

No. 93788-5

(Court of Appeals No. 33622-1-III and No. 33623-9-III)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation

Petitioner,

v.

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

and

STATE OF WASHINGTON, by and through the Department of
Revenue

Respondents.

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION OF MUNICIPAL
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I. IDENTITY AND INTEREST OF AMICUS CURIAE.

Amicus Curiae, the Washington State Association of Municipal Attorneys (hereinafter "WSAMA"), is the organization of municipal attorneys representing the cities and towns across the state. It has an interest in this case because essentially every city and town depends upon real property taxes, and for that and, depends upon the assistance of the County Assessor and Treasurer, as well as the state Department of Revenue.

Cities and towns are also zealously interested in protecting and safeguarding the validity and enforceability of their ordinances and other legislative enactments.

II. STATEMENT OF FACTS.

WSAMA adopts and incorporates herein the Statement of Facts as set forth in the pleadings of the Petitioner, City of Spokane, herein.

III. ISSUE.

The issue before the Court can be distilled down to whether the uniformity rule set forth in Art. VII, § 9 of the Washington state Constitution is violated by a city that enacts a low income property tax exemption.

IV. ARGUMENT.

A. *In Town of Tekoa v. Reilly* applies.

The issue before this court pivots to a significant degree on the purpose, meaning and applicability of the decision in *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 Pac. 769 (1907). The Respondents argue that *Tekoa* does not apply because it dealt with a poll tax, not a property tax. Rather, the focus should be on the applicability of this case in so far as it addressed the uniformity requirements of Art. VII, section 9 of the Washington state Constitution. The Town of Tekoa, in enacting a poll tax, provided for an exemption for certain members of its population. The *Tekoa* Court concluded that Tekoa's tax exemption did not violate the uniformity rule.

In this case, after a popular vote pursuant to the authority of Section 84.55.050 of the Revised Code of Washington (RCW), the City of Spokane adopted its ordinance number C-35231 relating to its property tax levy lid lift, which ordinance included an exemption for low income taxpayers. This exemption was rejected by the County, triggering Spokane's pursuit of a writ of mandamus.

This case does not involve the question of whether the City of Spokane had authority to enact the tax, but whether it had the authority to provide for the low income (property tax) exemption.

The majority opinion of the Court of Appeals concluded that the exemption violated the uniformity requirements of Art. VII, § 9.

B. Spokane Ordinance C-35231 is Entitled to Every Presumption of Validity,

Under article XI, section 10 of the state constitution, first class cities such as Spokane may adopt city charters, which allow cities to exercise broad legislative powers. *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 566, 29 P.3d 709 (2001).

Legislative enactments enjoy a strong presumption that they are constitutional *Department of Ecology v. State Finance Comm.*, 116 Wn.2d 246, 253, 804 P.2d 1241 (1991). *See also State v. Dixon*, 78 Wn.2d 796, 479 P.2d 931 (1971.) A statute is presumed to be constitutional unless the party challenging it proves that it is unconstitutional beyond a reasonable doubt. *State v. Smith*, 130 Wn. App 721, 726-27, 123 P.3d 896 (2005). *See also Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006).

When the constitutionality of a legislative enactment is drawn in question, the court will not declare it void unless its invalidity is so apparent as to leave *no reasonable doubt* upon the subject. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 643, 771 P.2d 711 (1989). If any state of facts can reasonably be conceived to uphold the legislation

including the classification made therein, the legislation will be upheld. *Sofie v. Fibreboard Corp.*, 112 Wn.2d at 690.

These presumptions apply to legislative enactments of city councils just as they do to those of the State legislature. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009); *City of Pasco v. Shaw*, 161 Wn.2d 450, 462, 166 P.3d 1157 (2007); *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 561, 29 P.3d 709 (2001). See also *State v. Immelt*, 150 Wn. App 681, 686, 208 P.3d 1256 (2009); *Kitsap County v. Mattress Outlet/Gould*, 153 Wn.2d 506, 509, 104 P.3d 1280 (2005).

Moreover, in *In State v. Melcher*, the court noted:

where legislation tends to promote health, safety, morals or welfare of the public, and the legislation bears a reasonable and substantial relationship to that purpose, every presumption will be indulged in favor of constitutionality.

33 Wn. App 357, 655 P.2d 1169 (1982). It would surely seem that “the laudable purpose of providing some of its disadvantaged citizens with a property tax exemption”¹ could be said to promote the health, safety, morals or welfare of the public. With that, Spokane Ordinance C-35231 should be entitled to having every presumption indulged in favor of its constitutionality.

¹ *City of Spokane v. Horton*, 196 Wn. App. 85, 87, 380 P.3d 1278 (2016).

C. *Tekoa* Supports the Constitutionality of Spokane's Ordinance.

The Respondents argue that *Tekoa* does not apply because it dealt with a poll tax, not a property tax.² But that is not a valid distinction. Washington Constitution article VII, section 1 imposes the same uniformity restriction on taxes imposed by the state legislature. The section reads, in relevant part:

All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class....

(Emphasis added.)

The *Tekoa* court stated that:

It must be apparent that a street poll tax imposed on minors or females without regard to property or ability to pay would be unjust and oppressive in the extreme. The burden of paying the tax for the entire household would ordinarily fall on the head of the family. Such a tax would lack both equality and uniformity, and was never contemplated by the framers of the Constitution. In *Thurston County v. Tenino Stone Quarries, Inc.*, 87 Pac. 634, we held that the act of 1905 (Laws 1905, p. 297, c. 156), imposing an annual road poll tax of \$2 on every male inhabitant of the state between the ages of 21 and 50 years, outside the limits of any incorporated city or town, did not violate any provision of our Constitution. While the provision now invoked applies only to municipalities,

² Respondents Answer to Petition for Review, p .10.

yet a court should not readily presume that the Constitution authorized or sanctioned one system of taxation within and another without the corporate limits of cities and towns. After a full consideration of the question presented, we are satisfied that the uniformity rule of taxation does not forbid a proper classification of the subjects of the tax, that the classification complained of is reasonable and proper, is sanctioned by usage, and violates no provision of the state Constitution.

Tekoa v. Reilly, 47 Wash. 209.

In light of the application of the uniformity rule to all taxes, substituting the property tax levy lid lift for the poll tax, and substituting low income property owners for minors and females, in light of the issues considered by the court in *Tekoa*, the uniformity rule of taxation would not forbid the classification of individuals falling within the exemption per Spokane's ordinance.

D. Writs of Mandamus and Declaratory Judgment Actions are not Mutually Exclusive.

In this case, one of the issues raised by the Respondents (including the State of Washington Department of Revenue) was a challenge to the Petitioner's employment of the Writ of Mandamus procedure versus the Declaratory Judgment process (Uniform Declaratory Judgment Act [UDJA])³. In the recent case, *City of Snoqualmie v. King County Executive Dow Constantine*, 187 Wn.2d

³ RCW 7.24.

289, 386 P.3d 279 (2016), the court considered a challenge to the constitutionality of a payment in lieu of tax (PILT), based upon an alleged conflict with the uniformity rule. Curiously, the Department of Revenue objected to the City's use declaratory judgment action, asserting that the City of Snoqualmie did not have standing to assert a challenge to the constitutional violation of the uniformity rule; that this is a claim that could only be brought by taxpayers themselves.⁴ However, in this case, even though objected to by the Respondents in the case now before the court, the City of Spokane brought an action seeking a Writ of Mandamus seeking to compel the appropriate (Respondent) officials to implement Spokane

⁴ The City Lacks Personal Or Representational Standing To Raise Its Constitutional Claims.

To bring this action under the Uniform Declaratory Judgment Act (UDJA), the City must have standing to raise its claims. *To-Go Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). The City's standing arguments fail to identify any interest or harm sufficient to provide it with standing in any capacity. Resp. at 6-17. Accordingly, this Court should reject the City's arguments and reverse the trial court's decision without reaching the merits of this case.

Brief of Appellant (in *Snoqualmie* case), DOR p. 1.

The City itself lacks standing.

To have standing, the City must fall within the zone of interests that the challenged statute or constitutional provision protects or regulates. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004) (Grant County II). The City asserts that it meets this test because it is a "central participant" in the process for taxing property, and thus has a direct interest in the "fairness and constitutionality of that process." Resp. at 7. This assertion is merely a generalized interest that is insufficient to give the City standing.

Brief of Appellant (in *Snoqualmie* case), DOR p.2.

ordinance C-35231 which would provide certain disabled or low-income citizens with a real property tax exemption. *City of Spokane v. Horton*, 196 Wn. App. At 85.

However, different than whether the City of Spokane *could have brought* a declaratory judgment action, amicus respectfully submits that surely the City of Spokane should be entitled to bring a Writ of Mandamus when it seeks to compel the performance of an act which the law especially enjoins as a duty.⁵

There should be no question as to the fact that the County Assessor and the County Treasurer, as well as the state Department of Revenue would be involved in the assessment, collection and distribution of city real property taxes, and where exemptions exist, they would be involved in that as well, assessing, collecting and distributing real property tax monies in conformity therewith.

If the Respondents argue, as they seem to have done, that the City of Spokane should have brought a declaratory judgment action rather than seeking a writ of mandamus, that is not

⁵ 7.16.160. Grounds for granting writ

It may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.

consistent with the language of either chapter 7.24 RCW or chapter 7.16 RCW. For that matter, one of the prerequisites for a Writ of Mandamus is that there not be another plain, speedy and adequate remedy available.⁶

Assuming that the City of Spokane could have brought a Declaratory Judgment action against the Respondents, the result could have been to accomplish essentially the same thing that could have been accomplished through a Writ of Mandamus. However neither chapter 7.16 nor chapter 7.24 RCW are worded in a way that precludes the use of one over the other. And, again, when the city of Spokane was seeking to compel the Respondent officials to take action in connection with the Spokane ordinance, that fits precisely into the purposes for a Writ of Mandamus.

E. Respondents Do Not Have Authority to Veto the City Ordinance.

Revised Code of Washington 84.36.383 creates property tax exemptions that require maintenance of property tax rolls indistinguishable from those to implement the City of Spokane's ordinance at issue. Consequently, the Respondents' arguments regarding the burden imposed by the City of Spokane is without

⁶ 7.16.170. Absence of remedy at law required--Affidavit

merit. Respondents seek to be absolved of the very duties they exist to discharge. Furthermore, Respondents' argument essentially seeks to veto a duly enacted ordinance in contravention of the Washington constitution's separation of powers.

Article XI of Washington's constitution vests certain powers in counties, and cities and towns. Those powers are exercised by locally-elected officials. Art. XI Sec. 4. If there is disapproval or defect with an ordinance enacted by the City of Spokane City Council, the redress is with the voters, not the Respondents. Respondents have usurped the power of the voters. It is the role of this Court to correct the decision of the Court of Appeals and return the evaluation of the City's Ordinance to the city's voters.

F. An Exemption From a Levy Does Not Defeat Uniformity.

This Court has recently rejected a broad application of the uniformity requirements of article VII, section 1. In *City of Snoqualmie v. King County Executive Dow Constantine*, the Supreme Court rejected the application of the uniformity requirements to a payment in lieu of tax (PILT), even though it applied to real property, because it was not a property tax. 187

The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon

Wn. 2d 289, 307, 386 P.3d 279 (2016). The effect of the Court's holding in *City of Snoqualmie* is that the uniformity requirements of article VII, section 1, apply only to the taxation of real property. The City of Spokane's ordinance at issue is not a real property tax. Instead, it is a mechanism by which the City of Spokane City Council provides assistance to the poor and infirm, as authorized by Article VIII, Section 7.

G. This Case Involves a Matter of State-wide Interest.

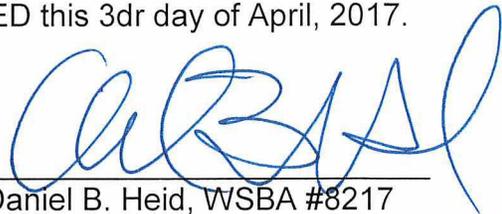
The Supreme Court serves to resolve matters that involve "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). Here, the validity and implementation of the City of Spokane's ordinance affects cities and towns throughout the state. Whether the subject is school funding, public transportation, affordable housing, access to internet, public health, or combating homelessness, cities and towns across the state have undertaken policies, including taxes and exemptions therefrom, that are jeopardized by the Court of Appeals' decision. This Court should reverse the decision of the Court of Appeals and affirm the decision of the superior court.

affidavit on the application of the party beneficially interested.

V. CONCLUSION.

For all the reasons set forth herein and set forth in the pleadings of the State, WSAMA respectfully requests that this Court reversed the ruling of the Court of Appeals.

RESPECTFULLY SUBMITTED this 3dr day of April, 2017.



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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

JUDITH MURRAY, and DARREN
ROBISON,

Respondents

Cause No. 92930-1

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 3rd day of April, 2017, I caused the Amicus Curiae Motion and Brief of the Washington State Association of Municipal Attorneys to be served on the attorneys of record herein, to the following physical and e-mail addresses, with postage pre-paid via U.S. Mail:

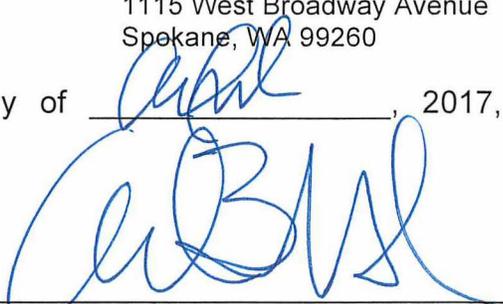
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