

No. 93788-5

IN THE SUPREME COURT
STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation,

Petitioner,

v.

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

and

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

Respondents.

SUPPLEMENTAL BRIEF OF PETITIONER CITY OF SPOKANE

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Petitioner City of Spokane (“City”), through counsel, submits the following supplemental brief pursuant to RAP 13.7(d).

I. INTRODUCTION

The City of Spokane enjoys “all powers of taxation” available under the Constitution. RCW 35A.11.020. The City exercised those powers in 2015 by enacting an ordinance (the “Ordinance”) that grants a partial property tax exemption to senior citizens, disabled veterans and other low-income taxpayers. The Ordinance is a local exemption to a local property tax; it does not affect taxes assessed at the state or county levels. The Ordinance was modeled on state law to ensure that persons who qualify for the state property tax exemption under RCW 84.36.381 would also qualify for the City’s local exemption.

The Ordinance was a proper exercise of the City’s constitutional and statutory authority. Contrary to Respondents’ assertions, Article VII, Section 9 does not require municipal taxes to be perfectly uniform. Under this Court’s longstanding precedent, the uniformity requirement must yield to minor deviations that ensure an equitable distribution of the tax burden and that promote “the general welfare of the people.” *Town of Tekoa v. Reilly*, 47 Wash. 202, 208 (1907). Exempting senior citizens, disabled veterans and other low-income taxpayers—the same people who receive an identical exemption at the state level—unquestionably serves

that purpose. The Court should reverse the decision below and remand to the trial court for reinstatement of the writ of mandamus compelling Respondents Horton and Chase to implement the Ordinance.

II. STATEMENT OF THE CASE

The City respectfully refers the Court to the Statement of the Case set forth in its Petition for Review filed on October 24, 2016.

III. STATEMENT OF THE ISSUES

1. Whether granting a local property tax exemption to senior citizens, disabled veterans and other low-income property owners who receive an identical exemption at the state level was a proper exercise of the City's authority under Article VII, Section 9 and RCW 35A.11.020.

2. Whether the trial court erred in issuing a writ of mandamus compelling Respondents Horton and Chase to implement the City's local exemption.

IV. ARGUMENT

A. The City's local property tax exemption is constitutional under *Town of Tekoa v. Reilly*.

1. Under *Tekoa*, cities may grant local exemptions to local taxes in order to achieve an equitable distribution of the tax burden.

The decision in *Town of Tekoa v. Reilly*, 47 Wash. 202 (1907), controls the outcome of this appeal. *Tekoa* holds that cities may grant exemptions to local taxes in order to achieve an equitable distribution of

the tax burden. *Id.* at 205-09. In particular, the case explains that local exemptions, when “consistent with the general welfare of the people,” do not violate the requirement in Article VII, Section 9 that municipal taxes must be “uniform in respect to persons and property.” *Id.* at 208. *Tekoa* thus forecloses Respondents’ argument that Article VII, Section 9 requires perfect mathematical uniformity.

The plaintiff in *Tekoa* challenged a local street poll tax, arguing that an exemption granted to women and men under age 21 rendered the tax non-uniform in violation of Article VII, Section 9. *Id.* at 203-04. The Court began its analysis by noting that the Constitution was “not the beginning of law” in Washington. *Id.* at 206. For decades prior to its adoption, the Court noted, the territorial Legislature had allowed cities to assess local taxes—and grant local exemptions—under their city charters. *Id.* Had the framers of the Constitution intended to change the status quo by denying charter cities the right to grant exemptions, the Court reasoned, they surely would have said so expressly:

Are all these charter provisions to be held for naught, simply because the Constitution contains the general altruistic declaration that taxes shall be uniform with respect to persons and property? Had the framers of the Constitution been dissatisfied with the existing order of things, would we not expect to find some more satisfactory evidence of their discontent?

Id. at 206-07. Finding no evidence that Article VII, Section 9 was intended to change the status quo, the Court upheld the challenged exemption. *Id.* at 208-09.

The application of *Tekoa* is clear. Under Article VII, Section 9, “absolute equality is not to be expected.” *Id.* at 208 (citation omitted). Local taxes need not be “as nearly equal as mathematical calculation can make them,” but merely “*as nearly equal as is consistent with the general welfare of the people, and an equitable distribution of the public burdens.*” *Id.* (emphasis added). Simply put, Article VII, Section 9 “does not require theoretical equality at the expense of substantial equity.” *Id.* In ratifying the Constitution, Washingtonians “did not propose to send the tax gatherer to the almshouse, the orphan asylum, or the nursery.” *Id.* Accordingly, granting exemptions that facilitate an equitable distribution of the tax burden does not violate Article VII, Section 9. *Id.*

There can be no dispute that the Ordinance is “consistent with the general welfare of the people,” and facilitates an “equitable distribution of the public burdens.” *Id.* Indeed, the Ordinance is merely an extension of the exemption granted by Article VII, Section 10 of the Constitution, as applied at the state level through RCW 84.36.381. Suffice it to say that extending an exemption expressly authorized by the Constitution can

hardly be inequitable. The Court should reverse the Court of Appeals and uphold the Ordinance as a proper exercise of the City’s authority under Article VII, Section 9.

2. Tekoa has not been overruled.

When this Court has announced a rule of law, it “will not—and should not—overrule it sub silentio.” *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280 (2009). A party claiming that a case has been overruled *sub silentio* carries a heavy burden. First, it must demonstrate that a later decision by this Court “directly contradicts the earlier rule of law.” *Id.* Second, it must make a clear showing that the original rule is “incorrect and harmful.” *Id.*

The rule of law announced in *Tekoa* is that cities may grant local tax exemptions when necessary to achieve an equitable distribution of the tax burden. *Tekoa*, 47 Wash. at 208. No subsequent decision has called that rule into question, much less “directly contradicted” it. While this Court has often said that uniformity is the “highest and most important of all requirements applicable to taxation,” *see, e.g., Boeing Co. v. King Cnty.*, 75 Wn.2d 160 (1969), it has never once retreated from the principle that the Constitution “does not require a theoretical equality at the expense of substantial equity.” *Tekoa*, 47 Wash. at 208. Having decisively

rejected strict mathematical uniformity as “Procrustean” and a “baseless dream,” it stands to reason that the Court would have been much more explicit in adopting such a standard in a later case.

Respondents argue that *Belas v. Kiga*, 135 Wn.2d 913 (1998), overruled *Tekoa* by implicitly endorsing strict mathematical uniformity. *Belas* did no such thing. Critically, *Belas* was not an exemption case. Rather, *Belas* involved a “value averaging” system that was designed to limit the amount by which property tax assessments could increase from year to year. *Belas*, 135 Wn.2d at 917-19. The Department of Revenue defended the system against a uniformity challenge on the ground that it was an “*exemption* from taxation and hence [did] not have to be uniform.” *Id.* at 929 (emphasis added).¹ The Court disagreed, concluding that value averaging was an “assessment scheme” rather than a tax exemption and therefore *was* required to comply with the uniformity requirement. *Id.* at 935. Nothing in *Belas* suggests a shift toward a “Procrustean standard” of uniformity where *exemptions* are concerned.

Finally, Respondents have failed to make a clear showing that *Tekoa*’s “substantial equity” standard is incorrect and harmful. Allowing

¹ Ironically, the argument that property tax exemptions are not subject to constitutional uniformity requirements is precisely the opposite of the position the Department of Revenue has taken in this case.

cities to grant exemptions to low-income taxpayers is perfectly reasonable in a just society.² As this Court so eloquently explained, municipal taxes need not be “as nearly equal as mathematical calculation can make them, but [rather] as nearly equal as is consistent with the general welfare of the people.” *Tekoa*, 47 Wash. at 208. Requiring perfect mathematical uniformity at the expense of the general welfare of the people is irrational and unjust. The Court should reaffirm that Article VII, Section 9 does not impose such a requirement.

B. RCW 35A.11.020 confers “all powers of taxation” available to the City under the Constitution, including the power to grant reasonable exemptions.

The City of Spokane is a first-class charter city organized under Title 35 RCW and its city charter. By virtue of being a first-class charter city, the City enjoys all powers granted to incorporated cities and towns under state law. RCW 35.22.195. The state law at issue in this case is RCW 35A.11.020, which broadly grants “all powers possible for a city or town to have under the Constitution of this state.” Included among those powers are “**all powers of taxation for local purposes**”:

² Indeed, the Constitution expressly endorses the concept of cities granting pecuniary benefits to their low-income citizens. *See* Const. art. VIII, § 7 (allowing cities to donate and lend money for “the necessary support of the poor and infirm”).

Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits *all powers of taxation for local purposes* except those which are *expressly preempted* by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

RCW 35A.11.020 (emphasis added).

Respondents interpret “all powers of taxation” to mean only the power to assess and collect taxes—and not the power to grant exemptions. In support of that position, Respondents advance two main arguments: (1) that the Constitution prohibits the Legislature from allowing cities to grant exemptions; and (2) in the alternative, that the Legislature did not express a clear intent to do so when it enacted RCW 35A.11.020. As explained below, these arguments are inconsistent with prior precedent, the plain language of the statute, and the liberal construction mandate set forth in RCW 35A.01.010.

1. The Constitution does not prohibit the Legislature from allowing cities to grant local exemptions to local taxes.

Respondents contend that exemptions are the exclusive province of the Legislature under the Constitution. In their view, the fact that Article VII, Section 1 refers to “the legislature” means that the Legislature—and only the Legislature—has the power to grant exemptions.

This argument is foreclosed by *Tekoa*. As explained above, *Tekoa* involved a challenge to a local street poll tax³ that exempted women and men under age 21. *Tekoa*, 47 Wash. at 203-04. The question presented was whether the exemption was a proper exercise of the Town of Tekoa’s authority under Article VII, Section 9. *Id.* This Court answered in the affirmative, holding that the town was well within its rights to grant the exemption, notwithstanding the uniformity requirement. *Id.* at 208-09. *Tekoa* thus confirms that that Article VII does not prohibit municipalities from granting local exemptions to local taxes.

2. The plain language of RCW 35A.11.020 confirms that the City enjoys “all powers of taxation” conferred by the Constitution, including the power to grant local exemptions.

RCW 35A.11.020 grants the City “all powers of taxation for local purposes[,] except those that are expressly preempted.” The plain meaning of this language is that the City has been given all powers relating to matters of local taxation, except those powers that the Legislature has specifically reserved for itself.

³ A poll tax is a “tax on the person without regard to his or her property, income, or employment.” 85 C.J.S. Taxation § 1801. Poll taxes and property taxes are subject to the same uniformity requirement imposed by Article VII, Section 9. *See* Const. art. VII, § 9 (municipal taxes “shall be uniform in respect to *persons and property*”) (emphasis added).

A court’s fundamental objective in interpreting a statute is to give effect to the Legislature’s intent. *Estate of Bunch v. McGraw Residential Ctr.*, 174 Wn.2d 425, 432 (2012). Legislative intent is gleaned from the plain language of the statute. *Id.* Plain meaning is determined by “the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Christensen v. Ellsworth*, 162 Wn.2d 365, 373 (2007). If the meaning of the statute is plain on its face, the court’s inquiry is complete. *Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Assocs., P.L.L.C.*, 168 Wn.2d 421, 433 (2010).

Interpreting “all powers of taxation” to mean only the power to *impose* taxes cannot be squared with the statute’s plain language. First, “all powers” is plural. The power to impose taxes—*i.e.*, to “assess and collect”—is a single power. *See* Const. art. XI, § 12 (“The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, *the power* to assess and collect taxes for such purposes.”) (emphasis added). The Legislature’s use of “all

powers” in plural form reflects a clear intent to convey both the power to assess and collect taxes and the power to exempt.

Second, had the Legislature intended to grant code cities only the power to “assess and collect” taxes as Respondents suggest, it could easily have said so. It bears noting that Article VII, Section 9 uses the phrase “assess and collect” to describe one of the powers that can be delegated to cities and towns. Had the Legislature intended to limit code cities to *imposing* taxes, without also conveying the power to exempt, it stands to reason that it would have used the phrase “assess and collect” rather than “all powers of taxation.” Indeed, the fact that the Legislature used much broader language is clear evidence that it did not intend to restrict code cities to assessing and collecting taxes.

Third, had the Legislature intended to deny code cities the power to grant exemptions, it could have expressly reserved that power to itself. For example, it could have granted code cities “all powers of taxation, except the power to exempt.” Or, more to the point, it could have included Chapter 84.36 RCW, which deals with property tax exemptions, among the list of statutes that RCW 35A.11.020 identifies as expressly preempting a city’s taxation powers. Indeed, the omission of Chapter 84.36 RCW from this list gives rise to an inference that the Legislature *did*

intend to allow cities to grant exemptions. *See Ellensburg Cement Prods., Inc. v. Kittitas Cnty.*, 179 Wn.2d 737, 750 (2014) (under the maxim of *unius est exclusio alterius*, when a statute “specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature”).

Fourth, the all-encompassing grant of “all powers of taxation” must be contrasted with the much narrower grants of authority given to other local government entities. For example, second-class cities are only authorized to “provide for the *assessment, levying and collecting* of taxes on real and personal property.” RCW 35.23.440(46) (emphasis added). Towns are only authorized to “*levy and collect* annually a property tax.” RCW 35.27.370(8) (emphasis added). Unclassified cities are likewise only permitted to “*levy and collect*” a property tax. RCW 35.30.010(3) (emphasis added). Fire protection districts can only “*levy and enforce* the collection of assessments and special taxes.” RCW 52.12.021 (emphasis added). Port districts are only authorized to “*levy and collect* assessments upon property.” RCW 53.08.010 (emphasis added). Public utility districts may only “*levy . . . an annual tax on all taxable property within the district.*” RCW 54.16.080 (emphasis added).

“It is well settled that where the Legislature uses certain language in one instance but different, dissimilar language in another, a difference in legislative intent is presumed.” *Millay v. Cam*, 135 Wn.2d 193, 202 (1998). The examples above illustrate that the Legislature knows how to grant only the power to assess and collect property taxes when that is what it intends. Had the Legislature intended to restrict code cities to imposing taxes, without conveying the authority to exempt, it would have used the words “levy and collect” as it had done in virtually every other statute. When compared to its sister statutes, RCW 35A.11.020’s broad grant of “all powers of taxation” is powerful evidence that the Legislature intended to convey each and every taxation power available under the Constitution.

In the final analysis, RCW 35A.11.020 means exactly what it says: that code cities may exercise “all powers of taxation” available under the Constitution. By using this broad language, the Legislature intended to convey not only the power to impose taxes, but also the power to grant reasonable exemptions. That result is perfectly consistent with the rule recognized in other states. *See, e.g., Betts v. Zeller*, 263 A.2d 290, 296 (Del. 1970) (“Necessarily implied in the broad delegation of taxing power was the power to determine . . . the amount of taxes to be raised, the rate of taxation, and all other necessary and essential elements of the power to

tax, including the power to carve out reasonable and proper exemptions as will best promote the public welfare.”) (emphasis added). The Court should uphold the City’s authority to grant a local exemption under the plain language of the statute.

3. Even if the Court concludes that “all powers of taxation” is ambiguous, it must construe the statute liberally to include all powers available to the City under the Constitution.

For the reasons explained above, the plain language of RCW 35A.11.020 forecloses any argument that the Legislature meant to deny code cities the power to grant exemptions. But even if the Court were to conclude that the statute is ambiguous on that point, the outcome would be the same under the liberal construction rule set forth in RCW 35A.01.010.

By virtue of having adopted a city charter, the City is entitled to all powers conferred by the Legislature in Title 35A RCW. RCW 35.22.195. These are “the broadest powers available under the Constitution.” *City of Bellevue v. Painter*, 58 Wn. App. 839, 843 (1990). By statute, legislative grants of authority under Title 35A RCW must be construed as broadly as possible, subject only to the restrictions imposed by the Constitution itself:

The purpose and policy of this title is to confer upon two optional classes of cities created hereby *the broadest powers of local self-government consistent with the Constitution of this state*. Any specific enumeration of municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power contained in this title, and any

such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title. *All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality.*

RCW 35A.01.010 (emphasis added).

This liberal construction mandate defeats Respondents' argument that RCW 35A.11.020 conveys something less than what the Constitution allows. The statute must be construed to convey each and every power of taxation available under the Constitution, including the power to exempt, without any independent restrictions imposed by the Legislature.

C. The writ of mandamus compelling Respondents Horton and Chase to implement the Ordinance was properly granted.

A writ of mandamus is an equitable remedy that “compel[s] the performance of an act which the law especially enjoins as a duty resulting from an office.” RCW 7.16.160. A party seeking a writ of mandamus must demonstrate the following: (1) that the opposing party is subject to a clear duty to act; (2) that it has no plain, speedy and adequate remedy at law; and (3) that it has beneficial interest in compelling performance of the duty. *Eugster v. City of Spokane*, 118 Wn. App. 383, 402 (2003).

After thoroughly considering the evidence, the trial court found all three elements satisfied and issued a writ compelling Respondents Horton

and Chase to implement the Ordinance. Division III then vacated the writ on appeal, holding that Respondents could not be compelled to implement an ordinance that it had declared unconstitutional. *City of Spokane v. Horton*, 196 Wn. App. 85, 89, 93 (2016). Division III did not separately review the trial court’s finding that the elements of the City’s mandamus claim had been satisfied.

“Writs of mandamus are subject to two separate standards of review, depending on the question reviewed.” *Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wn.2d 635, 648-49 (2013). Whether an official is subject to a clear duty to act is a question of law that is reviewed de novo. *Id.* A finding that a petitioner has no plain, speedy and adequate remedy at law is a case-specific decision that is reviewed for abuse of discretion. *Id.* A finding that the petitioner is beneficially interested is likewise reviewed for abuse of discretion.

1. Respondents Horton and Chase, as the ex officio collectors of city property taxes, have a clear duty to implement the Ordinance.

A writ of mandamus may only be issued to compel performance of a “ministerial” duty. For a duty to qualify as ministerial, it must “leave nothing to the exercise of discretion or judgment.” *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 599 (2010); *see also Brown v. Owen*, 165 Wn.2d 706, 725 n.10 (2009) (duty must be performed with “such

precision and certainty” as to leave nothing to the officer’s discretion or judgment).

Critically, the City cannot collect property taxes on its own; it must rely on Respondents to perform that function. Respondents are charged by statute as the “ex officio” collectors of city taxes. RCW 36.29.100. They must collect city taxes in the same manner that they collect all other taxes. RCW 36.29.130. It is well-established that Respondents are “subordinate ministerial officers” in the performance of this duty. *State ex rel. Godfrey v. Turner*, 113 Wash. 214, 218-19 (1920). They must simply “collect[] taxes as they are certified”—nothing more, nothing less. *Id.* at 219.

As explained in *Turner*, collecting city taxes is the epitome of a purely ministerial function. County assessors and county treasurers are not permitted to exercise discretion in the performance of this duty. As “subordinate ministerial officers,” their sworn duty is simply to “collect the amount of taxes shown by the certificate roll in [their] hands, placed there by the duly constituted authorities.” *Id.* at 223; *see also State ex rel. Mason Cnty. Logging Co. v. Wiley*, 177 Wash. 65, 75 (1934) (issuing writ of mandamus compelling county assessor and treasurer to perform the “ministerial” function of applying reduction in property tax rates for reforestation lands).

Respondents breached their duty to implement the Ordinance. They had no authority to consider its legality, much less to declare it unconstitutional. *Turner*, 113 Wash. at 219, 223. The writ of mandamus compelling Respondents to perform their ministerial duty as the ex officio collectors of the City's taxes was properly issued under *Turner*.

2. The trial court did not abuse its discretion in finding that the City had no adequate remedy at law and that it is beneficially interested.

The trial court did not abuse its discretion in finding that the City lacked an adequate remedy at law. As that court properly recognized, a declaratory judgment would not have been an adequate remedy because it would have put the burden on the City to prove the constitutionality of its own legislation. That result would have flown in the face of the well-established principle that city ordinances are presumptively constitutional. *See Commonwealth Title Ins. Co. v. City of Tacoma*, 81 Wn.2d 391, 395 (1972); *Weden v. San Juan Cty.*, 135 Wn.2d 678, 690 (1998); *Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 804 (2001).

It also bears noting that DOR fervently resisted being joined as a party in the trial court. Rather than defending its interests as a necessary party, DOR anointed itself an "interested party" and submitted briefing in an "amicus curiae" capacity. As the trial court recognized, this strategy

was calculated to avoid being bound by any ruling the court might issue vis-à-vis the constitutionality of the Ordinance. With DOR having taken that deliberately evasive position, a declaratory judgment would not have been sufficient; DOR could have (and likely would have) continued to insist that Respondents Horton and Chase not implement the Ordinance.

The trial court was also correct in finding that the City could not have “appealed” to the Department of Revenue under the Administrative Procedure Act. The City was a stranger to the dialogue between DOR and Respondents Horton and Chase; it did not request that DOR review the Ordinance, and it was not afforded an opportunity to be heard. There was, in short, no “appeal” to be taken.

Finally, the trial court did not abuse its discretion in finding that the City was a beneficially interested party. By refusing to implement the Ordinance, Respondents Horton and Chase exercised a *de facto* veto over the City’s duly-enacted legislation. As the trial court recognized, forcing the City to stand on the sidelines hoping that a taxpayer might stand up for its right to govern would be absurd. The City clearly has a beneficial interest in ensuring that its legislation is properly implemented.

V. CONCLUSION

The City respectfully requests that the Court reverse the Court of Appeals' decision and remand the case to the trial court for reinstatement of the writ of mandamus compelling Respondents Horton and Chase to implement the Ordinance.

RESPECTFULLY SUBMITTED this 14th day of April, 2017.

WITHERSPOON BRAJCICH McPHEE, PLLC

By

A handwritten signature in blue ink, appearing to be "Laura D. McAloon", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Veronica J. Clayton, hereby certify that a true and correct copy of the foregoing was served by the method indicated below to the following this 14th day of April, 2017.

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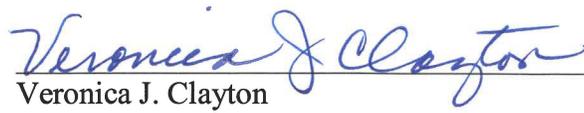
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<input type="checkbox"/> TELECOPY (FAX) TO:	Spokane, WA 99201-3333
<input checked="" type="checkbox"/> EMAIL TO:	
ESchoedel@spokanecity.org	

<input checked="" type="checkbox"/> U.S. MAIL	Robert Ferguson
<input type="checkbox"/> HAND DELIVERED	Callie A. Castillo
<input type="checkbox"/> OVERNIGHT MAIL	Andrew Krawczyk
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