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No. 98824-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent/Cross-Petitioner,

v.

STEVEN G. LONG,

Petitioner/Cross-Respondent.

CITY OF SEATTLE'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

The City's contractor towed the truck that Steven Long was using for his residence after he ignored the City's warnings and refused to move from the spot where he was illegally parking. When Mr. Long contested the towing and impoundment, a magistrate waived his parking fine and set up an 11-month payment plan that covered less than 60% of the costs of towing and impoundment (the "Payment Plan"). Mr. Long retrieved his vehicle and drove it to Brier. He also appealed and moved for summary judgment based on the City's alleged violations of the Eighth Amendment, the Homestead Act, and substantive due process. The municipal court denied summary judgment and then, at Mr. Long's request, entered final judgment.

The superior court, on RALJ appeal, granted Mr. Long relief under the Homestead Act and under the Eighth Amendment (as to the Payment Plan), while rejecting his arguments that impoundment violated the Eighth Amendment and substantive due process. The court of appeals affirmed the superior court's homestead ruling but overturned its Eighth Amendment ruling for Mr Long. The court rejected Mr. Long's other constitutional arguments, including a newly raised claim under article I, section 7.

This Court should affirm the municipal court and reject Mr. Long's belated article I, section 7 arguments. Homestead law does not support Mr. Long's claims. Temporarily impounding a truck that is parked illegally and

that its owner refuses to move also does not violate the Eighth Amendment, and neither does requiring that the owner pay part of the costs of towing and impoundment. Mr. Long fails to show manifest error meriting relief under Article I, section 7.[1]

II. ARGUMENT

A. Division One misapplied homestead law.

In holding that the Payment Plan violated the Homestead Act, the court of appeals departed from the plain terms of the Act and stretched that legislation far beyond its intended reach.

1. The Homestead Act requires a declaration of homestead for property such as Mr. Long's truck.

Mr. Long never delivered a declaration of homestead for his truck. That failure fatally undermines his attempt to invoke the Homestead Act.

Under RCW 6.13.040(1), "any other personal property," such as a truck, is protected as a homestead "from and after the delivery of a declaration as prescribed in RCW 6.15.060(3)(d)." RCW 6.15.060(3)(d) sets forth what must appear in such a declaration:

> A debtor who claims as a homestead, under RCW 6.13.040, any other personal property, shall at any time before sale, deliver to the officer making the levy a notice of claim of homestead . . . that sets forth the following: (i) The debtor owns the personal property; (ii) ***the debtor resides thereon as a homestead***; (iii) the debtor's estimate of the fair market value of the property; and (iv) the debtor's description of the

[1] Before this Court, Mr. Long has abandoned his substantive due process claim.

> property in sufficient detail for the officer making the levy to identify the same. [Emphasis added.]

It follows from this provision that the reference to "other personal property" in RCW 6.13.040(1) is susceptible to only one reading: it denotes personal property occupied by the debtor.

The court of appeals reached the opposite conclusion, holding that the term "other personal property" in RCW 6.13.040 applies only to ***unoccupied*** personal property. According to the court, Mr. Long's ***occupied*** vehicle enjoys automatic homestead protection without any declaration. 13 Wn.2d at 724. That interpretation turns the statute on its head. The court of appeals not only failed to "harmonize related statutory provisions to carry out a consistent scheme that maintains the statute's integrity," 13 Wn. App. 2d at 725, but also departed from the plain language of the statute, misconstrued the legislative history, and overlooked why a declaration is mandated for this kind of property.

RCW 6.13.040(1) describes the types of property for which a declaration of homestead is and is not required:

> 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, [1] 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, [2] 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, [3] 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). [Emphasis added.]

The court of appeals held, in effect, that the qualifier "not yet occupied" must be read into the final clause of RCW 6.13.040(1). *See* 13 Wn. App. 2d at 724. That conclusion departs from settled principles of statutory construction. If the legislature had intended to limit the last clause to not-yet-occupied property, it would have said so, using the same language it used in the preceding two clauses to denote such property. *See In re Detention of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) ("to express one thing in a statute implies the exclusion of the other. . . . Omissions are deemed to be exclusions.").[2]

In addition to misinterpreting RCW 6.13.040 and making the declaration required under RCW 6.15.060(3)(d) nonsensical, the court of appeals erred in drawing unwarranted inferences from legislative history. The Legislature meant to extend homestead protections to personal property other than mobile homes when it amended the Homestead Act in 1993.

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[2] The cases on which the court of appeals relies in concluding that all occupied property enjoys automatic homestead protection, *see* 13 Wn. App. 2d at 724 n. 8, involve real property and do not address homestead protections for personal property. Accordingly, none of the cases cited by the court of appeals in footnote 8 consider the meaning of the final clause of RCW 6.13.040(1) or the requirements governing "other personal property."

Nothing in the legislative history, however, evinces an intent to confer ***automatic*** homestead protection on such property. *See* Final B. Rep. on S.S.B. 5068 (App. C). To the contrary, when the Legislature brought personal property within the scope of the Homestead Act, it added a new clause to RCW 6.13.040 for "other personal property." It did this rather than allowing personal property to enjoy the automatic protection previously granted to traditional residences. Laws of 1993, ch. 200, § 3 (App. B).

The court of appeals also failed to appreciate why the Legislature required a declaration of homestead for "other personal property." Unlike traditional homesteads (structures and mobile homes), personal property such as a vehicle or a boat ordinarily functions as something other than a home, and its status as a home may not be readily apparent. Absent a declaration, creditors have no way of knowing whether such personal property should be treated as if it is subject to homestead protections.

The only way to harmonize the various provisions of the Homestead Act—and to avoid the other pitfalls of Division One's interpretation—is to recognize that the addition of nontraditional residences to the Homestead Act did not change the scope or meaning of the phrase "property described in RCW 6.13.010" in the first clause of RCW 6.13.040(1)—namely,

dwelling houses and mobile homes that the owner uses as a residence.[3] Those are, after all, the only kinds of homesteads that RCW 6.13.010 explicitly discusses.[4]

2. The impoundment of Mr. Long's truck did not offend the Homestead Act.

Even if Mr. Long's vehicle enjoyed automatic protection as a homestead, there can be no serious contention that its impoundment violated the Homestead Act.

To be sure, Mr. Long asserts that the purported attachment of a lien following the impoundment of his vehicle violated the Homestead Act. This, he says, provides an alternative basis for affirming Division One's homestead ruling. But the court of appeals correctly rejected the argument that the ***mere existence*** of a lien violates the Homestead Act. The lien in

[3] Contrary to the court of appeals' assertion, this reading does not render any portion of the statute superfluous. 13 Wn. App. 2d at 724. It is the court's overbroad reading of the first clause of RCW 6.13.040(1) that renders RCW 6.15.060(3)(d) self-contradictory and wholly ineffective.

[4] The City's construction of the statute is consistent with the legislature's understanding of RCW 6.13.010 (formerly RCW 6.12.010) in 1987, when it first enacted the provision in RCW 6.13.040(1) (formerly RCW 6.12.045) granting automatic protection to property described in RCW 6.13.010: the Legislature was contemplating only traditional residences. *See* Laws of 1987, ch. 442, §§ 201 & 204 (App. A). *Cf. Thurston County ex rel. Snaza v. City of Olympia,* 193 Wn.2d 102, 109, 440 P.3d 988 (2019) (adopting "narrow interpretation . . . consistent with the words of the statute as they would have been understood at the time" of enactment, based on then-existing statute). When the Legislature amended the Homestead Act in 1993 to include nontraditional residences, it added new language to RCW 6.13.040(1) to cover such property, rather than relying on the existing provision for "property described in RCW 6.13.010." This decision evinces a continued belief that "property described in RCW 6.13.010" was limited to traditional residences. *See* SSB 5068 (1993).

favor of the tow truck operator (which arises under RCW 46.55.140(1) upon impoundment) attaches only to portions of a homestead in excess of the homestead exemption. 13 Wn. App. 2d at 727–28; RCW 6.13.090; *Sweet v. O'Leary*, 88 Wn. App. 199, 202, 944 P.2d 414 (1997). Even if Mr. Long's truck had been protected as a homestead, the $15,000 homestead exemption for other personal property exceeds its value. RCW 6.13.030; CP 110. It follows that ***no lien ever attached*** impermissibly to Mr. Long's truck and that impoundment of the truck did not implicate the Homestead Act.[5]

3. The Payment Plan did not violate the Homestead Act.

Regardless of whether Mr. Long's truck was entitled to homestead protection, the superior court and the court of appeals erred in voiding the Payment Plan under the Homestead Act. Such a payment plan does not implicate, much less offend, homestead law.

When Magistrate Eng lifted the tow-truck operator's lien and issued the Payment Plan, he converted an obligation enforceable via an action *in rem* against the vehicle into an unsecured obligation that was enforceable only against Mr. Long personally. The Payment Plan required Mr. Long—

[5] A ruling to the contrary would call into question a host of other statutes that automatically give rise to liens. *See, e.g.*, RCW 4.56.200 (providing that entry of judgment in a matter before the superior court gives rise to a lien on the judgment debtor's real estate in the county in which the court is situated). Under Mr. Long's theory, every judgment entered against a party with a homestead would constitute a violation of the Homestead Act.

without providing any collateral, security, or other guarantee—to reimburse the City for a portion of the costs of the impoundment. CP 884. As soon as he signed the Payment Plan he could, and did, retrieve his truck. CP 873–77, 885. An unsecured personal obligation lies entirely outside the purview of the Homestead Act.

When it voided the Payment Plan, the court of appeals relieved Mr. Long of his debt to the City, thereby turning the Homestead Act into a means of debt forgiveness. This is unauthorized and unprecedented.

4. The Homestead Act does not extend to conduct that falls short of attachment, execution, or forced sale. Even if the Act did so, it would remain inapplicable.

The Homestead Act exempts certain property from attachment, execution, and forced sale. RCW 6.13.070. None of those things occurred here. Nevertheless, the court of appeals applied the Homestead Act because it believed the Act should be liberally construed "to achieve its purpose of protecting homes." 13 Wn. App. 2d at 729. Liberal construction is not a license to rewrite a statute. *Cf. Klossner v. San Juan Cty.*, 93 Wn.2d 42, 47, 605 P.2d 330 (1980) ("[T]his court's several decisions that the wrongful death statute is to be liberally construed do not mean we may read into the statute matters which are not there."); *Silverstreak, Inc. v. Washington State Dep't of Labor & Indus.*, 125 Wn. App. 202, 217-18, 104 P.3d 699 (2005) (declining to "rewrite" a statute despite statute's remedial purpose and need

for “liberal construction”), *aff’d on other* grounds, 159 Wn.2d 868, 154 P.3d 891 (2007); *City of Chicago, Illinois v. Fulton*, No. 19-357, 2021 WL 125106, at *5 (U.S. Jan. 14, 2021), Sotomayor, J., concurring (accepting majority’s construction of statute even though that construction “hardly comports with [the] spirit” of the Bankruptcy Code).

Contrary to Division One’s ruling, nothing in the Homestead Act prohibits conduct falling short of attachment, execution, or forced sale. *See* RCW 6.13.070(1); *see also Washington State Republican Party v. Washington State Pub. Disclosure Comm’n*, 141 Wn.2d 245, 280, 4 P.3d 808 (2000) (“Where a statute specifically lists the things upon which it operates, there is a presumption that the legislating body intended all omissions, i.e., the rule of expressio unius est exclusio alterius applies.”).

Even if the Homestead Act applied when a “forced sale” was merely contemplated, Mr. Long’s homestead claim would fail because the sale of an impounded vehicle under RCW 46.55.130(1) is not a “forced sale” within the meaning of RCW 6.13.070(1). The court of appeals relied on an inapposite federal case arising under the Fair Debt Collection Practices Act when it concluded that the sale of an impounded vehicle is non-consensual because “a state statute, not the registered owner, authorizes the sale.” 13 Wn. App. 2d at 729 (citing *Betts v. Equifax Credit Info. Servs., Inc*., 245 F. Supp. 2d 1130, 1133 (W.D. Wash. 2003)).

Under the Homestead Act, a homeowner may consent to a sale "indirectly by . . . doing those acts or things that necessarily or usually eventuate in a sale." *Felton v. Citizens Federal Association of Seattle*, 101 Wn.2d 416, 422, 679 P.2d 928 (1984) (cleaned up). Although state law (RCW 46.55.130(1)) precipitates the sale of an impounded vehicle, a vehicle owner indirectly consents to such a sale when he fails (or, as in this case, willfully refuses) to move an illegally parked vehicle and then fails to retrieve it from the impound lot. This sets into motion a process that "eventuate[s] in a sale" of the vehicle. *See Felton*, 101 Wn.2d at 422.

5. The Homestead Act is not a license to co-opt public property.

As the court of appeals recognized, the Homestead Act is a mechanism to protect homes. 13 Wn. App. 2d at 721. The court failed to consider what the Homestead Act is ***not***: a means to co-opt public property.

Although the court of appeals correctly concluded that nothing in the Homestead Act prevents the City from impounding illegally parked vehicles or charging their owners for the costs of doing so, 13 Wn. App. 2d at 714, applying the Homestead Act to vehicles—without requiring a declaration of homestead—has profound practical implications for the City and other jurisdictions. If the City cannot avail itself of ordinary procedures for impoundment and associated cost recovery, it will be hamstrung in enforcing its parking laws. Public property will be co-opted for private use.

B. The City did not violate the Eighth Amendment.

Mr. Long claims that impounding an illegally parked vehicle and directing its owner to repay the City a portion of the associated costs, at $50 per month for 11 months, violates the Excessive Fines Clause. He is wrong.

1. A temporary impoundment is not a fine, and the Payment Plan was not a punishment.

A party challenging an action under the Excessive Fines Clause must show a permanent loss, such as forfeiture of real or personal property. "A deprivation by the government must be intended to be permanent to constitute a fine." *Coleman v. Watt*, 40 F.3d 255, 263 (8th Cir. 1994). Mr. Long cannot show any permanent loss of his truck. Hence, he may not raise an Eighth Amendment challenge to its impoundment. The "temporary impoundment of a vehicle cannot fairly be considered a fine." *Id.*

Nor may Mr. Long raise an Eighth Amendment challenge to the Payment Plan. The Payment Plan was not punitive; rather, it served to reimburse the City for a portion of the $946.61 in towing and storage fees that the City paid on Mr. Long's behalf.[6] Such arrangements do not implicate the Eighth Amendment's Excessive Fines Clause. As the court

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[6] Once the magistrate adopted the Payment Plan, the City was responsible to pay all costs of impoundment. "In the event that the Municipal Court judicial officer grants time payments for the costs of impoundment and administrative fee, ***the City shall be responsible for paying the costs of impoundment to the towing company***." SMC 11.30.160(B) (emphasis added). Lincoln Towing charged the City $946.61 for the cost of impounding Mr. Long's truck. CP 536; *see also* CP 884.

held in *In re Metcalf*, 92 Wn. App. 165, 179, 963 P.2d 911 (1998), payments designed "to make the government whole for damage and injury caused to it" are remedial rather than punitive. *See also State v. Catlett*, 133 Wn.2d 355, 368, 945 P.2d 700 (1997) (statute "designed to reimburse government" for its costs held to be non-punitive); *Tillman v. Lebanon Cty. Correctional Facility*, 221 F.3d 410, 420 (3d Cir. 2010) (fees for cost of incarceration cannot "be called fines when they merely represent partial reimbursement of the prisoner's daily cost of maintenance, something he or she would be expected to pay on the outside").

When it held that the impoundment and associated costs were not constitutionally excessive, the court of appeals "assum[ed] without deciding that [they] constituted penalties." 13 Wn. App. 2d at 730. That assumption was incorrect. Because the Eighth Amendment does not apply to either the impoundment or the Payment Plan, there are independent grounds to affirm the court of appeals and reject Mr. Long's Eighth Amendment arguments.

2. Neither the impoundment nor the Payment Plan was grossly disproportional to Mr. Long's offense.

Even if, like the court of appeals, this Court is inclined to assume that the Payment Plan and the impoundment of Mr. Long's truck constituted penalties potentially subject to the Excessive Fines Clause, the Court should hold that they do not violate the Eighth Amendment.

The standard by which an Excessive Fines Clause challenge must be measured is whether "the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 336–37, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). Neither the impoundment of Mr. Long's truck nor the Payment Plan comes close to meeting this standard.

Consider first the impoundment. There can be no serious argument that impounding an illegally parked vehicle is grossly disproportional to the offense of illegal parking. As this Court observed long ago, "the power of the state and of the municipalities to regulate the parking of cars on the streets and highways can not be doubted." *Kimmel v. City of Spokane*, 7 Wn.2d 372, 376, 109 P.2d 1069 (1941). "Ordinances prescribing time limitations on parking have long been recognized as a proper exercise of the police power . . . ." *Id.* at 377. If someone fails to move a vehicle after repeated warnings, impoundment is the only means available to the City to reclaim that part of the public right of way for public use.

Bajakajian is easily distinguished. The defendant there committed solely a reporting offense. He could have legally transported U.S. currency out of the country if he had simply disclosed the amount. 524 U.S. at 337–338. The money that he failed to report was the proceeds of legal activity, and he was not among the persons for whom the statute was principally

designed. *Id*. He also caused no harm to the public fisc. *Id*. at 339. Mr. Long, by contrast, was not entitled to park his truck indefinitely in one spot simply by disclosing that this was his intent. Because his truck was parked illegally, he is one of the people for whom the City's parking regulations and remedies were principally designed. And Mr. Long, unlike Mr. Bajakajian, caused a loss to the public fisc: The City had to pay the costs of towing and impoundment. CP 533, 536, 884.

Consider next the Payment Plan. The magistrate's decision that Mr. Long should pay $50 per month for 11 months without interest cannot be considered grossly disproportional to his offense. That decision required the City to pay $946.61 to the towing company to cover the actual costs of towing and impoundment. Had the magistrate not acted to set aside Mr. Long's $44 fine and create the Payment Plan, Mr. Long would have had to pay $990.61 to retrieve his truck. To treat the Payment Plan as "excessive punishment" is to trivialize the Eighth Amendment.

3. Mr. Long raises no valid basis to rule in his favor.

Mr. Long makes four primary arguments for reversing Division One's Excessive Fines Clause ruling—namely, that the court (1) failed to conduct a proper proportionality analysis, (2) failed to consider personal financial circumstances, (3) improperly assumed a legislative imprimatur, and (4) failed to consider article I, section 14. All four lack merit.

First, Mr. Long's assertion that the court of appeals neglected to analyze proportionality is wrong. The court considered the proportionality of towing Mr. Long's truck and requiring him to pay part of the costs of towing and impoundment. It concluded that "[m]oving a vehicle has a direct relationship to the offense of illegally parking" and that the fees imposed on Mr. Long were not grossly disproportional to his offense because they "repay the City's agent, Lincoln Towing, for the costs of towing the vehicle . . . ." 13 Wn. App. 2d at 731. These conclusions are unassailable and fully consistent with this Court's decision in *State v. Clark*, 124 Wn.2d 90, 875 P.2d 613 (1994), *overruled on other grounds by Catlett*, 133 Wn.2d at 361.

Second, a court need not examine individual financial circumstances to determine whether a fine is excessive. The argument that it must do so has been rejected by every federal Court of Appeals to consider the question.[7] *See Pimentel v. City of Los Angeles*, 974 F.3d 917, 924–25 (9th Cir. 2020) (declining to "incorporate a means-testing requirement" for excessive fines claims); *U.S. v. Dubose*, 146 F.3d 1141, 1146 (9th Cir. 1998) (a "gross disproportionality analysis does not require an inquiry into the

[7] The sole federal decision Mr. Long has cited on this issue, *U.S. v. Levesque*, 546 F.3d 78 (1st Cir. 2008), does not support his argument. The court there stated that "a defendant's inability to satisfy a forfeiture at the time of conviction . . . is not at all sufficient to render a forfeiture unconstitutional, nor is it even the correct inquiry." *Id.* at 85.

hardship the sanction may work on the offender"); *U.S. v. Smith*, 656 F.3d 821, 828–29 (8th Cir. 2011) (affirming imposition of a $10,000 penalty upon an indigent defendant); *U.S. v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009) ("We do not take into account the impact the fine would have on an individual defendant."). And even if a court were to consider Mr. Long's personal circumstances, he fails to show that the outcome would change.[8]

Third, Mr. Long's claim that towing and impoundment charges lack any legislative imprimatur is misguided.[9] The City Council specifically authorized "towing illegally parked vehicles and requiring the owner to pay the associated costs." 13 Wn. App. 2d at 731. The City's legislative body called for a competitively bid contract for the towing and storage of vehicles, SMC 11.30.220.B, and it required every person redeeming an impounded vehicle to first "pay the towing contractor for costs of impoundment (removal, towing, and storage) and administrative fee," SMC 11.30.120.B.[10]

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[8] Mr. Long's income of $400–$700 per month, CP 110, is not so little as to make a $50-per-month payment plan unconstitutionally excessive. Nothing in the record shows that either the impoundment or the Payment Plan prevented Mr. Long from earning a living. Although Mr. Long's Petition asserts that he lost job opportunities while his tools were with his truck, "there is nothing in the record to support that he has been unable to work as a result of this incident." CP 16. Mr. Long could, and did, retrieve items from his truck while it was impounded. *See* CP 108–09.

[9] Mr. Long also did not properly preserve this issue. The City raised the legislative presumption in its briefing (*see* City Op. Br. at 22; City Reply Br. at 12), but Mr. Long failed to address it until he moved for reconsideration of the court of appeals' decision.

[10] Those costs are well below what state law permits. *See* RCW 46.55.118(1)(a)–(b) (private towing companies may charge 135% of the maximum rates charged by the State

Mr. Long contends that his was a minor offense, noting that the fine for illegal parking (which was forgiven) is $44. But Mr. Long did not just park illegally: He refused to move his vehicle one block despite an explicit warning that failure to do so would result in its being towed. This amounts to claiming a possessory interest in the public property where one chooses to park.[11] If Mr. Long wanted to avoid having his truck towed, he should have moved it rather than tearing off the 72-hour notice sticker.

The element of volitional choice in Mr. Long's actions and inactions distinguishes his case from the one to which his petition devotes an entire section. *See Blake v. City of Grants Pass*, 1:18-cv-01823-CL, 2020 WL 4209227 at * 11 (D. Or. July 22, 2020), *appeal filed*, No. 20-35881 (9th Cir. 2020) (plaintiffs there were "punished for engaging in the unavoidable, biological, life-sustaining acts of sleeping and resting while trying to stay warm and dry"). And Mr. Long's ability to drive his truck straight from the impound lot to Brier belies his claim that it was inoperable at the time of impoundment.

Patrol for towing and storage); WAC 204-91A-140(2) (describing process by which State Patrol establishes its rates); SMC 6.214.220 (specifying maximum private impound fees).

[11] No one may claim such an interest. *See Kimmel*, 7 Wn.2d at 377; *cf. Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019) (a city is not required to "allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.") (cleaned up).

Fourth, while Mr. Long faults the court of appeals for failing to consider his claim under article I, section 14 of the Washington constitution, he waived that claim by failing to address it in his opening brief. Failure to brief an issue before the reply waives the issue. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). In addition, Mr. Long did not provide a *Gunwall* analysis. *See Clark*, 124 Wn.2d at 102 n. 7 & 95 n. 2 (the "failure to engage a *Gunwall* analysis in a timely fashion precludes us from entertaining their state constitutional claim."); *accord Tellevik v. Real Property*, 83 Wn. App. 366, 371, 921 P.2d 1088 (1996) (refusing to consider an excessive fines argument under article 1, section 14 because appellant "has not provided a *Gunwall* analysis or any reason to believe that the Washington provision has a meaning different from the federal one"). For both reasons, the Court may not entertain Mr. Long's claim under article I, section 14.

C. Even if Mr Long is permitted to argue that the City violated article I, section 7, that argument is meritless.

Also belatedly, Mr. Long has raised a succession of arguments under article I, section 7 of the Washington constitution. Just 17 days before oral argument in the court of appeals, Mr. Long filed a supplemental brief arguing for the first time that the towing and impoundment of his truck violated article I, section 7. The violation he alleged there was that the

parking enforcement officer did not exercise discretion in calling for a tow truck. Mr. Long now appears to have abandoned this argument in favor of a yet newer one.[12] His petition for review asserts that keeping his truck impounded violated article I, section 7 because it violated the Homestead Act. Neither assertion has merit. And because neither raises a manifest error affecting a constitutional right, this Court should not consider Mr. Long's claim under article I, section 7.

Under RAP 2.5(a), a party waives the right to raise an issue on appeal that was not raised before the trial court. *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008). The purpose of requiring an issue to be raised below is to "afford the trial court an opportunity to correct any error." *State v. Torres,* 198 Wn. App. 864, 875, 397 P.3d 900 (2017). "No procedural principle is more familiar than that a constitutional right, or a right of any sort, may be forfeited . . . by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." *Id.* at 876.[13]

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[12] Mr. Long's petition for review does not argue that the initial impoundment violated article I, section 7.

[13] Allowing a party to raise issues on appeal that were not presented to the trial court provides "great potential for abuse . . . because a party so situated could simply lie back, not allowing the trial court to avoid the potential prejudice, gamble on the verdict, and then seek a new trial on appeal." *Torres,* 198 Wn. App. at 876. Requiring a party to preserve errors before the trial court also promotes judicial economy by allowing the trial court to correct any mistakes, ensures a developed record for review, and prevents unfairness. *Id.*

A limited exception in RAP 2.5(a)(3) permits raising a "manifest error affecting a constitutional right." But "RAP 2.5(a)(3) . . . does not serve as a vehicle for relief from conscious decisions of trial counsel not to litigate constitutional issues at the trial court level." *State v. Walton*, 76 Wn. App. 364, 365, 884 P.2d 1348 (1994); *accord Brundridge*, 164 Wn.2d at 441 ("A party who fails to raise an issue at trial normally waives the right to raise that issue on appeal.").[14] To take advantage of RAP 2.5(a)(3), moreover, Mr. Long must show not only that the error is of constitutional magnitude but also that it is manifest. *State v. O'Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009). This he cannot do.

A claim asserted under article I, section 7 is of constitutional magnitude, but Mr. Long does not show manifest error. To do so requires demonstrating actual prejudice—namely, "that the asserted error had

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[14] Mr. Long consciously chose not to raise an article I, section 7 argument in the lower courts. Before the superior court, for instance, Mr. Long submitted a statement of additional authorities that discussed an unlawful search and seizure on public lands involving a claim under article I, section 7. CP 1029–30. Mr. Long questioned the Parking Enforcement Officer during her deposition about whether she had discretion in enforcing parking laws. CP 451-53. But Mr. Long never raised an article I, section 7 claim before the municipal court or superior court. Before the court of appeals, Mr. Long cited *Brewster v. Beck*, 859 F.3d 1194, 1996 (9th Cir. 2017) (holding that a mandatory 30-day impoundment violated the Fourth Amendment), in both his opening brief and his reply brief. Consol. Br. of Resp. at 34 n.24; Resp.'s Reply Br. at 23-24. His reply brief also cited case law holding that mandatory impoundment violates article I, section 7. Resp.'s Reply Br. at 24. Despite being familiar with and citing cases that directly bear on his current article I, section 7 arguments, Mr. Long consciously chose not to make such an argument until shortly before oral argument in the court of appeals.

practical and identifiable consequences in the trial of the case." *Id.* at 99 (cleaned up). Mr. Long's article I, section 7 arguments would have had no practical and identifiable consequences in the proceedings below.

Article I, section 7 provides that "[n]o person shall be disturbed in his private affairs . . . without authority of law." Courts apply a "two-step analysis to determine whether article I, section 7 has been violated[:]" (1) "whether the action complained of disturbs one's private affairs" and, if so, (2) "whether authority of law justifies the intrusion." *State v. Villela*, 194 Wn.2d 451, 458, 450 P.3d 170 (2019) (cleaned up). Under the Washington constitution, "[i]mpounding a car is a seizure" and therefore a disturbance. *Id.* But the City seized Mr. Long's truck pursuant to authority of law. Hence, the City's impoundment did not violate article I, section 7.

Mr. Long had no right to illegally park his truck on public property. "[P]arking on the public right of way is a privilege, revocable by the State at any time." *Galvis v. State Dept. of Trans.*, 140 Wn. App. 693, 706, 167 P.3d 584 (2007); *accord Sandona v. City of Cle Elum*, 37 Wn.2d 831, 840, 226 P.2d 889 (1951). The City was authorized to impound Long's truck by SMC 11.30.060: "A vehicle . . . may be impounded after notice of such proposed impoundment has been securely attached . . . ." SMC 11.30.060.[15]

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[15] Mr. Long violated SMC 11.72.440, which forbids parking on municipal property for more than 72 hours. Such a violation justifies impoundment under Chapter 11.30 SMC.

Mr. Long also claims that the seizure of his truck, even if proper at the outset, became unconstitutional at some (undefined) later point: "the City lacked 'lawful authority' to withhold Long's home" because doing so violated the Homestead Act. Pet. at 19–20. But the court of appeals never ruled that the City wrongly held Mr. Long's truck under the Homestead Act; rather, it held that the Act made the Payment Plan void. Even if that holding stands, it cannot support Mr. Long's article I, section 7 argument.

The cases Long cites in his petition to support his new argument do not apply. Each considers whether an investigatory stop of a person was transformed into an unreasonable seizure.[16] None of these cases holds that a municipality violates article I, section 7 by impounding an illegally parked vehicle and requiring its owner to pay the costs of impound before returning the vehicle. Because the City properly impounded Mr. Long's truck, and because the City was authorized to keep it impounded until it was redeemed or until the municipal court ordered its release, Mr. Long's article I, section 7 argument would not have had any impact on the proceedings below even if it had been timely raised.

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[16] *State v. Williams*, 102 Wn.2d 733, 689 P.2d 1065 (1984) (evaluating the reasonableness of an investigatory stop); *State v. Cole*, 73 Wn. App. 844, 871 P.2d 656 (1994) (same); *State v. Gonzales*, 46 Wn. App. 388, 394, 731 P.2d 1101 (1986) (same).

III. CONCLUSION

Neither the Homestead Act nor the Eighth Amendment prohibits the City from applying its parking laws in an evenhanded manner. Neither applies to the impoundment of Mr. Long's truck or to the Payment Plan under which he agreed to repay the City for a portion of the impoundment costs. Mr. Long's Eighth Amendment and Homestead Act claims therefore fail. His belated Article I, section 7 claim fails as well.

The municipal court was right to deny Mr. Long's motion for summary judgment. This Court should reverse the court of appeals' homestead ruling and affirm the judgment entered by the municipal court.

DATED this 21st day of January 2021.

Respectfully submitted,

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APPENDIX A

compel contribution from the others. When a judgment against several persons is upon an obligation or contract of one of them as security for another, if the surety pays the full amount or any part of the judgment, either by sale of the surety's property or before sale, the surety may compel repayment from the principal.

(2) In either case covered by subsection (1) of this section, the person or surety so paying shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after the payment, notice of the payment and claim to contribution or repayment is filed with the clerk of the court where the judgment was rendered.

(3) Upon filing such notice, the clerk shall make an entry thereof in the docket where the judgment is entered.

PART II
HOMESTEAD EXEMPTION

Sec. 201. Section 1, chapter 64, Laws of 1895 as last amended by section 7, chapter 329, Laws of 1981 and RCW 6.12.010 are each amended to read as follows:

(1) 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 ((without improvements purchased)) owned with the intention of ((building)) 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.

Sec. 202. Section 2, chapter 64, Laws of 1895 as last amended by section 8, chapter 329, Laws of 1981 and RCW 6.12.020 are each amended to read as follows:

If the owner is married, the homestead may consist of the community or jointly owned property of the spouses or the separate property of either spouse: PROVIDED, That the same premises may not be claimed separately by the husband and wife with the effect of increasing the net value of the homestead available to the marital community beyond the amount specified in RCW 6.12.050 as now or hereafter amended. When the owner is not married, the homestead may consist of any of his or her property.

Sec. 203. Section 24, chapter 64, Laws of 1895 as last amended by section 4, chapter 45, Laws of 1983 1st ex. sess. and RCW 6.12.050 are each amended to read as follows:

A homestead((s)) may consist of lands ((and tenements with the improvements thereon)), as ((defined)) described in RCW 6.12.010, regardless of area, but ((not exceeding in)) the homestead exemption amount shall not exceed the lesser of (i) the total net value((;)) of ((both)) the lands ((and)), mobile home, and improvements as described in RCW 6.12.010, or (ii) the sum of ((twenty-five)) thirty thousand dollars. ((The premises thus included in the homestead must be actually intended or used as a home for the owner, and shall not be devoted exclusively to any other purpose.))

Sec. 204. Section 9, chapter 329, Laws of 1981 and RCW 6.12.045 are each amended to read as follows:

(1) ((The homestead exemption described in RCW 6.12.050 applies automatically to the homestead as defined in RCW 6.12.010 if the occupancy requirement of RCW 6.12.050 is met. However, the homestead exemption does not apply to those judgments defined in RCW 6.12.100)) Property described in RCW 6.12.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.12.090 from and after the time the 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 6.16.090(3)(c).

(2) ((If)) An owner ((elects to)) who selects ((the)) a homestead from unimproved or improved land ((purchased with the intention of residing thereon, the owner)) 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 ((the)) that other property ((on which the owner presently resides,)) 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 ((has purchased the same for a homestead and)) 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.

Sec. 205. Section 7, chapter 64, Laws of 1895 as amended by section 14, chapter 329, Laws of 1981 and RCW 6.12.120 are each amended to read as follows:

A homestead is presumed abandoned if the owner vacates the property for a continuous period of at least six months. However, if an owner is going to be absent from the homestead for more than six months but does not intend to abandon the homestead, and has no other ((permanent)) principal residence, the owner may execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of nonabandonment of homestead and file the declaration for record in the office of the recording officer of the county in which the property is situated.

The declaration of nonabandonment of homestead must contain:

(1) A statement that the owner claims the property as a homestead, that the owner intends to occupy the property in the future, and that the owner claims no other property as a homestead;

(2) A statement of where the owner will be residing while absent from the ((premises)) homestead property, the estimated duration of the owner's absence, and the reason for the absence; and

(3) A legal description of the ((premises)) homestead property.

Sec. 206. Section 6, chapter 64, Laws of 1895 as amended by section 1, chapter 251, Laws of 1983 and RCW 6.12.110 are each amended to read as follows:

The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife, except that a husband or a wife or both jointly may make and execute powers of attorney for the conveyance or encumbrance of the homestead.

Sec. 207. Section 4, chapter 64, Laws of 1895 as last amended by section 13, chapter 329, Laws of 1981 and RCW 6.12.090 are each amended to read as follows:

(1) Except as provided in RCW 6.12.100, the homestead is exempt from attachment and from execution or forced sale((, except as in this chapter provided, and)) for the debts of the owner up to the amount specified in RCW 6.12.050. 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 6.12.050, 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 ((~~lands~~)) 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.

Sec. 208. Section 1, chapter 10, Laws of 1982 as amended by section 16, chapter 260, Laws of 1984 and RCW 6.12.100 are each amended to read as follows:

The homestead exemption is ((~~subject to~~)) not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, materialmen's or vendor's liens upon the premises;

(2) On debts secured by purchase money security agreements describing as collateral ((~~a~~)) the mobile home ((~~located on the premises~~)) that is claimed as a homestead or by mortgages or deeds of trust on the premises, executed and acknowledged by the husband and wife or by any unmarried claimant;

(3) On one spouse's or the community's debts existing at the time of that spouse's bankruptcy filing where (a) bankruptcy is filed by both spouses within a six-month period, ((~~including as a joint case under 11 U.S.C. Sec. 302~~)) other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse exempts property from property of the estate under the ((~~federal~~)) bankruptcy exemption provisions of 11 U.S.C. Sec. ((~~522(b)(1)~~)) 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay spousal maintenance.

Sec. 209. Section 30, chapter 260, Laws of 1984 and RCW 6.12.105 are each amended to read as follows:

((~~When a homestead declaration occurs before a judgment, the judgment creditor has~~)) A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption((~~. This lien commences when~~)) from the time the judgment creditor records the judgment with the ((~~auditor~~)) recording officer of the county where the property is located.

Sec. 210. Section 9, chapter 64, Laws of 1895 and RCW 6.12.140 are each amended to read as follows:

When ((~~the~~)) execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.12.100 is levied upon the homestead, the judgment creditor ((~~may~~)) shall apply to the superior

court of the county in which the homestead is situated for the appointment of a person((s)) to appraise the value thereof.

Sec. 211. Section 10, chapter 64, Laws of 1895 as amended by section 15, chapter 329, Laws of 1981 and RCW 6.12.150 are each amended to read as follows:

The application under RCW 6.12.140 must be made ((upon)) by filing a verified petition, showing((——)):

(1) The fact that an execution has been levied upon the homestead.

(2) The name of the owner of the homestead property.

(3) That the net value of the homestead exceeds the amount of the homestead exemption.

Sec. 212. Section 12, chapter 64, Laws of 1895 as amended by section 16, chapter 329, Laws of 1981 and RCW 6.12.170 are each amended to read as follows:

A copy of the petition, with a notice of the time and place of hearing, must be served upon the owner and the owner's attorney of record, if any, at least ten days before the hearing.

Sec. 213. Section 13, chapter 64, Laws of 1895 as amended by section 1, chapter 118, Laws of 1984 and RCW 6.12.180 are each amended to read as follows:

At the hearing, the judge may, upon the proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint a disinterested qualified person of the county to appraise the value of the homestead.

Sec. 214. Section 14, chapter 64, Laws of 1895 and RCW 6.12.190 are each amended to read as follows:

The person((s)) appointed, before entering upon the performance of ((their)) duties, must take an oath to faithfully perform the same. The appraiser must view the premises and appraise the market value thereof and, if the appraised value, less all liens and encumbrances, exceeds the homestead exemption, must determine whether the land claimed can be divided without material injury. Within fifteen days after appointment, the appraiser must make to the court a report in writing, which report must show the appraised value, less liens and encumbrances, and, if necessary, the determination whether or not the land can be divided without material injury and without violation of any governmental restriction.

Sec. 215. Section 17, chapter 64, Laws of 1895 as amended by section 17, chapter 329, Laws of 1981 and RCW 6.12.220 are each amended to read as follows:

If, from the report, it appears to the court that the value of the homestead, less liens and encumbrances, exceeds the homestead exemption and the property can be divided without material injury and without violation of any governmental restriction, the court ((must)) may, by an order, direct

the appraiser((s)) to set off to the owner so much of the land, including the residence, as will amount in net value to the homestead exemption, and the execution may be enforced against the remainder of the land.

Sec. 216. Section 18, chapter 64, Laws of 1895 as amended by section 18, chapter 329, Laws of 1981 and RCW 6.12.230 are each amended to read as follows:

If, from the report, it appears to the court that the ((homestead exceeds in)) appraised value of the homestead property, less liens and encumbrances, exceeds the amount of the homestead exemption and ((that it cannot be)) the property is not divided, the court must make an order directing its sale under the execution. The order shall direct that at such sale no bid may be received unless it exceeds the amount of the homestead exemption.

Sec. 217. Section 20, chapter 64, Laws of 1895 as amended by section 19, chapter 329, Laws of 1981 and RCW 6.12.250 are each amended to read as follows:

If the sale is made, the proceeds must be applied in the following order: First, to the amount of the homestead exemption, to be paid to the judgment debtor; second, up to the amount of the execution, to be applied to the satisfaction of the execution; third, the balance to be paid to the judgment debtor.

Sec. 218. Section 21, chapter 64, Laws of 1895 as last amended by section 20, chapter 329, Laws of 1981 and RCW 6.12.260 are each amended to read as follows:

The money paid to the owner is entitled to the same protection against legal process and the voluntary disposition of the husband or wife which the law gives to the homestead.

Sec. 219. Section 22, chapter 64, Laws of 1895 as amended by section 2, chapter 118, Laws of 1984 and RCW 6.12.270 are each amended to read as follows:

The court shall determine a reasonable compensation for the appraiser.

Sec. 220. Section 23, chapter 64, Laws of 1895 and RCW 6.12.280 are each amended to read as follows:

The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in RCW 6.12.220 and 6.12.230 the amount so paid must be added as costs on execution, and collected accordingly.

Sec. 221. Section 26, chapter 64, Laws of 1895 as amended by section 4, chapter 80, Laws of 1977 ex. sess. and RCW 6.12.300 are each amended to read as follows:

In case of a homestead, if either the husband or wife shall be or become incompetent or disabled to such a degree that he or she is unable to assist in the management of his or her interest in the marital property and

no guardian has been appointed, upon application of the ((husband or wife not so incompetent or disabled)) other spouse to the superior court of the county in which the homestead is situated, and upon due proof of such incompetency or disability in the severity required above, the court may make an order permitting the husband or wife applying to the court to sell and convey or mortgage such homestead.

Sec. 222. Section 27, chapter 64, Laws of 1895 as amended by section 5, chapter 80, Laws of 1977 ex. sess. and RCW 6.12.310 are each amended to read as follows:

Notice of the application for such order shall be given by publication of the same in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks prior to the hearing of such application, and a copy of such notice shall be served upon the alleged incompetent husband or wife personally, and upon the nearest relative of such incompetent or disabled husband or wife other than the applicant, resident in this state, at least three weeks prior to such application being heard, and in case there be no such relative known to the applicant, a copy of such notice shall be served upon the prosecuting attorney of the county in which such homestead is situated; and it is hereby made the duty of such prosecuting attorney, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.

Sec. 223. Section 28, chapter 64, Laws of 1895 as amended by section 6, chapter 80, Laws of 1977 ex. sess. and RCW 6.12.320 are each amended to read as follows:

Thirty days before the hearing of any application under the provisions of this chapter, the applicant shall present and file in the court in which such application is to be heard a petition for the order mentioned, subscribed and sworn to by the applicant, setting forth the name and age of the alleged incompetent or disabled husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; such facts necessary to show that the nonpetitioning husband or wife is incompetent or disabled to the degree required under RCW 6.12-.300; and such additional facts relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition.

Sec. 224. Section 29, chapter 64, Laws of 1895 and RCW 6.12.330 are each amended to read as follows:

If the court shall make the order provided for in RCW 6.12.300, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance (([or])), or mortgage made in pursuance of such order shall be as valid and effectual as if the property affected thereby was the

absolute property of the person making such sale, conveyance, or mortgage in fee simple.

NEW SECTION. Sec. 225. The following acts or parts of acts are each repealed:

(1) Section 32, chapter 64, Laws of 1895, section 11, chapter 329, Laws of 1981 and RCW 6.12.070;

(2) Section 33, chapter 64, Laws of 1895, section 12, chapter 329, Laws of 1981 and RCW 6.12.080;

(3) Section 11, chapter 64, Laws of 1895 and RCW 6.12.160;

(4) Section 15, chapter 64, Laws of 1895 and RCW 6.12.200;

(5) Section 16, chapter 64, Laws of 1895 and RCW 6.12.210; and

(6) Section 19, chapter 64, Laws of 1895 and RCW 6.12.240.

PART III
PERSONAL EXEMPTIONS

Sec. 301. Section 253, page 178, Laws of 1854 as last amended by section 8, chapter 45, Laws of 1983 1st ex. sess. and RCW 6.16.020 are each amended to read as follows:

Except as provided in RCW 6.16.080, the following personal property shall be exempt from execution ((and)), attachment, ((except as hereinafter specially provided)) and garnishment:

(1) All wearing apparel of every ((person)) individual and family, but not to exceed seven hundred fifty dollars in value in furs, jewelry, and personal ornaments for any ((person)) individual.

(2) All private libraries of every individual, but not to exceed one thousand dollars in value, and all family pictures and keepsakes.

(3) To each ((person or family)) individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

(a) The ((person's or family's)) individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed one thousand five hundred dollars in value;

(b) Provisions and fuel for the comfortable maintenance of ((such person or family)) the individual or community for three months; ((and))

(c) Other property, except personal earnings as provided under RCW 6.16.090(1), not to exceed five hundred dollars in value, of which not more than one hundred dollars in value may consist of cash, bank accounts, savings and loan accounts, stocks, bonds, or other securities((.)); and

(((4) To any person or family,)) (d) One motor vehicle which is used for personal transportation, not to exceed one thousand two hundred dollars in value.

(((5))) To each qualified individual, one of the following exemptions:

(a) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed three thousand dollars in value((.));

APPENDIX B

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5068

Chapter 200, Laws of 1993

53rd Legislature
1993 Regular Session

HOMESTEAD EXEMPTIONS--REVISIONS

EFFECTIVE DATE: 7/25/93

Passed by the Senate March 13, 1993
YEAS 44 NAYS 1

JOEL PRITCHARD
President of the Senate

Passed by the House April 15, 1993
YEAS 95 NAYS 3

BRIAN EBERSOLE
Speaker of the House of Representatives

Approved May 6, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5068** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN
Secretary

FILED

May 6, 1993 - 1:18 p.m.

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 5068

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, McCaslin, Nelson, Erwin, Vognild and Roach)

Read first time 02/05/93.

AN ACT Relating to homestead exemptions; amending RCW 6.13.010, 6.13.030, 6.13.040, and 6.15.060; and reenacting and amending RCW 6.13.080.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 6.13.010 and 1987 c 442 s 201 are each amended to read as follows:

(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.

Sec. 2. RCW 6.13.030 and 1991 c 123 s 2 are each amended to read as follows:

A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, mobile home, ((~~and~~)) improvements, and other personal property, as described in RCW 6.13.010, or (2) the sum of thirty thousand dollars in the case of lands, mobile home, and improvements, or the sum of fifteen thousand dollars in the case of other personal property described in RCW 6.13.010, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption.

Sec. 3. RCW 6.13.040 and 1987 c 442 s 204 are each amended to read as follows:

(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.

Sec. 4. RCW 6.13.080 and 1988 c 231 s 3 and 1988 c 192 s 1 are each reenacted and amended to read as follows:

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, materialmen's or vendor's liens ((~~upon the premises~~)) arising out of and against the particular property claimed as a homestead;

(2) On debts secured (a) by security agreements describing as collateral the ((~~mobile home~~)) property that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by the husband and wife or by any unmarried claimant;

(3) On one spouse's or the community's debts existing at the time of that spouse's bankruptcy filing where (a) bankruptcy is filed by both spouses within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay spousal maintenance; or

(5) On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection.

Sec. 5. RCW 6.15.060 and 1988 c 231 s 7 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, property claimed exempt under RCW 6.15.010 shall be selected by the individual entitled to the exemption, or by the husband or wife entitled to a community exemption, in the manner described in subsection (3) of this section.

(2) If, at the time of seizure under execution or attachment of property exemptible under RCW 6.15.010(3) (a), (b), or (c), the individual or the husband or wife entitled to claim the exemption is not present, then the sheriff or deputy shall make a selection equal in value to the applicable exemptions and, if no appraisement is required and no objection is made by the creditor as permitted under subsection (4) of this section, the officer shall return the same as exempt by inventory. Any selection made as provided shall be prima facie evidence (a) that the property so selected is exempt from execution and attachment, and (b) that the property so selected is not in excess of the values specified for the exemptions.

(3)(a) A debtor who claims personal property as exempt against execution or attachment shall, at any time before sale, deliver to the officer making the levy a list by separate items of the property claimed as exempt, together with an itemized list of all the personal property owned or claimed by the debtor, including money, bonds, bills, notes, claims and demands, with the residence of the person indebted upon the said bonds, bills, notes, claims and demands, and shall verify such list by affidavit. The officer shall immediately advise the creditor, attorney, or agent of the exemption claim and, if no appraisement is required and no objection is made by the creditor as permitted under subsection (4) of this section, the officer shall return with the process the list of property claimed as exempt.

(b) A debtor who claims personal property exempt against garnishment shall proceed as provided in RCW 6.27.160.

(c) A debtor who claims as a homestead, under chapter 6.13 RCW, a mobile home that is not yet occupied as a homestead and that is located on land not owned by the debtor shall claim the homestead as against a specific levy by delivering to the sheriff who levied on the mobile home, before sale under the levy, a declaration of homestead that contains (i) a declaration that the debtor owns the mobile home, intends to reside therein, and claims it as a homestead, and (ii) a description of the mobile home, a statement where it is located or was located before the levy, and an estimate of its actual cash value.

(d) A debtor who claims as a homestead, under RCW 6.13.040, any other personal property, shall at any time before sale, deliver to the officer making the levy a notice of claim of homestead in a statement that sets forth the following: (i) The debtor owns the personal property; (ii) the debtor resides thereon as a homestead; (iii) the debtor's estimate of the fair market value of the property; and (iv) the debtor's description of the property in sufficient detail for the officer making the levy to identify the same.

(4)(a) Except as provided in (b) of this subsection, a creditor, or the agent or attorney of a creditor, who wishes to object to a claim of exemption shall proceed as provided in RCW 6.27.160 and shall give notice of the objection to the officer not later than seven days after the officer's giving notice of the exemption claim.

(b) A creditor, or the agent or attorney of the creditor, who wishes to object to a claim of exemption made to a levying officer, on the ground that the property claimed exceeds exemptible value, may

1 demand appraisement. If the creditor, or the agent or attorney of the
2 creditor, demands an appraisement, two disinterested persons shall be
3 chosen to appraise the property, one by the debtor and the other by the
4 creditor, agent or attorney, and these two, if they cannot agree, shall
5 select a third; but if either party fails to choose an appraiser, or
6 the two fail to select a third, or if one or more of the appraisers
7 fail to act, the court shall appoint one or more as the circumstances
8 require. The appraisers shall forthwith proceed to make a list by
9 separate items, of the personal property selected by the debtor as
10 exempt, which they shall decide as exempt, stating the value of each
11 article, and annexing to the list their affidavit to the following
12 effect: "We solemnly swear that to the best of our judgment the above
13 is a fair cash valuation of the property therein described," which
14 affidavit shall be signed by two appraisers at least, and be certified
15 by the officer administering the oaths. The list shall be delivered to
16 the officer holding the execution or attachment and be annexed to and
17 made part of the return, and the property therein specified shall be
18 exempt from levy and sale, but the other personal estate of the debtor
19 shall remain subject to execution, attachment, or garnishment. Each
20 appraiser shall be entitled to fifteen dollars or such larger fee as
21 shall be fixed by the court, to be paid by the creditor if all the
22 property claimed by the debtor shall be exempt; otherwise to be paid by
23 the debtor.
24 (c) If, within seven days following the giving of notice to a
25 creditor of an exemption claim, the officer has received no notice from
26 the creditor of an objection to the claim or a demand for appraisement,
27 the officer shall release the claimed property to the debtor.

Passed the Senate March 13, 1993.
Passed the House April 15, 1993.
Approved by the Governor May 6, 1993.
Filed in Office of Secretary of State May 6, 1993.

APPENDIX C

FINAL BILL REPORT

SSB 5068

C 200 L 93

SYNOPSIS AS ENACTED

Brief Description: Changing the homestead exemption.

SPONSORS: Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, McCaslin, Nelson, Erwin, Vognild and Roach)

SENATE COMMITTEE ON LAW & JUSTICE

HOUSE COMMITTEE ON JUDICIARY

BACKGROUND:

A creditor who obtains a judgment against a delinquent debtor often can force the debtor to sell property to repay his or her obligations.

The homestead exemption protects from forced sale the house or mobile home where the debtor resides or intends to reside, along with appurtenant buildings and related land. The exemption generally is limited to the lesser of (1) $30,000 and (2) the value of the lands, mobile home and improvements.

Because some Washington citizens reside on their boats or in their cars or vans, it has been recommended that the homestead exemption's scope be expanded to include any personal or real property that the owner uses as a residence.

SUMMARY:

The definition of homestead is expanded to include any real or personal property that the owner uses as a residence. The homestead exemption may not be asserted against certain liens arising in connection with the property claimed as a homestead.

The amount of the homestead exemption in personal property is limited to the lesser of (1) the net value of the personal property claimed as a homestead, and (2) $15,000.

VOTES ON FINAL PASSAGE:

Senate	44	1
House	95	3

EFFECTIVE: July 25, 1993

K&L GATES LLP

January 21, 2021 - 3:49 PM

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