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IN THE SUPREME COURT  
THE STATE OF WASHINGTON

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CITY OF SPOKANE, a municipal corporation,

Appellant,

v.

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

and

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

Respondents.

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SPOKANE COUNTY'S RESPONSE TO  
BRIEF OF AMICUS CURIAE WASHINGTON STATE  
ASSOCIATIONS OF MUNICIPAL ATTORNEYS

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## I. INTRODUCTION

The Respondents are Vicki Horton, the Spokane County Assessor, and Rob Chase, the Spokane County Treasurer (hereinafter collectively referred to as “Spokane County”). Respondents submit this brief in response to the Brief of Amicus Curiae, Washington State Association of Municipal Attorneys (“WSAMA”). In addition to the arguments set forth below, Spokane County directs this Court to its Supplemental Brief filed April 14, 2017, which discusses the issues before this Court in greater detail.

## II. ARGUMENT

### A. TOWN OF TEKOA V. REILLY DOES NOT ALLOW THE CITY’S ORDINANCE

The application of *Town of Tekoa v. Reilly*, 47 Wn. 2d 202, 91 P. 769 (1907) to the present circumstances is discussed at length in Spokane County’s briefing before the Court of Appeals and this Court, and is reasserted herein.

### B. A PRESUMPTION OF VALIDITY DOES NOT ALLOW A VIOLATION OF THE WASHINGTON CONSTITUTION OR THE GENERAL LAW

Citing *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 566, 29 P.3d 709 (2001), WSAMA first asserts that Article XI, § 10 of the Washington Constitution allows a City to “exercise broad legislative powers” and that

Article XI § 11 allows the broad exercise of police powers. This authority, however, is limited by both the general laws and by the Constitution itself.

Article XI, § 10 reads, in part,

... and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws. Any city containing a population of ten thousand inhabitants, or more, shall be permitted to frame a charter for its own government, *consistent with and subject to the Constitution and laws of this state* ...

Wash. Const. art. XI, § 10 (emphasis added).

Article XI, § 11 states “Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Wash. Const. art. XI, § 11.

*Heinsma* determined that a City’s extension of health care benefits to domestic partners and children of employees was within this general grant of authority and consistent with the legislative meaning of “dependent” found in RCW 41.04.180. *Heinsma* clearly recognizes the limits to such power, specifically stating:

“...a first class city may, without sanction from the legislature, legislate regarding any local subject matter. However, this power ends when the legislature adopts a law concerning a particular interest, unless the legislature has left room for concurrent jurisdiction. When the state's interest is paramount or joint with the city's interest, the

city may not enact ordinances affecting the interest unless it has delegated authority.”

*Id.* at 560, 29 P.3d 709 (emphasis added). Spokane County is not contesting that the City has broad authority under its general incorporation or police powers (Article XI, §§ 10 and 11); however, the authority to exempt property from taxation is inconsistent with the Washington Constitution, specifically Article VII, §§ 1, 9, and 10. In addition, the Constitution is clear that the *Legislature* is the body which is empowered to create property tax exemptions, and that body has exercised this authority by the adoption of chapter 84.36 RCW. *See id.* Neither the Constitution nor any legislative enactment delegates this tax exemption authority to cities.<sup>1</sup> Moreover, the City’s Ordinance adversely affects the State’s paramount interest in assuring the statewide uniformity of property taxes. *See State ex rel. Barlow v. Kinnear*, 70 Wn.2d 482, 485-86, 423 P.2d 937 (1967).

WSAMA also cites *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 643, 771 P.2d 711 (1989). The dispositive issue in *Sofie* was the right to a jury trial under Article I, § 21 of the Constitution; *Sofie* does not discuss any powers or rights held by a municipality at issue here. *See id.* In fact, *Sofie* reiterates the Court’s hesitation to question the judgment of the

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<sup>1</sup> The Brief of Amicus Curiae is silent as to the City’s assertion that such authority could be found in RCW 35A.11.020.

Legislature. *See Sofie*, 112 Wn.2d at 643. Here, the Legislature retained the sole authority to grant property tax exemptions.

Additionally, WSAMA cites *State v. Melcher*, 33 Wn. App. 357, 655 P.2d 1169 (1982) in support of the constitutionality of the City's Ordinance. This criminal case is inapposite here; the criminal defendant in *Melcher* challenged the constitutionality of the State's DUI statutes. *Id.* The Court of Appeals dismissed this challenge, noting the DUI statute was implemented for the general health, safety, and welfare of the public. *Id.* Here, the City is substituting its authority for that of the Legislature, an act contrary to both the Constitution and general law.

### **C. MANDAMUS IS NOT AN APPROPRIATE REMEDY**

WSAMA asserts that the availability of a declaratory judgment does not preclude the mandamus action before the Court, relying upon the language of the two remedies set forth in chapters 7.16 and 7.24 RCW. The prerequisite for issuance of an order of mandamus is the existence of a clear duty to act. *Brown v. Owen*, 165 Wn.2d 706, 724, 206 P.3d 310 (2009). WSAMA's assertion that the duty to act was clear ignores the directive issued by the DOR instructing the County not to implement the Ordinance and the complexity of Spokane County's obligations under chapter 84.36 RCW. *See* CP 124-125. In accordance with the DOR's directive, it did not implement the Ordinance. The City

instituted the action attempting to compel the County to act in contravention of the DOR directive, the Constitution, and the specific legislative acts concerning the duties of the County Assessor and Treasurer discussed in more detail in Spokane County's Supplemental Brief.

The DOR's authority to issue directives on issues affecting the application of property tax laws, and the County's duty to obey such directives, is "clear and express." *State ex rel. Barlow v. Kinnear*, 70 Wn.2d at 485-86; *Ridder v. Dept. of Revenue*, 43 Wn.App. 21, 28, 714 P.2d 717 (1986).

Mandamus will also not lie "when a party has at least one viable legal remedy." *See Zapotocky v. Dalton*, 166 Wn. App. 697, 706, 271 P.3d 326 (2012). It is a limited and extraordinary legal remedy. *See Eugster v. City of Spokane*, 118 Wn. App. 383, 402, 76 P.3d 741 (2003).

When reviewing cases in which both a writ of mandamus and declaratory judgment action were brought, courts generally grant relief under one theory based on the facts and circumstances of the particular case. *See Scannell v. City of Seattle*, 97 Wn.2d 701, 703, 648 P.2d 435 (1982); *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 243 P.3d 919 (2010); *Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994); *Crown Cascade v. O'Neal*, 100 Wn.2d 256, 668 P.2d 585 (1983).

There is ample authority supporting Spokane County's contention that a declaratory judgment was not only available to the City, but was a more appropriate remedy to seek than a writ of mandamus.

Initially, the City actually sought redress under the Uniform Declaratory Judgment Act (UDJA) but abandoned that attempt, amending its initial pleadings to seek a writ of mandamus. CP 61-93. It's unclear as to why a declaratory judgment suddenly became a non-viable remedy to the City. What is clear is that a declaratory judgment was, initially, the City's preferred remedy and an adequate remedy at law.

Bringing a declaratory judgment is appropriate in these circumstances and does not require the City prove the constitutionality of its ordinance, as is argued. In *City of Bellevue v. State*, 92 Wn.2d 717, 600 P.2d 1268 (1979) the City of Bellevue filed an action for a declaratory judgment to determine whether a city resolution allowing city officials and employees reimbursement for restaurant tips, paid while on city business, violated the state constitution. This case clearly demonstrates a declaratory judgment action is an appropriate, viable (in *City of Bellevue* the City prevailed) and available remedy when dealing with a question of constitutionality of a city ordinance or resolution. See also *City of Seattle v. Egan*, 179 Wn. App. 333, 317 P.3d 568 (2014) (City action for declaratory judgment to determine whether police

officers' "dash-cam videos" fell within statutory exemption from disclosure under Public Records Act.); *City of Yakima v. Taxpayers of Yakima*, 45 Wn.2d 824, 278 P.2d 777 (1954) (City brought declaratory action to determine whether certain general obligation bonds of the city would if issued be valid, and that such bonds could lawfully be redeemed by moneys derived from annual tax levies of the city in addition to an in excess of the statutory and constitutional forty-mill limitation.”).

Further, as discussed in detail in Spokane County’s Supplemental Brief, a declaratory judgment is more particularly suited to answer questions of constitutionality than is a writ of mandamus action. *See Seattle School Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 490, 585 P.2d 71 (1978); *See Nolette v. Christianson*, 115 Wn.2d 594, 604-606, 800 P.2d 359 (1990); *see also State ex rel. Distilled Spirits Institute, Inc. v. Kinnear*, 80 Wn.2d 175, 178, 492 P.2d 1012 (1972).

**D. THE ORDINANCE VIOLATES CONSTITUTIONALLY REQUIRED UNIFORMITY**

WSAMA incorrectly asserts that RCW 84.36.383 creates property tax exemptions that are maintained exactly as the City’s proposed exemption would be maintained. Not so. The Ordinance created an exemption that requires an entirely different maintenance schema than those exemptions created by the Legislature; it also creates a non-uniform

exemption. *See* DOR’s Supp. Br. at 7-9, 11-12. This is a burden on not only the County, but the State as well. *See id.* Additionally, the writ of mandamus specifically burdens Spokane County by requiring it to affirmatively apply the City’s exemption to qualifying property owners.

Finally, WSAMA essentially argues the City’s exemption is not subject to uniformity, citing *City of Snoqualmie v. King Cty. Executive Dow Constantine*, 187 Wn.2d 289, 386 P.3d 279 (2016) for this proposition. While *City of Snoqualmie* tends to establish the City has standing in order to bring an action in these circumstances – a point the County respectfully concedes – it does not establish that the exemption is not subject to the Constitution’s uniformity requirements. In fact, *City of Snoqualmie* specifically found the “tax” at issue (a payment in lieu of tax, or PILT) was not a tax at all. *See id.* While WSAMA attempts to creatively assert that the City’s exemption is not a tax but a “mechanism for assistance”, this argument is unpersuasive and unfounded. The City’s exemption is clearly subject to the uniformity requirements of the State Constitution.

**III. CONCLUSION**

Spokane County respectfully requests this Court affirm the decision of the Court of Appeals.

**RESPECTFULLY SUBMITTED** this 2nd day of May, 2017.

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**III. CONCLUSION**

Spokane County respectfully requests this Court affirm the decision of the Court of Appeals.

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**DECLARATION OF SERVICE**

I, Kristie M. Miller, declare and say as follows:

1. I am a citizen of the United States and resident of the State of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein. My business address is 618 W. Riverside Ave., Ste. 210, Spokane, Washington 99201-5048, and telephone number is 509-747-9100.

2. On May 2, 2017, I caused to be served the forgoing on the individuals named below in the manner indicated.

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I declare under the penalty of perjury under the laws of the state of  
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Dated this 2nd day of May, 2017, at Spokane, Washington.

  
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