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**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

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

Respondent,

v.

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

Appellants,

and,

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

Appellant.

DEPARTMENT'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

This Court has asked the parties to address whether *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 P. 769 (1907), requires this Court to affirm the City of Spokane's Ordinance C-35231, or whether that case has been overruled *sub silentio* by subsequent authority. *Town of Tekoa* held that the Legislature's exemption of women and children from an authorization for cities to impose a \$2 local street poll tax did not offend the state or federal constitutions. *Town of Tekoa* is unremarkable because the poll taxes paid by adult males were at a uniform rate, and the Legislature, not the Town, created all of the exemption classifications.

So the answer to the first question is "no." Nothing in *Town of Tekoa* requires affirming the City's Ordinance. First, the case addresses poll taxes or taxes on "persons." Other cases, notably *State ex. rel. Nettleton v. Case*, 39 Wash. 177, 81 P. 554 (1905) and *Covell v. City of Seattle*, 127 Wn.2d 874, 905 P.2d 324 (1995) require equal rate and equal ratio when the uniformity requirements are applied to "property" taxes. Second, *Town of Tekoa* does not hold that municipalities enjoy any authority to wholly or partially exempt persons from a poll tax or otherwise deviate from the classifications of taxation specifically authorized by the Legislature. In other words, the case does not require implementing an ordinance that imposes two different levy rates on real

property in Spokane, nor does it support the conclusion that the City has authority to classify and exempt property from taxation differently than the statutorily defined classes and exemptions of property taxation codified in RCW Title 84.

As to the Court's second question, *Town of Tekoa* can be read as allowing the Legislature to authorize local taxes that do not meet an absolute standard of uniformity, specifically under Article VII, Section 9, if the classification is rationally based, would avoid unjust results, or is sanctioned by long usage. But the Supreme Court has rejected these types of exceptions to the *property tax* uniformity requirement. Because of this, it is fair to say that *Town of Tekoa* has been overruled *sub silentio* if it had any applicability to property taxes. Accordingly, the Court should look to the body of case law addressing property taxes for the meaning of the uniformity requirement, rather than *Town of Tekoa*.

II. AUTHORITY AND ARGUMENT

A. Poll Taxes Are Distinct From Property Taxes, And Exceptions That Courts Have Allowed To Uniformity In Poll Taxes Do Not Apply To Property Taxes.

The Court's question refers to a poll tax case, which the courts have treated differently from property taxes. Historically, there were three general categories of taxes: property taxes, capitation taxes, and excise taxes. See Hugh D. Spitzer, *A Washington State Income Tax-Again?* 16

U.P.S. L. Rev. 515, 559-60 & n.294 (1993). A “poll” tax is a species of “capitation” tax (sometimes called “head” or “per capita” taxes) and is considered to be an “excise tax and not a property tax in the constitutional sense.”¹ See Spitzer, 16 U.P.S. L. Rev. at 559-60 & n.327; A.E. Harsch & G.A. Shipman, *The Constitutional Aspects of Washington’s Fiscal Crisis*, 33 Wash. L. Rev. 225, 284 (1958). A poll tax is generally defined as “a tax on a person without regard to his or her property, employment, or occupation.” 85 C.J.S. *Taxation* § 1801 (2016).

From 1854 to 1922, Washington actively used both property taxes and poll taxes as a source of state and local revenue. For example, at its first meeting, the Territorial Legislature enacted a \$1 poll tax upon all white males over the age of twenty-one. Laws of 1854, § 1, p. 331. At the same time, it authorized property taxes of one mill on real and personal property for the state, two mills for school purposes, and up to four mills for county purposes except on religious, government, and school property, and graveyards and Indian Land. Laws of 1854, §§ 1, 2, pp. 331-32. Over time the poll and property taxes became more complex, and when

¹ While the poll tax was infamously used as a means to disenfranchise voters as a qualification to the right to vote, the tax is also described as a “poll” tax because who paid the tax was based upon the poll-book of the taxing jurisdiction. See *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966) (overruling in part *Breedlove v. Suttles*, 302 U.S. 277, 58 S. Ct. 205, 82 L. Ed. 252 (1937) for the proposition that payment of poll tax was proper pre-condition of voting). The poll book listed the names of the legal voters registered within the jurisdiction’s districts, wards or precincts. See Laws of 1889-1890, ch. 13, § 1, at 414 (“registration of voters”).

Washington became a State, the Legislature re-enacted many of the revenue laws from the Territorial Legislature. *See* A. Harsch, *The Washington Tax System—How It Grew*, 39 Wash. L. Rev. 944, 944-45 (1964).

Recall that Washington law recognizes two uniformity requirements. The first is a “general uniformity requirement” having to do with the Legislature’s imposition of property taxes in Article VII, Section 1 (prior to Amendment 14 of the Washington Constitution in 1930, the requirement was found in Article VII, Section 2).² The second is a more specific uniformity requirement having to do with the Legislature’s authorization of municipal taxes on persons or property in Article VII, Section 9³ of the Washington Constitution. *See* Harsch & Shipman, *The Constitutional Aspects of Washington’s Fiscal Crisis*, 33 Wash. L. Rev. at 248-56, 262-74. Both requirements apply to taxes on property, but only Section 9 applies to taxes on persons. *See State v. Ide*, 35 Wash. 576, 583,

² Article VII, Section 1: “All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax... All real estate shall constitute one class: Provided [list of exceptions].” (Emphasis added).

Formerly: “[Section 1] All property in the state, not exempt..., shall be taxed in proportion to its value... [Section 2] 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 in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property; Provided [exceptions].” Article VII, §§ 1, 2 (1900) (emphasis added).

³ Article VII, Section 9: “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.” (Emphasis added).

77 P. 961 (1904). Article VII, Section 9 both permits authorization of taxes upon persons and limits such taxes. *Id.*

As explained below, early in the last century, the Washington Supreme Court recognized some limited “injustice” or “rational basis” exceptions to the specific uniformity requirement in the context of poll taxes. *Id.* At no time, however, has the Court applied those same exceptions to property taxes. To the contrary, uniformity in property taxes remains “the highest and most important of all requirements applicable to taxation under our system” regardless of which constitutional uniformity requirement is being applied. *Belas v. Kiga*, 135 Wn.2d 913, 937-38, 959 P.2d 1037 (1998); *State ex rel. Nettleton v. Case*, 39 Wash. 177, 180-81, 81 P. 554 (1905). For this reason, *Town of Tekoa* does not apply and does not provide a basis for affirming the City’s Ordinance.

1. *Town of Tekoa* recognized a limited injustice exception to uniformity for poll taxes.

Statutes allowing cities to enact annual poll taxes for street building purposes were the subject of litigation in *Town of Tekoa* and in *State v. Ide*, three years before it. *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 P. 769 (1907); *State v. Ide*, 35 Wash. 576.

The statute at issue in *State v. Ide* allowed cities to exclude women and children, men over the age of fifty, and members of volunteer fire companies. [Third and fourth class cities] shall have power –

Poll tax.—(7) To impose on and collect from every male inhabitant between the ages of twenty-one and fifty 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: *Provided*, That any member of a volunteer fire company in such city shall be exempt from such tax. . . .

Laws of 1889-90, ch. 7, § 117. In *State v. Ide*, the city of Port Townsend imposed an annual poll tax pursuant to this authority. *State v. Ide*, 35 Wash. at 577-79. Port Townsend assessed its annual \$2 poll tax on every male inhabitant between the ages of twenty-one and fifty years except members of the volunteer fire company. *Id.* at 579. *Ide*, a male citizen of Port Townsend, refused to pay this \$2 poll tax. He was arrested by the city marshal, convicted for willful nonpayment of a poll tax, and fined and jailed.⁴ *Id.*

Ide appealed, arguing the poll tax violated the state and federal constitutions by taxing only males between 21 and 50. *Id.* at 581. He alleged that the Legislature’s classifications on age, gender, and firefighter status were arbitrary and unreasonable, violated equal protection under the Fourteenth Amendment of the United States Constitution, and resulted in

⁴ Pursuant to a provision in the statute, Port Townsend criminalized the nonpayment of its poll taxes, making it a misdemeanor. *Ide*, 35 Wash at 579; see Laws of 1889-90, ch. 7, § 117(16).

non-uniform taxation under Article VII, Section 2 (1904) (the general uniformity requirement) and Section 9 (the specific uniformity requirement on persons and property) of the Washington Constitution. *Id.* at 584-86.

The Court first rejected *Ide*'s argument that the poll tax violated the general uniformity requirement in Article VII, Section 2. In doing so, the Court distinguished the constitutional requirements for poll taxes and property taxes:

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. But its assessment is not governed by the general revenue law, or, strictly speaking, by section 2 of article 7 of the state Constitution. . . .

State v. Ide, 35 Wash. at 583 (emphasis added).

The Supreme Court reached a different conclusion on *Ide*'s other claims. The Court held that the Legislature could authorize cities to levy taxes "on persons" under Article VII, Section 9, but the Constitution required that such taxes be "uniform in respect to *persons* and property within the jurisdiction of the body levying the same." *Id.* at 589 (emphasis added). The Court then concluded that the poll tax authorized by the Legislature was not "equal and uniform" in its classification of "persons":

The tax attempted to be collected in this instance is not uniform even as to the persons included in the classification

made by the Legislature for some persons in the general class are exempted from the payment of the tax. It would, therefore, seem clear that the section of the statute now under consideration is repugnant to section 9 of article 7 of the Constitution, and consequently void.

Id. at 589-90 (citing *Hunsaker v. Wright*, 30 Ill. 146, 20 Peck (IL) 146, 1863 WL 3028 (1863)). The Court then nullified the statute and ordinances. *Id.* at 590.

Following the *State v. Ide* decision, the Legislature passed emergency legislation re-enacting a stripped down version of the statutory section, removing the exemptions for older males and volunteer firefighters:

The city council of cities of the 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.

Laws of 1905, ch. 75, § 1.

Pursuant to this 1905 version of the poll tax authorization, the Town of Tekoa imposed a street poll tax on males over the age of 21. *Town of Tekoa*, 47 Wash. at 203. James E. Reilly, an adult male, appealed a judgment sustaining the validity of a street poll tax imposed upon him on similar grounds to those raised by *Ide* three years prior. *Id.* at 202-03. This time, the Supreme Court found the statute authorizing a street poll tax on

adult men did not violate the constitution and specifically overruled its decision in *State v. Ide*.

The Supreme Court in *Town of Tekoa* gave three reasons for its holding. First, it criticized the *State v. Ide* decision's reliance upon an Illinois property tax case, *Hunsaker v. Wright*, for the applicable rule of uniformity in a poll tax case. The Court noted that "the question of classification or exemption *under a poll tax law* was not considered or decided" in that case. *Town of Tekoa*, 47 Wash. at 207 (emphasis added). This distinguished poll taxes from property tax cases requiring uniform and equal treatment of property subject to tax.

Second, the Court acknowledged that it had recently upheld a uniformity and equal protection challenge to a state-wide poll tax. *Id.* at 209 (citing *Thurston County v. Tenino Stone Quarries, Inc.*, 44 Wash. 351, 87 P. 634 (1906)). In *Tenino Stone Quarries*, the Supreme Court held that uniformity was not a concern under Section 2 for a road poll tax assessed directly by the Legislature on all male inhabitants who lived in unincorporated portions of counties. *Tenino Stone Quarries*, 44 Wash. at 354-57. The Court in that case also held that the age and gender classifications did not violate equal protection or special privileges and immunities requirements. *Id.* (upholding Laws of 1905, ch. 156, § 1) (road poll tax on voters living in unincorporated areas). The Court in *Town of*

Tekoa then observed the absurdity of the different results in *State v. Ide*, which sanctioned one system of poll taxation within corporate limits of cities and towns and another system in unincorporated portions of counties in *Tenino Stone Quarries*.⁵ See *Town of Tekoa*, 47 Wash. at 209.

Finally, the Court in *Town of Tekoa* held that a poll tax on women and children would, in fact, defeat the goal of uniformity by burdening the head of household. Thus, it upheld the poll tax on a rational or exceptional basis:

It must be apparent that a street poll tax imposed on minors or females without regard to property or ability to pay would be *unjust and oppressive in the extreme*. The burden of paying the tax for the entire household would ordinarily fall on the head of the family. Such a tax would lack both equality and uniformity, and was never contemplated by the framers of the Constitution.

Id. at 209. For these three reasons, the Court then concluded that the uniformity rule “does not forbid a proper classification of the subjects of the tax, that the classification complained of is reasonable and proper, is sanctioned by usage, and violates no provision of the state Constitution.” *Id.*, 47 Wash. at 209.

Following *Tekoa*, the Supreme Court had another opportunity to comment on the constitutionality of poll taxes. In 1920, the Nineteenth

⁵ The absurdity of two (or more) systems of ad valorem taxation is precisely what the City seeks from this Court in requesting adoption of its interpretation of authority to exempt property from tax.

Amendment of the United States Constitution prohibited denying the right to vote on the basis of sex. In 1921, the Legislature enacted a state-wide poll tax of \$5 on *every person* between the age of 21 and 50. Laws of 1921, ch. 174 § 1. This state-wide poll tax on all adults was challenged as offending uniformity. *Nipges v. Thornton*, 119 Wash. 464, 469-70, 206 P. 17 (1922). The Court in *Nipges* once again recognized that the state-wide poll tax at issue was not a property tax. *Id.* (quoting *State v. Ide*, 35 Wash. 576). The Court then stated that “[a]s we have seen, our Constitution does not directly or indirectly prohibit the imposition of a per capita tax.” *Nipges*, 119 Wash. at 471.

Following *Nipges*, the state-wide \$5 poll tax was repealed by over 75 percent of the statewide vote. Init. No. 40 (1922), Laws of 1923, ch. 1, § 1. While still permitted in some instances after 1922, poll taxes ceased being used as a means for generating revenue in Washington, due to their unpopularity. Harsch, 39 Wash. L. Rev. at 952; *see also* RCW 35.27.500 (continuing to authorize a street poll tax for towns).

2. Property tax cases applied uniformity requirements differently than the poll tax cases.

The uniformity requirement developed differently (and continues to apply differently) to taxes on property than it had developed and applied for taxes on persons. Noted commentators Harsch and Shipman address

this difference in their article, *The Constitutional Aspects of Washington's Fiscal Crisis*. First, they set out the minimum of what uniformity means under Article VII Section 9:

[Uniformity under Section 9] obviously requires geographic uniformity. This means that a tax which a county is authorized to levy must apply alike to all persons or property within the geographic limits of the county, and a city tax must apply alike to all within the geographic limits of the city.

Harsch & Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 Wash. L. Rev at 263-64 (footnotes omitted). They also note the different standard for capitation (poll) taxes:

But as to taxes on persons, which are also within the contemplation of section nine, uniformity permits any reasonable classification of the subjects of taxation. It should mean the same as, *and no more than, equal protection of the laws. One case so holds [Town of Tekoa]*.

Id. at 264 (footnotes omitted, emphasis added); *see also Salt Lake City v. Wilson*, 46 Utah 60, 148 P. 1104, 1106-07 (1915) (citing *Town of Tekoa* and *Tenino Stone Quarries* for the proposition that a road poll tax does not come within the uniformity clause of the Utah Constitution relating to general taxation).

The difference in application of uniformity among the types of tax (property, capitation, and excise) has more to do with the nature of the subject-matter: property, persons, or transactions/privileges. Capitation

(poll) tax is defined as a fixed rate per subject head in the jurisdiction. 85 C.J.S. *Taxation* § 1801 (2016). Thus, it is expressed as a singular fixed sum of money per person. *Id.* Because a person is only one taxable subject, the only question for an equal tax burden was who the subjects of the tax were (e.g., \$2 for each male voter).

In contrast, ad valorem tax is a fixed rate per unit value of the subject property within the jurisdiction (generally expressed in millage or dollar rate per \$1,000 of the assessed value of the property). *University Village Ltd. Partners v. King County*, 106 Wn. App. 321, 23 P.3d 1090, *review denied*, 145 Wn.2d 1002 (2001). The burden is on the value of the property within the jurisdiction, not the individual person or exercise of a particular privilege. Thus, there is more to consider for equal tax burden for a property tax: there is both the rate for the subject property and the ratio of market value of the property to assessed value. *See Boeing Co. v. King County*, 75 Wn.2d 160, 165, 449 P.2d 404 (1969). If equality is lacking in either the rate of taxation or the assessment ratio, then courts find a lack of uniformity in the tax burden. *Id.*

In uniformity challenges to property taxes over the last century, the Court has been careful to identify the tax at issue as a property tax, as distinguished from some other type of tax (such as excise) before applying either the general uniformity requirement or the specific uniformity

requirement in Section 9. For example, in *State ex rel. Nettleton v. Case*, the Supreme Court found finding sliding scale of fees based upon the ad valorem value of estates to be a disguised property tax violating both the general uniformity requirement (applying to Legislature's imposition of tax) and the specific uniformity requirement found in Article VII, Section 9 of the Washington Constitution. *State ex rel. Nettleton*, 39 Wash. at 180-81; *see State v. Derbyshire*, 79 Wash. 227, 233-34, 140 P. 540 (1914) (affirming *State ex rel. Nettleton* analysis for applying both uniformity requirements to local property taxes after *Town of Tekoa*). In present day cases, the Court continues to carefully distinguish the tax as either a property tax, where uniformity applies, or an excise tax, where it does not. *Harbour Vill. Apartments v. City of Mukilteo*, 139 Wn.2d 604, 607-08, 989 P.2d 542 (1999).

Another feature of property tax cases is that they do not distinguish between the general and specific uniformity requirements. *See Harsch & Shipman*, 33 Wash. L. Rev at 264. For example, in a 1998 case, the Supreme Court discusses the uniformity requirement under both Sections 1 and 9 of Article VII without distinction. *Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls Library Capital Facility Area*, 134 Wn.2d 825, 833-34, 953 P.2d 1150 (1998).

The lack of a discernable distinction in how the uniformity requirement works in property tax cases, however, does not mean the requirement in Section 9 ceases to independently exist. *See Harsch & Shipman*, 33 Wash. L. Rev at 263-64. Notably, Division I of the Court of Appeals applied Section 9's requirement in isolation before finding the authorization of an impact fee was not a property tax and therefore did not violate the uniformity requirement. *See Wellington River Hollow, LLC v. King County*, 121 Wn. App. 224, 239, 54 P.3d 213 (2002) (citing *Dean v. Lehman*, 143 Wn.2d 12, 25-26, 18 P.3d 523 (2001) (which applied the uniformity requirement under Section 1)). Accordingly, regardless of whether the Legislature authorizes municipalities to levy a property tax or imposes one itself, the tax must be uniform in rate and ratio on the property subject to tax.

3. Assuming an injustice exception could apply in a property tax case, the City's Ordinance would not qualify for it.

Assuming, without conceding, that an injustice exception to uniformity requirement could apply to the City's levy, the circumstances here do not warrant such an exception. The Court in *Town of Tekoa* considered it, at the time, unjust and unequal if some men had to pay more in poll taxes based on the number of nonvoters (women and children) who they supported in their household. *Town of Tekoa*, 47 Wash. at 209; *see*

also *Tenino Stone Quarries*, 44 Wash. at 354-55 (commenting on the legal status of women and barriers to their compliance with such a tax). Without an exception to strict uniformity, the tax would impact male voters differently based on the number of additional nonvoters the voting male supported in his household. *Town of Tekoa*, 47 Wash. at 208-09.⁶ Later, the Supreme Court in *MacLaren v. Ferry County* described *Town of Tekoa* as permitting classifications which are “consistent with equality and uniformity.” *MacLaren v. Ferry County*, 135 Wash. 517, 520-21, 238 P. 579 (1925).

The City’s goals here are not consistent with the reasoning for granting the exception in *Town of Tekoa*. Consistency with equality and uniformity is not the goal of Spokane’s ordinance. Rather, the expressly stated purpose is to treat the primary residential property owned by retired persons with limited incomes differently than all other real property in Spokane. *See* CP 10. And unlike *Town of Tekoa*, where every person subject to the tax paid \$2, the trial court’s order and writ requires two different levy rates, one mill rate for the primary residence of low income seniors and one mill rate for all other real property valued for the City. *See* CP 486. This creates the very definition of a non-uniform property tax,

⁶ This analysis is very similar to the United States Supreme Court’s analysis in affirming that Georgia’s age and gender limitations for a poll tax did not violate Equal Protection. *Breedlove*, 302 U.S. at 281-82. The Court in *Breedlove* cited approvingly *Tenino Stone Quarries* for its analysis on minors. *See Breedlove*, 302 U.S. at 281-82.

facially requiring different treatment of property within the jurisdiction. The Ordinance also does not correct an injustice. The Legislature already decided to what extent seniors will benefit from tax preferences under its property tax code. RCW 84.36.379. It was the City officials' failure to grasp the legal effects of their levy-lid lift proposition, not manifest injustice, that prompted the Ordinance. *See* CP 6, 10, 28, 64-65, CP 164, 306; VRP 9:13-19. Furthermore, there has been no long period of acquiescence (or any acquiescence at all) in cities exempting property from taxes under local law without challenge to their authority. Rather, this is a case of first impression.

In sum, if this Court were to apply the exception to uniformity in *Town of Tekoa*, which it should not, the injustice, acquiesce and conformity to principles of uniformity are not present here.

B. *Town of Tekoa* Does Not Authorize Municipalities To Modify The Legislative's Designation Of: The Subjects Of Poll Tax Nor Legislative's Property Tax Classifications Or Exemptions.

Aside from the distinction between uniformity in the poll tax and property tax contexts, there is another reason why *Town of Tekoa* does not require affirming the City's Ordinance. *Town of Tekoa* addressed the Legislature's authority to identify the subjects of a poll tax in a poll tax authorization for municipalities. *See* Laws of 1889-90, ch. 7, § 117, Laws

of 1905, ch. 75, § 1.⁷ *Town of Tekoa* did not concern a municipality deciding on its own what classifications to create or what persons to exempt. This case, in contrast, concerns whether the Legislature delegated authority to municipalities to exempt properties from tax, and whether the Ordinance is a valid exercise of that authority in compliance with Section 9. Nowhere in *Town of Tekoa* does the Court hold that cities, of any type, enjoy any authority to classify or exempt persons from poll taxes. Thus, *Town of Tekoa* does not stand for the proposition that municipalities have the power to choose for themselves the subjects of property taxation or make new tax exemptions for either poll or property taxes.

Furthermore, the Court found the Legislature's definition of who is subject to a local poll tax controlling even where a City attempted to deviate from it by ordinance. *See State v. Superior Court of Whitman County*, 92 Wash. 360, 363, 159 P. 383 (1916). After *Town of Tekoa*

⁷ The principle of uniform taxation does not forbid the Legislature's identification of the subjects of taxation. *See Libby, McNeill & Libby v. Ivarson*, 19 Wn.2d 723, 730-31, 144 P.2d 258 (1943). The Legislature's decision to completely exempt property from taxes is an exception to the uniformity requirement written into the Constitution. *See Belas v. Kiga*, 135 Wn.2d 913, 941-42, 959 P.2d 1037 (1998); *see also* Harsch & Shipman, 33 Wash. L. Rev. at 244-245 (discussing the boundaries of the Legislature's classification power versus the more restrictive "uniformity" requirement). Likewise, to the extent the Legislature may use a classification to partially exempt real property or apply different ratios, it must do so under the limitations of what is expressly permitted in the Constitution. *See Inter Island Tel. Co., Inc. v. San Juan County*, 125 Wn.2d 332, 883 P.2d 1380 (1994) (cyclical revaluation does not permit assessments at 100 percent of value when other property in the class was assessed at 22 to 36 percent below value); *State ex rel. Barlow v. Kinnear*, 70 Wn.2d 482, 423 P.2d 937 (1967) (assessment of some real property within the county at 20 percent of market value and other real property at 25 percent patently violated uniformity).

overruled *State v. Ide*, the Legislature again amended the poll tax, reinstating an upper age limitation of 50 years on the poll tax. *See* Laws of 1913, ch. 108, § 1. The Tekoa once again imposed a \$2 poll tax under the older version of the law without reference to the Legislature's re-enacted upper limit of 50 years of age. *Superior Court of Whitman County*, 92 Wash. at 360-61. A male inhabitant of the town over the age of 50 years refused to pay the 1915 poll tax and was arrested. *Id.* On appeal, the Court reversed, finding that he had no liability to pay the 1915 poll tax to the town. *Id.* at 363. Specifically, the Court held the town's ordinance "was void or it was necessarily amended in effect by the legislation of 1913 to the extent that a poll tax could not be collected from, nor could the ordinance be enforced in any of its provisions against, persons 50 years of age or over." *Id.* Thus, the Legislature's definition of the persons subject to the authorized poll tax limits a municipality's to the same.

Moreover, no case, including *Town of Tekoa*, holds that cities may deviate from the subjects selected by the Legislature for either a poll tax or a property tax. *See* RCW 84.36.005 (subjects of tax); *see also*, Laws of 1925, 1st Ex. Sess., ch. 130, § 7 (prior version). Additionally, in this case, there is express evidence the Legislature did not intend code cities to select their own subjects of taxation. *See* RCW 35A.84.010 (legislative intent for the cities using the Optional Municipal Code to be governed by

the State's ad valorem tax scheme, procedures and rules). In sum, *Town of Tekoa* does not authorize the City's Ordinance.

C. Any Interpretation Of *Town of Tekoa* As Requiring Only A Rational Basis To Deviate From Uniformity Has Been Silently Overruled.

This Court also asks whether *Town of Tekoa* has been overruled *sub silentio*. With respect to whether a uniformity exception exists based on a rational basis or injustice values of what is fair, the answer is "yes."

The theory that Section 9 (whether applied to property or poll tax) requires only a rational basis for deviating from uniformity has been rejected. In *Belas v. Kiga*, the attorney defending the referendum included an argument for a California-recognized exception from the uniformity requirement. *Belas v. Kiga*, 135 Wn.2d 913, 941-42, 959 P.2d 1037 (1998). While that case involved Section 1's uniformity requirement, the Court expressly rejected the theory of a "rational basis" exception to the uniformity requirement without distinction between Section 1 and 9's requirements. *Id.* at 940-41. The Court in *Belas* said that recognizing such an exception would ignore "a century of this Court's cases requiring uniformity of taxation under article VII of the state Constitution." *Id.* at 941-42.

That century of authority refers to the Supreme Court's repeated practice of striking down ordinances where local government charges

were labeled as fees, but the Court found they were, in fact, disguised property taxes. *See e.g., Covell v. City of Seattle*, 127 Wn.2d 874, 879, 905 P.2d 324 (1995) (a street utility charge was a nonuniform property tax in disguise); *Hillis Homes, Inc. v. Snohomish County*, 97 Wn.2d 804, 809, 650 P.2d 193 (1982) (development fee was a disguised property tax).

If either a rational basis or judgments about societal values were permitted exceptions to Section 9's requirement of a uniform property tax, they likely would have been discussed in cases as a basis for permitting a non-uniform scheme of property taxation. Instead, the consistent and repeated mantra by our Supreme Court is that tax "uniformity is the highest and most important of all requirements applicable to taxation under our system." *Belas*, 135 Wn.2d at 937-38. And the consistent application is to require the property tax be at a uniform rate and uniform assessment ratio. *Id.* The City's ordinance seeks, and the trial court's order requires, two different rates and ratio schemes. In no way is this consistent with a uniform property tax or property tax authority.

III. CONCLUSION

Nothing in *Town of Tekoa* requires affirming the City's Ordinance. The case addresses poll taxes or taxes on "persons," and it does not hold that municipalities enjoy any authority to create whole or partial property tax exemptions. For all the reasons set forth above and in the

Department's prior briefing, the Ordinance is invalid and unconstitutional because it creates non-uniform property taxes in Spokane.

RESPECTFULLY SUBMITTED this 8 day of August, 2016.

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A handwritten signature in black ink, appearing to read 'AK', is written over the printed name of Andrew Krawczyk.

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I certify under penalty of perjury under the laws of the State of
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DATED this 8th day of August, 2016, at Tumwater, WA.

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