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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

No. 96183-2

Grant County Cause No. 18-1-00030-3

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Petitioner,

v.

JOEL VILLELA,

Respondent.

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BRIEF OF PETITIONER

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## **I. ASSIGNMENT OF ERROR**

1. The trial court erred in concluding the mandatory impound requirement of Hailey's Law, RCW 46.55.360, is unconstitutional.

## **II. ISSUE RELATED TO ASSIGNMENT OF ERROR**

1. Is the mandatory impound requirement of Hailey's Law, RCW 46.55.360, unconstitutional under either Art. 1 §7 of the State Constitution or the Due Process Clause?

## **III. STATEMENT OF THE CASE**

Facts are taken from the police report filed by Sgt. Paul Snyder of the Quincy Police Department. CP 5-7. As this case involves a facial attack on a statute the details of the facts are not critical. They are provided here for context.

At about 2 AM Sgt. Snyder observed a Jeep Grand Cherokee speeding in Quincy, Washington. As he pulled over the vehicle he observed a case of beer in the back. He contacted the driver and smelled a strong odor of alcohol coming from the vehicle. There were two other passengers in the Jeep. Sgt. Snyder ordered the driver, Joel Villela, out of the vehicle to investigate a possible DUI. Mr. Villela was less than cooperative, refusing to get out of the vehicle until he was asked several times. After Mr. Villela was removed from the vehicle Sgt. Snyder could still smell a significant odor of alcohol from Mr. Villela and believed he

was impaired. Sgt. Snyder arrested Mr. Villela for suspicion of DUI. Search incident to arrest of Mr. Villela revealed 10 grams of a white powder Sgt. Snyder believed to be cocaine.

Pursuant to the mandatory impound law, RCW 46.55.360 (Hailey's Law), Sgt. Snyder impounded the vehicle. Sgt. Snyder did not consider any alternatives to impoundment because it was mandatory under the statute. During the inventory search of the vehicle, in the center console, Sgt. Snyder found three baggies, several pieces of baggies, a black digital scale with white powder, a new scale, a black cloth with white powder, and \$340.00 in cash.

The State charged Mr. Villela with possession of cocaine with intent to deliver and DUI. Mr. Villela moved to suppress the evidence found in the car and Sgt. Snyder's audio recording of the incident.<sup>1</sup> The trial court granted the suppression motion for the items found in Mr. Villela's Jeep, adopting a previous ruling from another judge in another case, and holding the mandatory DUI impound law is facially unconstitutional. CP 41-46.

#### **IV. ARGUMENT**

##### *1. Hailey's Law is based on a public safety rationale.*

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<sup>1</sup> The suppression of the audio recording is not at issue here.

Short term mandatory seizures with public safety rationales are common and have never been found to violate any constitutional provision.

The party seeking to declare a statute unconstitutional has the burden to do so beyond a reasonable doubt. *Sch. Districts' All. for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605, 244 P.3d 1, 4 (2010). The burden exists because the legislature is a co-equal branch of government, also sworn to uphold the Constitution. *Id.* Also, the legislature speaks for the people, and so the courts are hesitant to strike a duly enacted statute unless convinced, after a searching legal analysis, that the statute violates the Constitution. *Id.* The Courts assume the legislature considered the constitutionality of its enactments and afford great deference to its judgment. *Id.*

The trial court held that the law was “calculated to mandate a search of every car driven by one arrested for driving under the influence.” This holding is unsupported by evidence in the legislative record or the record of this case. While the search of a DUI arrestee’s vehicle is certainly a foreseeable side effect of Hailey’s Law that does not mean it was an animating motive behind it, and the court should not impute improper motive to the legislature without any evidence to back it up. The legislature declared its intent for the law to be promoting public safety by

removing the ability of impaired drivers to access their vehicles. Laws of 2011 Ch 167 §2. Absent significant evidence to the contrary, the legislature should be taken at their word as a co-equal branch of government. Thus Hailey's Law should be analyzed for what it is, an attempt by the legislature to improve the public safety. Nor does the fact that the law may not perfectly achieve its goals make it illusory. The Court noted that another registered owner of the vehicle may potentially pick up the vehicle at the impound lot before the 12 hours expire, and stated this makes the protections of the law illusory. First, even if a co-owner of the vehicle does pick it up, according to the tow company operator who testified at the CrR 3.6 hearing it would still take at least an hour and a half to pick up and process the vehicle. The legislature had to balance two competing concerns. The safety need to impound the vehicle and prevent the intoxicated person from driving it versus the property rights of innocent registered co-owners. *See Jackson v. City of Chicago*, 975 N.E.2d 153, 163 (Ill. App. Ct. 2012) (discussing constitutionality of seizure and forfeiture statutes without innocent owner defense). The compromise the legislature came up with may not be perfect from the safety of the public standpoint, but it does not render the promise of the statute illusory. The legislature has made this compromise to protect property rights of innocent parties in other areas as well. The purpose of

the civil seizure laws is to deprive criminals of the means and profits of their criminal activities. Yet the legislature allows innocent owners of the property that a criminal might use to keep their property. RCW 69.50.505. No doubt this reduces the effectiveness of the civil seizure laws. That does not make them illusory or mean the legislature had an ulterior motive in passing them.

*2. The legislature properly utilized its long standing authority to legislatively determine certain situations are a threat to public safety and create a solution.*

The practice of mandatory short term seizures for the purposes of public safety has a significant history across the country in a large number of States. They exist in the domestic violence mandatory arrest context: Alaska Stat. § 18.65.530 (A),(B); Ariz. Legis. Serv. Ch. 90 §13– 3601(B); Cal. Penal Code § 13701(B); Colo. Rev. Stat. § 18-6-803.6; Conn. Gen. Stat. § 46b-38b (a); D.C. Code Ann. § 16-1031 (a); Iowa Code Ann. §§ 236.12 (2)(a) and (2)(b); Kan. Stat. Ann. § 22-2307 (b)(1); La. Rev. Stat. Ann. § 46-2140 A(1), A(2), B(1); Me. Rev. Stat. Ann. Tit 19-A § 4012 (5); Mass. Gen. Laws Ann. Ch. 209a § 6 (7); Miss. Code Ann. § 99-3-7 (3); Mo.Rev.Stat. §455.085.1, 455.085.3; Nev. Rev. Stat. § 171.137; N.H. Rev. Stat. Ann. § 173B:9; N.J. Stat. Ann. § 2c:25-21; N.Y. Crim. Proc. Law § 140.10 (1), (4)(a), (b); Ohio Rev. Code Ann. § 2935.032 (A)(1)(a);

Ohio Rev. Code Ann. § 2935.03 (A)(1)(a)(ii); Or. Rev. Stat. § 133.055 (2)(a),(b),(c); R.I. Gen. Laws § 12-29-3 (b), (c); S.C. Code Ann. § 16-25-70; S.D. Codified Laws Ann. §§ 23a3-2.1; Utah Code Ann. § 77-36-2.2 (2), (3); RCW §10.31.100 (1), (2)(a),(b),(c); Wis. Stat. Ann. § 968.075(2). They also exist in the mandatory DUI arrest context: Minn Stat 169A.44; RCW 10.31.100(16)(a). They also exist in the mandatory DUI impound context. N.J.S. 39:4-50.23; U.C. 41-6a-527; Chicago Muni Code 7-24-226. Despite an extensive search the State could not find any prior case where these statutes had been challenged as facially unconstitutional, much less been declared so by a court.

*3. The short term seizure does not violate Art. 1 §7 or the due process clause.*

Article 1 §7 of the State Constitution states “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Going through someone’s car is disturbing their private affairs. In a criminal investigation the normal authority of law is a warrant or an exception to the warrant requirement. *State v. Hinton*, 179 Wn.2d 862, 869, 319 P.3d 9, 12 (2014). However, an inventory search after an impound is an exception to the warrant requirement, and the reason for the impound is not criminal investigation, but public safety. The impound was conducted under clear authority of law passed by the legislature.

Nor is the due process clause violated. When the issue is only a temporary deprivation of a property interest, without touching on other fundamental rights, substantive due process only requires a rational basis. *Lee v. City of Chicago*, 330 F.3d 456, 467 (7th Cir. 2003). The legislature has articulated a rational basis of preventing drivers from regaining possession of their vehicles before they have had time to sober up.

Procedural due process requires the Court to examine (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976). Here the private interest affected is the temporary (12 hour) loss of the vehicle. In order to seize the vehicle the officer must have probable cause of a DUI. An obvious substitute, used in other contexts, would be mandatory arrest and detention for 12 hours. Seizure of vehicle is certainly less intrusive than an arrest. The government interest is defined by the legislature in the statute, the reduction of the ability of someone who there is probable cause to believe is too impaired to drive by removal of their vehicle. Given the

short time frames involved and the fact that the government releases the car after 12 hours, there is no additional substitute procedure other than the officer's determination of probable cause that would meet the governmental interest involved.

**V. CONCLUSION**

The legislature rationally concluded that taking drunk drivers' vehicles away for a short period so they could not go back and recover their vehicles and injure innocent people required a 12 hour impound of the vehicles. This is in keeping with a long practice of short term seizures to allow a "cooling off" period and reduce an immediate threat to public safety. The Court should uphold the statute, reverse the trial court, and remand for further proceedings.

Dated this 25<sup>th</sup> day of January, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this day I served a copy of the Brief of Petitioner in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

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Dated: January 25, 2019.

  
Kaye Burns

# GRANT COUNTY PROSECUTOR'S OFFICE

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