No. 98824-2

SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent and Cross-Petitioner,

v.

STEVEN G. LONG,

Petitioner and Cross-Respondent

ON APPEAL FROM SEATTLE MUNICIPAL COURT
Honorable Karen Donahue

SUPPLEMENTAL BRIEF OF PETITIONER AND CROSS-RESPONDENT STEVEN G. LONG

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I. INTRODUCTION

Steven Long was punished for the civil infraction of parking for more than 72 hours in one spot. In reality he was punished for *living* in a vehicle.[1] Unable to afford an apartment, Long slept in the front seat of his GMC Sierra truck. CP 105, ¶¶1-3, CP 384:23-24. Because his only shelter was his truck, and because he was poor, the punishments imposed upon Long violated three different, but related, guarantees which protect against excessive fines, unreasonable seizures, and the loss of one's home.

Financial penalties can be excessive because they impose debts too large to bear, leave a person without sufficient funds to pay for the necessities of life, deprive a person of his home, or subject the person to peonage.[2] Some penalties that take the form of seizures can be constitutionally unreasonable when other alternatives exist or when the seizure lasts too long. Because homes provide shelter, they are afforded special protection against seizure and against being leveraged for unpaid debts. In this case, the seizure of Long's only shelter, and the imposition of financial obligations, constituted all three types of constitutional violation.

II. STATEMENT OF FACTS

On a rainy October night, Long, a 57 year old tribal member of the

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[1] Although the City has accused Long of asserting "a right to park" on public property, he has never made any such claim. As he said in his deposition, "I wasn't parking," CP 412:13-25. "I was living in it . . . I have nowhere to go and no place to shelter myself, my belongings, my livelihood, all my work that I do." & CP 414:1-16.

[2] "[A]n inability to pay off criminal debt means that the punishment imposed, even for very minor offenses, can effectively be perpetual. Desperate to avoid these repercussions, people go to extremes to pay. In an alarming number of cases people report having to forego basic necessities …." B. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 U.C.L.A. L. REV. 2, 8 (2018).

Flathead Nation, returned from a work shift and found that the City had towed his truck away. CP 105, ¶1; 108, ¶¶12-13. Long did not use the truck for transportation, he used it as his only home and shelter. CP 105, ¶3.[3] His clothes, work tools,[4] food, bedding, and cooking utensils were stored in it. *Id*. Long found an unused City lot close to "Peter's Place," a day center for the homeless where Long could shower and get food. CP 106, ¶5; CP 379:5-14. He parked in this lot because it was secluded and seldom traveled, there were no private homes on the block, and the nearby businesses had no objection to his presence. CP 106, ¶5; 380:3-222. He lived there for three months before his home was impounded. CP 381:13-15.

On October 5, police officers contacted Long, told him that he had to move the truck, and called for a Parking Enforcement Officer ("PEO"). CP 107, ¶8. Long told them that the truck was inoperable because it needed a repair, and that he lived in it and had no other home. *Id.*; CP 803. An officer made fun of Long's creation of a "patio" next to his truck.[5] The PEO tagged the truck with a notice that it had to be moved. CP 817. The PEO stated she *always* tags a vehicle that is violating the 72-hour ordinance and she *never* asks occupants if they are living in the vehicle.[6] CP 826-27.

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[3] He could not drive it because it needed a repair he could not afford and driving it even a short distance would further damage its transmission. CP 378:1-16; CP 106, ¶¶ 4, 10.

[4] Long, who gets work through agencies such as People Ready and Labor Works does plumbing, painting and construction work. CP 372:3-23. He kept drills, saws, ratchets, painting tools, ladders, a power washer and a small crane in his truck. CP 106, ¶3.

[5] Noting an elevated tarp next to the truck which shaded a portion of the ground Officer Burk commented to Officer Velling that Long's "truck was like his trailer and that [tarp] is his 'patio.'" Velling replied, "Oh cute. Nice. It would be such a boring life." Burk then said, "[Y]ou got a city that gives you everything you need. Why work?" CP 62-63, 84.

[6] "A. If I see a vehicle in violation, then I'm going to cite the vehicle for that particular

On October 12, Long went to work at Century Field where he had part time employment as a janitor. CP 108, ¶¶12-13. When he returned to his truck around midnight he discovered that his home had been impounded by Lincoln Towing ("Lincoln"), the City's contractor. *Id.*, ¶13. An intense storm was beginning and his truck contained bedding and clothing needed to stay warm. *Id.* Long tried to use a tarp to erect a shelter but strong winds made that impossible. *Id.*, ¶14. Around 3 a.m. he went to Peter's Place, but there were no available beds so he sat in a chair until morning. *Id.*, ¶¶16.

He missed work the next day and had the flu for a week. *Id.* Six days later he was able to access his truck briefly to get some warm clothes, but in the interim he had to buy new bedding. *Id.*, CP 108-09, ¶¶18, 26. He took no other items (his stove, cutlery, soap, towels, and toothbrush) because he had no way to safely store them. CP 106, ¶3; CP 108, ¶¶17-18.

Long could not get his truck back until he paid all accrued towing and storage fees, and with every passing day those storage fees kept rising.[7] Without his tools, during this period Long also could not do any skilled labor jobs. *Id.*, ¶¶ 19, 22, 27.

On October 12, Long requested a hearing to contest the impound but the hearing did not take place until November 2. *Id.*, CP 109, ¶19. For three

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infraction, period. Q. Period, every time? A. Yes." CP 824-25.

[7] State law gave the towing company a lien on the truck. RCW 46.55.140(1) (Appx. A). Under both State law (RCW 46.55.120(1)(f), Appx. B) and the municipal code (SMC 11.30.120(B), Appx. C), Long could not get his home out of impound without paying first. If he did not pay within fifteen days of a mailed redemption notice, the City was entitled to auction off his home. RCW 46.55.140(4), Appx. A); RCW 46.55.130(1) (Appx. D). Storage fees accrued at the rate of $27 per day. CP 536.

weeks, Long slept on the ground in the same spot where his truck had been for three months. CP 109, ¶22. At his impound hearing, Long twice told the magistrate the vehicle was his home. CP 490:8-15, 495:14-16. He also told the magistrate he had only $50 to his name. CP 502:19.[8] The magistrate ruled that the impound was proper, acknowledged it was Long's home, but made release of the truck contingent upon him signing a promissory note to the City for $547.12,[9] payable at the rate of $50 a month. CP 109, ¶¶19, 26; CP 500:8-14, CP 535. Long felt he had "no real choice but to agree" to prevent the sale of his home, which was scheduled for three days later. CP 117 (payment agreement);[10] CP 109, ¶¶ 19-20. He was able to get his home back on November 3, two days before it was scheduled to be sold. *Id.*, ¶20.

Long appealed, challenging both the impoundment and the financial obligations. The Court of Appeals agreed with Long that the City unlawfully held onto his home for 21 days and illegally threatened to auction his truck if he did not pay in violation of his homestead rights. The Court held that the City *could still* charge Long "for costs associated with the towing and impounding of" his parked truck, but that failing to give it back right away violated the Homestead Act. *City v. Long*, 13 Wn. App.2d

[8] At that time, Long earned between $300 and $600 and received $100 in tribal dividends per month, and he was trying to save enough money to be able to move into an apartment. CP 110, ¶24. Long had only about $25-50 in cash. CP 502, CP 110, ¶25.

[9] It is unclear how much of the $547.12 is for the towing and how much is for storage.

[10] The agreement carried other consequences if he fell behind in payments. CP 117.

709, 715, 467 P.3d 979 (2020).[11] The Court did not agree with Long's contention that the towing and storage fees constituted an excessive fine that violated the Eighth Amendment and art. 1, §14. *Id.* Finally, the Court declined to consider Long's contention that impoundment of his home was an unreasonable seizure which violated Wash. Const., art. 1, §7.

III. ARGUMENT

A. THE EXCESSIVE FINES CLAUSES

1. The purpose of the Excessive Fines Clause is to protect against fines that impoverish people.

"For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history." *Timbs v. Indiana*, 139 S.Ct. 682, 689 (2019). "The Excessive Fines Clause traces its venerable lineage back to at least 1215, when Magna Carta guaranteed that '[a] Freeman shall not be amerced[12] for a small fault, but after the manner of the fault," and requiring that fines "'be proportioned to the wrong' and 'not be so large as to deprive [an offender] of his livelihood.'" *Id.* at 687-88. Magna Carta limited abusive amercements "by requiring that one be amerced only for some genuine harm to the Crown; by requiring that the amount of the

[11] It is unclear what the Court meant by "impounding costs." Since these costs seem to be differentiated from "towing costs" it seems that the Court ruled that the City can impose both types of costs on Long. Long contends that requiring payment of any of the storage costs violated the Homestead Act, and that requiring payment of either towing or storage costs violates the Excessive Fines Clause and art. 1, §7 under the facts of this case.

[12] "Amercements were payments to the Crown, and were required of individuals … because of some act offensive to the Crown." *Timbs*, at 688 n.2, quoting *Browning-Ferris Industries v. Kelco Disposal*, 492 U.S. 257, 269 (1989). "Those acts ranged from what we today would consider minor criminal offenses, such as breach of the King's peace with force and arms, to 'civil' wrongs against the King, such as infringing 'a final accord' made in the King's court . . . The use of amercements was widespread; … most men in England could expect to be amerced at least once a year." *Id.* at 269-70.

amercement be proportioned to the wrong; by requiring that the amercement not be so large as to deprive him of his livelihood; and by requiring that the amount of the amercement be fixed by one's peers, sworn to amerce only in a proportionate amount." *Browning-Ferris*, at 271.[13]

Despite Magna Carta, imposition of excessive fines persisted. *Id.* at 688. *Browning-Ferris* at 267. The English Bill of Rights reaffirmed Magna Carta's prohibition against excessive Fines. *Timbs*, at 688.[14]

After the Civil War, southern states enacted Black Codes which included laws that imposed draconian fines for crimes such as vagrancy and other dubious offenses which newly freed slaves were often forced to pay off with involuntary labor. *Id.* at 688-89.[15] Debates over the resolution which eventually became the Fourteenth Amendment repeatedly mentioned the use of such fines to coerce involuntary labor. *Id.* By 1868, the constitutions of 35 of the 37 States expressly prohibited excessive fines. *Id.* at 688. The Washington Constitution's prohibition against excessive fines

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[13] Magna Carta applies in all Washington courts: "The provisions of the common law relating to the commission of crime and the punishment thereof ... shall supplement all penal statutes of this state ...." RCW 9A.04.060.

[14] The familiar language of Magna Carta's Amercement Clause was adopted in colonial charters such as the Pennsylvania Frame of Government, ART. XVIII (1682), and in the constitutions of eight of the original thirteen states. "The Eighth Amendment was based directly on Art. 1, §9 of the Virginia Declaration of Rights" which "adopted verbatim the language of the English Bill of Rights." *Solem v. Helm*, 463 U.S. 277, 285 n.10 (1983).

[15] *See* B. Gorod, & B. Frazelle, *Timbs v. Indiana: Mere Constitutional Housekeeping or the Timely Revival of a Critical Safeguard?*, 2019 CATO SUPREME COURT REV. 215, 222 ("southern governments used outlandish fines as a tool of oppression. The infliction of these unpayable fines supplied the pretext under which slavery conditions were reinstituted …."). The disproportionate impact of traffic and parking fines on people of color continues unabated today. *See* Sanchez & Kambhampati, *Driven Into Debt: How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy*, ProPublica Ill. (Feb. 27, 2018), https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy.

is set forth in art. 1, §14.

2. The prohibition against excessive fines applies to all punishments, whether denominated as criminal or civil, and all payments, whether made in cash or in kind.

The Excessive Fines Clause prohibits excessive punishments regardless of their label. *Austin v. United States*, 509 U.S. 602, 607-08 (1993). "The notion of punishment … cuts across the division between civil and criminal law." *Id.* at 610.[16] A civil sanction is punishment subject to the clause if it serves, even if only in part, either a retributive or a deterrent purpose. *Id*. Because forfeitures "historically have been understood, at least in part, as punishment," they are subject to the Clause. *Id.* at 618.

The courts below noted that SMC 11.72.440(E) explicitly states that impoundment is a "penalty"[17] for violation of the 72 hour law. Thus, impoundment is a punishment subject to the Excessive Fines Clause.[18]

3. The Court of Appeals erred by completely failing to consider the "gravity-of the-offense" factor.

The Court below initially recognized that the "touchstone" of the excessiveness inquiry is consideration of the relationship between the

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[16] The Government sought civil forfeiture of Austin's mobile home because he sold cocaine from it. The Court rejected the arguments that the Clause did not apply because the action was "civil." "Some provisions of the Bill of Rights are expressly limited to criminal cases. . . The text of the Eighth Amendment includes no [such] limitation." *Id.* at 607-08. "The Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *Id.* at 609-10.

[17] *See* CP 14:2-7 ("plain reading" of SMC 11.72.440(E) "supports Long's argument that impound is, at least in part, a penalty."). The law reads: "Vehicles in violation of this section are subject to impound as provided for in Chapter 11.30 SMC, ***in addition to any other penalty*** provided by law." (Emphasis added). See also CP 960:20-21 and 961:5-14.

[18] The Ninth Circuit recently "h[e]ld that the Excessive Fines Clause applies to municipal parking fines." *Pimentel v. Los Angeles*, 966 F.3d 934, 936 (9th Cir. 2020). The parking violation in that case was similar to Long's violation but unlike Long, Pimentel was not homeless and living in his car.

punishment imposed and "the gravity of the offense." 13 Wn. App.2d at 730, citing *Bajakajian*, 524 U.S. at 334. And yet the Court never analyzed the gravity of Long's "offense." Bajakajian's offense – failure to report the transportation of currency – was a felony. But "the harm [Bajakajian] caused was . . . minimal" since he merely deprived the Government of information. *Id.* at 323, 326. The "gravity" of Long's "offense" could not get any lower. His *civil* parking infraction carries a $44 fine and caused no harm at all. He was not parked in a residential neighborhood, he was not taking up a spot that could be used by any business customers, and his truck was not blocking anything. CP 66. In the words of Magna Carta, his "offense" caused no "genuine harm" at all. The Court of Appeals never considered the "gravity" of Long's offense" and never conducted any proportionality analysis. Instead, it purported to rely on *State v. Clark*, 124 Wn.2d 90, 875 P.2d 613 (1994), a case that did not mention the "gravity of the offense" factor because it was decided four years before *Bajakajian*.

4. The towing and storage fees are *not* entitled to a presumption of constitutionality.

Relying on *United States v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009), the Court of Appeals held that the impoundment of Long's truck and the fees imposed were not excessive because a presumption of constitutionality arises whenever "a legislative body" determines the value of a fine or forfeiture. But in this case, the fees were *not* set by a legislative body. They were set by a contract negotiated with Lincoln by the police department. CP 883-84. Thus, it was error to dispense with a proportionality

analysis and error to hold that the fees were presumptively constitutional.

5. Consideration of the offender's ability to pay is required.

When deciding whether the impoundment and the towing and storage fees were excessive, the Court below did not consider Long's personal financial circumstances or the fact that he was homeless. In the wake of *Timbs*, scholars have asked the same question now before this court: "Does a person's wealth and income (or lack thereof) bear on whether a fine is excessive?" And they have answered: "History suggests that the answer is yes."[19] Like Justice Ginsburg, they have noted the established principle of the common law that "no man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear …." *Timbs*, at 688, quoting 4 W. Blackstone, *Commentaries on the Laws of England* 372 (1769). *Accord Browning-Ferris*, 492 U.S. at 300 (O'Connor, J., concurring) (amount of a fine cannot be invariable because "what is ruin to one man's fortune, may be a matter of indifference to another's.") *Id.*[20]

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[19] B. Gorod, at 242-43. *Accord* R. Weiss, *The Forfeiture Forecast After Timbs: Cloudy With a Chance of Offender Ability to Pay*, 61 BOSTON COLL. L. REV. 3073, 3108 (Nov. 2020) (historical practices compel consideration of an offender's ability to pay); J. Feinzig, *A Unified Constitutional View of Financial Punishment*, 38 YALE L. & POL'Y REV. 444, 448-49 (Spring 2020) (logic of Supreme Court's opinions "highly suggests" that consideration of ability to pay is constitutionally required); N. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 HASTINGS CONST. LAW Q. 833, 834 (2013); D. Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause*, 11 HARV. L. & P'CY REV. 541, 580-81 (Summer 2017) ("ability to pay — must be a part of the Excessive Fines analysis"); B. Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277, 335 (2014) ("saving defendants from persistent impoverishment was a guiding principle reaching back to the days of Magna Carta and the English Bill of Rights.").

[20] *See, e.g.* B. Colgan, *supra*, 65 UCLA L. REV. at 21 ("It is likely true that for many, and perhaps most people who receive parking tickets in Los Angeles, $63 is an

Literary characters may espouse the principle that "the law in all its majestic equality, forbids the rich as well as the poor to sleep under bridges."[21] But the Excessive Fines Clause prohibits government from treating the rich and poor in this simplistically "equal" way. As Justice Thomas has noted, historical evidence strongly supports the conclusion that the Framers believed that the Excessive Fines Clause required courts to consider the offender's ability to pay.[22]

Timbs also suggests that consideration of the offender's financial resources is constitutionally required. In a post-*Timbs* decision, the Colorado Supreme Court said that the Court's repeated references to Magna Carta and Blackstone constituted "persuasive evidence" that fines that exceed what a person can pay are excessive and "that ability to pay is an appropriate element of the Excessive Fines Clause gross disproportionality analysis." *Colorado Dept. Labor v. Dami*, 442 P.3d 94, 101 & 103 (2019).

Even before *Timbs*, the appellate courts of many states[23] and a

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inconvenience; but for those who have limited means, it can be a significant part of their monthly budget and in fact operates as a 'heavy' fine.").

[21] See Anatole France, *The Red Lily* (1894).

[22] He noted that eight years after the Constitution was ratified, the Virginia Supreme Court explained that the Excessive Fines Clause of the Virginia Declaration of Rights, "embodied *the traditional legal understanding* that any 'fine or amercement ought to be according to the degree of the fault and *estate* of the defendant.'" 139 S.Ct. at 695 (Thomas, J., concurring), citing *Jones v. Commonwealth*, 5 Va. 555, 557 (1799) (italics added). There were several defendants in *Jones*. One state court justice noted that it would be "the highest injustice" to oblige the defendant of "poorer circumstances" to pay the same amount as that of his wealthier co-defendants. *Jones*, at 558 Opinion of Carrington, J.). As noted earlier, the Eighth Amendment Excessive Fines Clause was based on the Excessive Fines Clause in Virginia's Declaration of Rights. *Solem*, 463 U.S. at 285 n. 10).

[23] *People v. Cowan*, 47 Cal. App.5th 32, 46-47, 260 Cal. Rptr.3d 505 (2020), *rev. granted* 466 P.3d 843 (2020); *State v. Goodenow*, 251 Or. App. 139, 282 P.3d 8, 17 (2012)); *State v. Staub*, 182 La. 1040, 162 So. 766, 768 (La. 1935); *People ex rel. Lockyer v. R.J.*

number of federal circuit courts[24] explicitly held that courts must consider the defendant's ability to pay. Moreover, a number of state courts have held that failure to consider the offender's ability to pay is a violation of their state constitutional prohibition against excessive fines.[25] This Court had "repeatedly recognized" that art. 1, §14 often provides "greater protection than the Eighth Amendment." *State v. Gregory*, 192 Wn.2d 1, 15, 427 P.3d 621 (2018). This Court "reserved for another day" the question of whether the fine imposed violated art. 1, §14. *Clark*, 124 Wn.2d at 102, n.7. This Court could hold that the impoundment of Long's truck violated art.1, §14 and thus avoid the Eighth Amendment issue.

6. Recoupment of the costs of enforcement is not automatically permissible.

The Court of Appeals also held that requiring Long to "repay the City's agent for the costs of towing [his] vehicle based on [the] contract" entered into by the Seattle Police Department and Lincoln Towing, was "not excessive." 13 Wn. App.2d at 731. The only authority for this statement was a single sentence plucked out of this Court's opinion in *Clark*: "The Government is entitled to rough remedial justice." 124 Wn.2d at 103. Unfortunately, the Court below read this sentence as a *per se* rule that

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Reynolds Tobacco, 37 Cal.4th 707, 124 P.3d 408, 421 (2005).

[24] *See, e.g., United States v. Levesque*, 546 F.3d 78, 83-84 (1st Cir. 2008); *United States v. Lippert*, 148 F.3d 974, 978 (8th Cir. 1998); *People v. Ingham*, 115 Misc.2d 64, 70, 453 N.Y.S.2d 325, (1982)("as to this defendant, on this day, in her economic circumstances, the constitutional injunction against excessive fines shall stand supreme.").

[25] *See, e.g., Commonwealth v. Eisenberg*, 626 Pa. 512, 98 A.3d 1268 (2014) (Pennsylvania Const., art. 1, §13); *State v. Yang*, 397 Mont. 486, 452 P.3d 897 (Montana Const., art. 2, §22) (failure to consider defendant's financial circumstances violates both Montana Const., art. 2, §22 and Eighth Amendment Excessive Fines Clause); *People v. Ingham*, 115 Misc.2d 64, 70, 453 N.Y.S.2d 325, (1982) (New York Const., art. 1, §5).

ordering a defendant to repay the costs of law enforcement can never constitute an excessive fine. But the Court of Appeals overlooked the fact that *Clark* explicitly states that such a "rough equivalence" "may not always insulate a forfeiture from a finding that the forfeiture is 'excessive'" and went on to cite a number of cases, including some where a forfeiture was found to be excessive.[26] In *Clark* this Court concluded, "[o]n the particular facts of this case … we do not find the punishment ... to be excessive." *Id*.

But the facts in *Clark* were quite different than those present here. Clark was convicted of two felonies each punishable by up to five years in prison and forfeiture of his properties was sought to recoup roughly $26,000 of prosecution costs. Excessiveness turns on the facts of each case.

7. Courts distrust the reasonableness of fines when governments use fines as a revenue raising measure.

The Supreme Court has advised courts to be skeptical of the reasonableness of government imposed fines because "fines are a source of revenue," while other forms of punishment "cost a State money." *Timbs*, 139 S.Ct. at 689, quoting *Harmelin v. Michigan*, 501 U.S. 957, 979, n. 9 (1991) (Opinion of Scalia, J.,) ("it makes sense to scrutinize governmental action more closely when the State stands to benefit").[27] Scholars have

[26] *Clark*, at 104, citing, *United States v. One Single Family Residence*, 13 F.3d 1493 (11th Cir. 1994) (forfeiture of home was excessive); *United States v. 6625 Zumirez Drive*, 845 F.Supp. 725 (C.D. Cal. 1994) (same).

[27] *See* B. Gorod, at 241-42 "[E]xploitative fines and fees . . . have undergone a dramatic increase in the last few decades as local governments have turned to criminal justice debt as funding sources. Indeed, the mercenary practices on display in places like Ferguson, Missouri – raising revenue by issuing fines for staying at a boyfriend's house, having tall grass, wearing saggy pants, or failing to sign up for a designated trash collection service – strikingly echo the Black Codes of the Reconstruction era, under which Southern

noted that in recent decades there has been a significant rise in the use of fines and fees to generate revenue, "largely on the backs of minority and low-income communities least equipped to resist."[28] The widespread use of traffic and parking violation fines to raise municipal revenue through ticketing has led some to call the practice "taxation by citation."[29]

The increasing privatization of forfeiture and fee collection has allowed State and local governments to use private businesses as the enforcers of a bounty system in which government and private corporations split the assets and fees that are collected.[30] Washington's laws provide for the same type of revenue sharing between government and the companies to whom towing and impoundment services are outsourced. When a vehicle owner fails to pay all accumulated fees within fifteen days, the towing company must sell the vehicle at a public auction. The company then pays

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governments imposed fines for things like entering town limits without special permission, being on the streets after 10 p.m. without a pass, preaching without a license, and being stubborn or refractory." (Internal quotation marks and footnotes omitted).

[28] B. Gorod, at 217; B. Colgan, 65 UCLA L. REV. at 16 ("failure to account for ability to pay leads people to see the court system as valuing revenue generation over fairness.").

[29] *See* D. Carpenter, *The Price of Taxation by Citation: Case Studies of Three Georgia Cities*, Inst. For Just. 5 (Oct. 2019), https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf.; and *The Ferguson Report* 10 (Mar. 4, 2015) issued by the Justice Department's Civil Rights Division, exposing the perverse relationship between punishment and profit in which the "City [of Ferguson], [the] police, and court officials for years worked in concert to maximize revenue at every stage of the enforcement process."

[30] In *Timbs*, Indiana law authorized local prosecutors to outsource the prosecution of a civil forfeiture case to private attorneys on a contingency fee basis creating what was essentially an institutionalized bounty system under which the lawyers were entitled to a contingent fee of one quarter to one third of all the property they caused to be forfeited. David P. Smith, *Prosecution and Defense of Forfeiture Cases* ¶1.01 at 1-13 (2017). *See also* B. Colgan, 65 UCLA L. REV. at 27-28 (partnership between the city of Mountlake Terrace and private company for operation of electronic home monitoring allowed company to profit and the City to raise revenues of approximately $50,000 per year.)

itself all accumulated towing and storage fees out of the proceeds and any surplus funds are turned over to the State. RCW 46.55.130(2)(h) (Appx. D). While the loss of a vehicle through private auctioneering is not officially called a "forfeiture," it can accurately be labeled a "slow forfeiture" which, as this Court has noted, often takes place when the poor vehicle owner is unable to pay the accumulated fees.[31] Justice Thomas has recognized that these types of laws operate with limited judicial oversight and "frequently target the poor and other groups least able to defend their interests ..."[32]

8. Eviction of a person from his home as punishment for a minor infraction constitutes an excessive fine.

Punishment which deprives a person of his home is constitutionally excessive. Many courts have held that forfeiture of the offender's home violates the Eighth Amendment.[33] In this case, although Long "only" lost his home for 21 days, this does not alter the fact that this was an extremely onerous punishment. Thus, the impoundment of his home was, by itself, an excessive fine.[34] *See also* N. McLean, 40 HASTINGS CONST. LAW Q. at

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[31] *See State v. Villela*, 194 Wn.2d 451, 460, 450 P.3d 170 (2019), citing *In re Chevrolet Truck*, 148 Wn.2d 145, 164-65, 60 P.3d 53 (2002) (Chambers, J., concurring): "[T]he legislature must have known that, for the poor, impoundment often means forfeiture. While there are procedures for an owner to recover an impounded vehicle, for the poor who cannot afford the towing and storage fees, these procedures offer little relief."

[32] *Leonard v. Texas*, 137 S.Ct. 847, 848 (2017) (statement of Thomas, J. respecting denial of certiorari). It is the poor who "are more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car or a home." *Id.*

[33] *See, e.g., von Hofe v. United States*, 492 F.3d 175, 188-89 (2nd Cir. 2007); *United States v. 6380 Little Canyon Road*, 59 F.3d 974, 985-86 (9th Cir. 1985); *State v. Real Property*, 994 P.2d 1254, 1257-59 (Utah 2000); *United States v. 461 Shelby County Road*, 857 F.Supp. 935, 938 (N.D. Ala. 1994) (same).

[34] Suppose a court punished a person who *did* have a home for the parking violation of parking for more than 72 hours in the same spot by entering an order forbidding that person from entering his home for 21 days. That would clearly constitute an excessive punishment

897-98, noting that government seizure of homes should be subject to a "particularly searching Eighth Amendment review" due to the history of the Excessive Fines Clause and Magna Carta's protection of individual homesteads and core personal possessions.[35]

"Make no mistake, fines ruin lives. They can create a perpetual cycle of poverty" and "can end in ... joblessness, and even homelessness."[36] In this case, a parking citation *did* lead to joblessness and exacerbated homelessness by depriving a man of his only shelter for three weeks. CP ¶¶ 19, 22. The Court of Appeals erred when it ignored the constitutional significance of the impoundment of Long's only home and shelter.

9. The Excessive Fines Clause protects against penalties that endanger a person's livelihood or economic survival.

Magna Carta dictates that any amercement must be "in accordance with the gravity of the offence" and could not be imposed for a slight offense, "*yet saving always his 'contenement'*; and a merchant in the same way, saving his 'merchandise'; and a villein shall be amerced in the same

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given the minimal severity of the civil infraction he committed.

[35] *See Frese v. State*, 23 Fla. 267, 2 So. 1, 3 (Fla. 1887) ("The provisions of *magna charta* ... seem to have somewhat of a counterpart in our homestead and exemption laws."). The U.S. Supreme Court has already held that in addition to the Fourth Amendment, when Government seeks to forfeit a person's home the Due Process Clause affords the homeowner protection against an ex parte civil seizure conducted as part of the forfeiture process. *United States v. James Daniel Good Real Property*, 510 U.S. 43, 49 (1993). "Good's right to maintain control over his home, and to be free from governmental interference, is a private interest of historic and continuing importance." *Id.* at 53-54. Due Process requires a pre-seizure hearing because "a post-seizure hearing may be no recompense for losses caused by erroneous seizure." *Id.* at 56. As in all Seattle vehicle impounds, there was no judicial involvement until after Long's home was seized.

[36] D. Harawa, *How Much is Too Much? A Test to Protect Against Excessive Fines*, 81 OHIO STATE. L. J. 65, 67 (2020).

way, saving his 'waynage' …." (Italics added). "[T]o save a man's 'contenement' was to leave him sufficient for the sustenance of himself and others dependent upon him."[37]

While the language is archaic, "waynage"[38] was a term for carts and the "contenement" of a villein consisted of the tools that he used to earn his living. *See* N. McLean, at 863-64.[39] The Excessive Fines Clause reaffirmed this "livelihood protection" principle. *Timbs*, at 688.[40] Long's "waynage" was his truck and all of his work tools stored within it. Because he was homeless, he had no other place to keep them. When the City impounded his "waynage," it violated the Excessive Fines Clause by seizing the means of his livelihood by preventing him from working in his skilled trades.[41]

B. UNREASONABLE SEIZURE CONSTITUTES AN EXCESSIVE DISTURBANCE OF PRIVATE AFFAIRS.

1. The seizure of Long's home had practical consequences.

The Court of Appeals refused to consider Long's contention that the

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[37] N. McLean, 40 HASTINGS CONST. L. Q. at 854-55, quoting W. McKechnie, *Magna Carta: A Commentary on the Great Charter of King John* 293 (2d ed. 1914).

[38] Pennsylvania's colonial charter provided that "all fines shall be moderate, and saving men's contenements, merchandise or wainage." PENN. FRAME OF GOVT., §XVIII (1682).

[39] William Eden outlined this principle in his influential treatise, Principles of Penal Law (1771): "[T]he bill of rights was only declaratory of the old constitutional privileges," he writes that "[i]t is the usage of the courts, superinduced on the clause of Magna Charta relative to civil amercements, never to extend the fine of any criminal so far, as to take from him the implements, and means of his profession, and livelihood …."

[40] *See also United States v. Viloski*, 814 F.3d 104, 110-11 (2nd Cir. 2016), *cert. denied*, 137 S.Ct. 1223 (2017) ("hostility to livelihood-destroying fines became 'deeply rooted' in Anglo–American constitutional thought").

[41] As noted in B. Colgan & N. McLean, *Financial Hardship and the Excessive Fines Clause*, 129 YALE L.J.F. 430, 446 (2020), "the loss of an automobile may interfere with conditions requiring attendance at work or school …." Courts should consider impact of loss of a vehicle "in light of the owner's broader economic condition." *Id*. at 447.

impoundment of his home violated Wash. Const., art. 1, §7. Long raised this claim for the first time on appeal pursuant to RAP 2.5(a).[42] The Court reasoned that the seizure could not be manifest constitutional error because Long did not suffer any practical and identifiable consequences as a result of the impoundment of his truck. *Long*, 13 Wn. App.2d at 734-35.

But there were obvious practical consequences. The seizure of his truck deprived him of shelter, forced him to sleep on the ground, resulted in his catching the flu, impeded access to virtually *all* of his possessions, and prevented him from getting jobs that required the use of his tools.

2. All seizures must be reasonable. Statutory authority to impound does not mean all impounds are reasonable.

All seizures must be reasonable[43] and impounds are no exception. "[A]n impound is lawful under article l, section 7 only if, in the judgment of the impounding officer, *it is reasonable under the circumstances* and there are no reasonable alternatives." *Villela*, at 460 (italics added). The Court below reasoned that "[h]ere, the SMC permits police to impound vehicles parked in violation of the 72-hour Rule. SMC 11.72.440(E). Thus, the police could lawfully impound Long's truck in enforcing traffic violations." *Long*, at 735. But this reasoning overlooks the requirement of

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[42] Initially, the Court refused to consider it on the ground that since his impounded truck was never *searched* Long had failed to show any disturbance of his private affairs. In his reconsideration motion, Long pointed out that it was settled law that the impoundment of a vehicle is a seizure and a disturbance of private affairs. *Villela*, 194 Wn.2d at 458 citing *State v. Reynoso*, 41 Wn. App. 113, 116, 702 P.2d 1222 (1985). *Accord Soldal v. Cook County*, 506 U.S. 56, 61 (1992). In response, the Court of Appeals withdrew its first opinion and issued a second opinion, but again the Court refused to consider the issue.

[43] *Villela*, at 458, citing *Reynoso*, 41 Wn. App. at 116 ("article 1, section 7 of the Washington Constitution require[s] all seizures to be reasonable").

reasonableness imposed by both art. 1, §7 and the Fourth Amendment. *State v. Hill*, 68 Wn. App. 300, 305, 842 P.2d 996 (1993) ("Although authorized by statute, impoundment must nonetheless be reasonable under the circumstances to comport with constitutional guarantees.").[44]

"[A]rt. 1, §7 … begins with the proposition that warrantless seizures are unreasonable *per se*," and "the burden is on the [State] to show that such a warrantless . . . seizure falls within a[] [well-recognized] exception.[45] The constitutionality of a warrantless vehicle seizure turns on whether the facts justify application of the community caretaking exception; in other words, on whether impoundment was reasonable. But reasonableness does not depend on the existence of probable cause to believe that there was a traffic violation. *South Dakota v. Opperman*, 428 U.S. 364, 371 n.5 (1976).

When exercising their community caretaking function, police may "impound vehicles which violate parking ordinances *and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic*." *Id.* at 368-69 (italics added). But if they pose no such danger, then impoundment is constitutionally unreasonable.[46] In this case, the facts do *not* show that Long's truck was jeopardizing public safety nor do they show that it was impeding the efficient movement of traffic. CP 66. Thus, the

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[44] *See also Sibron v. New York*, 392 U.S. 40, 61 (1968) ("The question . . . is not whether the search (or seizure) was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment."). *Accord Illinois v. McArthur*, 531 U.S. 326, 330 (2001) (Fourth Amendment's "'central requirement is one of reasonableness.'"); *Miranda v. City of Cornelius*, 429 F.3d 858, 860 (9th Cir. 2005).

[45] *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996); *State v. Houser*, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980).

[46] *See, e.g., Miranda*, 429 F.3d at 860 (under the circumstances, impoundment was an unreasonable seizure because it was not justified by community caretaking exception).

impoundment of Long's vehicle was unreasonable for that reason alone.

3. Impoundment of a vehicle being used by a homeless person as shelter is *per se* unreasonable when it is not jeopardizing public safety or impeding traffic.

The impoundment of a vehicle that is serving as a person's only shelter is blatantly *un*reasonable. For decades this Court has held that an officer must consider reasonable alternatives to impoundment.[47] When a vehicle is not causing any problem, but is serving as a person's only shelter, it is *per se* unreasonable to impound it.[48] Doing *nothing* is virtually the only constitutionally reasonable decision under those circumstances.[49]

4. Retaining possession of the vehicle was unreasonable.

Even assuming that the initial impound decision was reasonable, the Court below failed to recognize that in the homestead portion of its opinion it had already held that it was unlawful, and thus unreasonable, to refuse to release the truck unless Long paid all accrued towing and storage fees. 13 Wn. App. at 728. Impounding Long's truck fulfilled the goal of ending the parking infraction. After that there was no justifiable reason to continue to

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[47] *Houser*, 95 Wn.2d at 153; *State v. Tyler*, 177 Wn.2d 690, 698, 302 P.3d 165 (2013); *Chevrolet Truck*, 148 Wn.2d at 151 n.4.

[48] The district court's comments in *Shelby County Road* are on point: "[T]he fact that drug trafficking cannot be condoned does not lead inexorably to the taking away of the only residence of two small drug traffickers …. A taking that would be as 'unfair' as this one would be, would be 'excessive.' [¶] ... Nobody has ever accused this court of being a bleeding heart, but its conscience nevertheless would be shocked if the Brashers' residence were forfeited to the United States in this case." 857 F. Supp. at 940.

[49] *Compare Winston v. Lee*, 470 U.S. 753 (1985) (surgical removal of bullet from defendant's body held unreasonable seizure even though court order authorized it after finding probable cause to believe bullet was evidence of robbery).

withhold his home for another 21 days.[50] "A seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force. Thereafter, the government must cease the seizure or secure a new justification." *Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017) (thirty day impound for driving with suspended license violates Fourth Amendment). The same is true here. Art. 1, §7 imposes the same reasonableness requirement.[51]

C. HOMESTEAD ACT

1. Withholding possession of a home, under threat of forced sale, violates Washington State's Homestead Act.

The purpose of Washington's constitutionally derived Homestead Act ("Act"), is to ensure, in the interests of humanity, public policy, and the stability of the State, that individuals do not lose their homes even when

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[50] *See, e.g. State v. Cole*, 73 Wn. App. 844, 848, 871 P.2d 656 (1994) (assuming initial stop was reasonable, the seizure became unreasonable because stop was longer than necessary to issue traffic citation); *State v. Gonzales*, 46 Wn. App. 388, 394-95, 731 P.2d 1101 (1986); *State v. Williams*, 102 Wn.2d 733, 741, 689 P.2d 1065 (1984) (length of stop was unreasonably long); *Cf. United States v. Place*, 462 U.S. 696, 709-10 (1983) (90 minute detention rendered warrantless seizure unreasonable).

[51] There are many ways that Government can deny a person possession, use, or enjoyment of his home. It can exclude him from the property, as the Court did in *James Daniel*, 510 U.S. at 49 (held to be a due process violation where no pre-seizure hearing). It can physically seize the homeowner, thereby preventing him from entering his home, as the police did in *Illinois v. McArthur*, 531 U.S. 326, 329 (2001). When the home itself is moveable, it can also seize the home and impound it as it did here. But whatever means it uses to deprive the owner of the possession and use of his home, the means must be reasonable. In *McArthur*, police prevented the homeowner from entering his home *for two hours* while they sought, obtained and executed a warrant authorizing them to search for drugs. *Id.* at 328. Concluding that this brief exclusion of McArthur from his own home was constitutionally reasonable, the Court stressed two points. First, they merely "prevent[ed] [him] from entering his home unaccompanied. They left his home and his belongings intact—until a neutral Magistrate, finding probable cause, issued a warrant." *Id.* at 327, 332. Second, they "imposed the restraint for a limited period of time, namely, two hours." *Id.* at 332. In the present case, the police denied Long entrance to his home for 21 days. Such a deprivation is a quintessential example of an *unreasonable* seizure.

they face financial misfortune.[52] The Act is "favored in the law" and must be liberally construed in favor of debtors to achieve that purpose.[53]

Under the Act, homesteads are exempt from execution, attachment or forced sale. RCW 6.13.070.[54] This exemption takes precedence over other debt collection laws. *Algona v. Sharp*, 30 Wn. App. 837, 843, 638 P.2d 627 (1982) (homestead exempt from city's efforts to foreclose on an assessment lien under RCW 35.50.010). In this case, Long lost his home for 21 days because it was completely encumbered by a tow operator lien as security for his debts when, in violation of RCW 6.13.070, it was withheld from his possession under threat of forced sale until he paid (or agreed to pay over time) his debts. The Court of Appeals correctly held that "the City could not withhold Long's truck under the threat to forcibly sell it, or threaten to forcibly sell it unless he agreed to pay the associated fees, without violating his homestead rights." 13 Wn. App. 2d at 728.

The City conceded that vehicles can be homesteads and that Long's truck would have been sold had he not agreed to make installment payments. The Court of Appeals properly rejected the City's contentions that the scheduled sale of Long's home was "consensual," and that Long needed to file a declaration to assert homestead rights. *Long*, at 723-26, 729.

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[52] *See Clark v. Davis*, 37 Wash.2d 850, 852, 226 P.2d 904 (1951); *Macumber v. Shafer*, 96 Wash.2d 568, 570, 637 P.2d 645 (1981).

[53] *In re Dependency of Schermer*, 161 Wash.2d 927, 953, 169 P.3d 452 (2007).

[54] The Act limits the homestead exemption value to a set amount. RCW 6.13.030. Long's $4,000 truck was less than that amount and therefore it was totally exempt. CP 110, ¶25.

2. The scheduled sale was a not a "consensual" one.

The scheduled sale of Long's home was "forced" and therefore covered by the protections of RCW 6.13.070. It was not voluntary.[55] The City's only authority that Long consented to sale by violating a parking ordinance is in apposite. *Felton v. Citizens Fed. Sav. & Loan*, 101 Wn.2d 416, 422, 679 P.2d 928 (1984)(not a forced sale where homeowner had agreed to a nonjudicial foreclosure sale as part of an assumed purchase money obligation secured by a deed of trust).[56] By the City's logic, homestead protections could never be invoked when someone commits an act that leads to the incursion of a debt. Courts have rejected this type of argument when an individual has incurred municipal or other debts.[57]

3. Long's homestead protection was automatic because he occupied his truck as his principal residence.

Any limitations on homestead rights "must be specific, clear, and definite." *Viewcrest Condo v. Robertson*, 197 Wn. App. 334, 337, 387 P.3d 1147 (2016). As the statutory language makes clear, when the homestead is occupied as a residence, homestead protection is automatic, and there is no need to file a declaration. RCW 6.13.040 and RCW 6.13.010. *See Long*, 13 Wn. App.2d at 723-26[58] and Long's *Consol. Brf. Of Respondent* at 67-

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[55] *See Betts v. Equifax Credit Info Services*, 245 F. Supp.2d 1130, 1133 (W.D. Wash. 2003) (an impound is not a consensual transaction).

[56] Voluntary financial arrangements generally have been exempted by the legislature from homestead protections. RCW 6.13.080 (1)-(2) (mortgages, consensual repairs on property). Most of these arrangements involve homeowners getting some *benefit*. Tow operator liens are not on this list.

[57] *See, e.g., Algona v. Sharp*, 30 Wn. App. at 837, 843 (quashing notice of sale) ("[City's] assessment lien cannot therefore be 'superior' to homestead").

[58] "The City's reading" of the final clause of RCW 6.13.040(1) "would render

71 filed in the Court of Appeals. And as the Court below correctly noted, even if another construction of the statute were possible, homestead precedent requires courts to liberally construe it in Long's favor. *Id.* at 725.

4. **This Court could also hold that Long's home was unlawfully attached in violation of the Homestead Act.**

In the proceedings below, Long also argued that his home was subject to an unlawful attachment. Long submits that this contention was erroneously rejected. *Long*, at 726-28. This Court could affirm judgment for Long on either "forced sale" or "wrongful attachment" grounds. The remedy for Long is the same in either event.

RCW 6.13.070 provides "the homestead is exempt from attachment *and* from execution or forced sale for the debts of the owner." The Court below focused on the fact that a creditor cannot *execute* a judgment lien on the first $15,000 worth of value in the homestead property (RCW 6.13.030), and Long's truck was worth only $4,000. 13 Wn. App.2d at 717. Since a creditor can only execute on value in excess of the homestead exemption, there was nothing to be obtained by executing Lincoln Towing's statutory lien. The Court below concluded, "because Long's truck did not have value above the homestead exemption, there was no property to which the RCW 46.55.140(1) lien could attach. For these reasons, we reject Long's argument that the attachment of a lien to his truck violated the Homestead Act." *Id.* at

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meaningless the terms 'any other'" in that clause and "would have the final clause contradict the opening clause." *Id.* at 724.

727-28, citing RCW 6.13.090 and *In re Deal,* 85 Wn. App. 680, 584, 933 P.2d 1084 (1997).[59]

But the Court of Appeals simply failed to recognize the existence of possessory liens. While it is not possible to execute on any excess value when there is none, it is still possible to deprive the homeowner of *possession* of his property and that is exactly what Lincoln Towing did. Lincoln Towing asserted a lien pursuant to RCW 46.55.140(1). This type of lien has been described as "possessory." *See In re Hayden,* 308 B.R. 428, 433 (9th Cir. 2004). By impounding Long's truck, they deprived him of possession of his home and refused to release it to him until he paid its fees.

Possessory liens in Washington generally allow a creditor to retain property until payment, like the lien in this case. Some types of possessory liens in Washington do not allow for foreclosure and sale. *See, e.g., Ross v. Scannell,* 97 Wn.2d 598, 604, 647 P.2d 1004 (1982). A tow operator's lien not only allows for sale, after fifteen days if the vehicle is not "redeemed" by payment of all fees, state law requires a sale at public auction, and once sold the owner is permanently deprived of possession as well as title.

In the real property context, creditors may have the existence of a lien passively noted on real property by simply obtaining and recording a judgment. But such a passive lien does not oust the owner of possession of the property. The owner loses possession only if and when the lien is executed by means of a forced sale and a forced sale is not supposed to take place if there is no excess value above the homestead exemption to be

[59] *See also* *In re DeLavern,* 337 B.R. 239, 242 (Bankr. W.D. Wash. 2005).

obtained. By contrast, the tow operator's lien on Long's home completely deprived Long of all possession and control over the vehicle. Lincoln Towing, at the direction of the Seattle Police Department, took his home away and impounded it and thereby kept Long from occupying it or from using it in any other way. The "purpose" of the Act is "to secure the claimant and his family in the possession of his home." *Downey v. Wilber*, 117 Wash. 660, 661, 202 P.256 (1921). "[H]omestead . . . is an absolute right intended to secure and protect the homesteader … in the enjoyment of a domicile." *In re Estate of Poli*, 27 Wn.2d 670, 674, 179 P.2d 704 (1947). The City's towing agent deprived Long of that absolute right for 21 days and thereby violated the Act by attaching his homestead.

IV. CONCLUSION

For these reasons, Petitioner asks this Court to hold that the impoundment of his vehicular home violated the Excessive Fines Clauses of the state and federal constitutions, the Homestead Act, and art. 1, §7, and to hold that the City cannot require Long to pay for either the towing fees or the storage fees.

Respectfully submitted this 21st day of January, 2021.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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APPENDIX A

I. RCW 46.55.140

II. Operator's lien, deficiency claim, liability.

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vehicle that is not permanently attached to or is not an integral part of the vehicle except for items of personal property registered or titled with the department. The registered tow truck operator also has a deficiency claim against the registered owner of the vehicle for services provided in the towing and storage of the vehicle not to exceed the sum of five hundred dollars after deduction of the amount bid at auction, and for vehicles of over ten thousand pounds gross vehicle weight, the operator has a deficiency claim of one thousand dollars after deduction of the amount bid at auction, unless the impound is determined to be invalid. The limitation on towing and storage deficiency claims does not apply to an impound directed by a law enforcement officer. In no case may the cost of the auction or a buyer's fee be added to the amount charged for the vehicle at the auction, the vehicle's lien, or the overage due. A registered owner who has completed and filed with the department the report of sale as provided for in RCW 46.12.650 and has timely and properly filed the report of sale is relieved of liability under this section. The person named as the new owner of the vehicle on the timely and properly filed report of sale shall assume liability under this section.

(2) Any person who tows, removes, or otherwise disturbs any vehicle parked, stalled, or otherwise left on privately owned or controlled property, and any person owning or controlling the private property, or either of them, are liable to the owner or operator of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of the vehicle which does not comply with the requirements of this chapter.

[2010 c 161 § 1121; 1995 c 360 § 8; 1992 c 200 § 1; 1991 c 20 § 2; 1989 c 111 § 13; 1987 c 311 § 14; 1985 c 377 § 14.]

III. NOTES:

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

APPENDIX B

I. RCW 46.55.120

II. Redemption of vehicles—Sale of unredeemed property—Improper impoundment.

(1)(a) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only by the following persons or entities:

(i) The legal owner;

(ii) The registered owner;

(iii) A person authorized in writing by the registered owner;

(iv) The vehicle's insurer or a vendor working on behalf of the vehicle's insurer;

(v) A third-party insurer that has a duty to repair or replace the vehicle, has obtained consent from the registered owner or the owner's agent to move the vehicle, and has documented that consent in the insurer's claim file, or a vendor working on behalf of a third-party insurer that has received such consent; provided, however, that at all times the registered owner must be granted access to and may reclaim possession of the vehicle. For the purposes of this subsection, "owner's agent" means the legal owner of the vehicle, a driver in possession of the vehicle with the registered owner's permission, or an adult member of the registered owner's family;

(vi) A person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department;

(vii) A person who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor; or

(viii) If (a)(i) through (vii) of this subsection do not apply, a person, who is known to the registered or legal owner of a motorcycle or moped, as each are defined in chapter 46.04 RCW, that was towed from the scene of an accident, may redeem the motorcycle or moped as a bailment in accordance with RCW 46.55.125 while the registered or legal owner is admitted as a patient in a hospital due to the accident.

(b) In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under (a) of this subsection satisfies the requirements of (f) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency shall issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (b)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under (a) of this subsection satisfies the requirements of (f) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(c) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(d) Notwithstanding (c) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(e) Notwithstanding (c) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations

required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(f) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (c) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in (a) of this subsection and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon

receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO: . . . . . .

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the . . . . . Court located at . . . . . in the sum of $. . . . ., in an action entitled . . . . ., Case No. . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.

DATED this . . . . day of . . . . ., (year) . . .

Signature . . . . . .

Typed name and address
of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees.

[2017 c 152 § 1; 2013 c 150 § 1; 2009 c 387 § 3; 2004 c 250 § 1; 2003 c 177 § 2; 2000 c 193 § 1. Prior: 1999 c 398 § 7; 1999 c 327 § 5; 1998 c 203 § 5; 1996 c 89 § 2; 1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

III. NOTES:

Short title—2017 c 152: See note following RCW 46.55.125.

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Finding—1998 c 203: See note following RCW 46.55.105.

APPENDIX C

SMC 11.30.120 - Redemption of impounded vehicles

Vehicles impounded by the City shall be redeemed only under the following circumstances:

A. The vehicle may be redeemed only by the following persons or entities: the legal owner; the registered owner; a person authorized in writing by the registered owner; the vehicle's insurer or a vendor working on behalf of the vehicle's insurer; a third-party insurer that has a duty to repair or replace the vehicle, has obtained consent from the registered owner or the owner's agent to move the vehicle, and has documented that consent in the insurer's claim file, or a vendor working on behalf of a third-party insurer that has received such consent; a person, who is known to the registered or legal owner of a motorcycle or moped, as each are defined in Chapter 11.14, that was towed from the scene of an accident, may redeem the motorcycle or moped as a bailment in accordance with chapter 46.55 RCW, as amended by Chapter 152, Section 4, Laws of 2017, while the registered or legal owner is admitted as a patient in a hospital due to the accident; provided, however, that at all times the registered owner must be granted access to and may reclaim possession of the vehicle. For the purposes of this subsection 11.30.120.A, "owner's agent" means the legal owner of the vehicle, a driver in possession of the vehicle with the registered owner's permission, or an adult member of the registered owner's family; a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle; or a person who has purchased the vehicle from the registered owner, who produces proof of ownership or authorization and signs a receipt therefore. A person redeeming a vehicle impounded pursuant to Section 11.30.105 must prior to redemption establish that he or she has a valid driver's license and is in compliance with Section 11.20.340. A vehicle impounded pursuant to Section 11.30.105 can be released only pursuant to a written release authorization from the Seattle Police Department pursuant to subsection 11.30.120.C or a written release authorization or order from Municipal Court pursuant to subsection 11.30.120.B or 11.30.120.C.

B. Any person so redeeming a vehicle impounded by the City shall pay the towing contractor for costs of impoundment (removal, towing, and storage) and administrative fee prior to redeeming such vehicle. Such towing contractor shall accept payment as provided in RCW 46.55.120(1)(b), as now or hereafter amended. If the vehicle was impounded pursuant to Section 11.30.105 and was being operated by the registered owner when it was impounded, it may not be released to any person until all penalties, fines, or fees owed by the registered owner to the City of Seattle have been satisfied by payment in full, by establishment of a time payment agreement with the Municipal Court, or by other means acceptable to the Municipal Court. If the vehicle was impounded pursuant to Section 11.30.040.A.7, it may not be released to any person until all penalties, fines, or fees on all parking infractions described in that section, and all booting, removal, towing, storage, lost boot, and administrative fees charged against the vehicle and owed by the registered owner to the City of Seattle have been satisfied by payment in full or through a time payment plan. Upon payment in full or time payment arrangement of such obligations, the court may issue a written release authorization allowing the vehicle to be released from impoundment.

C. The Chief of Police or Municipal Court shall release a vehicle impounded pursuant to Section 11.30.105 prior to the expiration of any period of impoundment:

1. Upon petition of the spouse of the driver, or the person registered pursuant to Ordinance 117244 as the domestic partner of the driver, based on economic or personal hardship to such spouse or domestic partner resulting from the unavailability of the vehicle and after consideration of the threat to public safety that may result from release of the vehicle, including, but not limited to, the driver's criminal history, driving record, license status, and access to the vehicle; or

2. If the registered owner of the vehicle was not the driver, did not know that the driver's license was suspended or revoked and has not received a prior release under this Subsection 11.30.120 C2 or Subsection 11.30.040 A9.

In order to avoid discriminatory application, the Chief of Police and Municipal Court shall deny release without discretion in all circumstances other than for the reasons set forth in this Subsection 11.30.120 C. If such release is authorized, the person redeeming the vehicle still must satisfy the requirements of Section 11.30.120 A and B.

D. Any person seeking to redeem a vehicle impounded as a result of a parking or traffic citation or under Section 12A.10.115 has a right to a hearing before a Municipal Court judicial officer to contest the validity of an impoundment or the amount of removal, towing, and storage charges or administrative fee if such request for hearing is in writing, in a form approved by the Municipal Court and signed by such person, and is received by the Municipal Court within ten (10) days (including Saturdays, Sundays, and holidays) of the latter of the date the notice was mailed to such person pursuant to Section 11.30.100 A or B, or the date the notice was given to such person by the registered tow truck operator pursuant to RCW 46.55.120(2)(a). Such hearing shall be provided as follows:

1. If all of the requirements to redeem the vehicle, including expiration of any period of impoundment under Section 11.30.105, have been satisfied, then the impounded vehicle shall be released immediately, and a hearing as provided for in Section 11.30.160 shall be held within ninety (90) days of the written request for hearing.

2. If not all of the requirements to redeem the vehicle, including expiration of any period of impoundment under Section 11.30.105, have been satisfied, then the impounded vehicle shall not be released until after the hearing provided pursuant to Section 11.30.160, which shall be held within two (2) business days (excluding Saturdays, Sundays and holidays) of the written request for hearing.

3. Any person seeking a hearing who has failed to request such hearing within the time specified in Section 11.30.120 D may petition the Municipal Court for an extension to file a request for hearing. Such extension shall only be granted upon the demonstration of good cause as to the reason(s) the request for hearing was not timely filed. For the purposes of this section, "good cause" shall be defined as circumstances beyond the control of the person seeking the hearing that prevented such person from filing a timely request for hearing. In the event such extension is granted, the person receiving such extension shall be granted a hearing in accordance with this chapter.

4. If a person fails to file a timely request for hearing and no extension to file such a request has been granted, the right to a hearing is waived, the impoundment and the associated costs of impoundment and administrative fee are deemed to be proper, and the City shall not be liable for removal, towing, and storage charges arising from the impoundment.

5. In accordance with RCW 46.55.240 (1)(d), a decision made by a Municipal Court judicial officer may be appealed to Municipal Court for final judgment. The hearing on the appeal under this subsection shall be de novo. A person appealing such a decision must file a request for an appeal in Municipal Court within fifteen (15) days after the decision of the Municipal Court judicial officer and must pay a filing fee in the same amount required for the filing of a suit in district court. If a person fails to file a request for an appeal within the time specified by this section or does not pay the filing fee, the right to an appeal is waived and the Municipal Court judicial officer's decision is final.

(Ord. 125344 , § 1, 2017; Ord. 124302, § 6, 2013; Ord. 123447, § 3, 2010; Ord. 123190, § 9, 2009; Ord. 121525 § 5, 2004; Ord. 121483 § 2, 2004; Ord. 120007 § 1, 2000; Ord. 120006 § 2, 2000; Ord. 119180 § 5, 1998: Ord. 117306 , § 7, 1994; Ord. 115634 , § 1, 1991; Ord. 110106 § 1, 1981: (Ord. 108200 , § 2(11.30.120), 1979.)

APPENDIX D

I. RCW 46.55.130

II. Notice requirements—Public auction—Accumulation of storage charges.

(1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(3) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, a suspended license impound has been directed but no commercially reasonable tender has been paid under RCW 46.55.120, or a person eligible to redeem under RCW 46.55.120(1)(a)(viii) has not come forth providing information that the registered or legal owner of a motorcycle or moped is an admitted patient in a hospital, the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction, and a method to contact the tow truck operator conducting the auction such as a telephone number, email address, or web site, in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. For the purposes of this section, a newspaper of general circulation may be a commercial, widely circulated, free, classified advertisement circular not affiliated with the registered tow truck operator and the notice may be listed in a classification delineating "auctions" or similar language designed to attract potential bidders to the auction. The notice shall contain a notification that a public viewing period will be available before the auction and the length of the viewing period. The auction shall be held during daylight hours of a normal business day. The viewing period must be one hour if twenty-five or fewer vehicles are to be auctioned, two hours if more than twenty-five and fewer than fifty vehicles are to be auctioned, and three hours if fifty or more vehicles are to be auctioned. If the registered tow truck operator is notified that the registered or legal owner of the moped or motorcycle is an admitted patient in the hospital as evidenced by a declaration on a form authorized by the department, the registered tow truck operator may delay the auction of the moped or motorcycle for a reasonable time in a good faith effort to provide additional time for the redemption of the vehicle.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be

held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

(i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within forty-five days, sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) A tow truck operator may refuse to accept a bid at an abandoned vehicle auction under this section for any reason in the operator's posted operating procedures and for any of the following reasons: (a) The bidder is currently indebted to the operator; (b) the operator has knowledge that the bidder has previously abandoned vehicles purchased at auction; or (c) the bidder has purchased, at auction, more than four vehicles in the last calendar year without obtaining title to any or all of the vehicles. In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4)(a) The accumulation of storage charges applied to the lien at auction under RCW 46.55.140 may not exceed fifteen additional days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(3) plus the storage charges accumulated prior to the receipt of the information. However, vehicles redeemed pursuant to RCW 46.55.120 prior to their sale at auction are subject to payment of all accumulated storage charges from the time of impoundment up to the time of redemption.

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available. However, storage charges begin to accrue again on the date the correct and complete information is provided to the department by the registered tow truck operator.

[2017 c 152 § 2; 2011 c 65 § 1; 2006 c 28 § 1; 2002 c 279 § 12; 2000 c 193 § 2; 1998 c 203 § 6; 1989 c 111 § 12; 1987 c 311 § 13; 1985 c 377 § 13.]

III. NOTES:

Short title—2017 c 152: See note following RCW 46.55.125.

Finding—1998 c 203: See note following RCW 46.55.105.

APPENDIX E

I. RCW 6.13.010

II. Homestead, what constitutes—"Owner," "net value" defined.

(1) The homestead consists of real or personal property that the owner uses as a residence. In the case of a dwelling house or mobile home, the homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

(2) As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract.

(3) As used in this chapter, the term "net value" means market value less all liens and encumbrances senior to the judgment being executed upon and not including the judgment being executed upon.

[1999 c 403 § 1; 1993 c 200 § 1; 1987 c 442 § 201; 1981 c 329 § 7; 1945 c 196 § 1; 1931 c 88 § 1; 1927 c 193 § 1; 1895 c 64 § 1; Rem. Supp. 1945 § 528. Formerly RCW 6.12.010.]

III. NOTES:

Severability—1981 c 329: See note following RCW 6.21.020.

APPENDIX F

I. RCW 6.13.040

II. Automatic homestead exemption—Conditions—Declaration of homestead—Declaration of abandonment.

(1) Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the real or personal property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required by the following subsections are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as prescribed in RCW 6.15.060(3)(c) or, if the homestead is any other personal property, from and after the delivery of a declaration as prescribed in RCW 6.15.060(3)(d).

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recording officer in the county in which the land is located. However, if the owner also owns another parcel of property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that other property and file the same for record with the recording officer in the county in which the land is located.

(3) The declaration of homestead must contain:

(a) A statement that the person making it is residing on the premises or intends to reside thereon and claims them as a homestead;

(b) A legal description of the premises; and

(c) An estimate of their actual cash value.

(4) The declaration of abandonment must contain:

(a) A statement that premises occupied as a residence or claimed as a homestead no longer constitute the owner's homestead;

(b) A legal description of the premises; and

(c) A statement of the date of abandonment.

(5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged.

[1993 c 200 § 3; 1987 c 442 § 204; 1981 c 329 § 9. Formerly RCW 6.12.045.]

III. NOTES:

Severability—1981 c 329: See note following RCW 6.21.020.

APPENDIX G

I. RCW 6.13.070

II. Homestead exempt from execution, when—Presumed valid.

(1) Except as provided in RCW 6.13.080, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in RCW 6.13.030, shall likewise be exempt for one year from receipt, and also such new homestead acquired with such proceeds.

(2) Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county or district in which the homestead is situated.

[1987 c 442 § 207; 1981 c 329 § 13; 1945 c 196 § 2; 1927 c 193 § 2; 1895 c 64 § 4; Rem. Supp. 1945 § 532. Formerly RCW 6.12.090.]

III. NOTES:

Severability—1981 c 329: See note following RCW 6.21.020.

CARNEY BADLEY SPELLMAN

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