No. 98824-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent,

v.

STEVEN G. LONG,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondent City of Seattle (the "City") asks this Court to deny the petition for review filed by Steven G. Long ("Long"). If—but only if—the Court grants review of any of Long's claims, the City asks that the Court also grant review of the Court of Appeals' Homestead Act ruling.

II. ISSUES PRESENTED

A. Is a party barred from petitioning for review where the relief he requests from this Court was already granted by the Court of Appeals?

B. Did the Court of Appeals correctly hold that the City did not violate the Excessive Fines Clause by impounding Long's illegally parked vehicle and requiring him to pay less than 60% of the associated costs?

C. Did the Court of Appeals correctly hold that Long failed to show manifest error excusing his failure to raise any claim under article 1, section 7 until shortly before oral argument?

D. Did the Court of Appeals misinterpret the Homestead Act?

III. STATEMENT OF THE CASE

A. Factual background

Petitioner Steven Long lives in his truck. There he also keeps the tools he uses to do construction, handyman, and maintenance work. *City of Seattle v. Long*, — Wn. App. 3d —, 467 P.3d 979, 984 (2020). In July 2016, after experiencing a mechanical problem, Long parked his truck in a City-

owned gravel lot. *Id*. Under Seattle law, if a vehicle is parked in the same place on City property for more than 72 hours, it is "subject to impound." SMC 11.72.440(B), (E). If a vehicle is towed, the towing company receives a statutory lien on the vehicle for its towing and storage fees. RCW 46.55.140(1). A vehicle owner can either pay the towing fees and retrieve the vehicle or contest the impoundment and demand a hearing. SMC 11.30.120, 11.30.160. If the vehicle is not redeemed within a prescribed period, the towing company must sell it at auction. RCW 46.55.130(1).

On October 5, 2016, police responding to an unrelated complaint told Long that he could not keep his truck on City property for more than 72 hours. 467 P.3d at 985. Long told officers that he lived in his truck but it needed repairs. *Id.* A parking enforcement officer posted a notice on Long's truck warning him that it would be impounded if not moved in 72 hours. *Id.* Rather than move his truck, Long tore off the notice. CP 766–67. A week after the parking enforcement officer posted the notice, the City's towing contractor impounded Long's truck. 467 P.3d at 985. Long learned that his truck had been impounded late that night, when he returned from work. *Id.*

Long sought a hearing because he could not afford to redeem his truck. *Id*. The magistrate set up a payment plan for a portion of the impound fees, forgiving the remainder as well as the $44 ticket. Long accepted this plan and went to get his truck, while the City paid the towing company. *See*

id.; SMC 11.30.160.B. At the impound lot, Long learned that his truck would have been auctioned had he not retrieved it. 467 P.3d at 985. Despite claiming that the truck was inoperable, Long then drove his truck from the impound lot to a friend's property in Brier. *See id.*; CP 770–71.

B. Procedural History

After Long appealed the magistrate's order, the Seattle Municipal Court affirmed it. 467 P.3d at 985. On Long's RALJ appeal, the King County Superior Court rejected his due process argument but held the impoundment fees were an excessive fine and that "attaching" the truck to secure payment violated the Homestead Act. *Id.* at 985–86.

The Court of Appeals agreed with the superior court that the City had violated the Homestead Act, but its reasoning differed. It rejected Long's argument that the towing company's lien violated the Homestead Act. It held, however, that the City could not condition protecting the truck from forced sale on Long's accepting a payment plan. *Id.* at 983, 986–90.[1] The court therefore voided the payment plan.

The court rejected Long's constitutional claims. Assuming, without deciding, that impounding the truck and charging the costs to Long was

[1] Contrary to Long's suggestion, Pet. at 3–4, the Court of Appeals did not hold it was illegal to tow and store Long's truck or to incur fees to do so. Rather, it held the City could not make Long choose between accepting the payment plan and losing his truck. 467 P.3d at 983–84.

"punishment" under the Eighth Amendment, *id*. at 990, the court held this was not unconstitutionally excessive because "[m]oving a vehicle has a direct relationship to . . . illegally parking," and the fees "repay . . . the costs of towing the vehicle . . . ." *Id*. at 991 (citing this Court's recognition in *State v. Clark*, 124 Wn.2d 90, 103, 875 P.2d 613 (1994), that governments may exact "rough remedial justice").[2]

The court rejected Long's substantive due process claim, holding that Long could not raise the state-created danger doctrine as a defense to the impoundment. 467 P.3d at 991–92 (noting the lack of authority for asserting this doctrine outside of a 42 U.S.C. § 1983 lawsuit). It also ruled that Long could not argue for the first time on appeal that impounding his truck violated article I, section 7 of the State Constitution, noting that the City had lawful authority to impound the vehicle and lacked a reasonable alternative. *Id.* at 992–93.

On July 28, 2020, Long petitioned this Court to review and reverse the Court of Appeals' rejection of his constitutional claims (other than the substantive due process claim, which he has abandoned).

[2] "Remedial justice" suggests that the payment plan was remedial rather than punitive. If so, it would not implicate the Excessive Fines Clause at all. *See* 467 P.3d at 991 (recognizing that the purpose of the Clause "is to limit the government's power to punish.").

IV. ARGUMENT

A. Long lacks standing to petition for review because he is not an aggrieved party.

Having already received the relief he seeks, Long may not petition for further review. Long requested a hearing to challenge his truck's impoundment. He retrieved his truck and then defended against imposition of impound-related costs by invoking the Homestead Act and constitutional provisions. While the municipal court rejected his arguments, the superior court voided the payment plan and the Court of Appeals affirmed. Long now asks this Court to "grant review, reverse, and remand with directions to vacate the $547.12 fine," Pet. at 20, but there is no fine left to vacate.

"Only an aggrieved party may seek review by the appellate court." RAP 3.1. A party is "aggrieved" if he has a "present, substantial" personal or pecuniary interest that remains at stake in the proceeding. *Tinker v. Kent Gypsum Supply, Inc.*, 95 Wn. App. 761, 764, 977 P.2d 627 (1999); *State v. Taylor*, 150 Wn.2d 599, 603, 80 P.3d 605 (2003). With his truck returned and the payment plan voided, Long has no such interest.

Long may not seek review just because he wishes that the Court of Appeals had voided the payment plan for different or additional reasons. *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 685, 743 P.2d 793 (1987); *In re Detention of Henrickson*, 140 Wn.2d 686, 691 n.1, 2 P.3d 473 (2000) (a party "may not seek review of a decision in its favor

merely because it disputes the reasoning of that decision."). Here, the Court of Appeals accepted one of several alternative bases Long raised to challenge the payment plan. He is not "aggrieved" simply because he thinks it should have accepted more of them.

Long's non-aggrieved status precludes him from meeting the criteria for discretionary review in RAP 13.4(b). There can be no "significant question of [constitutional] law," RAP 13.4(b)(3), in a case that has been fully resolved on non-constitutional grounds. Nor can Long raise "an issue of substantial public interest," RAP 13.4(b)(4), where the obligation he challenges has already been vacated. For this reason, too, Long's lack of standing under RAP 3.1 requires that his petition for review be denied.

B. The Court of Appeals properly held that impounding Long's vehicle and requiring him to enter into a payment plan did not violate the Eighth Amendment.

Even if Long could be considered aggrieved, his claims do not merit review. The Court of Appeals conducted a proper proportionality analysis when it rejected Long's claim under the Excessive Fines Clause. In arguing otherwise, Long mischaracterizes the court's decision, the law, and the record. Moreover, neither the impoundment nor the payment plan is a "fine" under the Eighth Amendment. A temporary impoundment is not a fine because a fine requires permanent deprivation of property. *See, e.g.*, *Coleman v. Watt*, 40 F.3d 255, 263 (8th Cir. 1994) (temporary vehicle

impoundment cannot constitute an Eighth Amendment fine). And in acknowledging that the payment plan was a means for the City to recover its cost of enforcement, *see* Pet. at 8–12, Long effectively concedes that requiring him to pay those costs was remedial, not punitive. This places the payment plan beyond the Eighth Amendment's reach. *See, e.g.*, *In re Metcalf*, 92 Wn. App. 165, 177–79, 963 P.2d 911 (1998).

1. The Court of Appeals conducted a proper proportionality analysis.

Long claims that the Court of Appeals rejected his Eighth Amendment argument solely because the "'rough recovery' of the costs of prosecution can never constitute an excessive fine." Pet. at 8. Not so. The Court of Appeals never stated categorically that the rough recovery of costs negates an excessive fine. *See* 467 P.3d at 991. Rather, the court analyzed the proportionality of towing Long's truck and imposing on him part of the costs of impoundment. *Id.* Long's disagreement with the proportionality analysis in this case does not mean that the court failed to conduct one.

As *United States v. Bajakajian* recognizes, the constitutional touchstone in analyzing a claim under the Excessive Fines Clause is that the "amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). The Court of Appeals explained why this test is

met here: "Moving a vehicle has a direct relationship to the offense of illegally parking." 467 P.3d at 991. Further, the fees imposed on Long were not grossly disproportional to the offense because they "repay the City's agent, Lincoln Towing, for the costs of towing the vehicle . . . ." *Id.* Only after conducting this analysis did the Court of Appeals support its conclusion by noting that "[t]he government is entitled to rough remedial justice." *Id.* (quoting *Clark*, 124 Wn.2d at 103). This is plainly true. *See Clark*, 124 Wn.2d 90.[3]

Despite Long's arguments otherwise, "*Bajakajian* does not mandate the consideration of any rigid set of factors in deciding whether a punitive fine is 'grossly disproportional.'" *U.S. v. Mackby*, 339 F.3d 1013, 1016 (9th Cir. 2003). Rather, courts have "looked to factors similar to those used by the Court in *Bajakajian*." *Id.* There, the Supreme Court examined three factors in assessing gross disproportionality: (1) whether the defendant falls into the class of persons at whom the statute was directed; (2) other penalties authorized by the legislature for the same or similar offenses; and (3) the harm caused by the defendant. *Bajakajian*, 524 U.S. at

[3] Long baldly asserts that temporarily impounding his truck must violate the Excessive Fines Clause because the Court of Appeals held that withholding his home under threat of forced sale violated the Homestead Act. Pet. at 3–4. But Long fails to support this assertion with argument or authority. In any case, the Court of Appeals never held that it was illegal to tow and store Long's truck or to charge him for the cost of doing so. Rather, the court held that the City could not force Long to choose between accepting the payment plan and having his truck sold.

337–40. The Court of Appeals considered each of these factors.

First, the Court of Appeals recognized that Long falls within the class of persons at which the 72-hour rule is directed because he illegally parked his truck. *See* 467 P.3d at 991 (discussing Long's illegal parking). Long never argues that the 72-hour rule targets a class that excludes him.

Second, the Court of Appeals acknowledged that "towing illegally parked vehicles and requiring the owner to pay the associated costs are the exact penalties the city council authorized for a violation of the 72-hour rule." *Id*. In reality, Long's "penalty" was less than what the City Council authorized, since he had to pay only a portion of the impoundment costs under his interest-free payment plan.

Third, while the Court of Appeals did not explicitly address the harm caused, its opinion recognizes that the payment plan partially repaid the City for towing and storage costs. *See id.* (noting that Long's liability served to repay the towing contractor). Long harmed the City by forcing it to incur impound costs.

Long's argument that the gravity of his civil parking infraction is much less than the criminal offenses considered in *Clark* and *Bajakajian* is misplaced. The question is not whether Long's conduct is criminal but whether impoundment has "some relationship" to the seriousness of his conduct. *Bajakajian*, 524 U.S. at 334. Having a vehicle towed at the owner's

expense is directly related to the owner's conduct in illegally parking and ignoring an explicit warning that the vehicle could be towed.

The decision in *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 WL 4209227 (D. Or. July 22, 2020), does not change the analysis.[4] There, the court held that fining a homeless person for sleeping outside beneath a blanket, which someone experiencing homelessness cannot avoid, was grossly disproportionate to the gravity of the offense. *Id.* at *11. Here, the City did not impose liability on Long for an unavoidable act. Rather, the City required him to move his vehicle because he had parked illegally. Long could have avoided any consequence by moving just one block, and he was given ample opportunity to do so.

The Court of Appeals properly rejected Long's arguments. Its proportionality analysis is sound and accounts for all relevant factors. Neither impounding Long's truck nor imposing a payment plan was grossly disproportional to the offense of illegally parking his truck on City property.

2. The Court of Appeals properly deferred to the City Council's determination that those who violate the 72-hour rule should pay the costs of towing and impoundment.

Long next attacks the Court of Appeals' decision for applying the presumption that fines set by the legislature are seldom excessive. Pet. at

[4] Long includes a separate section (Pet. at 16–17) discussing this recent decision but fails to explain how it supports his petition for review.

12–14. Long failed to address this presumption until his motion for reconsideration, despite the City's explicitly raising it in its briefing. *See* City Op. Br. at 22; City Reply Br. at 12. Hence, Long did not properly preserve the argument he now raises.

Long's argument also lacks merit. The City Council specifically authorized "towing illegally parked vehicles and requiring the owner to pay the associated costs." 467 P.3d at 991. The City's legislative body called for a competitively bid contract for the towing and storage of vehicles, SMC 11.30.220.B, and it required someone redeeming an impounded vehicle to first "pay the towing contractor for costs of impoundment (removal, towing, and storage) and administrative fee," SMC 11.30.120.B. Because the City Council passed these provisions, actions taken and charges levied under them are entitled to a presumption of proportionality. It is immaterial that the City Council did not itself set the rates for towing and storage.[5]

3. **The Court of Appeals did not need to consider Long's circumstances, and doing so would not change the outcome**.

Long's argument that the Court of Appeals had to consider his particular financial circumstances misreads *Timbs v. Indiana*, 139 S. Ct.

[5] The costs set forth in the City's contract with Lincoln Towing are also well below those authorized by state law. *See* RCW 46.55.118(1)(a)–(b) (private towing companies may charge 135% of the maximum rates charged by the State Patrol for towing and storage); WAC 204-91A-140(2) (describing process by which State Patrol establishes its rates); SMC 6.214.220 (specifying maximum private impound fees).

682, 203 L. Ed. 2d 11 (2019), and relies on a dissent from a 1989 Supreme Court decision, *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 300, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989) (O'Connor, J., concurring in part and dissenting in part). *See* Pet. at 14–16. Neither case requires considering the defendant's financial circumstances.

As the *Timbs* Court pointed out, *Bajakajian* took "no position on . . . whether a person's income and wealth are relevant considerations in judging excessiveness of a fine." 139 S. Ct. at 688. *Timbs* itself addressed solely whether the Excessive Fines Clause is "an 'incorporated' protection applicable to the States under the Fourteenth Amendment's Due Process Clause"; it did not consider whether ability-to-pay is relevant to the Excessive Fines inquiry. *Id.* at 686; *see also Pimentel v. City of Los Angeles*, 966 F.3d 934, 941 (9th Cir. 2020) (citing *Bajakajian and Timbs* before rejecting a "novel claim in this circuit" and declining "to affirmatively incorporate a means-testing requirement for claims arising under the Eighth Amendment's Excessive Fines Clause").

All three federal circuits to have specifically addressed the issue hold that a defendant's personal financial circumstances are not relevant. *See U.S. v. Smith*, 656 F.3d 821, 828 (8th Cir. 2011); *U.S. v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009); and *U.S. v. Dubose*, 146 F.3d 1141, 1146 (9th

Cir. 1998). Even if a court were to consider Long's personal circumstances, he fails to show that the outcome would be different.[6]

4. **Long failed to raise his article 1, section 14 argument until his reply brief, and he did not provide a *Gunwall* analysis**.

The Court should disregard Long's article 1, section 14 argument. First, he failed to address the issue in his opening brief despite raising it in his motion for discretionary review. Failure to brief an issue until reply waives the issue. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (a party who fails to present argument in the opening brief on a claimed assignment of error waives the claimed error). Long's claim that the City "ignored" this issue, Pet. at 17, blames the City for not responding to an argument he failed to make and thereby abandoned.

Second, even if Long could properly raise the issue in his reply brief, he failed to provide the required *Gunwall* analysis. *See Clark*, 124 Wn.2d at 102 n. 7 & 95 n. 2 ("Their failure to engage a *Gunwall* analysis in a timely fashion precludes us from entertaining their state constitutional claim."); *Tellevik v. Real Property*, 83 Wn. App. 366, 371, 921 P.2d 1088 (1996)

[6] Long earned $400–$700 per month, CP 110, which is not so little as to make a $50-per-month payment plan unconstitutionally excessive. Nothing in the record shows that either the temporary impoundment or the payment plan prevented Long from earning a living, as an analysis of personal circumstances would require. *See U.S. v. Viloski*, 814 F.3d 104, 114 (2d Cir. 2016). Although the Petition asserts that Long lost job opportunities while his tools were with his truck, "there is nothing in the record to support that he has been unable to work as a result of this incident." CP 16. Long could, and did, retrieve items from his truck while it was impounded. *See* CP 108–09.

(refusing to consider an excessive fines argument under art. 1, § 14 because appellant "has not provided a *Gunwall* analysis or any reason to believe that the Washington provision has a meaning different from the federal one.").

C. Long's Article 1, Section 7 claim is both procedurally and substantively flawed.

Long filed a supplemental brief shortly before oral argument in the Court of Appeals in which he claimed for the first time that the seizure of his truck violated article 1, section 7—because, he said, the parking enforcement officer failed to consider reasonable alternatives to impoundment.[7] Long's petition abandons this argument; he now claims that the seizure became unlawful because its duration exceeded its permissible scope. Pet. at 19–20. He also argues that holding his truck was "constitutionally unreasonable" because it violated the Homestead Act. *Id.* But the Court of Appeals never ruled that the City wrongly held Long's truck; rather, it ruled that the payment plan was void. 467 P.3d at 983–84, 993. And Long gives no reason to believe that a Homestead Act violation is a per se violation of article 1, section 7.

Furthermore, the Court need not consider the merits of this issue because Long never presented any article 1, section 7 argument to the municipal court or superior court and never presented his current theory to

[7] Long sought to justify filing this supplemental brief by asserting that *State v. Villela*, 194 Wn.2d 451, 450 P.3d 170 (2019), changed governing law. It did not.

the Court of Appeals. Long waived his argument by failing to make it in the lower courts, despite multiple chances to do so. *See* RAP 2.5(a); *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008).

To be sure, RAP 2.5(a)(3) permits a party to raise "manifest error affecting a constitutional right" for the first time on appeal. But that rule is not "a vehicle for relief from conscious decisions of trial counsel not to litigate constitutional issues at the trial court level." *State v. Walton*, 76 Wn. App. 364, 365, 884 P.2d 1348 (1994). RAP 2.5(a)(3) "requires a ***manifest error*** of constitutional magnitude, not simply the identification of a constitutional issue not litigated below, . . . and particularly not simply the identification of a constitutional issue ***deliberately*** not litigated below." *Id.* at 370 (emphasis original; internal quotations, alterations, and citations omitted). A "conscious decision not to raise a constitutional issue at trial . . . serves as an affirmative waiver." *Id.*

If Long thought he had a valid claim under article 1, section 7, a manifest error that he could raise for the first time before the Court of Appeals, he should have raised that claim in his 86-page opening brief. *See Cowiche*, 118 Wn.2d at 809 (refusing to consider an argument not presented in the opening brief). Allowing a party to raise a new argument after the opening brief rewards sandbagging and deprives the court of a fully

developed adversarial response. *See State v. Lee*, 82 Wn. App. 298, 313, 917 P.2d 159 (1996), *aff'd*, 135 Wn.2d 369 (1998).[8]

These principles apply with even greater force here because Long did not raise any claim under article 1, section 7 in his reply brief, either, despite discussing multiple article 1, section 7 cases.[9] Though long aware of article 1, section 7, Long chose not to raise any argument under it until the eve of oral argument. Even then, the argument he presented to the Court of Appeals is not the same one he raises now. His failure to preserve the claim supplies an independent reason for the Court not to consider it. *See State v. Johnson*, 119 Wn.2d 167, 170, 829 P.2d 1082 (1992).

D. If the Court accepts review of Long's claims, the Court should also accept review of the Court of Appeals' ruling under the Homestead Act.

Long lacks standing to seek further review, and his arguments for review lack merit. If, however, this Court grants Long's petition—and only in that event—it should also review the one part of the Court of Appeals' decision that is both consequential and wrong: its homestead ruling. That

[8] Long also did not assign error with respect to article 1, section 7. *See* RAP 12.1 (unless the appellate court identifies an issue not set forth in the briefs, notifies the parties, and gives them an opportunity to present written argument on that issue, "the appellate court will decide a case only on the basis of the issues set forth by the parties in their briefs.").

[9] In his reply brief, Long addresses impoundment under the Fourth Amendment and relies on two cases with extensive discussions of article 1, section 7. Long Reply Br. at 12 n.14, 24 (citing *State v. Houser*, 95 Wn.2d 143, 153, 622 P.2d 1218 (1980), and *In re Chevrolet Truck*, 148 Wn.2d 145, 151 n.4, 60 P.3d 53 (2002)).

ruling misinterprets the statutes that the court construes. It also creates substantial practical problems for enforcing traffic and parking laws.

1. The Court of Appeals erred in concluding that Long's vehicle is subject to automatic homestead protection.

Despite acknowledging the need to "harmonize related statutory provisions to carry out a consistent scheme that maintains the statute's integrity," 467 P.3d at 988, the court interpreted RCW 6.13.040(1) in a manner that makes the requirements of RCW 6.15.060(3)(d) nonsensical. According to the Court of Appeals, a declaration of homestead is required only for unoccupied personal property. But the declaration prescribed by RCW 6.15.060(3)(d) requires the debtor to certify occupancy.[10]

The Court of Appeals also violated the canons of statutory interpretation by reading the qualifier "not yet occupied" into the final clause of RCW 6.13.040(1). The legislature knew how to include such language but declined to do so in that last clause. *See* RCW 6.13.040(1) (requiring a declaration of homestead for "unimproved or improved land that is ***not yet occupied*** as a homestead," "a mobile home ***not yet occupied*** as a homestead," and "any other personal property . . . .") (emphasis added).

[10] Contrary to the Court of Appeals, RCW 6.13.040(1) and RCW 6.15.060(3)(d) are not "inconsistent." 467 P.3d at 988. The phrase "property described in RCW 6.13.010" in RCW 6.13.040(1) refers to the specific types of property called out in RCW 6.13.010—namely, dwelling houses and mobile homes. The state cases on which the Court of Appeals relies (467 P.3d at 988 n. 8) do not address homestead protections for personal property.

The Court of Appeals also drew flawed inferences from legislative history. *See* 467 P.3d at 987. The history of the 1993 amendments to the Homestead Act evinces an intent to extend homestead protections to personal property but not to bestow automatic protection on such property. *See, e.g.*, Final B. Rep. on Substitute S.B. 5068 (describing the bill as expanding "[t]he ***definition*** of homestead . . . to include any real or personal property that the owner uses as a residence.") (emphasis added). When the legislature added personal property to the definition of a homestead, it added a new category in RCW 6.13.040(1) for "other personal property" rather than relying on the existing language conferring automatic protection. *See* SSB 5068 (1993). Yet the Court of Appeals cited that old language and rendered the new "other personal property" clause ineffective.

2. The Court of Appeals erred in applying the Homestead Act despite the absence of attachment, execution, or forced sale.

In addition to misconstruing the declaration requirement, the Court of Appeals stretched homestead law far beyond the statutory text. While acknowledging that this case did not involve the sale of a homestead, the court invoked the Homestead Act's prohibition on forced sales to invalidate Long's payment plan. The rule of liberal construction is not a license to rewrite statutes. *Cf. Klossner v. San Juan Cty*., 93 Wn.2d 42, 47, 605 P. 2d 330 (1980) ("[T]his court's several decisions that the wrongful death statute

is to be liberally construed do not mean we may read into the statute matters which are not there."). Homesteads are protected from attachment, execution, and forced sale. RCW 6.13.070(1). Nothing in the statute prohibits the mere threat of a forced sale.

Even if the Homestead Act covered mere threats, the sale of an impounded vehicle is not a forced sale under the Homestead Act. The Court of Appeals held that selling an impounded vehicle is nonconsensual because a statute, not the vehicle owner, "authorizes the sale." 467 P.3d at 990. But under the Homestead Act, a homeowner may consent to a sale "***indirectly*** by . . . doing those acts or things that necessarily or usually eventuate in a sale." *Felton v. Citizens Fed. Sav. and Loan Ass'n of Seattle*, 101 Wn.2d 416, 422, 679 P.2d 928 (1984) (quotation omitted; emphasis added). When he refused to move his illegally parked vehicle, Long did exactly that.[11]

3. The court's decision complicates the enforcement of traffic and parking laws.

Although the Court of Appeals' ruling "does not affect the City's authority to tow and impound an illegally parked vehicle" nor "prohibit the City from charging a vehicle owner for costs associated with the towing and impounding of a vehicle," 467 P.3d at 983, it will make it harder for the

[11]The federal case the Court of Appeals cites for the proposition that impoundment is "not a consensual consumer transaction" is inapposite, as it involved an entirely different inquiry under the Fair Debt Collection Practices Act. 467 P.3d at 990 (citing *Betts v. Equifax Credit Info. Servs., Inc.*, 245 F. Supp. 2d 1130, 1133 (W.D. Wash. 2003)).

City—and jurisdictions throughout the state—to actually recover such costs from offending vehicle owners.[12]

The Court of Appeals' ruling creates other practical problems, too. It is not always apparent when personal property is serving as a residence. Unlike traditional homesteads such as dwellings and mobile homes, cars and boats ordinarily function as something other than a home. By conferring automatic protection on vehicular homesteads and dispensing with notice requirements for occupied personal property, the court forces officials to guess whether they are dealing with a homestead or not.

V. CONCLUSION

Long is not an aggrieved party, and he fails to show any basis for review under RAP 13.4(b). His petition for review should be denied. If, however, the Court does grant Long's petition for review, the City asks that the Court also review the Court of Appeals' homestead ruling.

DATED this 27th day of August 2020.

[12] Effective enforcement of parking regulations is critical to preserving public property for public use. *See, e.g., Kimmel v. City of Spokane*, 7 Wn.2d 372, 377, 109 P.2d 1069 (1941) ("Ordinances prescribing time limitations on parking have long been recognized as a proper exercise of the police power").

Respectfully submitted,

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