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**IN THE SUPREME COURT OF THE STATE OF  
WASHINGTON**

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DULING ENTERPRISES, LLC, DBA STUFFY'S II  
RESTAURANT,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

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**BRIEF AMICUS CURIAE OF PACIFIC LEGAL  
FOUNDATION IN SUPPORT OF PETITIONER**

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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized for the purpose of litigating matters affecting the public interest in constitutional rights including property rights. PLF attorneys have participated as lead counsel representing property owners in constitutional cases in the United States Supreme Court, state supreme courts, and other appellate and trial courts.

Relevant here, many PLF clients have faced life-altering fines because of innocent mistakes, poverty, and the increasingly complex codes that seemingly regulate every aspect of property use. Innocuous activity that makes owners subject to daily fines can be as innocent as hanging string lights in a yard. PLF's clients include individuals who face devastating fines, especially modest property owners who face daily fines for minor property-related code violations.

## INTRODUCTION

In *City of Seattle v. Long*, 198 Wn.2d 136, 493 P.3d 94 (2021), this Court affirmed the importance of the federal and Washington excessive fines clauses in preventing the government from imposing oppressive and ruinous fines. This case asks the Court to consider whether the excessive fines clauses will continue to provide meaningful protection, or whether the government may evade them by persecuting businesses instead of natural persons, or by employing daily fines rather than aggregate fines.

The history of both clauses supports holding that the protections apply to Duling Enterprises, LLC (“Stuffys”). Importantly, that protection includes consideration of its ability to pay.

Failure to apply that protection to corporations, LLCs, and other business entities would leave law firms, including public interest law firms, particularly at risk of confiscatory persecution by the very administrations, legislatures, municipalities, and

agencies that they hold accountable through lawsuits. The constitutional prohibitions on excessive fines were designed, in part, to prevent the government from targeting its opponents with ruinous fines. This Court should reject the government's invitation to open the floodgates to such persecution and instead hold fast to the original intent of the clauses.

The Court should also decline the State's invitation to rubber-stamp ruinous daily fines. The State's proposed legal approach would leave Washington's poor and middle class especially vulnerable to ruinous fines.

### **STATEMENT OF THE CASE**

Amicus PLF adopts the Statement in Stuffy's Petition for Discretionary Review.

### **ARGUMENT**

#### **I. The Washington and U.S. Constitutions Prohibit Imposing Excessive Fines on Business, Including LLCs**

The Eighth Amendment declares, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Text of

article I, section 14 of the Washington Constitution is virtually identical. This state’s Excessive Fines Clause is more protective than its federal counterpart, but the Court frequently looks to federal precedent when construing it. *Long*, 198 Wn.2d at 159.

Whether a constitutional guarantee protects corporations “depends on the nature, history, and purpose” of the provision. *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 778 n.14, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978). And the text, history, and purpose of the Washington and federal Excessive Fines Clauses confirm that they protect corporations and LLCs. This Court should again “hew to [the] history.” *Long*, 198 Wn.2d at 173.

#### **A. The Excessive Fines Clause’s Text Supports Its Application Here**

Start with the text. *Wash. Water Jet v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). Though sandwiched between two prohibitions that apply only to criminal punishments, the excessive fines clauses apply to limit both civil and criminal fines. *See Austin v. United States*, 509 U.S. 602, 113 S. Ct. 2801,

125 L. Ed. 2d 488 (1993); *Long*, 198 Wn.2d at 161. And because “[t]he payment of monetary penalties . . . is something that a corporation can do as an entity”—unlike being jailed or being subject to cruel and unusual punishment—it naturally follows that only one of the Eighth Amendment’s prohibitions would be relevant for corporations. *See Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 285, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989) (O’Connor, J., concurring in part and dissenting in part).

Moreover, the Excessive Fines Clause is “a directive to the government not to impose excessive fines.” *Colo. Dep’t of Labor & Empl., Div. of Workers’ Compensation v. Dami Hospitality, LLC*, 442 P.3d 94, 100 (Colo. 2019). Its text does not limit this prohibition to fines imposed on natural persons. *See id.* If anything, the text’s focus on limiting the sovereign’s power supports applying the Excessive Fines Clause to fines imposed on business entities.

## **B. The Clause’s History and Purpose Support Holding That It Protects Business Entities**

The prohibition on excessive fines emerged to prevent the government from improperly using fines as a source of revenue and to prevent the use of fines for political oppression and abuse. *Long*, 198 Wn.2d at 160, 172. “The Court of Star Chamber, for instance, ‘imposed heavy fines on the king’s enemies.’” *Timbs v. Indiana*, 586 U.S. 146, 162, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019) (Thomas, J., concurring) (quoting L. Schwoerer, *The Declaration of Rights* 91 (1993)). But even after the 1641 statute abolishing the Court of Star Chamber “specifically prohibited any court thereafter from . . . levying excessive fines,” Schwoerer, *supra*, at 91, courts again “imposed ruinous fines on the critics of the crown,” *id.* And the years leading up to the enactment of the English Bill of Rights saw fines that were “even more excessive and partisan.” *Id.*

Across the Atlantic and after the Revolution, the Framers of our Bill of Rights carried those concerns into their adoption of the Eighth Amendment. *Browning-Ferris*, 492 U.S. at 267–77.

They understood it to “guard against abuse and oppression.” 2 J. Kent, *Commentaries on American Law* 9 (1827). The Excessive Fines Clause, as Justice Story put it, was “adopted as an admonition to all departments of the national government, to warn them against such violent proceedings as had taken place in England” when “[e]normous fines and amercements were also sometimes imposed.” 2 J. Story, *Commentaries on the Constitution* 624, § 1903 (Cooley 4th ed. 1873). At its core, the Excessive Fines Clause stands as a bulwark between the sovereign’s punitive power and political oppression.

### **C. Government Cannot Bypass the Excessive Fines Clause by Targeting Corporations or LLCs Instead of Individuals**

Behind business entities like corporations and LLCs are natural persons trying to earn a living, provide a charitable service, or organize for political purposes. As Chief Justice Marshall put it, “[i]t is chiefly for the purpose of clothing bodies of men . . . that corporations were invented, and are in use.” *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 636,

L. Ed. 629 (1819). People create LLCs for similar reasons. *See* WASHINGTON STATE DEP’T OF REVENUE, *Compare Business Structures* (LLCs offer more flexibility than corporations, like pass through taxation).<sup>1</sup>

And these business entities, like natural persons, can be subject to fines imposed for “purposes of oppressing political opponents.” *Browning-Ferris*, 492 U.S. at 272. Much like at the Founding, fines are commonplace— “[p]erhaps because they are politically easier to impose than generally applicable taxes, state and local governments nationwide increasingly depend heavily on fines and fees as a source of general revenue.” *Timbs*, 586 U.S. at 154 (quoting Br. for *Amici Curiae* American Civil Liberties Union et al. at 7). And fines “are frequently imposed . . . upon organizational defendants” precisely because they “cannot be imprisoned.” *Southern Union Co. v. United States*, 567 U.S. 343, 349, 132 S. Ct. 2344, 183 L. Ed. 2d 318 (2012).

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<sup>1</sup> <https://dor.wa.gov/open-business/choose-ownership-structure/compare-business-structures>.

This makes the use of fines against business entities ripe for abuse for political purposes. And both sides of the political aisle can offer examples in other contexts. *See, e.g.*, PBS NEWS, *Trump administration targets Harvard's tax-exempt status and international students* (Apr. 17, 2025 7:07pm)<sup>2</sup>; REUTERS, *Trump targets Jenner & Block in latest executive order aimed at law firms* (Mar. 25, 2025 3:01pm)<sup>3</sup>; U.S. NEWS, *Tracking Trump's Crackdown on Higher Education* (Mar. 23, 2026 2:13pm)<sup>4</sup>; CHAIRMAN PAUL FLASH REPORT: THE WEAPONIZATION OF QUIET SKIES AND TSA WATCH LIST (2025) (describing how agency under Biden Administration had targeted Republicans and Tulsi Gabbard)<sup>5</sup>; *People v. Trump*, 237 N.Y.S.3d 443, 622 (N.Y. App.

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<sup>2</sup> <https://www.pbs.org/newshour/politics/trump-administration-targets-harvards-tax-exempt-status-and-international-students>.

<sup>3</sup> [https://www.yahoo.com/news/trump-signs-executive-order-against-190149483.html?fr=sycsrp\\_catchall](https://www.yahoo.com/news/trump-signs-executive-order-against-190149483.html?fr=sycsrp_catchall).

<sup>4</sup> <https://www.usnews.com/news/national-news/articles/trumps-higher-education-crackdown-visa-revocations-dei-bans-lawsuits-and-funding-cuts>.

<sup>5</sup> <https://www.hsgac.senate.gov/wp-content/uploads/flash-report-final-1.pdf>.

Ct. 2025) (Friedman, J., concurring in part) (prosecutor’s “ultimate goal” in case imposing half a billion in fines was “political hygiene, ending with the derailment of President Trump’s political career and the destruction of his real estate business”). This Court should deadbolt the door on using fines to oppress political opponents before it can open.

That threat is even more prominent for organizations formed specifically to “defend[] Americans’ liberties when threatened by government overreach and abuse.” PACIFIC LEGAL FOUNDATION, *About Pacific Legal Foundation*<sup>6</sup>; see also AMERICAN CIVIL LIBERTIES UNION, *History: Why We Do What We Do* (“We work to stop the erosion of civil liberties before it’s too late”)<sup>7</sup>; FIRE, *About Us: Mission* (“FIRE’s mission is to defend and sustain the individual rights of all Americans to free speech and free thought.”)<sup>8</sup>.

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<sup>6</sup> <https://pacificlegal.org/about/>.

<sup>7</sup> <https://www.aclu.org/about/aclu-history>.

<sup>8</sup> <https://www.fire.org/about-us/mission>.

And fines imposed on business entities to generate revenue can also result in injustice. That is because when the business is fined, the natural persons behind it sometimes suffer devastating losses. For example, PLF client DJB Rentals, LLC became insolvent because of harmless code violations. DJB Rentals, which owned a modest rental property, was established by a senior citizen as the foundation of his retirement plan. But daily accruing fines for minor violations ultimately led the city to confiscating the entire property, leaving the LLC insolvent and the owner without any means of livelihood. Instead of enjoying his senior years, the owner was forced to start over and return to work.

Similarly, PLF client Hoopes Vineyard, LLC and its owner and operator Lindsay Hoopes both face bankruptcy and loss of livelihood because the vineyard held wine tastings at its small winery in Napa Valley. They had thought the vineyard obtained the correct local permission, but the local city disagreed and

slapped the winery *and Ms. Hoopes* with devastating daily fines and fees reaching \$4 million that will leave them in ruin.

The upshot is that for some owners, the “secondary impacts” of excessive fines on their business are more than just “los[ing] the value of the company.” Respondent’s Answer to Pet. for Rev. at 20 (L&I Br.). It can mean “declar[ing] personal and business bankruptcy.” *Dami Hospitality, LLC v. Indus. Claim Appeals Office*, 457 P.3d 621, 624 (Colo. App. Ct. 2017). And “[t]hey can damage credit scores and directly compromise access to credit, rental housing, mortgages, automobiles, and employment.” Br. for *Amici Curiae American Civil Liberties Union et al.* at 15, *Timbs, supra* (No. 17-1091).

In sum, the Excessive Fines Clause was intended to prevent political abuse and injustice. “Punitive fines,” as this Court put it, “should not be sought or imposed ‘to retaliate against or chill the speech of political enemies’ or as ‘a source of revenue.’” *State v. Grocery Mfrs. Ass’n*, 195 Wn.2d 442, 476, 461 P.3d 334 (2020) (quoting *Timbs*, 586 U.S. at 153–54).

Excluding business entities would allow the government to do indirectly (through entities) what it cannot do to individuals directly. The Court should ensure that the Excessive Fines Clause continues to provide meaningful protection to the hundreds of thousands of businesses<sup>9</sup> in this state and consequently the natural persons behind those business entities.

## **II. The Fine Against Stuffy’s Is Excessive**

### **A. No Presumption of Constitutionality Applies to Civil Fines under the Eighth Amendment**

The State argues that the Court must apply a “strong presumption . . . that a [fine] is constitutional” if “the value of the fine is within the range prescribed by a legislative body.” L&I Br. at 15 (quoting *Long*, 198 Wn.2d at 175) (citing *United States v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009)). And because the fines here “were 25 percent of the legislatively designated range of \$70,000 per violation,” L&I Br. at 7, Stuffy’s must

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<sup>9</sup> See Office of the Secretary of State, <https://ccfs.sos.wa.gov/#/AdvancedSearch> (search returns over 470,000 active LLCs, 75,000 active for-profit corporations, and 60,000 active nonprofit corporations).

“overcome” this “strong presumption of constitutionality,” *id.* at 25. But *Long* did not hold that a strong presumption applies. Rather, it responded to the argument raised by the City of Seattle (citing the Eleventh Circuit) that a strong presumption must apply. *See Long*, 198 Wn.2d at 175 (“[T]hough not referenced in our proportionality test, the Court of Appeals below considered the legislative approval of the fines.”).

Indeed, any such presumption of constitutionality lacks a foundation in Supreme Court precedent and contradicts the original meaning and purpose of the Excessive Fines Clause. In *United States v. Bajakajian*, 524 U.S. 321, 336, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998), the Supreme Court stated that a legislature is the appropriate body to determine the appropriate punishment in the first instance when the Court was “deriving a constitutional excessiveness standard.” *Id.* Because that principle (along with one other) “counsel[ed] against requiring strict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense,” the Supreme Court chose a

“gross disproportionality” test. *Id.* In other words, deference to the legislature’s judgment is why the standard is gross disproportionality and not strict proportionality; deference is thus already baked into the gross disproportionality standard. *See id.*

The very next paragraph of *Bajakajian* confirms this reading. After choosing the gross disproportionality standard, the Supreme Court then directed “district courts *in the first instance*” to “compare the amount of the forfeiture to the gravity of the defendant’s offense” and declare it unconstitutional “[i]f the amount of the forfeiture is grossly disproportional.” *Id.* at 336–37 (emphasis added). That does not “require[] lower courts to apply deference anew in each case to the legislatively enacted fine.” *Robson 200, LLC v. City of Lakeland*, 593 F. Supp. 3d 1110, 1120 (M.D. Fla. 2022).

And applying such a presumption would, in effect, defer to the legislature twice over even though “it makes sense to scrutinize governmental action more closely when the State stands to benefit.” *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9,

111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (opinion of Scalia, J.).  
Allowing a legislature to both levy a fine and presumptively determine its constitutionality is “a bit like letting the driver set the speed limit.” *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (Newsom, J., concurring).  
Indeed, “[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” because “fines are a source of revenue.” *Harmelin*, 501 U.S. at 978 n.9 (opinion of Scalia, J.).

At bottom, because the Excessive Fines Clause is a prohibition on the legislature, it demands meaningful judicial scrutiny—not deference in double measure. This Court should thus reject applying a presumption of constitutionality.

**B. The Aggregate Amount Should Be Considered Along with the Per Violation Amount**

The government here frames the constitutionality entirely in terms of the per-violation or per-day amount—not the

cumulative total fine. *See* L&I Br. at 27 (“Duling Enterprises was cited at \$18,000 per violation”); L&I Supp. Br. at 15 (“Proportionality is viewed per violation, not the cumulative fine.”). Indeed, the State does not argue that its aggregate fine is constitutional.

But that approach conflicts with the requirement that an excessive fines analysis “consider” the defendant’s “ability to pay.” *See Long*, 198 Wn.2d at 173. Whether a party can pay a fine will, in most cases, turn on the aggregate fine imposed instead of the per violation amount. So, naturally, an ability to pay analysis must consider the aggregate fine amount along with the per violation amount. Ignoring the aggregate fine “risks immunizing” statutes “from constitutional attack under the Eighth Amendment.” *Dami Hospitality*, 442 P.3d at 104–05 (Samour, J., concurring in part and dissenting in part).

To be clear, a party’s willful failure to correct a violation can be relevant in an excessive fine analysis. But if only the per violation amount is relevant in an ability to pay analysis, the

legislature could manipulate fines to circumvent the Excessive Fines Clause. The danger is especially apparent in property cases where owners who can't afford to make repairs are treated as if every single day is a new violation and fined accordingly. While \$100 per day for chipping paint might be affordable on day one (the first violation), few people could afford it on day 100.

### **C. The Fine Is Excessive in Light of Stuffy's Inability to Pay**

The Eighth Amendment “descended” from Magna Carta, which forbids “penalties ‘so large as to deprive [a person] of his livelihood.’” *Long*, 198 Wn.2d at 168 (quoting *Browning-Ferris*, 492 U.S. at 271) (alteration in original). The protection was simple: a fine should not be more than the fined party’s “circumstances or personal estate will bear; saving to the landholder his contenment, or land; to the trader his merchandize; and to the countryman his wainage, or team, and instruments of husbandry.” 4 Blackstone, *Commentaries on the Laws of England* \*379. Put another way, the Excessive Fines

Clause has a “merciful spirit.” T. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 329 (1868).

So, as this Court explained, “excessiveness concerns more than just an offense itself; it also includes consideration of an offender’s [financial] circumstances.” *Long*, 198 Wn.2d at 171. And because “[t]he central tenant of the excessive fines clause is to protect individuals against fines so oppressive as to deprive them of their livelihood,” *id.*, a party’s ability to pay “can outweigh all other factors” in an excessive fines analysis, *Jacobo Hernandez v. City of Kent*, 19 Wn. App. 2d 709, 723, 497 P.3d 871 (2021) (citing *Long*, 198 Wn.2d at 168–69). This is consistent with historical amercement practice. *See Browning-Ferris*, 492 U.S. at 289 (O’Connor, J., concurring in part and dissenting in part) (discussing how after a court initially set “the amount of an amercement,” “[a] group of the amerced party’s peers would then be assembled to reduce the amercement in accordance with the party’s ability to pay”).

The ability-to-pay analysis does not vanish simply because a person organizes their business as a corporation or an LLC. True, a corporation or an LLC is a “separate, nonliving entity” that “does not breathe.” L&I Supp. Br. at 27. But if a “trader” was saved his “merchandize,” Blackstone, *supra*, at \*379, then a corporation is likewise saved its necessities. It makes little sense to distinguish between the trader without formal organization and the trader with formal organization. That is even more so when the state encourages the trader, with limited liability and lower tax rates, to formally organize.

The Supreme Court has already impliedly recognized as much when it reviewed excessiveness of fines imposed on corporations under the Due Process Clause. *See Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 111, 29 S. Ct. 220, 53 L. Ed. 417 (1909). And in doing so, the Court noted that “[t]he property of the defendant amounted to more than forty millions of dollars” and “[i]ts dividends had been as high as seven hundred per cent per annum.” *Id.* at 111–12. If a corporation’s assets are relevant

for a Due Process analysis, then a corporation's ability to pay is relevant for an Excessive Fines Clause analysis. As the Colorado Supreme Court put it, "[a] fine that would bankrupt a person or put a company out of business would be a substantially more onerous fine than one that did not." *Dami Hospitality*, 442 P.3d at 102.

Here, Stuffy's submitted unrebutted evidence, including tax returns, show that it lost hundreds of thousands of dollars in 2020 and 2021. The State below argued that PPP funds almost cancelled out that loss. But the restaurant still did not turn a profit. Moreover, Stuffy's submitted a declaration from the owner stating that Stuffy's could not afford to pay and showing that even in 2022, the restaurant made less than \$10,000 in profit for the entire year. This evidence was unrebutted by the State. Thus, Stuffy's established it could not pay the fines.

The State argues that the inability of Stuffy's to pay is irrelevant because the corporation could just cease operating. But the State's argument proves why imposing excessive fines is

counterproductive: by demanding far more than the restaurant can pay, the State will ensure it gets paid virtually nothing, while destroying the livelihood of the owner and the restaurant's employees in the process. *Cf. People v. Duenas*, 30 Cal. App. 5th 1157, 1167, 242 Cal. Rptr. 3d 268 (2019) (economic sanctions on individuals who cannot pay are "counterproductive" because they do not "augment the State's revenues" nor do they meaningfully further the State's "penal objective[s]" because "the defendant cannot pay"). Adjusting the fine to a reasonable level would save those livelihoods and ensure the State obtains more tax revenue and more payments toward a reasonable fine in the end.

There is little precedent for the lower courts and counsel to follow in following an ability to pay analysis. Below, Stuffy's demonstrated its lack of income. Rather than hold an ability to pay hearing where such evidence can be fully aired and Stuffy's would have an opportunity to rebut any eleventh hour assertions made by the State that its owners should have said more to prove

its dire circumstances, the lower court simply held—without briefing—that Stuffy’s should have anticipated the argument and better proved its inability to pay. This Court should reject such an extreme approach to the Excessive Fines Clause, which will benefit the government more when it waits to raise its arguments until after briefing has concluded and all evidence has been submitted. This would severely weaken the protection and cause injustice. The Court should hold the fine was excessive or remand for the lower court to take additional evidence.

### **CONCLUSION**

The Court should hold that the fines are unconstitutionally excessive or remand for Stuffy’s to supplement the record with information about its assets to prove its absolute inability to pay.

### **RAP 18.17(b) CERTIFICATE OF COMPLIANCE**

The undersigned certifies that the foregoing brief complies with the rules of this Court and contains 3,694 words.

DATED: March 30, 2026.

Respectfully submitted,

PACIFIC LEGAL FOUNDATION

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**DECLARATION OF ELECTRONIC SERVICE**

The undersigned declares that all parties' counsel will receive electronic notice of the filing of this document at the Washington State Appellate Courts' Portal.

DATED: March 30, 2026.

s/ Christina M. Martin  
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