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Anna Ferron
University of Washington School of Law

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TAKING THE *LONG* ROAD: THE EXCESSIVE FINES CLAUSE AS A TOOL FOR PROTECTING WASHINGTON'S UNSHELTERED POPULATION

Anna Ferron*

Abstract: Over the last decade, Washington State has seen a substantial increase in its unhoused population and an increase in laws that harm this group. Many of these laws subject unhoused and unsheltered people to fines, fees, and forfeitures that are exceedingly difficult for them to afford. The Excessive Fines Clauses in the United States and Washington Constitutions protect citizens from fines deemed constitutionally excessive and could be used to shield unsheltered people from the burden of paying unjust fines they cannot afford. In *City of Seattle v. Long*, the Washington State Supreme Court analyzed the ability to pay of a person who lived in his vehicle when deciding whether the fines imposed on him violated the state or federal Excessive Fines Clauses. This Note contends that the *Long* decision offers a strong constitutional foundation for arguments against the enforcement of many laws and policies that adversely affect vehicle residents and unsheltered people. Part I reviews the housing crisis in Washington and the legal ramifications unhoused people face. Part II discusses the historical jurisprudence of the Washington State and the federal Excessive Fines Clauses and their relation to a person's ability to pay. Part II also outlines the *Long* case and how it fits into the framework of the Excessive Fines Clause. Finally, Part III argues that an expansive reading of the *Long* decision is both constitutionally appropriate in light of current jurisprudence and an important tool for advocating for unsheltered people.

INTRODUCTION

In 2016, Steven Long lived in his truck until it was towed by the City of Seattle, and he ended up on the street.¹ At the time, Long was a fifty-six-year-old carpenter and a member of the Confederated Salish and Kootenai Tribes of the Flathead Nation.² In 2014, his landlord evicted him and he moved into his truck.³ Long kept his life in his truck: his work

*J.D. Candidate, University of Washington School of Law, Class of 2024. Many thanks to my editors on *Washington Law Review*, my advisor Mary Fan, and my family for their endless support. This piece is dedicated to the continually growing population of vehicle residents and unsheltered people in Washington and those who continue to advocate for them.

1. Alison Grande, *Homeless Seattle Man Who Had His Truck Towed Gets Case Heard by WA Supreme Court*, KIRO 7 NEWS (Mar. 16, 2021, 8:12 PM PDT), <https://www.kiro7.com/news/local/homeless-seattle-man-who-had-his-truck-towed-gets-case-heard-by-wa-supreme-court/MOEPEPZD5RD3RIBHQN2WWQIEOY/> [<https://perma.cc/8H2N-TQHM>]; *City of Seattle v. Long (Long II)*, 198 Wash. 2d 136, 142, 493 P.3d 94, 99 (2021).

2. *City of Seattle v. Long (Long I)*, 13 Wash. App. 2d 709, 717, 467 P.3d 979, 984 (2020).

3. *Id.*

tools, winter jackets, sleeping bag, bus money, laptop, and all his other personal items.⁴ On October 13, 2016, the City of Seattle ticketed and towed his truck because he parked in an area for longer than seventy-two hours.⁵ Long could not afford the \$547.12 fine that the City required to get his truck—and all his belongings—back.⁶ So, Steven Long slept on the ground for twenty-one days.⁷

Long's story is not unique in Seattle or on the West Coast.⁸ In 2015, the City of Seattle declared local homelessness to be in a state of emergency, allowing the city to use additional funding to address issues leading to the rise in homelessness. As the housing crisis grows across America and on the West Coast in particular, many people are forced out of more traditional housing—like apartments and houses—and forced into their cars, shelters, or onto the street.⁹ About forty percent of the unhoused¹⁰ population on the West Coast reside in their vehicles.¹¹ Those who are unhoused and remain unsheltered—either by living in their vehicles or on the street¹²—confront many unique challenges.¹³ Many

4. *Id.* at 718, 467 P.3d at 985.

5. *Id.*; see also SEATTLE, WASH., MUN. CODE § 11.72.440 (2006) (“No person shall park a vehicle on any street or other municipal property for a period of time longer than seventy-two (72) hours, unless an official posted sign provides a shorter period of time, or unless otherwise posted by law.”).

6. *Long I*, 13 Wash. App. 2d at 718, 467 P.3d at 985; Grande, *supra* note 1.

7. See Grande, *supra* note 1; *City of Seattle v. Long (Long II)*, 198 Wash. 2d 136, 143, 493 P.3d 94, 99 (2021).

8. See Margot Kushel, *Why There Are So Many Unsheltered Homeless People on the West Coast*, CONVERSATION (June 14, 2018, 6:43 AM EDT), <https://theconversation.com/why-there-are-so-many-unsheltered-homeless-people-on-the-west-coast-96767> [<https://perma.cc/SX7U-R2CY>].

9. See WASH. DEP'T COM., WHY IS HOMELESSNESS INCREASING? (2017), <http://www.commerce.wa.gov/wp-content/uploads/2017/01/hau-why-homelessness-increase-2017.pdf> [<https://perma.cc/S7W8-7J9H>] [hereinafter WHY IS HOMELESSNESS INCREASING?]; Kushel, *supra* note 8.

10. In this Note, I use both the terms “unhoused” and “people experiencing homelessness” as umbrella terms for the group of people who lack permanent residency or housing. The term “unhoused” has recently gained popularity in many advocacy-based settings; agencies and research institutions often continue to use the word “homeless.” The focus of this Note is on the “unsheltered” population, which refers to those who fall under these larger umbrella terms but live on the street, in an encampment, or in their vehicle. See Scott Kerman, *Homeless, Houseless, and Unhoused: A Glossary of Terms Used to Talk About Homelessness*, BLANCHET HOUSE NEWS, <https://blanchethouse.org/homeless-houseless-unhoused-glossary-about-homelessness/> [<https://perma.cc/8LWR-PZU5>]; ALL HOME, COUNT US IN: SEATTLE/KING COUNTY POINT-IN-TIME COUNT OF INDIVIDUALS EXPERIENCING HOMELESSNESS 4 (2020), https://kcrha.org/wp-content/uploads/2022/05/Count-Us-In-2020-Final_7.29.2020-1.pdf [<https://perma.cc/C5C2-G3K6>].

11. Thacher Schmid, *Vehicle Residency: Homelessness We Struggle to Talk About*, NATION (Nov. 11, 2021), <https://www.thenation.com/article/society/homelessness-vehicle-residency-housing/> [<https://perma.cc/8Y4V-BSFP>].

12. See ALL HOME, *supra* note 10, at 4.

13. See *id.*

unsheltered people face severe consequences from seemingly innocuous laws and policies, such as the seventy-two hour parking rule that led to the impoundment of Long’s truck.¹⁴ In short, Long’s story is all too common.

Long’s situation was unique, however, because he found a lawyer to represent him within the fifteen-day window allocated for disputing towing fees, and eventually his case reached the Washington State Supreme Court in 2021.¹⁵ In *City of Seattle v. Long*,¹⁶ the Court held that the impoundment of Long’s truck and associated fees violated both the Washington and United States Constitutions’ Excessive Fines Clauses.¹⁷ Since the *Long* decision, there is yet to be any scholarship on how the current landscape of the laws that harm unhoused persons will shift. The ramifications of the *Long* decision for other laws and policies that negatively affect people living in their vehicles—known as vehicle residents¹⁸—and other unsheltered people in Washington in general are unclear.

The *Long* decision applied the Excessive Fines Clauses of the Washington and Federal Constitutions to the impoundment of Long’s truck and the fees associated with it.¹⁹ This decision expands the rights of vehicle residents in Washington and highlights how consideration of one’s ability to pay in the Excessive Fines Clause analysis should further protect vehicle residents and unsheltered people.

This Note analyzes how the *Long* decision may influence judicial analysis of Excessive Fines Clause claims and how this analysis should

14. See JUSTIN OLSON & SCOTT MACDONALD, WASHINGTON’S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT 3 (Sara K. Rankin ed., 2015); SEATTLE, WASH., MUN. CODE § 11.72.440 (2006).

15. Ashley Archibald, *This Is My Home: Seattle and the New Realities of Residencies*, REAL CHANGE (Jan. 5, 2022), <https://www.realchangenews.org/news/2022/01/05/my-home-seattle-and-new-realities-residencies> [<https://perma.cc/JLR5-LFXM>]; *City of Seattle v. Long (Long II)*, 198 Wash. 2d 136, 493 P.3d 94 (2021).

16. *Long II*, 198 Wash. 2d 136, 493 P.3d 94 (2021).

17. *Id.* at 176, 493 P.3d at 115. See generally U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”); WASH. CONST. art. I, § 14 (“Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.”).

18. *E.g.*, Schmid, *supra* note 11. Recently, there has been a rise in people living a nomadic lifestyle in their vehicles, generally referred to as “van life.” Callie Carmichael, *Van Life: Embracing Minimalism, Millennials Ditch Apartments in Favor of Nomadic Lifestyle*, USA TODAY (Oct. 24, 2019, 12:04 PM ET), <https://www.usatoday.com/story/travel/2019/10/24/van-life-takes-off-among-younger-generations/3865329002/> [<https://perma.cc/7WRX-XC88>]. Often, these people work remotely or finance this lifestyle through savings. *Id.* For purposes of this Note, “vehicle residents” refers to the members of the unhoused community who live in their vehicles out of necessity, not those involved in van life.

19. *Long II*, 198 Wash. 2d at 158–59, 173–77, 493 P.3d at 107, 114–16.

protect vehicle residents and unsheltered people in Washington. In Part I, this Note discusses the housing crisis in Washington, the specific types of laws that often harm vehicle residents and the unhoused, and the relationship between civil fines, criminal fines, and continued poverty. Section II.A outlines the historical jurisprudence of the Excessive Fines Clause up until *Long*. Section II.B explains the Washington State Supreme Court's decision in *City of Seattle v. Long* and its relation to the State and Federal Clauses. Sections III.A and III.B explore how the *Long* decision may guide the use of the Excessive Fines Clauses to further protect the rights of vehicle residents. Finally, section III.C argues that these protections should extend to the entire population of unsheltered people. This Note contends that Washington courts and advocates should use the *Long* decision and its analysis of one's ability to pay under the Excessive Fines Clause to expand the rights of vehicle residents and the unsheltered throughout Washington.

I. THE HOUSING CRISIS IN WASHINGTON AND LAWS CRIMINALIZING HOMELESSNESS

Part I of this Note provides context on the housing crisis in Washington. This section outlines the ways that Washington's current legal framework adversely affects unsheltered people generally as well as vehicle residents specifically. It further discusses the relationship between civil punishment and cyclical poverty.

A. *The Housing Crisis in Washington*

Homelessness is a pervasive issue in Washington and throughout the West Coast.²⁰ The high rates of homelessness on the West Coast have led to conflicting narratives among the general population about why more people are homeless in this region.²¹ However, the expert consensus is that

20. Kushel, *supra* note 8; see also WASH. DEP'T COM., *2022 Point in Time Count* (2022), <https://deptofcommerce.app.box.com/s/t1h0xf2a3xczyubgeymryz8iivfkif2y> (last visited Sept. 16, 2023) [hereinafter *2022 Point in Time Count*] (showing the large number of homeless individuals in Washington counties).

21. Compare, e.g., Christopher Rufo, *Crisis: Why Are Liberal West Coast Cities Plagued by Homelessness?*, NAT'L INT. (Feb. 24, 2020), <https://nationalinterest.org/blog/buzz/crisis-why-are-liberal-west-coast-cities-plagued-homelessness-126562> [<https://perma.cc/78WK-MH92>] (blaming "addiction, mental illness, and permissive public policies"), with Christopher Weber & Geoff Mulvihill, *U.S. Homelessness Is on the Rise, Especially on the West Coast*, PBS NEWS HOUR (Dec. 6, 2017, 3:29 PM EDT), <https://www.pbs.org/newshour/nation/u-s-homelessness-is-on-the-rise-especially-on-the-west-coast> [<https://perma.cc/Y9C4-BD6Y>] (blaming "the region's booming economy").

the high cost of living and the lack of affordable housing in major West Coast cities are driving factors.²² In Washington, the unhoused population began to steadily increase in 2013, largely due to the rising cost of rent.²³ Leaders in Seattle declared a “state of emergency” in regards to the rise of homelessness in 2015 and allowed for the use of emergency funding to address the issue.²⁴ One helpful (though critiqued) way to monitor the size of the unhoused population at any given time is through Point-in-Time (“PIT”) counts,²⁵ as mandated by the U.S. Department of Housing and Urban Development.²⁶ On January 26, 2022, Washington counted 25,452 people experiencing homelessness in the state through its PIT count.²⁷ Over half of the people Washington counted as experiencing homelessness (13,368) resided in King County, which encompasses the Seattle metropolitan region.²⁸ That same year, an estimated forty-three percent of the homeless population was deemed to be sheltered, meaning they were housed in emergency shelters or transitional housing.²⁹ The other fifty-seven percent of the population was considered to be unsheltered, meaning they lived on the street, in tent encampments, or in

22. See Kushel, *supra* note 8; WHY IS HOMELESSNESS INCREASING?, *supra* note 9.

23. WHY IS HOMELESSNESS INCREASING?, *supra* note 9.

24. Daniel Beekman & Jack Broom, *Mayor, County Exec Declare ‘State of Emergency’ Over Homelessness*, SEATTLE TIMES (Jan. 31, 2016, 10:41 AM), <https://www.seattletimes.com/seattle-news/politics/mayor-county-exec-declare-state-of-emergency-over-homelessness/> [<https://perma.cc/2TA3-6YCR>] (“The mayor called homelessness in Seattle a human tragedy ‘seldom seen in the history of our city,’ while King County Executive Dow Constantine said the situation countywide has become ‘just as devastating to thousands as flood or fire.’”).

25. A Point-in-Time (PIT) count is a count of all sheltered and unsheltered people in a city or area on one night. The U.S. Department of Housing and Urban Development requires that a PIT count be done each year across the country. HUD EXCH., *Point-in-Time Count and Housing Inventory Count*, <https://www.hudexchange.info/programs/hdx/pit-hic/> [<https://perma.cc/9B2T-46JB>]. Critics of PIT counts argue that the method often undercounts homeless populations and leaves out certain groups, such as people temporarily staying in hotels. *E.g.*, Ben Brazil, *Advocates and Nonprofit Leaders Question the Accuracy of Orange County Homeless Count*, L.A. TIMES (June 2, 2022, 3:22 PM PT), <https://www.latimes.com/socal/daily-pilot/entertainment/story/2022-06-02/advocates-and-nonprofit-leaders-question-the-accuracy-of-orange-county-homeless-count> [<https://perma.cc/SAE3-95NB>]. Many advocates propose a movement toward a by-name counting system to reflect the number of unhoused people in a community more accurately. *E.g.*, Bethany Snyder, *Yes, There’s a Better Way to Measure Homelessness than the Annual Point-in-Time Count*, CMTY. SOLS. BLOG (Jan. 22, 2021) <https://community.solutions/yes-theres-a-better-way-to-measure-homelessness-than-the-annual-point-in-time-count/> [<https://perma.cc/LKK4-HKCG>].

26. HUD EXCH., *supra* note 25.

27. *2022 Point in Time Count*, *supra* note 20.

28. KING CNTY. REG’L HOUS. AUTH., *2022 Point in Time Count* (2022), <https://kcrha.org/wp-content/uploads/2022/06/PIT-2022-Infograph-v7.pdf> [<https://perma.cc/KNE5-HCAA>].

29. *Id.*; see also ALL HOME, *supra* note 10, at 19 (describing “sheltered”).

their vehicles.³⁰ These statistics provide helpful background for the legal developments in Washington law that target unhoused people.

B. Laws that Adversely Affect Unsheltered People

As the number of unsheltered people rose, so did the number of laws regulating the day-to-day activities of this group.³¹ Legal advocates and scholars often refer to statutes and ordinances that outlaw necessary and often life-sustaining activities of the unhoused as laws that “criminalize homelessness.”³² These laws have a higher effect on unsheltered people, as opposed to sheltered people, because they generally focus on behaviors occurring in public spaces.³³ In Washington, many cities have passed ordinances that scholars and advocates see as criminalizing homelessness.³⁴ Sitting, standing, and sleeping in public are the most commonly criminalized behaviors.³⁵ Urination and defecation in public, as well as “aggressive” panhandling, are also commonly prohibited.³⁶ Many of these ordinances, such as bans on public urination, have legitimate purposes, like health and sanitation.³⁷ Although these concerns may be legitimate, these regulations have a disparate impact on unsheltered people. Because of the unavailability of twenty-four hour public restrooms or hygiene areas and the high need of those who are unhoused, laws prohibiting certain public activities significantly impact

30. KING CNTY. REG’L HOUS. AUTH., *supra* note 28.

31. NAT’L HOMELESSNESS L. CTR., HOUSING NOT HANDCUFFS 2021: STATE LAW SUPPLEMENT 5 (2021), <https://homelesslaw.org/wp-content/uploads/2021/11/2021-HNH-State-Crim-Supplement.pdf> [<https://perma.cc/CN6M-9976>] [hereinafter HOUSING NOT HANDCUFFS].

32. *Id.*; see also OLSON & MACDONALD, *supra* note 14, at 3 (noting that at least seventy-five percent of the seventy-two Washington cities examined criminalize sitting or standing in public places, sleeping in public places, and public urination or defecation). The Ninth Circuit held in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), that the Cruel and Unusual Punishment Clause of the U.S. Constitution bars cities without adequate shelter and housing options from punishing unhoused people from the “unavoidable consequence” of being unhoused. 902 F.3d 1031, 1048 (9th Cir. 2018). Many cities have continued to pass these laws or amend them to avoid *Martin* concerns. See Sara K. Rankin, *Hiding Homelessness: The Transcarceration of Homelessness*, 109 CALIF. L. REV. 559, 565 (2021). While this Note focuses on the Excessive Fines Clause arguments that may further protect unhoused individuals, arguments rooted in the Cruel and Unusual Punishment Clause are another route for advocacy.

33. See HOUSING NOT HANDCUFFS, *supra* note 31, at 9.

34. OLSON & MACDONALD, *supra* note 14, at 1. These types of laws are generally passed by cities and towns because they are seen as relating to town health and safety. Jordan Talge, *No Direction Home: Constitutional Limitations on Washington’s Homeless Encampment Ordinances*, 85 WASH. L. REV. 781, 784–85 (2010).

35. OLSON & MACDONALD, *supra* note 14, at 3.

36. *Id.* at 3–4.

37. *Id.* at 4.

unhoused people’s ability to exist.³⁸ Washington lawmakers continue to pass laws punishing common behaviors of the unsheltered communities, particularly in the areas surrounding Seattle.³⁹ Recently, cities surrounding Seattle have taken action to prevent unsheltered people from moving out of Seattle and to their cities.⁴⁰ For example, Edmonds, Washington, passed an ordinance banning camping in public places in May of 2022.⁴¹ The ordinance made it illegal to “occupy or store belongings in public places overnight.”⁴² City officials acknowledged this measure was “partly preemptive, aimed at keeping what residents see as the growing homelessness crisis in Seattle out of their city,” but did not see their ordinance as criminalizing homelessness.⁴³ Instead, city officials said the act was “criminalizing not accepting the support and help [that was offered].”⁴⁴ Regardless of their intention, the adverse consequences of these types of laws remain clear—homelessness is criminalized.

C. *Laws that Adversely Affect Vehicle Residents*

The growing population of vehicle residents must contend with a plethora of laws that ban their existence.⁴⁵ Vehicle residents are the “nation’s fastest-growing homeless subpopulation,”⁴⁶ and an estimated forty percent of unhoused people on the West Coast are living in their vehicles.⁴⁷ In King County, Washington, an estimated 2,748 individuals—about half the total unsheltered population—lived in their vehicles during 2020.⁴⁸ Many unsheltered people with vehicles do not want to leave their

38. *Id.* at 4–5.

39. *E.g.*, Greg Kim, *Edmonds Passes Law Criminalizing Camping in Public Spaces – but Lacks Local Homeless Shelter Options*, SEATTLE TIMES (May 26, 2022, 6:00 AM), <https://www.seattletimes.com/seattle-news/homeless/edmonds-passes-law-criminalizing-homelessness-in-public-spaces-but-lacks-local-shelter-options/> [<https://perma.cc/D77G-WQJM>].

40. *E.g.*, EVERETT, WASH., MUN. CODE § 13.94.010 (2021) (“No person shall sit or lie down upon, or place a blanket, sleeping bag, . . . or any similar equipment, item, or furniture upon, a public sidewalk or any portion of the public right-of-way.”); *see* Kim, *supra* note 39.

41. Kim, *supra* note 39.

42. *Id.*

43. *Id.*

44. *Id.* City council members introduced this ordinance in response to a few instances where homeless individuals created “outsized disturbance[s].” *Id.* These same individuals were offered shelter but did not accept it. *Id.*

45. *See* Schmid, *supra* note 11 (noting that people who live in vehicles are “targeted by restrictive laws”); JESSICA SO, SCOTT MACDONALD, JUSTIN OLSON & RYAN MANSELL, *LIVING AT THE INTERSECTION: LAWS & VEHICLE RESIDENCY* 9 (Sara K. Rankin ed., 2016).

46. Schmid, *supra* note 11 (quoting Sara Rankin, Director of Seattle University’s Homeless Rights Advocacy Project).

47. *Id.*

48. *See* ALL HOME, *supra* note 10, at 7.

vehicle to stay at a shelter, especially when all of their possessions are inside it.⁴⁹

Vehicle residents are affected both by laws explicitly banning their lifestyle and by parking and traffic regulations.⁵⁰ The Homeless Rights Advocacy Project (HRAP) surveyed twenty-nine cities in Washington during 2016 and found 291 ordinances they categorized as criminalizing vehicle residency.⁵¹ Some of these cities specifically prohibit the act of living or sleeping in one's vehicle.⁵² In Tacoma, Washington, for example, a city ordinance makes it unlawful for a vehicle to be "used for human habitation purposes for a period exceeding 72 hours on a public street or public right-of-way."⁵³ Other cities, like Mercer Island, Washington, have passed ordinances more recently that make it a misdemeanor to "camp" on public property.⁵⁴ The city defines "camp" as "remaining overnight or parking a vehicle for the purpose of occupying the vehicle overnight."⁵⁵ Additionally, vehicle residents are harmed by certain kinds of parking restrictions. With no private property to park in, vehicle residents are particularly impacted by public parking restrictions based on vehicle size or time parked.⁵⁶ Seattle bans parking in the same location for more than seventy-two hours.⁵⁷ Ellensburg, Washington disallows any person to "stop, stand, or park any vehicle on any street in the city of Ellensburg for a period longer than 24 hours."⁵⁸ Bellevue, Washington and other cities have similar twenty-four hour parking restrictions.⁵⁹ Laws that explicitly ban living in vehicles and laws that restrict vehicle movement both have significant ramifications for vehicle

49. Tobias Coughlin-Bogue, *Service Refusal Is Not a Myth, but It Is Surrounded by Them*, REAL CHANGE (Jan. 11, 2023), <https://www.realchangenews.org/news/2023/01/11/service-refusal-not-myth-it-surrounded-them> [<https://perma.cc/LK7Y-XQJD>].

50. SO ET AL., *supra* note 45, at 2, 9.

51. *Id.* at 9.

52. *E.g.*, TACOMA, WASH., MUN. CODE § 11.05.231(A)(1) (2017) ("Evidence of human habitation includes . . . sleeping . . . or any other activity where it reasonably appears, in light of all the circumstances, that a person or persons is using the vehicle as a living accommodation.").

53. *Id.* § 11.05.231(B) (2017).

54. MERCER ISLAND, WASH., CITY CODE §§ 9.60.030, .050 (2021) (providing that a camping violation is a misdemeanor offense punishable by imprisonment of up to ninety days, a fine of up to \$1,000, or both).

55. *Id.* § 9.60.020.

56. SO ET AL., *supra* note 45, at 11.

57. SEATTLE, WASH., MUN. CODE § 11.72.440 (2006).

58. ELLENSBURG, WASH., CITY CODE § 8.12.040 (1983).

59. BELLEVUE, WASH., CITY CODE § 11.23.020 (2022) ("[N]o person may park or re-park a vehicle on either side of a public street within the same block for a period exceeding 24 consecutive hours."). *E.g.*, BURIEN, WASH. MUN. CODE § 10.15.080 (1999) ("No person shall park or stand any vehicle upon any street or public right-of-way for a period exceeding 24 hours.").

residents. Further, the punishments for violating these ordinances can have major, ongoing impacts on the lives of vehicle residents.

D. Civil Punishment and Cyclical Poverty

Both civil and criminal laws impact the unhoused and vehicle residents.⁶⁰ The United States legal system generally distinguishes between civil and criminal punishment.⁶¹ Civil actions relate to someone's private rights, such as property or contract-based claims.⁶² Criminal offenses, or crimes, are generally social harms that the law deems as punishable.⁶³ Unlike civil offenses, criminal prosecution can directly lead to punishment through time in prison or other losses of liberty.⁶⁴ Largely due to this distinction, criminal prosecution triggers additional constitutional protections.⁶⁵ People charged with crimes, for example, have a right to an attorney under the Sixth Amendment, but those with civil suits filed against them do not.⁶⁶

Civil punishment, particularly in the housing context, is often equally as impactful as criminal punishment. Scholars see the distinction between civil and criminal punishment as “de minimis,” particularly when applied to already vulnerable unsheltered people.⁶⁷ This is because the costs of civil punishments are often substantial and can lead to criminal punishment.⁶⁸ Civil infractions can morph into criminal charges “through ‘failure-to-appear’ or ‘failure-to-pay’ provisions” which, as the names suggest, result in additional consequences for those who do not pay their fines or show up to court.⁶⁹ Civil punishment and fines can also have large non-legal consequences, particularly for vulnerable populations like the unhoused and unsheltered.⁷⁰ Unhoused people who are fined face the tough choice between attempting to pay off their fines—often at the expense of basic needs—or failing to pay their fine and possibly receiving

60. Sara K. Rankin, *Civilly Criminalizing Homelessness*, 56 HARV. C.R.-C.L. L. REV. 367, 385–89 (2021).

61. Cf. Siobhan Allen, *The Role of the Excessive Fines Clause in Ending the Criminalization of Homelessness*, 55 COLUM. J.L. & SOC. PROBS. 499, 507 (2022) (detailing differences between criminal prosecution and civil infractions).

62. See *Civil*, BLACK'S LAW DICTIONARY (11th ed. 2019).

63. See *Crime*, BLACK'S LAW DICTIONARY (11th ed. 2019).

64. Rankin, *supra* note 60, at 377.

65. *Id.* at 369; *Gideon v. Wainwright*, 372 U.S. 335, 344–45 (1963).

66. Rankin, *supra* note 60, at 369.

67. *Id.* at 386.

68. *Id.* at 378.

69. *Id.*

70. See Allen, *supra* note 61, at 508.

even higher fines.⁷¹ Non-payment of fines can also lead to the revocation of one's driver's license, which, in turn, impacts one's ability to go to or find work.⁷² All of these consequences only increase the chances of continued, cyclical poverty.⁷³ For example, fines imposed on those who already cannot afford stable housing only continue to keep them out of stable housing.⁷⁴ Thus, the stakes are higher than may be expected for those in civil proceedings—especially for unhoused people. The high stakes of civil fines for unhoused people underscore the importance of legal rules, such as the Excessive Fines Clause, that exist to protect individuals from unwarranted punishment.

II. THE EXCESSIVE FINES CLAUSE AND *CITY OF SEATTLE V. LONG*

Laws regulating the behavior of unhoused people often utilize fines to deter or punish certain actions.⁷⁵ The Excessive Fines Clause of both the United States and Washington Constitutions protect citizens from fines that are deemed constitutionally “excessive.”⁷⁶ Until recently, the Clause⁷⁷ has not been the subject of much attention or litigation compared to other constitutional provisions. Section II.A explains the Excessive Fines Clause, its history, and the current jurisprudence regarding the Clause. It then discusses the question of one's ability to pay and how different jurisdictions have approached the question of whether someone's ability to pay should have a role in the Excessive Fines Clause analysis. Section II.B discusses the Washington State Supreme Court's decision in *City of Seattle v. Long*. It explores how the Court analyzed the Excessive Fines Clause and its findings regarding the importance of ability to pay.

71. *Id.* at 507; Rankin, *supra* note 60, at 378.

72. Allen, *supra* note 61, at 508.

73. *Id.*

74. *Id.*

75. *Id.* at 507–08.

76. U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”); WASH. CONST. art. I, § 14 (“Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.”).

77. I refer to the Eighth Amendment's Excessive Fines Clause and the Washington Constitution's Excessive Fines Clause jointly in the singular for simplicity and because they are treated similarly. *See infra* section II.B.

A. *The Federal Excessive Fines Clause, Its History, and Its Application*

Section II.A overviews the Excessive Fines Clause, its historical roots, and three key concepts: the partially punitive requirement, proportionality, and ability to pay. It then explains the excessive fines provisions in the states, specifically Washington.

1. *Historical Roots of the Clause*

The historical roots of the Excessive Fines Clause heavily influence its judicial application.⁷⁸ The modern Excessive Fines Clause is rooted in the Magna Carta.⁷⁹ The Magna Carta, written in 1215, stated that a person should only be fined “in proportion to the degree of his offence . . . , but not so heavily as to deprive him of his livelihood.”⁸⁰ The concept of proportionality continued in colonial era provisions. For instance, the Frame of Government of Pennsylvania required fines to be “moderate, and saving men’s contentements, merchandize, or wainage.”⁸¹ Similarly, the language of the United States Constitution’s Excessive Fines Clause is directly based on a provision of the Virginia Declaration of Rights of 1776, which echoed a past provision from the English Bill of Rights of 1689.⁸² The implementation of the Excessive Fines Clause was, at the time, “understood to be linked” to the “analogous legal protections in English history.”⁸³ The Excessive Fines Clause received minimal attention from the drafters of the U.S. Constitution.⁸⁴ There was no debate at the Constitutional Convention over the Excessive Fines Clause, except by one representative of South Carolina who questioned whether the Clause had any intelligible meaning at all.⁸⁵ Due to this, instead of looking

78. See, e.g., *Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682 (2019) (noting the importance of the historical roots of the Clause).

79. Nathaniel Amann, Note, *Restitution and the Excessive Fines Clause*, 58 AM. CRIM. L. REV. 205, 213 (2020). The Magna Carta originally referred to amercements, as opposed to fines. *Id.* An amercement is similar to the modern understanding of a fine but was a “non-optional pecuniary penalty imposed by the king.” *Id.*

80. *Magna Carta 1215*, BRIT. LIBR., <https://www.bl.uk/learning/timeline/item95692.html> [<https://perma.cc/894S-3MK8>].

81. *Pennsylvania Frame of Government*, TEACHING AM. HIST., <https://teachingamericanhistory.org/document/pennsylvania-frame-of-government/> [<https://perma.cc/MR2P-JZT5>].

82. Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 HASTINGS CONST. L.Q. 833, 839 (2013).

83. *Id.* at 840.

84. Amann, *supra* note 79, at 216.

85. *Id.*

to the history of the Constitutional Convention—as courts often do when interpreting the U.S. Constitution—courts interpreting the Excessive Fines Clause look to its historical roots.⁸⁶ Despite the Clause’s long historical roots, the United States Supreme Court did not hear an excessive fines claim until 1989 in the case of *Browning-Ferris Industries v. Kelco Disposal, Inc.*⁸⁷ There, the plaintiffs challenged a six-million dollar jury damages award under the Excessive Fines Clause.⁸⁸ The Court, relying on the history of the Excessive Fines Clause, held that it did not apply to a punitive jury award in a civil trial.⁸⁹ While the Court in *Browning-Ferris* did not create a test for whether a fine is constitutionally excessive, other case law has generated clearer tests.⁹⁰

2. *The Partially Punitive Requirement*

To be assessed under the Excessive Fines Clause, the fine imposed must be at least partially punitive,⁹¹ i.e., serve to punish.⁹² This requirement originated in *Austin v. United States*.⁹³ Austin pled guilty to one count of possession with an intent to distribute.⁹⁴ Austin was sentenced to seven years in prison and the United States initiated a civil forfeiture of both Austin’s mobile home and body shop, which were worth about \$37,000.⁹⁵ Austin argued that this was a violation of the Excessive Fines Clause, but the Eighth Circuit held that the Excessive Fines Clause did not apply to civil forfeitures.⁹⁶ Reversing the Eighth Circuit’s decision, the United States Supreme Court held that the civil forfeiture was punitive and thus required an Eighth Amendment excessive fines analysis.⁹⁷ The Court stated the “question is not . . . whether the forfeiture . . . is civil or criminal, but rather whether it

86. *Id.* at 212. *E.g.*, *Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 267–73 (1989).

87. 492 U.S. 257.

88. *Id.* at 259.

89. *Id.* at 275; Amann, *supra* note 79, at 208.

90. *See Browning-Ferris*, 492 U.S. 257; Amann, *supra* note 79, at 209–11.

91. *Austin v. United States*, 509 U.S. 602, 609–10 (1993).

92. *Punitive*, BLACK’S LAW DICTIONARY (11th ed. 2019).

93. 509 U.S. 602 (1993).

94. *Id.* at 604.

95. David Lieber, *Eighth Amendment—The Excessive Fines Clause*, 84 J. CRIM. L. & CRIMINOLOGY 805, 811–12 (1994).

96. The Eighth Circuit expressed some hesitation at the idea that there should be no constitutional review of this type of seizure and stated it was “troubled” with the idea that any property” could be seized only because the owner committed a single drug offense. *Id.* at 813 (quoting *United States v. 508 Depot Street*, 964 F.2d 814, 816 (8th Cir. 1992)).

97. *Austin*, 509 U.S. at 610.

is punishment.”⁹⁸ Punishment does not have to be the only purpose of the fine, however.⁹⁹ The Court held that “serving in part to punish” is enough for the Excessive Fines Clause to apply¹⁰⁰ and remanded the case on the issue of whether this fine was constitutionally excessive.¹⁰¹ After *Austin*, fines must be at least “partially punitive” to be assessed under the Clause.¹⁰² This requirement is foundational for the application of the Excessive Fines Clause.

3. *The Proportionality Analysis*

Once a fine has been deemed partially punitive, courts use a proportionality test to determine if it is constitutionally excessive.¹⁰³ In 1998, the United States Supreme Court took up the question of when a fine is constitutionally excessive.¹⁰⁴ In *United States v. Bajakajian*,¹⁰⁵ an individual attempting to export \$357,144 out of the United States violated a federal statute by failing to report bringing over \$10,000 outside the United States.¹⁰⁶ The United States caught and charged Bajakajian with violating this statute.¹⁰⁷ As punishment for failure to report, the government required Bajakajian to forfeit the entire \$357,144 Bajakajian tried to transport.¹⁰⁸ The Court in *Bajakajian* held that a fine violated the Excessive Fines Clause when it was “grossly disproportional” to its offense.¹⁰⁹ The Court held that proportionality was “[t]he touchstone of the constitutional inquiry . . . : The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.”¹¹⁰ When analyzing proportionality, the *Bajakajian* Court considered four factors: “(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent

98. *Id.*

99. *Id.* at 602, 610.

100. *Id.* at 610.

101. *Id.* at 623.

102. Beth A. Colgan, *The Burdens of the Excessive Fines Clause*, 63 WM. & MARY L. REV. 407, 419 (2021).

103. *E.g.*, *United State v. Bajakajian*, 524 U.S. 321, 334 (1998).

104. *Id.*

105. 524 U.S. 321 (1998).

106. *Id.* at 325; 31 U.S.C. § 5316(a)(1)(A).

107. *Bajakajian*, 524 U.S. at 325.

108. *Id.*

109. *Id.* at 334.

110. *Id.*

of the harm caused.”¹¹¹ The Court did not indicate that these factors were exhaustive, but used them to find that the high fine imposed on *Bajakajian* was not proportional to the offense of the failure to report.¹¹² The Court reasoned that while the failure to report minimally affected the government by depriving it of information, a loss of \$357,144 was not proportional, as there was no correlation between this amount and the minor injury.¹¹³ Since *Bajakajian*, courts have generally been guided by these factors,¹¹⁴ but an important question remains: whether one’s ability to pay should be a factor in analyzing proportionality under the Excessive Fines Clause.

The United States Supreme Court has not decided whether someone’s ability to pay should be an additional factor in the proportionality analysis performed under the Excessive Fines Clause. The historical roots of the Excessive Fines Clause in the Magna Carta and colonial laws suggest that ability to pay should be a factor.¹¹⁵ The Court has noted that these roots resonate with the idea that a fine is excessive if it impedes on one’s livelihood.¹¹⁶ But the Court has not yet decided whether ability to pay should factor into the analysis, stating that the *Bajakajian* Court took “no position on . . . whether a person’s income and wealth are relevant considerations in judging the excessiveness of a fine.”¹¹⁷ The issue of ability to pay, however, was not presented in *Bajakajian*, and thus, the Court did not consider it when reaching its holding.¹¹⁸ The only mention of “ability to pay” in *Bajakajian* appears in a footnote: “[r]espondent does not argue that his wealth or income are relevant to the proportionality determination.”¹¹⁹ The appropriateness of adding one’s ability to pay as a factor in an Excessive Fines Clause analysis remains unclear since the Supreme Court has not directly considered the question.

Since the United States Supreme Court has not offered clear guidance, jurisdictions have taken different approaches to whether the proportionality test includes an analysis of a person’s ability to pay. Although these decisions are not binding in Washington State, they may

111. *United States v. \$100,348.00 in U.S. Currency*, 354 F.3d 1110, 1122 (9th Cir. 2004) (citing *Bajakajian*, 524 U.S. at 337–40).

112. *Bajakajian*, 524 U.S. at 337–40.

113. *Id.* at 339.

114. *E.g.*, *State v. Grocery Mfrs. Ass’n*, 195 Wash.2d 442, 476, 461 P.3d 334, 353 (2020) (citing the *Bajakajian* factors).

115. *E.g.*, *Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682, 688 (2019).

116. *Id.*

117. *Id.*

118. *Bajakajian*, 524 U.S. at 340 n.15.

119. *Id.*

have persuasive value for Washington courts.¹²⁰ Many courts across the country have examined ability to pay in their proportionality analysis.¹²¹ For example, the Supreme Court of Colorado recently held that ability to pay should be central to a claim under the federal Excessive Fines Clause.¹²² In *Colorado Department of Labor and Employment v. Dami Hospitality, LLC*,¹²³ the Supreme Court of Colorado expanded its excessive fines analysis to include ability to pay.¹²⁴ In *Dami*, a hospital was fined \$841,200 based on 1,698 daily fines for failure to comply with statutes requiring it to retain workers' compensation insurance.¹²⁵ The Supreme Court of Colorado noted that the United States Supreme Court's citations to the Excessive Fines Clauses' historical predecessors and its consideration of an ability to pay analysis were "persuasive evidence that a fine that is more than a person can pay may be 'excessive.'"¹²⁶ Further, the Court reasoned that considering one's ability to pay is appropriate because a fine that "would bankrupt a person or put a company out of business would be a substantially more onerous fine than one that did not."¹²⁷ Because the Supreme Court of Colorado expanded its Excessive Fines Clause analysis, it remanded the case to the Colorado Court of Appeals to decide whether an evidentiary hearing on *Dami's* ability to pay was necessary.¹²⁸

Other courts have declined to weigh ability to pay in the Excessive Fines Clause balancing test. In *United States v. 817 N.E. 29th Drive*,¹²⁹ the Eleventh Circuit pointed to the Supreme Court's analysis in *Bajakajian* and noted that there was no comparison of the amount of the forfeiture to the owner's assets, only to the gravity of the offense itself.¹³⁰ The Ninth Circuit also declined to examine ability to pay in the context of

120. See, e.g., Robyn Painter & Kate Mayer, *Which Court is Binding?: Binding vs. Persuasive Cases*, WRITING CTR. GEO. UNIV. L. CTR. (2017), <https://www.law.georgetown.edu/wp-content/uploads/2018/07/Which-Court-is-Binding-HandoutFinal.pdf> [<https://perma.cc/NGS9-7DQU>] (detailing when a decision is binding on a court and when a decision does not bind—but may be persuasive to—a court).

121. E.g., *United States v. Levesque*, 546 F.3d 78, 83 (1st Cir. 2008); *State v. Goodenow*, 282 P.3d 8, 17 (Or. App. 2012); *State v. Taylor*, 70 S.W.3d 717, 723 (Tenn. 2002).

122. *Colo. Dep't of Lab. & Emp. v. Dami Hosp., LLC*, 442 P.3d 94, 101–02 (Colo. 2019).

123. 442 P.3d 94 (2019).

124. *Id.* at 101–02.

125. *Id.* at 97.

126. *Id.* at 101.

127. *Id.* at 102.

128. *Id.* at 96, 103.

129. 175 F.3d 1304 (11th Cir. 1999).

130. *Id.* at 1311.

the Mandatory Victims Restitution Act of 1996,¹³¹ holding that the Eighth Amendment gross disproportionality test did not require any inquiry into the offender's ability to pay.¹³²

Until the *Long* decision in 2021, Washington courts had not yet ruled on whether a person's ability to pay should be a part of the state Excessive Fines Clause analysis.

4. *The Federal Excessive Fines Clause and Washington State Provisions*

Courts around the nation did not apply the Federal Excessive Fines Clause to state government actions until 2019, when the Supreme Court issued another seminal decision.¹³³ In *Timbs v. Indiana*,¹³⁴ Indiana sought a civil forfeiture of the petitioner's car, saying that it had been used to transport heroin.¹³⁵ The trial court in Indiana found the civil forfeiture to be grossly disproportionate to Timbs's drug conviction, as Timbs purchased the car for more than four times as much as the maximum monetary fine for the offense.¹³⁶ Reversing the decision, the Supreme Court of Indiana held that the Federal Excessive Fines Clause only applied to federal actions, not state impositions.¹³⁷ The United States Supreme Court granted certiorari on the question of whether the Excessive Fines Clause should be incorporated against the states.¹³⁸ Incorporation is when the Supreme Court applies Federal Constitutional provisions to the actions of state governments.¹³⁹ The Court noted that the safeguard against excessive fines in the Eighth Amendment is "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition."¹⁴⁰ Thus, the Court reasoned it should be incorporated through the Fourteenth Amendment.¹⁴¹ After *Timbs*, the

131. 18 U.S.C. § 3663A.

132. *United States v. Dubose*, 146 F.3d 1141, 1146 (9th Cir. 1998) (holding that the Mandatory Victims Restitution Act did not violate the Excessive Fines Clause as applied or facially).

133. *See Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682 (2019).

134. 586 U.S. ___, 139 S. Ct. 682 (2019).

135. *See id.* at 686. Civil asset forfeiture is the seizing of property that the government believes is connected to a crime. The proceedings are civil in nature and do not require any formal criminal proceedings. KAREN DOLAN & JODI L. CARR, *THE POOR GET PRISON: THE ALARMING SPREAD OF THE CRIMINALIZATION OF POVERTY*, INST. POL'Y STUD. 27, <https://ips-dc.org/wp-content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf> [<https://perma.cc/M4SZ-KHHT>].

136. *Timbs*, 139 S. Ct. at 686.

137. *Id.*

138. *Id.* at 686.

139. *E.g., id.*

140. *Id.* at 689 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010)).

141. *Id.* at 686–87.

Federal Excessive Fines Clause applies to both federal and state government action.

In conjunction with the Federal Excessive Fines Clause, Washington State also has separate constitutional protections against excessive fines. Although the Federal Excessive Fines Clause was not applied against states until 2019, all fifty states—including Washington—have state constitutional provisions against excessive fines.¹⁴² The Washington Constitution’s Excessive Fines Clause mirrors the provision in the United States Constitution: “Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.”¹⁴³ Notably, while Washington courts have interpreted some provisions of the State Constitution as providing greater protections than their federal counterparts,¹⁴⁴ the courts have not yet recognized the Excessive Fines Clause as providing greater protections.¹⁴⁵ The Washington State Supreme Court has left open the possibility of a more protective analysis if the issue is properly briefed to the Court.¹⁴⁶ Thus, there is some room for potential advocacy in this realm.¹⁴⁷ Currently, however, article I, section 14 of the Washington State Constitution and the Eighth Amendment of the United States Constitution are viewed in Washington as “coextensive for the purposes of excessive fines.”¹⁴⁸ As the law currently stands, Washington courts analyze the Washington Excessive Fines Clause in tandem with the Federal Clause. Thus, if the Federal Excessive Fines Clause is violated, so is the Washington one, and vice versa.¹⁴⁹ For the purposes of this Note, the two Excessive Fines Clauses can be seen as coextensive, and the arguments made apply to both. Thus, the following analysis of excessive fines as

142. *Id.* at 689.

143. WASH. CONST. art. I, § 14.

144. *E.g.*, *State v. Boland*, 115 Wash. 2d 571, 800 P.2d 1112 (1990) (interpreting Washington’s article I, section 7 protections regarding constitutionally protected searches as more protective than the Federal Constitution’s Fourth Amendment).

145. *City of Seattle v. Long (Long II)*, 198 Wash. 2d 136, 158–59, 493 P.3d 94, 107 (2021).

146. *Id.*

147. Lower courts in Washington have heard arguments on whether there is a basis for treating Washington’s Excessive Fines Clause as more protective than the Federal Excessive Fines Clause and have not yet found any basis for applying a different standard under Washington law. *E.g.*, *State v. Tatum*, 23 Wash. App. 2d 123, 133, 514 P.3d 763, 769 (2022) (finding no difference in the goals of the United States and Washington in this regard); *State v. Ramos*, 24 Wash. App. 2d 204, 223, 520 P.3d 65, 76 (2022) (finding no basis to interpret the clauses differently partially due to the text and origins being the same).

148. *Ramos*, 24 Wash. App. at 217, 520 P.3d at 73 (quoting *Long II*, 198 Wash. 2d at 159, 493 P.3d at 107).

149. *See, e.g., Tatum*, 23 Wash. App. 2d at 133, 514 P.3d at 769 (treating the Washington and Federal Excessive Fines Clauses as identical).

applied to the United States Constitution would apply to the Washington State Constitution as well.

B. The Long Decision

Section II.B discusses the Washington State Supreme Court's decision in *City of Seattle v. Long*. It explores how the Court analyzed the Excessive Fines Clause and its findings regarding the importance of ability to pay.

1. The Facts of Long

When Steven Long's home was impounded, he experienced increased financial instability.¹⁵⁰ In July of 2016, Long had fifty dollars to his name and was attempting to save for an apartment.¹⁵¹ In the meantime, he was living in his truck, earning between \$300 and \$600 a month, and receiving an additional \$100 in monthly tribal contributions.¹⁵² At this same time, Long's truck began to make grinding sounds.¹⁵³ So, on July 5, he parked the truck in a lot owned by the City of Seattle.¹⁵⁴ For the next three months, Long lived in his truck in this same parking lot.¹⁵⁵ Seattle Municipal Code (SMC) 11.72.440 forbids parking any vehicle on the street or municipal property for more than seventy-two hours.¹⁵⁶ On October 5, the Seattle Police Department notified Long that he was violating the SMC because he had parked in the location for more than seventy-two hours.¹⁵⁷ Long informed the police officers that he lived in his truck and later received a seventy-two hour notice from parking enforcement.¹⁵⁸ The notice stated that his truck would be impounded if it was not moved at least one city block away.¹⁵⁹ Long did not move his vehicle, and on October 12, a city-contracted towing company towed his truck.¹⁶⁰ Without his vehicle, Long

150. *Long II*, 198 Wash. 2d at 174–75, 493 P.3d at 114–15.

151. *Id.* at 174, 493 P.3d at 114.

152. *Id.*

153. *Id.* at 143, 493 P.3d at 99.

154. *Id.*

155. *Id.*

156. SEATTLE, WASH., MUN. CODE § 11.72.440(B) (2006).

157. *Long II*, 198 Wash. 2d at 143, 493 P.3d at 99.

158. *Id.*

159. *Id.*

160. *Id.*

had no place to stay.¹⁶¹ He slept outside on the ground and eventually went to a shelter to escape bad weather.¹⁶²

Long took legal action to get his truck back.¹⁶³ He requested a hearing to contest the seventy-two hour parking infraction.¹⁶⁴ At the impoundment hearing, Long reiterated that his truck was his home and that he both lived and kept his work tools in the truck.¹⁶⁵ The magistrate judge waived the standard \$44 fee for violating the seventy-two hour rule, reduced Long's impoundment fees from \$946.61 to \$547.12, and added a \$10 administrative fee.¹⁶⁶ The magistrate also drafted a payment plan for Long, which required him to pay \$50 every month.¹⁶⁷ Long felt "forced" to agree or else he risked losing his truck at public auction.¹⁶⁸

Long appealed the magistrate judge's findings and argued that the impoundment of his truck violated the State and Federal Excessive Fines Clauses.¹⁶⁹ Long first appealed to a municipal judge and filed a motion for summary judgment, which the court denied.¹⁷⁰ Long then filed an appeal to the King County Superior Court.¹⁷¹ The superior court held that impoundment itself did not violate the Excessive Fines Clause, but that the fees associated with it did.¹⁷² The case then moved to the Washington State Court of Appeals.¹⁷³ There, Long's Excessive Fines Clause arguments were rejected.¹⁷⁴ Finally, the case was appealed to the Supreme Court of Washington, where Long brought several arguments, including an Excessive Fines Clause claim.¹⁷⁵ Long petitioned the Washington State Supreme Court, arguing that the impoundment, as well as the fees associated with it, violated the

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 143, 173, 493 P.3d at 99, 114.

167. *Id.* at 143, 493 P.3d at 99.

168. *Id.*

169. *Id.* at 144, 493 P.3d at 99.

170. *City of Seattle v. Long (Long I)*, 13 Wash. App. 2d 709, 719, 467 P.3d 979, 985 (2020).

171. *Id.*

172. *Id.* at 719, 467 P.3d at 985–86.

173. *Id.* at 719, 467 P.3d at 986.

174. *Id.* at 731, 467 P.3d at 991.

175. *Long II*, 198 Wash. 2d at 144, 493 P.3d at 100; *see also* WASH. REV. CODE § 6.13.010 (2021) (defining what kind of property is protected by Washington's Homestead Act). Long also brought claims under the Washington Homestead Act, saying that his truck was the kind of private property protected by the Act. *Long II*, 198 Wash. 2d at 142, 493 P.3d at 99. This Note solely analyzes Long's excessive fines claims.

Excessive Fines Clause of the United States Constitution and article I, section 17 of the Washington State Constitution.¹⁷⁶ As these two provisions are interpreted by the Washington courts as coextensive, the analysis was the same.¹⁷⁷

2. *The Long Holding*

The majority opinion of the Washington State Supreme Court, written by Justice Madsen, held that the fines were unconstitutional under both the Federal and Washington State Excessive Fines Clauses.¹⁷⁸ The Court held that the Excessive Fines Clauses applied to both Long's impoundment and fees, as they were partially punitive.¹⁷⁹ Importantly, the Court incorporated an analysis of Long's ability to pay into its application of the Excessive Fines Clause analysis.¹⁸⁰ The Court, considering Long's ability to pay, found that the impoundment of his truck and the fees issued were unconstitutional.¹⁸¹ The following sections further explain the three crucial components of the Court's analysis under the Excessive Fines Clause: punitiveness, ability to pay, and proportionality.

a. *The Impoundment and Fees Were Partially Punitive*

The impoundment and fees, as applied, were deemed partially punitive in *Long*.¹⁸² Long argued that the impoundment and payment plan were a penalty for violating the seventy-two hour parking ban, and therefore, the fine was partially punitive.¹⁸³ The City of Seattle argued that the fine served only a remedial purpose.¹⁸⁴ Nevertheless, the plain language of the Seattle Municipal Code characterizes the fine as a "penalty."¹⁸⁵ The Court

176. Petition for Review at 4–5, 8–18, *City of Seattle v. Long (Long I)*, 13 Wash. App. 2d 709, 467 P.3d 979 (2020) (No. 98824-2). The Federal and Washington State Constitutions' Excessive Fines Clauses are nearly identical. U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."); WASH. CONST. art. I, § 14 ("Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.").

177. *See supra* section II.A.5.

178. *Long II*, 198 Wash. 2d at 173, 493 P.3d at 114; *see* U.S. CONST. amend. VIII; WASH. CONST. art. I, § 14.

179. *Long II*, 198 Wash.2d at 163, 493 P.3d at 109.

180. *Id.* at 173, 493 P.3d at 114.

181. *Id.*

182. *Id.* at 163, 493 P.3d at 109.

183. *Id.*

184. *Id.*

185. *Id.* at 164, 493 P.3d at 109; SEATTLE, WASH., MUN. CODE § 11.72.440(E) (2006).

found this plain language to be convincing of the partially punitive nature of the fine.¹⁸⁶

b. Washington Courts Will Analyze Ability to Pay

After *Long*, a person's ability to pay a fine became central to the constitutionality of that fine.¹⁸⁷ "The homelessness crisis and widespread use of fines to fund the criminal justice system . . . fully support an ability to pay inquiry."¹⁸⁸ The historical context of the Excessive Fines Clause and the Colorado Supreme Court's holding in *Dami* also influenced the decision.¹⁸⁹ The majority opinion noted that the Court would pay "more than 'lip service' to the [E]xcessive [F]ines [C]lause and instead hew to its history" by analyzing ability to pay.¹⁹⁰

c. Long's Fines Were Grossly Disproportional

The Court held that the fines imposed on Long were grossly disproportional to the activity being punished.¹⁹¹ The Washington State Supreme Court analyzed the standard factors used by the United States Supreme Court in *Bajakajian*, as well as ability to pay: "Our gross disproportionality test considers '(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused,' as well as a person's ability to pay the fine."¹⁹² Walking through these factors, the Court first looked at the nature of the offense.¹⁹³ Long's infraction was a civil parking violation.¹⁹⁴ Although the city has an incentive to keep streets clear and prevent people from remaining parked in the same location for extended periods, the Court held that the offense of staying in one location was not "particularly egregious."¹⁹⁵ Looking at the second factor, the Court found no evidence

186. *Long II*, 198 Wash. 2d at 164, 493 P.3d at 109

187. *Id.* at 171, 493 P.3d at 113.

188. *Id.*

189. *See id.* at 171–73, 493 P.3d at 113–14; Colo. Dep't of Lab. & Emp't. v. *Dami Hosp., LLC*, 442 P.3d 94, 103 (Colo. 2019) (holding that Colorado will analyze ability to pay when deciding whether a fine is constitutionally excessive).

190. *Long II*, 198 Wash. 2d at 173, 493 P.3d at 114.

191. *Id.*

192. *Id.* (quoting *State v. Grocery Mfrs. Ass'n.*, 195 Wash. 2d 442, 476, 461 P.3d 334, 353 (2020)); *see United States v. Bajakajian*, 524 U.S. 321, 336–40 (1998).

193. *Long II*, 198 Wash. 2d at 173, 493 P.3d at 114.

194. *Id.*; *see SEATTLE, WASH., MUN. CODE* § 11.72.440(B) (2006).

195. *Long II*, 198 Wash. 2d at 173, 493 P.3d at 114.

that Long's parking infraction "was related to any other criminal activity."¹⁹⁶ For the third factor, the only other penalty was the forty-four dollar ticket and any towing or storage costs.¹⁹⁷ The extent of the harm was also minimal.¹⁹⁸ Long was not parked in a high demand area or a residential neighborhood and was not blocking or obstructing any roadway.¹⁹⁹ The City of Seattle was harmed, the Court noted, when it had to pay for the towing and impoundment of the vehicle.²⁰⁰ However, reimbursement is not dispositive and is generally just one of multiple factors that courts will consider.²⁰¹

The fifth "bonus" factor—ability to pay—weighed heavily in the Court's decision that the fines were excessive. Due to Long's living situation and personal finances, he had little ability to pay the fine.²⁰² Further, the impoundment compromised his ability to work and earn the money needed to pay the fine.²⁰³ In Seattle, the estimated minimum amount of money necessary to meet one's monthly needs is \$2,270.²⁰⁴ Comparatively, the \$50 per month payment plan set by the magistrate judge left Long with, at most, \$650 a month, and likely less.²⁰⁵ The Court noted that it would be difficult for Long to "save money for an apartment and lift himself out of homelessness while paying the fine and affording the expenses of daily life."²⁰⁶ Thus, the fine would deprive Long of his livelihood, which is a consideration that weighed against proportionality.²⁰⁷

Based on the analysis of these five factors, the Washington State Supreme Court held that the impoundment and associated fees were a violation of the Excessive Fines Clauses.²⁰⁸ The Court remanded the case back to the trial court to do an excessive fines analysis and decide if any

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.* See SEATTLE, WASH., MUN. CODE § 11.30.160(B) (2000) ("[T]he City shall be responsible for paying the costs of impoundment to the towing company.").

201. *Long II*, 198 Wash. 2d at 174, 493 P.3d at 114; see *supra* section II.B.1.

202. *Long II*, 198 Wash. 2d at 174–75, 493 P.3d at 114–15.

203. *Id.*

204. *Id.* at 175, 493 P.3d at 115.

205. See *id.*

206. *Id.*

207. *Id.* at 175–76, 493 P.3d at 115.

208. *Id.*

level of fine would be appropriate based on Long's ability to pay.²⁰⁹ While the Court's decision was a monumental step in protecting those unable to pay governmental fines, the decision does alter the City's ability to enforce its laws.²¹⁰ Under *Long*, the City is not precluded from impounding or enforcing towing-related costs.²¹¹ Moreover, this decision does not require city parking officials to determine one's ability to pay when issuing parking infractions.²¹² Rather, the Court's analysis in *Long* focused on the *enforcement* of associated fees, not the violation itself. Despite these limitations, the holding in *Long* is critical for the application of the Excessive Fines Clauses in Washington.

III. THE *LONG* HOLDING SHOULD BE BROADLY APPLIED

The Excessive Fines Clause acts as a safeguard for those fined by the government.²¹³ At its core, the Clause aims to protect people from paying fines more harmful than the action resulting in the fine.²¹⁴ The Washington State Supreme Court, by analyzing Long's ability to pay in its decision, met that goal.²¹⁵ Taking this goal into account, this Note argues that a proper reading of *Long* would lead to an expansion of people who are protected by the Excessive Fines Clause, and advocates for this expansion.

For the purpose of this Note, the Washington and Federal Excessive Fines Clauses are seen as coextensive, and the following arguments apply to both.²¹⁶ Though this Note primarily references Washington law and ramifications of the holding in *Long*, these arguments could be expanded to any jurisdiction that decides to analyze ability to pay when ruling on Excessive Fines Clause issues.

209. *Id.* at 176–77, 493 P.3d at 116. Although the case was remanded back to the lower court, Steven Long passed away before it could be determined whether any fine would be appropriate. Steven Gregory Long, CHAR-KOOSTA NEWS (Mar. 11, 2022), http://www.charkoosta.com/obituaries/steven-gregory-long/article_a671c6b8-a1a6-11ec-ab64-afb5312033c4.html [<https://perma.cc/FSN9-4C9J>].

210. *Long II*, 198 Wash. 2d at 176, 493 P.3d at 115.

211. *Id.*

212. *Id.*

213. *See supra* section II.A.1.

214. *See supra* section II.A.1.

215. *See Long II*, 198 Wash. 2d at 176, 493 P.3d at 115.

216. In *Long II*, the Court did not make a finding on whether the Washington Constitution's Excessive Fines Clause should be interpreted more broadly than its counterpart in the U.S. Constitution, as some other portions of the Washington Constitution that mirror the Federal Constitution are. *Id.* at 159, 493 P.3d at 107; *see supra* note 147 and accompanying text.

A. *Many Ordinances Should Be Seen as Partially Punitive*

Courts should consider many other fine-based ordinances that impact vehicle residents as partially punitive. In *Long*, the Washington State Supreme Court viewed temporary impoundment as partially punitive because it served more than just a remedial purpose.²¹⁷ After *Long*, some fines will easily meet the partially punitive requirement, while others may be less clear.

1. *Fines that Are As or More Punitive than the Consequences in Long Should Be Categorized As Partially Punitive*

Under a consistent application of *Long*, similar ordinances with the same or higher penalties than in *Long* should meet the partially punitive requirement. Because temporary impoundments and associated fees, like the ones in *Long*, were held to be partially punitive,²¹⁸ other temporary and permanent impoundments should fall into the same category. Fines that are associated with criminal punishment should also meet the partially punitive requirement, as they are more punitive in purpose than the fine in *Long*.²¹⁹ A criminal ordinance with attached fines shows that the nature of the ordinance is not for remedial purposes but to punish those who violate the law. For example, the Mercer Island ordinance banning camping—which is punishable by imprisonment and/or a fine of up to \$1,000—should easily meet the partially punitive requirement because the fine is attached to criminal punishment.²²⁰

Courts should look to the precedent set in *Austin* to analyze whether these criminal ordinances are punitive. Although the question in *Austin* was not whether the fine came from a civil or criminal statute, the fines in criminal ordinances clearly serve more than a remedial purpose because the criminal penalties are indicative of an intent to punish.²²¹ Some portion of a fine could be argued to be remedial, but fines that are associated with, or in place of, an option to put someone in jail²²² should be assumed to be punitive. An association with criminal punishment indicates intent to punish those who inhabit their vehicles by assigning high fines or jail time, and not just to prevent people from sleeping in their cars for remedial

217. *Long II*, 198 Wash. 2d at 163–64, 493 P.3d at 109–10.

218. *See id.*

219. MERCER ISLAND, WASH., CITY CODE § 9.60.050 (2021).

220. *Id.*

221. *See Austin v. United States*, 509 U.S. 602, 610 (1993).

222. *See, e.g., MERCER ISLAND, WASH., CITY CODE § 9.60.050 (2021)* (stating that a camping violation is punishable by imprisonment of up to ninety days or a fine of up to \$1,000 as of 2021).

purposes like safety or traffic control. Thus, these criminal ordinances will easily meet the partially punitive requirement under *Austin* and be subject to a gross disproportionality analysis.²²³

2. *Courts Should Look to the Categorization and Nature of Other Fines to Determine Whether They Are Partially Punitive*

Ordinances that have more lenient penalties than the ordinance in *Long* will require more attention from courts. In particular, this Note analyzes two relevant variables for deciding whether a fine is partially punitive after *Long*: the categorization of the ordinance and the nature of the fine.²²⁴

The categorization of a fine in an ordinance as a “penalty”—though not dispositive—should impact a court’s analysis of whether a fine is partially punitive. In *Long*, the Washington State Supreme Court looked to the plain language of the ordinance and assessed that the fine served more than a remedial purpose because it was categorized by the City as a “penalty.”²²⁵ This analysis may lead courts to conclude that the title of “penalty” is the primary factor they should use to identify whether something is partially punitive. However, this limited assessment would improperly characterize the Supreme Court of Washington’s holding in *Long*.²²⁶ Although the Court relied on the characterization and plain language of the ordinance, it was also highly deferential to the United States Supreme Court’s earlier holding in *Austin*.²²⁷ In situations, like the one in *Long*, where the city has written the ordinance in a way that explicitly shows the purpose of the fine, the plain language analysis is proper.²²⁸ In other words, if the text of the ordinance clearly indicates its punitive nature, then the court’s analysis could likely end there. When the ordinance does not explicitly use the word “penalty” or other language that indicates a punitive nature, however, courts should not see this as dispositive of the fact that there is no punitive purpose. In those situations, courts should adopt an expansive reading of *Long*. The partially punitive requirement, as originated in *Austin* and cited in *Long*, asks the question whether the fine serves in part to punish, not just whether the fine is

223. See *Austin*, 509 U.S. at 610; *Long II*, 198 Wash. 2d at 162–68, 493 P.3d at 109–11.

224. *Long II*, 198 Wash. 2d at 164, 493 P.3d at 109.

225. *Id.*; see also SEATTLE, WASH., MUN. CODE § 11.72.440(E) (2006) (categorizing the fine as a penalty).

226. *Long II*, 198 Wash. 2d at 164, 493 P.3d at 109.

227. *Id.*

228. *Id.* at 148, 493 P.3d at 101.

referred to as a punishment.²²⁹ If cities can evade the Excessive Fines Clause by simply changing the wording of their ordinances, then the underlying question in *Long* and *Austin* will not be answered properly, and many fines that serve to punish will unfairly evade review.

B. The Addition of an Ability to Pay Analysis Will Greatly Impact the Gross Disproportionality Test

Once a court deems an ordinance to be partially punitive, they must perform the gross disproportionality analysis, including looking at ability to pay. For individuals with high incomes, ability to pay will not have a significant impact on whether a fine is deemed excessive. Ability to pay will be especially relevant, however, for those with little to no income. The *Long* case provides an example of what is clearly excessive and unconstitutional. Going forward, the addition of one's ability to pay as a factor in the proportionality balancing test will increase the need for a case-by-case analysis because ability to pay is specific to the individual who comes before the court.²³⁰ Despite increasing the need for a case-by-case analysis, *Long* provides guidance for courts' application of the Excessive Fines Clause to vehicle residents and other unsheltered litigants.²³¹

1. A General Finding of Unconstitutionality for Vehicle Residents?

The addition of an ability to pay factor in the Excessive Fines Clause analysis could result in a finding that all fines imposed against vehicle residents are excessive and per se unconstitutional. Many vehicle residents, like Steven Long, live in their car for financial reasons.²³² The Court in *Long* held that a finding of "little ability to pay" weighed in favor of gross disproportionality.²³³ Even if vehicle residents have some level of income, their living circumstances are indicative of little ability to pay, assuming there are no other extenuating circumstances.²³⁴ Importantly,

229. *Id.* at 164, 493 P.3d at 109; *Austin v. United States*, 509 U.S. 602, 610 (1993) (holding that "serving in part to punish" meets the requirements necessary for the Excessive Fines Clause to apply and thus, a civil forfeiture is considered a fine).

230. *Long II*, 198 Wash. 2d at 166–67, 493 P.3d at 115.

231. *Id.*

232. See *supra* note 18 and accompanying text; see also *Long II*, 198 Wash. 2d at 114–15, 493 P.3d at 174–75 (explaining Long's financial status); cf. Schmid, *supra* note 11 (explaining that people move into their vehicles as a last resort).

233. *Long II*, 198 Wash. 2d at 174–75, 493 P.3d at 114–15.

234. Cf. Schmid, *supra* note 11 (explaining that people move into their vehicles when they have no other options).

the *Long* Court specifically noted the rise of the housing crisis in Washington as a factor leading it to include the ability to pay analysis.²³⁵ This stance on homelessness and its connection to ability to pay should impact future courts' consideration of ability to pay, especially when applied to unhoused people. Courts could reasonably find that all fines are excessive and unconstitutional as applied to vehicle residents.

The current realities for vehicle residents in Washington may suggest that all fines imposed on vehicle residents are unconstitutional, even when courts consider the four other factors.²³⁶ Fines imposed on people unable to afford even temporary housing are always excessive, as these fines lead vehicle residents to forego basic needs and perpetuate the cycle of poverty.²³⁷ The historical roots of the Excessive Fines Clause in the Magna Carta, as referenced in *Long* and current United States Supreme Court jurisprudence, indicate that if a fine takes away someone's livelihood, it is constitutionally excessive.²³⁸ Vehicle residents often have little or no income or livelihood.²³⁹ Thus, the imposition of fines on this group should be seen as categorically excessive and unconstitutional.

2. *Or a Strong Presumption Towards Disproportionality?*

If Washington courts do not find all fines imposed on vehicle residents categorically unconstitutional, the addition of the ability to pay analysis should generally lead towards a finding that fines imposed on vehicle residents are excessive, and thus, unconstitutional. For many of the same reasons discussed previously,²⁴⁰ an ability to pay analysis as applied to vehicle residents should have a strong presumption of disproportionality, and thus, unconstitutionality.

Courts could apply this strong presumption in a variety of ways. For example, courts could continue to use a case-by-case analysis and force unhoused or unsheltered litigants to prove that they have little ability to pay and that none of the other factors outweigh that one. Alternatively, courts could develop a burden-shifting framework for analyzing excessive fines claims brought by vehicle residents. The burden of proof could shift to the city or whichever entity imposed the fine. Cities would be required

235. *Long II*, 198 Wash. 2d at 171, 493 P.3d at 113.

236. *See id.* at 167, 493 P.3d at 111 (outlining the four relevant factors as “(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused”).

237. *See supra* section I.D.

238. *See Long II*, 198 Wash. 2d at 159–60, 493 P.3d at 107; *supra* section II.A.1.

239. Schmid, *supra* note 11.

240. *See supra* section III.B.2.

to show that such a fine is not excessive and is constitutional. Cities may be able to show either (1) this individual does have an ability to pay or (2) their inability to pay is still outweighed by the other factors for a variety of reasons. Because cities have more resources and easier access to lawyers, this burden shifting may lead to more equitable results. Regardless of the approach taken, a presumption toward disproportionality should exist for partially punitive fines imposed on vehicle residents.

C. *The Long Holding Applies to Unsheltered People Beyond Vehicle Residents*

The Excessive Fines Clause's application to vehicle residents can easily be expanded to fines imposed on unsheltered people in general. Vehicle residents are a subgroup of the unsheltered population.²⁴¹ Other members of this group include people who live on the street, in parks, or in tent encampments.²⁴² Nothing in *Long* indicates that the holding regarding the Excessive Fines Clause would not apply to this group as a whole.²⁴³ In fact, other unsheltered people may be even more likely to benefit from the addition of ability to pay in the Excessive Fines Clause analysis.

Laws that impact unsheltered people, in general, should meet the partially punitive requirement. Indeed, these laws may be even more likely to be seen as partially punitive than those impacting vehicle residents because laws impacting the unsheltered often lack a remedial purpose, such as parking enforcement or traffic concerns.²⁴⁴ Laws passed to intentionally drive out unsheltered people or keep them in other cities, however, do not have the benefit of this assumption. Lawmakers, like those in Edmonds, Washington, have even admitted that they passed anti-camping and other ordinances to keep unsheltered people out of their community.²⁴⁵ Similarly, laws that ban aggressive panhandling or public urination have a disproportionate effect on unsheltered people.²⁴⁶ These laws, as enforced against those without a place to live, are intended to be

241. See ALL HOME, *supra* note 10, at 19 (describing unsheltered as those “living in a park, tent, or car”).

242. See *id.*

243. *Long II*, 198 Wash. 2d at 164, 177, 493 P.3d at 109, 116 (holding that courts should consider a person's ability to pay when considering whether the Excessive Fines Clause has been violated).

244. E.g., SEATTLE, WASH., MUN. CODE § 11.72.440 (2006) (limiting parking in Seattle to seventy-two hours); ELLENSBURG, WASH., CITY CODE § 8.12.040 (2020) (limiting parking in Ellensburg to twenty-four hours).

245. Kim, *supra* note 39.

246. See *supra* section I.B.

at least partially punitive. Categorically, many of these laws are passed with a punitive purpose and should be seen as such.

Unsheltered litigants generally have little ability to pay.²⁴⁷ The cycle of poverty and its influence on all unsheltered people are analogous to that of vehicle residents.²⁴⁸ Thus, there is no reason to limit the holding of *Long* to vehicle residents. Instead, Washington courts should follow the rationale of *Long* and recognize the right of unsheltered people to be free from excessive fines. Because vehicle residents are just a subgroup of the larger unhoused population, and there are no notable differences in their ability to pay, the *Long* holding should apply to all unhoused people. Thus, Washington courts should either adopt the categorically unconstitutional approach or the strong presumption towards disproportionality approach in analyzing Excessive Fines Clause claims for the entire unsheltered population.²⁴⁹

CONCLUSION

Washington's end goal should be to create safe, stable living environments for unsheltered people and eventually transition them out of homelessness. Instead, cities around Washington continue to pass laws that impose fines on people who are already homeless. These laws only increase the likelihood that those who are fined remain unhoused. This Note contends that the expansive and individualized view of the Excessive Fines Clause in *City of Seattle v. Long* offers a path forward for those advocating for the unhoused and their constitutional rights.

The Excessive Fines Clause offers one way for advocates to protect vehicle residents and the unsheltered, but it is not a permanent solution. Once it is clear to municipalities and courts that these laws are unconstitutional, as applied to many unsheltered people, they will cease to be a tool for adversely affecting the unhoused. Instead of inviting litigation expenses for unenforceable fines, cities should focus on finding temporary and permanent solutions for vehicle residents and the unsheltered. Such a shift will ultimately lead to increased stability and benefit Washington as a whole. Until cities enact permanent solutions for the unsheltered, the Excessive Fines Clause and the ability to pay analysis provide a promising strategy for working for and with unsheltered people.

247. *Cf.* WHY IS HOMELESSNESS INCREASING?, *supra* note 9 (explaining that many people in Washington are becoming homeless due to financial reasons).

248. *See supra* section I.D.

249. *See supra* sections III.B.1–III.B.2.

