Does Not Involve An Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court.

The City's appeal to the public interest as a basis for review is misplaced. Everyone agrees that helping low-income people is in the public's interest, and the Legislature already provides consistent relief for low-income retired persons statewide across all taxing districts. RCW 84.36.381; RCW 84.38.030. These citizens will continue to enjoy the statewide exemption if the Court of Appeals' decision stands.

The City, however, does not discuss the effects of reversing the Court of Appeals' decision. Extending property exemption authority to first-class cities would mean that first-class cities are not governed by the general provisions of the property tax code. *See* RCW 35A.84.010. It would also permit first-class cities to balkanize the classification of property within the tax code areas shared with other districts. *See* RCW 84.52.010(3); RCW 84.52.043 (changing assessors' calculations of the aggregate statutory levy limitations for junior districts and reducing junior district's levies). This would unduly complicate and impinge on the policy of uniformity in the administration of property taxes. *See* RCW 84.08.010; WAC 458-12-140.

In summary, first-class cities should not customize the statewide exemptions to their own purposes, and the Legislature did not intend that

they do so. The City's desire to avoid the effects of replacing a bond retirement levy with an increase in its regular property tax levy—while laudable—does not provide a basis to hold otherwise. The City may still explore other options to provide relief: e.g., it could lower its budget; revert to using excess levies to fund its transportation projects; or it could spend its increased revenue on programs to help low-income Seniors.

VI. CONCLUSION

The City's petition for review does not meet the criteria of RAP 13.4(b)(1), (3) or (4). The Court of Appeals' decision is in complete conformance with this Court's decisions regarding uniformity in property taxes. Moreover, the City's mistakes in failing to anticipate either the tax effects of the levy lid lift on low-income retired citizens or the legal defects of the Ordinance do not create an issue of substantial public interest that this Court should determine. The Department requests that the City's petition for review be denied.

RESPECTFULLY SUBMITTED this 23rd day of November, 2016.

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I certify under 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 Tumwater, WA.

Julie Johnson

Julie Johnson, Legal Assistant

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

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