Honorable Catherine Shaffer

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN THE COUNTY OF KING

CITY OF SEATTLE,

Respondent,

v.

STEVEN GREGORY LONG,

Appellant.

NO. 17-2-15099-1 SEA

REPLY BRIEF OF APPELLANT STEVEN LONG

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I. INTRODUCTION

Because the City mischaracterizes many of Long's arguments, Long begins by clarifying what is *not* at issue in this case. First, the City asserts that parking is a privilege, not a right. *Response*, at 6:22-23, 7:1-8. Long agrees. He does not claim that he has a constitutional right to "park." Instead, he maintains that even though he knowingly committed a parking infraction, he still has a constitutional right to be free from excessive fines and forfeitures imposed upon him as punishment for that infraction. Even a deliberate parking law violator has the right to be free from the impoundment of his home for weeks. Similarly, he also has an art. 19, §1 right not to have his home attached as security for a debt, even though that debt was triggered by his decision to deliberately violate a parking law.

Second, the City asserts that Long has no constitutional right to housing. *Response*, at 7:15-18. Again, Long agrees: The City has no obligation to *provide* him with a home of any kind. But the City is constitutionally prohibited from *taking away* the only home he had, and then requiring him to pay a huge sum as a condition of not being permanently deprived of his home by selling it at auction to a third party.

Third, citing *Joel v. City of Orlando,* 232 F.3d 1353 (11th Cir. 2000), the City asserts that Long has no constitutional right to trespass, or to sleep on public property. However, the *Joel* decision actually supports Long's contention that a homeless person *does* have a constitutional right to be free from punishment for sleeping on public property *if he has no other place to go*. *See Joel*, 232 F.3d at 1362, acknowledging that in other cases city ordinances "violated the Eighth Amendment rights of the homeless," because the "lack of sufficient homeless shelter space . . . made sleeping in public involuntary conduct for those who could not get in a shelter."[1]

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[1] In *Joel* "the City . . . presented unrefuted evidence that the Coalition, a large homeless shelter, has never reached its maximum capacity and that no individual has been tuned away . . . ." *Id.* Seattle did not present any such evidence in this case, nor could it. On the contrary, the record in this case contains Long's unrefuted testimony that he had no other place to go. *Decl. Ryan,* Ex. A, at 84:15-16 ("Q. . . . Why is towing your car

(Footnote continued next page)

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II. THE CITY WILL NOT BE "POWERLESS" TO ENFORCE THE 72-HOUR PARKING ORDINANCE IF THE COURT RECOGNIZES THAT TAKING AWAY ONE'S HOME IS CONSTITUTIONALLY EXCESSIVE.

The City's brief teems with alarmist rhetoric that suggests all sorts of dire consequences if Long prevails in this appeal. The City asserts that if Long prevails, it will be powerless to enforce the parking laws against a certain class of individuals – the homeless – and that the practical effect will be that these individuals will have "the right to park wherever they want." *Response Brief* at 1:21-23. This is also untrue.

It *is* true that if this Court recognizes the constitutional rights of Long, and other homeless people who live in their vehicles, the City will be powerless *to impound* their homes, and to threaten to auction off their homes if they do not pay the City for the cost of having (illegally) impounded and "stored" their homes. But that will *not* render the City powerless to impose other *less draconian penalties*. Recognizing that poor people with no place else to live do not have the financial ability to pay big fines in order to ransom back their seized vehicular homes, and thus cannot constitutionally be subjected to this, will put an end to the seizure of their homes. But the City will still have the power to impose modest monetary fines. In some rare cases, a homeless person living in his vehicle may not be able to pay even a small fine. But as *Tate v. Short,* 401 U.S. 395, 398 (1971) and *Bearden v. Georgia*, 461 U.S. 660, 667 (1983) teach, "The State is not powerless to enforce judgments against those financially unable to pay a fine." *Bearden*, at 672. "[G]iven the general flexibility of tailoring fines *to the resources of a defendant*, or even permitting the defendant to do specified work to satisfy the fine, [Citation] a sentencing court can often establish a reduced fine or alternate public service in lieu of a fine that adequately serves the State's goals of punishment and deterrence, *given the defendant's diminished financial resources.*" *Id.*,

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because you're living in it, in your own words, wrong? A. Because I have nowhere to go and no place to shelter myself, my belongs [sic], my livelihood, all my work that I do."). Long testified he looked for a "program that had safe parking. And the lines were never answered and the program was discontinued and another place was too full." *Id.* at 58:7-9.

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quoting *Williams v. Illinois*, 399 U.S. 235, 265 (1970) (italics added).

In other words, the *size* of the punishments the City is empowered to impose will occasionally be reduced, but that is precisely what the Eighth Amendment requires. The Excessive Fines clause prohibits "excessive" financial penalties and the seizure of a poor person's vehicular home is the *sine qua non* of constitutional excessiveness. (It is also explicitly forbidden by Wash. Const., art. 19, §1 and RCW 6.13.070).

III. THE CITY CONTINUES TO IGNORE THE DISTINCTION BETWEEN FACIAL AND "AS-APPLIED" CHALLENGES.

The City complains that it will not be able to treat the homeless in the same way that it treats others. *Response*, at 26:14-15. This is *true*, but it avails the City nothing because the Eighth Amendment protects people against "excessive" fines, and the threshold of unconstitutional excessiveness is simply much lower for the poor and homeless than it is for everyone else. That is precisely why so many courts have ruled that a statute is unconstitutional *as applied* to homeless people, even though it is perfectly constitutional for everyone else. Thus, in *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992),[2] the court noted the difference between a facial and an as-applied challenge to a law that prohibited sleeping in public. The Court noted that the plaintiffs had not made any facial challenges. "[R]ather, plaintiffs contend that the ordinances are overbroad, *as applied to them,* because they reach conduct that is beyond the reach of the City's police power ... plaintiffs do not argue that the challenged ordinances should be stricken. Rather, as in their eighth amendment argument, plaintiffs ask that the City be enjoined from arresting homeless individuals for harmless involuntary conduct." *Id.* at 1576. The Court concluded that the "plaintiffs have shown that the challenged ordinances *as applied to them* are overbroad to the extent that they result in class members being arrested for harmless, inoffensive conduct that

[2] On appeal, the case was remanded for limited purposes, *Pottinger*, 40 F.3d 1155 (11th Cir. 1994), the parties were ordered to undertake settlement discussions. 76 F.3d 1154 (11th Cir. 1996), and finally "the parties entered into a settlement agreement which the district court . . . approved." 805 F.3d 1293, 1295-96 (11th Cir. 2015).

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they are forced to perform in public places." *Id.* at 1577 (italics added).[3]

IV. THE IMPOUNDMENT OF ONE'S HOME AS PUNISHMENT FOR A PARKING INFRACTION VIOLATES THE EXCESSIVE FINES CLAUSE.

A. Excessiveness determinations are reviewed de novo.

"In *Bajakajian* [the Supreme Court] specifically *rejected* the suggestion . . . that the trial judge's determination of excessiveness should be reviewed only for an abuse of discretion." *Cooper Industries v. Leatherman Tool Group*, 532 U.S. 424, 435 (2001). Thus, this Court must decide *de novo* if the impoundment of Long's home was unconstitutional.

B. The State Constitution has an identical Excessive Fines Clause.

The City notes while the Supreme Court has assumed the Excessive Fines Clause applies to the States through the 14th Amendment, no case has ever explicitly so held. Long notes that even if the Supreme Court someday holds that it does not apply to the States, art. 1, §14 of the Washington Constitution contains its own prohibition against excessive fines.

C. The ordinance explicitly labels impoundment as a penalty.

The Municipal Court correctly ruled that "[a] plain reading of the language of SMC 11.72.440E supports Mr. Long's argument that impound is, at least in part, a penalty." *Order*, at 12. The City ignores the fact that the ordinance explicitly states that "vehicles in violation of this section are subject to impound . . . in addition to any other *penalty*." (Italics added).

D. The City's attempt to characterize the fines as "remedial" fails.

The City argues that Long's fines are "purely remedial" because he is just paying the City back for "an interest free loan." *Response,* at 22. The City paid Lincoln Towing the towing and storage fees that it had contractually agreed to pay for impounded vehicles. Then

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[3] *Accord Jones v. Los Angeles*, 444 F.3d 1118, 1132 (2006), vacated 505 F.3d 1006 (9th Cir. 2007) (ordinance prohibiting sleeping on public streets is "unconstitutional *as applied* to the homeless")(*see McKenzie v. Day,* 57 F.3d 1493, 1494 (9th Cir. 1995)(vacated opinion is still persuasive authority); *Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994) (ban on "sleeping in public . . . *as applied* against the homeless is unconstitutional"), *rev'd on other grounds*, 61 F.3d 442 (5th Cir. 1995); *State v. Adams*, 91 So.3d 724 (Ala. Crim. App. 2010) ("*as applied* to this defendant," a homeless man, statute "constitutes cruel and unusual punishment").

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it turned around and ordered Long to pay it back for these costs that it incurred when his truck was towed away at the direction of a Seattle parking enforcement officer. But the City's contractual obligations to Lincoln Towing do not transform the fees into a "remedial" financial obligation because the City took it upon itself to pay these fees when it decided to punish Long by impounding his home. The City chose to impose the punishment of impoundment, and thus it chose to incur the costs of inflicting that punishment.[4]

E. The City claims impoundment of Long's home was justified because some unknown person "associated with the vehicle" may have committed a crime.

As to the impoundment itself, the City makes no real attempt to argue that this was a "remedial" action. But it does suggest that it can use impoundment as a means of punishing a homeless person who is (allegedly) "associated" with some other person who (allegedly) committed a crime. The officers admitted they lacked probable cause to believe Long was the man in question, and they never arrested or charged anyone with anything. Nevertheless, the City argues that because some unidentified man "associated with the truck" that Long was living in was accused by some other unidentified person of a crime, impounding Long's truck was an "entirely reasonable . . . way to diffuse future incidents." *Response*, at 25.[5]

F. The City silently concedes that Long's infraction is not characterized by any significant degree of reprehensibility.

The first factor courts examine when deciding an Eighth Amendment excessiveness question is "the degree of the defendant's reprehensibility or culpability." *Cooper Industries,*

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[4] If accepted the City's argument would trigger absurd consequences. Suppose the punishment for theft is to be given fifty lashes. Government contracts with a man to perform the whipping, he does so, and he charges the government $100 for his services. Government pays him and orders the convicted man to pay back the $100 expense that it incurred. Requiring payment for the cost of administering a punishment does not make the payment "remedial" in nature and it makes no difference whether the punishment is physical torture or loss of one's home. Requiring an offender to pay for his own punishment is simply an additional form of punishment.

[5] Moreover, impounding of Long's truck in no way addressed the problem. Nothing prevented the unidentified man from returning to the area where Long was living in his truck. Indeed, nothing prevented Long himself from returning to that exact same spot. In fact, as Judge Donohue noted, Long "remains in Seattle, living in a make-shift shelter on the lot at Norman and poplar streets," and he has continued to live there "ever since." DKT 1, at 6-7, 10.

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at 435. The City wisely does not attempt to argue that violating the 72-hour parking ordinance is a law violation that is particularly "reprehensible." Indeed, it is hard to imagine any law violation that could possibly be *less* reprehensible than Long's parking infraction.

G. Long's violation of the 72 hour parking law caused no harm.

The City concedes that Long's vehicle was not causing any problems, and argues that harm to the public is simply irrelevant because the City has an "inherent interest in the uniform application of its traffic and parking ordinances," even if a violation of law is not causing any harm whatsoever. *Response*, at 26:14-15. The City argues that if the homeless can violate the parking law and yet escape impoundment of their homes, that everyone else will be "incentivized" to violate the law. That clearly does not follow. The homeless who live in their cars have no choice;[6] they have to "park" their homes somewhere, and thus they may be forced to violate the 72-hour law occasionally. People who have regular homes are not forced to live in their cars, and thus are not subject to the same temptation to violate the law. More importantly, if people *with* homes violate the law and have their cars impounded as a result, the punishment of impoundment of their car will *not* be unconstitutional precisely *because they have a home*.

Admittedly, harm to the public is irrelevant to the question of statutory construction. When the City Council enacted this ordinance and omitted any requirement that the vehicle be blocking, obstructing, or harming anything, it made harm to the public irrelevant to the question of whether or not the ordinance was violated. Thus, it is no "defense" to the infraction that Long's violation of the law caused no harm to anyone.

But while the absence of harm to the public is not a *defense* to the infraction, it remains critically relevant to the constitutional question of whether the punishment imposed – impoundment – is constitutionally *excessive* when it is inflicted upon a homeless person living

[6] See T. Skolnik, *Homelessness and the Impossibility to Obey the Law*, 43 Fordham Urban L. J. 741 (2016)

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in his vehicle. As the City acknowledges, the second factor bearing upon the Eighth Amendment question of excessiveness is "the relationship between the penalty and *the harm to the victim caused by the defendant's actions*." *Response*, at 25, quoting *Cooper Industries*, 532 U.S. at 435 (italics added). Since the City cannot identify any "harm to the victim" – to the public or to the City – caused by the defendant's actions in violating the 72 hour parking ordinance, this factor weighs entirely in favor of the conclusion that the impounding of Long's home as a punishment for this parking infraction was constitutionally excessive.

H. The individual defendant's financial resources must be considered.

The City contends that it isn't clear whether the individual's financial resources are to be considered when deciding whether a punishment is grossly disproportional to the violation of law. But the Supreme Court has held that they must. *See Browning-Ferris v. Kelco Disposal*, 492 U.S. 257, 281 (1989) (jury told to take into account defendants' financial standing) (Opinion of Brennan); *Id.* at 300 (amount that destroys a man's livelihood varies because "what is ruin to one man's fortune may be a matter of indifference to another's") (Opinion of O'Connor, citing Blackstone, *Commentaries* at 371); *Williams,* 399 U.S. at 265 (court can always tailor fines given the "defendant's diminished financial resources").

I. The City falsely accuses Long of "trivializing" its interest in having "its traffic and parking laws" obeyed.

The City argues that "Long trivializes the City's interest in seeing all its laws, including its traffic and parking laws, followed." *Response*, at 26:3-4. It points to "the practical and modern necessity of maintaining orderly traffic enforcement" and cites cases that recognize a city has legitimate interests in "traffic safety." In response, Long makes two points. First, he does not dispute that Cities have an interest in seeing "its traffic laws" enforced, especially those which impact public safety. In this case , Long has not challenged the entire traffic code; as noted above he argues that *one* particular parking law is unconstitutional *as applied to him* on the night of October 12, 2016.

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Second, the City has never identified any traffic management or safety interest that was served by impounding Long's truck on October 12. The truck had been in the same spot for three months. *Decl. Long*, §5. It was parked at the back of a parking lot on an unused gravel strip owned by the City. *Id.,* §10. It was not blocking anything. (It wasn't even on a street). It was not abandoned. It was not identified as any kind of public health hazard.

The City asserts the necessity of "maintaining orderly traffic enforcement" but never claims that Long's vehicle was obstructing the passage of anything, or that it was impeding "orderly traffic." The City has never even *tried* to identify a traffic management or safety reason for impounding this vehicle on this night, because no such reason exists. In fact, because this particular law has nothing to do with the *place* where the vehicle was parked, it is virtually impossible to articulate an argument that this vehicle was causing a problem because of *where* it was. This particular law regulates the *duration* of time that a vehicle can be parked in one spot. This shows that the 72-hour parking law is actually a type of loitering or vagrancy law that targets homeless people and forces them to "move along."[7]

J. Any societal interest in requiring that a vehicle be moved after 72 hours can be satisfied in other ways that do not deprive the poor of their only home.

In *Desertrain v. City of Los Angeles*, 754 F.3d 1147 (9th Cir. 2014), homeless people living in their cars brought suit against the City to enjoin the police from arresting them for violating a law that prohibited the "use [of] a vehicle parked or standing upon any City street . . . as living quarters either overnight, day-by-day, or otherwise." City officials repeatedly asserted "that their concern was not homelessness generally, but the illegal dumping of trash and human waste on city streets that was endangering public health." *Id.* at 1149. The Court acknowledged that the City enforcement of this law was "motivated by legitimate health and

[7] See J. So, S. MacDonald, J. Olson & R. Mansell, *Living at the Intersection: Laws & Vehicle Residency*, at 5 ("To abide by the law, vehicle residents often have to move from place to place. The end result of these ordinances is to push vehicle residents out of neighborhoods and concentrate vehicle residency in certain parts of cities.") https://papers.ssrn.com/sol3/paprs.cfm?abstract_id+2776423.

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safety concerns," but struck down the law noting that the City "has many options at its disposal" for dealing with these health problems. "Selectively preventing the homeless and the poor from using their vehicles for activities many other citizens also conduct in their cars should not be one of those options. *Id.* at 1158.

Similarly, in *City of Pompano Beach v. Capalbo,* 455 So.2d 468, 470 (Fla. 4th DCA 1984), *cert. denied,* 474 U.S. 824 (1985), the Court held that an ordinance making it "unlawful for any person to lodge or sleep in, on, or about any automobile, [or] truck" was unconstitutional. The statute was "unconstitutionally overbroad" because it "criminalizes conduct which is beyond the reach of the city's police power inasmuch as [the] conduct in no way impinges on the rights or interests of others." Noting that the law reached a "wide range of persons" including "the latterday Okie who has made his jalopy his home," the Court held that because the law "brings within its sweep conduct that cannot conceivably be criminal in purpose or effect [it] cannot stand." *Id.* at 472. "Absent a showing of a compelling subordinating societal interest, the City may not thus invade the right of persons ... to be let alone ...." *Id.* Criminalizing living and sleeping in cars was unconstitutional because "[s]urely the City could tailor an ordinance that fits more snugly the health, safety or aesthetic concerns it may have intended to address in enacting [this law]." *Id.*

K. Like Seattle's loitering law struck down 50 years ago, this "vehicle loitering" law is unconstitutional as applied to people who have no where else to go.

Long ago, the Washington Supreme Court struck down a Seattle ordinance because it infringed this bedrock right "to be let alone." "It is fundamental that no ordinance may unreasonably or unnecessarily interfere with a person's freedom, whether it be to move about or to stand still. The right to be let alone is inviolate; interference with that right is to be tolerated only if it is necessary to protect the rights and the welfare of others." *City of Seattle v. Drew*, 70 Wn.2d 405, 408, 423 P.2d 522 (1967). The law struck down in *Drew* made it a crime for "any person wandering or loitering abroad, or abroad under other suspicious

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circumstances, from one-half hour after sunset to one-half hour before sunrise, to fail to give a satisfactory account of himself upon the demand of any police officer." The 72-hour parking ordinance is simply another type of loitering law. It prohibits homeless people who live in their vehicles from "loitering" by "parking" for more than 72 hours in one spot. The concern that underlies such a law, like the law struck down in *Drew*, is the suspicion that a person who is simply hanging around the neighborhood must be up to something criminal. It isn't material whether one "loiters" on foot or in a car. Moreover, a homeless person has no choice in the matter – at some point a homeless person must "loiter" at least long enough to get some sleep. At his deposition, when the City asked him, ""Do you believe you have the right to park your car on city property for more than 72 hours?" Long answered, "I wasn't parking, I was living." *Decl. Ryan*, Ex. A, Long Dep. at 82:20-25. He could just as easily have said, "I wasn't loitering, I was living." It is undisputed that Long's vehicle was not causing any problems. *As applied* to a homeless man living in his vehicle, Seattle's laws authorizing the impoundment of a vehicle that stays more than 72 hours in the same spot is unconstitutional.

V. THE ATTACHMENT OF LONG'S HOME VIOLATED ART. 19 §1 AND THE HOMESTEAD ACT

A. One need not wait until one's home is sold to claim Homestead Act protection.

The City argues that because there was no actual sale of the Long's home, the Homestead Act does not apply. *Response* at 13:13 – 14:1. But the City does not deny that Long's vehicle would have been sold on November 5, had he not agreed to pay the impound lien. The argument here is not whether *any* impounded vehicle, subject to an impoundment lien, may or may not be sold. Rather, the question is, may it be sold to satisfy debts *when it is a home* protected by the Homestead Act. The City relies upon *Felton v. Citizens Fed. Sav. & Loan,* 101 Wn.2d 416, 419-423, 679 P.2d 928 (1984). *Response* at 14:3-10. There the owner voluntarily signed a deed of trust at the time of purchase of the home, agreeing to the sale. *Id.* at 417. Here, Long never agreed to the sale of his home. Quite the opposite - he had to agree

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to pay money to *avoid* the sale of his home.

The City argues Long should have asserted a homestead exemption earlier when he appeared before the Magistrate. *Response* at 14:17-15:2. This is incorrect. The proceedings in Municipal Court, in front of Judge Donohue, constituted a "trial de novo." Moreover, Long did tell the Magistrate at the initial hearing that his truck was his home. Dkt. 8, at 52:8-11.

B. Long Did Not Need to File a Declaration for Homestead Protection.

The City argues that the Homestead Act does not apply because Long did not file a declaration of homestead pursuant to RCW 6.15.060(3)(d). *Response* at 16:11 – 19:2. The City claims that the Homestead Act's exemption does not automatically apply to "nontraditional homes." *Id.* at 16:14-15. This is an incorrect reading of the Homestead Act.

The key to automatic homestead protection has long been "occupancy." Before 1981, all homesteads had to be declared to receive statutory protection, but the statute was rewritten in 1981 to ensure that all properties occupied as a principal residence would automatically be classified as homesteads. *See Fed. Intermediate Credit Bank v. O/S Sablefish*, 111 Wn.2d 219, 229, 758 P.2d 494 (1988). In *NW Cascade, Inc. v. Unique Constr., Inc.*, 187 Wn. App. 685, 698, 351 P.3d 172 (2015), the Court held that "[t]o claim a homestead exemption in a property, the owner must either occupy the property as a principal residence or intend to do so." "Once the owner occupies the property as a principal residence, a homestead exemption *is established automatically without a declaration.*" *Id.* citing RCW 6.13.040(1).[8]

The City incorrectly interprets the language of the Homestead Act to mean that any "nontraditional" personal property homesteads require a declaration to be exempt. The definitional section of RCW 6.13.010 (see Appendix A) merely describes homestead property as "...consist[ing] of real or personal property that the owner uses as a residence."[9] The City

[8] *Accord In re Dependency of Schermer*, 161 Wn.2d 927, 953, 169 P.3d 452 (2007) ("A home *automatically* becomes a homestead when the owners use the property as their primary residence.") (Italics added).

[9] RCW 6.13.040 states: "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

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also argues the legislative history supports a reading that any personal property, such as a truck, needs a declaration because the Legislature added "any other personal property," to the statute. But the Legislature also added "real or personal property" to the *beginning* of the statute, clearly envisioning instances when personal property would be "automatically" exempt. *See Dkt.* 7, at 2 (legislative history attached as Appendix B).[10]

Homestead statutes are "favored in the law," "liberally construed," and "any limitations on homestead rights must be specific, clear, and direct." *Viewcrest Condo. Ass'n v. Robertson*, 197 Wn. App. 334, 337, 387 P.3d 1147 (2016). The City may not add a declaration requirement into the Homestead Act for nontraditional residences that is neither specific nor clear from the statutory language. Therefore, because Mr. Long occupied his truck as his principal residence at the time of the impoundment, the Homestead Act applies.

C. The attachment and threat of forced sale of Long's home violated the Homestead Act.

The Homestead Act was enacted to "promote the public policy of insuring shelter for each family." *Viewcrest Condo,* 197 Wn. App. at 338-29. Here, the City violated the Act by threatening to carry out a forced sale of Long's home and by attaching his home as security for impoundment debts.

The City argues that "the redemption statute controls over the more general homestead exemption because it is the more specific statute related to the sale of 'impounded abandoned vehicles.'" *Response* at 16:3-7. This argument ignores the fact that the Homestead Act is an "exemption" that carves out specific protections for homes. It also ignores the fact that whenever a vehicle *is* a homestead, the Homestead Act – not the redemption statute – is the

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occupied as a principal residence by the owner..." It also refers to properties that are not *yet* occupied, but which the owner intends to occupy *in the future.* That portion of the statute has no application to this case.

[10] "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 ...." (Italics added)

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more specific statute. The Homestead Act, which is constitutionally mandated, also provide protection from conflicting state or city laws. *See, e.g.*, *City of Algona v. Sharp*, 30 Wn. App. 837, 843, 638 P.2d 627, 630 (1982) (declaring a homestead exempt from City law allowing a forced sale to satisfy a City's Local Improvement District assessment lien). The redemption statute and the Act are not in conflict. It is simply that where a vehicle is a homestead, it may not be subject to attachment and sale for impoundment.

VI. DEPRIVING A PERSON OF HIS ONLY SHELTER VIOLATES SUBSTANTIVE DUE PROCESS.

"The touchstone of due process is protection of the individual against arbitrary action of government." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998). This principle is central to the present dispute. Long lived in his vehicle on a seldom-used sliver of public land in an industrial zone. The City knowingly impounded Long's home (and all his work tools stored in it), because of an unsubstantiated complaint against a person "associated" with his truck. This left Long with no place to go, made it impossible for him to work, and forced him to sleep under a tarp as the winter set in, causing him to become sick. *Decl. Long*, ¶¶ 16, 28. This arbitrary[11] action violated Long's substantive due process right to be free from danger that he would not have otherwise faced.

The City acknowledges that due process forbids placing "an individual in a situation of known danger with deliberate indifference to their personal safety." *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1101 (E.D. Cal. 2012). Instead, the City argues that this right cannot be raised as a defense, only as an affirmative claim. But substantive due process has formed the basis of defenses to criminal or civil prosecution in numerous cases. This includes landmark decisions such as *Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003) (invalidating conviction and striking down a statute banning consensual same-sex intimacy on substantive

[11] The arbitrariness of this action is further demonstrated by the fact that Long continues to live in the exact same spot. DKT 1, at 6-7, 10. In other words, the City did not need to clear this public space for any purpose.

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due process grounds) and *Foucha v. Louisiana*, 504 U.S. 71, 80-83 (1992) (invalidating indefinite commitment of an insanity acquitee on substantive due process grounds). Further, if a court can affirmatively impose liability for unconstitutional action under the "state created danger" theory of substantive due process, then it can certainly declare the underlying conduct unconstitutional when it is raised as an affirmative defense.

The City attempts to minimize the danger of depriving an individual of shelter and claims that Long's injury is not sufficiently serious. *Response* at 9-10. Admittedly, the consequences here were not fatal. But this Court should not write-off the seriousness of a week-long illness for a vulnerable, older individual experiencing homelessness. The City also attempts to impose a more burdensome causation analysis, claiming that an officer must have known that Long had nowhere else to go. *Response* at 10. This is not the case. In *Munger v. City of Glasgow*, 227 F.3d 1082, 1086-87 (9th Cir. 2000), the Court did not require the police to know that Munger would freeze to death and premised liability simply on the fact that police had taken affirmative actions that placed Munger "'in a more dangerous position than the one in which they found him.'" *Id.* at 1087.[12] The same is true here. The City left Long in a much more dangerous position by impounding his only source of shelter on a cold, stormy evening. This impoundment was the proximate cause of Long's injuries. Thus, this Court should find that the impound violated Long's substantive due process rights.

VI. CONCLUSION

Appellant Long asks this Court to reverse the decision below, to enter a judgment declaring the impoundment of his home violated the Excessive Fines Clause of the state and federal constitutions, the Homestead provisions of art. 19, §1 and RCW 6.13, and the Due Process Clause of the Fourteenth Amendment.

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[12] This is similar to the outcome in *Kneipp v. Tedder*. 95 F.3d 1199 (3d Cir. 1996). There, the Court found that an intoxicated woman who was stopped by police and subsequently suffered permanent brain damage due to hypothermia after the officers let her walk home alone "was in a worse position after the police intervened than she would have been if they had not done so." *Id.* at 1203-09.

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DATED this 13th day of November, 2017.

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Attorneys for Appellant

CERTIFICATE OF SERVICE

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

☒ King County ESERVICE, to the following:

Attorneys for Respondent
Michael K. Ryan
SEATTLE CITY ATTORNEY'S OFFICE
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Seattle WA 98104-7097
michael.ryan@seattle.gov

DATED this 13th day of November, 2017.

Deborah A. Groth, Legal Assistant

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APPENDIX A

RCW 6.13.010

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

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

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

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

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

RCW 6.13.040

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

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

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

(3) The declaration of homestead must contain:

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

(b) A legal description of the premises; and

(c) An estimate of their actual cash value.

(4) The declaration of abandonment must contain:

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

(b) A legal description of the premises; and

(c) A statement of the date of abandonment.

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

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

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

demand appraisement. If the creditor, or the agent or attorney of the creditor, demands an appraisement, two disinterested persons shall be chosen to appraise the property, one by the debtor and the other by the creditor, agent or attorney, and these two, if they cannot agree, shall select a third; but if either party fails to choose an appraiser, or the two fail to select a third, or if one or more of the appraisers fail to act, the court shall appoint one or more as the circumstances require. The appraisers shall forthwith proceed to make a list by separate items, of the personal property selected by the debtor as exempt, which they shall decide as exempt, stating the value of each article, and annexing to the list their affidavit to the following effect: "We solemnly swear that to the best of our judgment the above is a fair cash valuation of the property therein described," which affidavit shall be signed by two appraisers at least, and be certified by the officer administering the oaths. The list shall be delivered to the officer holding the execution or attachment and be annexed to and made part of the return, and the property therein specified shall be exempt from levy and sale, but the other personal estate of the debtor shall remain subject to execution, attachment, or garnishment. Each appraiser shall be entitled to fifteen dollars or such larger fee as shall be fixed by the court, to be paid by the creditor if all the property claimed by the debtor shall be exempt; otherwise to be paid by the debtor.

(c) If, within seven days following the giving of notice to a creditor of an exemption claim, the officer has received no notice from the creditor of an objection to the claim or a demand for appraisement, 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.

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