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No. 98824-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent,

v.

STEVEN G. LONG,

Petitioner.

BRIEF OF PUBLIC JUSTICE, THE INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION, THE NATIONAL CENTER FOR LAW AND ECONOMIC JUSTICE, AND THE RUTHERFORD INSTITUTE AS AMICI CURIAE IN SUPPORT OF PETITIONER

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IDENTITY AND INTERESTS OF AMICI CURIAE

The identity and interest of Amici are set forth in the Motion for Leave to File Amici Curiae Brief in Support of Petitioner.

INTRODUCTION

Steven Long is homeless. Since being evicted from his apartment in 2014, Long has lived in his truck while struggling to save money for stable housing. Working various jobs, including as a skilled laborer and janitor, he earns only a few hundred dollars per month, far below the minimum amount necessary to cover a Seattle resident's basic needs. After the City impounded his truck for a minor parking infraction, Long slept outside on the ground where his truck used to be. During that time, his financial circumstances grew more dire, as he was unable to work skilled-labor jobs without a place to safely keep his tools. Ultimately, a municipal court fined him $547.12, even though Long attested that he had only $50 to his name.

In holding that this fine was not excessive under the Eighth Amendment, the court of appeals weighed none of these facts. Instead, the court concluded that two other facts were enough to make the fine constitutional: (1) the fine "repa[id] the City's agent . . . for the costs of towing the vehicle based on contract," and (2) the fine resulted in "the exact penalties the city council authorized." *City of Seattle v. Long*, 13 Wn. App. 2d 709, 731 (2020).

If the decision below becomes the law in Washington, it will deny the State's poorest citizens essential Eighth Amendment protections.

Under the court of appeals' reasoning, *any* monetary sanction is constitutional—no matter how trivial the underlying offense or how impoverished the person being fined—so long as the sanction is authorized by the legislature or used to reimburse the government for services. As a matter of both law and justice, this ruling cannot stand.

First, in its Excessive Fines Clause analysis, the court of appeals erred by disregarding Long's undisputed inability to pay. "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). And in evaluating proportionality under the Eighth Amendment, the U.S. Supreme Court has relied heavily on careful consideration of an individual's circumstances. Given Long's indigence, the practical necessity that led to his parking violation, and the relative insignificance of that violation, the fine imposed on Long—on pain of permanently losing his home—was grossly disproportionate to the gravity of his offense.

Second, because fines disproportionately impact those with lower incomes, an Excessive Fines Clause standard that does not account for an individual's circumstances—and most significantly, his or her ability to pay—will fail to adequately protect individuals who are poor. Only by requiring consideration of a person's ability to pay can this Court ensure that the Excessive Fines Clause provides meaningful protection for all Washingtonians, including indigent and homeless individuals like Long.

STATEMENT OF FACTS

Amici join in the statement of the case provided by the petitioner at pages 1 to 5 of the Supplemental Brief of Petitioner.

ARGUMENT

I. Assessing Disproportionality under the Excessive Fines Clause Requires Consideration of the Fined Individual's Circumstances.

In determining the proper scope of the Excessive Fines Clause's protections, this Court should look to cases construing the Cruel and Unusual Punishments Clause's "standard of gross disproportionality." *Bajakajian*, 524 U.S. at 336. In *Bajakajian*, the first and only U.S. Supreme Court case directly addressing the scope of the Excessive Fines Clause's protections, the Court held that a fine "violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Id.* at 334. But because "[t]he text and history of the Excessive Fines Clause . . . provide[d] little guidance as to *how* disproportional a punitive [fine] must be to the gravity of an offense in order to be 'excessive,'" the Court adopted "the standard of gross disproportionality articulated in [its] Cruel and Unusual Punishments Clause precedents." *Id.* at 335–36 (emphasis added). Given the direct importation of that standard into excessive-fines analysis, this Court should adopt two key principles outlined by the U.S. Supreme Court in its Punishments Clause jurisprudence.

First, this Court should hold that, like the Punishments Clause, the Excessive Fines Clause requires consideration of a defendant's

circumstances in weighing both the severity of the penalty and the gravity of the offense. Second, this Court should recognize that, in line with cases interpreting the Punishments Clause, the Excessive Fines Clause prohibits monetary sanctions imposed against categories of persons whose culpability for certain offenses is heavily outweighed by the severity of the penalty—and that individuals whose offenses directly result from their homelessness constitute one such class.

A. The Excessive Fines Clause, like the Cruel and Unusual Punishments Clause, requires consideration of individual circumstances in assessing whether a punishment is grossly disproportionate.

To determine whether a fine violates the Excessive Fines Clause, courts should weigh both the gravity of the offense and the severity of the punishment in light of the sanctioned individual's circumstances. This approach stems from the Supreme Court's recognition that, in "determin[ing] whether a sentence is unconstitutionally excessive" under the Cruel and Unusual Punishments Clause, courts must "consider[] all of the circumstances of the case," including those of the defendant. *Graham v. Florida*, 560 U.S. 48, 59 (2010); *see also Solem v. Helm*, 463 U.S. 277, 296–97 (1983).

In *Solem*, for example, the Court invalidated a sentence of life imprisonment without the possibility of parole for a defendant's seventh nonviolent felony, the crime of writing a bad check. 463 U.S. at 300. The Court emphasized that the defendant's sentence could not be "considered in the abstract." *Id.* at 296. Rather, the Court undertook a full analysis of

the defendant's background and the circumstances of his crime, recognizing that his "prior offenses . . . were all relatively minor. All were nonviolent and none was a crime against a person." *Id.* at 296–97. The Court also noted that the defendant was "not a professional criminal" and had "an addiction to alcohol, and a consequent difficulty in holding a job." *Id.* at 297 n.22. Thus, "[i]ncarcerating him for life without possibility of parole" was too severe a sanction because it was "unlikely to advance the goals of our criminal justice system in any substantial way." *Id.*

Similarly, the Supreme Court has struck down statutes mandating the death penalty for certain crimes because such laws fail "to allow the particularized consideration" of "relevant facts of the character and record of the individual offender or the circumstances of the particular offense." *Woodson v. North Carolina*, 428 U.S. 280, 303–04 (1976) (plurality opinion). As the Court has explained, the Punishments Clause requires "that capital defendants have an opportunity to advance, and the judge or jury a chance to assess, any mitigating factors, so that the death penalty is reserved only for the most culpable defendants committing the most serious offenses." *Miller v. Alabama*, 567 U.S. 460, 475–76 (2012).

Because the Punishments Clause's proportionality standard has been imported into the Excessive Fines Clause context, the same individualized consideration of a defendant's circumstances is appropriate in determining whether a fine "is grossly disproportional to the gravity of a defendant's offense." *Bajakajian*, 524 U.S. at 334. Indeed, this kind of

careful consideration is even more critical in the excessive-fines context given that the government has a clear financial incentive to impose unnecessary and disproportionate fines. Because “fines are a source of revenue,” the Supreme Court has cautioned, “[t]here is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence.” *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (plurality opinion). Thus, “[i]t makes sense to scrutinize governmental action more closely when the State stands to benefit.” *Id.*[1]

The Supreme Court has also held that individual circumstances are relevant to determining whether a punishment is “especially harsh.” *Miller*, 567 U.S. at 475 (quoting *Graham*, 560 U.S. at 70). In *Miller*, for example, the Court recognized that a sentence of life without parole “is an ‘especially harsh punishment for a juvenile,’ because he will almost inevitably serve ‘more years and a greater percentage of his life in prison than an adult offender.’” *Id.* at 475 (quoting *Graham*, 560 U.S. at 70).

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[1] For this reason, the Supreme Court’s suggestion that an individualized sentencing assessment—including consideration of mitigating factors—is not required “outside the capital context, because of the qualitative difference between death and all other penalties,” *Harmelin*, 501 U.S. at 995 (plurality opinion), is inapplicable in the excessive-fines context. Indeed, “the text and structure of the Eighth Amendment strongly suggest that the proportionality limitations the Excessive Fines Clause imposes are more rigorous than any proportionality limitations associated with the Cruel and Unusual Punishments Clause.” Barry L. Johnson, *Purging the Cruel and Unusual: The Autonomous Excessive Fines Clause and Desert-Based Constitutional Limits on Forfeiture After* United States v. Bajakajian, 2000 U. Ill. L. Rev. 461, 514. In any event, this Court may also rely on article I, section 14 of the Washington Constitution, which “is more protective than the Eighth Amendment.” *State v. Witherspoon*, 180 Wn.2d 875, 887 (2014).

A fine that is especially harsh in light of a particular defendant's circumstances can thereby be excessive. As outlined below, criminal debt can have a devastating effect on individuals with low income and their families. Potential consequences include incarceration, the deprivation of important civil rights, or—as here—the loss of one's home. An individualized inquiry can therefore establish that a monetary sanction would constitute "especially harsh punishment." *Miller*, 567 U.S. at 475 (quoting *Graham*, 560 U.S. at 70). Such an inquiry addresses the common law's concern over fines that are "so large as to deprive [the offender] of his livelihood." *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 271 (1989); *see also Timbs v. Indiana*, 139 S. Ct. 682, 688 (2019) ("[N]o man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear . . . ." (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES 372 (1769))).

One of the most relevant circumstances in assessing the severity of a monetary sanction is the fined person's ability to pay. Here, the $547.12 penalty that the municipal court imposed on Long would be a mere inconvenience for more affluent individuals. But as discussed below, many Americans cannot pay such a fine without substantial hardship, and many, like Long, cannot pay such a penalty at all. *See infra* Part II. Again, Long is a homeless individual already struggling to make ends meet, and his home was held as collateral because of his inability to pay a fine. Had the court below heeded these facts, the severity of the punishment imposed

would have been obvious. Instead, the court of appeals refused to consider these circumstances, holding that the fine imposed on Long was "not excessive" because it went toward repaying the towing company and had been "authorized" by the city council. *Long*, 13 Wn. App. 2d at 731. This curt reasoning—with no reference to Long's circumstances—bears no resemblance to the careful analysis the Supreme Court requires in assessing proportionality.

Individual circumstances are also relevant to the other side of the scale—that is, "the gravity of a defendant's offense." *Bajakajian*, 524 U.S. at 334. This is because the seriousness of a defendant's conduct may differ "in light of the harm caused or threatened to the victim or society, and the culpability of the offender." *Solem*, 463 U.S. at 292. As Long has forcefully argued, the court of appeals failed to consider this element. Pet'r Suppl. Br. at 7–9. Indeed, Long's "offense" here was only a minor parking infraction—so minor, in fact, that the City has suspended enforcement of the ordinance in question for the past nine months.[2] Thus, the court should have given no weight to the seriousness of Long's parking infraction because the violation caused no harm. And as discussed below, Long's culpability is diminished because the violation was in fact caused by his poverty and resulting homelessness. *See infra* Section I.B. In short, consideration of Long's characteristics compels the conclusion that

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[2] *See COVID-19 Parking*, SEATTLE DEP'T TRANSP., https://www.seattle.gov/transportation/projects-and-programs/programs/parking-program/covid-parking-and-curb-management (last updated Dec. 8, 2020).

the severity of the monetary penalty imposed against him far outweighed the gravity of his parking infraction.

B. The Excessive Fines Clause imposes a categorical bar on fining homeless individuals for offenses stemming from homelessness.

In some cases, the Eighth Amendment also requires "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." *Miller*, 567 U.S. at 470. Thus, under the Excessive Fines Clause, the status of a particular class of offenders may render a fine categorically excessive, even without conducting a detailed analysis of the defendant's individualized circumstances.

The U.S. Supreme Court has, for example, held that certain sentences are *always* grossly disproportionate—and thus violate the Punishments Clause—when applied to juvenile offenders. *See Roper v. Simmons*, 543 U.S. 551 (2005) (death penalty); *Miller*, 567 U.S. at 465 (life without parole without a finding of permanent incorrigibility). Similarly, the Court has held that capital punishment is categorically impermissible for defendants with intellectual disabilities. *See Atkins v. Virginia*, 536 U.S. 304, 318 (2002). And the Court applied a similar approach to invalidate a statute criminalizing addiction to narcotics, holding any punishment as grossly disproportionate under the Eighth Amendment because "narcotic addiction is an illness." *Robinson v. California*, 370 U.S. 660, 667 (1962); *see also id.* ("Even one day in

prison would be a cruel and unusual punishment for the 'crime' of having a common cold.").

Here, there is one obvious class of offenders for whom there is a "mismatch" between their level of culpability and the severity of any monetary sanction imposed on them: homeless individuals fined for offenses caused by their homelessness. Any fine imposed for an offense directly caused by an individual's homelessness—as in Long's case—is excessive, given both the severity of a monetary sanction on an already-indigent person and that person's relative lack of culpability for the offense. As a result, individuals in Long's position are precisely those for whom "a categorical ban on sentencing practices" would be appropriate. *Miller*, 567 U.S. at 470.

Three considerations derived from the Supreme Court's Punishments Clause cases demand this result. First, as already discussed, a monetary sanction's severity is driven by an individual's ability to pay. *See supra* Section I.A. Common sense dictates that even a small financial sanction imposed against a homeless individual, already unable to afford shelter and struggling to pay for other necessities of life, is a harsh penalty.

Second, in applying the categorical approach, the Supreme Court has considered "the culpability of the offenders at issue in light of their crimes and characteristics"—in other words, how the characteristics of this class of offenders and the offenses they commit affect their culpability.

Graham, 560 U.S. at 67. Thus, in *Roper* and its progeny, the Court gave special consideration to "lack of maturity and . . . underdeveloped sense of responsibility" of juveniles, as well as their "vulnerab[ility] . . . to negative influences and outside pressures," in concluding that they have diminished culpability. 543 U.S. at 569. Similarly, in *Atkins*, the Court emphasized that "[b]ecause of their disabilities in areas of reasoning, judgment, and control of their impulses," defendants with intellectual disabilities "do not act with the level of moral culpability that characterizes the most serious adult criminal conduct." 536 U.S. at 306. And in *Robinson*, the Court recognized that the defendant's narcotics addiction did not itself make him culpable, because it is "an illness which may be contracted innocently or involuntarily." 370 U.S. at 667.

Likewise, for purposes of the Excessive Fines Clause, homelessness is a condition that diminishes an individual's culpability such that any fine is grossly disproportionate when imposed for an offense directly caused by homelessness. Most municipalities in Washington, including Seattle, impose monetary sanctions for panhandling, sleeping outside, and seeking shelter from inclement weather, among other actions. "Although some ordinances may appear neutral on their face, in practice, many disproportionately target visibly poor people"—including, for example, laws that prohibit "rummaging or scavenging through trash

receptacles" or "the storage of personal property in public places."[3] Individuals like Long often have no practical choice but to engage in conduct for which they will be fined.

Moreover, homelessness, at least as much as the narcotics addiction considered in *Robinson*, is often an involuntary status. *See* 370 U.S. at 667. That is certainly true for Steven Long, who began living in his truck only because he could not afford stable housing and in fact was "trying to save enough money to be able to move into an apartment." Pet'r Suppl. Br. at 4 n.8. For this reason, the Ninth Circuit has recognized that *Robinson*'s logic "compels the conclusion that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir.), *cert. denied*, 140 S. Ct. 674 (2019). And at least one federal district court has held that this reasoning applies with equal force in the Excessive Fines Clause context: "Fining a homeless person . . . who must sleep outside beneath a blanket because they cannot find shelter . . . is grossly disproportionate to the 'gravity of the offense.'" *Blake v. City of Grants Pass*, No. 18-cv-01823, 2020 WL 4209227, at *11 (D. Or. July 22, 2020). This Court should likewise recognize that individuals whose offenses stem from their

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[3] *See* JUSTIN OLSON & SCOTT MACDONALD, SEATTLE UNIV. HOMELESS RIGHTS ADVOC. PROJECT, WASHINGTON'S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT 3–4 (Sara K. Rankin ed. 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2602318; *see also* ANATOLE FRANCE, LE LYS ROUGE 117–18 (rev. ed. 1923) ("The law in its majestic equality forbids the rich as well as the poor to sleep under the bridges.")

homelessness lack the culpability necessary to impose any financial penalty against them.

Third and finally, imposing monetary sanctions on homeless individuals for offenses caused by their homelessness is also categorically impermissible because such penalties do not "serve[] legitimate penological goals"—that is, they cannot be justified based on retribution, deterrence, incapacitation, or rehabilitation. *Graham*, 560 U.S. at 67. Although "[c]riminal punishment can have different goals, and choosing among them is within a legislature's discretion," the Supreme Court has held that "[a] sentence lacking any legitimate penological justification is by its nature disproportionate to the offense." *Id.* at 71.

In *Miller*, the Court prohibited life-without-parole sentences for juveniles in all but the rarest of cases, reasoning that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." 567 U.S. at 472. "[T]he case for retribution is not as strong with a minor as with an adult" because of juveniles' lessened culpability. *Id.* (quoting *Graham*, 560 U.S. at 71). By the same token, deterrence is not furthered, because the characteristics of juveniles "make them less likely to consider punishment." *Id.* And finally, "a child's capacity to change" undermined any argument that incapacitation and rehabilitation justified life-without-parole sentences for juveniles. *Id.* at 472–73.

Imposing monetary sanctions on homeless individuals for these types of offenses similarly "lack[s] any legitimate penological justification." *Graham*, 560 U.S. at 71. Again, offenses like Long's parking violation in this case are directly linked to their homelessness, and homelessness is, in turn, often an involuntary status. Given the lack of culpability for such offenses, a fine levied against a homeless individual cannot be justified by retribution. *See Miller*, 567 U.S. at 472. Incapacitation is also not appropriate for purposes of preventing parking offenses, especially when they are driven by necessity. And deterrence is an inadequate justification, because the offenses at issue frequently involve necessities of life—here, shelter—that homeless individuals cannot forgo. Finally, rehabilitation cannot justify a fine imposed against the homeless because a monetary sanction will only hinder a homeless individual's ability to secure housing and financial stability.

The principles outlined here—establishing that the severity of a monetary sanction is disproportionate to a homeless individual's culpability for offenses stemming from homelessness—further underscores the disproportionality of the fine imposed on Long. Although this Court may rule in Long's favor without adopting on this categorical rule, we respectfully ask the Court to embrace these principles in holding that the fine imposed on Long violates the Excessive Fines Clause.

II. An Excessive Fines Clause Standard That Does Not Account for a Defendant's Circumstances Provides Virtually No Protection for Individuals Experiencing Poverty.

Requiring that sentencing courts consider a defendant's circumstances—whether through an individualized inquiry or on a categorical basis—will ensure that the Excessive Fines Clause protects all Washingtonians. This Court should make certain that the centuries-old purpose of the prohibition on excessive fines—that they "not be so large as to deprive [the offender] of his livelihood," *Browning-Ferris*, 492 U.S. at 271—applies not only to the wealthy, but also to those impoverished individuals who need it most.

To date, this Court has applied the Clause in only a narrow set of cases, mostly involving large penalties committed by persons or entities with money. *See, e.g.*, *State v. Grocery Mfrs. Ass'n*, 195 Wn.2d 442, 476 (2020) ($18 million penalty for illegal election-related spending); *State v. WWJ Corp.*, 138 Wn.2d 595, 604 (1999) ($500,000 fine for violating Mortgage Broker Practices Act). Those cases bear little resemblance to the circumstances faced by Long and others who experience poverty and homelessness. Given the limited case law applying the Excessive Fines Clause in this context, there is a critical need for this Court to address how the Excessive Fines Clause protects indigent individuals like Long.[4]

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[4] The City's reliance on the facts of *Bajakajian*, City Suppl. Br. at 13, is also illustrative. The City is correct that "*Bajakajian* is easily distinguished," *id.*, but not for the reasons the City cites. Rather, a poor individual like Long would simply never present facts like those found in *Bajakajian*. *Bajakajian* involved the forfeiture of more than $300,000 as a penalty for a defendant's failure to

For the Excessive Fines Clause to offer meaningful protection in this context, this Court must require consideration of an individual's circumstances in weighing the proportionality of a fine. Indeed, the need for the Clause is heightened for individuals like Long because fines are inherently regressive—that is, they are "more punitive for poorer individuals than for wealthier individuals."[5] That is because fines throughout the United States—including in Washington—turn on a fixed dollar amount, rather than on an offender's income.

To illustrate, a $547.12 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.[6] But for Long, who earns roughly $400–$700 a month, the fine equals a month's earnings—a harsh financial penalty for a homeless individual already struggling to make ends meet.

Long's experience is not unique. A recent report by the Federal Reserve found that nearly 40 percent of adults would be unable to

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report all money in excess of $10,000, as required by federal law. 524 U.S. at 325. If all excessive fines analyses began and ended with cases like *Bajakajian*, then it would be unlikely that any fine imposed on the poor would ever be considered excessive. Poor people simply do not commit offenses that involve such large forfeitures.

[5] COUNCIL OF ECON. ADVISORS, FINES, FEES, AND BAIL: PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR 1 (2015), https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf.

[6] *See* Gene Balk, *Seattle's Median Household Income Soars Past $100,000—but Wealth Doesn't Reach All*, SEATTLE TIMES (Oct. 4, 2020, 8:04 PM), https://www.seattletimes.com/seattle-news/data/seattles-median-income-soars-past-100000-but-wealth-doesnt-reach-all/.

immediately cover an unexpected $400 expense.[7] And that number is likely to rise, given employment disruptions resulting from the COVID-19 pandemic.

Even worse, a fine's dollar amount is not the full extent of its impact on a defendant. The inability to pay fines can result in suspension of a driver's license, the loss of public benefits, and the deprivation of important civil rights.[8] And as Professor Steven Mello has noted, "[f]or individuals lacking financial slack, coping mechanisms such as forgoing basic needs, missing bills, or borrowing at high interest rates may impact future financial stability."[9] In a study of Florida traffic fines, Professor Mello found that drivers who are poor "exhibit increases in financial distress observationally similar to a $950 income loss following a $175 ticket"—solely because of their financial instability.[10] The upshot is that fines can have lasting effects far exceeding the base fine amount.

Contrary to the City's argument, the impact of a $547.12 penalty on Long is not mitigated by the $50-per-month payment plan that the municipal court imposed. City Suppl. Br. at 14. As Professor Beth Colgan has explained, payment plans only exacerbate the disproportionality of

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[7] BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2019, at 21 (2020), https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf.
[8] *See* Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 UCLA L. REV. 2, 7–8 (2018).
[9] Steven Mello, *Speed Trap or Poverty Trap?: Fines, Fees, and Financial Wellbeing* 2 (Nov. 14, 2018) (unpublished manuscript), https://mello.github.io/files/jmp.pdf.
[10] *Id.* at 5.

monetary sanctions. While a rich offender "can pay the base fine in one day," a poor offender who cannot pay the base fine endures punishment for a much longer period, all the while "stretch[ing] his meager budget."[11] And although the municipal court here imposed a payment plan with no interest, the payment plan's documentation warned that failure to pay would result in a default penalty of at least $25, along with other unspecified fees. CP 117. All this is consistent with this Court's recognition that "indigent offenders owe higher [legal financial obligations] than their wealthier counterparts because they cannot afford to pay." *State v. Blazina*, 182 Wn.2d 827, 836 (2015).

This Court has already acknowledged the importance of weighing the serious difficulties faced by poor individuals like Long. In *City of Richland v. Wakefield*, this Court considered evidence from "expert witness Dr. Diana Pierce, a professor at the University of Washington School of Social Work," who "testified regarding her research calculating 'self-sufficiency standards,' which are measurements of 'the minimum amount of money you need to adequately meet your basic needs.'" 186 Wn.2d 596, 601–02 (2016).[12] According to Dr. Pierce's testimony, a person in Long's position is likely unable "to secure even the basic necessities with one's own resources" and is thus "forced to sacrifice one

[11] Colgan, *supra* note 8, at 50.
[12] Dr. Pierce later found that the self-sufficiency standard for a Seattle resident is $2,270 per month. DIANA M. PIERCE, WORKFORCE DEV. COUNCIL OF SEATTLE-KING CNTY., THE SELF-SUFFICIENCY STANDARD FOR WASHINGTON STATE IN 2017, at 66 (2017), http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017_SSS.pdf.

need for another, e.g., not eat in order to pay for heat, or be forced to rely on luck, [or] on the uncertainty of the kindness of others." *Id.* at 602. Such individuals have no funds for "recreation, entertainment, savings, debt repayment, or any other needs beyond the inescapable daily needs of basic human existence." *Id.*

Relying on this evidence, the Court held that a district court erred in "disregard[ing] whether [a defendant] could currently meet her own basic needs when evaluating her ability to pay" court-imposed legal financial obligations (LFOs). *Id.* at 606. "A person's present inability to meet their own basic needs is not only relevant, but crucial to determining whether paying LFOs would create a manifest hardship." *Id.* The Court should reach the same conclusion here.[13]

If this Court's proportionality analysis for fines does not require consideration of a defendant's circumstances, as the court of appeals held, then the Excessive Fines Clause offers virtually no protection for poor individuals like Long. Viewed in the abstract, a fine's dollar amount may not seem excessive to a sentencing judge with no insight into the offender's financial status and thus how severe that monetary sanction will be. Without that context, a judge is tasked with answering a largely subjective question—How much is too much for a particular violation?—without any meaningful constitutional restraints. Such discretion is easily

[13] Although the Court in *Wakefield* interpreted "manifest hardship" under RCW 10.01.160(4) rather than the Excessive Fines Clause, *see* 186 Wn.2d at 605, the Court's reasoning logically extends to this constitutional context.

influenced by implicit bias or other impermissible considerations regarding the appropriateness of a fine.[14]

If the right to be protected from excessive fines, enshrined in the Eighth Amendment, is to be a meaningful one for all Washingtonians—including indigent and homeless people like Steven Long—this Court must reject the approach taken by the court of appeals. We therefore urge the Court to require the consideration of a defendant's personal circumstances in determining whether a fine violates the Excessive Fines Clause.

CONCLUSION

For the reasons stated, this Court should reverse the court of appeals' Excessive Fines Clause holding.

RESPECTFULLY SUBMITTED AND DATED this 5th day of February 2021.

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[14] *See* Michael B. Hyman, *Implicit Bias in the Courts*, 102 ILL. B.J. 40, 42 (2014) ("[E]specially where heavy discretion is involved, implicit biases predispose judges in making rulings, jurors in deliberating, and prosecutors in deciding how aggressively to pursue a defendant.").

CERTIFICATE OF SERVICE

I certify that on February 5, 2021, I caused a true and correct copy of the foregoing to be served on the following via email:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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