

No. 91534-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON DEPT. OF REVENUE,
Appellants,

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.

**RESPONDENT CITY OF SNOQUALMIE'S ANSWER TO
AMICUS CURIAE BRIEFS OF MUCKLESHOOT INDIAN TRIBE
AND MASTER BUILDERS ASSOCIATION**

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I. INTRODUCTION

The central issue in this appeal concerns the true nature of the so-called “payment in lieu of tax,” or PILT, established under Laws of 2014, ch. 207 (the “PILT Law”). Is the PILT an alternative property tax, as the trial court found and Respondent the City of Snoqualmie (the “City”) has argued? *See* CP 681-85; Br. of Resp. at 20-36. Or is the PILT instead a fee or excise tax, as Appellant the Department of Revenue (“DOR”) unsuccessfully argued below and contends on appeal? *See* Br. of App. at 24-39. That is the primary issue that this Court must adjudicate.

In its amicus brief, the Muckleshoot Indian Tribe (the “Tribe”) questions the City’s standing to challenge the PILT, reasoning that the PILT provides the City with more, not less, tax revenue. *See* Am. Cur. Br. of Muckleshoot Ind. Tribe (“MIT Br.”) at 9-13. But the Tribe overlooks myriad alternative grounds supporting standing, including that the City is challenging the entire scheme established under the PILT Law, that the PILT Law’s provisions are interdependent and must stand or fall together, that the City’s residents are directly subject to and disadvantaged by the tax non-uniformity resulting from the PILT Law, and that the issue is one of public importance. *See infra*, at 2-6. The City thus has standing to challenge the PILT as a non-uniform property tax.

As to the merits, the amicus briefs of both the Tribe and the Master Builders Association (the “MBA”) argue over an issue that is not presented for review: whether the Legislature has underlying authority to exempt off-reservation tribal property from taxation. *See* MIT Br. at 4-9; Am. Cur. Br. of Master Bldrs. Ass’n (“MBA Br.”) at 3-17. This dispute among amici falls outside the scope of DOR’s appeal to this Court. In any case, the scope of the Legislature’s exemption power is irrelevant because the PILT is distinct from the exemption created in the PILT Law and is not itself an exemption, in name or in substance. Moreover, even if the PILT were a tax exemption, it would still be an unconstitutional form of non-uniform real property taxation. Under Article VII, § 1 of the Washington Constitution, the Legislature cannot pick out a favored subset of landowners for an alternative and varying form of tax payment, whether under the guise of an exemption or otherwise. In the end, the PILT is a non-uniform property tax and does not survive constitutional scrutiny.¹

II. ARGUMENT

A. The City Has Standing to Challenge the PILT Law.

As elaborated in the City’s brief, there are multiple, independent grounds for the City’s standing to challenge the PILT Law. *See* Br. of Resp. at 6-17. These include the City’s central role in the state process for

¹ The Tribe also ignores that the PILT Law is unconstitutional because it surrenders the Legislature’s taxing authority and delegates without minimum standards. *See* Br. of Resp. at 37-43. Each of these grounds separately warrants invalidation of the PILT Law.

real property taxation; a resulting reduction of the City's ability to raise tax revenues; substantial lost tax revenues from forthcoming construction; a shift in tax burden onto the City's residents; and the distinct public importance of the issues presented. *See id.*

Notwithstanding these independent grounds for the City's standing, the Tribe insists that the City has no standing because the PILT itself—when considered separately from the tax exemption contained in the same legislation—increases the amount of tax revenues paid to the City. *See* MIT Br. at 10. In other words, in the Tribe's view only exempt landowners allowed to pay the lesser PILT have standing to challenge the PILT as a non-uniform tax. This argument fails, for four separate reasons.

First, the City has, by necessity, challenged the entire tax scheme established under the PILT Law, rather than the PILT standing alone. The PILT Law simultaneously exempts certain real property from taxation while requiring payment of an alternative amount to claim that exemption. *See* Br. of Resp. at 21 (discussing provisions). The law would not have been enacted without both provisions. *See id.* at 22-23 (discussing legislative history); Laws of 2014, ch. 207, § 12 (non-severability clause). In suggesting the PILT only helps the City, the Tribe ignores that the City has challenged the entire scheme, not the PILT in a vacuum. *See State v. Pedro*, 148 Wn. App. 932, 945, 201 P.3d 398 (2009) (“The State’s

argument . . . mistakenly believes [plaintiff] is challenging just the portion of the statute that lists the exemptions. To the contrary, his challenge is to the entire statutory scheme . . . arguing that those who are exempt and those who are not, are similarly situated yet treated unequally.”).

Second, the PILT is not severable from the rest of the PILT Law, and thus, the validity of the entire law depends on the validity of the PILT. As discussed in the City’s brief, the PILT Law would not have been enacted absent the PILT and even contains a non-severability clause. *See* Br. of Resp. at 43-44; Laws of 2014, ch. 207, § 12. The Tribe does not dispute this but insists that a party may challenge only “the specific provision” of a statute that harms or otherwise applies to the party. MIT Br. at 9 (citing cases). There is a longstanding “exception” to this rule, however, which applies whenever an “unconstitutional portion” of a statute “is inseparable from the remainder,” as here. *In re Hendrickson*, 12 Wn.2d 600, 609, 123 P.2d 322 (1942).² In that instance, any “persons affected by the remainder are permitted to question the constitutionality of the invalid part even [if] it does not apply to them, since that is an essential element in establishing that the remainder is legally [operative] as to

² *See also Yelle v. Bishop*, 55 Wn.2d 286, 298, 347 P.2d 1081 (1959) (applying exception); *State v. Canyon Lumber Corp.*, 46 Wn.2d 701, 708-09, 284 P.2d 316 (1955) (same); *State v. Grabinski*, 33 Wn.2d 603, 612, 206 P.2d 1022 (1949) (“Unless a person’s rights are directly involved, courts will postpone inquiry into constitutional questions which are separable from the issue then before the court . . . unless the unconstitutional feature, if it exists, is of such character as to render the entire act void.”).

them.” *Id.* at 608 (internal quotations omitted). The City thus has standing to challenge the PILT so long as its interests are implicated by any of the PILT Law’s provisions, which are inseparable from the PILT and must be struck down if the trial court and City are correct.

Third, the City represents its residents in this action, who will be paying the standard real property tax rather than the lesser PILT, and who will shoulder a greater tax burden as a result of the PILT Law. The PILT is thus being challenged as non-uniform on behalf of the very taxpayers who are disadvantaged by the non-uniformity. For any uniformity challenge ever to be brought, as a practical matter, the taxpayers who will be forced to pay more (or their representative) must have standing to assert the claim. *See, e.g., Harbour Village Apartments v. City of Mukilteo*, 139 Wn.2d 604, 606, 989 P.2d 542 (1999) (challenge by property owners paying greater amounts); *Belas v. Kiga*, 135 Wn.2d 913, 916, 959 P.2d 1037 (1998) (challenge by elected county assessors). Were it otherwise, the constitutional uniformity requirement would be insulated from meaningful judicial review.³

Fourth, the issues presented in this case are of public importance and warrant adjudication for that reason alone. *See Br. of Resp.* at 16.

³ If the Tribe were correct, the Legislature could always shield property tax favoritism by depriving disadvantaged parties of any standing to challenge it: the Legislature could simply exempt selected property, and then require that the owners pay an alternative, more favorable tax in order to claim the exemption.

DOR has conceded the public importance of the issues presented, which DOR admits “will have a broad impact on the administration of property taxes.” Br. of App. at 23. The Tribe does not address this basis for standing. For all the above reasons, this Court should reach the merits.

B. The Legislature’s Power of Exemption Is Not at Issue Here.

On the merits, this Court should address only the issues raised by the parties. The issue that DOR has raised in this appeal is whether the PILT is a fee or excise tax rather than an alternative property tax. In DOR’s Statement of Grounds for Direct Review to this Court, DOR identified the issue to be reviewed as whether or not “the PILT is . . . a property tax.” *See* Stmt. of Grounds at 8. In its opening brief, DOR then specified the issue as whether “the PILT [is] a fee,” or if “not a fee, [then] an excise tax, rather than a property tax subject to the Constitution’s uniformity requirements” Br. of App. at 2. In doing so, DOR established “precisely which claims and issues” it has “brought before the court for appellate review.” *Clark County v. W. Wash. Growth Mgmt. Hrgs. Rev. Bd.*, 177 Wn.2d 136, 144-45, 298 P.3d 704 (2013).

In response to DOR’s arguments, the City proceeded in its response brief to address the status of the PILT specifically as an alternative property tax rather than a fee or excise tax. *See* Br. of Resp. at 20-36. The City also observed in passing that “the PILT does not qualify

as a tax exemption” and that “DOR does not argue otherwise.” *Id.* at 23. The City further clarified that the issue in dispute is not the validity of the Legislature’s goal of assisting Native American tribes—a goal the City supports—but rather, whether the Legislature’s chosen method is constitutional. *See id.* at 17-20.

Contrary to the arguments of the parties, the Tribe and MBA in their amicus briefs debate an issue that has not been raised or perfected before this Court. In particular, amici debate whether the Legislature has general authority to exempt tribal off-reservation land from standard real property taxation, as if there were no PILT. The Tribe’s brief attempts to recast this appeal as raising “a single, unambiguous question,” namely, whether an “exemption . . . of tribally owned property” is “a valid property tax exemption.” MIT Br. at 4. Likewise, the MBA brief queries whether “a real property tax exemption for tribe owned properties” is unfair and unconstitutional. MBA Br. at 3; *see also id.* at 16-17. Not only do these arguments ignore the presence of the PILT, they also ignore that the only issue raised in this appeal is whether the PILT qualifies as a fee or excise tax rather than a property tax.

This Court should disregard amici’s collateral colloquy over the Legislature’s authority to exempt property from taxation. This Court has emphasized numerous times that it “will not address arguments raised only

by amicus.” *E.g.*, *City of Seattle v. Evans*, 184 Wn.2d 856, 366 P.3d 906, 909 n.5 (2015) (internal quotations omitted). The Tribe could have intervened in this case and become a party but chose not to do so.⁴ In perfecting its appeal, DOR did not argue that the PILT is a tax exemption or an exercise of the Legislature’s exemption power, and for that reason alone, this Court should not address or adjudicate that issue.

C. The PILT Cannot Be Defended as a Form of Tax Exemption.

Even if the Court were to address the issue of the Legislature’s exemption power, it would find that DOR did not defend the PILT on that basis for good reason: the PILT does not qualify as a tax exemption, nor would it survive constitutional scrutiny even if it were a form of tax exemption. The PILT remains an invalid, non-uniform real property tax.

1. The PILT is not an exercise of the Legislature’s power to exempt property from taxation.

The PILT is not an exercise of the Legislature’s exemption power, in form or in substance. The Legislature did not label the PILT an exemption or suggest that the PILT was an exercise of its exemption power. Instead, the Legislature correctly recognized that the PILT is an alternative charge required of certain taxpayers claiming an exemption

⁴ Along the same lines, the City was prevented from joining the Tribe due to sovereign immunity. *See, e.g.*, *Automotive United Trades Org. v. State*, 175 Wn.2d 214, 226, 285 P.3d 52 (2012).

from the standard real property tax. Such an alternative charge constitutes non-uniform taxation at its core; it does not qualify as a tax exemption.

Initially, the PILT Law does not identify the PILT as a tax exemption. This Court has acknowledged that tax exemptions “create inequities” and run contrary to the paramount principle of uniformity, and thus, must be “expressed in unambiguous terms” and “presented” as exemptions whenever enacted. *Belas*, 135 Wn.2d at 930, 932-34 (internal quotations omitted). The PILT was neither labeled nor intended as an exemption within the PILT Law and thus fails to meet this standard.

The PILT Law first establishes a tax exemption for certain tribal commercial properties, in a distinct section. *See* Laws of 2014, ch. 207, § 5 (extending “exemption” to certain tribal property used for “economic development”); *see also id.*, § 5(2) (setting contours of “the exemption from taxes in this section” (emphasis added)). In a separate section, the PILT Law then provides that the property “that is exempt” under the prior section is “subject to” payment of the PILT in certain circumstances. *See id.*, § 8(1). Thus, although the Legislature “knew how to exempt property from taxation,” it “did not do so” with regard to the PILT. *Belas*, 135 Wn.2d at 934. The legislative history further confirms that the PILT was imposed separate from and subsequent to the underlying exemption at issue, to generate tax revenues, and that a non-severability clause was

added to ensure that the underlying exemption would not survive if the PILT were invalidated. *See* Br. of Resp. at 22-23.

In *Belas*, this Court found that the provision of an alternative “method of assessment” for certain landowners was “not intended as an exemption,” and thus could not qualify as one, because the law in question did not use “language” that “clearly create[d] an exemption.” 135 Wn.2d at 934. Instead, the statutory language discussed the alternative method as separate from any potential exemptions. *See id.* The same law elsewhere amended an existing exemption and clearly expanded that exemption, in contrast to the language used to establish the alternative valuation method under attack. *See id.* The same is true here: the language of the PILT Law indicates that the PILT is separate from the exemption for tribal property, and the language used to expand that exemption stands in stark contrast to the separate section establishing the PILT.

Beyond the lack of any clear language in the PILT Law establishing the PILT as a tax exemption, the PILT also fails to qualify as a tax exemption in substance under Article VII, § 1. That is because the imposition of an alternative tax cannot be considered a valid form of exemption. As this Court has recognized, “the term ‘exemption’ . . . presupposes a liability, and is properly applied only to a grant of immunity to persons or property which otherwise would have been liable to

assessment.” *Petroleum Nav. Co. v. King County*, 1 Wn.2d 489, 494, 96 P.2d 467 (1939) (emphasis added); *see also* BLACK’S LAW DICTIONARY (10th ed. 2014) (defining “exempt” as “released from a . . . liability to which others are held”).

Consistent with the plain meaning of being “exempt” from taxation, the City is unaware of any tax exemption this Court has upheld that did anything other than grant immunity (rather than imposing an alternative charge to be paid). *See, e.g., Libby, McNeill & Libby v. Ivarson*, 19 Wn.2d 723, 726, 144 P.2d 258 (1943) (law provided that specified property “shall be exempt from taxation”). In contrast, the PILT is an alternative tax payment using a different assessment method. This cannot qualify as a valid “exemption” from taxation. *See Chicago, R.I. & P.R. Co. v. Robertson*, 122 Miss. 417, 84 So. 449, 449, 451 (1920) (invalidating alternative charge on freight line companies as non-uniform tax and observing legislature’s power of exemption was not at issue because “the intention of the Legislature . . . was not to exempt the property of freight line companies . . . but to tax it in a [different] manner”).

The Tribe insists that the PILT is an exercise of the Legislature’s broad authority “to set conditions and limitations on the grant of tax exemptions.” MIT Br. at 8 (citing *Libby*). But the Legislature cannot

condition a tax exemption on payment of an alternative real property tax; that would run afoul of the paramount constitutional requirement of tax uniformity. The Tribe cites to *Libby*, but that case is distinguishable on multiple grounds. In *Libby*, the tax exemption at issue applied to “salmon brought into the state for storage,” if the salmon was “shipped out of the state” by a certain time. 19 Wn.2d at 726. The latter condition specified the particular property being exempted, based on the use of that property, and did not impose an alternative tax as a condition to claiming the exemption. *See id.*; *cf. Yakima First Baptist Homes, Inc. v. Gray*, 82 Wn.2d 295, 301, 510 P.2d 243 (1973) (“Under Washington law . . . it is the use to which the property is put that determines its exempt character.”). This stands in stark contrast to the PILT, which is simply an alternative tax that must be paid to claim an exemption from the standard tax. The *Libby* case is distinguishable also because it dealt only with personal property, which does not need to be treated as a single class under Article VII, § 1. In the end, the PILT is not an exemption, and it remains invalid as an alternative real property tax.

2. The PILT would be unconstitutional even if it qualified as a tax exemption.

Even if the PILT were an exercise of the Legislature’s exemption power, it would still be unconstitutional. The Washington Constitution grants the Legislature power to exempt classes of property from taxation,

but this power has limits—especially with regard to real property taxation. *See* Const. art. VII, § 1. Were it otherwise, the express requirement of uniformity for taxation of real property would lose all meaning. Thus, even considered as a form of tax exemption the PILT would violate applicable constitutional limits.

At the outset, under the plain language of Article VII, § 1, the Legislature is prohibited from exempting any subset of real property from standard, uniform taxation. Article VII, § 1 states that “[s]uch property as the legislature may by general laws provide shall be exempt from taxation,” while also mandating that “[a]ll real estate shall constitute one class.” Const. art. VII, § 1 (emphases added). As this Court has recognized, “a ‘general law’ is one which applies to all persons or things of a class.” *Libby*, 19 Wn.2d at 730 (emphasis added). And again, real property must be a single class. Thus, while the Legislature normally has “wide discretion” in “classifying property for . . . exemption,” that does not apply to real property. *Id.* Because the Legislature cannot exempt a subset of real property from taxation, the PILT could not be used for that purpose.⁵

⁵ In *Belas*, this Court noted that some existing Washington statutes do exempt real property from taxation, but the Court also acknowledged that the validity of those statutes was not before it. *See* 135 Wn.2d at 932 (“That statute has never been challenged; whether that exemption would withstand scrutiny under a uniformity challenge is not before us. . . . [T]he question before us is whether an exemption was created in

The Tribe insists that exempting tribal real property from taxation is permissible because it has a rational basis. *See* MIT Br. at 7-9. But “there is no rational basis exception to the uniformity requirement” in Article VII, § 1. *Belas*, 135 Wn.2d at 941 (internal quotations omitted).

The Court in *Belas* specifically rejected this same argument:

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

Id. at 941-42. The *Belas* Court even distinguished the line of cases the Tribe now cites in its brief. *Compare* MIT Br. at 7 (citing *Forbes v. City of Seattle*, 113 Wn.2d 929, 785 P.2d 431 (1990)), *with Belas*, 135 Wn.2d at 942 (noting “equal protection challenges in taxation cases” are treated “very differently” than “uniformity challenges” and specifically distinguishing *Forbes*).

The Tribe further ignores this Court’s reasoning in *Belas* by insisting that the tax scheme at issue in that case was invalidated only because it failed to “serve any [] valid public purpose” and “arbitrarily granted a tax preference” MIT Br. at 9. But the *Belas* Court clarified

Referendum 47.”). The *Belas* Court elsewhere observed that for any exemption, “both the power to exempt and the intention to exempt must be clear.” *Id.* at 934 (emphases added; internal quotations omitted). As explained above, the Legislature’s power to exempt real property from taxation is far from clear—indeed, it is inconsistent with the plain language of Article VII, § 1. Regardless, the scope of the Legislature’s power of exemption is not actually before the Court here, and as in *Belas*, the issue should not be resolved in this appeal. *See supra*, at 6-8.

that the “goal” of the scheme under review there was “laudable”—the problem was instead that “the method used” to achieve that goal was “unconstitutional.” 135 Wn.2d at 917. And the same is true here: while the goal of assisting Native American tribes is laudable, the Legislature’s chosen method for achieving that goal is unlawful.

Even if the Legislature could exempt real property from standard taxation, the PILT would still be unconstitutional as a tax exemption. To whatever extent the Legislature’s exemption power may be applied to real property, it must necessarily be a blunt tool used only sparingly. Otherwise, the exception would swallow the rule—the Legislature could exempt whatever real property it desired from taxation under any conditions it saw fit. That cannot comport with Article VII, § 1, which specifically requires uniformity of taxation for all real property. *See Chlopeck Fish Co. v. City of Seattle*, 64 Wash. 315, 322-23, 117 P. 232 (1911) (upholding the “fundamental principle” of giving “effect . . . to all of the words used” in each provision of Washington’s Constitution); *see also Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 805 n.13, 23 P.3d 477 (2001) (noting uniformity is “the highest and most important of all requirements applicable to taxation under our system”).

Assuming *arguendo* that real property exemptions may be permitted in some circumstances under Article VII, § 1 (an issue the Court

need not decide in this case), the PILT does not present such a circumstance. This is because the PILT (1) shifts tax burdens onto remaining taxpayers, (2) fails to provide complete immunity from taxation, and (3) creates non-uniformity even within the class of exempted landowners. Put another way, the PILT not only circumvents the requirement of uniformity, it does so by leaps and bounds.

First, the PILT represents an impermissible shift in tax burdens. The core purpose of tax uniformity is to ensure certain property owners do not obtain unique tax advantages to the detriment of all other taxpayers. As such, any exemption of real property that is not separately funded and that would “improperly shift the property tax burden to the remaining tax base” conflicts with the paramount goal of uniformity and should be held invalid. *Jaksha v. State*, 241 Neb. 106, 116-17, 486 N.W.2d 858 (1992).

In *Jaksha*, the Nebraska Supreme Court rightly observed that a shift in tax burdens “implicate[s] the chief evil associated by the framers of [a] uniformity clause with the power to grant exemptions.” *Id.* at 120. That court thus reasoned that burden-shifting should be a primary concern whenever reviewing the validity of any tax exemption subject to an overarching uniformity requirement. *See id.* at 116-17. The *Jaksha* court proceeded to strike down a broad exemption of personal property due to the resulting shift in tax burdens onto owners of real property. *See id.* at

112, 115-17, 120, 124-27. Here, there is no dispute the PILT effectively represents a shift in tax burdens onto the City's residents. Thus, the PILT runs contrary to the requirement of uniformity and would remain invalid.

Second, even if the PILT involved no shift in tax burdens, the PILT would still be invalid as an incomplete exemption. Again, to whatever extent the power of exemption is available for real property, its scope must be limited and, as much as possible, consistent with the requirement of uniformity. Accordingly, only complete tax exemptions for real property would be proper, rather than allowing the Legislature to make exemptions of any degree (or delegate the determination of degree to an agency, as it has done here). *See, e.g., Knowlton v. Bd. of Sup'rs of Rock Cty.*, 9 Wis. 410, 424 (1859) (“[T]he very moment that the legislature say[s] that a specific . . . kind of property shall be taxed . . . it must be taxed by the uniform rule . . . [and t]here cannot be any medium ground between absolute exemption and uniform taxation.”). In *Knowlton*, the Wisconsin Supreme Court rejected a law allowing half the normal rate of taxation for agricultural lands, as contrary to a constitutional requirement of tax uniformity. *See* 9 Wis. at 417, 425. Similarly requiring complete exemptions for real property in Washington would serve as an important check to the legislative exemption power.

Finally, the PILT is non-uniform even among the class paying it, and is unconstitutional for that additional and separate reason. As the City has explained, the PILT Law allows for substantial variation among the landowners paying the alternative tax. *See* Br. of Resp. at 21-22, 24. In particular, the Tribes may and will negotiate individualized PILTs according to their bargaining power and without guidelines or standards. This type of variability adds substantially to the inherent non-uniformity tax exemptions already create, contrary to constitutional command that exemptions be established with “general laws” that apply uniformly to “the same class” of property. Const. art. VII, § 1.

The Tribe identifies various foreign PILT statutes in defense of the PILT. *See* MIT Br. at 11-12 & nn.5-6. But the mere existence of these statutes is no stand-in for substantive legal analysis of their terms and the laws of the relevant jurisdictions, and thus fails to demonstrate that the PILT itself is constitutional under Washington law. Indeed, each cited statute is distinguishable from the present case on numerous grounds, including (1) the absence of an equivalent uniformity requirement in the jurisdiction at issue, *see, e.g., In re Prop. of One Church Street*, 152 Vt. 260, 265, 565 A.2d 1349 (1989) (noting state constitution’s requirement of “proportional contribution” is no more restrictive than federal equal protection clause); (2) the use of a PILT to direct state funds under

legislative control, rather than as an exercise of taxing authority, *see, e.g.*, Fla. Stat. § 259.032(10) (providing legislature “may appropriate funds annually” for a PILT); (3) the optional nature of any payments to be made, *see, e.g.*, Cal. Health & Safety Code § 36063 (providing a “housing authority may make payments in lieu of taxes” (emphasis added)); (4) the presence of specified services for which the PILT serves as a compensatory fee, *see, e.g.*, *City of Dayton v. Cloud*, 30 Ohio St. 2d 295, 302, 285 N.E.2d 42 (1972) (noting Ohio Rev. Code § 725.04 imposes a “service payment” rather than a tax); (5) uniform application of the same measurement as the underlying tax, *see, e.g.*, Nev. Rev. Stat. § 548.397 (PILT “must be equal to the property taxes which would have been payable on the property”); and (6) uniform assessment among all members of the exempted class, *see, e.g., id.*⁶ In sum, these examples do not save the PILT law, which remains unconstitutional as a form of non-uniform real property taxation.

⁶ *See also* RCW 77.12.201, .203, 79.70.130, 79.71.130 (exercise of state spending power); 31 U.S.C. §§ 6901-07 (spending power); Del. Code tit. 9, § 8335(d)(6) (spending power); Ind. Code Ann. § 36-3-2-10(f) (same measurement as property tax); Md. Const. Decl. of Rights art. 15 (allowing “classification and sub-classification” of property); Minn. Stat. § 97A.061, 477A.11-.15 (spending power); *Reed v. Bjornson*, 191 Minn. 254, 261, 253 N.W. 102 (1934) (“[O]ur uniformity clause is no more restrictive than the Fourteenth Amendment.”); Mont. Code Ann. § 87-1-603 (spending power); Neb. Rev. Stat. § 77-202 (fee for specified services); N.D. Cent. Code 57-02.1 (spending power); *Haugland v. City of Bismarck*, 818 N.W.2d 660, 677 (N.D. 2012) (state uniformity analysis follows federal equal protection analysis); Ohio Rev. Code § 725.04 (same measurement); Utah Code 23-21-2 (spending power); Vt. Stat. tit. 32, § 3708 (spending power); Wisc. Stat. § 70.113 (spending power).

III. CONCLUSION

The City has standing to challenge the tax scheme in the PILT Law as unconstitutional. The City's interests and the interests of its residents are at stake and the issues presented are of public importance. On the merits, the central issue presented for review by the parties is whether the PILT qualifies as a fee or excise tax as opposed to a property tax. As the City has shown, the PILT is an alternative and non-uniform property tax. Even if the Court went on to consider whether the PILT can be defended as a tax exemption, as the Tribe now argues, the result would be the same. The PILT is not an exemption, and even if it were, it would violate the constitutional limits on the Legislature's exemption power. Under Article VII, § 1, the Legislature cannot pick out a subset of landowners for an alternative tax.

The City will continue to support efforts to promote tribal commercial development within its jurisdiction. But the Legislature's method of achieving that goal in this instance is unconstitutional and inappropriate. This Court should affirm.

RESPECTFULLY SUBMITTED this 20th day of April, 2016.

CITY OF SNOQUALMIE

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On behalf of Matt Segal (WSBA No. 29797) and Bob C. Sterbank (WSBA No. 19514), attorneys for City of Snoqualmie, attached for filing and service please find the:

RESPONDENT CITY OF SNOQUALMIE'S ANSWER TO AMICUS CURIAE BRIEFS OF MUCKLESHOOT INDIAN TRIBE AND MASTER BUILDERS ASSOCIATION

Please note that our reception, address suite number and zip code have changed.

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