

NO. 93788-5

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation located in the County of
Spokane, State of Washington,

Appellant,

v.

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

and

THE STATE OF WASHINGTON, by and through the DEPARTMENT
OF REVENUE,

Respondents.

DEPARTMENT OF REVENUE'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

With explicit exceptions entrusted solely to the Legislature, the Washington Constitution mandates that property taxes be uniform for all real property within a taxing jurisdiction—regardless of whether the jurisdiction is statewide or local. Const. art. VII, §§ 1, 9, 10. The City of Spokane’s Ordinance, which exempts certain disadvantaged persons from paying “all or a portion of the amount of excess and regular voted real property taxes,” had a laudable purpose but is nevertheless unconstitutional because it violates uniformity.

The City contends that this violation is of “no moment,” arguing that the Legislature has extended its own exemption power in article VII, section 10 of the Washington Constitution to all code cities like Spokane. Not so. The Legislature plainly granted cities only such local taxing authority as the Washington Constitution allows and that conforms to the state property tax system as a whole. RCW 35A.11.020, .030; RCW 35A.84.010. And the Legislature certainly did not exempt cities from that which the Constitution explicitly requires—that municipal taxes “be uniform in respect to persons and property within the jurisdiction of the body levying the same.” Const. art. VII, § 9.

The Court of Appeals correctly found the City of Spokane’s Ordinance to be invalid. This Court should too.

II. STATEMENT OF THE ISSUE

Article VII, section 9 of the Washington Constitution allows the Legislature to grant authority to municipal corporations to impose taxes,

but “such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.” The Legislature granted code cities all powers of taxation “within constitutional limitations,” RCW 35A.11.020, and “in the manner provided” by state law. RCW 35A.11.030.

Does the City of Spokane’s property tax exemption ordinance comply with these constitutional and statutory provisions when the ordinance imposes non-uniform tax rates and assessment values on like property, and no constitutional or legislative enactment grants cities such exemption authority?

III. STATEMENT OF THE CASE

A. An Overview of Washington’s Property Tax System

Article VII of the Washington Constitution places restrictions on the assessment and taxation of real property. Section 1 provides:

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: Provided, That the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both. Such property as the legislature may by general laws provide shall be exempt from taxation.

Const. art. VII, § 1 (emphases added).¹ In other words, unless explicitly exempted from taxation by the Legislature, all real estate constitutes one class that must be taxed uniformly at the same rate (e.g. \$1.00 per \$1,000

¹ This provision also exempts certain property from taxation including that of the United States, the state, counties, school districts, and other municipal corporations. Const. art. VII, § 1.

value) and the same ratio of market value to assessed value (e.g. assessed at 100 percent of market value). Const. art. VII, § 1; *Boeing Co. v. King County*, 75 Wn.2d 160, 165, 449 P.2d 404 (1969).

Section 2 limits the aggregate of all annual property tax levies on a particular property to no more than one percent of the true and fair value of that property. Const. art. VII, § 2. This provision also allows taxing districts to impose additional levies above the regular amount if voters in the taxing district approve under specific conditions. *Id.* Therefore, the combined total property taxes for “regular” levies that may be imposed on a particular property from all taxing jurisdictions is limited to one percent, but a supermajority of voters in particular taxing districts may approve additional “excess” levies for specific purposes.

The Washington Constitution also sets forth an explicit exception from uniformity:

Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax exemption shall be allowed as to real property:

The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners. The legislature may place such restrictions and conditions upon the granting of such relief as it shall deem proper. Such restrictions and conditions may include, but are not limited to, the limiting of the relief to those property owners below a specific level of income and those fulfilling certain minimum residential requirements.

Const. art. VII, § 10 (emphases added). The Legislature enabled this relief for retired property owners by establishing a property tax exemption subject to restrictions and conditions. *See* RCW 84.36.379-.389. Specifically, the Legislature exempted qualifying persons from paying excess levies, and allowed the regular property tax rate to be less than full market value of their primary residence depending on their income. RCW 84.36.381(5)(a)-(b), (6); WAC 458-16A-140(2). The exemption applies to all property taxes, regardless of whether they are imposed by the State or by a local taxing jurisdiction. *See generally* RCW 84.36.381.

Unlike the Legislature, local jurisdictions such as cities do not have inherent taxing authority. *State ex rel. Tacoma Sch. Dist. 10 v. Kelly*, 176 Wash. 689, 690, 30 P.2d 638 (1934). Instead, their powers derive from legislative grant as specified by the Washington Constitution. *Id.* Article VII, section 9 speaks of this required legislative grant, and in addition, mandates that city taxes on persons and property be uniform:

The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. *For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.*

Const. art. VII, § 9 (emphases added). Similarly, article XI, section 12 emphasizes the Legislature's role in establishing local taxing authority:

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.*

Const. art. XI, § 12 (emphases added).

The Legislature granted code cities property tax authority through a number of statutory provisions. RCW 35A.11.020 provides that, “[w]ithin 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” In turn, RCW 35A.11.030 provides that such “powers of taxation” may be exercised “in the manner provided” by RCW 35A and the general laws of the state, i.e., those laws applicable or available to all cities and towns. RCW 35A.11.030. The Legislature also determined that taxation of property in code cities is to be governed by a number of general provisions of the law, including RCW 84.36 relating to property taxation and exemptions therefrom, and RCW 84.52, relating to tax levying. RCW 35A.84.010.

Accordingly, all code cities, including the City of Spokane, must follow the state system when imposing property taxes. RCW 35A.84.010. Under this system, cities and other taxing districts may annually impose regular property tax levies on real and personal property within their geographic limits to meet their budgeted government operations. RCW 84.36.005; RCW 84.52.010-.020.² Many constitutional and statutory

² See the Dep’t of Revenue’s Court of Appeals brief at pages 6-11 for a detailed explanation of how the state’s property system works in practice.

constraints limit these jurisdictions' taxing powers including, among others, the constitutional one percent limit, constitutional uniformity, a "statutory dollar rate limit," and a "statutory aggregate dollar rate limit." *See, e.g.*, Const. art. VII, §§ 1, 2, 9; RCW 84.52.043, .050; *see also* WAC 458-19-005 (defining these terms).

Taxing districts are also restricted in their ability to increase their regular levies from year to year. RCW 84.55.010. Under this "levy lid," taxing districts may levy only as much as in the preceding year (accounting for inflation), plus an amount for new construction and improvements to property. *Id.* If a taxing district wants to exceed the yearly limitation, it may do so by seeking "levy-lid lift" approval from a majority of its voters. RCW 84.55.050. While a levy-lid lift allows the taxing district to increase its levy amount, it does not relieve the taxing district from any of the other statutory or constitutional limitations imposed on regular levies. RCW 84.55.050.

Because of the various constitutional and statutory aggregate limitations, the Legislature has also established a hierarchy whereby certain jurisdictions' tax levies can take precedence over others. RCW 84.52.010. For instance, if the combined rate of regular property tax levies by senior districts, such as the state, counties, and cities, exceeds one percent of the true and fair value of property, then junior districts' rates, such as fire or flood districts, must be reduced until the limitation is met. RCW 84.52.010. Therefore, any jurisdiction that increases its regular

levy tax rate may impact the ability of lower jurisdictions to fund government services.

It is against this constitutional and statutory framework that the present case arose.

B. The City of Spokane's Property Tax Exemption Program

In 2004, the City of Spokane's City Council obtained voter approval for a \$117 million street bond to pay for street projects. CP at 27. The City initially planned to complete the street projects over ten years and then retire the street bond under a 20-year retirement levy, a type of excess levy. CP at 27.; *see also* RCW 84.52.056. In 2014, the City completed the planned projects, but still had ten more years to pay off its remaining \$84 million bond debt and interest. City leaders proposed a new strategy to pay off the bonds, as well as to extend the City's street program for another eleven years. *Id.* Specifically, the City proposed swapping out the \$0.57 per \$1,000 assessed value imposed under the City's excess bond levy with an equivalent \$0.57 increase in the City's regular property tax rate. *Id.* To do this, the City needed to raise its regular property tax levy by more than the statutory levy lid. *See, e.g.,* RCW 84.55.010, .050. It therefore referred a levy-lid lift proposition to its voters. CP at 26-27. "Proposition One" permitted the City Council to pass a budget that was higher than the levy lid would have allowed, and to use the additional revenue to pay off the bond debt and to pay for new street and road projects. CP at 26-27.

When the City referred Proposition One to voters, it promised that approving the measure would not cause a net increase in their total property taxes. CP at 27. The City, however, did not account for the measure's effects on retired persons who qualified for the State's relief program under RCW 84.36.381 (e.g., low-income seniors, disabled veterans, and others). As previously noted, the Legislature exempted persons qualifying for this program from paying excess levies, but required them to pay regular property taxes at a reduced rate. RCW 84.36.381(5)(a)-(b), (6); WAC 458-16A-140(2). Consequently, when the City proposed increasing the regular property tax rate by \$0.57 per \$1,000, these individuals' total property taxes would also increase. Supp. Decl. of Hodgson at 4 (Div. III, Oct. 16, 2016) (total increase of \$14.22 to \$63.45 depending on income).

City voters approved Proposition One on November 4, 2014. CP at 26, 64. Two months later, the City realized that, despite its intentions, local property taxes had in fact increased for those individuals qualifying for the state exemption. CP at 28, 64-65, 75, 164, 306. Attempting to rectify the situation, the City Council passed emergency Ordinance C-35231. CP at 110-23. The Ordinance sought to enact a City property tax exemption program that would exempt qualifying individuals from the voter-approved portion of the City's regular levy. CP at 110-23. While ostensibly modeled after the State's program, the Ordinance used different qualifying income rates, redefined "excess levies" to include

voter approved levy-lid lifts, and created its own appeals process. *See* CP at 114-15, 121-22.

The City then asked the Spokane County Assessor and Treasurer to recalculate and reprint tax statements to reflect the exemption provided by the Ordinance. CP at 67, 126-27. Unsure about the validity of the City's exemption program, the County officials contacted the Department of Revenue, which supervises the administration of state property tax laws. CP at 149, 256; *see also* RCW 84.08.010. The Department advised the County not to implement the City's Ordinance, having concluded that the exemption was not authorized under state law and violated uniformity requirements. CP at 124-25.

C. Proceedings Below

While the County officials awaited the Department's guidance, the City filed this action seeking to prevent the County from mailing the original tax statements to County residents. CP at 3-8. After the Department issued its letter, the City amended its complaint and sought a writ of mandamus compelling the County Assessor and Treasurer to implement the Ordinance. CP at 96-109. The superior court found the Ordinance constitutional and issued a writ expressly requiring the County Assessor to apply different tax rates for the City's voted and non-voted regular property tax levies and to apply the exemption. CP at 485-88. Both the Department and the County officials appealed. CP at 434-35, 469-71.

The Court of Appeals reversed the superior court, concluding that the Ordinance violated article VII, section 9's uniformity requirement and

that RCW 35A.11.020 only granted code cities property tax authority to the extent it falls “within constitutional limitations.” *City of Spokane v. Horton*, 196 Wn. App. 85, 92, 380 P.3d 1278 (2016).

IV. ARGUMENT

The City of Spokane’s property tax exemption does not withstand constitutional scrutiny. It undisputedly violates the uniformity requirements of article VII, sections 1 and 9 by imposing unequal rates and disparate assessment ratios on real property located within the City’s taxing jurisdiction. Nevertheless, the City contends that the Legislature granted it the power to impose non-uniform taxes in RCW 35A.11.020. This argument belies the plain text of the statute and the Constitution.

The Legislature granted code cities only such taxing authority as is allowed under the Constitution and in conformity with state law. RCW 35A.11.020, .030. While article VII, section 10 empowers the Legislature to impose non-uniform property taxes in a limited, specific circumstance, no provision of law permits local authorities to do the same. To do so would authorize that which the Constitution forbids—a non-uniform local property tax system. Const. art. VII, § 9. The Court of Appeals correctly held the City’s Ordinance to be unconstitutional because it violates uniformity. This Court should conclude the same.³

³ The County asks this Court to review the superior court’s mandamus order. The Court need not reach that issue because the Ordinance is plainly invalid, and therefore the County had no duty to act. *See* Dep’t of Revenue’s COA Br. at 43-44. The Department understands that the County will address this issue in its supplemental brief.

A. The City’s Ordinance Fails the Constitutional Requirement of Uniformity

Washington has long held the uniformity requirements in article VII, to be the “highest and most important of all requirements applicable to taxation under our system.” *Inter Island Tel. Co. v. San Juan County*, 125 Wn.2d 332, 334, 883 P.2d 1380 (1994) (quoting *Savage v. Pierce County*, 68 Wash. 623, 625, 123 P. 1088 (1912)).⁴ The premise behind this constitutional requirement is the belief that the burdens of taxation should be equally distributed amongst all property owners. *Bond v. Burrows*, 103 Wn. 2d 153, 157, 690 P.2d 1168 (1984). Uniformity requires both equality in the tax rate and equality in valuing the property taxed. *Belas v. Kigas*, 135 Wn.2d 913, 923, 959 P.2d 1037 (1998). If either requirement is lacking, there will be “a lack of uniformity in the tax burden” and the provision enabling such discrepancy must fail. *Id.* (quoting *Boeing Co.*, 75 Wn.2d at 165).

Here, the City Ordinance lacks both. First, the Ordinance imposes two different tax rates on real property within the taxing jurisdiction. CP at 111-12, 402. Taxpayers in the City would either (1) pay the full regular levy rate, as increased by voter-approval of Proposition One; or (2) pay a preferred rate calculated by taking the full regular rate and subtracting the amount of the levy-lid lift, as set by the Ordinance. CP at

⁴ In fact, some form of uniformity requirement has been in place since the Territorial Organic Act, ch. 90, § 6, 10 Stat. 172 (1853), which stated that “all taxes shall be equal and uniform; and no distinctions shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof.” See Alfred Harsch, *The Washington Tax System—How It Grew*, 39 Wash. L. Rev. 944 (1964).

111-12, 402. Second, the Ordinance creates disparities in the assessed value of real property within City limits. CP at 114-16, 402-03. Some taxpayer-owned property would be assessed at one hundred percent of the property's true and fair value; while other taxpayer-owned property would be assessed at a reduced value pursuant to the Ordinance. CP at 114-16, 402-03.⁵

Accordingly, because the Ordinance establishes both unequal rates and unequal assessment valuations, it causes non-uniform distribution of the tax burden in the jurisdiction and must fail under article VII, sections 1 and 9.

B. No Authority Permits the City to Enact a Non-Uniform Property Tax

Despite undisputedly creating a non-uniform property tax, the City nevertheless contends this is of “no moment” because it claims the Legislature granted it “all powers” of taxation, including the power to exempt property, as a first class charter city. *See* Pet. at 14; City Resp. Br. at 23. But no authority, including the three upon which the City primarily relies—RCW 35A.11.020, article VII, section 10 of the Washington Constitution, and *City of Tekoa v. Reilly*, 47 Wash. 202, 91 P. 769 (1907)—allows *any* local jurisdiction to violate uniformity by taxing

⁵ For instance, under the Ordinance, qualifying property owners with a combined disposable income of less than \$25,000 would have their property value reduced by the greater of \$60,000 or 60 percent of fair market value. CP at 114-15. Qualifying property owners with a combined disposable income between \$25,000 and \$30,000 would have their property value reduced by the greater of \$50,000 or 35 percent of fair market value. CP at 114-15.

some property differently than other property located within the same jurisdiction.

1. The Legislature Expressly Limited Code Cities' Property Tax Powers

Municipal corporations have no inherent right to levy taxes. *State ex rel. King County v. Tax Comm'n of Wash.*, 174 Wash. 668, 671, 26 P.2d 80 (1933). Instead, the Constitution, through article VII, section 9 and article XI, section 12, permits the Legislature to vest municipal authorities with the power to tax for local purposes, subject to such conditions and limitations as the Constitution or the legislature may prescribe. *Carkoren v. Williams*, 76 Wn.2d 617, 627, 458 P.2d 280 (1969). “It is undoubtedly the right of the Legislature, therefore, when vesting municipal corporations with the power to tax, to regulate and safeguard the exercise of this power and to insure the uniformity in respect to persons and property required by article 7, § 9.” *King County*, 174 Wash. at 672. The Legislature exercised this authority when it prescribed explicit limitations and conditions on code cities’ powers to tax property. *See, e.g.*, RCW 35A.11.020, .030; RCW 35A.84.

The City nevertheless contends that, through RCW 35A.11.020, the Legislature granted it plenary taxation authority.⁶ *See* Pet. at 10; City Resp. Br. at 12-18. This argument ignores the plain language of the statute

⁶ Throughout its briefing, the City implies that as a “first class charter city” it has more extensive taxing powers than other cities, but this is not so. RCW 35A.11.020 applies to all code cities. If the City of Spokane has authority to enact a non-uniform property tax program under this provision, then so do all 194 code cities in the State.

and is contrary to the legal framework for local property taxation. It ignores the unambiguous text of RCW 35A.11.020, granting cities all of the powers of taxation *permitted by the Washington Constitution*, not all general taxation powers:

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 (emphases added). The City cannot rely on a statute purportedly giving it authority to impose a non-uniform tax where the Constitution explicitly forbids it. *See State ex rel. Schillberg v. Safeway Stores, Inc.*, 75 Wn.2d 339, 349, 450 P.2d 949 (1969) (the Legislature may not authorize indirectly what the Constitution forbids directly). And, in any event, the statute explicitly states that cities' authority is only that "within constitutional limits." RCW 35A.11.020.

Also, the City focuses on RCW 35A.11.020 in isolation, ignoring the numerous other statutory limitations and conditions for local property taxes. *Cf. State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn. 2d 226, 245-46, 88 P.3d 375 (2004) (statutes should be read to achieve a "harmonious total statutory scheme"). These include requiring code cities to exercise their powers of taxation in the manner provided by RCW 35A and those laws applicable to all cities or towns. RCW 35A.11.030. Indeed, the Legislature explicitly mandated that "taxation of property in code cities" be governed by the numerous provisions of state law addressing

property taxes. RCW 35A.84.010. None of those provisions authorize, or even contemplate, cities enacting their own non-uniform property tax structure. *See generally* RCW 84.36 (exemptions); RCW 84.40 (listing property for assessment); RCW 84.52 (levying taxes). Instead, all cities must levy and assess taxes in conformity with the statutory framework of the state’s property tax system. To authorize otherwise would invite disunity and fractionalize an already complex system. *Cf. Boeing Co.*, 75 Wn.2d at 165 (recognizing need for supervisory power “to ensure equality of taxation and uniformity of administration in a tax structure badly fractionalized” by different county units) (internal quotation marks removed).

The Legislature provided code cities, such as the City of Spokane, with only those taxing powers that are consistent with the Washington Constitution and the state property tax system as a whole. The City’s suggestion that the Legislature granted it powers broader than this is wrong.

2. The Legislature Did Not Extend Article VII, § 10 Exemption Authority to the City

The City also argues that, through RCW 35A.11.020, it enjoys the same exemption authority as the Legislature under article VII, section 10. *See Pet.* at 9-11; *City Resp. Br.* at 23-24. This argument too ignores the plain language of the law and distorts the meaning of the Constitution.

While the Constitution generally requires taxes on real property to be uniform, it also provides limited exceptions. *See Belas*, 135 Wn.2d at

930. The Constitution provides that *the Legislature* may by general law exempt property from taxation. Const. art. VII, § 1. It also provides that *the Legislature* is released from uniformity requirements to the extent *it* grants retired property owners relief from property taxes due to income limitations. Const. art. VII, § 10; *Belas*, 135 Wn.2d at 930-31. Nothing in these constitutional provisions suggests that any government entity other than the Legislature may exercise such exemption power.

The City, however, contends this is a “myopic reading” of article VII and that the “[b]are references to the Legislature” do not prevent the Legislature from delegating its exemption power. *See* Pet. at 11-12. In essence, the City asks this Court to write out the “notwithstanding” clause and the “the Legislature” in article VII, section 10, and ignore entirely the uniformity requirement in article VII, section 9. But this interpretation ignores words in the Constitution and violates fundamental principles of constitutional construction. *Chlopeck Fish Co. v. City of Seattle*, 64 Wash. 315, 322-23, 117 P. 232 (1911) (fundamental principles of constitutional construction require giving effect and meaning to all of the words used, if possible).

The “notwithstanding” phrase found in section 10 explicitly acknowledges that *but for* that constitutional amendment, the Legislature could not otherwise enact non-uniform property taxes for retired persons. Const., art. VII, § 10. And, as discussed, section 9 explicitly requires that all local property taxes be uniform with no such exception as is found in section 10. Const., art. VII, § 9. This Court should decline the City’s

request to ignore the Constitution’s plain language and create an exception to uniformity for municipalities where none exists. *State ex rel. O’Connell v. Port of Seattle*, 65 Wn. 2d 801, 806, 399 P.2d 623 (1965) (courts may not engraft an exception to a constitutional provision where none is expressed).

Even if the constitutional provisions were not plain, the City’s argument that the Legislature intended to extend its own article VII, section 10 uniformity exception to code cities through RCW 35A.11.020 conflicts with this Court’s precedent. This Court has long held that it will only find a property tax exemption “where the Legislature has authorized such by clear and explicit language.” *Belas*, 135 Wn.2d at 933 (quoting *Pac. Nw. Annual Conf. of the United Methodist Church v. Walla Walla County*, 82 Wn.2d 138, 140-41, 508 P.2d 1361 (1973)). In rejecting the idea that exemptions can be extended by judicial construction, the Court noted the purpose behind such strict interpretation:

It is widely recognized that tax exemptions create inequities in the distribution of the tax burden . . . Not only does the granting of exemptions result in an unequal distribution of the tax burden, but it also reduces the amount of revenue available to the governing body through reduction in the tax base.

Belas, 135 Wn.2d at 933 (quoting same). Here, nothing in RCW 35A.11.020 suggests that the Legislature granted cities such exemption power. To conclude that it does, would authorize all cities to unevenly distribute the tax burdens at will, causing downstream loss of tax revenue to other jurisdictions. *See* RCW 84.52.010. If the Legislature

intended these effects, it would have clearly stated so and accounted for it in the state's property tax structure. It did not. Instead, the Legislature made its intent in RCW 35A.11.020 quite clear: when exercising their taxing authority, code cities remain subject to all constitutional limitations, including the requirements that property taxes be uniform.

3. The City's Reliance on *Town of Tekoa* is Misplaced

Finally, ignoring years of this Court's precedent requiring strict uniformity for property taxes, the City points to the 1907 case of *Town of Tekoa v. Reilly* for the proposition that this Court has sanctioned municipalities' non-compliance with constitutional uniformity for altruistic purposes. *See* Pet. 5-9, 12-14. But *Tekoa* concerned a municipal street poll tax, which the Legislature authorized to be imposed on all males over the age of 21. *Tekoa*, 47 Wash. at 203-04. The Court, applying then-accepted notions about tax equality, concluded 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." *Id.* at 209. It then sanctioned *the Legislature's* classification of the subjects of the tax, i.e. every male over 21, as "reasonable and proper." *Id.*

While the City would like to extend these notions to its property tax exemption here, they simply do not apply.⁷ First, *Tekoa* addressed a tax specifically authorized by the Legislature, not a municipality. Second, this Court has repeatedly distinguished property taxes from other types of

⁷ *See also* Dep't of Revenue's Supplemental Brief in the Court of Appeals for an in-depth discussion of why *Tekoa* does not apply.

taxes, *Covell v. City of Seattle*, 127 Wn.2d 874, 890, 905 P.2d 324 (1995), and repeatedly applied the Constitution's uniformity provisions for property taxes. *See, e.g., Belas*, 135 Wn.2d at 937. Regardless of whether *Tekoa* might remain good law for purposes of examining a poll tax, this Court has made quite clear that property taxes must be uniform. Indeed, 91 years after *Tekoa*, this Court explicitly rejected the idea that a "rational basis for classification" could satisfy the uniformity requirements for property taxes under article VII of the Washington Constitution. *Belas*, 135 Wn.2d at 941-42.

V. CONCLUSION

The Department of Revenue respectfully requests that the Court of Appeals decision be affirmed.

RESPECTFULLY SUBMITTED this 14th day of April 2017.

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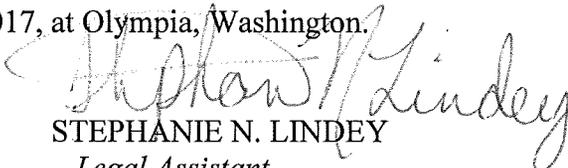
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