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No. 98824-2

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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

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CITY OF SEATTLE,

*Petitioner,*

v.

STEVEN G. LONG,

*Respondent*

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**BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES  
UNION OF WASHINGTON; WASHINGTON DEFENDER  
ASSOCIATION; NATIONAL HOMELESSNESS LAW CENTER;  
INTERFAITH TASK FORCE ON HOMELESSNESS; HOMELESS  
RIGHTS ADVOCACY PROJECT; AND PUBLIC DEFENDER  
ASSOCIATION**

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**I. IDENTITY AND INTEREST OF *AMICI CURIAE***

The identity and interest of Amici are set forth in the Motion for Leave to File Amici Curiae filed contemporaneously with this brief.

**II. ISSUE TO BE ADDRESSED BY *AMICI CURIAE***

Whether the City of Seattle has the “authority of law” to seize and prolongedly deprive residents of their vehicle homes pursuant to Seattle Municipal Code (SMC) 11.72.440.

**III. STATEMENT OF THE CASE**

Amici adopt Petitioner Long’s Statement of the Case.

**IV. ARGUMENT**

“The United States may be facing the most severe housing crisis in its history.” Emily Benfer et. al., *Nat’l Low Income Housing Alliance, The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at Risk 2* (2020),

[https://nlihc.org/sites/default/files/The\\_Eviction\\_Crisis\\_080720.pdf](https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf).

Absent “robust and swift intervention, an estimated 30-40 million people in America could be at risk of eviction in the next several months.” *Id.* Our nation’s housing crisis, however, is not simply a product of the pandemic. Rather, it is a predictable consequence of unchecked housing markets and insufficient safety nets, fueled by centuries of racially discriminatory and exploitative practices. From settler colonialism, slavery, and segregation

laws, to decades of redlining which effectively preserved desirable neighborhoods for whites and blocked home financing in other areas, systemic racism has made homeownership—the primary way in which Americans accumulate wealth—impossible for many Black, Indigenous, and other people of color. Compounded by gentrification, intentional disruptions of economic and social prosperity, and the funneling of people into the carceral system, it is no accident that Black, Indigenous, and other communities of color are disproportionately forced into poverty; evicted from their homes; and living in cars, tents, and other makeshift shelters on City streets to survive.

Excluding and pushing people out of the City for being poor and engaging in life-sustaining conduct—such as living in their vehicles—continues this long legacy of forced displacement, segregation, and oppression and only exacerbates the housing crisis. Critically, such policies and practices also run contrary to our state constitution. As more and more Washingtonians are unable to pay for brick-and-mortar housing, it is crucial that the Court affirm there is no income requirement to live in this state and that the government cannot use the guise of the law to eject those it deems “undesirable” from City boundaries.

**A. Centuries of Discrimination and Systemic Oppression Have Created a Housing Crisis in Washington State and the City of Seattle that Determines Who Is Houseless Today.**

Displacement and segregation were baked into the design of the City of Seattle. Like most reservation lands throughout the country, the land now considered “Seattle” was seized from Indigenous communities who had lived here for generations and redistributed to white Americans in the mid-1800s. Jennifer Ott, *Seattle Board of Trustees passes ordinance, calling for the removal of Indians from the town, on February 7, 1865*, HistoryLink (Dec. 7, 2014), <https://www.historylink.org/File/10979>. Indigenous communities were not only deprived of their land and associated rights, but upon taking governance the first Seattle Board of Trustees was quick to call for their expulsion and removal from the City altogether. *Id.* After the federal government had “terminated more than 100 tribal nations’ recognition” and caused the “loss of millions of acres of tribal land,” lawmakers encouraged Indigenous communities to move to urban centers where they encountered immense discrimination and housing instability. Danyelle Solomon, Connor Maxwell, Abril Castro, *Systemic Inequality: Displacement, Exclusion, and Segregation*, Ctr. for Am. Progress (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/>.

To further exclude non-white families from their boundaries, most neighborhoods in the City and suburbs adopted racially restrictive covenants making it illegal to sell or rent property to Black, Jewish, Asian, and other communities of color. Catherine Silva, *Racial Restrictive Covenants History, Enforcing Neighborhood Segregation in Seattle*, Seattle Civ. Rts. & Labor Hist. Project (2009), [depts.washington.edu/civilr/covenants\\_report.htm](https://depts.washington.edu/civilr/covenants_report.htm). When racially restrictive covenants were finally deemed legally unenforceable,<sup>1</sup> redlining<sup>2</sup> and continued anti-Black and anti-integrationist violence such as cross-burnings and firebombs continued to make moving into white neighborhoods either financially unfeasible—or life-threatening. *Id.*; see generally Bell, Jeannine, *Hate Thy Neighbor: Move-In Violence and the Persistence of Racial Segregation in American Housing* (2013).

The primary way Americans build family wealth—homeownership—

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<sup>1</sup> Even though racial covenants were deemed unenforceable in *Shelley v. Kraemer*, they continued to govern housing patterns in Seattle until the Fair Housing Act was passed in 1968—finally making housing discrimination based on race illegal. *Shelley v. Kraemer*, 334 U.S. 1 (1948); 42 U.S. Code § 3604.

<sup>2</sup> “Redlining” entails “drawing lines on city maps delineating the ideal geographic areas for bank investment and the sale of mortgages,” which “made it exceedingly more difficult for non-Whites to purchase property because financing was refused in the only neighborhoods they were able to live.” Silva, *supra*. Black, Latinx, and Asian households continue to be disproportionately denied loan applications to buy or refinance a home at disproportionate rates today. Kenneth Harney, *Large numbers of loan applications get denied. But for blacks, Hispanics and Asians, the rejection rate is even higher*, Wash. Post (May 23, 2018), [https://www.washingtonpost.com/realestate/large-numbers-of-loan-applications-get-denied-but-for-blacks-hispanics-and-asians-the-rejection-rate-is-even-higher/2018/05/22/dac19ffc-5d1b-11e8-9ee3-49d6d4814c4c\\_story.html](https://www.washingtonpost.com/realestate/large-numbers-of-loan-applications-get-denied-but-for-blacks-hispanics-and-asians-the-rejection-rate-is-even-higher/2018/05/22/dac19ffc-5d1b-11e8-9ee3-49d6d4814c4c_story.html).

continues to be impossible for many families of color.<sup>3</sup> Nationally, over 73 percent of white households own their homes, while only 42 percent of Black, 47 percent of Latinx, 50 percent of Indigenous, and 57 percent of Asian or Pacific Islander households own their homes. *Housing Vacancies and Homeownership, Annual Statistics: 2019*, U.S. Census Bureau, <https://www.census.gov/housing/hvs/data/ann19ind.html>. Disparities in Seattle are even greater: just 28 percent of Black households in the region own their home and King County has one of the lowest rates of Black homeownership among the 100 U.S. counties with the largest Black populations. Gene Balk, *The rise and dramatic fall of King County's black homeowners*, Seattle Times (June 12, 2017) <https://www.seattletimes.com/seattle-news/data/the-rise-and-dramatic-fall-of-king-countys-black-homeowners/>. Similarly, as of 2017, less than 40 percent of Indigenous households owned their house in Seattle/King County. *2019 King County Analysis of Impediments to Fair Housing*

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<sup>3</sup> Across the U.S., people of color are not only less likely to own homes, but their homes are worth less on average than white families. For example, the median home value for Indigenous and Alaska Native people is approximately \$135,000, while the median home value for white people is nearly \$220,000 and less than \$95,000 for Black homeowners. Solomon et al., *supra*. Neighborhood racial composition also still drives unequal home values, despite laws that forbid real estate professionals from explicitly using race when evaluating a property's worth. Even though redlining has since been prohibited, it allowed appraisers to use past sale prices to determine home values. Real estate professionals compound these historical inequalities by assuming communities of color are undesirable, even when real estate demand suggests otherwise. See e.g., Junia Howell, Elizabeth Korver-Glenn, *The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980-2015*, Social Problems (2020).



*Choice, Equal Housing Opportunity* 44 (2019), <https://www.kingcounty.gov/~media/depts/community-human-services/housing-homelessness-community-development/2020-24-ConPlan/AOI-Draft-7-25-2019.ashx?la=en>. As a result of centuries of exclusion and ongoing discrimination in the housing market,<sup>4</sup> Black, Indigenous, and other people of color disproportionately rent their housing, leaving them more exposed to rent hikes and evictions in one of the most expensive rental markets in the country. Gene Balk, *Seattle now most expensive city for renters outside California, census data shows*, Seattle Times (July 30, 2019), <https://www.seattletimes.com/seattle-news/data/seattle-now-most-expensive-city-for-renters-outside-california-census-data-shows/>.

Predictably, people of color are disproportionately evicted from their housing<sup>5</sup>—often onto City streets and emergency shelters and/or out of

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<sup>4</sup>“People of color continue to endure rampant discrimination in the housing market: [nationally] 17 percent of Native Americans, 25 percent of Asian Americans, 31 percent of Latinos, and 45 percent of African Americans report experiencing discrimination when trying to rent or buy housing.” Solomon, *supra* note 3. In 2018, the Seattle Office of Civil Rights similarly observed differences in treatment between a Black tester and a non-Black tester in 32 out of 53 tests. *2018 Testing Program Report, Seattle Office for Civ. Rts.* (2018), [https://www.seattle.gov/Documents/Departments/CivilRights/Testing/2018\\_Testing\\_Program\\_Report\\_FINAL.pdf](https://www.seattle.gov/Documents/Departments/CivilRights/Testing/2018_Testing_Program_Report_FINAL.pdf).

<sup>5</sup> In King County, the rates of unlawful detainment or eviction among Black defendants is four times greater than it is for white defendants. The greatest concentration of overall evictions also occurs in the most diverse neighborhoods in the county and Black households face disproportionately higher rates of eviction in any neighborhood where there is a substantial Black renting population. Timothy A. Thomas, *Forced Out: Race,*

Seattle entirely. In a survey conducted by the Housing Justice Project, nearly 90 percent of evicted respondents in Seattle reported becoming homeless after being evicted; 43.5 percent of evicted respondents were forced to leave the City. Tara Cookson et. al., *King Cnty. Bar Ass'n, Losing Home: The Human Cost of Eviction in Seattle* 60-61 (2018), [https://www.kcba.org/Portals/0/pbs/pdf/HJP\\_LosingHome\\_%202018.pdf](https://www.kcba.org/Portals/0/pbs/pdf/HJP_LosingHome_%202018.pdf). COVID-19 and the eventual lifting of current eviction moratoriums is expected to substantially worsen the housing crisis and increase homelessness.<sup>6</sup>

The effects of persistent racial oppression in our housing system are plainly borne out in numbers. Indigenous and Alaskan Native people have the highest rates of homelessness compared to any other racial or ethnic group, comprising just 1 percent of the overall population in Seattle/King County, but 15 percent of the total homeless population<sup>7</sup>; Black/African Americans make up 25 percent of the homeless population yet are only 7

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*Market, and Neighborhood Dynamics of Evictions* 27-28, 33 (2017) (Ph.D. dissertation, University of Washington (on file with the University of Washington Library).

<sup>6</sup> As of late November 2020, over 200,000 people in Washington were behind on rent and will be at risk of eviction once the eviction moratorium lifts. Ctr. on Budget & Policy Priorities, *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships* 16 (2021), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and->

<sup>7</sup> Once homeless, Indigenous people are also less likely to be able to find housing than any racial or ethnic group. Vianna Davila, *Native Americans, Seattle's original residents, are homeless at highest rate*, Seattle Times (Feb. 8, 2018), <https://www.seattletimes.com/seattle-news/homeless/native-americans-are-this-regions-original-residents-and-they-are-its-most-likely-to-be-homeless/>.

percent of the general population. All Home, *Seattle/King County Point-in-Time Count of Individuals Experiencing Homelessness 2020* 10 (2020), [https://regionalthomelessssystem.org/wp-content/uploads/2020/07/Count-Us-In-2020-Final\\_7.29.2020.pdf](https://regionalthomelessssystem.org/wp-content/uploads/2020/07/Count-Us-In-2020-Final_7.29.2020.pdf) [hereinafter All Home]. Faced with a lack of alternatives, thousands of people like Mr. Long, a member of the Flathead Nation and evicted from his housing, have increasingly turned to their vehicles, tents, and other makeshift shelters on City streets to survive.<sup>8</sup>

**B. The Policing of Where and How Poor Communities Live Continues Our Legacy of Segregation and Displacement.**

Rather than reckoning with the oppressive systems causing Seattle’s housing crisis, the City has simply tried to hide it. For those who have been unable to build equity and wealth for centuries and are increasingly forced into homelessness due to unaffordable rents, Seattle has attempted to banish their residency from City limits by making it impossible, if not illegal, to survive on public streets.

The regulation of public space has been used as a tool to persecute, punish, and exclude people of color, poor people, and people with

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<sup>8</sup> It cannot be disputed that there are insufficient alternative shelter spaces in Seattle. On a single night in January 2020, 11,751 individuals were counted as “homeless” in Seattle/King County; nearly half of whom living in vehicles, tents, and other makeshift shelters. All Home, *supra*, at 5, 21. The average daily availability of emergency shelter in Seattle in 2019 was 12 beds. Jason Johnson, Council Clerk File: Human Services Department (HSD) Navigation Team Q1 2020 Proviso Report 5 (Jan. 31, 2020), <https://www.documentcloud.org/documents/6766903-Final-Q1-2020-Proviso-Due-Jan-31-3.html>.

disabilities for centuries—from vagrancy laws that “permitted the arrest or fining of individuals in public spaces who did not have visible means of support” to “Anti-Okie Laws” that prohibited indigent farmers from entering western states; “Ugly laws” that punished people with physical disabilities for appearing in public; Jim Crow segregation laws that controlled where Black people could sit, stand, or visit; Sundown Towns aimed at preventing non-white people from occupying a town’s geographical borders; and Broken Windows policing. *See generally* Lawyers Committee for Civil Rights of the San Francisco Bay Area, *Cited for Being in Plain Sight: How California Polices Being Black, Brown, and Unhoused in Public* 26-29 (Sept. 2020), [https://lccrsf.org/wp-content/uploads/LCCR\\_CA\\_Infraction\\_report\\_4WEB-1.pdf](https://lccrsf.org/wp-content/uploads/LCCR_CA_Infraction_report_4WEB-1.pdf); Javier Ortiz & Matthew Dick, *The Wrong Side of History: A Comparison of Modern and Historical Criminalization Laws*, Homeless Rights Advocacy Project (2015). While such explicit exclusions have been struck down by numerous courts as unconstitutional, cities have simply pivoted to new techniques, often imposed through legal hybrid control tools.

“Seattle appears to be at the cutting edge of this trend toward increased use of banishment.” Katherine Beckett & Steve Herbert, *Penal Boundaries: Banishment and the Expansion of Punishment*, 35 *Law & Soc. Inquiry* 1, 5 (2010). One critical component has been restricting the use of

public space by people experiencing homelessness through policies and practices that prohibit sitting, sleeping, or placing objects on a public sidewalk (SMC 15.48.040; SMC 12A.12.015); erecting tents and tarps to shelter oneself on public property (SMC 18.12.250; Financial Administrative Services Rules 17-01; Multi-departmental Administrative Rules 17-01); and the pervasive use of Parks exclusion orders and trespass citations (SMC 18.12.279; SMC 18.12.250).<sup>9</sup>

Laws restricting vehicular residency—often enforced through impoundment—are one of the fastest growing categories of “criminalization” policies in the nation. Nat’l Law Ctr. On Homelessness & Poverty, *Housing Not Handcuffs* 37 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>. Seattle has approximately twenty ordinances restricting parking, vehicle operability, and licensing and registration, and the types of vehicles that are allowed on city streets. T. Ray Ivey, *The Criminalization of Vehicle Residency and the Case for Judicial Intervention via the Washington State Homestead Act*, 42 Seattle U. L. Rev. 243, 244 (2018);

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<sup>9</sup> The National Homelessness Law Center has found substantial increases in prohibitions against acts of public survival across the country. Of the cities surveyed, the Law Center has documented a 92 percent increase against camping; a 50 percent increase against sleeping; a 78 percent increase against sitting and lying down; a 103 percent increase against loitering, loafing, and vagrancy; a 103 percent increase against begging since 2006; and a 213 percent increase against living in vehicles between 2006 and 2019. Nat’l Law Ctr. On Homelessness & Poverty, *supra*, at 12-14.

Jessica So, Scott MacDonald Justin Olson, Ryan Mansell, & Sara Rankin, *Living at the Intersection: Laws & Vehicle Residency*, Homeless Rights Advocacy Project 9 (2016).

While some of these tactics—such as Seattle Municipal Code 11.72.440—may appear innocuous on their face, together they leave the houseless with no lawful place to park their vehicle, pitch a tent to shelter themselves, or otherwise exist within city limits, serving to remove the visibly houseless from public view, and deter them from remaining in or returning to the community. *See generally* Sara Rankin, *Civilly Criminalizing Homelessness*, Harv. C.R.-C.L. L. Rev. (forthcoming 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3677531](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3677531); Nat'l Law Ctr. On Homelessness & Poverty, *supra*.

Other exclusion tactics Seattle employs include persistent forced eviction through encampment “sweeps” wherein the City clears houseless communities under threat of arrest; perpetual move-along orders; “emphasis patrols”<sup>10</sup> and over-policing, and surveillance. *See* Rankin, *supra*, at 33-39.

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<sup>10</sup> Seattle, of the view that “the broken-windows theory is accurate, to a certain extent,” launched its “emphasis patrol” program in 2019, which entails an increased police presence in 7 targeted neighborhoods, many of which have significant houseless populations. Daniel Beekman, *Seattle officials on hot seat over boosting police patrols in 7 neighborhoods*, Seattle Times (May 7, 2019), <https://www.seattletimes.com/seattle-news/politics/move-to-increase-police-patrols-in-7-seattle-neighborhoods-draws-varied-reactions/>. Goals of the program include reducing “fear of crime” and promoting the “vitality” of neighborhoods. Press Release, Office of the Mayor, Mayor Durkan, Chief Best, and City Departments Announce Pre-Summer Emphasis Program to Improve Public Safety & Address Maintenance Needs in Seven Neighborhoods across Seattle

Unsurprisingly, people forced to live outside “commonly report feeling a relentless exile from public space, ‘like a constant pestering that keeps you from ever feeling relaxed or belonging just about anywhere.’” *Id.* at 39 (internal citations omitted).

Enforcement of these policies not only results in unresolvable tickets or citations and impossible-to-pay fines or fees,<sup>11</sup> but the deprivation of houseless peoples’ homes and belongings, whether through vehicle impoundment pursuant to SMC 11.72.440(E) (as was the case for Mr. Long); “scofflaw ordinances” which “escalate penalties and financial burdens by allowing for the extrajudicial impoundment of the targeted vehicle for specific violations, such as accumulating a certain threshold of unpaid fines, or exceeding specified time restrictions[]”; or encampment sweeps where residents are rarely given any warning before the City clears the area with bulldozers and garbage trucks. *Ivey, supra*, at 244-245.

Often passed under the guise of “public health and safety” such policies and practices are rooted in the widely debunked “broken windows theory” that signs of visible poverty create an atmosphere that leads to more

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(Apr. 30, 2019) (on file with the Office of the Mayor), <https://durkan.seattle.gov/2019/04/mayor-durkan-chief-best-and-city-departments-announce-pre-summer-emphasis-program-to-improve-public-safety-address-maintenance-needs-in-seven-neighborhoods-across-seattle/>).

<sup>11</sup> For example, a 2016 study showed that almost every citation received through Seattle’s impoundment or scofflaw ordinances was unresolved, demonstrating that people impacted by parking citations are unable to pay the fines. *So et. al., supra*, at 24-25.

crime. In reality, such policies and practices are not aimed at any legitimate government interest and instead only serve to segregate, exclude, and make less visible those deemed “undesirable”<sup>12</sup>—exacerbating the City’s housing crises and deepening inequalities.<sup>13</sup> They also—like the prolonged seizure of Mr. Long’s vehicle—violate the state constitution.

**C. Vehicle Impoundment is Unconstitutional When Used as a Tool to Seize Homes and Exclude Visibly Houseless Residents.**

Article I, section 7 of the Washington State Constitution mandates that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. I, § 7. “The ‘authority of law’ required by article I, section 7 is a valid warrant unless the State shows that a search or seizure falls within one of the jealously guarded and carefully drawn exceptions to the warrant requirement.” *State v. Hinton*, 179 Wn.2d 862, 868-69, 319 P.3d 9 (2014) (citing *State v. Miles*, 160 Wn.2d 236, 244,

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<sup>12</sup> According to a Seattle police spokesman, for example, the 72-hour parking rule is largely enforced by relying on reports or complaints. Jessica Lee, *What’s with Seattle’s rule limiting on-street parking to 72 hours?* Seattle Times (Aug. 28, 2017), <https://www.seattletimes.com/seattle-news/transportation/whats-with-seattles-rule-limiting-on-street-parking-to-72-hours/>.

<sup>13</sup> For example, research shows that individuals in Seattle with legal debt are more likely to experience nearly two additional years of homelessness. Jessica Mogk, Valeria Shmigol, Marvin Futrell, Bert Stover & Amy Hagopian, *Court-imposed fines as a feature of the homelessness-incarceration nexus: a cross-sectional study of the relationship between legal debts and duration of homelessness in Seattle, Washington, USA*, 42 J. Public Health 107, (2020). Research also shows that constant punitive interactions with police as a result of move-along orders and citations also limit access to services, housing, and jobs for people who are unhoused, thus perpetuating homelessness. Chris Herring, Dilara Yarbrough & Lisa Marie Alatorre, *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 Social Problems 131, 131-149 (2020).



156 P.3d 864 (2007)). “[W]arrantless seizures are per se unreasonable, and the State bears the burden of demonstrating that a warrantless seizure falls into a narrow exception to the rule.” *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010) (citing *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984)).

A municipal parking code authorizing the seizure of vehicles for failing to move after 72 hours is not sufficient authority of law to deprive Mr. Long of his home for weeks. *Cf. City of Seattle v. Long*, 13 Wn. App. 709, 735, 467 P.3d 979 (2020) (“Here, 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.”). The Court of Appeals’ refusal to consider Mr. Long’s article I, section 7 claim was erroneous.<sup>14</sup>

**1. The Seizure of a Home Requires More Protection Than the Impoundment of a Vehicle.**

As this Court has emphasized, “[o]ur constitution cannot be amended by statute, and while the legislature can give more protection to constitutional rights through legislation, it cannot use legislation to take that protection away.” *State v. Villela*, 194 Wn.2d 451, 454, 450 P.3d 170, 172

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<sup>14</sup> Issues that involve manifest error affecting a constitutional right, such as unlawful searches and seizures, may be raised for the first time on appeal pursuant to RAP 2.5(a). The record here is adequate to review Mr. Long’s article I, section 7 claim.

(2019) (internal citations omitted). That SMC 11.72.440(E) allows Seattle to impound vehicles does not mean the City inherently has the “authority of law” under article I, section 7 to do so—and certainly not under every circumstance. *Id.* at 454 (holding that the legislature did not create “authority of law” by passing RCW 46.55.360 and that the statute was also unconstitutional); *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030 (9th Cir. 2012) (“Violation of a City ordinance does not vitiate the Fourth Amendment’s protection of one’s property. Were it otherwise, the government could seize and destroy any illegally parked car or unlawfully unattended dog without implicating the Fourth Amendment.”).

Because a statute or code authorizing impoundment does not qualify as “authority of law” alone, “impoundment must nonetheless be reasonable under the circumstances to comport with constitutional guaranties.” *State v. Hill*, 68 Wn. App. 300, 305, 306, 842 P.2d 996 (1993). However, the requirement that impoundment of a vehicle be “reasonable under the circumstances” stems from caselaw applying article I, section 7 in cases where the driver was arrested, not in circumstances where the vehicle is a home and the owner is not in custody. *Cf. Villela*, 194 Wn. 2d at 460 (“authority of law to impound a vehicle *after the driver has been arrested* exists. . . . when there is reasonable and proper justification for such impoundment (emphasis added); *State v. Houser*, 95 Wn.2d 143, 153, 622

P.2d 1218, 1225 (1980)) (“It is unreasonable to impound a citizen's vehicle *following his or her arrest* when there is no probable cause to seize the car and where a reasonable alternative to impoundment exists) (emphasis added); *State v. Tyler*, 177 Wn.2d 690, 700, 302 P.3d 165, 171 (2013) (impoundment was reasonable when the “vehicle threatened public safety if left where it was” and the driver “had been arrested”).<sup>15</sup>

Seattle did not simply seize Mr. Long’s vehicle, a means of transportation he could easily pick up the next day. Rather, the City knowingly deprived Mr. Long of his home and all his worldly possessions for weeks. Caselaw analyzing the proper “authority of law” required for an impoundment does not contemplate what protections are needed if the vehicle is a home rather than a means of transportation. *See Houser*, 95 Wn.2d at 153 (“a warrant is not required” because “the inherent mobility of automobiles makes rigorous enforcement of the warrant requirement impracticable” and “the expectation of privacy in regard to one’s automobile is less than that relating to a home or office.”); *State v. Simpson*, 95 Wn.2d 170, 184, 622 P.2d 1199, 1208 (1980) (“Of course, the

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<sup>15</sup> This Court has also aptly noted, “[i]t seems obvious and almost beyond debate that the property rights of persons who are not under arrest [like Mr. Long] should be accorded more sanctity than should the property rights of persons under arrest. We should be slower, therefore, to disturb the personal affairs and property rights of persons who are not under arrest.” *State v. Kirwin*, 165 Wn.2d 818, 839, 203 P.3d 144, 1054 (2009). In circumstances such as Mr. Long’s, where impounding his home stemmed from non-criminal actions and no arrest was made, more than a local ordinance authorizing the seizure is required.

consideration of mobility would not diminish the individual's privacy interest in those situations in which the motor vehicle is not readily moveable and the officer has a practicable opportunity to obtain a warrant before searching the vehicle.”).

Mr. Long’s truck was his home, and “[i]n no area is a citizen more entitled to his privacy than in his or her home.” *State v. Young*, 123 Wn.2d 173, 185, 867 P.2d 593 (1994). “[T]he closer officers come to intrusion into a dwelling, the greater the constitutional protection.” *Id.* (quoting *State v. Chrisman*, 100 Wn.2d 814, 820, 676 P.2d 419 (1984)). In fact, the Government is generally not allowed to even *search* one’s home without a warrant—let alone deprive the owner of it. *See e.g. State v. Pippin*, 200 Wn. App. 826, 836-846, 403 P.3d 907 (2017) (affirming that a warrant is required to enter a houseless person’s tent home, even if erected on public property in violation of local law); *Seattle v. McCready*, 123 Wn.2d 260, 272-280, 868 P.2d 134 (1994) (affirming for non-criminal searches of homes there must still exist a valid warrant issued by a magistrate).

Seattle cannot bypass article I, section 7’s protections simply because Mr. Long’s home by necessity also happened to be a vehicle. Doing so only continues the City’s legacy of displacing “undesirable” residents under color of law and will have dire consequences for the rights of thousands of people who cannot afford brick-and-mortar housing and are

forced to make their vehicle their home.<sup>16</sup>

## **2. Seizing Mr. Long’s Vehicle Home Was Unreasonable.**

Even under typical vehicle impoundment caselaw, Mr. Long’s article I, section 7 claim should succeed. As this Court has repeatedly stated, a vehicle may only be impounded when “there is reasonable and proper justification for such impoundment.” *Villela*, 194 Wn. 2d at 460 (internal quotation marks and citations omitted). “The reasonableness of a search or seizure must be decided in light of the facts and circumstances of the case.” *Houser*, 95 Wn.2d at 148. Only when there are “no reasonable alternatives” is a vehicle impoundment lawful under article I, section 7. *Villela*, 194 Wn. 2d at 460.

The City utterly failed to engage in individual consideration of reasonable alternatives to impounding Mr. Long’s vehicle home. For example, one very simple alternative that the City has seamlessly implemented during other crises like COVID-19 is suspending enforcement of the 72-hour rule. *See* Seattle Dep’t of Transportation, *COVID-19 Parking*, (Dec. 8, 2020), <https://www.seattle.gov/transportation/projects->

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<sup>16</sup> “[V]ehicle residency has been the most commonly reported form of shelter for people who inhabit public space in Seattle and King County . . . for over a decade.” Graham Joseph Pruss, *A Home Without a Home: Vehicle Residency and Settled Bias* 41 (2019) (Ph.D. dissertation, University of Washington) (on file with the University of Washington Library), [https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/44706/Pruss\\_washington\\_0250E\\_20593.pdf](https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/44706/Pruss_washington_0250E_20593.pdf). In 2020, nearly 3,000 individuals were living in their vehicles, representing a 28 percent increase from 2019. *All Home*, *supra*, at 21.

and-programs/programs/parking-program/covid-parking-and-curb-management. The City could have also worked with Mr. Long, who they knew was awaiting repair parts for his vehicle, to tow the truck to another street or parking area or waited until Mr. Long was able to get his truck repaired. *See Houser*, 95 Wn.2d at 153 (“The police could have left the car parked and locked in its location on the public street”); *Hill*, 68 Wn. App. at 307–08 (threat of vandalism and parking on private property is a “weak justification”, especially when there “was ample parking adjacent”). Instead, the City deprived Mr. Long of his home, a safe place to sleep and virtually all of his personal property for twenty-one days.<sup>17</sup>

Depriving Mr. Long of his home under the guise of a law that would otherwise force Mr. Long to constantly move his truck from street to street or out of Seattle is simply part of the current iteration in a long history of unconstitutional policies and practices that have primarily excluded and displaced Black, Indigenous, and other communities of color impacted by poverty. Seattle’s weaponization of City ordinances like SMC 11.72.440 and tools like “sweeps”; “emphasis patrols”; and move-along orders,

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<sup>17</sup> Even if the initial seizure of Mr. Long’s vehicle was “reasonable”—the duration of 21 days was far longer than necessary to enforce the City’s parking code. *See, e.g., State v. Williams*, 102 Wn.2d 733, 741, 689 P.2d 2 1065 (1984) (“the length of time involved here appears to approach excessiveness,” finding art. 1, §7 violated); *U.S. v. Jacobsen*, 466 U.S. 109, 124-125, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984). (“[A] seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment’s prohibition on ‘unreasonable seizures.’”)(citations omitted).

effectively banish visibly houseless residents from public view. Racially restrictive covenants, Jim Crow laws, vagrancy laws, “ugly laws”, Sundown Towns, and broken windows policing should be viewed as predecessors for our present-day restrictions on where and who can legally exist in public spaces. Just as many of those predecessors were deemed unconstitutional, so should our current practices of exclusion and expulsion.

## V. CONCLUSION

For these reasons, Amici ask this Court to reverse the lower court ruling insofar as it categorically allows all vehicles, including homes, to be seized without proper authority of law.

RESPECTFULLY SUBMITTED this 5th day of February, 2021.

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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on February 5, 2021, I caused a true and correct copy of the Amici Curiae Motion in support of Petitioner of WASHINGTON DEFENDER ASSOCIATION, NATIONAL HOMELESSNESS LAW CENTER, INTERFAITH TASK FORCE ON HOMELESSNESS, HOMELESS RIGHTS ADVOCACY PROJECT, ACLU OF WASHINGTON FOUNDATION, and PUBLIC DEFENDER ASSOCIATION. Now to be served as follows:

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DATED this 5th day of February, 2021.

*Electronically Signed* \_\_\_\_\_ */s/ Tracie Wells*

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