No. 102868-7

SUPREME COURT OF THE STATE OF WASHINGTON

No. 57452-7

IN THE COURT OF APPEALS FOR

THE STATE OF WASHINGTON, DIVISION II

SkyCorp Ltd.,

Plaintiff and Appellant,

v.

King County,

Defendant and Respondent,

Appellant's Petition for Review

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Introduction

This case local government authority—or lack of authority—to control activities occurring outside its borders. King County issued a citation to SkyCorp for disposing construction and demolition (C&D) debris at a facility in Yakima County, fully licensed by the regulatory authorities in Yakima County, but not licensed by King County. The question presented in this case is whether King County may regulate where a person disposes of debris when that disposal occurs outside the borders of King County.

Division Two of the Court of Appeals—in a published, split decision—grants King County jurisdiction to prohibit one's use of lawfully operating facilities in Yakima County by prohibiting disposal there.

Regulating activities outside the jurisdiction's borders, however, is (i) inconsistent with it being a

local regulation, (ii) is unaligned with general laws, and (iii) does not promote the health, safety, welfare, or other interests of King County, all of which are required by Article XI, Section 11 of the Washington Constitution. Additionally, the privileges and immunities clause in Article I, Section 12 of the Washington Constitution protects the right of citizens to be free to choose among lawful options in the disposition of their property.

This Court should grant review to determine whether a county may apply its code outside its borders. As dissenting Judge Veljacic concluded, King County does not have extraterritorial jurisdiction as this Court made clear long ago in *Brown v. City of Cle Elum*, 145 Wash. 588 (1927).

Identity of Petitioner

Petitioner is SkyCorp Ltd, the Plaintiff and Appellant below.

Citation to Court of Appeals Decision

SkyCorp seeks review of a decision of Division Two filed on February 13, 2024, which is reproduced as Appendix A-1.

Issues Presented for Review

1. Whether King County's extraterritorial regulation of C&D debris disposal outside its borders violates Article XI, Section 11 of the Washington Constitution because it is not a "local" regulation.
2. Whether King County's requirement that all C&D debris be disposed only in King County-approved facilities, conflicts with RCW 70A.205.195 which prohibits the deposit of waste only if not within locally approved facilities?
3. Whether King County's regulation of activities beyond its borders is unreasonable in that it does not "promote the health, safety, peace, education, or welfare" of the people of King

County as contemplated by Article XI, Section 11 of the Washington Constitution?

4. Whether King County's regulation of out-of-county conduct violates the Privileges and Immunities Clause in Article I, Section 12 of the Washington Constitution?

Statement of the Case

SkyCorp is a family-owned and operated for profit corporation which removes buildings to make way for a variety of public and private development projects throughout Washington. It either moves buildings intact to other locations or demolishes them and disposes of debris and recycles appropriate materials. CP 280-82.

King County Code (KCC) 10.08.020 establishes a regulatory system of disposal of all solid waste generated, collected, or disposed of in unincorporated King County or generated or collected, or both, in any city with which King County has a solid waste inter-

local agreement. Although King County does not regulate the transportation of C&D debris, it prohibits disposal even outside the county unless disposal occurs at a King County-approved site. CP 3.

In 2020, King County issued a citation and fine to SkyCorp for violation of KCC 10.08.030. SkyCorp removed a building pursuant to a contract with the Renton School District, thereby creating C&D debris which it disposed of at a fully licensed facility in Yakima County. CP 280-81. On other occasions, SkyCorp took C&D waste to sites in Oregon that are fully licensed or permitted under Oregon law to handle such materials. CP 282.

Because of the increased cost in depositing C&D waste at the sites approved by King County, it is less financially burdensome for SkyCorp to transport and deposit construction and demolition waste in Oregon,

or in other lawfully operating locations in Washington, such as the facility in Yakima County. CP 282.

SkyCorp appealed the citation to the King County Hearing Examiner, who affirmed the citation of SkyCorp. Thereafter, SkyCorp filed suit in federal court challenging King County's code, asserting two federal claims for relief (interference with the Commerce Clause by prohibiting disposal in Oregon and violation of Due Process) and the two state-law-based claims asserted here (violation of local police powers and the privileges and immunities clause). The federal district court dismissed the federal claims and SkyCorp appealed that dismissal.[1] As to the two, state law-based claims, the federal district court did not address the merits but rather dismissed them without prejudice,

[1] *SkyCorp Ltd. v. King County,* 2021 WL 135846 (W.D. Wa. January 14, 2021).

allowing SkyCorp to refile the state law-based claims in state court. CP 120-21.

On appeal to the Ninth Circuit, the court affirmed the district court, but concluded that SkyCorp had not established standing under Article III to pursue its Commerce Clause claim because King County had yet to enforce its code when SkyCorp takes material to Oregon. *SkyCorp v. King County*, 859 Fed. Appx 780, 781 (9th Cir. 2021).

Based on the portion of the District Court's ruling allowing the refiling of the state law claims in state court, SkyCorp filed the present action realleging the same two state-law-based causes of action in Pierce County Superior Court. King County moved for summary judgment. CP 193. SkyCorp opposed that motion and filed its own cross-motion for summary judgment in response. CP 221.

The Superior Court granted King County's motion for summary judgment and denied that of SkyCorp. On appeal, a majority of Division Two affirmed the summary judgment decisions. A-1. Judge Veljacic dissented. A-28.

Argument:
Review Should be Granted for the Following Reasons

RAP 13.4(b) establishes this Court's considerations governing acceptance of review.

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) …
> (3) If a significant question of law under the Constitution of the State of Washington … is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RPA 13.4(b). Review is appropriate under subsections (1), (3) and (4), based on the following arguments:

I. Whether King County's enforcement of regulations on out-of-county conduct is consistent with Article XI, Section 11 of the Washington Constitution involves significant questions of law and conflicts with decisions of this Court.

A. The majority in Division Two's approval of King County applying its code outside of King County's jurisdictional borders involves significant questions of law as to the constitutional power to enact and enforce "local" regulations "within its limits."

Because King County applied its regulatory authority against SkyCorp to an activity occurring entirely within Yakima County, King County has violated Article XI, Section 11's requirement that King County's power to make and enforce only "local" regulations "within its limits." *Id.* This Article of the Constitution is short and to the point:

> Police and Sanitary Regulations.
>
> Any county, city, town or township may make and enforce *within its limits* all such *local* police, sanitary and other regulations *as are not in conflict with general laws*.

Article XI, Section 11 (emphases added).

Thus, the application of an ordinance violates Article XI, Section 11 of the Washington Constitution if it fails any of the following three criteria: (1) the ordinance shall be confined to local matters; (2) the ordinance does not conflict with a general law; or (3), the ordinance is a reasonable exercise of a county's police power. *Weden v. San Juan County*, 135 Wn.2d 678, 692-93 (1998) (listing the criteria), *abrogated on other grounds by Yim v. City of Seattle,* 194 Wn.2d 682 (2019).

Notably then, the precedent of this Court is that, if the out-of-county application of KCC 10.30.020 fails *any one* of these criteria, then it violates Article XI, Section 11. *Weden,* 135 Wn.2d at 692. As addressed below, prohibiting otherwise lawful disposal of waste outside of King County at a facility licensed by the governing jurisdiction where the facility is located fails each of these three criteria.

Although there is no ability for the Legislature to grant authority for a county to exceed its constitutional powers, the majority in Division Two relies on the grant of authority in RCW 36.58.040(1) for counties to establish a system of solid waste and designate disposal sites. A-7. It then plucks Division One's decision in *Rabanco Ltd. v. King County*, 125 Wn. App. 794 (2005), out of context to support its rationale that a county can regulate out-of-county conduct. A-8.

Rabanco, a waste collection service, had authority to collect in more than one county. It claimed that King County could not select disposal sites unless the County had an interlocal agreement with the other jurisdictions. Division One ruled King County did not need an interlocal agreement under the statute. Importantly, *Rabanco* was about the regulation of the waste-hauling business—not at issue here. RCW 36.58.040 is about the regulation of solid waste

"collected in" the county. It is undisputed that SkyCorp does not "collect" solid waste but disposes of construction debris when it chooses to demolish its buildings on sites it is hired to clear.

Division Two recites part of the legislative history referred to in *Rabanco* but ignores that the legislation was about private collection service, not about where someone disposes of their own debris. Nevertheless, the majority in Division Two recognizes that *Rabanco* involved no article XI, section 11 issue. A-9.

The Division Two majority concludes that KCC 10.30.020's regulation of out-of-county disposal is still a "local" regulation because it governs waste that is "generated within the county's jurisdiction." A-11 (quoting KCC 10.30.020(A)). But as applied here, the regulation does not regulate either generation or collection. Rather, the County uses its regulation to govern activities—the disposal of waste and the

commercial transactions associated with such disposal—that occur completely outside of the County's borders.

The critical legal question in this case is whether King County can regulate these out-of-county transactions simply because the waste was at one time within King County borders.[2] Whether it can—and SkyCorp contends it cannot—is a significant question regarding the appropriate scope and limits of local government regulatory power.

Division Two continues:

> RCW 36.58.040(1) expressly contemplates that counties will designate some disposal sites that are outside of county borders, requiring that these approvals be supported by an interlocal agreement. Thus, the legislature restricted out-of-county disposal by making an interlocal

[2] The place of origin does not open the door for King County to regulate beyond its borders. The mere fact that a salmon is caught in King County does not allow King County to dictate how it is served in a restaurant in Tacoma.

> agreement a prerequisite to designation of an out-of-county disposal site.

A-11.

No, the interlocal agreement requirement applies only when a private hauler is operating under a certificate from the Utilities and Transportation Commission (UTC), allowing operation in more than one county. RCW 36.58.040(1). SkyCorp is not a private hauler operating in more than one county, nor under a UTC certificate.

The significance of the question of law in this case is highlighted by the Division Two majority's efforts to stretch *Rabanco* to suggest counties can regulate out-of-county conduct.

B. Division Two's decision conflicts with several decisions of this Court.

1. As recognized by dissenting Judge Veljacic, the majority's decision conflicts with this Court's reasoning in *Brown v. City of Cle Elum.*

Division Two's decision plainly conflicts with this Court's decision in *Brown v. City of Cle Elum,* 145 Wash. 588 (1927), the controlling authority on local regulation outside of jurisdictional boundaries. In *Brown,* the City of Cle Elum sought to enforce a municipal ordinance that prohibited persons from swimming, fishing, or boating in Lake Cle Elum, located outside the city limits. *Id.* at 589-90.

The city's purposes were legitimate—to protect the city's water supply. Yet, this Court emphasized that municipalities shall not regulate beyond their borders. *Brown,* 145 Wash. at 589. The Court elaborated: "[t]his delegation of its police power by the state to various municipalities is *strictly limited* to the exercise of that

power *within the limits* of such municipalities." *Id.* (emphasis added).

> The municipalities having only such legislative powers as are delegated to them, and the delegation by the Constitution containing a limitation as to the extent of that power, the *Legislature is not empowered to exceed that limitation*.

Id. at 590 (emphasis added).

As Judge Veljacic recognizes in the dissent, the majority's decision conflicts with *Brown v. City of Cle Elum*. A-30. King County's police power does not extend to activities occurring outside King County's borders simply because the waste was generated in King County any more than Cle Elum could prohibit swimming in a lake outside its jurisdiction even though the potential swimmers may have come from within the city limits, or the water would eventually flow to the city. Boundaries mean something and Division Two's decision directly conflicts with *Brown*.

2. Division Two's approval of King County's enforcement of a code to conduct occurring entirely outside of King County conflicts with this Court's decisions in *Weden, Petstel* and *Wilson.*

SkyCorp contends that a regulation is not local if it applies to activities not occurring within the local jurisdiction's borders. Permissible nonlocal "incidental effects" are just that—effects that may be felt out of the jurisdiction of regulations applied within the jurisdiction—but the direct regulation of activities occurring wholly outside the jurisdiction raises more than a concern about "incidental effects." Division Two's decision redefines "incidental effects" to apply to direct regulation of out-of-county conduct and that redefinition conflicts with this Court's decisions upon which Division Two purports to apply—*Weden,*135 Wn.2d at 705 and *Petstel, Inc. v. King County*, 77 Wn.2d 144, 159 (1969), and *Wilson v. City of Mountlake Terrace*, 69 Wn.2d 148 (1966). These three cases concern the regulation of actions *taken inside* the

jurisdictions, but the effects of which may be felt beyond the jurisdiction's borders. A-15-17. However, King County's application of its code does not merely have incidental *effects*. As applied, the code completely prohibits transactions that occur entirely outside of King County.

King County does not regulate the demolition of buildings within city borders. King County does not prohibit transporting C&D waste outside of King County's borders. CP 201 n.7. Once debris leaves, King County has no authority to regulate out-of-county activities dealing with that debris.

As recognized by Judge Veljacic in the dissent (A-31), the facts and holding in *Weden* demonstrate why Division Two's conclusion conflicts with this Court's rulings and analysis. This Court in *Weden* concluded that the applicable county's prohibition on personal watercraft (aka, jet skis) on waters "*within the physical boundaries of*

San Juan County is purely local," even though it would prohibit *nonresidents* from using jet skis when on the water *within the county's jurisdiction*. *Weden,* 135 Wn.2d at 705-06 (emphasis added).

This Court observed the obvious: "The fact that nonresidents must comply with the law does not invalidate the law or make it 'not local' for purposes of the police power." *Id.* The meaning of "local" in Article XI, Section 11 goes to actions taken inside of a municipality, not external thereto.

KCC 10.30.020 is not being challenged for requiring nonresidents to comply with County disposal regulations *when they are within the County*—as were the facts in *Weden*. Anyone wanting to dispose of C&D waste *in* King County must, of course, follow King County's regulations. Rather, King County has applied KCC 10.30.020 to regulate transactions that occur outside of the County's borders. Division Two has twisted the *Weden* decision

into an unrecognizable shape by equating the regulation of solely out-of-county conduct with incidental effects of regulation of in-county conduct.

This Court's ruling in *Weden* would not authorize San Juan County to prohibit personal watercraft operating on the Skagit County side of the Rosario Strait off Cypress Island simply because the noise might be heard by San Juan County residents on Blakely Island or affect wildlife there. The ruling of this Court in *Weden* makes it clear that San Juan County has no such authority even if the operators were residents of San Juan County who had trailered their personal watercraft on the ferry to Anacortes to put in there. The same is true here. King County cannot use a connection to activity in King County as a basis to regulate activity outside its borders in Yakima County.

Petstel likewise addresses a local ordinance which only regulated in-county conduct but had incidental extra-

jurisdictional effects. *Petstel,* 77 Wn.2d at 144. This Court in *Petstel* concluded that a county regulation of the fees charged by employment agencies *within the county* could have incidental effects on the general market conditions out of the county. Under the circumstances at hand, effects out of the county did not make the regulation of in-county conduct nonlocal. *Petstel,* 77 Wn.2d at 159.

Finally, Division Two's reliance on *Wilson* misapplies this Court's holding. The Court in *Wilson* concluded that a city that purchased water from a water district for city residents could authorize the addition of fluoride by the water district even though noncity residents would receive fluoridated water. *Id.* at 150. The City was not imposing a nonlocal regulation simply because the water was also sold by the water district to people residing outside of its borders. "[T]he city does not distribute water" to the challengers. *Wilson,* 69 Wn.2d at 153. Thus, the City was merely identifying the water it wanted to receive and the

fact that out-of-city customers would receive the same water did not mean the City was regulating them.

While the fluoridation decision did have *effects* outside the city because it would affect all water the district had to sell to anyone, even those outside the city, it was not a regulation of any out-of-jurisdiction conduct as is the position SkyCorp finds itself.

Accordingly, Division Two's reasoning conflicts with and distorts *Wilson, Petstel* and *Weden,* all of which recognize the distinction between a county's regulation of activities occurring *inside* the regulating jurisdiction—which may have incidental effects outside its borders—versus regulating activities occurring *outside* of the county, the latter of which does not fall under Article XI, section 11's requirement that police and sanitary powers be local and enforced within its limits.

This Court should review Division Two's erroneous conclusion because its published decision conflicts with

tdecisions of this Court on significant legal issues—whether a local government may regulate conduct beyond its borders.

C. Division Two's conclusion that KCC 10.30.020, as applied here, does not conflict with general law—RCW 70A.205.195—is an issue of substantial public interest.

Whether the Legislature has authorized King County to prohibit waste disposal occurring outside of King County—but occurring consistent with the local regulations—is an issue of substantial public interest. This Court has recognized a similar substantial public interest sufficient to grant review in prior cases. *See Ventenbergs v. City of Seattle*, 163 Wn.2d 92 (2008). Here, the impact of King County's regulation is even greater because it applies to the disposal of one's own debris, while *Ventenbergs* involved regulation of a more limited class of persons—those in the waste hauling business. *Id.* at 99.

Article XI, Section 11 prohibits local laws that conflict with general statutes. To the extent KCC 10.30.020, as applied, prohibits the disposal of waste at non-local facilities licensed by the governing authorities where the facility is located, that prohibition conflicts with RCW 70A.205.195.

RCW 70A.205.010 sets up a comprehensive statewide program for solid waste that relies on local regulation within local governments' individual jurisdictions. The state law provides that it is illegal to deposit solid waste "*[e]xcept* … at a solid waste disposal site for which there is a valid permit." RCW 70A.205.195 (emphasis added). The corollary here is that the statute does not make it illegal to deposit solid waste at a site where there is a valid permit. That is exactly what SkyCorp did at a facility in Yakima County which was fully permitted to process waste as required by RCW 70A.205.195. A-1, CP 281. KCC 10.30.020 makes it illegal to deposit solid waste at a

facility even though the facility is fully permitted as required by RCW 70A.205.195.

Until Division Two's decision, Washington law was clear about conflict between local and state law. An ordinance violates Article XI, Section 11 if it directly and irreconcilably conflicts with a state statute. *Brown v. City of Yakima,* 116 Wn.2d 556, 561 (1991). Unconstitutional conflict is found where an ordinance permits that which is forbidden by state law or *prohibits that which state law permits*. *Trimen Dev. Co. v. King County,* 124 Wn.2d 261, 269 (1994) (emphasis added).

Here, state law permits the deposit of waste at sites that meet local permit standards. But Division Two's majority allows King County to use KCC 10.30.020 to prohibit deposit of waste at any sites unless the site is also approved by King County, essentially applying King County permitting requirements to disposal facilities outside of King County. Thus, KCC 10.30.020 directly

conflicts with state law and violates Article XI, Section 11's directive—that a county may make regulations "as are not in conflict with general laws."

The Division Two majority relies on its decision in *Emerald Enters., LLC v. Clark County*, 2 Wn. App. 2d 794 (2018), for the notion that the Legislature's provision that a business (marijuana facilities) can be licensed does not mean that the activity must be allowed locally. A-19. Here, state law allows the deposit of C&D debris in Yakima at a licensed facility. King County disallows it. This scenario is not like that in *Emerald Enterprises* where the mere authorization of licenses by the State was unsuccessfully argued to require local government to provide zoning for the business.

And to put it more broadly, under no scenario, is King County free to dictate the disposition of matters occurring outside its borders simply because there is some connection within. If the contrary were true, there would

be no place to draw the line. But the line was drawn when the jurisdictional borders of counties of the state were established.

D. The application of KCC 10.30.020 beyond King County's borders is not a reasonable exercise of its police powers because it does not promote the health, safety, peace, education, or welfare of the people of King County.

The application of KCC 10.30.020 to prohibit the disposal of C&D waste in other parts of the state also violates the third requirement of Article XI, Section 11— KCC 10.30.020 fails to reasonably promote the health, safety, peace, education or welfare of the people of King County. *Weden*, 135 Wn.2d at 693. KCC 10.30.020 violates this reasonableness criterion because, if applied to prohibit the deposit of C&D waste in Yakima County or elsewhere, that code provision does not promote the health, safety, peace education or welfare of the people of King County.

Division Two concludes that the analogous situation held to be illegal in *Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608 (9th Cir. 2018), involved a "legal theory [which] ... is fundamentally different and thus the case is not persuasive." A-21 n.3. The Ninth Circuit concluded that the Commerce Clause prohibited California from dictating the manner of disposal of medical waste outside of California even though the waste originated in California. *Id.* at 618.

But Division Two concludes that the Commerce Clause legal theory was so "fundamentally different" to render the reasoning unpersuasive. A-21 n.3. The similarity of the legal theories is readily apparent, contrasting the Division Two majority's quick dismissal of the similarity. As addressed above, Article XI, section 11 is about local jurisdictions enforcing power locally and "within its limits." *Id.* As addressed in *Daniels Sharpsmart*, 889 F.3d 608, the Commerce Clause involves the same concerns at the

state level, *i.e.,* a state regulating commercial transactions occurring outside the state. *Id.*

Ultimately, the reasonableness question is whether King County's prohibition of disposal of waste in licensed facilities in Yakima County, or in Whitman County, Idaho or Oregon, for that matter, has any reasonable bearing on promoting public health, comfort or welfare in King County. The answer to that question is a question of substantial public interest.

II. Division Two's rejection of SkyCorp's privileges and immunities right to choose among lawful options involves an issue of substantial public interest and a conflict with this Court's decision in *Ventenbergs.*

The privileges and immunities clause of article I, section 12 of the State Constitution, provides that "[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

> Passed during a period of distrust toward laws that served special interests, the purpose of article I, section 12 is to limit the sort of favoritism that ran rampant during the territorial period.

Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 196 Wn.2d 506, 514 (2020); *see also id* at 518 ("article I, section 12 … is more protective than the federal equal protection clause").

Privileges and immunities clause violations occur where the government grants privileges or immunities that implicate fundamental rights of state citizenship and the reasons for such are inadequate. *Schroeder v. Weighall*, 179 Wn.2d 566, 573 (2014) (citations omitted). This Court in *Schroeder* concluded that longstanding rights under the common law could constitute fundamental rights belonging to citizens. *Id.*

SkyCorp has at least a common law right to choose among lawfully operating facilities and King County's

regulation of conduct outside of King County is not reasonable.

A. SkyCorp has a privilege or immunity at stake in having the freedom—as all people do—to choose among lawful options.

A fundamental right belonging to all citizens—not dependent upon any statute—is the right to dispose of one's own property in any lawful manner. SkyCorp has an inherent right to choose among all lawful options where to dispose of it.

Under Washington law, ownership of property includes the right to dispose of it—as in transfer to new ownership—as the owner wishes. *See Guimont v. Clarke,* 121 Wn.2d 586, 601-02 (1993) ("fundamental attribute of property ownership … includes the right … to dispose of the property), *abrogated on other grounds, Yim,* 194 Wn.2d 682. *See also Ventenbergs*, 163 Wn.2d at 106 ("right to freely alienate his property" referring to "construction debris"). To be sure, SkyCorp never

asserted a right to dispose of waste anywhere, but only at any facility approved by the governing regulatory body.

Similarly, under the common law, people could dispose of debris at any location allowed by the owner and lawful regulators of the disposal site. *Id*. While there have been restrictions on hauling waste, especially when dealing with hazardous wastes, individuals always have had the right to choose where to dispose of their own property, including debris, in any location where disposal is lawful and under lawful conditions. That right is inherent with all citizens and the right does not depend upon any legislative authorization. The right to choose is a personal, inherent right.

The Division Two majority relied primarily on *Ventenbergs,* 163 Wn.2d 92, but misappropriated this Court's conclusions. A-25. Notably, SkyCorp fully agrees that there is no fundamental right of citizenship to go into the waste-hauling business as was the argument in

Ventenbergs. Rather, SkyCorp seeks to choose among lawful options where to dispose of the buildings it buys prior to any potential demolition.

The Division Two majority ignores that this Court in *Ventenbergs* carefully made no ruling that people cannot dispose of their own property. To the contrary,

> *nothing* in the statutes or municipal code at issue *prevents Haider from hauling his own construction debris*—he is required to employ the services of Rabanco or Waste Management *only if he chooses not to haul the debris himself.* Therefore, we find that the City did not infringe upon his right to freely alienate his property.

Id. at 106 (emphases added).

The distinction in *Ventenbergs* between a person hauling their own waste versus others doing so is consistent with Washington law that people have the right to make their own decisions among lawful options regarding their own property.

The Division Two majority's conclusion that property owners "do not have a right to freely dispose of solid

waste without restriction" misses the mark. A-26. SkyCorp is not asserting any right to "freely dispose" of waste or to be "without restriction." It asserts a right to choose among lawful options—a right that King County has taken away.

B. King County's interference with the inherent right to choose among lawful options is unreasonable.

As to the reasonableness of King County's restriction of choices, the majority decision never addresses that inquiry. While King County has a reasonable basis for regulating waste within its borders, there is no reasonable basis for regulating waste disposal at locations outside of King County. At issue is whether King County's exertion of control over events that occur within the jurisdiction of other counties and outside of King County's jurisdiction is reasonable. This is a significant issue worthy of the Court's review.

Conclusion

The Division Two majority's approval of King County's efforts to extend its regulatory jurisdiction over conduct occurring outside of King County is a step too far. While a local government's police powers under Article XI, Section 11 are broad, they are not completely unbridled. And the readily apparent restriction the constitution provides is that a local government can only regulate conduct occurring within its borders.

These issues are significant questions of law under the Constitution of the State of Washington and issues of substantial public interest as to the geographic reach of local government authority. These issues all arise from the majority decision in Division Two which conflicts with several decisions of this Court, most notably *Brown,*145 Wash. 588.

SkyCorp requests the Court to grant this Petition for Review.

This document contains 4986 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 11th day of March 2024,

/s/ Richard M. Stephens
Richard M. Stephens
Attorney, WSBA #21776
Attorney for Appellant

Certificate of Service

I hereby certify that I caused the foregoing to be served on all parties on this date through the Court's electronic filing system.

Dated and executed this 11th day of March 2024 in Woodinville, Washington.

/s/ Richard M. Stephens

Richard M. Stephens, WSBA #21776

Filed
Washington State
Court of Appeals
Division Two

February 13, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SKYCORP LTD, Appellant, v. KING COUNTY, a municipal subdivision of the State of Washington, Respondent.	No. 57452-7-II PUBLISHED OPINION

GLASGOW, C.J.—The King County Code (KCC) 10.30.020 requires that anyone who generates, handles, or collects mixed or nonrecyclable construction and demolition waste within King County must dispose of such waste in county designated facilities. King County (the County) has designated facilities in King, Pierce, and Snohomish counties for this purpose. In violation of the code, SkyCorp disposed of mixed construction and demolition waste that was generated and then collected within King County at a licensed, but not designated, facility in Yakima County. In response to this violation of KCC 10.30.020, the County issued a citation and imposed a one hundred dollar fine.

SkyCorp does not dispute that it violated the code. Rather, SkyCorp sued the County arguing that KCC 10.30.020, as applied in this case, is an unconstitutional exercise of the County's police power beyond its jurisdictional borders. SkyCorp also asserts that the code is an unconstitutional restriction on SkyCorp's purported fundamental right to freely dispose of their

property under the privileges and immunities clause of the Washington Constitution. The superior court granted summary judgment in favor of the County and dismissed the case. SkyCorp appeals.

On appeal, SkyCorp argues that the County's application of KCC 10.30.020 is a violation of two provisions of the Washington Constitution: article XI, section 11, addressing local governments' police power to impose local sanitary regulations, and article I, section 12, the privileges and immunities clause. Furthermore, SkyCorp argues that the trial court improperly admitted into the record, and then relied on, a declaration by the County's construction and demolition program manager in reaching its summary judgment decision.

First, we affirm the trial court's decision to grant summary judgment to the County as to SkyCorp's article XI, section 11 claim. The code is local in nature because it regulates the disposal of waste generated and collected *within* King County. The code is not contrary to state statutes, and the code is a reasonable exercise of the County's police power to regulate sanitation---a power expressly granted to local governments in the Washington Constitution. Thus, the County's enforcement action against SkyCorp did not violate article XI, section 11 in this case.

Second, we affirm the trial court's decision to grant summary judgment to the County in regard to SkyCorp's privileges and immunities claim. KCC 10.30.020, as applied to SkyCorp, does not violate the privileges and immunities clause of the Washington Constitution because SkyCorp does not possess a fundamental right to dispose of waste as it desires without county regulation.

Third, the trial court did not abuse its discretion when it denied SkyCorp's oral motion to strike the county program manager's declaration. Moreover, any error was harmless because we need not rely on the declaration to resolve this case.

FACTS

I. FACTUAL BACKGROUND

King County implemented a Comprehensive Solid Waste Management Plan through Title 10 of the King County Code. As part of this plan, the County sought to ensure the proper disposal of nonrecyclable construction and demolition waste, to increase the amount of construction and demolition waste that is recycled, to conserve energy and natural resources, to protect the environment, and to preserve space at existing landfills. *See* KCC 10.08.080; KCC 10.30.010; KCC 10.14.020. To achieve these objectives, the County adopted a solid waste disposal code that regulates "all solid waste either generated, collected[,] or disposed, in unincorporated King County." KCC 10.08.020(A). The County's code makes it unlawful to deliver mixed and nonrecyclable construction and demolition waste to non-designated facilities. KCC 10.08.020(B)–(D).

The County's Comprehensive Solid Waste Management Plan describes a process for designating facilities to receive construction and demolition waste generated or collected in King County. DEP'T OF NAT. RES. & PARKS, KING COUNTY, 2019 COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN 4-36 to 4-37 (Nov. 2019) (CSWMP).[1] The implementing code requires that "[a]ll generators, handlers and collectors of mixed [construction and demolition] waste or nonrecyclable [construction and demolition] waste generated within the county's jurisdiction shall deliver, or ensure delivery to, a designated [construction and demolition waste] receiving facility" specified by the County. KCC 10.30.020(A)(1). These requirements apply only to mixed and

[1] https://your.kingcounty.gov/dnrp/library/solid-waste/about/planning/2019-comp-plan.pdf [https://perma.cc/482A-W89R]

nonrecyclable construction and demolition waste whereas recyclable construction and demolition materials may be disposed of at any recycling facility. KCC 10.30.020(C).

The County has designated eight disposal sites that are within its territorial borders, as well as six facilities in adjacent Snohomish County and Pierce County. CSWMP, *supra*, at 4-36 to 4-37 (listing designated disposal facilities as of July, 2018). The County argues that the designated facilities are specifically designed to handle mixed and nonrecyclable construction and demolition waste.

SkyCorp does not dispute that it collected construction and demolition waste from sites in King County and disposed of the waste at a non-designated facility in Yakima County in violation of KCC 10.30.020. As a result, the County issued SkyCorp a citation and fine in the amount of one hundred dollars.

II. PROCEDURAL HISTORY

In response to this citation, SkyCorp sued the County in federal district court, asserting both federal and state law claims. SkyCorp asserted that the County's solid waste disposal code violated the commerce clause and due process clause of the United States Constitution as applied in this case. The U.S. District Court for the Western District of Washington dismissed the federal claims with prejudice. The Ninth Circuit affirmed. *SkyCorp, Ltd. v. King County*, 859 F. App'x 780 (9th Cir. 2021).

The U.S. District Court dismissed SkyCorp's state law claims without prejudice and SkyCorp subsequently sued the County in superior court. SkyCorp argued that the County's citation is an unconstitutional application of King County's police power under article XI, section 11 of the Washington Constitution, which expressly grants municipal governments the police power to regulate sanitation so long as the regulations are local, reasonable, and do not conflict

with state law. SkyCorp also argued that KCC 10.30.020 violates article I, section 12, the privileges and immunities clause of the Washington Constitution, by "den[ying] SkyCorp the privilege of disposing of its property at any location of its choice." Clerk's Papers (CP) at 7. In making this claim, SkyCorp argued that it has a constitutionally protected property interest in the construction and demolition waste that it is disposing of.

The County presented several reasons justifying KCC 10.30.020 and its application to SkyCorp's conduct. The County asserted that the code maximizes the amount of construction and demolition waste that is recycled and ensures the safe disposal of waste that is nonrecyclable. In doing so, the County argued, the code "preserves landfill capacity, whether it's the landfills in King County or the regional landfills themselves. It creates jobs. It saves energy by reducing the amount of raw materials that are needed to create new products." Verbatim Rep. of Proc. (VRP) at 10. Furthermore, the County asserted that the code "generates revenue for monitoring and enforcement" and "protects King County and King County residents against hazardous waste." *Id.* Benefits to King County and its residents are not only realized when in-county facilities are designated to receive King County's construction and demolition waste. Rather, the County argued that revenue generated from any designated facility goes directly into funding the County's solid waste disposal plan and will ensure that construction and demolition waste generated within King County is disposed of in compliance with the County's strict environmental standards.

During the hearing on the County's motion for summary judgment, SkyCorp's counsel raised an oral motion to strike the declaration of the County's construction and demolition manager. The court declined to strike the declaration from the record, instead promising to "take [the oral motion to strike] into consideration in terms of weight given." VRP at 14. The superior court granted the County's motion for summary judgment. The summary judgment order lists the

declaration of the County's construction and demolition manager as one of the documents that the court considered. SkyCorp appeals.

ANALYSIS

I. STANDARD OF REVIEW

We review a trial court's decision to grant summary judgment de novo. *Wolf v. State*, 2 Wn.3d 93, 102, 534 P.3d 822 (2023). Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; CR 56(c). We engage in the same inquiry as the trial court, treating all facts and reasonable inferences in the light most favorable to the nonmoving party. *Mason v. Mason*, 19 Wn. App. 2d 803, 819, 497 P.3d 431 (2021). Summary judgment is appropriate when the plaintiff has failed to make a showing sufficient to establish the existence of an element essential to that party's case. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225 n.1, 770 P.2d 182 (1989).

The constitutionality of an ordinance is also a question of law that we review de novo. *City of Spokane v. Neff*, 152 Wn.2d 85, 88, 93 P.3d 158 (2004). We interpret ordinances using the same rules of construction we employ for statutes. *City of Spokane v. Douglass*, 115 Wn.2d 171, 177, 795 P.2d 693 (1990). We presume an ordinance is constitutional, and the party challenging it must prove that "the ordinance is unconstitutional beyond a reasonable doubt." *Id.*

II. SKYCORP'S CHALLENGE TO KCC 10.30.020 UNDER ARTICLE XI, SECTION 11

A. Municipal Regulation of Solid Waste

1. Solid waste regulation under the Washington Constitution and Washington statutes

Article XI, section 11 of the Washington Constitution provides that "[a]ny county, city, town or township may make and enforce within its limits all such local police, *sanitary* and other regulations as are not in conflict with general laws." (Emphasis added.) This is a direct grant of

police power to counties, and within a county's jurisdiction, this power is as extensive as the legislature's police power. *Petstel, Inc. v. King County*, 77 Wn.2d 144, 159, 459 P.2d 937 (1969). To that end, an ordinance violates article XI, section 11 only if (1) the subject matter of the ordinance is not local, (2) the ordinance directly and irreconcilably conflicts with state law, or (3) the ordinance is an unreasonable exercise of the County's police power. *Weden v. San Juan County*, 135 Wn.2d 678, 692, 958 P.2d 273 (1998), *abrogated on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019). Determinations of whether an ordinance is local, conflicts with state law, or is a reasonable exercise of municipal authority under article XI, section 11, are purely questions of law subject to de novo review. *Id.* at 693

In addition to the grant of power to cities and counties under article XI, section 11, the legislature has mandated that all counties regulate solid waste, declaring that "[i]t is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies." RCW 70A.205.005(6)(c). The legislature has also recognized counties have broad authority to regulate the disposal of solid waste, specifically:

> The legislative authority of a county may by ordinance provide for the establishment of a system or systems of solid waste handling for all unincorporated areas of the county or for portions thereof. *A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to chapter 70A.205 RCW.* However[,] for any solid waste collected by a private hauler operating under a certificate granted by the Washington utilities and transportation commission under the provisions of chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

RCW 36.58.040(1) (emphasis added).

The County derives its authority to designate disposal sites for mixed and nonrecyclable construction and demolition waste generated in the unincorporated areas of King County from these provisions of state law.

In *Rabanco Ltd. v. King County*, Division One explained that "[t]he first part of RCW 36.58.040 grants King County authority to designate a final disposal site in King County for waste collected in unincorporated King County." 125 Wn. App. 794, 803, 106 P.3d 802 (2005). The court in *Rabanco* also concluded that "the statute prohibits . . . collecting waste in one county and taking it to another county without an agreement between those counties." *Id.* at 806. The statute "was intended to preserve a county's control over disposal of waste collected within the county to protect a county's substantial investment in its solid waste management system." *Id.*

The *Rabanco* court also examined the legislative history of RCW 36.58.040. During the Senate floor debate, prior to the passage of the statute, the bill's sponsor described its impetus:

> "At present when you have a private collection franchise if you want to pick up the garbage in the unincorporated part of the county and you want to truck it down to . . . Cowlitz County and dump it there, you can do so. This bill would prohibit that. If a private collection group wants to take its garbage to another county[,] then it would be up to an inter-local cooperation agreement between the two counties to work this out so that it is very clear as to who is receiving the ultimate garbage disposal.
>
> "This also assures King County or any county that it is going to continue to have in the future quite a garbage disposal business to justify that huge capital investment."

Rabanco, 125 Wn. App. at 805. (first alteration in original) (quoting 3 SENATE JOURNAL, 44th Leg., 2d Ex. Sess., at 514 (Wash. 1975-76)).

Thus, the legislature intended that the authorizing statute would provide counties with the authority to prevent solid waste collected within its borders from being transported to another

county absent an inter-local cooperation agreement or a designation by the originating county. *Id.* at 806. The *Rabanco* court did not address article XI, section 11, however.

Finally, chapter 70A.205 RCW established statewide restrictions on solid waste disposal and required permits to operate a disposal facility. RCW 70A.205.195(1) provides that "it is unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state." The statute provides an exception for dumping "at a solid waste disposal site for which there is a valid permit, after the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70A.205.100." *Id.*

RCW 70A.205.100 governs permitting by requiring each county to enact "ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including but not limited to the issuance of permits and the establishment of minimum levels and types of service for any aspect of solid waste handling." The legislature expressly required that these codes "assure that solid waste storage and disposal facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, are consistent with the priorities established in RCW 70A.205.005, and avoid the creation of nuisances." RCW 70A.205.100. The statute permits counties to implement regulations or codes that are "more stringent than the minimum functional standards adopted by the department." *Id.*

2. King County's solid waste disposal code

Under the authority of state law described above and to comply with the statutory mandate to control the flow of solid waste, the County enacted KCC 10.30.020. The code provides that "[a]ll generators, handlers and collectors of mixed [construction and demolition] waste or

nonrecyclable [construction and demolition] waste generated within the county's jurisdiction shall deliver, or ensure delivery to, a designated [construction and demolition waste] receiving facility." KCC 10.30.020(A)(1). To enforce this requirement, the County also provided that "[i]t is unlawful for any person to dispose of county solid waste except at solid waste facilities and in a manner authorized under this title." KCC 10.08.020(B).

The County has designated eight disposal sites that are within its territorial borders, as well as six facilities in adjacent Snohomish and Pierce Counties. CSWMP, *supra*, at 4-36 to 4-37.

B. SkyCorp's Article XI, Section 11 Claim

Under article XI, section 11, SkyCorp challenges the County's application of KCC 10.30.020 to SkyCorp's disposal of mixed and nonrecyclable construction and demolition waste at a non-designated facility in Yakima. SkyCorp argues that to be valid under article XI, section 11, a code and its enforcement must be local, but that the County's citation constitutes an extraterritorial application of the County's police power because the County is regulating the disposal of solid waste beyond its borders. SkyCorp argues that KCC 10.30.020 conflicts with RCW 70A.205.195, which authorizes entities like SkyCorp to dispose of solid waste at any waste disposal site that has a valid permit. Finally, SkyCorp argues that the application of KCC 10.30.020 is not a reasonable exercise of municipal police power under article XI, section 11 because the code does not promote the health, safety, peace, education, or welfare of the people of King County.

The County responds that KCC 10.30.020 only regulates the flow of solid waste that originates within its borders, and thus, the code is regulating local subject matter, even if it has some incidental extraterritorial reach. The County further argues that RCW 70A.205.195 does not create the affirmative right that SkyCorp asserts to dispose of this waste without local interference,

and thus, there is no conflict with state law. Finally, the County argues that SkyCorp has failed to demonstrate that KCC 10.30.020 is a "'clearly unreasonable, arbitrary or capricious'" exercise of King County's police power. Br. of Resp't at 36 (quoting *Weden*, 135 Wn.2d at 700). We agree with the County.

1. As applied challenge and RCW 36.58.040(1)

As an initial matter, SkyCorp characterizes its challenge to KCC 10.30.020 as a narrow, as applied challenge to King County's application of the code to prohibit SkyCorp's disposal of construction and demolition waste at a non-designated facility outside of King County's borders. Nevertheless, if successful, SkyCorp's proposed analysis would undermine the constitutionality of the statutory authority granted in RCW 36.58.040(1).

The legislature has granted counties broad authority to "designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to chapter 70A.205 RCW." RCW 36.58.040(1). In addition, RCW 36.58.040(1) expressly contemplates that counties will designate some disposal sites that are outside of county borders, requiring that these approvals be supported by an interlocal agreement. Thus, the legislature restricted out-of-county disposal by making an interlocal agreement a prerequisite to designation of an out-of-county disposal site. The legislature put no other restrictions on county designations of approved disposal sites. The legislature certainly did not say in RCW 36.58.040(1) that the counties are required to designate *all* state-licensed disposal facilities.

SkyCorp essentially argues that the County cannot constitutionally exercise the broad authority granted in RCW 36.58.040(1) to choose which facilities will be authorized to receive the County's construction and demolition waste. To the extent SkyCorp asks us to adopt an analysis

that renders RCW 36.58.040(1) unconstitutional, we must keep in mind the strong presumption of constitutionality for legislative enactments. *State v. Batson*, 196 Wn.2d 670, 674, 478 P.3d 75 (2020). As explained below, we decline to adopt SkyCorp's reasoning and call the constitutionality of RCW 36.58.040(1) into question.

2. Local nature of the code

SkyCorp contends the "critical legal question" is "whether King County can regulate these out of jurisdiction transactions simply because the waste was at one time within King County borders." Appellant's Opening Br. at 16. In this sense, SkyCorp asserts that King County "regulate[s] solid waste disposal in other counties." *Id.* at 18. SkyCorp argues that King County's application of its code "does not merely have incidental *effects*" outside the County, but it "completely prohibits a transaction that occurs entirely outside of King County." *Id.* at 19. Thus, SkyCorp asserts that KCC 10.30.020 is nonlocal.

The County responds by explaining that the code only governs "solid waste generated within the County's local jurisdiction." Br. of Resp't at 24. The County argues that the primary purpose of the code is to regulate the flow of waste that is generated within King County and is not to exert regulatory authority over extraterritorial disposal sites. Rather, the County is simply exercising its legislatively delegated authority to control the flow of solid waste that is generated within their borders. Thus, prohibiting the disposal of waste at some out-of-county locations is merely an incidental effect stemming from the primary focus of the code—regulating the flow of solid waste generated within King County. We agree with the County.

KCC 10.30.020 only requires that construction and demolition waste *generated within King County* be delivered to a county-designated disposal site. When an entity like SkyCorp collects construction and demolition waste that originates inside King County, the entity must then

determine where to dispose of that waste. The County's code requires the entity to take the waste from its point of origin in King County to a designated disposal site, all of which are located in King County or in adjacent counties. Thus, the code necessarily prohibits an entity from disposing of the waste at any other place and in any other manner, including at non-designated facilities in more distant counties. The fact that this regulation has the effect of prohibiting disposal at non-designated sites in more distant counties does not render it nonlocal. The core purpose and effect of the regulation are to ensure the efficient and proper disposal of waste that originated in King County from the moment it is generated or collected within the county.

In regulating the proper disposal of construction and demolition waste, the County's stated purposes were to ensure the proper disposal of nonrecyclable construction and demolition waste, increase the amount of construction and demolition waste that is recycled, conserve energy and natural resources, protect the environment, and preserve space at existing landfills. *See* KCC 10.08.080; KCC 10.30.010; KCC 10.14.020. The County has explained that KCC 10.30.020 maximizes the amount of construction and demolition waste that is recycled and ensures the safe disposal of waste that is nonrecyclable by enabling nonrecyclable waste to be separated from recyclable waste in specially designated facilities. The code "preserves landfill capacity, whether it's the landfills in King County or the regional landfills themselves." VRP at 10. KCC 10.30.020 saves energy and slows climate change by reducing the amount of raw materials that are needed to create new products. It also necessarily prevents needless long-distance hauling of the waste.

Significantly, there is economic benefit to the County because the code's requirement creates jobs both in King County and in adjacent counties where King County residents can work. In addition, the Comprehensive Solid Waste Management Plan requires designated facilities to pay fees to the County, so the code "generates revenue for monitoring and enforcement," and

"protects King County and King County residents against hazardous waste." *Id.* Benefits to King County and its residents are not only realized when in-county facilities are designated to receive construction and demolition waste. Rather, the County argues that revenue generated from any designated facility goes directly into funding King County's solid waste disposal plan and will ensure that construction and demolition waste generated within King County continues to be disposed of in compliance with the County's environmental standards.[2]

SkyCorp rightly identifies *Brown v. City of Cle Elum*, as a relevant case, but it misapplies *Brown* to the facts here. *Brown* involved a City of Cle Elum code through which the City sought to assume jurisdiction over all water that fed into its water supply. The code prohibited and punished activities including, but not limited to, swimming, fishing, and boating in Cle Elum Lake, which was situated entirely outside of the city. 143 Wash. 606, 609, 255 P. 961, *vacated on reh'g*, 145 Wash. 588, 261 P. 112 (1927). In the context of these facts, the Washington Supreme Court stated that the grant of police power to various municipalities in article XI, section 11 "is strictly limited to the exercise of that power *within the limits* of such municipalities." *Brown*, 145 Wash. at 589. The court held that Cle Elum's code was an unconstitutional extraterritorial exercise of its police power under article XI, section 11. *Id.* at 590-91.

[2] At oral argument, SkyCorp stated that a code that required the disposal of construction and demolition waste only at sites entirely within King County would likely not violate article XI, section 11 because such a regulation would be entirely local. Wash. Court of Appeals oral arg., *SkyCorp Ltd. v. King County*, No. 57452-7-II (Sept. 11, 2023) at 30 min., 14 sec., to 31 min., 20 sec., video recording by TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-2-court-of-appeals-2023091062/. This concession undermines SkyCorp's argument, because a code that required disposal *only* within King County's borders would just as effectively prohibit disposal at facilities in Yakima County, as the one King County adopted. If SkyCorp's identified fault in the County's code is its prohibition against disposal in a remote county, and that is what makes the code nonlocal, then the result should not depend on whether the County allows this type of waste to be disposed of in some facilities in adjacent counties.

In more modem cases, the Washington Supreme Court has recognized that codes exercising a county's police power can have effects outside of the county without invalidating the code. In *Weden*, the County sought to prohibit the use of private watercraft on all marine waters and one lake within the county with limited exceptions. 135 Wn.2d at 684-85. The court held that the fact nonresidents traveling to San Juan County would be impacted by this prohibition and had to comply, did not "invalidate the law or make it 'not local' for purposes of the police power." *Id.* at 706."[M]unicipal legislation will not be found to violate the police power if its effect outside the county is only incidental." *Id.* at 705. The *Weden* court thus further developed the analysis, making it clear that our focus in evaluating whether a code is local must be directed at whether "the subject matter" is local, not whether the effects are confined within the county's borders. *Id.* at 692.

In *Petstel*, the Washington Supreme Court addressed whether the County's imposition of maximum rates to be charged by employment agencies operating within the county had a sufficient impact outside of the county to render the code unconstitutional. 77 Wn.2d at 159. The court concluded that "[w]hile it is true that county regulation of [wage] rates may result in dissimilar market conditions throughout the state, the same effect could also result from various county licensing and standards regulations . . . [and] is not sufficient to render these regulations nonlocal in character." *Id.*

Finally, in *Wilson,* the Washington Supreme Court considered the authority of the City of Mountlake Terrace to fluoridate its water given that some of the fluoridated water would flow to residents living outside of the city's limits. *Wilson v. City of Mountlake Terrace*, 69 Wn.2d 148, 150-51, 417 P.2d 632 (1966). The challengers of the code relied heavily on *Brown* for the proposition that "a city cannot exercise its police power outside its boundaries." *Id.* at 152. The

court rejected this argument, finding that while the "appellant is correct in his abstract statement of the law," the City was not in fact proposing to exercise its police power outside the city limits. *Id.* at 152-53. Rather, the City was exercising its police power within city limits for the purpose of "furnish[ing] fluoridated water to its own inhabitants," and the subsequent flow of fluoridated water to the non-resident appellant was "the incidental, although inevitable, result of the city's exercise of its police power in this respect." *Id.* at 153. The literal downstream effect outside of the city was not enough to render the code nonlocal. Importantly, the court in *Wilson* focused its analysis on the purpose of the code to determine whether its extraterritorial impact was merely a constitutional incidental effect.

Here, KCC 10.30.020 controls the flow of all mixed and nonrecyclable construction and demolition waste that is generated or collected within unincorporated King County. An important component of a code is designating where such waste may be disposed. To that end, the code makes it "unlawful for any person to deliver any county solid waste to a place other than a disposal facility designated by the county to receive the particular waste." KCC 10.08.020(C).

The County's authority to govern local sanitation arises from the plain language of article XI, section 11. The County draws its specific authority for this code from RCW 36.58.040, which provides clear authority to counties for the purpose of designating disposal sites for all solid waste collected in their unincorporated areas. As the *Rabanco* court explained, this statute's legislative history demonstrates that the legislature intended RCW 36.58.040 to ensure counties are able to control, by interlocal agreement, the disposal of solid waste generated within their borders—including when and to where that waste is transported out of the county. *Rabanco*, 125 Wn. App. at 806.

Incidental effects that stem from a regulation that directly regulates activities primarily within the borders of the county do not violate article XI, section 11. To varying degrees, *Weden*, *Petstel*, and *Wilson* are examples of incidental effects stemming from a locally focused exercise of police power. Conversely, *Brown* is a clear example of an exercise of police power with a primarily extraterritorial focus.

We acknowledge that this case falls somewhere in between *Brown's* attempt to regulate activity entirely outside of the municipality's borders and *Weden's* and *Petstel*'s regulation of activities entirely within the municipalities' borders. This case is more like *Wilson,* where a regulatory scheme directly addresses activity within the municipality's boarders (here, regulation of where construction and demolition material must go after it is generated or collected within King County) with downstream effects outside of the county.

The *primary* purpose of KCC 10.30.020 is to regulate the flow of mixed and nonrecyclable construction and demolition waste that is generated within King County. The code achieves this purpose by designating lawful waste disposal sites. The County has designated several disposal sites—with some located within King County and some located in adjacent Snohomish and Pierce Counties. CSWMP, *supra*, at 4-36 to 4-37. Thus, the subject matter of the code is mixed and nonrecyclable construction and demolition waste that is generated within King County and is not, as SkyCorp argues, the prohibition of a transaction occurring entirely outside of King County.

The *Wilson* court recognized that Mountlake Terrace was acting within its constitutional limitations under article XI, section 11 because the primary focus of its exercise of police power was the fluoridation of water treated within city limits, despite the fact that the water inevitably flowed to out-of-county residents. Similarly, the County's prohibition on disposal at a non-designated, out-of-county facility is an inevitable, but incidental product of the County's

application of its police power to control the flow of mixed and nonrecyclable construction and demolition waste generated within King County. To the extent that this code has the downstream effect of prohibiting disposal at non-designated facilities outside of King County, the scope of that incidental effect is minimal when compared to the code's primary purpose. Mixed and nonrecyclable construction and demolition waste that SkyCorp collects *inside* King County must be disposed of at a King County approved facility. The County does not seek to control the flow of waste that is generated or collected elsewhere and is not regulating or permitting the facility in Yakima County. Rather, the County is designating permissible disposal locations for mixed and nonrecyclable construction and demolition waste generated within the county as part of its constitutionally granted power to govern local sanitation and its legislatively granted specific control over the flow of solid waste that is generated within its borders.

SkyCorp is correct that "[b]oundaries mean something." Appellant's Opening Br. at 60. Here, the County does not regulate any facility beyond its borders absent an interlocal agreement, nor does it control the flow of waste that is generated outside of county boundaries. On balance, we conclude that out-of-county downstream effects are incidental to the primary regulatory effect—managing the flow of waste by designating disposal sites for mixed and nonrecyclable construction and demolition waste that is generated within King County. SkyCorp failed to meet its heavy burden of overcoming the presumption of constitutionality by showing the King County code is nonlocal beyond a reasonable doubt.

3. Conflict with state law

KCC 10.30.020 makes it unlawful to dispose of mixed or nonrecyclable construction and demolition waste except at county-approved facilities. SkyCorp argues that this code directly and irreconcilably conflicts with RCW 70A.205.195, which makes it unlawful to dispose of solid waste

except at locally permitted sites. SkyCorp's argument hinges on us interpreting RCW 70A.205.195 to create an affirmative right—the right to dispose of waste at any facility that is locally permitted, including the permitted disposal site in Yakima County. SkyCorp points out that "[n]othing in [RCW 70A.205.195] suggests that King County may prohibit the use of locally licensed disposal facilities . . . by anyone who happens to have waste that originated in King County." Appellant's Opening Br. at 24. SkyCorp concludes that RCW 70A.205.195 provides that it is legal to deposit solid waste at a site where there is a valid permit and that KCC 10.30.020, by reducing the number of lawful disposal sites for mixed and nonrecyclable construction and demolition waste, conflicts with this grant of permission to dispose of this waste under state law. We disagree.

A local code violates article XI, section 11 if it directly and irreconcilably conflicts with a state statute. *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 482, 61 P.3d 1141 (2003); *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 564, 29 P.3d 709 (2001). If the state statute and local code can be harmonized, there is no conflict for the purposes of article XI, section 11. *Heinsma*, 144 Wn.2d at 564. A direct and irreconcilable conflict occurs when a code permits what state law forbids or forbids what state law permits. *Lawson v. City of Pasco*, 168 Wn.2d 675, 682, 230 P.3d 1038 (2010).

When interpreting a statute, "the court must assume that the Legislature does not engage in meaningless acts." *JJR Inc. v. City of Seattle*, 126 Wn.2d 1, 10, 891 P.2d 720 (1995). Furthermore, simply because an activity can be licensed under state law does not mean that local governments are required to allow such activity. *Emerald Enters., LLC v. Clark County*, 2 Wn. App. 2d 794, 805, 413 P.3d 92 (2018) (concluding that just because Washington's Uniform Controlled Substances Act, chapter 69.50 RCW permitted the licensing of marijuana facilities, it did not also "grant retailers an affirmative right to sell marijuana").

Similarly, in *Weden,* the court analyzed whether a statute that created a title registration system for boats also entitled registered boat owners to operate their boats anywhere in the state, thereby preempting San Juan County's prohibition on personal watercraft in certain marine waters and one lake. 135 Wn.2d at 694-95. The court held that no unconditional right to operate a boat was granted by obtaining the registration. *Id.* at 695. "Statutes often impose preconditions which do not grant unrestricted permission to participate in an activity." *Id.*

Here, RCW 70A.205.195 provides "it is unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state" except "at a solid waste disposal site for which there is a valid permit" or as otherwise provided in that section. RCW 70A.205.195(1). Under *Emerald Enterprises* and *Weden,* just because the state *permits* an activity to be licensed, does not mean such an activity *must* be allowed under local law. RCW 70A.205.195 does not create an affirmative right to dispose of solid waste at any locally licensed facility. As a result, the King County code can be harmonized with RCW 70A.205.195.

Moreover, RCW 36.58.040 simultaneously authorizes counties to designate disposal sites, which would be entirely superfluous if *all* locally permitted disposal sites *had* to be designated. To read RCW 70A.205.195 as creating an affirmative right to dispose of waste at any licensed facility would render the power granted by RCW 36.58.040 meaningless because counties would have no choice but to designate all locally licensed disposal facilities. We presume the legislature does not engage in useless or meaningless acts. *JJR*, 126 Wn.2d at 10.

Finally, KCC 10.30.020 does not impede the ability of Yakima County to regulate and license its own solid waste facilities. Rather, KCC 10.30.020 comports with the legislature's stated

purpose when it enacted RCW 36.58.040, which is to provide every county the authority to designate disposal facilities for solid waste that is generated within its unincorporated areas.

In sum, RCW 70A.205.195 does not create the affirmative right that SkyCorp asserts and is capable of being harmonized with KCC 10.30.020. SkyCorp has therefore failed to meet its heavy burden of demonstrating that KCC 10.30.020 unconstitutionally conflicts with state law.

4. Reasonable exercise of police power

SkyCorp argues that KCC 10.30.020 does not promote the health, safety, peace, education, or welfare of King County residents when it is applied to prohibit SkyCorp's disposal of mixed and nonrecyclable construction and demolition waste in Yakima County. SkyCorp concedes that King County has a reasonable basis for regulating solid waste disposal within its borders, but it argues that regulating waste disposal once the waste has travelled outside of King County has no reasonable basis in promoting the health, safety, peace, education, or welfare of King County or its residents.[3] To the extent that the County argues that designating sites for the disposal of solid waste ensures that the flow of waste complies with strict environmental standards, SkyCorp responds that the County is exerting "jurisdiction over the entire state" by imposing its own environmental standards statewide. Appellant's Opening Br. at 33. We disagree.

[3] SkyCorp also cites *Daniels Sharpsmart, Inc. v. Smith* in support of its claim that King County cannot regulate waste generated within the county that is disposed of elsewhere. 889 F.3d 608, 616 (9th Cir. 2018). While it is true that the Ninth Circuit held that California's regulation of medical waste disposed outside of California is likely a "per se violation of the Commerce Clause," *id.,* a commerce clause challenge is not before this court because the facts before us do not involve any interstate or out-of-state activity. Furthermore, the Ninth Circuit already heard and dismissed SkyCorp's commerce clause claim for lack of standing. *SkyCorp Ltd. v. King County,* 859 F. App'x. 780 (9th Cir. 2021). While SkyCorp attempts to analogize *Daniels* to the case at bar, the legal theory on which the Ninth Circuit relied in reaching its decision is fundamentally different and thus the case is not persuasive.

We use a two-part test for determining whether legislation is reasonable for the purposes of article XI, section 11: (1) The legislation "must promote the health, safety, peace, education, or welfare" of the people; and (2) the legislation must bear some reasonable relationship to accomplishing this purpose. *Weden*, 135 Wn.2d at 700. With regard to the first prong, "'[t]he wisdom, necessity and expediency of the law are not for judicial determination,' and an enactment may not be struck down as beyond the police power unless it 'is shown to be clearly unreasonable, arbitrary or capricious.'" *Id.* (quoting *Homes Unlimited, Inc. v City of Seattle*, 90 Wn.2d 154, 159, 579 P.2d 1331 (1978), *abrogated on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019)). With regard to the second prong, a law must be reasonably necessary to achieve the goal of protecting the public health, safety, morals, or general welfare. *Id.* at 701. In deciding whether a code meets the requirements of the second prong, the courts should generally defer to legislative judgment. *See Homes Unlimited, Inc.*, 90 Wn.2d at 160

The Washington Supreme Court has recognized that "[t]he handling and disposal of solid waste is a governmental function." *Weyerhaeuser v. Pierce County*., 124 Wn.2d 26, 40, 873 P.2d 498 (1994). Title 10 of the King County Code in its entirety is "necessary for the preservation and protection of public health, welfare, and safety." KCC 10.04.010. Specifically, the purpose of KCC 10.30 is to ensure:

> [T]hat there will be [construction and demolition waste] disposal facilities to serve King County, that in accordance with the comprehensive solid waste management plan, [construction and demolition waste] is recycled to the maximum extent feasible, that the Cedar Hills regional landfill may continue to be dedicated to receiving municipal solid waste (MSW), and that [construction and demolition waste] disposal is subject to King County's strict environmental controls.

KCC 10.30.010.

The same aspects of KCC 10.30.020 that make it local, also support a conclusion that the code is a reasonable exercise of the County's police power. Requiring and enforcing designated

disposal at facilities in King County or in adjacent counties, allows King County to (1) promote the welfare of its residents by preserving revenue generated from specialized disposal sites and jobs at those sites while increasing the quantity of material recycled, reducing long term costs by preserving landfill capacity and decreasing the flow of new materials into King County; (2) promote the health and safety of its residents by preventing diminished air quality and increased carbon emissions that would result from hauling construction and demolition waste to distant counties; and (3) protect the county and its residents by ensuring that waste generated within the county is disposed of in compliance with strict environmental standards. The County has sufficiently identified reasonable public health, safety, and welfare impacts that would result from not being able to properly regulate the flow of mixed and nonrecyclable construction and demolition waste from start to finish. Designating specialized disposal sites bears a reasonable relation to the public health, safety, and welfare of King County residents.

In light of the deference we afford local governments when evaluating the wisdom, necessity, and expediency of local regulations, KCC 10.30.020 is a reasonable exercise of its police power to promote the health, safety, and welfare of its residents. SkyCorp fails to demonstrate that this code is unreasonable, arbitrary, or capricious.

Having failed to meet their heavy burden under any of the three prongs, SkyCorp fails to sufficiently overcome the presumption of constitutionality to demonstrate that KCC 10.30.020 or the County's enforcement action violates article XI, section 11. For the foregoing reasons, we affirm the trial court's grant of summary judgment as to the article XI, section 11 claim.

III. CHALLENGE TO KCC 10.30.020 UNDER ARTICLE I, SECTION 12 PRIVILEGES & IMMUNITIES

SkyCorp argues that by approving some disposal sites and not others, the County has engaged in favoritism that "is improper because King County forces SkyCorp to pay King County's favored facilities for all [construction and demolition] waste originating in King County." Appellant's Opening Br. at 39. According to SkyCorp, this is a violation of the privileges and immunities clause because the County grants a privilege to certain favored facilities to SkyCorp's financial detriment. We disagree.

The privileges and immunities clause of the Washington Constitution, article I section 12, provides that "[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." We apply a two-step inquiry to determine whether a regulation violates this clause: (1) "whether the law in question involves a privilege or immunity" and, if so, (2) whether the legislative body "had a 'reasonable ground' for granting the privilege or immunity." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 776, 317 P.3d 1009 (2014).

A "privilege" or "immunity" is implicated when a fundamental right of state citizenship is involved. *Id.* at 778-79 We need only examine whether a reasonable ground exists for granting a privilege or immunity if we find that a fundamental right is implicated. *Martinez-Cuevas v. DeRuyter Bros. Dairy,* 196 Wn.2d 506, 519, 475 P.3d 164 (2020).

The Washington Supreme Court has recognized only a limited number of rights of state citizenship under the privileges and immunities clause. *Id.* at 522. Not every statutory grant or benefit constitutes a constitutionally protected privilege or immunity. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004). Generally, rights left to the discretion of the legislature are not fundamental rights of state citizenship for privileges and

immunities clause purposes. *Martinez-Cuevas*, 196 Wn.2d at 518-19; *Grant County*, 150 Wn.2d at 813 (holding that because "the *legislature* enjoys plenary power to adjust the boundaries of municipal corporations," landowners did not have fundamental rights to seek or prevent annexation).

In *Ventenbergs v. City of Seattle*, a waste hauler sued the City for violating the privileges and immunities clause by granting exclusive contracts to some waste haulers. 163 Wn.2d 92, 100, 178 P.3d 960 (2008). The petitioners argued that the right to hold specific private employment was a fundamental right of citizenship, *id.* at 103, and that the City was infringing upon the right to freely alienate property. *Id.* at 105. The court disagreed, reasoning in part that the petitioners could not identify a case establishing a right to freely dispose of solid waste and "[t]o the contrary, '[t]he gathering of garbage and trash is considered to be a matter which public agencies are authorized to pursue by the best means in their possession to protect the public health.'" *Id.* at 105-06 (second alteration in original) (internal quotation mark omitted) (quoting *Shaw Disposal, Inc. v City of Auburn*, 15 Wn. App. 65, 68, 546 P.2d 1236 (1976)). Therefore, because the power to regulate solid waste collection lies entirely with the legislature and local governments, there is no fundamental right to provide this governmental service. *Id.* at 103-04.

SkyCorp attempts to distinguish *Ventenbergs* by arguing that it is not asserting a right to provide solid waste hauling services, but SkyCorp is instead asserting a right to dispose of property that it purchases prior to demolition and then turns into waste. This is a distinction without a difference. Even assuming SkyCorp has a property interest in the waste it hauls to disposal facilities, the regulation of solid waste disposal is nevertheless a power that lies within the discretion of the legislature and local governments. "[I]t is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and

implement aggressive and effective waste reduction and source separation strategies." RCW 70A.205.005(6)(c). "The legislative authority of a county may by ordinance provide for the establishment of a system or systems of solid waste handling for all unincorporated areas of the county or for portions thereof." RCW 36.58.040(1)

Property owners do have a right to own, sell, and dispose of property as SkyCorp asserts, but they do not have a right to freely dispose of solid waste without restriction. *See Ventenbergs*, 163 Wn.2d at 101-06. To protect the public health, safety, and welfare of county residents, the County has express authority to decide where solid waste generated within its borders is disposed. *See, e.g.*, RCW 36.58.040. The right to dispose of solid waste is not a fundamental right and thus the code does not implicate the privileges and immunities clause.

IV. CHALLENGED DECLARATION

During the hearing on the County's motion for summary judgment, counsel for SkyCorp moved to strike the declaration of the County's construction and demolition manager. The court declined to strike the declaration from the record, instead promising to "take [the oral motion to strike] into consideration in terms of weight given." VRP at 14.

SkyCorp has not demonstrated that the trial court abused its discretion by evaluating the weight to be given the declaration in light of SkyCorp's arguments. *See Engstrom v. Goodman*, 166 Wn. App. 905, 909, 271 P.3d 959 (2012). Moreover, any error was harmless because as discussed above, the County's enactment of KCC 10.30.020 was local in nature, reasonable in application, and otherwise consistent with the Washington Constitution, regardless of the content of the challenged declaration, which specifically discussed the County's risk of liability under federal environmental law. We reach our conclusion regarding the constitutionality of KCC 10.30.020 without any reliance on the contested declaration.

CONCLUSION

We affirm the trial court's grant of summary judgment to the County and the dismissal of SkyCorp's claims.

Glasgow, C.J.

I concur:

Che, J.

VELJACIC, J. (dissent) — I write separately from the majority because King County's extraterritorial enforcement of its ordinances in Yakima County violates article XI, section 11 of the Washington Constitution.

SkyCorp Ldt. is a Washington-based business that contracts to remove or demolish buildings in King County and elsewhere. SkyCorp removed mixed and nonrecyclable construction and demolition (C&D) waste, pursuant to a contract with the Renton School District, from a site within the borders of King County. SkyCorp then delivered this waste to a disposal facility in Yakima County. This facility is lawfully permitted to receive such waste, but is not approved by King County under King County Code (KCC) 10.08.020. SkyCorp delivered the waste to this facility because it was more cost effective to transport the waste and deposit it there than to pay to dispose of the waste at a King County approved facility.

On July 24, 2020, SkyCorp received a citation and a $100 fine from the King County Division of Solid Waste for violation of KCC 10.08.020 and 10.30.020. SkyCorp appealed the citation to the King County Hearing Examiner, who affirmed the citation. Additional facts and procedural history are set out in the majority opinion and will not be repeated here.

Among other things, SkyCorp argues that King County's application of KCC 10.30.020 to prohibit disposal of waste at facilities, which are in full compliance with local and state governing authorities but not in King County, violates article XI, section 11 of the Washington Constitution. I agree with SkyCorp on this point.

Article XI, section 11 of the Washington Constitution reads: "Any county, city, town or township, may make and *enforce within its limits* all such local police, sanitary, and other regulations as are not in conflict with general laws." (Emphasis added.) This constitutional provision is a direct delegation of police power to cities and counties. *Petstel, Inc. v. King County*,

77 Wn.2d 144, 159, 459 P.2d 937 (1969). Our Supreme Court has described the "scope of the police power [as] broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people." *Covell v. City of Seattle*, 127 Wn.2d 874, 878, 905 P.2d 324 (1995) (internal quotation marks omitted), *abrogated on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019); *see also Lawton v. Steele*, 152 U.S. 133, 136, 14 S. Ct. 499, 38 L. Ed. 385 (1894) (describing the police power as "universally conceded to include everything essential to the public safety, health, morals, and . . . of whatever may be regarded as a public nuisance," allowing the State to "interfere wherever the public interests demand it").

An ordinance complies with article XI, section 11, so long as: (1) the subject matter of the ordinance is local; (2) the ordinance does not conflict with general laws; and (3) the ordinance is a reasonable exercise of the County's police power. *Weden v. San Juan County*, 135 Wn.2d 678, 692-93, 958 P.2d 273 (1998), *abrogated on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682. An ordinance violates article XI, section 11 of the Washington Constitution if it fails any of the above criterion. *Id.* at 692. Whether an ordinance is local, conflicts with general law, or is reasonable is purely a question of law subject to de novo review. *Id.* at 693. KCC 10.30.020 fails the first requirement.

To comply with article XI, section 11, the subject matter of an ordinance must be local. SkyCorp argues that once debris leaves King County, it is no longer a local matter. King County argues that the regulation is local because it only governs waste that is generated within the County's jurisdiction. I agree with SkyCorp.

KCC 10.30.020 regulates out of county disposal. That ordinance renders it "unlawful for any person to deliver any county solid waste to a place other than a disposal facility designated by the county to receive the particular waste." KCC 10.08.020(C).

Washington law authorizes counties to designate disposal sites for solid waste generated within the county's jurisdiction. *See* RCW 36.58.040(1) ("The legislative authority of a county may by ordinance provide for the establishment of a system or systems of solid waste handling for all unincorporated areas of the county or for portions thereof. A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to chapter 70A.205 RCW."). However, there are limits to this delegation of legislative authority—nothing in the statute gives the county the authority to make these disposal sites exclusive among the several disposal sites in the state. *See generally* RCW 36.58.040.[4]

Brown v. City of Cle Elum, 145 Wash. 588, 261 P. 112 (1927), is instructive. In that case, the city enacted an ordinance that punished certain acts committed six miles outside of the city limits in Cle Elum Lake, the source of the City's drinking water. *Id.* at 589. Our Supreme Court held that this was a violation of article XI, section 11, because the delegation of police power by the state to municipalities is "strictly limited to the exercise of that power *within the limits* of such municipalities." *Id.* The court noted that municipalities only have such legislative powers that are delegated to them, and the legislature is not empowered to exceed the limitation of those powers.

[4] I also note that while the underlying purpose of the county ordinance appears to be a lawful purpose, and the legislature appears to have authorized flow control generally, I do not conclude it is appropriate to elevate a lawful purpose or even a legislative delegation of authority above an express constitutional limitation like we have here.

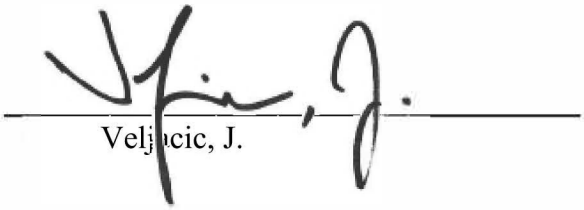
Id. at 590. The court set aside the ordinance, holding that "ordinances such as the one under consideration here cannot be given extraterritorial effect." *Id.* at 591.

More recently, in *Weden*, our Supreme Court found that municipal legislation is still "local" and does not violate article XI, section 11, if its effects outside the county are only "incidental." 135 Wn.2d at 705. In that case, motorized personal watercraft (PWC) users challenged a county ordinance banning personal watercraft use on all marine waters in San Juan County. *Id.* at 688. The challengers argued that the ordinance violated the "local" requirement of article XI, section 11, because it affected those living outside the county. *Id.* at 706. The Court held that the prohibition within the boundaries of the county was purely local, despite the tangential effects on individuals outside of the county when those individuals sought to operate their PWC within San Juan County. *Id.* The court reasoned that while the ordinance had some tangential effects on interests or individuals lying geographically outside of San Juan County, those tangential effects did not render the ordinance not-local. The court further stated, "The bottom line is this PWC Ordinance *only affects the type of activity allowed within the county.* The Ordinance does not preclude San Juan County residents from using PWC outside the County, nor does it regulate activities beyond geographical limits." *Id.* (emphasis added).

Based on the foregoing, it is clear that a county exceeds its authority when it attempts to regulate activity that occurs outside its boundaries, but mere incidental effects outside its boundaries are not enough to violate article XI, section 11. In *Weden*, the prohibition was completely within the jurisdictional borders of San Juan County. *See* 135 Wn.2d at 688. In *Brown*, the ordinance regulated conduct completely outside of the municipality's jurisdiction. *See* 145 Wash. at 589.

Here, like in *Brown*, the penalized conduct occurs outside the jurisdictional boundaries of King County: disposal in Yakima County. And unlike *Weden*, the effects are not merely incidental, they include a targeted citation and monetary fine for disposal outside the geographic boundaries of King County. King County's application of KCC 10.30.020 to sanction otherwise lawful disposal of C&D materials in Yakima County fails the first of the three *Weden* factors.

Accordingly, King County's application of KCC 10.30.020 in this manner violates article XI, section 11, and is unconstitutional. I would reverse summary judgment and remand to the trial court for entry of a summary judgment order in favor of SkyCorp.



Veljacic, J.

STEPHENS & KLINGE LLP

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