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No. 98824-2

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent

v.

STEVEN G. LONG,

Petitioner

MEMORANDUM OF AMICI CURIAE IN SUPPORT OF REVIEW

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of Amici are set forth in the Motion for Leave to File Memorandum of Amici Curiae in Support of Review.

II. COURT OF APPEALS DECISION

This brief is filed in support of Petitioner Long's Petition for Review of the published Court of Appeals decision in *City of Seattle v. Long*, 13 Wn. App. 2d 709, issued on June 29, 2020.

III. ISSUES WARRANTING GRANT OF REVIEW

In concluding that neither the impoundment nor the associated costs were unconstitutionally excessive, the Court of Appeals failed to make any inquiry into Mr. Long's personal financial circumstances and did not properly consider that the vehicle was his home and only shelter. There are at least two issues warranting grant of review: (1) Is the impoundment of a vehicle home and imposition of associated fees excessive punishment under the Eighth Amendment's Excessive Fines Clause?; and (2) Must a court consider individual financial circumstances when conducting a proportionality analysis under the Eighth Amendment's Excessive Fines Clause?

IV. STATEMENT OF THE CASE

Amici adopt Petitioner's Statement of the Case.

V. REASONS WHY REVIEW SHOULD BE GRANTED

A. Laws That Punish People for Living in Their Vehicles Despite a Lack of Reasonable Alternatives During a Growing Housing Crisis Are a Matter of Substantial Public Interest

Washington State is in the midst of an affordable housing crisis that has left thousands of residents without access to a safe and stable place to live and is projected to significantly worsen with the COVID-19 pandemic. Michal Grinstein-Weiss et al., *Housing Hardships reach unprecedented heights during the COVID-19 Pandemic*, Brookings Inst. (June 1, 2020), <https://www.brookings.edu/blog/up-front/2020/06/01/housing-hardships-reach-unprecedented-heights-during-the-covid-19-pandemic/>. Priced out of the housing market, many people have exceedingly limited options for meeting their basic shelter needs. Emergency shelters are not available in every community and, even where shelters exist, they are generally full and routinely turn people away at the front door.¹ Thus, many people are left with no realistic option but to attempt to shelter themselves outside, often in public space.

¹ In addition to waiting lists for admission, emergency shelters often have admission criteria that exclude people based on sex, family composition, lack of identification documents, age, religion, and disability. Suzanne Skinner & Sara Rankin, *Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter* (2016), <https://ssrn.com/abstract=2776421>.

More than 11,751 people are homeless in Seattle/King County. All Home, *Count Us In: 2020 Seattle/King County Point-in-Time Count of Individuals Experiencing Homelessness* 5 (2020), <https://regionalthomelessssystem.org/wp-content/uploads/2020/06/Count-Us-In-2020-Final.pdf>. More than 2,748 of those individuals, like Mr. Long, seek refuge in their vehicles as a last resort to avoid sleeping on the streets in tents, or without shelter at all.² *Id.* at 7. People of color are disproportionately represented among people living in vehicles in King County. *Id.* at 10, 71. Native Americans like Mr. Long, for example, comprise 16 percent of the people living in vehicles, despite making up only one percent of the general population. *Id.*

Vehicles are the best shelter option for many people who cannot afford traditional housing. Graham Pruss & Karen Cheng, *The “Punitive Push” on Mobile Homes*, Volume 22, Number 2, *Cityscape: A Journal of Policy Development and Research* 87 (2020), https://www.researchgate.net/publication/343427677_The_Punitive_Push_on_Mobile_Homes. For example, vehicles offer protection from outdoor elements during daytime and nighttime hours; allow people to stay

² A 2001 study using administrative data collected from homeless service providers estimated that the annual number of homeless individuals is 2.5 to 10.2 times greater than can be obtained using a Point-in-Time count. *Don’t Count on It*, Nat’l Law Ctr. on Homelessness & Poverty (2017), <https://nlchp.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf>.

together with their families, property, and beloved pets; and offer security, privacy, and social-distancing that tents and crowded shelters do not.

However, as unsheltered homelessness has grown, so have laws that punish unsheltered people for surviving in public space. Nat'l Law Ctr. On Homelessness & Poverty, *Housing Not Handcuffs* 37 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>. Punitive approaches to homelessness are ineffective at reducing homelessness, expensive to implement, and harmful to public health and safety. *Id.* at 15, 63. Yet, they are increasingly enacted and enforced by governments to punish homeless people's survival in public space, remove them from public view, and deter them from remaining in or returning to the community. *Id.*; see also Sara Rankin, *Civilly Criminalizing Homelessness*, Harv. C.R.-C.L. L. Rev. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3677531.

Laws restricting living in and/or parking vehicle homes, such as Seattle Municipal Code 11.72.440 (72-hour Rule) are the fastest growing category of "criminalization" policy in the nation. *Housing Not Handcuffs*, *supra*, at 14. They are most commonly enforced as civil infractions which, "impose conditions, fines, or fees that are virtually impossible for impoverished homeless people to meet[.]" Rankin, *supra*, at 11. Adding to

the problem is the City's discretionary use of towing and impoundment of vehicle homes as punishment for minor parking violations. See W. Ctr. on Law & Poverty, *Towed Into Debt: How Towing Practices in California Punish Poor People* 5 (2019), <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>.

Because of these punitive policies, people who live in vehicles are at significant risk of losing their vehicle homes, resulting in a cascade of harms. Graham & Cheng, *supra*, at 89; see also W. Ctr., *supra*, at 16-21. Without access to the vehicle home, as was the case with Mr. Long, people who had access to stable, if rudimentary, shelter are forced to live outside, where the health and safety risks attendant to homelessness are significantly greater than in vehicles. *Housing Not Handcuffs*, *supra*, at 69. Along with the loss of shelter, impoundment of vehicle homes affects homeless people's livelihood, employment opportunities, and earning potential. *Id.* at 16-17. Fines, fees, and forfeitures, such as impoundments of vehicle homes, also drive homeless people deeper into cycles of poverty, debt, and criminal justice involvement. Rankin, *supra*, at 11. When faced with excessive fines and fees, homeless people are forced to make impossible choices between meeting basic needs and making payments to avoid further penalties. "Regardless of how 'small' a fine might appear to people with means, most homeless people cannot pay

such fees. . . . [N]onpayment unleashes a pandora’s box of other brutal consequences, ranging from civil contempt, wage garnishment, lien impositions, exponential increases in financial penalties, driver’s license suspensions, and even incarceration.” *Id.* at 19.

The serious harms that the growing number of people who live in vehicles suffer from enforcement of the 72-Hour Rule establish a matter of substantial public interest warranting review.

B. A Significant Constitutional Question is Presented When a Homeless Individual’s Circumstances Are Not Considered in An Excessive Fines Analysis

The Eighth Amendment to the United States Constitution prohibits “excessive fines” and limits the government’s power to impose fines that are out of accord with the penal goals of retribution and deterrence and out of proportion to the crime committed. U.S. Const. amend. VIII; *Austin v. United States*, 509 U.S. 602, 609-10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993). When evaluating a claim under the Excessive Fines Clause, courts must determine whether the challenged “fines” constitute punishment and, if so, whether that punishment is excessive. *Tellevik v. Real Prop. Known as 6717 100th St. S.W. Located in Pierce Cty.*, 83 Wn. App. 366, 372 (1996). The determinative inquiry is whether these civil sanctions “at least partially serve[] the traditional punitive functions of retribution and deterrence.” *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020

WL 42909227, at *10 (D. Or. July 22, 2020) (citing *Austin*, 509 U.S. at 610). In *Blake*, the court noted that “all civil penalties serve some deterrent effect” in its review of civil penalties that, as here, are “intended to deter homeless individuals from residing in [the city.]” *Id.* at *10-11.

Here, Mr. Long was stripped of his vehicle home even though it was located on a gravel lot where it presented no apparent traffic or public safety problem and had not generated any complaints. The government then withheld Mr. Long’s vehicle home, rendering him shelterless, until he agreed to pay fines amounting to an entire month’s worth of income. Under these circumstances, and against the backdrop of punitive approaches to homelessness, it is clear that Mr. Long was penalized to deter him from living in a vehicle in the City of Seattle. As such, the impoundment of Mr. Long’s vehicle home and associated fines are penalties under the Excessive Fines Clause.

In evaluating excessiveness, “[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.” *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). A punitive fine or forfeiture violates the Eighth Amendment if it is “grossly disproportional to the gravity of a defendant’s offense.” *Id.*

Punishment of unsheltered people for life-sustaining conduct in public, when they lack reasonable alternatives, is inherently excessive and disproportionate to minor parking offenses and to the offense of necessary public survival. *See, e.g.* Rankin, *supra*, at 21; Blake, 2020 WL 42909227, at *10-11. Here, as punishment for Mr. Long’s minor parking violation, the City impounded Mr. Long’s home and work tools, charged him with unaffordable fines, and withheld his home and only shelter until he agreed to pay. The punishment suffered by Mr. Long is a grossly disproportionate penalty for a minor parking offense. The unanimous decision of the United States Supreme Court in *Timbs v. Indiana* supports this conclusion. *Timbs v. Indiana*, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019). Indeed, the *Timbs* decision calls into serious doubt the constitutionality of vehicle impoundment as punishment, even for felony crimes, when impoundment would deprive a person of their home and ability to earn a livelihood. *Id.*

The Excessive Fines Clause properly considers an individual’s financial circumstances in determining whether a fine, fee, or forfeiture, such as vehicle impoundment, is excessive because people of different means do not experience civil penalties in the same way. *See* Rankin, *supra*, at 19. Here, the appellate court failed to apply the appropriate proportionality analysis because it failed to consider Mr. Long’s individual financial circumstances.

By impounding Mr. Long's vehicle and withholding it until he paid associated fines, the City of Seattle deprived Mr. Long of his home. Homes are entitled to greater protection than other types of property due to "the harshness of taking the roof from over the head of a person, even a wrongdoer[.]" *United States v. 461 Shelby County Road*, 857 F. Supp. 935, 938-940 (N.D. Ala. 1994) (holding that forfeiture of home used for drug trafficking is an especially onerous punishment that violates the Eighth Amendment, and noting that "society already has more homeless people than it wants or can take care of, and this court is wary of adding . . . to the list of the homeless"); *see also United States v. Robinson*, 721 F. Supp. 1541, 1544 (D. R.I. 1989) (holding that forfeiture of criminal defendant's apartment and housing subsidy is an unconstitutionally excessive penalty where the order of forfeiture would be "a sentence of homelessness for the defendant and her three young children"). The interest in one's home is significantly greater than the City's interest in removing Mr. Long's vehicle from a location where it was not an obstruction and posed no safety threat. Because even temporary loss of Mr. Long's vehicle home is a grossly disproportionate penalty for the minor parking offense he committed, it is an excessive punishment in violation of the Eighth Amendment.

Moreover, the City's actions deprived Mr. Long of his ability to

earn a living. In *Bajakajian*, the U.S. Supreme Court examined the predecessors to the Excessive Fines Clause in the English Bill of Rights and the Magna Carta, which required that fines “be proportioned to the offense and that they should not deprive a wrongdoer of his livelihood.” 524 U.S. at 335. The requirement of proportionality to the individual’s financial circumstances was again emphasized in *Timbs* when the Court cited to Blackstone’s Commentaries on the Laws of England: “[N]o man shall have a larger amercement imposed upon him, than his personal circumstances or personal estate will bear” 139 S. Ct. at 688.

When Mr. Long’s vehicle home was impounded as punishment for violating a parking ordinance, he lost access to his shelter, clothing, and work tools; he had to miss several days of work and lost the ability to obtain higher paying work as a general laborer. Compounding this harm, Mr. Long was ordered to pay more than he could afford to regain access to his home and belongings. This deprivation is an excessive punishment.

VI. CONCLUSION

For these reasons, Amici ask this Court to grant Petitioner Long’s petition for review.

RESPECTFULLY SUBMITTED this 25 day of September, 2020.

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