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NO. 91534-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON DEPARTMENT OF REVENUE,
Appellant,

v.

CITY OF SNOQUALMIE, a municipal corporation,
Respondent,

and

KING COUNTY EXECUTIVE DOW CONSTANTINE, an individual in his official capacity, KING COUNTY ASSESSOR LLOYD HARA, an individual in his official capacity, KING COUNTY, Other Parties,
Defendants.

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AMICUS CURIAE BRIEF OF MUCKLESHOOT INDIAN TRIBE

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Muckleshoot Indian Tribe ("Amicus Tribe" or "Tribe") is a federally recognized Indian tribe that is the successor in interest to tribes or bands who were party to the Treaties of Point Elliott, 12 Stat. 927, and Medicine Creek, 10 Stat. 1132. *United States v. Washington*, 384 F. Supp. 312, 365-66, (W.D. Wash. 1974), *affirmed*, 520 F.2d 676, 692 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976). The Tribe is the owner in fee simple of the Salish Lodge & Spa located within the City of Snoqualmie. The Lodge has been granted a property tax exemption as tribal economic-development property under RCW 84.36.010. To qualify for that exemption, RCW 82.29A.055 required the Tribe to make a "payment in lieu of leasehold excise tax" ("PILT"). In this appeal the City claims that the PILT is unconstitutional.

The City's lawsuit directly affects the Amicus Tribe. The City would deny the Tribe the benefit of the exemption granted by the Legislature and undermine the Legislature's objective of creating jobs and improving the economic health of tribal communities. The City's challenge also directly affects other Washington tribes that have applied for economic-development exemptions under this same law.[1] The tax

[1] For the 2015 tax year these included the Jamestown S'Klallam Tribe (CP 0295-0299, 0318-0319), the Quinault Indian Nation (CP 0299, 0309), the Suquamish Tribe (CP 0300-0301, 0320), the Colville Confederated Tribes (CP 0301, 0320), the Puyallup Tribe (CP 0302, 0311), the Swinomish Tribe (CP 0303, 0321), the Upper Skagit Tribe (CP 0303-0304, 0321), and the Yakama Nation (CP 0305, 0314), in addition to the Amicus Muckleshoot Indian Tribe (CP 0299, 0313).

exemption for tribal economic-development property and the exemption's objective of creating jobs and improving the economic health of tribal communities are important concerns for the Tribe.

II. ISSUES ADDRESSED BY AMICUS CURIAE

This brief addresses (1) the constitutionality of the property tax exemption granted in RCW 84.36.010 for tribally owned economic-development property, and (2) the City of Snoqualmie's lack of standing to challenge the PILT that tribal owners may be required to pay to qualify for the exemption.

III. STANDARD OF REVIEW

The Legislature has broad authority to grant tax exemptions and to set the terms and conditions with which a taxpayer must comply to qualify for exemption. *Libby v. Ivarson*, 19 Wn.2d 723, 730-31, 144 P.2d 258 (1943). The Court presumes statutes are constitutional and reviews challenges to them *de novo*. *See e.g.*, *Dot Foods, Inc. v. Dep't of Revenue*, Supreme Court No. 92398-1 at 8 (Wash. filed Mar. 17, 2016); *Auto. United Trades Org. v. State*, 183 Wn.2d 842, 854, 357 P.3d 615 (2015). As the challenger, the City bears the burden of showing unconstitutionality. *Auto. United Trades Org.*, 183 Wn.2d at 854. Where possible, the Court must "construe a statute so as to uphold its constitutionality." *State v. Abrams*, 163 Wn.2d 277, 282, 178 P.3d 1021 (2008).

IV. STATUTORY AND PROCEDURAL BACKGROUND

Unlike land held for the benefit of a tribe by the United States in trust, lands owned by a tribe in fee are subject to state and local property taxes under federal law. *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 257-58, 112 S. Ct. 683, 116 L. Ed. 2d 687 (1992); *Cass Cnty., Minn. v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 114-15, 118 S. Ct. 1904, 141 L. Ed. 2d 90 (1998). Nevertheless, the Washington Legislature has used its authority to grant tax exemptions to help address the financial difficulties faced by tribes.

The Legislature first exempted fee-owned tribal property in 2004 when it established a statutory exemption for tribal property used exclusively for "essential government services." Laws of 2004, ch. 236 (amending RCW 84.36.010); Final Bill Report SHB 1322, 58th Leg., Reg. Sess. (Wash. 2004). The 2004 bill originally defined "essential government services" to include property used for "economic development" activities, but the final version of the bill omitted "economic development" from the definition of "essential government services." *Compare* HB 1322, 58th Leg., Reg. Sess. (2004) *with* Laws of 2004, ch. 236, § 2 (amending RCW 84.36.010). In 2014 the Legislature reversed this omission by expanding the definition of "essential government services" to include "economic development activities." Laws of 2014, ch. 207, §§ 1, 5(b)-(c). The Legislature, however, limited this expanded exemption by providing that (1) the leasehold excise tax would

apply to any lease of tribally owned property that is exempt from taxation under RCW 84.36.010, and (2) tribes must pay a PILT to qualify for exemption on unleased tribal property located outside of an Indian reservation. *See id.* §§ 2-4, 6-8.

The Salish Lodge and Spa qualified for this tax exemption for assessment year 2014 (for taxes payable in 2015), and the Muckleshoot Indian Tribe negotiated a PILT agreement with King County and voluntarily paid the agreed PILT. *See* CP 0215-0216. In October, 2014, the City filed this declaratory judgment action to challenge the constitutionality of the tribal property tax exemption and the associated PILT. CP 0010-0012 (Complaint ¶ 4.1). That challenge should be rejected because (1) the tax exemption for tribal economic-development property in RCW 84.36.010 is valid, and (2) the City has no standing to challenge the validity of the PILT requirement.

V. SUMMARY OF ARGUMENT

In the end, resolution of this appeal turns on a single, unambiguous question:

> Is the exemption in RCW 84.36.010 of tribally owned property used for economic development a valid property tax exemption?

If the exemption for tribal economic-development property is valid, all of the City's complaints, as well as its standing to complain, vanish.

The Washington Constitution grants the Legislature broad power to exempt property from taxation. It may be conceded that any such

exemption must be reasonable (*i.e.*, not arbitrary, capricious or discriminatory) and serve a valid public purpose.[2] The exemption of tribally owned economic-development property readily satisfies these requisites. There is no evidence to the contrary, and the City does not contend otherwise.[3]

Once it is established that the exemption of tribal economic-development property is valid, neither the City, nor anyone the City might properly represent, has standing to complain that the Legislature requires the exemption grantees to make a "payment in lieu of leasehold excise tax" for the benefit of local governments. Nor does the City have standing to challenge the structure of the PILT. Therefore, the superior court's decision should be reversed, and the City's complaint should be dismissed.

VI. ARGUMENT

A. RCW 84.36.010 validly exempts tribally owned economic-development property from tax.

"Property tax exemptions are subsidies to certain owners or for certain uses or property, to encourage publicly desired objectives." *Belas*

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[2] In classifying property for taxation or exemption therefrom, the Legislature has wide discretion, and its exercise is not subject to review by the courts unless clearly arbitrary or unreasonable and beyond its power. *Libby*, 19 Wn.2d at 730-31. *See also, City of Kennewick v. Benton County*, 131 Wn.2d 768, 772-73, 935 P.2d 606 (1997).

[3] Indeed, the City expressly concedes that support for tribal economic development is a valid public purpose. Br. of Resp't at 17.

v. Kiga, 135 Wn.2d 913, 930, 959 P.2d 1037 (1998) (quoting International Association of Assessing Officers, Assessment Standard 5.3.1). Under Art. VII, § 1 of the Washington Constitution, the Legislature has broad authority to grant property tax exemptions for uses that promote publicly desired objectives. In 2014, the Legislature determined that there were good and sufficient reasons to exempt tribally owned property used for economic development from the property tax. In the Legislature's own words:

> It is the legislature's specific public policy objective to create jobs and improve the economic health of tribal communities. It is the legislature's intent to exempt property used by federally recognized Indian tribes for economic development purposes, in order to achieve these policy objectives.

Laws of 2014, ch. 207, § 1(2). Support for tribal economic development is a valid public purpose. Providing that support through a tax exemption for tribal property used for economic development is entirely reasonable. Like most Indian tribes, the Amicus Tribe has little or no tax base and relies heavily on economic development to fund tribal government activities and services. *See Pueblo of Santa Ana v. Hodel*, 663 F. Supp. 1300, 1315 n.21 (D.D.C. 1987), ("[T]he Indians have no viable tax base and a weak economic infrastructure. Therefore, they, even more than the states, need to develop creative ways to generate revenue."); Matthew L. M. Fletcher, *In Pursuit of Tribal Economic Development As A Substitute for Reservation Tax Revenue*, 80 N.D. L. Rev. 759, 775 (2004) ("Tribal

governments generally use revenue derived from tribal businesses 'to build new schools and provide better health care' and pay for governmental services such as 'law enforcement and day care.'"); Milo Colton, *Self-Determination and the American Indian: A Case Study*, 4 Scholar 1, 35 n.270 (2001) ("In order to be successful, tribal governments must generate revenue through the development of businesses because they are prevented from establishing a stable tax base."); Janet I. Tu, *Economic Focus: As Casinos Struggle, Tribes Look to Other Industries*, Wall St. J., Oct. 28, 1998, ("'Tribes don't have the funding base that other governments do,' says Jennifer Scott, assistant director of Washington State's Governor's Office of Indian Affairs.").[4]

The Legislature plainly has the constitutional authority to use its tax exemption power to promote tribal economic development. *See, e.g.*, *Forbes v. City of Seattle*, 113 Wn.2d 929, 944, 785 P.2d 431 (1990) ("[L]egislative bodies have very broad discretion in establishing classifications for economic and social legislation [and] even broader discretion and greater power in making classifications for purposes of taxation."); *State v. Wooster*, 163 Wash. 659, 664-65, 2 P.2d 653 (1931) (concluding that the plain language of the constitution grants broad authority to the Legislature to exempt property from taxation). Indeed, the reasonableness of this tribal economic-development exemption is so self-

[4] *Available* at http://www.wsj.com/articles/SB909463461876912500.

evident that the City does not even try to argue that it is invalid. Instead, it attempts to leapfrog this critical issue by jumping directly to arguing that the PILT which tribal exemption grantees agree to pay is an unconstitutional tax. But that argument mischaracterizes the legislation and fails to recognize the Legislature's clear authority to set conditions and limitations on the grant of tax exemptions. *Libby*, 19 Wn.2d at 730-31. Here, the Legislature has conditioned the exemption for tribal economic-development property to lessen the adverse effect on other governments. The Legislature has the authority to grant such a conditional exemption, and there is no basis to argue otherwise.

B. The tribal economic-development exemption and PILT do not combine to surreptitiously create an unconstitutional tax classification scheme.

The City argues that the exemption of tribal economic-development property and the PILT combine to create a *de facto* discriminatory tax scheme, akin to the tax preference scheme struck down in *Belas v. Kiga*, 135 Wn.2d 913, 959 P.2d 1037 (1998). Br. of Resp't at 20-25. But this case is not like *Belas*. The voter initiative challenged in *Belas* established a preferential assessment scheme that was fundamentally at odds with the rule of tax uniformity for real property. It granted preferential tax treatment to certain owners simply because the value of their property appreciated faster than other property. That scheme was not designed to support publicly desirable uses of property, mitigate the tax burden on those in special need of assistance, or serve any other valid

public purpose that would justify a departure from the constitutional standard of uniform taxation. Instead, it arbitrarily granted a tax preference to owners of rapidly appreciating property, those who most benefited from a rising real estate market. That preference was unconstitutional. Here, in contrast, no one questions the propriety of using legislation to promote tribal economic development or the power of the Legislature to fully exempt tribal economic-development property from tax. That is not at all analogous to the facts in *Belas*. The City's attempt to equate the abuse of tax uniformity in *Belas* with the Legislature's legitimate effort to promote tribal economic development is without merit.

C. The City has no standing to challenge the PILT.

A party seeking to declare a statute invalid must demonstrate both that (1) the party has a constitutionally or statutorily protected interest, and (2) the challenged statute inflicts an "injury in fact"—a harm that is "personal to the party" and "substantial rather than speculative or abstract." *Amalgamated Transit Union Local No. 1576 v. Snohomish County Public Transp. Ben. Area*, 178 Wn. App. 566, 572, 36 P.3d 1103 (2013). *Accord Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend*, Supreme Court No. 91551-2 at 5-6 (Wash. filed Feb. 4, 2016). These two standing requirements apply *with respect to the specific provision of the law challenged, not the statute as a whole*: "A litigant does not have standing to challenge a statute on constitutional grounds unless the litigant is harmed by the particular feature of the statute which is claimed to be

unconstitutional." *Kadoranian v. Bellingham Police Dep't*, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992).

Here, if exempting tribal economic-development property from tax is valid (which it is), nothing about requiring tribes to pay a PILT to qualify for the exemption can possibly harm any legally protected interest of the City or anyone that the City could properly represent. If the PILT requirement creates an illegal burden, it is for those who suffer the illegal burden to bring a challenge. But the City "cannot take upon itself the duty of protecting the interests of [others]." *King County v. Port of Seattle*, 37 Wn.2d 338, 346, 223 P.2d 834 (1950) (citing *Vance Lumber Co. v. King County*, 184 Wash. 402, 51 P.2d 623 (1935)). It is particularly egregious for the City to assert standing to challenge the PILT where its interests are diametrically opposed to the interests of those who actually have standing to challenge the PILT—*i.e.,* the tribes who are required to pay. The constitution does not grant the City a roving commission to police the actions of the Legislature or to step into the shoes of others to present arguments that undermine the interests of those with actual standing.

The PILT serves to limit the adverse financial impact of the tribal economic-development property tax exemption on local governments. It provides cities a financial *benefit* that they would not receive had the Legislature dispensed with the PILT and granted an unconditional tax exemption to tribal economic-development property. The City would have no ground to complain had the Legislature taken that approach. The fact

that the Legislature has required tribes to pay a PILT to qualify for exemption does not change that result. The City is not harmed by the PILT and has no standing to challenge its validity.

The City claims it has five grounds for standing to challenge the PILT, but, in substance, those five reduce down to just two: (1) the City benefits from property tax revenues (grounds 1, 2 and 3), and (2) the City has standing, as an organization or otherwise, to represent its residents who bear the burden of a tax shift if tribal economic-development property is exempt from tax (grounds 4 and 5). Br. of Resp't at 7-11. Even conceding—for purposes of argument—that these alleged grounds would be adequate to provide standing for the City to challenge the exemption itself, they do not support standing to challenge the PILT. The PILT does not reduce tax revenues to the City or shift a higher tax burden onto City residents. It does the very opposite: it increases City revenues, thereby reducing the need for additional taxes on other City residents. If the City dislikes these benefits it can choose not to accept PILT revenues. But it has no standing to challenge the constitutionality of a provision that causes it no harm.

PILTs are a common feature associated with tax-exempt property.[5] The PILT in RCW 82.29A.055 treats tribes in a manner similar to other

[5] *See, e.g.*, RCW 77.12.201, 77.12.203 (PILT program for property owned by the Washington State Department of Fish and Wildlife); RCW 79.71.130, 79.70.130 (PILT program for property owned by the Washington State Department of Natural Resources); 31 U.S.C. §§ 6901-6907 (PILT programs for property owned by the federal government); Cal. Health & Safety Code § 36063 (PILT program for farm

government entities that commonly make PILT payments in connection with tax-exempt properties. It is also not unusual to require a PILT as a condition for exempting property used for economic development.[6] And, of particular importance here, the fact that the PILT is a prerequisite for the exemption of tribal economic-development property does not change the standing analysis. The compulsory nature of this PILT only benefits

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labor centers exempt from property tax); Del. Code 9.83 § 8335 (PILT program for agricultural lands acquired by state agencies in Delaware for public use); Fla. Stat. 259.032 (PILT program for state-owned property based on the amount of property taxes paid prior to removal from the tax rolls); Ind. Code § 36-3-2-10 (PILT program for property owned by a public entity or when a private entity owns an airport; the PILT is based on the amount of property taxes that would be imposed if not exempt); Minn. Stat. 97A.061, 477A.11-14 (PILT programs for conservation areas, public hunting and game refuges, and natural resource land); Mont. Code Ann. 87-1-603 (PILT program for certain publicly owned property); Neb. Rev. Stat. § 77-202, Neb. Admin. Code § 41-003 (PILT program for property owned by the Game and Parks Commission for wildlife management purposes, based on property taxes that would be imposed if not exempt); Nev. Rev. Stat. 548.397 (PILT program for certain state-owned property, based on property taxes that would be imposed if not exempt); N.D. Cent. Code 57-02.1 (PILT program for property owned by the Game and Fish Department); Utah Code 23-21-2 (PILT program for property owned by the Division of Wildlife Resources, based on the property taxes that would be imposed on the land if not exempt); 32 V.S.A. § 3708 (PILT program for certain state-owned property); Wisc. Stat. § 70.113 (PILT program for lands owned by the state and for lands leased from the federal government). *See also King County Fire Protection Districts No. 16, No. 36 and No. 40 v. Housing Authority of King County*, 123 Wn.2d 819, 822, 872 P.2d 516 (1994) (noting that local housing authorities may receive federal funds only on the condition that the funded project "is exempt from all real and personal property taxes" and that federal and state laws authorize the housing authorities to make "payments in lieu of taxes").

[6] *See, e.g.*, Md. Code Tax § 7-504.3 (property tax exemption for economic development projects in which the owner and local jurisdiction have entered into "a payment in lieu of taxes agreement"); N.D. Cent. Code 40-57.1 (PILT program for property exempted from tax to incentivize certain new or expanded businesses for "promotion of economic activities within the state" and job creation); Ohio Rev. Code § 725.04 (program in which property owners are required to make "service payments in lieu of taxes" based on the property taxes that would be imposed if not exempt for property receiving a tax exemption as an urban renewal area or for community redevelopment).

the City and its residents. Nothing about the PILT invades a protected interest of the City or causes the City any harm.

Standing is a vital protector of the adversary process. To allow strangers to litigate issues in which they have no personal stake is dangerous to the adversarial system, to the real parties in interest, and to the public policy determinations of the Legislature. Allowing such challenges breeds mischief. The purpose of standing and other justiciability standards "is to ensure that [courts] render a final judgment on an actual dispute between opposing parties that have a genuine stake in the resolution." *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). This is to ensure that the courts operate "not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982). Respecting this limitation "is crucial in maintaining the 'tripartite allocation of power'" between the branches of government. *Id.*, 454 U.S. at 474. The City has no standing to complain about the PILT, and its effort here to do so should be rejected.

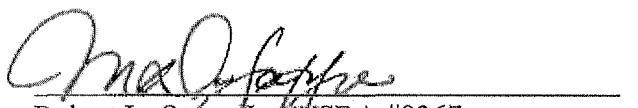
VII. CONCLUSION

The Legislature acted within its constitutional authority in expanding the tax exemption for tribal property to promote job creation and the economic development of tribal communities while at the same

time conditioning the availability of the exemption in part on a payment to mitigate the exemption's effect on local taxing districts. The exemption is valid, and the City has no standing to challenge the PILT provision. Accordingly, the Amicus Tribe supports the Department of Revenue's request that the Court reverse the superior court's decision.

DATED this 17th day of March, 2016.

Respectfully submitted,



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Subject: electronic filing (2 documents attached); Case No. 91534-2, State of Washington Department of Revenue v City of Snoqualmie and King County Executive Dow Constantine

Supreme Court Clerk,

Please accept by email filing the attached documents in Supreme court case No. 91534-2, *The State of Washington Department of Revenue v. City of Snoqualmie and King County Executive Dow Constantine, et al.*:

(1) Motion of Muckleshoot Indian Tribe for Leave to Participate as Amicus Curiae
(2) Amicus Curiae Brief of Muckleshoot Indian Tribe.

By consent of the counsel for the DOR copied on this email, this email constitutes electronic service of the attached documents.

Thank you,

LISA TARDIFF

Legal Assistant | 206.464.3939 x1453 Tel | 206.464.0125 Fax | LTardiff@gsblaw.com

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