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.

# AMICUS BRIEF OF INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

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## I. INTRODUCTION

The purpose of the Excessive Fines Clause of the Eighth Amendment is to prohibit the imposition of monetary penalties that are not only punitive but also grossly disproportional to the offense committed. The Amendment does not create immunity from parking laws, nor does it prevent the government from recouping actual costs associated with a legal violation. Thus, a lawfully conducted, temporary, impoundment of a vehicle parked illegally on public property, that is not accompanied by punitive (rather than remedial) monetary obligations, fully satisfies any excessive fines limitations the Eighth Amendment may impose on municipal governments.

Here, the municipal court correctly ruled the City of Seattle had complied with the Eighth Amendment. The Superior Court ruled the impoundment of Steven Long's vehicle (which was illegally parked and towed) was constitutional, but the requirement he reimburse a portion of the towing and storage costs, violated the Excessive Fines Clause. The Court of Appeals reversed, holding (like the municipal court) that there was no violation of the Eighth Amendment in any respect. *City of Seattle v. Long*, 13 Wn. App. 2d 709, 730, 467 P.3d 979, *review granted*, 196 Wn.2d 1024, 476 P.3d 582 (2020).

The International Municipal Lawyers Association ("IMLA") asks this Court to confirm no constitutional violation occurred in this case. Mr. Long's contrary position is unsupported by case law and is unworkable in practice for any municipal government. There is no reasonable or reliable process for municipalities to individually evaluate the owner of each vehicle subject to impoundment to attempt to determine that owner's ability to pay. Moreover, the result would create a means to avoid parking regulations that would essentially allow persons to live, indefinitely, on municipal property with no recourse for the public. This would, in turn, undermine the health and safety protections inherent in parking regulations such as Seattle's 72-hour rule.

The circumstances of Mr. Long's violation are a perfect example of how the interests of municipalities and vehicle owners may be appropriately balanced. Here, Seattle waived any actual "fine" associated with the underlying parking violation, required only a partial reimbursement of the City's out-of-pocket expenses, and allowed an extended payment plan without interest to alleviate any undue financial hardship. Mr. Long was able to redeem his vehicle after a brief time without making those payments. And, had Mr. Long simply moved his vehicle one city block in the first instance, it would have never been

impounded. Mr. Long was not required to make any punitive payment, much less one grossly disproportional to the underlying offense.

For these reasons, the Court of Appeals' rejection of Mr. Long's excessive fines argument should be affirmed.

## II. IDENTITY AND INTEREST OF AMICUS CURIAE

IMLA is a non-profit, nonpartisan professional organization consisting of more than 2,500 members. The membership is comprised of local government entities, including cities, counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and in state supreme and appellate courts.

IMLA's member cities throughout the United States have been required to adopt parking regulations for a myriad of reasons that include

emergency, public safety, relief of traffic congestion and access to limited, shared public space.[1] In the context of emergency, virtually every government in the United States adopts some form of regulation to prevent cars from impeding access to fire hydrants, impeding evacuations during emergencies, impeding clearing streets during snow or ice events, or cleaning streets. In the context of relief of traffic congestion, major cities like Seattle address the compression of thousands of drivers attempting to enter the work area or leave it during the commute, and to alleviate the stress on limited transportation network lanes used for parking during off hours that must be used as rights of way to add capacity in the face of increased volume. In the context of public safety, aside from emergencies, often vehicles limit sight or affect access to streets making intersections unsafe or putting pedestrians at risk; sometimes, parking at other locations can affect bike lanes and make those spaces hazardous to cyclists. In the context of public health, vehicles including RV's may congregate closely together surrounded by debris and waste.

Streets and highways are generally owned by the public, and cities strive to provide equal access to the limited parking spaces available to the

[1] For more details regarding such regulations in Washington State, see Chapter 6 of the WSDOT Traffic Manual, available at http://www.wsdot.wa.gov/publications/manuals/fulltext/M51-02/Chapter6.pdf (last visited February 2, 2021).

public by limiting the length of time any one person can use that shared space. In all contexts, removing vehicles that violate the regulations affecting parking forms a part of a planned and informed effort to govern a city. Regardless of when removal and impoundment occur these are necessary remedies, rather than punishment. Cities generally apply fines for violations that proceed through the normal judicial proceedings allowing for due process, and for exceptions and waiver where appropriate (as Seattle did here).

In light of the above, IMLA's focus in this brief is the assertion by Mr. Long that the City's temporary impoundment of his vehicle and required repayment solely of some costs associated with the impoundment violated the Eighth Amendment.[2] Such a position, if upheld, would substantially undermine the important municipal functions implemented daily by IMLA's members. The Court of Appeals properly rejected this argument, and IMLA requests that this Court affirm that portion of the decision.

## III. STATEMENT OF FACTS

IMLA has reviewed and adopts the recitations of facts and procedural history provided by the City in its opening brief at the Court of

[2] IMLA also agrees with Seattle's other arguments, but focuses this brief on the Excessive Fines Clause.

Appeals and supplemental brief before this Court. IMLA otherwise emphasizes the following key facts in the record.

Mr. Long parked his vehicle on property owned by Seattle for a three-month period, during that time moving the car only once for a distance of 20 feet. Seattle prohibits the parking of a vehicle in one location (i.e., within the same city block) for more than 72 hours. Seattle Municipal Code § 11.72.440B. Vehicles in violation may be impounded. Seattle Municipal Code § 11.72.440E; *see also* CP 881.

Mr. Long indisputably violated this ordinance, and he conceded as much before the magistrate. CP 872-73. Mr. Long also received a full week's notice that his car was parked illegally and subject to impound, but rather than move the car at least one city block, he removed the notice sticker and left the car where it was. *Id.*; *see also* CP 830, 844, 848-50, 766-67. Although Mr. Long was sleeping in his car, he never told the officers this when they informed him the car was parked illegally. CP 828, 844. Although Mr. Long later contended the vehicle did not operate, he also conceded he drove the vehicle out of impound when he redeemed it, which he attributed to "magic". CP 770. He then drove the vehicle to a friend's property outside of the City. CP 771. Mr. Long's contention is that he was not "parking", but "living" on City property. CP 784.

## IV. ARGUMENT

Mr. Long's excessive fines claim arises under the Eighth Amendment to the United States Constitution, which states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., Amdt. 8. Mr. Long mentions, in passing in his supplemental brief, the Excessive Fines Clause of the Washington Constitution, Const. art. I, § 14 ("Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted."). Although in some cases Washington's Cruel Punishment Clause has been held to provide greater protection than the Eighth Amendment, Mr. Long has never presented any authority or argument in this case as to whether or why the Excessive Fines Clause in Washington provides any greater protection than the Eighth Amendment. *See In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 406 & n.12, 978 P.2d 1083 (1999) (failure to provide *Gunwall* analysis as to specific application of Article I, section 14 precluded independent state analysis). Given that no argument has been presented on this point, the Court should address Mr. Long's claim based on federal law.

At the time the U.S. Constitution was adopted, "a 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *Browning–Ferris Industries of Vt., Inc. v. Kelco*

*Disposal, Inc.*, 492 U.S. 257, 265, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989); *see also United States v. Bennett*, No. 19-4599, 2021 WL 209088, at *6 (4th Cir. Jan. 21, 2021). The Excessive Fines Clause, therefore, applies when the government seeks "to extract payments, whether in cash or in kind, 'as *punishment* for some offense.'" *Austin v. United States*, 509 U.S. 602, 609–610, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (italics in original) (quoting *Browning–Ferris*, 492 U.S. at 265). And even if a payment is punitive, it is still constitutional unless it is also grossly disproportional to the underlying offense. *United Sates v Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998); *Bennett*, 2021 WL 209088, at *6.

The Court of Appeals did not decide "whether impoundment of Long's truck and the associated costs constituted penalties", because it determined that regardless, the payment was not disproportional to the offense. *Long*, 13 Wn. App. 2d at 730. Should this Court reach the first part of this inquiry, it should hold that ordinances merely allowing the impound of illegally parked vehicles and requiring reimbursement of towing or other out of pocket impound expenses are not punitive and, therefore, fall outside the reach of the Excessive Fines Clause. *See, e.g.*, *United States v. Alt*, 83 F.3d 779, 784 (6th Cir. 1996) ("Because we hold that the tax penalties awarded against Alt are not "punishment," there is no

need to address Alt's claim that the penalties constitute an excessive fine under the Eighth Amendment."); *compare Towers v. City of Chicago*, 173 F.3d 619, 624 (7th Cir. 1999) ("The fines imposed by the City under the ordinances at issue here are not **solely remedial**. In fact, they appear to serve little or no remedial purpose; **they do not compensate the City for any loss sustained as a result of the violations**.") (emphasis added); *Timbs v. Indiana*, 139 S. Ct. 682, 690, 203 L. Ed. 2d 11 (2019) ("We thus decline the State's invitation to reconsider our unanimous judgment… that civil *in rem* forfeitures are fines for purposes of the Eighth Amendment **when they are at least partially punitive**.") (Emphasis added).

Here, the only monetary payment Seattle sought from Mr. Long was "solely remedial" and not even "partially punitive". The payment was to compensate the City (at a substantial discount, and over an extended period of time without any down payment or interest) for out of pocket expenses incurred through the temporary impound of Mr. Long's vehicle resulting from his violation of the City's parking code. *See* CP 873-75, 884. Mr. Long's vehicle was also returned to him the same day as his court hearing and the same day he set up his payment plan, even though the reimbursement payments remained outstanding. CP 782.

Along these same lines, ordinances providing for or resulting in a purely temporary impoundment of a vehicle, rather than for example a

permanent forfeiture of property, are not punitive and do not trigger the Excessive Fines Clause. A seminal federal case on this point is *Coleman v. Watt*, 40 F.3d 255, 263 (8th Cir. 1994) ("Coleman's argument that the temporary deprivation of his car constitutes an excessive fine in violation of the Eighth Amendment merits little discussion."); *see also Sessler v. Crawford Cty. Child Support Enf't Agency*, No. 1:14-CV-0058, 2014 WL 3014513, at *4 (N.D. Ohio July 3, 2014) ("Plaintiff can obtain reinstatement of his driver's license by paying the child support arrearage. He was not assessed a 'fine' as defined by the Eighth Amendment."); *Valson v. Mesa*, No. 215CV00082GMNNJK, 2017 WL 4391763, at *2 (D. Nev. Sept. 29, 2017) (affording officer qualified immunity from excessive fine claim because there is no "clearly established" right to avoid having an unlawfully parked vehicle towed).

"The Eighth Amendment prohibition against excessive fines is not new law, even if it was not previously applied to the states." *Gonsalez v. Employment Dev. Dep't*, No. 218CV08607ABADS, 2019 WL 5107099, at *6 (C.D. Cal. June 18, 2019), *report and recommendation adopted sub nom. Gonsalez v. Employment Dev. Dep't EDD*, No. 218CV08607ABADS, 2019 WL 4302251 (C.D. Cal. Sept. 10, 2019). Despite the wealth of federal decisions on excessive fines, Mr. Long still cites no authority supporting his argument that a brief and temporary

vehicle impoundment may constitute an excessive fine. He makes no mention of *Coleman* in his supplemental brief. His attempt to distinguish *Coleman* before the Court of Appeals was unpersuasive. Mr. Long alleged that *Coleman* was a facial challenge and the circumstances were less injurious, but in rejecting class certification, the Court of Appeals emphasized it was reviewing claims "as applied to him." *Coleman*, 40 F.3d at 259. And, unlike in this case, Coleman's vehicle was impounded without any advance notice or opportunity to relocate the car. *Id.* at 258. Mr. Long also noted that Coleman "prevailed" on his procedural due process claim. While this is true, Mr. Long asserts no procedural due process claim in this case, and the Eighth Circuit affirmed dismissal of his Excessive Fines claim based on temporary impoundment of his vehicle. *Coleman*, 40 F.3d at 257 ("On all other issues, we affirm."). *Coleman* is directly on point here and confirms that there is no viable Excessive Fines claim in this case.

The Excessive Fines Clause was never intended to prohibit a court from requiring a violator to provide reimbursement or restitution. Thus a securities cheat might be ordered to repay millions of stolen dollars, a graffiti artist might owe the cost to repair vandalized property, a thief might be required to restore the value of goods stolen. In this case, the violator was ordered to repay Seattle part of its cost for remedying the

violation. A different conclusion conflates punishment with restitution; something that would have been foreign to the Founders as it should be to this Court today. *Cf. Woods v. Judicial Correction Servs., Inc.*, No. 2:15-CV-00493-RDP, 2019 WL 2388995, at *16 (N.D. Ala. June 5, 2019) ("Whatever might be said of probation supervision fees at the time of the founding (if they even existed), it is clear that the fees paid to JCS in this case do not constitute a form of "punishment" as that term is properly understood today under Supreme Court precedent."). Because neither the impoundment nor the partial reimbursement owed to the City for the costs of the temporary impoundment amount to a punitive fine, this Court need not address the issue of proportionality. *See, e.g., Bajakajian*, 524 U.S. at 334 (requiring proportionality review where a forfeiture constitutes punishment). But should this Court choose to do so, it should affirm the Court of Appeals, and reject Mr. Long's theory of disproportionality as unprecedented and unworkable.

Mr. Long contends that because he is unhoused and could not afford to reimburse the City for even a portion of the costs of impoundment, this amounts to a disproportionately excessive fine as to him. The Court of Appeals correctly concluded, however, that a remedial reimbursement tied to actual costs incurred by the government is not grossly disproportional. *Long*, 13 Wn. App. 2d at 731 (quoting *State v.*

*Clark*, 124 Wn.2d 90, 103, 875 P.2d 613 (1994) ("The government is entitled to rough remedial justice."), *overruled on other grounds by State v. Catlett*, 133 Wn.2d 355, 945 P.2d 700 (1997)). Mr. Long contends in his supplemental brief that the Court of Appeals adopted this statement from *Clark* as a per se rule. The Court of Appeals did not say anything to that effect, however. Moreover, the essential point of *Clark* applies equally here. As in *Clark*, the amounts sought for reimbursement are tied to the actual amounts of expense incurred by the government (although *Clark* involved the forfeiture of equity in a mobile home, valued at over $30,000 nearly thirty years ago).

The natural consequence of Mr. Long's argument is that before any vehicle may be impounded, even for indisputably legitimate reasons (as was the case here), the impounding officer must ascertain whether the vehicle's owner or occupant is using the vehicle as a residence, **and** can afford to reimburse the costs of towing and storage. If not, under Mr. Long's theory, if the government proceeds it violates the Eighth Amendment. Thus, for example, before impounding a vehicle being driven with a suspended license pursuant to state law, an officer would be required to ascertain whether the driver was sleeping in the car, and regardless whether the driver had the means to make repayment. *See*

RCW 46.55.110, .120. The same requirements would seemingly apply to numerous other vehicle-related offenses.

Mr. Long argues "courts have held that forfeiture of the offender's home violates the Eighth Amendment." Long Supp. Br. at 14. While some courts have held that an outright and permanent forfeiture of real property including a house may constitute an excessive fine if also grossly disproportional to the offense, none of those cases involved vehicles.[3] This Court should not automatically equate the two. "Location matters. A home is entitled to constitutional protections that a moving vehicle is not." *City of Shoreline v. McLemore*, 193 Wn.2d 225, 236, 438 P.3d 1161 (2019) (opinion of Gonzalez, J. for four justices), *as amended* (Apr. 19, 2019) (citing *State v. Ferrier*, 136 Wn.2d 103, 112, 960 P.2d 927 (1998)).

[3] The facts of these real property forfeiture cases are also starkly different than those of the present case. *See, e.g., von Hofe v. United States*, 492 F.3d 175, 191 (2d Cir. 2007) ("Mrs. von Hofe's offensive conduct boils down to her joint ownership of 32 Medley Lane and silence in the face of her husband's decision to grow marijuana in their basement almost thirty years into their marriage. And yet she is being punished as if she were distributing drugs, when the district court concluded as a matter of fact that she had no knowledge of any distribution or remuneration."); *State v. Real Prop. at 633 E. 640 N., Orem, Utah*, 994 P.2d 1254, 1261 (Utah 2000) ("When we compare the (1) gravity of Cannon's conduct; (2) the actual fines, surcharges, and penalties of $9,660.10 imposed; and (3) her probation on the prison and jail sentences, with the value of the forfeited real property at approximately $80,000.00, we must conclude that there is a gross disproportionality here under the standards set forth in *Bajakajian*, and the forfeiture cannot be sustained.").

Should this Court accept Mr. Long's Eighth Amendment arguments, it would undermine important health and safety considerations underlying municipal regulations across the country. The Seattle Code emphasizes these health and safety concerns with respect to its parking and traffic ordinances. Seattle Municipal Code § 11.10.040.[4] Such laws are exceedingly common and necessary for the public's welfare. *See, e.g.*, City of Wichita Code § 11.97.010(b)(1) (identifying "any unoccupied vehicle [that] is left parked continuously upon any street of the city for forty-eight hours or more" as a "public nuisance"); City of Colorado Springs Code § 10.25.101; Texas Transportation Code §683.071-072 (declaring vehicle that is inoperative on public property for more than 72 hours a public nuisance and a threat to the "safety and welfare" of the public).

Moreover, the sheer cost of an individualized assessment of the circumstances of each person who violates the parking code would make code enforcement, which is already difficult, nearly impossible. What Mr. Long in fact seeks is not freedom from excessive fines, but the right to park his vehicle unlawfully on public property in perpetuity. The fact that

[4] "This subtitle is enacted as an exercise of the police power of the City to protect and preserve the public peace, health, safety and welfare, and its provisions shall be liberally construed for the accomplishment of these purposes. It is expressly the purpose of this subtitle to provide for and promote the health, safety and welfare of the general public…."

Mr. Long may also have been living in his vehicle does not mean that the Excessive Fines Clause grants him immunity from parking regulation.

In effect, Mr. Long's arguments seek to achieve through the Excessive Fines Clause of the Eighth Amendment what federal courts have long declined to require through the Cruel Punishment Clause. In his reply brief at the Court of Appeals, Mr. Long cited *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), a Cruel Punishment Clause case, for the premise that an unhoused person may have an as applied constitutional claim. *Martin* involved the narrow instance of a city criminalizing sleeping outside while, at the same time, having no alternative shelter available. 920 F.3d at 615. The Ninth Circuit held that this specific circumstance (not present in this case) violated the Cruel Punishment Clause. *Id.*

The author of the *Martin* decision, however, took care to note the limits of the Eighth Amendment:

> The City is quite right about the limited nature of the opinion. On the merits, the opinion holds only that municipal ordinances that criminalize sleeping, sitting, or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment.

*Martin v. City of Boise*, 920 F.3d 584, 589 (9th Cir. 2019) (Berzon, J., concurring in denial of hearing en banc) (internal quotations omitted; italics in original). Instead, "the opinion clearly states that it is not

outlawing ordinances barring the obstruction of public rights of way or the erection of certain structures…." *Id.*; *see also Yeager v. City of Seattle*, No. 2:20-CV-01813-RAJ, 2020 WL 7398748, at *5 (W.D. Wash. Dec. 17, 2020); *Frank v. City of St. Louis*, 458 F. Supp. 3d 1090, 1094 (E.D. Mo. 2020) (" The City of St. Louis is therefore not criminalizing the state of being homeless or its unavoidable consequences, such as sleeping in public. At most, the City is criminalizing sleeping in public *in a particular location*…. Furthermore, it is not at all clear that the City is criminalizing homelessness anywhere….")

The clauses of the Eighth Amendment "place 'parallel limitations' on 'the power of those entrusted with the criminal-law function of government.'" *Timbs*, 139 S. Ct. at 687 (quoting *Browning-Ferris*, 492 U.S. at 263 (quoting *Ingraham* v. *Wright*, 430 U.S. 651, 664, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977))). Yet, Mr. Long attempts to rely on an as-applied Excessive Fines claim in this case to obtain relief rejected by the Ninth Circuit and many other courts under the Cruel Punishment Clause. While the clauses are independently interpreted, Mr. Long's attempt to label the impoundment and reimbursement in this case as "fines" should be considered in light of the fact that Seattle's actions in the present case are well outside even the outer reaches of the Cruel Punishment Clause.

Put another way, this Court should not expand the reach of the federal Excessive Fines Clause to grant relief unavailable through the Cruel Punishment Clause. As one member of the Court observed during the en banc petition proceedings in *Martin*:

> None of us is blind to the undeniable suffering that the homeless endure, and I understand the panel's impulse to help such a vulnerable population. But the Eighth Amendment is not a vehicle through which to critique public policy choices or to hamstring a local government's enforcement of its criminal code.

*Martin v.* 920 F.3d at 599 (9th Cir. 2019) (Smith, J., dissenting from denial of hearing en banc). Judge Smith's sentiment holds true in this case. The issues raised by homelessness are daunting and complex. But arguments about when and how vehicles should be impounded within a city are best addressed to local policymakers through the administrative and electoral process, not to this Court through a federal constitutional claim.

## V. CONCLUSION

IMLA members including municipalities across the country must deal with the realities of a housing crisis every day, as well as the protection of the health and safety of their entire populaces. The policy makers of those local governments must ultimately balance the complex questions involved. In the present case, Seattle ably addressed these

issues first through its code, and then by providing advance notice of a potential impound and an extended opportunity to relocate a vehicle, by waiving underlying traffic fines, and by releasing the vehicle to Mr. Long without payment of other towing and impound costs. Seattle imposed no punitive fines on Mr. Long, much less grossly disproportional fines. As the Court of Appeals held, there is no Eighth Amendment violation in this case.

RESPECTFULLY SUBMITTED this 5th day of February, 2021.

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