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Supreme Court No. 100857-1
(COA No. 82744-8-I)

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY ALEXANDER WIDMER,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

PETITION FOR REVIEW

TRAVIS STEARNS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711

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A. IDENTITY OF PETITIONER

Jeffrey Widmer asks this Court to accept review of the Court of Appeals decision terminating review under RAP 13.3 and RAP 13.4.¹

B. COURT OF APPEALS DECISION

Mr. Widmer seeks review of the Court of Appeals decision dated March 21, 2022, which is attached.

C. ISSUES PRESENTED FOR REVIEW

Does the imposition of mandatory fines and fees without regard to the ability to pay violate the excessive fines clause of the Eighth Amendment and article I, section 14?

D. STATEMENT OF THE CASE

Throughout this case, a public defender represented Mr. Widmer. RP 1. He was also unable to

¹ Although unrelated to this case, similar issues have been petitioned to this Court in *State v. Clement*, COA No. 82476-7-I, which was also filed today.

post his bail, even though his proceedings lasted for over a year. CP 4, 98. At the time of his appeal, his total assets amounted to \$100. CP 113.

Mr. Widmer presented with competency issues. RP 3. He required restoration to become competent. CP 55, 68, RP 17. Before trial, Mr. Widmer accepted a plea offer. CP 93. In exchange for his guilty plea, the government reduced his charges to gross misdemeanors. CP 93. Mr. Widmer pled guilty. CP 72, RP 76-77. The trial court imposed a sentence of 364 days in custody and unsupervised probation for 12 months. CP 97, RP 84. The court also imposed the \$500 penalty assessment. CP 97, RP 84.

On appeal, Mr. Widmer challenged the mandatory imposition of his legal financial obligations. The Court of Appeals determined *State v. Curry* prevented it from addressing Mr. Widmer's legal

financial obligations until he sought remediation. App. 3 (citing *State v. Curry*, 118 Wn.2d 911, 917, 829 P.2d 166 (1992)). Because the Court of Appeals' analysis is in error and Mr. Widmer is entitled to relief, he petitions this Court for review.

E. ARGUMENT

Legal debt is punishment. Fines and fees that do not account for a person's ability to pay act as a barrier to reentry and have a lasting impact on the poor. Because fines and fees are disproportionately imposed against persons of color, they also perpetuate the persistent and systemic injustices of the legal system. To reconcile this opinion with the United States Supreme Court's requirement of proportionality and this Court's requirement that financial obligations should only be imposed when a person has the ability to pay them, this Court should grant review.

1. The Court of Appeals' decision is wrong and conflicts with decisions from this Court.

Relying on *Curry*, the Court of Appeals determined Mr. Widmer could not challenge the legal financial obligations imposed in his case. App. 3. This analysis is flawed, as this Court does not restrict challenges to improper legal financial obligations imposed at sentencing to the time of their collection.

In *State v. Blazina*, this Court held that a defendant could challenge the imposition of legal financial obligations imposed at sentencing. 182 Wn.2d 827, 839, 344 P.3d 680 (2015). Rather than focus on collection, *Blazina* looks to the impacts uncollected debt has on a person convicted of a crime. *Id.* at 837. This Court found the impact so significant it held RAP 2.5 permitted discretionary review even when not objected to at the trial level. *Id.* at 834-35.

Following *Blazina*, this Court examined legal financial obligations in *State v. Ramirez*, 191 Wn.2d 732, 750, 426 P.3d 714 (2018). *Ramirez* establishes that a court must conduct an on-the-record examination of ability to pay before it can impose discretionary legal financial obligations. Like *Blazina*, *Ramirez* examines the imposition of legal financial obligations, and not their collection. *Id.* at 738-39. This Court has followed a similar pattern in many other cases. *See, e.g., State v. Duncan*, 185 Wn.2d 430, 437, 374 P.3d 83 (2016); *State v. Catling*, 193 Wn.2d 252, 255, 438 P.3d 1174 (2019); *State v. Burke*, 196 Wn.2d 712, 743, 478 P.3d 1096 (2021).

The Court of Appeals looks past this Court's recent precedent to avoid addressing whether the sentencing court had the authority to impose the penalty assessment without first determining whether

Mr. Widmer had the ability to pay. App. 3. This Court should continue to recognize the debilitating effect of legal financial obligations. *Blazina*, 182 Wn.2d at 837.

Because the question of whether the Eighth Amendment and article I, Section 14 prohibit the imposition of legal financial obligations that are partially punitive without determining whether a person can pay them, review should be granted.

2. This Court should review whether a court may impose partially punitive fines and fees when they are grossly disproportionate and the person has no ability to pay them.

Article I, section 14 of the Washington Constitution prohibits the imposition of “excessive fines.” Const. art. I, § 14; *City of Seattle v. Long*, 198 Wn.2d 136, 158, 493 P.3d 94 (2021) . The Eighth Amendment also prohibits “excessive fines.” U.S. Const. amend. VIII. This prohibition is incorporated against the States under the Fourteenth Amendment.

U.S. Const. amend. XIV; *Timbs v. Indiana*, ___ U.S. ___, 139 S. Ct. 682, 687, 203 L. Ed. 2d 11 (2019) .

The federal and state excessive fines clause limits the government’s power to require payments as punishment for an offense. *Austin v. United States*, 509 U.S. 602, 609-10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (citing *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989)). A fine is excessive if it is “grossly disproportional to the gravity of the defendant’s offense.” *Long*, 198 Wn.2d at 162 (quoting *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998)).

a. The victim penalty assessment and DNA collection fee are punitive.

If a statutory fee or fine has any purpose not solely remedial, it is punishment within the meaning of the Eighth Amendment. *Bajakajian*, 524 U.S. at 332;

Long, 198 Wn.2d at 163-64 (citing *Tellevik v. 6717 100th Street S.W.*, 83 Wn. App. 366, 376-77, 921 P.2d 1088 (1996)).

The penalty assessment is not solely remedial. Instead, it is a payment to the government that operates to punish the offender, regardless of the crime or ability to pay. As such, it should only be imposed when it complies with the Eighth Amendment and article I, section 14.

The penalty assessment is used to fund “comprehensive programs to encourage and facilitate” testimony. *State v. Conway*, 8 Wn. App. 2d 538, 555, 438 P.3d 1235 (2019). It is a penalty imposed in every case, regardless of whether there was a victim. RCW 7.68.035. It is not remedial.

This Court can also find that the statute’s plain language suggests that the penalty assessment is

punitive. The statute requires the assessment to be imposed “in addition to any other penalty or fine.” RCW 7.68.035. This language is almost identical to the municipal code language reviewed by this Court in *Long*, where this Court determined that the plain language stating the impoundment fees were “in addition to any other penalty” persuaded this Court the impoundment fee was a penalty. 198 Wn.2d at 164. Like *Long*, the plain language shows that one purpose of the statute is to punish offenders. *Id.*

As with the impoundment fee in *Long*, this Court should find the penalty assessment partially punitive. *Long*, 198 Wn.2d at 163. A remedial action is one brought to obtain compensation or indemnity. *Bajakajian*, 524 U.S. at 329 (citing *Black’s Law Dictionary*, 1293 (6th ed. 1990)). And even where a fee may serve a remedial purpose, it is still subject to the

excessive fines clause if it serves “in part to punish.” *Austin*, 509 U.S. at 610. The purpose of the penalty assessment is not to obtain compensation or indemnity, but to fund the courts. This Court should apply the same analysis it did in *Long* and hold that the penalty assessment is punitive.

b. The failure of the Court of Appeals to address whether Timbs v. Indiana controls its decision in this case requires review.

The Court of Appeals does not address the United States Supreme Court’s requirement that where a fine is grossly disproportionate to the crime committed, it runs afoul of the excessive fines clause. *See Timbs*, 139 S. Ct. at 687. In *Long*, however, this Court recognized it was bound by *Timbs*, acknowledging that “the central tenant of the excessive fines clause is to protect individuals against fines so oppressive as to deprive

them of their livelihood.” 198 Wn.2d at 171 (citing *Timbs*, 139 S. Ct. at 688).

In *Timbs*, the United States Supreme Court held that where forfeitures are partially punitive, they violate the Eighth Amendment excessive fines clause. 139 S. Ct. at 689. The Court acknowledged the toll excessive fines have on persons unable to pay them. *Id.* at 687. The Court further recognized that economic sanctions must “be proportioned to the wrong” and “not be so large as to deprive [an offender] of his livelihood.” *Id.* at 688 (citing *Browning-Ferris Industries of Vt., Inc.*, 492 U.S. at 271).

Nor will this Court ignore the historical realities of fines, which were used “to subjugate newly freed slaves and maintain the prewar racial hierarchy.” *Timbs*, 139 S. Ct. at 688; *see also, Long*, 198 Wn.2d at 136. Increasingly, fines are employed “in a measure out

of accord with the penal goals of retribution and deterrence,” for “fines are a source of revenue,” while other forms of punishment “cost a State money.”

Harmelin v. Michigan, 501 U.S. 957, 979, n. 9, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (Scalia, J.).

If a fine has any punitive characteristics, it must be considered a punishment for the purpose of the excessive fines clause. *Timbs*, 139 S. Ct. at 689; *Austin*, 509 U.S. at 621. Where the court imposes a fine to finance a state operation, “it makes sense to scrutinize governmental action more closely.” *Harmelin*, 501 U.S. at 979, n. 9.

The Court of Appeals did not address why *Timbs* does not control this case. This Court should grant review to clarify that *Timbs* requires lower courts to apply the excessive fines clause whenever a legal financial obligation is considered punitive.

c. *The failure of the Court of Appeals to address whether City of Seattle v. Long controls its decision in this case requires review.*

Nor did the Court of Appeals examine this Court's application of *Timbs* to impoundment fees in *Long*, where this Court found impoundment charges partially punitive. 198 Wn.2d at 173. In considering whether a fine is grossly disproportionate, this Court looks to several factors, including "a person's ability to pay the fine." *Id.* (citing *State v. Grocery Manufacturers Ass'n*, 195 Wn.2d 442, 476, 461 P.3d 334 (2020); *Colorado Dep't of Labor & Emp't v. Dami Hosp., LLC*, 442 P.3d 94, 101 (Colo. 2019)).

In *Long*, this Court recognized that for a sanction to trigger the excessive fines clause, it must be a "fine," and it must be "excessive." 198 Wn.2d at 162. Even though the fines imposed for the impoundment were remedial and intended to recoup costs associated with

the storage of the impounded vehicle, this Court found they were also partially punitive. *Id.* at 164.

Here, the imposition of the penalty assessment is not remedial. The penalty assessment is imposed regardless of whether the crime has a victim, intended to facilitate witness services. RCW 7.68.035.

Finally, *Long* recognizes that the Supreme Court's decisions bind it on federal constitutional law questions. 198 Wn.2d at 166 (citing *United States State v. Vance*, 168 Wn.2d 754, 762 n.7, 230 P.3d 1055 (2010) (citing *State v. Radcliffe*, 164 Wn.2d 900, 906, 194 P.3d 250 (2008); *Tricon, Inc. v. King County*, 60 Wn.2d 392, 394, 374 P.2d 174 (1962)). As with impoundment fees, this Court should anchor its decision with respect to the legal financial obligations imposed here in *Timbs*, *Austin*, and *Bajakajian*. *Id.*

Under their precedent, the fines and fees imposed here were partially punitive.

Long also provides guidance for when a fine is excessive. “The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.” *Long*, 198 Wn.2d at 110-11 (quoting *Bajakajian*, 524 U.S. at 334 (citing *Austin*, 509 U.S. at 622-23; *Alexander v. United States*, 509 U.S. 544, 559, 113 S. Ct. 2766, 125 L. Ed. 2d 441 (1993)). A fine violates the excessive fines clause if it is grossly disproportional to the gravity of a defendant’s offense. *Id.* (citing *Bajakajian*, 524 U.S. at 336).

This Court analyzes whether a fine is excessive in *Long*, focusing on proportionality. 198 Wn.2d at 168. This Court determined that the “weight of history and

the reasoning of the Supreme Court demonstrate that excessiveness concerns more than just an offense itself; it also includes consideration of an offender's circumstances." *Id.* at 171. The "widespread use of fines" to fund the criminal legal system was critical to this analysis. *Id.* This Court made clear that punitive fines should not be sought or imposed as "a source of revenue." *Grocery Mfrs. Ass'n*, 195 Wn.2d at 476 (quoting *Timbs*, 139 S. Ct. at 689).

Courts look at a person's ability to pay before assessing legal financial obligations with almost every other legal financial obligation. *Ramirez*, 191 Wn.2d at 735. This Court consistently recognizes the harm caused when fines and fees are imposed on people who cannot pay them. *State v. Blazina*, 182 Wn.2d at 836; *City of Richland v. Wakefield*, 186 Wn.2d 596, 607, 380 P.3d 459 (2016).

And yet, without considering the ability to pay, almost every person convicted of a crime in superior court is assessed \$500. This fee can have a devastating effect on reentry. *Blazina*, 182 Wn.2d at 837. The long-term involvement of the court in debt collection inhibits reentry, as legal or background checks will show an active record for individuals who have not paid their legal financial obligations. *Id.* This active record can negatively affect employment, housing, and finances. *Id.*

Legal financial obligations overwhelming affect the poor. Cynthia Delostrinos, Michelle Bellmer, & Joel McAllister, State Minority & Justice Comm'n, *The Price of Justice: Legal Financial Obligations in Washington State*, 10 (2022).² Legal financial obligation

²https://www.courts.wa.gov/subsite/mjc/docs/MJC_LFO_Price_of_Justice_Report_Final.pdf

debt also affects credit ratings, making it more difficult to find secure housing. Katherine Beckett & Alexis Harris, State Minority & Justice Comm'n, *The Assessment And Consequences of Legal Financial Obligations In Washington State*, 43 (2008).³ These reentry difficulties increase the chances of recidivism. *Id.* at 68. These difficulties persist for most persons convicted of crimes in Washington long after they have paid any other penalties because of their conviction, as only a small percentage of persons are ever able to repay their assessed debt. *Id.* at 21.

This Court will “pay more than ‘lip service’ to the excessive fines clause and instead hew to its history.” *Long*, 198 Wn.2d at 173. When considering whether a fine is constitutionally excessive, a court must also

³https://media.spokesman.com/documents/2009/05/study_LFOimpact.pdf

consider a person's ability to pay. *Id.* (citing *Dami Hosp., LLC*, 442 P.3d at 101). In deciding to limit *Long* to impoundment fees, the Court of Appeals misapprehends this Court's holding. This Court should grant review to clarify that when an assessment is partially punitive, as is the victim penalty assessment, it may only be imposed after the court conducts a proportionality review.

3. This case is an excellent vehicle for providing guidance for when courts may impose legal financial obligations.

The Court of Appeals held it could not examine whether the imposition of mandatory fees is constitutional. App. 3. This Court should grant review to address whether the Eighth Amendment requires a proportionality review and, because article I, section 14 provides greater protection, whether mandatory fines

and fees may ever be imposed when a person lacks the ability to pay them.

a. The excessive fines clause requires a proportionality review.

A fine is excessive under the Eighth Amendment if it is “grossly disproportional.” *Bajakajian*, 524 U.S. at 339-40; *Long*, 198 Wn.2d at 166. To determine whether a fine is grossly disproportional, courts examine several factors, including the nature and extent of the crime; whether the violation was related to other illegal activities; the other penalties that may be imposed; the extent of the harm caused; and, most critically, the person’s ability to pay. *Long*, 198 Wn.2d at 174.

Applying this test, this Court found that the impoundment of a person’s truck in which they were living and an assessment of \$547.12 were excessive fines predominantly because of the person’s inability to

pay. *Long*, 198 Wn.2d at 174-75. Likewise, this Court should find that Mr. Widmers' fine was excessive under the Eighth Amendment. Mr. Widmer spent a year of his life in jail, unable to pay bail and subject to a restoration order. CP 72, RP 76-77. While not minimizing the seriousness of this offense, Mr. Widmer spent considerable time in custody because of his poverty. *Id.* Imposing a mandatory fine he cannot pay is arbitrary and creates enormous disproportionality, especially given his fragile mental health. Because the penalty assessment is always imposed, this Court can find that it has a grossly disproportionate effect.

b. Article I, section 14 prohibits imposing fines against persons who cannot pay them.

It is “well established that state courts have the power to interpret their state constitutional provisions as more protective of individual rights than the parallel provisions of the United States Constitution.”

State v. Simpson, 95 Wn.2d 170, 177, 622 P.2d 1199 (1980). “When both the federal and Washington constitutions are alleged, it is appropriate to examine the state constitutional claim first.” *State v. Young*, 123 Wn.2d 173, 178, 867 P.2d 593 (1994).

This Court articulated standards to decide when an independent or different interpretation of a state constitutional guarantee is warranted in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986). This Court examines six “nonexclusive” criteria: (1) the text of the state constitutional provision; (2) the differences in the texts of the parallel state and federal provisions; (3) state constitutional history; (4) pre-existing state law; (5) structural differences between the two constitutions; and (6) matters of particular state interest and local concern. *Id.* at 61-62.

- i. Similarities in language do not require an identical analysis.

Even though the two provisions are identical, they do not have to be interpreted the same way. Justice Robert F. Utter, *Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights*, 7 U. Puget Sound L. Rev. 491, 514-16 (1983-1984); *State v. Blake*, 197 Wn.2d 170, 181 n. 9, 481 P.3d 521 (2021). This axiom is particularly important to remember “whenever the United States Supreme Court’s decisions dilute or underenforce important individual rights and protections.” *State v. Mole*, 149 Ohio St. 3d 215, 221, 74 N.E.3d 368 (2016); see *State v. Gregory*, 192 Wn.2d 1, 42-43, 427 P.3d 621 (2018) (Johnson, J., concurring).

- ii. History and pre-existing state law support an independent review.

The third and fourth factors support independently interpreting article I, section 14's prohibition against excessive fines and holding that a fine is excessive if the person lacks the ability to pay. Washington lacks significant decisional history interpreting its excessive fines prohibition. But there is substantial history interpreting article I, section 14's prohibition against cruel punishment independently from the Eighth Amendment's guarantee. *See Gregory*, 192 Wn.2d at 15-17. This analysis supports an independent interpretation of the related and adjacent guarantee in article I, section 14.

Furthermore, given the dearth of United States Supreme Court precedent interpreting the federal guarantee, Washington courts have been left to interpret it and give it life. *See Long*, 198 Wn.2d at 161

(“The Supreme Court largely ignored the excessive fines clause for two centuries.”). Following the Colorado Supreme Court, this Court “revised the test for the Excessive Fines Clause, expressly requiring courts to consider the defendant’s ability to pay when conducting an excessive fine analysis.” *Jacobo Hernandez v. City of Kent*, 19 Wn. App. 2d 709, 717, 497 P.3d 871 (2021). And although *Long* correctly interprets the Eighth Amendment, were the United States Supreme Court to disagree, this Court would not be required to “follow, blindly, the lead of the United States Supreme Court” when interpreting article I, section 14. *State v. Jackson*, 102 Wn.2d 432, 438, 688 P.2d 136 (1984).

- iii. The structure of the Washington constitution and local concerns support an independent analysis.

The fifth factor, differences in structure between the state and federal constitutions, always supports an

independent analysis because the federal constitution is a grant of power from the people, while the state constitution represents a limitation on the State. *State v. Bassett*, 192 Wn.2d 67, 82, 428 P.3d 343 (2018).

As for the sixth factor, state and local concern, this factor also favors independent interpretation. Criminal law is a matter of local concern generally delegated to the states. *Bond v. United States*, 572 U.S. 844, 848, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014). There is no need for national uniformity in how an excessive fines prohibition is interpreted or applied.

The enduring consequences of legal debt on people in Washington is a paramount local concern. This year, the Washington State Minority and Justice Commission issued another report on the impact of legal debt imposed by Washington courts on low-income communities. Delostrinos, at 68; *see also*

Deborah Espinoza et al., *The Cost of Justice: Reform Priorities of People with Court Fines and Fees* (2021).⁴

The report found that “80-90 percent of defendants in Washington are indigent and thus do not have the ability to pay.” Delostrinos at 5. This report continues the work of the State Minority and Justice Commission, which first issued a report on the impact of legal debt imposed by Washington courts on low-income communities in 2008. Beckett & Harris, at 43. The report found “most people with felony convictions are poor prior to their convictions” and, when they are released from incarceration, legal debt poses a significant barrier to reentry. *Id.* at 62. Legal debt subjects poor people to extended court involvement and additional fines, sanctions, or arrest. *Id.*

⁴https://www.courts.wa.gov/subsite/mjc/docs/LwC_Cost_of_Justice_Report_Final.pdf

These concerns are reflected in decisions of this Court, which acknowledges the “problematic consequences” of legal debt in Washington and specifically noted statewide disparities based on race and geographic location. *Blazina*, 182 Wn.2d at 836-37. This Court also recognized that legal fines contribute to homelessness and exacerbates inequalities caused by “volatile housing markets, uncertain social safety nets, colonialism, slavery, and discriminative housing practices.” *Long*, 198 Wn.2d at 172.

Concerns about the impact of legal debt on poor people are also reflected in recent legislation. In this session, the legislature addressed interest accrual on restitution, for the first time limiting when it may be imposed. Laws of 2022, ch. 260, § 3. This action follows other reforms the legislature passed in 2018, when it amended the statutes to limit the imposition of fines

and interest accrual on indigent people at the time of sentencing. Laws of 2018, ch. 269.

Washington has a particular concern with the impact of legal debt on low-income communities, which is reflected in decisions by the courts and actions by the legislature.

- iv. The state constitution prohibits the imposition of fines and fees when a person lacks the ability to pay them.

The *Gunwall* factors support a holding that article I, section 14 prohibits fines and fees from being imposed when a person cannot pay them. Under this analysis, the superior court must first determine whether a person has the ability to pay a fine. *Ramirez*, 191 Wn.2d at 735. If a person is indigent, it will generally mean they lack the ability to pay. *Id.* at 743-46. Where a person cannot pay a fine, the superior court should not impose the fine. This Court should

grant review to hold that article I, section 14 prohibits the imposition of fines that a person cannot pay.

This analysis is consistent with the decisions of other state courts “strongly suggest that considering ability to pay is constitutionally required.” *Long*, 198 Wn.2d at 170. Colorado recently held that history and precedent constitute “persuasive evidence that a fine that is more than a person can pay may be ‘excessive’ within the meaning of the Eighth Amendment.” *Dami Hosp., LLC*, 442 P.3d at 101. In Oregon, “[w]hen assessing the severity of a defendant’s forfeiture, courts consider the amount of the forfeiture and the effect of the forfeiture on the defendant.” *Oregon v. Goodenow*, 251 Or. App. 139, 153, 282 P.3d 8 (2012). Pennsylvania holds that “the excessive fines analysis . . . requires . . . a thorough examination of every property owner’s circumstances.” *Commonwealth v. 1997 Chevrolet*, 106

A.3d 836, 871 (Pa. 2014). This analysis strongly suggests adopting a similar analysis here.

4. Addressing when to impose legal financial obligations is an important issue.

Assessing fines on people who cannot pay has devastating effects on the poor. *Blazina*, 182 Wn.2d at 837. The long-term involvement of the court in debt collection inhibits reentry, as legal or background checks will show an active record in superior court for individuals who have not paid their legal financial obligations. *Id.* This active record can negatively affect employment, housing, and finances. *Id.* Imposing legal financial obligations on persons who cannot pay them may also increase recidivism. Beckett & Harris, at 43.

The racial disproportionality of blanket imposition of fines is also concerning. In 2015, the United States Department of Justice issued a report on excessive fines imposed in Ferguson, Missouri. Civil

Rights Div., U.S. Dep't of Justice, *Investigation of the Ferguson Police Department*, 4-5 (Mar. 2015).⁵ The report concluded that “Ferguson’s law enforcement practices [were] shaped on the City’s focus on revenue rather than by public safety needs.” *Id.* at 2. In releasing the report, Attorney General Eric Holder stated that its findings were “not confined to any one city, state, or geographic region. They implicate questions about fairness and trust that are national in scope.” U.S. Dep’t of Justice, Press Release, *Attorney General Holder Delivers Update on Investigation in Ferguson, Missouri* (Mar. 4, 2015).⁶

The Ferguson Report began a national conversation on how financial punishment is unfairly

⁵http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf

⁶ <http://www.justice.gov/opa/speech/attorney-general-holder-delivers-update-investigations-ferguson-missouri>

wielded, often against poor people of color, to fund the government. Daniel S. Harawa, *How Much Is Too Much? A Test to Protect Against Excessive Fines*, 81 Ohio St. L.J. 65, 74 (2020) (citing Matthew Menendez, *Fines and Fees Justice Center Launches New Clearinghouse Featuring Brennan Center Work*, Brennan Ctr. for Just. (Jan. 8, 2019)). It exposed the underbelly of a justice system not often discussed: it revealed that punishment went hand-in-hand with revenue generation and detailed how such a system can corrupt the administration of justice for the first time on the national stage. *Id.*

Restricting the imposition of legal financial obligations to those who have the ability to pay is also fair. In *United States v. Hantzis*, the Ninth Circuit held that the criminal fine did not violate the Eighth Amendment because the defendant had the ability to

pay. 403 F. App'x 170, 172 (9th Cir. 2010). The court concluded this because “there was evidence that [the defendant] was very wealthy, and as he refused to submit a financial affidavit, there was no evidence that a fine would deprive him of his livelihood” (internal brackets and quotation marks omitted)). *Id.*

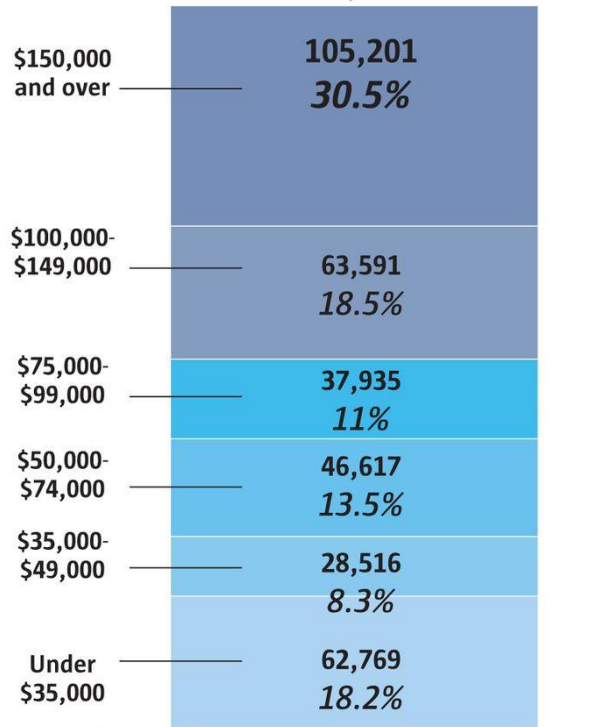
Whether a fine is excessive is relative to the person's income and ability to pay. To illustrate, a \$600 fine like the one imposed here might cause only a slight inconvenience for someone with a median Seattle household income of \$102,500 per year, or around \$8,500 a month. Gene Balk, *Seattle's Median Household Income Soars Past \$100,000—but Wealth Doesn't Reach All*, Seattle Times (Oct. 4, 2020).⁷

⁷ <https://www.seattletimes.com/seattle-news/data/seattles-median-income-soars-past-100000-but-wealth-doesnt-reach-all/>

Top-heavy Seattle incomes

Nearly half of Seattle households (49%) earn \$100,000 or more.

TOTAL HOUSEHOLDS: **344,629**



Source: U.S. Census Bureau, 2016-2020

Reporting by GENE BALK, graphic by MARK NOWLIN / THE SEATTLE TIMES

Gene Balk, *\$100K-Plus Households Are Now the Majority In Most Seattle Neighborhoods*, Seattle Times (March 31, 2022).⁸ It can be ruinous to a poor person with no ability to pay like Mr. Widmer. See Alec

⁸ <https://www.seattletimes.com/seattle-news/data/100k-plus-households-are-now-the-majority-in-most-seattle-neighborhoods/>

Schierenbeck, *Pay the Same Fine for Speeding*, New York Times (Mar. 15, 2018).⁹ Requiring a proportionality analysis creates a more just legal system. Review should be granted.

F. CONCLUSION

The Court of Appeals declined to review Mr. the grossly disproportionate legal financial obligations imposed in Mr. Widmer's case based on caselaw to which this Court no longer adheres. App. 3. "Too often in the legal profession, we feel bound by tradition and the way things have 'always' been. We must remember that even the most venerable precedent must be struck down when it is incorrect and harmful." Wash. St. Supreme Court, *Open Letter from the Wash. St. Supreme Court to the Members of the Jud. and the*

⁹<https://www.nytimes.com/2018/03/15/opinion/flat-fines-wealthy-poor.html>

Legal Cmty (June 4, 2020). Based on the preceding, Mr. Widmer requests that review be granted. RAP 13.4(b).

This petition is 4,805 words long and complies with RAP 18.17.

DATED this 20th day of April 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

TRAVIS STEARNS (WSBA 29335)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX

Table of Contents

Court of Appeals Opinion..... App. 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,)	No. 82744-8-I
)	
Respondent,)	
)	DIVISION ONE
v.)	
)	
JEFFREY ALEXANDER WIDMER,)	
)	UNPUBLISHED OPINION
Appellant.)	
_____)	

MANN, C.J. — Jeffrey Widmer appeals the trial court’s judgment and sentence finding him guilty of three counts of gross misdemeanor harassment. Widmer argues that the mandatory victim penalty assessment (VPA) is unconstitutional when imposed on indigent defendants. We affirm.

FACTS

The State charged Widmer with three counts of felony harassment for threatening to kill three different individuals at his apartment complex. Following a plea bargain, Widmer pleaded guilty to three counts of gross misdemeanor harassment.

The parties’ joint sentencing recommendation included a mandatory \$500 VPA. Defense counsel asked the court to follow the recommendation. The sentencing court

No. 82744-8-1/2

waived all discretionary legal financial obligations due to Widmer's indigency, but imposed the VPA. Widmer did not object at sentencing.

Widmer appeals.

ANALYSIS

Widmer argues that the VPA is unconstitutional when imposed on indigent defendants, violating the excessive fines clause of the Washington Constitution. WASH. CONST. art. I, § 14. We disagree.

As a threshold matter, the State contends that Widmer invited any error by agreeing to recommend the VPA. See State v. Carson, 179 Wn. App. 961, 973, 320 P.3d 185 (2014) (holding that the invited error doctrine precludes a criminal defendant from seeking appellate review of an error that he helped create, even when the alleged error implicates a constitutional right). The State also asserts that we need not consider Widmer's argument for the first time on appeal because he cannot demonstrate that it is a manifest error affecting a constitutional right. RAP 2.5(a). Regardless of the constraints that the invited error doctrine or RAP 2.5(a) may place on Widmer's appeal, his argument nonetheless fails.

RCW 7.68.035(1) provides in part:

(a) When any person is found guilty in any superior court of having committed a crime . . . there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor.

The Washington Supreme Court has already upheld the constitutionality of this statute. State v. Curry, 118 Wn.2d 911, 917, 829 P.2d 166 (1992). In Curry, the court reasoned that constitutional principles will not be implicated unless the government

seeks to enforce collection of the assessments at a time when a defendant is unable to comply. Curry, 118 Wn.2d at 917. It is at the point when an indigent defendant may be faced with alternatives of payment or imprisonment that they may assert a constitutional objection based on the grounds of their indigency. Curry, 118 Wn.2d at 917.

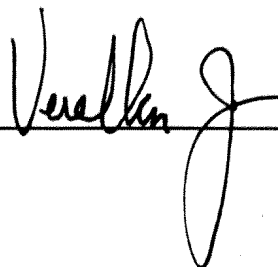
The Curry court noted that there are sufficient safeguards in the current sentencing scheme to prevent the imprisonment of indigent defendants: “a sentencing court shall require a defendant the opportunity to show cause why he or she should not be incarcerated for a violation of his or her sentence, and the court is empowered to treat a nonwillful violation more leniently. Moreover, contempt proceedings for violations of a sentence are defined as those which are intentional.” Curry, 118 Wn.2d at 918 (citing RCW 9.94A.200; RCW 7.21.010(1)(b)). The court concluded that, due to such safeguards, no defendant will be incarcerated for their inability to pay the penalty assessment unless the violation is willful. Curry, 118 Wn.2d at 918.

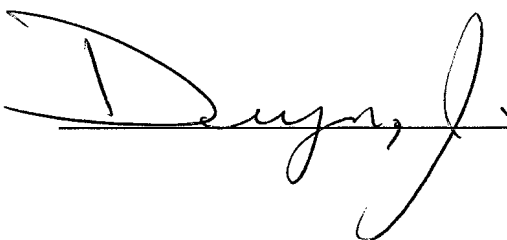
Once our Supreme Court “has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled.” State v. Gore, 101 Wn.2d 481, 487, 681 P.2d 227 (1984).

Affirmed.



WE CONCUR:





DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 82744-8-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

respondent Gavriel Jacobs, DPA
[gavriel.jacobs@kingcounty.gov]
[PAOAppellateUnitMail@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit

petitioner

Attorney for other party



MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: April 20, 2022

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