No. 24-

IN THE

Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

v.

JESUS PIMENTEL, DAVID WELCH, JEFFREY O'CONNELL, EDWARD LEE, WENDY COOPER, JACLYN BAIRD AND RAFAEL BUELNA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a government defending against an Eighth Amendment excessive fines claim under 42 U.S.C. § 1983 bear a burden to produce affirmative evidence that the fine is *not* grossly disproportionate to the gravity of the offense, when the plaintiff lacks evidence to establish a prima facie case of gross disproportionality as required by *United States v. Bajakajian*, 524 U.S. 321 (1998)?

PARTIES TO THE PROCEEDING

Petitioner, the City of Los Angeles, was the Defendant and Appellee in the Ninth Circuit.

Respondents are Jesus Pimentel, David Welch, Jeffrey O'Connell, Edward Lee, Wendy Cooper, Jaclyn Baird, and Rafael Buelna, who were the Plaintiffs and Appellants in the Ninth Circuit.

Former plaintiffs Anthony Rodriguez and Elen Karapetyan were not parties to the proceeding in the Ninth Circuit because they voluntarily dismissed their claims by stipulation before the proceeding began.

RELATED PROCEEDINGS

This proceeding arises from the same district court case as the related Ninth Circuit proceeding in *Pimentel v. City of Los Angeles* (*Pimentel I*), Case No. 18-56553, in which the Ninth Circuit entered judgment on July 22, 2020, and amended the judgment on September 11, 2020. The Ninth Circuit's judgment in that prior, related proceeding is reported at 974 F.3d 917. The Ninth Circuit partially affirmed and partially reversed a summary judgment in favor of Petitioner and remanded for further proceedings in the district court. The proceedings on remand gave rise to the Ninth Circuit judgment that is the subject of this petition, *Pimentel v. City of Los Angeles* (*Pimentel II*), Case No. 22-55946, entered on September 9, 2024, and reported at 115 F.4th 1062.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, the City of Los Angeles, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 115 F.4th 1062, and reprinted in the Appendix at 1a-45a. The district court's opinion is not reported but is available at 2022 WL 9274650 and reprinted in the Appendix at 48a-66a.

The Ninth Circuit's opinion in the prior, related proceeding identified above (*Pimentel I*) is reported at 974 F.3d 917, and reprinted in the Appendix at 67a-88a. The district court's opinion in that proceeding is not reported but is available at 2018 WL 6118600, and reprinted in the Appendix at 89a-112a.

JURISDICTION

The Ninth Circuit entered its judgment on September 9, 2024. App. 2a. On October 30, 2024, the Ninth Circuit denied Petitioner's timely petition for rehearing en banc. App. 46a. On December 13, 2024, Justice Kagan extended the time to file this petition for a writ of certiorari until March 28, 2025 (Application No. 24A579). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The district court had jurisdiction under 28 U.S.C. § 1343. The Ninth Circuit had jurisdiction under 28 U.S.C. § 1291.

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

U.S. Const. amend. VIII: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Los Angeles Municipal Code § 88.13 is set forth at App. 113a.

Los Angeles Municipal Code § 89.60 is set forth at App. 114a-138a.

INTRODUCTION

Petitioner, the City of Los Angeles ("the City"), respectfully seeks this Court's review due to the extraordinary burdens that will be placed on the City and other local and state governments if this Court permits the Ninth Circuit's unprecedented reversal of the burden of proof on an Eighth Amendment excessive fines claim under 42 U.S.C. § 1983 to stand. The question presented is: Does a government defending against an Eighth Amendment excessive fines claim under 42 U.S.C. § 1983 bear a burden to produce affirmative evidence that the fine is *not* grossly disproportionate to the gravity of the offense, when the plaintiff lacks evidence to establish a prima facie case of gross disproportionality as required by *United States v. Bajakajian*, 524 U.S. 321 (1998)? The Ninth Circuit erroneously answered "yes," improperly shifting a plaintiff's burden to establish that a fine is excessive to the defendant government to justify, through affirmative evidence, how and why its legislative body set the fine's specific amount, no matter how reasonable on its face.

This case arises from a challenge to the City's $63 late fee for failure to timely pay a $63 fine for illegally parking at a meter. The City successfully moved for summary judgment against the Plaintiffs' claim that the $63 late fee is excessive, and discharged its summary judgment burden under this Court's precedent by demonstrating that Plaintiffs had no evidence that the $63 late fee is grossly disproportionate to the gravity of the offense. *See Bajakajian*, 524 U.S. at 336; *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

The majority of the Ninth Circuit panel reversed, erroneously holding that the City bore the burden to produce evidence that the $63 late fee is *not* grossly disproportionate to the gravity of the offense—even though the Ninth Circuit did not and could not find that Plaintiffs made a prima facie showing of gross disproportionality.

The Ninth Circuit's erroneous decision exposes every municipal, county, and state government throughout the Ninth Circuit—and beyond, if other courts of appeals adopt the decision's reasoning—to the burdens of discovery and trial in every future lawsuit challenging any fine, even one as modest and routine as the City's $63 late fee for untimely payment of its $63 parking meter fine. Other cities impose similar 100% late fees for parking fines, and the State of California imposes across-the-board 50% late fees for traffic fines (reaching as high as a $500 late fee for a $1,000 traffic fine). The Ninth Circuit's decision exposes all these late fees—and many more routine fines—to an Eighth Amendment constitutional challenge through and including trial, if the legislative bodies that imposed them did not explicitly identify reasons for their amounts when they enacted the fines and fees. In doing so, the

Ninth Circuit opens the door to boundless and endless litigation and impermissibly encroaches upon legislative policy making.

The Ninth Circuit's erroneous decision conflicts with decisions of the Second, Seventh, Eighth, and Eleventh Circuits, which affirmed dismissals and summary judgments dismissing excessive fines claims on the merits prior to trial without imposing any evidentiary burden on the government to explain or justify the amounts of the fines with affirmative evidence. Moreover, the Ninth Circuit's decision conflicts with this Court's summary judgment precedent holding that a defendant need not produce *any* evidence in moving for summary judgment on an issue on which the plaintiff bears the burden of proof, *Celotex*, 477 U.S. at 325, as well as this Court's Excessive Fines Clause precedent holding that courts owe substantial deference to legislative judgment, *Bajakajian*, 524 U.S. at 336.

In short, this Court should grant the petition for a writ of certiorari because the Ninth Circuit erroneously decided an exceptionally important question in a manner that conflicts with decisions of other courts of appeals and this Court itself.

STATEMENT OF THE CASE

A. The underlying facts

Under California law, all parking offenses under the California Vehicle Code and local ordinances are subject to civil penalties. Cal. Veh. Code § 40200(a). The California Legislature directs the governing body of each local

jurisdiction to establish a schedule of parking fines and late fees. Cal. Veh. Code § 40203.5(a).

In 2012, the Los Angeles City Council enacted the current version of Los Angeles Municipal Code § 89.60, which establishes the schedule of fines and late fees for 164 parking offenses. App. 114a-137a. As relevant, the ordinance sets a $63 fine and $63 late fee for the offenses of parking at a meter without paying and parking at a meter beyond the time purchased or the maximum time allowed. App. 113a, 123a. The City imposes the $63 late fee if the offender fails to pay the $63 fine within 21 days of the citation date. App. 3a.

Plaintiffs each incurred at least one $63 parking meter fine and $63 late fee. App. 4a.

B. The proceedings in the district court and a prior appeal

In 2015, Plaintiffs filed this putative class action under 42 U.S.C. § 1983 in the district court, alleging that the City's $63 parking meter fine and $63 late fee violate the Eighth Amendment's Excessive Fines Clause. App. 4a. In *United States v. Bajakajian*, 524 U.S. 321 (1998), this Court held that a fine or criminal forfeiture violates the Excessive Fines Clause only if a court determines that the amount is grossly disproportionate to the gravity of the offense. *Id.* at 336–37. The Court determined that a forfeiture of $357,144 in currency was grossly disproportionate to the defendant's offense of failing to report his lawful removal of the currency from the United States, considering four factors: (1) the nature and extent of the offense; (2) whether the offense related to other

illegal activities; (3) whether other penalties could be imposed for the offense; and (4) the extent of the harm caused by the offense. *Id.* at 337–39.

Here, the district court granted the City's summary judgment motion, applying the *Bajakajian* factors to the City's $63 initial fine and finding that it did not violate the Excessive Fines Clause because it was not grossly disproportionate to the gravity of the offense of overstaying a parking meter. App. 100a-111a. The district court rejected Plaintiffs' challenge to the $63 late fee in a footnote on the same grounds. App. 103a-104a. The Ninth Circuit affirmed summary judgment for the City as to the constitutionality of the fine, but remanded to the district court for further consideration of the late fee because the district court did not separately apply the *Bajakajian* factors to the late fee. App. 73a-81a.

On remand, the parties filed cross-motions for summary judgment. App. 48a. The City argued that no evidence supported Plaintiffs' claim that the $63 late fee is grossly disproportionate to the gravity of the offense of failing to timely pay the $63 parking meter fine. (Supplemental Excerpts of Record (SER) 78–80, 86–96, ECF No. 28.) Plaintiffs argued that the late fee should be no higher than $25, relying on declarations from two former City officials who opined, without any evidentiary support, that the City Council increased the amounts of the fine and late fee to $63 for the sole purpose of raising revenue. App. 14a-15a, 44a, 63a-64a.

The district court granted the City's cross-motion for summary judgment and denied Plaintiffs' motion, applying the *Bajakajian* factors and finding that the

$63 late fee does not constitute an excessive fine because it bears "some" relationship—which is all *Bajakajian* requires—to the gravity of the offense of failing to timely pay the $63 parking meter fine. App. 65a, quoting App. 78a (quoting *Bajakajian*, 524 U.S. at 334). The district court reasoned that the late fee deters untimely payment of the fine and thus protects the City from monetary harm (the aggregate costs of alternative efforts to collect payment) and nonmonetary harm (noncompliance with the City's municipal laws). App. 59a-62a. "In short, in light of the monetary and non-monetary harms cited by the City, and '[w]ithout material evidence provided by [plaintiffs] to the contrary,' the court 'must afford "substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments."'" App. 62a-63a, quoting App. 78a (quoting *Bajakajian*, 524 U.S. at 336).

C. The Ninth Circuit's decision

A divided panel of the Ninth Circuit reversed the summary judgment for the City on Plaintiffs' facial challenge to the $63 late fee. App. 9a-19a. The majority and the dissent unanimously rejected Plaintiffs' *as-applied* challenge, App. 19a-24a, which is not at issue in this petition.

In reversing the summary judgment on Plaintiffs' facial challenge, the majority applied the *Bajakajian* factors and found that the first three factors did not strongly favor either party. App. 10a. With respect to the fourth factor (the harm caused by the offense), the majority found that the offense of failing to timely pay the parking meter fine causes the City "fairly obvious"

monetary harms in the form of "administrative costs to collect the parking fines and the time-value of fees not collected timely," as well as nonmonetary harm to the City's "interest in ensuring compliance with the law." App. 11a.

Nevertheless, the majority erroneously faulted the City for failing to produce affirmative evidence explaining why "the [$63] penalty amount was actually tethered to the nature and extent of the harm caused by nonpayment." App. 18a. The majority refused to presume that the $63 amount was "tied to the extent of harm," finding that Plaintiffs countered that presumption and created a triable issue of fact with the two former officials' unsubstantiated opinions that revenue generation motivated the City Council to increase the late fee's amount to $63. App. 18a-19a.

The majority held that the City "has not met its low burden of showing that a 100 percent late payment penalty of $63—a not insubstantial amount—is sufficiently large enough to ensure timely payment but is not so large as to be grossly out of proportion to the offense of nonpayment within 21 days." App. 16a. The majority erroneously concluded that a genuine factual dispute about the City's "basis for setting the late fee at 100 percent of the parking fine" precluded the district court's finding as a matter of law that the $63 late fee is not excessive. App. 3a.

Judge Mark J. Bennett dissented. App. 24a. Judge Bennett reviewed the history of the Excessive Fines Clause and this Court's related jurisprudence, observing that *Bajakajian* adopted the gross disproportionality standard based on the controlling principles that "'judgments about the appropriate punishment for an

offense belong in the first instance to the legislature,'" and that "'any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise.'" App. 28a (quoting *Bajakajian*, 524 U.S. at 336). Judge Bennett concluded that the majority decision violates these principles because the decision "neither gives legislative bodies the substantial deference that they are owed, nor does it adequately address how … a $63 fine *could* be grossly disproportionate—especially in light of Plaintiffs' own expert testifying that *some* fine was appropriate and that even a $25 fine would be proportional." App. 29a (original italics). Judge Bennett "would find that the $63 late fee is easily proportional (and certainly not grossly disproportional) to the recognized (and obvious) harms that flow from late payment of the original parking fine." App. 41a.

Judge Bennett further concluded that the majority decision contradicts *Bajakajian* by relying on the City Council's alleged motive to raise revenue, because "*Bajakajian* does not require that a legislative body affirmatively prove to a trier of fact that it was not motivated by revenue generation in implementing a fine." App. 34a. Judge Bennett warned that the majority's erroneous reliance on motivation "improperly requires legislative bodies (at least in some circumstances) to make specific findings on why they enact a certain fine, lest they be accused, as the City is here, of failing to provide sufficient evidence of why the City chose $63 and not $62." App. 32a-33a (footnote omitted). "And if such findings are required for a $63 parking late fee, one can imagine a similar requirement for scores of what would have here-to-fore been thought to be routine fine settings. And so, scores of potential future federal court § 1983 actions and class actions." App. 32a-33a.

REASONS FOR GRANTING THE PETITION

Three compelling reasons warrant this Court's review of the Ninth Circuit's decision. First, the Ninth Circuit decided an "important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). Second, the Ninth Circuit's decision conflicts with decisions of other courts of appeals. Sup. Ct. R. 10(a). Finally, the Ninth Circuit's erroneous answer to this important question "conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). The question the petition raises is important and has wide-ranging implications for state and local governments and whether the manner in which they set their fines and fees exposes them to class action lawsuits alleging civil rights violations with the potential for enormous damages and attorney's fee awards.

I. The Ninth Circuit decided a question of great practical importance to governments that impose countless fines throughout the nation.

The Ninth Circuit erroneously answered "yes" to an important question of federal law: Does a government defending against an Eighth Amendment excessive fines claim under 42 U.S.C. § 1983 bear a burden to produce affirmative evidence that the fine is *not* grossly disproportionate to the gravity of the offense, when the plaintiff lacks evidence to establish a prima facie case of gross disproportionality as required by *United States v. Bajakajian*, 524 U.S. 321 (1998)? App. 12a, 16a-18a. This Court should grant certiorari to settle that the answer to this important question is "no." That answer will eliminate a conflict between the Ninth Circuit's decision and decisions of other courts of appeals which do not

require governments to produce affirmative evidence to defeat such claims (as discussed in the next section of this petition), and will reaffirm this Court's precedents on summary judgment burdens and the Excessive Fines Clause (as discussed in the final section). It will also spare state and local governments throughout the nation from unwarranted burdens of discovery and trial in individual and class actions over countless lawful fines and late fees.

Nothing in the Ninth Circuit's decision limits its holding to the specific $63 parking meter late fee at issue in this case, to *parking* fines and fees, or to fines and fees imposed by *the City* rather than by other governments. Nothing in the Ninth Circuit's decision also limits its holdings to pretrial motions to dismiss or motions for summary judgment. On the contrary, the decision erroneously imposes an evidentiary burden on *any* government moving for summary judgment or during trial on an excessive fines claim to explain and justify the amount of *any* fine, no matter how small. App. 12a ("So long as a government provides an unrebutted commonsense explanation or some—even relatively weak—evidence to justify its fine, it will likely prevail against an Excessive Fines Clause challenge.") (italics omitted); App. 18a-19a ("[The Ninth Circuit's] approach … just requires the government to provide some evidence that the fine amount was not wholly arbitrary.").

The Ninth Circuit's approach stands in stark contrast to this Court's approach to reviewing statutes for a rational basis in the context of equal protection claims. As the Court explained in *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307 (1993), "because we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually

motivated the legislature." *Id.* at 315. "Thus, the absence of legislative facts explaining the distinction on the record has no significance in a rational-basis analysis. In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Id.* (internal citations and quotation marks omitted).

Moreover, if the Ninth Circuit's decision stands, its practical impact will be sweeping. As Judge Bennett warned in dissent, the majority decision invites courts to require legislative bodies to make specific findings as to why they enacted countless "routine" fines, and thus opens the floodgates to "scores of potential future federal court § 1983 actions and class actions." App. 32a-33a.

The City itself will likely face dozens of such actions. Los Angeles Municipal Code § 89.60 establishes a schedule of fines and late fees for 164 parking offenses, and 137 of these offenses carry a late fee equal to 100% of the initial fine. App. 114a-137a. Many of these 100% late fees equal or exceed the $63 late fee at issue in this case (e.g., a $93 late fee for untimely payment of a $93 fine for parking in a red no-stopping zone). App. 116a. The Ninth Circuit's decision threatens to burden the City with producing evidence in future litigation, through discovery and trial, to explain and justify with affirmative evidence, the legislative decision making behind each and every one of its 164 parking fines and late fees, regardless of their modest sizes and commonsense justifications.

The Ninth Circuit's decision threatens to expose other local governments to similar litigation throughout the Ninth Circuit—and elsewhere in the nation, if other circuit courts follow the Ninth Circuit's holding. Within

Los Angeles County alone, the City of Santa Monica, like Petitioner, imposes a $63 late fee for its $63 parking meter fine—in addition to 60 other 100% late fees that Santa Monica imposes for parking offenses, ranging as high as $163.[1] Similarly, the City of Beverly Hills imposes a $58 late fee for its $58 parking meter fine, in addition to 70 other 100% parking late fees up to $158.[2] Los Angeles County itself imposes 100% late fees for a $40 parking meter fine and 99 other parking fines up to $350.[3] These are just three examples of public entities that impose 100% late fees but multiple examples abound, including the District of Columbia;[4] Dallas, Texas;[5] and Chicago, Illinois.[6]

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1. *Schedule of Civil Penalties for Parking Violations and for Late Payments*, City of Santa Monica Fin. Dep't, https://finance.smgov.net/Media/Default/fines/Parking.pdf (available at https://finance.smgov.net/fees-taxes/fines).

2. *Fiscal Year 2024-25 Schedule of Taxes, Fees and Charges* (July 2024), City of Beverly Hills Fin. Dep't, at 40–43, https://www.beverlyhills.org/DocumentCenter/View/7245/FY-2024-2025-Schedule-of-Taxes-Fees-and-Charges-PDF (available at https://www.beverlyhills.org/339/Taxes-Fees-Charges).

3. L.A. County Code §§ 15.200.010, 15.200.030 (available at https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT15VETR_DIV3PEFEREVISTPALA).

4. D.C. Code §§ 50–2301.05(a)(2)(A), 50–2303.05(d)(1) (available at https://code.dccouncil.gov/us/dc/council/code/titles/50/chapters/23).

5. Dallas City Code § 28-130.9(c) (available at https://codelibrary.amlegal.com/codes/dallas/latest/dallas_tx/0-0-0-112824).

6. *Parking, Standing and Compliance Violations*, City of Chicago Fin. Dep't, https://www.chicago.gov/city/en/depts/fin/provdrs/parking_and_redlightcitationadministration/supp_info/ParkingStandingandComplianceViolations.html.

Parking is not the only area in which the Ninth Circuit's new evidentiary burden will interfere with state and local governments' authority. For example, the California Legislature enacted 50% late fees for all traffic fines under the California Vehicle Code unrelated to parking. Cal. Veh. Code § 40310; Cal. Stats. 1992, ch. 696 (A.B. 1344), § 93. The 50% formula yields late fees as high as $125 and $500. *See, e.g.,* Cal. Veh. Code § 5201.1(d) ($250 fine for tampering with license plate), § 10852.5(c)(1) ($1,000 fine for unauthorized purchase of used catalytic converter).

If even one future plaintiff merely *alleges* that California's $125 late fee for tampering with a license plate, for example, is excessive, the Ninth Circuit's decision will apparently require the State to produce affirmative evidence explaining why the Legislature set the late fee at $125. The State will likely find it impossible to meet this burden, since (as noted) the Legislature set the amount by applying a 50% formula to *all* traffic fines *across the board*, rather than calibrating the amount of each late fee to the specific harm caused by nonpayment of each corresponding traffic fine. Cal. Veh. Code § 40310; Cal. Stats. 1992, ch. 696 (A.B. 1344), § 93. Nevertheless, absent affirmative evidence of such calibration, the Ninth Circuit's decision will likely subject the State to the burdens of discovery and trial in future lawsuits.

Powerful financial incentives will motivate plaintiffs' attorneys to challenge all these parking and traffic fines—among other routine fines—in class actions. In this case, for instance, Plaintiffs seek damages as high as *$20 million* based on their putative class's payment of the $63 late fee from 2012 to 2016. (Decl. of Pls.' Expert Karl

J. Schulze in Supp. of Pls.' Mot. for Class Certification 3, 13, 29–30, ECF No. 122-3.) Plaintiffs also seek attorney's fees under 42 U.S.C. § 1988. (SER 39, ECF No. 28.) If governments are required to produce affirmative evidence for the reasons they selected each individual fine or late fee and how the fine or fee is tethered to the severity of the offense, they will be required to try every single one of these cases or be forced to settle to avoid the massive burdens the Ninth Circuit's ruling will impose.[7]

The Ninth Circuit's decision heightens the already powerful financial incentives for plaintiffs' attorneys to bring constitutional litigation over routine fines, because it heightens the pressure on the government to settle excessive fines claims by paying damages and attorney's fees. It does so by erroneously imposing a burden on the government to explain and justify a fine's amount with affirmative evidence. App. 12a, 16a-18a. This erroneous evidentiary burden not only makes it more difficult for the government to successfully move for summary judgment, but also makes it difficult for a government to prevail at trial because the public entity will need to produce affirmative evidence of the reasoning for its fine even if the plaintiff does not produce evidence of disproportionality.

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7. Class action lawsuits are particularly daunting and burdensome because of the pressure they place on a defendant (which in the case of government entities is the tax-paying public), to settle cases. *See, e.g.*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011). "Faced with even a small chance of devastating loss, defendants [are] pressured into settling questionable claims." *Id.*; *see also Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 485 (2013) (Scalia, J., dissenting) ("Certification of the class is often, if not usually, the prelude to a substantial settlement by the defendant because the costs and risks of litigating further are so high.").

Moreover, the erroneous evidentiary burden appears to preclude the government from successfully moving for dismissal on the merits of an excessive fines claim at the pleading stage, when courts refuse to consider evidence outside the pleadings and assume the plaintiffs' non-conclusory allegations are true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

In fact, a different panel of the Ninth Circuit already cited the decision below in a manner implying that the decision precludes a merits-based dismissal of excessive fines claims on the pleadings. In *Thomas v. Cnty. of Humboldt, California*, 124 F.4th 1179 (9th Cir. 2024), a putative class action, a Ninth Circuit panel reversed a district court's dismissal of excessive fines challenges to a county's minimum $6,000 per day penalties for failing to abate the illegal cultivation of cannabis at the offender's property. *Id.* at 1184. The panel concluded that the fourth *Bajakajian* factor (harm caused by the offenses) favored the plaintiffs because they *alleged* that their offenses "caused no harm beyond a technical lack of compliance with the County's cannabis permitting regulations." *Id.* at 1194. In support of this conclusion, the panel quoted the Ninth Circuit's demand in this case for the City to "'provide some evidence that the penalty amount was actually tethered to the nature and extent of the harm caused by nonpayment.'" *Id.* (quoting App. 18a (italics omitted)). The panel appeared to require the county to support its motion to dismiss with *evidence*—but the panel nevertheless declined to address various documents that the district court judicially noticed on the county's request. *Id.* at 1185 & n.3.

Thus, the *Thomas* Ninth Circuit panel relied on the decision below to impose an evidentiary burden on the

county that the county could not possibly meet in moving to dismiss at the pleading stage. *Thomas* is an early warning sign of the widespread problems that the Ninth Circuit's decision below will cause if this Court does not settle the important question that the Ninth Circuit erroneously answered.

Indeed, excessive fines lawsuits over parking and traffic fines are already prevalent throughout the nation. Prior to the decision below, district courts in the Ninth Circuit frequently dismissed such challenges on the merits by granting motions for dismissal or summary judgment. *E.g., Yesue v. City of Sebastopol*, No. 22-CV-06474-KAW, 2024 WL 4876953, at *5–7 (N.D. Cal. Nov. 22, 2024) (granting a city summary judgment on excessive fines challenges to a $60 fine for improperly parking an RV); *Shoaga v. City of San Pablo*, No. 23-CV-05525-DMR, 2024 WL 3956326, at *5 (N.D. Cal. Aug. 26, 2024) (granting a city's motion to dismiss an excessive fines challenge to fees of over $1,000 to retrieve a car towed for lack of proper registration); *Stewart v. City of Carlsbad*, No. 23CV266-LL-MSB, 2024 WL 1298075, at *2–3 (S.D. Cal. Mar. 26, 2024) (granting a city's motion to dismiss an excessive fines challenge to a $50 fine for parking an oversized vehicle on city property overnight); *Popescu v. City of San Diego*, No. 06CV1577-LAB (LSP), 2008 WL 220281, at *4 (S.D. Cal. 2008) (granting a city summary judgment on an excessive fines challenge to $104 in fines and late fees for parking a car where the car slightly intruded into a public alley).

In other jurisdictions, too, courts frequently dismiss excessive fines lawsuits over parking and traffic fines well before trial. Courts dismissed many of these lawsuits against New York City on their merits. *See Oles v. City of New York*, No. 22-1620-CV, 2023 WL 3263620, at *2 (2d

Cir. May 5, 2023) (affirming order granting a motion to dismiss an excessive fines challenge to New York City's $115 fines for parking a truck with commercial license plates in a commercial zone without displaying the owner's name and address); *Torres v. City of New York*, 590 F.Supp.3d 610, 628–29 (S.D.N.Y. 2022) (granting New York City's motion to dismiss excessive fines challenges to $95 and $115 fines for parking without displaying a permit and parking at a bus stop, respectively); *Tsinberg v. City of New York*, No. 20 Civ. 749 (PAE), 2021 WL 1146942, at *8–9 (S.D.N.Y. March 25, 2021) (granting New York City's motion to dismiss excessive fines challenges to $63 late fees for nonpayment of $65 fines for displaying expired registration and inspection stickers); *Shibeshi v. City of New York*, No. 11 Civ. 4449 (LAP), 2011 WL 13176091, at *2 (S.D.N.Y. September 21, 2011) (sua sponte dismissing a pro se plaintiff's excessive fines challenges to $515.16 in parking fines that New York City imposed for failing to display registration and inspection stickers), aff'd, 475 Fed.App'x 807 (2d Cir. 2012).

New York City is hardly alone in this regard. For example, courts in the District of Columbia, Maryland, and North Dakota reached the same result. *See, e.g.*, *Matthews v. D.C.*, 507 F. Supp. 3d 203, 207 (D.D.C. 2020) (granting the District of Columbia's motion to dismiss excessive fines challenges to a $200 fine for speeding); *Mills v. City of Grand Forks*, 614 F.3d 495, 501 (8th Cir. 2010) (affirming dismissal of an excessive fines challenge to a North Dakota city's $150 fine for careless driving); *Wemhoff v. City of Baltimore*, 591 F.Supp.2d 804, 808–09 (D. Md. 2008) (granting Baltimore's motion for summary judgment on an excessive fines challenge to $496 in monthly late fees for nonpayment of a $23 parking meter fine).

Under the Ninth Circuit's approach, all of the lawsuits cited above would have survived through discovery, summary judgment, and likely through trial, burdening governments and the courts with meritless litigation over routine, de minimis parking and traffic fines that are constitutional on their face. The Ninth Circuit's decision distorts the Eighth Amendment by rendering even de minimis fines presumptively excessive and unconstitutional unless legislatures affirmatively prove the justifications for their fines to a court's satisfaction.[8]

In short, the importance of the federal question presented warrants this Court's review. Sup. Ct. R. 10(c). In *Crawford-El v. Britton*, 523 U.S. 574 (1998), this Court granted certiorari—"[d]espite the relative unimportance of the facts" in that case—to settle the important question of whether a plaintiff bringing a constitutional claim based on improper motive bears a burden to "adduce clear and convincing evidence of improper motive in order to defeat a motion for summary judgment." *Id.* at 577–78, 584. This case presents an even more important question concerning whether a government defending itself against a constitutional claim under the Excessive Fines Clause bears a burden to produce evidence of proportionality

8. Even where, unlike here, government officials subject prisoners to physical force, the Eighth Amendment's Cruel and Unusual Punishments Clause "necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind." *Hudson v. McMillian*, 503 U.S. 1, 9–10 (1992) (internal quotation marks and italics omitted); *cf. City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 543 n.4 (2024) ("This Court has never held that the Cruel and Unusual Punishments Clause extends beyond criminal punishments to civil fines and orders . . . .").

to *succeed on* a motion for summary judgment, and for that matter, an eventual trial. This Court should grant certiorari to settle that the answer is "no."

II. The Ninth Circuit's decision conflicts with decisions of other courts of appeals that recognize that the government has no evidentiary burden to prove a fine is not excessive.

The Ninth Circuit reversed the summary judgment in the City's favor based on its holding that the City bore a burden to produce affirmative evidence that its $63 late fee was not grossly disproportionate to the offense of nonpayment of its $63 parking meter fine. App. 12a, 16a-18a. In particular, the Ninth Circuit required affirmative "evidence that the [$63] penalty amount was actually tethered to the nature and extent of the harm caused by nonpayment." App. 18a.

The Ninth Circuit's holding conflicts with decisions of the Second, Seventh, Eighth, and Eleventh Circuits that affirmed dismissals of excessive fines claims on the pleadings as a matter of law, under Federal Rules of Civil Procedure 12(b)(6) or 12(c), or on motions for summary judgment under Rule 56, without imposing any burden on the government to produce affirmative evidence explaining or justifying the amounts of the challenged fines. The split of authority created by the Ninth Circuit's decision warrants this Court's review. Sup. Ct. R. 10(a).

A. Second Circuit

In *Reese v. Triborough Bridge & Tunnel Auth.*, 91 F.4th 582 (2d Cir. 2024), three drivers repeatedly failed to pay tolls when they used bridges and tunnels operated

by a New York State transit authority. *Id.* at 587–88. As authorized by state law, the transit authority imposed $50 or $100 fines for each failure to pay, but ultimately accepted smaller payments averaging $17.56 per offense for one driver, $18.61 for the second, and $50 for the third. *Id.* at 588, 592. In total, the first driver paid $720 in fines for her failure to pay $381.50 in tolls (a fine-to-toll ratio of around 189%); the second paid $8,170 in fines for his failure to pay $3,810 (around 214%); and the third paid $500 in fines for her failure to pay $85 (around 588%). *Id.* at 588. The drivers filed a putative class action under § 1983, alleging the fines were excessive. *Id.* The district court granted the transit authority's motion for summary judgment under Rule 56 without requiring the transit authority to produce affirmative evidence regarding the reasoning for the fines or how it related to the harm caused by the underlying offense. *Id.*

Affirming the summary judgment, the Second Circuit "independently weighed the *Bajakajian* factors and agree[d] with the District Court's conclusion that the fines the Plaintiffs paid were not grossly disproportional to their conduct and thereby [were not] unconstitutionally excessive." *Reese*, 91 F.4th at 593. The Second Circuit reasoned, in part, that "[t]he fines that the New York legislature has authorized for toll violations are roughly equivalent to those authorized for other traffic violations," including parking fines of $100 in large cities and $50 in others. *Id.* at 591 & n.6. The Second Circuit further reasoned that the transit authority "avoids financial harm by assessing fines that are greater than the cost of the lost toll," and that "it would be difficult for [the transit authority] to successfully collect tolls if it were unable to deter would-be toll violators through fines." *Id.* at 593.

Reese did not discuss the legislative history of the fines. Nor did it demand affirmative evidence from the transit authority that it actually tethered the $50 and $100 amounts originally imposed—or the reduced amounts accepted, which still exceeded the unpaid tolls by well over 100%—to the nature and extent of the harms caused by nonpayment of the tolls. The Second Circuit's affirmance of the summary judgment in *Reese* therefore conflicts with the Ninth Circuit's holding that the City bore a burden to support its motion for summary judgment with affirmative "evidence that the [$63] penalty amount was actually tethered to the nature and extent of the harm caused by nonpayment." App. 18a.

Reese approvingly cited the Second Circuit's prior decision in *Oles v. City of New York*, No. 22-1620-CV, 2023 WL 3263620 (2d Cir. May 5, 2023). *Reese*, 91 F.4th at 591 n.6. In *Oles*, New York City imposed two $115 parking tickets on a driver for parking a truck that had commercial license plates in a commercial zone without displaying the owner's name and address as required by a city ordinance. *Oles v. City of New York*, No. 21 CIV. 9393 (LGS), 2022 WL 1808905, at *1 (S.D.N.Y. June 2, 2022). The driver filed a putative class action under § 1983, alleging that the fines were excessive, and the district court granted the city's Rule 12(b)(6) motion to dismiss. *Id.* at *8. Affirming the dismissal, the Second Circuit observed that state law authorized the $115 fines, "independently weighed the remaining [*Bajakajian*] factors" without discussion, and held that the driver failed to plausibly allege that the fines were excessive. *Oles*, 2023 WL 3263620, at *2.

Oles did not discuss the legislative history of the fines or demand affirmative evidence from New York City

that it actually tethered the $115 amount to the nature and extent of the harms caused by the parking offenses. The Second Circuit's affirmance of the dismissal in *Oles*, like its affirmance of the summary judgment in *Reese*, therefore conflicts with the Ninth Circuit's holding that a government bears a burden to produce such evidence in the first place. App. 16a-18a.

B. Seventh Circuit

In *Towers v. City of Chicago*, 173 F.3d 619 (7th Cir. 1999), Chicago imposed $500 fines on two plaintiffs for owning vehicles into which third parties, without the plaintiffs' knowledge or permission, brought a controlled substance or an unregistered firearm. *Id.* at 621–22. The plaintiffs filed a putative class action under § 1983, alleging the fines were excessive. *Id.* at 622. The district court granted Chicago's Rule 12(b)(6) motion to dismiss. *Id.* Chicago did not support the motion with evidence. *See id.* at 629 ("The district court decided this matter on the pleadings and we therefore have a very meager record upon which to determine whether the procedures set forth in the ordinances [satisfy due process].").

Despite this "very meager record," the Seventh Circuit affirmed the dismissal of the excessive fines claim even though it found that part of the reason Chicago imposed the fines was punitive. *Towers*, 173 F.3d at 620–21. In holding that the $500 fines were punitive and thus subject to the Excessive Fines Clause, the Seventh Circuit credited Chicago's representation at oral argument (which was not evidence) that Chicago enacted the fine to deter illegal drug and firearm activity. *Id.* at 624. The Seventh Circuit then held that the $500 fines were not grossly

disproportionate to the plaintiffs' offenses, which harmed Chicago by "facilitating illegal activity involving drugs and firearms." *Id.* at 625. The Seventh Circuit reasoned that "the City, in fixing the amount, was entitled to take into consideration that the ordinances must perform a deterrent function—to induce vehicle owners to ask borrowers hard questions about the uses to which the vehicle would be put or to refrain from lending the vehicle whenever the owner has a misgiving about the items that might find a temporary home in that vehicle." *Id.* at 626. The Seventh Circuit concluded as a matter of law and without weighing any evidence, that the $500 fines were "large enough to function as a deterrent, but … not so large as to be grossly out of proportion to the activity that the City is seeking to deter." *Id.*

Towers did not discuss the fines' legislative history or demand affirmative evidence from Chicago to explain how or whether it actually tethered the $500 amount to the nature and extent of the harm caused by third parties bringing contraband into offenders' vehicles. The Seventh Circuit's affirmance of the dismissal in *Towers* thus conflicts with the Ninth Circuit's demand that the City produce such evidence in defending against an excessive fines claim. App. 16a-18a.

The Seventh Circuit affirmed the dismissal of additional excessive fines claims against Chicago in *Disc. Inn, Inc. v. City of Chicago*, 803 F.3d 317 (7th Cir. 2015). In *Disc. Inn*, Chicago repeatedly fined a company that owned real estate in the city under two ordinances. *Id.* at 318–19. First, Chicago's "fencing ordinance" imposed a fine of $300 to $600 per day on any owner of a vacant lot for failing to surround the lot with a fence. *Id.* at 319. Second, Chicago's "weed ordinance" imposed a larger fine of $600 to $1,200

per day on any owner of real property for allowing weeds on the property to exceed a height of ten inches. *Id.* at 318–19. The company paid more than twenty fines under these ordinances and filed a putative class action, alleging the ordinances facially violated the Excessive Fines Clause. *Id.* at 319. The district court granted Chicago's motion to dismiss, applying the *Bajakajian* factors and holding that the company had not and could not plead facts showing that the maximum $600 and $1,200 per day fines were grossly disproportionate to the gravity of the fencing and weed offenses, without requiring Chicago to make any evidentiary showing regarding proportionality. *Disc. Inn, Inc. v. City of Chicago*, 72 F. Supp. 3d 930, 935 (N.D. Ill. 2014).

The Seventh Circuit affirmed the dismissal. *Disc. Inn*, 803 F.3d at 327. The Seventh Circuit first held that the maximum $600 per day fine for violating the fencing ordinance was not excessive. *Id.* at 320. Citing no evidence other than a newspaper article about coyotes in Chicago (published after the district court granted Chicago's motion to dismiss), the Seventh Circuit reasoned that the fencing ordinance "plainly" fulfills legitimate governmental interests in protecting people from encountering coyotes and other hazards in vacant lots, enabling people to discern whether a vacant lot is abandoned, and discouraging the use of vacant lots by squatters and drug dealers. *Id.* Thus, the Seventh Circuit concluded, "there has to be a nontrivial penalty for violating [the fencing ordinance] in order to induce even minimal compliance." *Id.*

The Seventh Circuit then observed: "The weed ordinance presents more difficult questions, though not because the maximum [$1,200] fine is twice as great as for

violations of the fencing ordinance. (*We haven't been told, and have no idea, why the difference.*)" *Id.* at 320 (italics added). Citing a city website explaining why Chicago prohibits overgrown weeds (which did not mention the $1,200 fine or explain why it was $1,200), the Seventh Circuit concluded that "Chicago has a valid ecological interest in weed control, an interest that justifies an ordinance forbidding tall weeds." *Id.* at 320–21. The Seventh Circuit held: "A far from astronomical fine such as $1200, aimed at limiting the City's weed population, is not 'excessive' in the sense that the word bears in the Eighth Amendment." *Id.* at 321.

Disc. Inn did not require Chicago to produce evidence that it actually tethered the $600 and $1,200 fine amounts to the nature and extent of the harms caused by unfenced lots and overgrown weeds. The Seventh Circuit's affirmance of the dismissal in *Disc. Inn* thus conflicts with the Ninth Circuit's erroneous demand for such evidence to support the City's motion for summary judgment. App. 16a-18a.

C. Eighth Circuit

In *Mills v. City of Grand Forks*, 614 F.3d 495 (8th Cir. 2010), the City of Grand Forks, North Dakota, imposed a $150 fine on a driver for "careless driving in traveling between 55 and 60 miles per hour within the City of Grand Forks." *Id.* at 501. The $150 fine was *five times higher* than the maximum $30 fine that a state statute authorized for the same offense of careless driving. *Id.* at 497. The driver filed a putative class action, alleging the $150 fine violated the Excessive Fines Clause. *Mills v. City of Grand Forks*, No. 2:08-CV-30, 2009 WL 1033759, at *1

(D.N.D. Apr. 15, 2009). The district court granted Grand Forks' Rule 12(c) motion for judgment on the pleadings and dismissed the excessive fines claim, holding as a matter of law that the driver did not plead a prima facie case of gross disproportionality. *Id.* at *5–7.

The Eighth Circuit affirmed the dismissal. *Mills*, 614 F.3d at 497. The Eighth Circuit first held that Grand Forks did not clearly violate state law when it imposed the $150 fine in excess of the state statutory limit, because Grand Forks reasonably relied on state attorney general opinions that authorized the fine when Grand Forks imposed it. *Id.* at 498–501. The Eighth Circuit then held that the driver failed to show that the $150 fine for careless driving was "grossly disproportionate in a constitutional sense," because the fine was not excessive "[o]n its face" in light of Grand Forks' "interest in protecting against unsafe drivers." *Id.* at 501.

Mills did not discuss the fine's legislative history or demand evidence from Grand Forks that it actually tethered the $150 amount to the nature and extent of the harms caused by careless driving. The Eighth Circuit's affirmance of the dismissal in *Mills* thus conflicts with the Ninth Circuit's holding that a government bears a burden to produce such evidence in defending against an excessive fines claim. App. 16a-18a.

D. Eleventh Circuit

In *Moustakis v. City of Fort Lauderdale*, 338 F. App'x 820 (11th Cir. 2009), the City of Fort Lauderdale, Florida, imposed a $150 per day fine on two homeowners for code violations at their house. *Id.* at 820–21. The homeowners

failed to correct the violations for 14 years, causing the fine to accrue to $700,000 (far exceeding the $200,000 value of the house itself). *Id.* at 821. They sued Fort Lauderdale, alleging the $700,000 fine was excessive. *Id.* at 822. The district court granted Fort Lauderdale's Rule 12(b)(6) motion to dismiss, holding that the fine was not excessive. *Id.* at 821.

The Eleventh Circuit affirmed the dismissal. *Moustakis*, 338 F. App'x at 822. Observing that the Florida Legislature imposed no cap on the amount that the $150 per day fine could accrue to, the Eleventh Circuit held: "The $150 per day fine that has accrued for 14 years and now totals $700,000 is within the range of fines prescribed by the Florida Legislature and accordingly is due our substantial deference." *Id.* at 821. The Eleventh Circuit further held that the $700,000 fine was proportionate to the offense because the $700,000 amount was "a function of the [offense's] daily repetition." *Id.* at 822.

Moustakis recognized that the federal courts owed substantial deference to the $700,000 fine because the state legislature authorized the fine's amount—without discussing the legislative history or any other evidence that the legislature considered the nature and extent of the harms caused by the code violations in declining to cap the amount, or in setting the $150 amount of the fine's daily accrual. The Eleventh Circuit's affirmance of the dismissal in *Moustakis* therefore conflicts with the Ninth Circuit's holding that a government bears a burden to produce such evidence before a court can defer to the legislature's judgment in fashioning a fine. App. 18a ("there is nothing we can defer to because the City has provided no evidence about why or how it set the $63 late fee.").

In sum, the Ninth Circuit's decision conflicts with decisions of the Second, Seventh, Eighth, and Eleventh Circuits, creating a split of authority that warrants this Court's review. Sup. Ct. R. 10(a).

III. The Ninth Circuit's decision is wrong and conflicts with this Court's decisions on summary judgment and the Excessive Fines Clause.

In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), this Court held that when a party moves for summary judgment under Federal Rule of Civil Procedure 56 on an issue on which the nonmoving party bears the burden of proof, "the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. "*Celotex* made clear that Rule 56 does not require the moving party to *negate* the elements of the nonmoving party's case …." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 885 (1990) (original italics); *accord*, *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir. 2000) ("a moving defendant may shift the burden of producing evidence to the nonmoving plaintiff merely by 'showing'—that is, pointing out through *argument*—the absence of evidence to support plaintiff's claim.") (italics added).

The party challenging a fine under the Excessive Fines Clause bears the burden to prove the fine is excessive. *E.g.*, *United States v. Schwarzbaum*, 127 F.4th 259, 280 (11th Cir. 2025) (defendant challenging statutory penalties as excessive bore the burden of proof); *United States v. $63,530.00 in U.S. Currency*, 781 F.3d 949, 958 (8th Cir. 2015) (claimant challenging forfeiture as excessive bore

the burden of proof); *United States v. $132,245.00 in U.S. Currency*, 764 F.3d 1055, 1058 (9th Cir. 2014) (same). Similarly, the plaintiff in an action under 42 U.S.C. § 1983 bears the burden to prove a constitutional violation. *E.g.*, *Vincent v. Annucci*, 63 F.4th 145, 151 (2d Cir. 2023); *Jones v. Cummings*, 998 F.3d 782, 788 (7th Cir. 2021); *Larez v. Holcomb*, 16 F.3d 1513, 1517 (9th Cir. 1994).

Here, Plaintiffs bore the burden of proof on their excessive fines claim under § 1983. *See Schwarzbaum*, 127 F.4th at 280; *Vincent*, 63 F.4th at 151. In moving for summary judgment on that claim, the City met its burden under *Celotex*, 477 U.S. at 325, by arguing that Plaintiffs lacked any evidence showing that the $63 late fee is grossly disproportionate to the gravity of the offense of failing to timely pay the $63 parking meter fine. (SER-78–80, 86–96, ECF No. 28.)

The Ninth Circuit erroneously shifted the burden of proof by requiring *the City* to show that the $63 late fee is *not* grossly disproportionate to the gravity of the offense, rather than requiring Plaintiffs to prove gross disproportionality. App. 16a ("the City has not met *its* low burden of showing that a 100 percent late payment penalty of $63 … is *not* so large as to be grossly out of proportion to the offense of nonpayment within 21 days.") (italics added and internal quotation marks omitted); *see also* App. 19a ("our decision is based on the City's inability to adduce any evidence that its late fee was *not* arbitrarily imposed") (italics added).

Compounding its error, the Ninth Circuit erroneously heightened the City's burden under *Celotex* by requiring the City to support its motion for summary judgment with affirmative evidence of proportionality, rather than

recognizing that the City discharged its burden under *Celotex* by pointing out the absence of evidence supporting Plaintiffs' claim of gross disproportionality. *See* App. 9a-10a ("our ruling … is rooted in the evidentiary record—or more accurately, the complete lack of material evidence offered by the City in moving for summary judgment."); App. 12a ("We cannot determine 'gross disproportionality' as a matter of law because the City offered no evidence to justify its $63 late fee."); App. 18a ("there is nothing we can defer to because the City has provided no evidence about why or how it set the $63 late fee.").

The Ninth Circuit did not—and could not—find that Plaintiffs established a prima facie case of gross disproportionality merely by producing two former city officials' unsubstantiated opinions that the City Council set the late fee at $63 to raise revenue. On the contrary, the Ninth Circuit acknowledged that under *Bajakajian*, "revenue generation alone … has no bearing on the proportionality of a fine," and "the aim of revenue generation does not render a fine *per se* excessive." App. 16a (citing *Bajakajian*, 524 U.S. at 334).

Indeed, in adopting the controlling "gross disproportionality" standard for excessive fines claims, *Bajakajian* relied solely on the principles that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature," and "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Bajakajian*, 524 U.S. at 336. *Bajakajian* said nothing about potential legislative motives for imposing a fine, and nothing about revenue generation. *Id.* at 334–37.

The Ninth Circuit majority nevertheless erroneously refused to presume that the $63 late fee bore a constitutional relationship to the harms caused by the offense (the dispositive *Bajakajian* factor in this case) because Plaintiffs produced the two former officials' unsubstantiated opinions that the City Council's motive was to raise revenue. App. 18a-19a. As Judge Bennett explained in dissent, the majority's reliance on the City Council's alleged motive conflicts with *Bajakajian*, because "*Bajakajian* does not require that a legislative body affirmatively prove to a trier of fact that it was not motivated by revenue generation in implementing a fine." App. 34a.

In short, the Ninth Circuit's erroneous departure from this Court's precedents in *Celotex* and *Bajakajian* on an important federal question warrants this Court's review. Sup. Ct. R. 10(c).

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 9, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55946
D.C. No. 2:14-cv-01371-FMO-E

JESUS PIMENTEL; DAVID R. WELCH; JEFFREY O'CONNELL; EDWARD LEE; WENDY COOPER; JACKLYN BAIRD; RAFAEL BUELNA, AND ALL PERSONS SIMILARLY SITUATED,

Plaintiffs-Appellants,

and

ANTHONY RODRIGUEZ,

Plaintiff,

v.

CITY OF LOS ANGELES,

Defendant-Appellee,

v.

ELEN KARAPETYAN,

Movant.

Appendix A

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Argued and Submitted January 25, 2024
Pasadena, California

Filed September 9, 2024

Before: Johnnie B. Rawlinson, Mark J. Bennett, and Kenneth K. Lee, Circuit Judges.

Opinion by Judge Lee;
Partial Concurrence and Partial Dissent by Judge Bennett.

OPINION

LEE, Circuit Judge:

In Los Angeles—the "City of Angels"—trying to find a parking spot can sometimes feel like traipsing through Dante's nine circles of hell. To make more parking spaces available and decrease traffic congestion, the City levies a $63 fine on those who overstay their allotted parking time. We upheld this fine against an Excessive Fines Clause challenge under the Eighth Amendment, deferring to the City's judgment in fashioning a fine to further these goals. *Pimentel v. City of Los Angeles,* 974 F.3d 917, 922, 925 (9th Cir. 2020) (*Pimentel I*). But we remanded to determine whether the City's late fee of $63—which is imposed if a driver does not pay the $63 parking fine within 21 days—violates the Excessive Fines Clause.

Based on the record before us, we hold that a genuine factual dispute exists about the City's basis for setting the late fee at 100 percent of the parking fine. And given this factual dispute, we cannot say as a matter of law that the late fee is not grossly disproportional to the harm caused by the untimely payment of the parking fine under the Excessive Fines Clause.

While we generally defer to the legislature, there is nothing to defer to here because the City has provided no evidence—no testimony, no declaration, no document—on how it set the $63 late fee amount. It is difficult for a moving party to prevail on summary judgment if it has not provided any evidence. And so it is here. Nor should we presume that the City imposed a fairly hefty 100 percent late fee to ensure compliance with the law. If anything, the record undermines any such presumption, as the appellants have offered unrebutted testimony from former City officials that the late fee was established solely to fill up the City's coffers. Given that the $63 late fee appears arbitrary—at least based on the record—we reverse summary judgment for the City and remand.

BACKGROUND

In Los Angeles, a driver who overstays a parking meter faces a $63 fine. If that driver does not pay within 21 days, the City assesses a 100 percent late payment penalty of another $63. (The City imposes additional late fees—*e.g.,* another $25 late fee if the fine is not paid within 58 days—but those fees are not being challenged here).

The 100 percent late payment penalty traces back to the 1990s. Between 1996 and 2012, the City implemented multiple across-the-board increases of around $5 each for all parking fines, along with corresponding increases in the 100 percent late penalty. In 2012, the City Council increased the parking fine and the 100 percent late payment penalty to their current $63 amounts.

The appellants here incurred at least one parking meter citation and late fee. In 2015, they brought a class action suit against the City of Los Angeles, asserting that the $63 parking fine and $63 late payment penalty violated the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.[1] The district court granted summary judgment for the City, finding that the $63 initial fine was not "grossly disproportionate" to the offense of overstaying a parking meter and thus did not contravene the Excessive Fines Clause. In a footnote, the district court rejected the challenge to the $63 late fee but did not explain its rationale. The appellants appealed.

In *Pimentel I,* we held that the Excessive Fines Clause applies to municipal parking fines. 974 F.3d at 920, 922.

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1. The complaint also alleged a claim under the Excessive Fines counterpart under the California Constitution, *see* Cal. Const. art. I § 17. But the opening brief only addresses the claims under the federal Excessive Fines Clause, thus waiving any distinct challenge under the California Constitution. *See Devereaux v. Abbey,* 263 F.3d 1070, 1079 (9th Cir. 2001) (en banc). But both parties agreed before the district court that the same standard governs the claims under the federal and state constitutions.

Applying the gross disproportionality analysis set forth in *United States v. Bajakajian,* 524 U.S. 321, 336-40, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998), we affirmed the district court's summary judgment for the City as to the initial $63 parking fine. *Pimentel I,* 974 F.3d at 922-25. But we reversed on the late fee, "remand[ing] for the court to determine under *Bajakajian* whether the late payment penalty of $63 is grossly disproportional to the offense of failing to pay the initial fine within 21 days." *Id.* at 925.

On remand, the appellants argued that the late payment penalty is unconstitutional both facially, and as applied. They adduced some evidence suggesting that the City set its late payment penalty at 100 percent of the parking fine solely to raise revenue. The City, in contrast, presented no countervailing evidence. Applying the *Bajakajian* factors, the district court again granted summary judgment for the City. The appellants timely appealed.

STANDARD OF REVIEW

We review de novo a district court's grant of summary judgment. *Desire, LLC v. Manna Textiles, Inc.,* 986 F.3d 1253, 1259 (9th Cir. 2021). "Viewing the evidence in the light most favorable to the nonmoving party, we must determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law." *Pimentel I,* 974 F.3d at 920 (quoting *Devereaux v. Abbey,* 263 F.3d 1070, 1074 (9th Cir. 2001) (en banc)) (internal quotation marks omitted).

Appendix A

ANALYSIS

I. The Eighth Amendment limits the government's ability to impose excessive punitive fines.

The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. "The Excessive Fines Clause traces its venerable lineage back to at least 1215, when Magna Carta guaranteed that '[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement. . . .'" *Timbs v. Indiana,* 586 U.S. 146, 151, 139 S.Ct. 682, 203 L.Ed.2d 11 (2019) (quoting § 20, 9 Hen. III, ch. 14, in 1 Eng. Stat. at Large 5 (1225)). Magna Carta dictated that "economic sanctions 'be proportioned to the wrong' and 'not be so large as to deprive [an offender] of his livelihood.'" *Id.* (quoting *Browning-Ferris Indus. Of Vermont, Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 271, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989)).

In the centuries that followed, "authorities abused their power to impose fines against their enemies or to illegitimately raise revenue." *Pimentel I,* 974 F.3d at 921 (citing *Timbs,* 586 U.S. at 162, 139 S.Ct. 682 (Thomas, J., concurring) (discussing the imposition of onerous fines during the reign of the 17th century Stuart kings)). This fear of governmental abuse of power persisted into the colonial era and through the American Founding. *See id.* And so the Framers adopted the Eighth Amendment "to

shield the people from governmental overreach." *Id.*; *see also Timbs,* 586 U.S. at 163-67, 139 S.Ct. 682.

Today, the Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense," *Pimentel I,* 974 F.3d at 921 (quoting *Austin v. United States,* 509 U.S. 602, 609-10, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993)) (internal quotation marks omitted). Only punitive fines fall within the Clause's scope; purely remedial sanctions are not subject to Eighth Amendment scrutiny. *Austin,* 509 U.S. at 609-10, 113 S.Ct. 2801; *United States v. Mackby,* 261 F.3d 821, 829-30 (9th Cir. 2001)

The Supreme Court has held that a fine runs afoul of the Eighth Amendment if its amount "is grossly disproportional to the gravity of the defendant's offense." *Pimentel I,* 974 F.3d at 921 (quoting *Bajakajian,* 524 U.S. at 337, 118 S.Ct. 2028). Because neither the text nor the history of the Excessive Fines Clause sheds light on how to assess proportionality, Justice Thomas, writing for the majority in *Bajakajian,* outlined several factors to consider. *Bajakajian,* 524 U.S. at 335, 118 S.Ct. 2028 (noting that the "text of the Excessive Fines Clause does not answer [the proportionality question]. Nor does its history"). The four factors for analyzing gross disproportionality are: "(1) the nature and extent of the underlying offense; (2) whether the underlying offense [is] related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense." *Pimentel I,* 974 F.3d at 921 (citing *Bajakajian*). But "*Bajakajian* itself does not mandate the consideration of any rigid set of factors." *Id.*

Even so, one common thread emerges from our Excessive Fines Clause jurisprudence: Our gross disproportionality analysis must be tethered to the nature and extent of the harm suffered by the government. *See, e.g., Bajakajian,* 524 U.S. at 340, 118 S.Ct. 2028 (noting the absence of an "articulable correlation to any injury suffered by the Government"); *Vasudeva v. United States,* 214 F.3d 1155, 1161 (9th Cir. 2000) ("trafficking in food stamps is a serious offense that defrauds the federal government and undermines the viability of an important government program for the needy").

Put another way, we do not ask whether a fine appears grossly disproportionate in an abstract sense independent of the harm suffered by the government. *Cf. United States v. $132,245.00 in U.S. Currency,* 764 F.3d 1055, 1061 (9th Cir. 2014) (upholding forfeiture of $132,245 transported by defendant into the United States because his violation of the bulk cash smuggling statute unlike the reporting statute, "constitute[d] a far greater harm") (citation omitted). So, for example, a $10,000 fine for a minor violation (such as a parking ticket) would be grossly disproportionate. But perhaps such a fine would not violate the Excessive Fines Clause if it implicated serious crimes (say, money-laundering for a drug ring).

In *Pimentel I,* we held that absent "material evidence provided by appellants to the contrary," courts "must afford 'substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments.'" *Pimentel I,* 974 F.3d at 924 (quoting *Bajakajian,* 524 U.S. at 336, 118 S.Ct. 2028).

We also stressed that the City need not prove "strict proportionality" between the amount of the fine and the gravity of the offense. *Id.* (quoting *Bajakajian,* 524 U.S. at 336, 118 S.Ct. 2028). Nor does the City need to commission quantitative analysis to justify its parking fines and late penalties. *Id.*

Applying these principles, we first observed that there was "no real dispute that the City is harmed because overstaying parking meters leads to increased congestion and impedes traffic flow." *Id.* We then held that the City had met the low evidentiary threshold of showing that "the $63 parking fine is sufficiently large enough to deter parking violations but is 'not so large as to be grossly out of proportion' to combatting traffic congestion" in the City. *Id.* (quoting *Towers v. City of Chicago,* 173 F.3d 619, 626 (7th Cir. 1999)).

We now must engage in that same gross disproportionality analysis for the $63 late payment penalty for the parking ticket.

II. We reverse summary judgment for the City on the appellants' facial challenge.

Applying the *Bajakajian* factors outlined by the Supreme Court for evaluating Excessive Fines Clause challenges, we hold that a genuine factual dispute remains over the City's basis for the $63 late fee. We thus reverse the district court's summary judgment for the City and remand. We stress the narrow scope of our ruling: It is rooted in the evidentiary record—or more accurately, the

complete lack of material evidence offered by the City in moving for summary judgment.

A. Under the *Bajakajian* factors, we focus mainly on the harm caused by the failure to timely pay parking tickets in determining whether the $63 late fee is "grossly disproportional."

As we explained in *Pimentel I,* the fourth *Bajakajian* factor plays an outsized role here because the first three factors do not strongly favor either party. But for the sake of completeness, we will briefly address the first three *Bajakajian* factors.

Under the first *Bajakajian* factor, courts assess the nature and extent of the underlying offense by "typically look[ing] to the violator's culpability. . . ." *Id.* at 922. The appellants are culpable because they failed to timely pay their parking citations and thus violated Los Angeles Municipal Code § 88.13. But the offense is minor. In sum, the appellants' violations are "minimal but not de minimis." *Pimentel I,* 974 F.3d at 923.

Turning to the second *Bajakajian* factor, we must ascertain whether the underlying offense relates to other illegal activities. *Id.* As in *Pimentel I,* this factor—often ill-suited to the civil context—is neutral because the failure to timely pay the parking fine has no nexus to other illegal activity. *Id.*

The third *Bajakajian* factor—whether alternative penalties may be imposed for the offense—is similarly

neutral. *See id.* The appellants do not identify a lesser, alternative penalty that may be imposed but merely assert that the penalty amount could be lower. But as the district court rightly concluded, the appellants "cite no authority supporting their contention that the possibility of a lower late fee is a relevant consideration under *Bajakajian.*" Rather, under *Bajakajian,* this court "look[s] to 'other penalties that the Legislature has authorized.'" *United States v. $100,348.00 in U.S. Currency,* 354 F.3d 1110, 1122 (9th Cir. 2004) (citation omitted). There are no such alternative penalties here, so this factor does not aid our inquiry, either. *See* Cal. Veh. Code § 40203.5(a).

This case thus largely hinges on the fourth *Bajakajian* factor—the extent of the harm caused by the appellants' violation of the law. *See Pimentel I,* 974 F.3d at 923-24. We generally consider both monetary and nonmonetary harms. *See id.* While the "most obvious and simple way to assess this factor is to observe the monetary harm resulting from the violation," we "may also consider how the violation erodes the government's purposes for proscribing the conduct." *Id.* at 923. Here, the monetary harms to the City are fairly obvious: administrative costs to collect the parking fines and the time-value of fees not collected timely.[2] And as for non-monetary harms, the government has an interest in ensuring compliance with the law, even for a matter as seemingly trifling as timely payment of a parking ticket.

2. Notably though, the City's Fed. R. Civ. P. 30(b)(6) designee testified that the $63 late payment penalty is "not based on interest rate or cost of collection."

B. We cannot determine "gross disproportionality" as a matter of law because the City offered no evidence to justify its $63 late fee.

After identifying the monetary and non-monetary harms suffered by the City, we must next determine whether a $63 late fee is "grossly disproportional" to the gravity of those harms. On one end of the spectrum, a nominal $1 late fee would not be "grossly disproportional" to the harms suffered by the City. On the other end, a $10,000 late fee for a parking ticket would be "grossly disproportional."

The tougher question is whether a 100 percent late fee of $63 for a $63 parking ticket—or, for that matter, a hypothetical late fee of $126 or $200—is "grossly disproportional" to the gravity of nonpayment within 21 days. To avoid delving into this policy-laden determination, we generally defer to the government's basis for setting fines. We do not require quantitative studies to justify the fines, nor do we demand strict proportionality. *Id.* at 924. So long as a government provides an unrebutted commonsense explanation or *some*—even relatively weak—evidence to justify its fine, it will likely prevail against an Excessive Fines Clause challenge. Our deference is born of a keen awareness that "any judicial determinations regarding the gravity of a particular . . . offense will be inherently imprecise." *Bajakajian,* 524 U.S. at 336, 118 S.Ct. 2028 (citations omitted).

But this deference does not command judicial blindness to the arbitrary imposition of punitive fines. Here, the City

has offered no evidence to justify or explain its $63 late fee. Indeed, the City's Fed. R. Civ. P. 30(b)(6) witness—Robert Andalon, who oversaw the City's parking fines and fees from 2000 to 2012—testified that he has no clue how the City came up with that amount. To put it bluntly, as far as the City knows, the late fee's $63 amount is arbitrary. And we cannot fall back on reflexive deference to conclude that an arbitrary fine passes constitutional muster.

The City, however, insists that we should defer to the commonsense presumption that a $63 late fee would help ensure compliance with the law. We can, of course, presume that any late penalty will encourage timely payment and compliance. And the city's interest in deterring non-payment is legitimate. *See Towers,* 173 F.3d at 626. But we must be careful not to conflate the legitimacy of the City's interest in ensuring timely payment with the *proportionality* of the 100 percent late payment penalty. Without evidence establishing an "articulable correlation to any injury suffered by the [City]," *Bajakajian,* 524 U.S. at 340, 118 S.Ct. 2028, the City's interest alone does not validate any fine amount that the City might arbitrarily impose. Otherwise, no fine—no matter how sizable or disproportionate—would ever violate the Excessive Fines Clause because the government always has an interest in enforcing its laws.

In any event, we cannot credit the presumption that the City crafted the late fee to ensure compliance—at least at the summary judgment stage in which the City has offered no relevant evidence—because the appellants have provided some material, unrebutted evidence countering

that presumption. According to testimony from two former City officials, the late fee was established *solely* to raise revenue and had nothing to do with ensuring compliance with the laws.

Jay Carsman—who oversaw the City's Parking Violations Bureau—rejected the City's assertion that the late fees were intended to ensure compliance with the law. To the contrary, he claimed that the late fees "were adopted *solely* because the City sought to increase revenue to its General Fund." (Emphasis added). For example, Carsman said that the "$5 increase in 2008 was adopted only two years after the 2006 $5 increase because of the effect of the economic recession on City revenue." And he maintained that the 100 percent late payment penalty "was an arbitrary figure."[3]

The appellants also rely on expert witness Jay Beeber, who in 2014 was appointed by the Mayor to the City's Parking Reform Working Group. Beeber served as co-chair of the group's "Management and Administration" subcommittee, which examined the City's parking

3. Carsman's testimony, however, suffers from two evidentiary deficits. First, Carsman retired in January 2008, four years before the late fee was increased to $63. Second, his tenure overseeing the Parking Violations Bureau concluded in 1998. Even so, Carsman attested that he was "involved in evaluating the[ ] parking fine increases" effected in 1996, 2002, 2006, and 2008. Although Carsman lacks personal knowledge of the City's reason for setting the fine at $63 in 2012, his testimony may potentially bear on the City's basis for fixing the late fee at 100 percent of the fine.

enforcement policies and protocols, and, according to Beeber, "conducted extensive research into the history of the City's parking fine and fee structure. . . ." Beeber stated that the working group members had "inquired of the City and the LADOT as to the reason why the initial late payment penalty is 100%," but they "were told that 'it just is what it is,' that is, we were given no reason at all, let alone a rational reason." Beeber also testified that he "ha[s] been unable to locate any City documentation of any reason put forth for a 100% penalty. . . ." He concluded that the "late penalties are arbitrary, and that the dollar amounts of their increases over time have been motivated *solely by a desire to increase revenue for the City.*" (Emphasis added).[4]

To be clear, our Excessive Fines Clause precedent does not establish that revenue-raising is an inherently improper aim that renders a fine grossly disproportionate. By definition, all civil penalties and criminal fines serve a revenue-raising function. *See Dep't of Revenue of Montana v. Kurth Ranch,* 511 U.S. 767, 778, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994). The City is, of course, entitled to rely on the revenue generated by parking fines and penalties, even for services unrelated to parking enforcement. By the same token, however, the Supreme Court has also suggested that "it makes sense to scrutinize governmental action more closely when the State stands to benefit." *Timbs,* 586 U.S. at 154, 139 S.Ct. 682 (quoting *Harmelin v. Michigan,* 501 U.S. 957, 979 n.9, 111 S.Ct. 2680, 115 L.Ed.2d

4. The district court did not rule on the City's evidentiary objections to the testimony of Beeber and Carsman, so we do not address them here.

836 (1991) (opinion of Scalia, J.)) (internal quotation marks omitted). Thus, if revenue generation were the *sole* basis for the 100 percent late payment penalty, then the nexus between the amount of the late fee and the gravity of the underlying offense becomes all the more tenuous. Put another way, revenue generation alone says nothing about the harm suffered by the government—and thus has no bearing on the proportionality of a fine under the fourth *Bajakajian* factor. The late payment penalty must "bear some relationship to the gravity of the offense that it is designed to punish," but the aim of revenue generation does not render a fine *per se* excessive. *Bajakajian,* 524 U.S. at 334, 118 S.Ct. 2028.

Here, the City has not met its low burden of showing that a 100 percent late payment penalty of $63—a not insubstantial amount—"is sufficiently large enough to" ensure timely payment "but is 'not so large as to be grossly out of proportion'" to the offense of nonpayment within 21 days. *See Pimentel I,* 974 F.3d at 924 (quoting *Towers,* 173 F.3d at 626).[5] The City has provided no evidence to

5. The dissent argues that the majority opinion incorrectly bases the excessiveness inquiry on the proportionality between the late fee and the original parking fine. Dissent at 1080-81 (citing Op. at 1065); *id.* at 1080-81 & n.10. Not so. First, we explicitly state: "[T]he City has not met its low burden of showing that a 100 percent late payment penalty of $63—a not insubstantial amount—'is sufficiently large enough to' ensure timely payment 'but *is 'not so large as to be grossly out of proportion" to the offense of nonpayment within 21 days.*" Op. at 1077 (citation omitted) (emphasis added). That sentence makes clear that we are comparing the late fee amount to the harm caused by the offense of not paying the parking ticket timely.

explain its late fee. And in the face of countervailing and unrebutted evidence from the appellants, the City cannot rely on a general presumption that its late fee was adopted to ensure timely compliance with its laws.

The dissent accuses the majority of focusing on the City's motivation for setting the late payment penalty. Dissent at 1077-79. By engaging in a "motivation inquiry," the dissent insists, the court "injects itself into the legislative process and creates a requirement that courts parse a legislative body's motive in implementing a fine. . . ." Dissent at 1077.

Nonetheless, the dissent stresses that it "does not matter whether the late fee is 10 percent or 100 percent of the original parking fee" because the "relevant question is whether the $63 late fee is grossly disproportionate to *the harms caused by nonpayment.*" Dissent at 1081 (emphasis in original). Again, we agree that the relevant inquiry is not whether the late fee is proportional to the initial parking fine—and we imply nothing to the contrary merely by observing that the late penalty is 100 percent of the initial fine.

But we note that the ratio of the late payment penalty to the initial fine is still relevant to our factbound inquiry in this case, given the testimony from City officials about the history of the parking fees. On these facts, relevant to determining whether the $63 late penalty is grossly disproportional to the offense of nonpayment is whether the penalty was arbitrarily set at 100 percent in the 1990s and then merely increased dollar-for-dollar, along with the initial fine, to $63 in 2012—without any relationship to the harm caused by nonpayment. It is simply for this reason—assessing whether the fine was arbitrarily both imposed and increased without regard for the harm—that we reference the ratio between the late penalty and the initial parking fine.

We do no such thing. Our holding hinges on the lack of *evidence* supporting the City's asserted rationale for setting the late payment penalty at $63 in 2012. The City moved for summary judgment, so we must look at the evidence offered by the parties. While we are deferential to the City's decisions, there is nothing we can defer to because the City has provided no evidence about why or how it set the $63 late fee. Had the City provided *something*—testimony from a Rule 30(b)(6) witness, a declaration from a City official, or even a single piece of paper shedding light on the City's basis for the $63 late fee amount—the City would have likely prevailed. But the City provided zilch.

Reflexive deference is inappropriate where, as here, the City "stands to benefit," *Harmelin,* 501 U.S. at 978 n.9, 111 S.Ct. 2680, and has failed to offer any evidence that the late payment penalty was—as the City claims—set at an amount that would ensure compliance and deter both monetary and nonmonetary harm. The City's assertions in its briefing are not evidence and do not support the substantial deference it seeks (and would otherwise be entitled to). *See Comstock v. Humphries,* 786 F.3d 701, 709 (9th Cir. 2015) ("arguments in briefs are not evidence"). We simply ask that the City provide *some* evidence that the penalty amount was actually tethered to the nature and extent of the harm caused by nonpayment.[6] This

6. We mention the two former high-ranking City officials—who swore under oath that the City enacted the late fee solely to generate revenue—merely to point out that the City cannot rely on a presumption that its late fee is tied to the extent of harm it suffered when (1) it has offered no evidence to support that

commonsense approach does not require parsing the motives of legislatures. *Contra* Dissent at 1077-78. It just requires the government to provide some evidence that the fine amount was not wholly arbitrary.

In sum, our decision is based on the City's inability to adduce any evidence that its late fee was not arbitrarily imposed, not on improper judicial scrutiny of legislative motives. This is a low evidentiary bar, not—as the dissent erroneously claims—a searching inquiry demanding from municipal officials "evidence of why the City chose $63 and not $62."[7] Dissent at 1078. And under the specific facts here, the City has not met that low bar. We thus reverse the district court's summary judgment for the City on the appellants' facial challenge.

III. We decline to incorporate means-testing into our Excessive Fines Clause analysis.

The appellants also mount an as-applied challenge, asserting that several of them lack the financial means to

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assertion, (2) it has not even tried to rebut the evidence offered by the plaintiffs, and (3) the late fee amount is not insignificant.

7. The dissent seems to rely on the most extreme, rubber-stamp version of rational basis review in which we uphold a fine as long as we can divine a conceivable basis for it, even if the legislature never articulated that purpose and lacks any knowledge of how it came up with the fine amount. But rational basis review largely applies to governmental action where fundamental rights or suspect classifications are not implicated. In contrast, our Constitutional safeguard against excessive fines "has been a constant shield throughout Anglo-American history," *Timbs,* 586 U.S. at 149, 153, 139 S.Ct. 682.

pay the fine within 21 days. They reprise their argument from their prior appeal that the Excessive Fines Clause analysis should incorporate means-testing by evaluating a person's ability to pay. *See also Pimentel I,* 974 F.3d at 924-25.

As noted in *Pimentel I,* the Supreme Court declined to address whether an ability to pay is relevant to the Excessive Fines Clause analysis. *Id.* at 925 (citing *Bajakajian,* 524 U.S. at 340 n.15, 118 S.Ct. 2028). We, too, once again decline to incorporate a means-testing requirement for claims arising under the Excessive Fines Clause. *Id.*

The appellants mainly rely on *United States v. Real Prop. Located in El Dorado Cnty.,* 59 F.3d 974, 985 (9th Cir. 1995), *abrogated in part on other grounds by Bajakajian,* 524 U.S. 321, 118 S.Ct. 2028 (1998), a pre-*Bajakajian* decision about an *in rem* forfeiture. *El Dorado* commanded consideration of "the hardship to the defendant, including the effect of the forfeiture on defendant's family or financial condition," as part of the court's analysis of the "harshness of the forfeiture" under the Eighth Amendment. *Id.* But the appellants have cited no case law extending *El Dorado* beyond the confines of *in rem* forfeitures, let alone to civil *in personam* fines. *See United States v. Dubose,* 146 F.3d 1141, 1146 (9th Cir. 1998), *as amended on denial of reh'g* (Aug. 31, 1998) (refusing to extend *El Dorado* to the context of criminal restitution and noting that "an Eighth Amendment gross disproportionality analysis does not require an inquiry into the hardship the sanction may work on the offender").

Finally, the appellants' emphasis on the origins of the Excessive Fines Clause is similarly unpersuasive. The Excessive Fines Clause reflects the principle that a fine "should not deprive a wrongdoer of his livelihood." *Bajakajian,* 524 U.S. at 335, 118 S.Ct. 2028; *see also Browning-Ferris,* 492 U.S. at 269, 109 S.Ct. 2909. But for criminal forfeitures, our sister circuits have noted that a deprivation of livelihood is distinct from a present inability to pay. *See, e.g., United States v. Viloski,* 814 F.3d 104, 112 (2d Cir. 2016) ("whether a forfeiture would destroy a defendant's *future* livelihood is different from considering as a discrete factor a defendant's *present* personal circumstances, including age, health, and financial situation" (emphasis in original)).

* * *

Today, we reaffirm that the "right to be free from excessive governmental fines is not a relic relegated to the period of parchments and parliaments, but rather it remains a crucial bulwark against government abuse." *Pimentel I,* 974 F.3d at 925. As the Supreme Court recognized, the Excessive Fines Clause is "fundamental to our scheme of ordered liberty with deep roots in our history and tradition." *Timbs,* 586 U.S. at 149, 139 S.Ct. 682 (internal quotation marks and alterations omitted).

The dissent, however, dismissively claims that applying the Clause to the $63 late penalty somehow "trivializes the monumental import of the documents from which the Clause sprung—Magna Carta, the English Bill of Rights, and the Virginia Declaration of

Rights." Dissent at 1083. But our Constitution protects against arbitrary governmental overreach, no matter how slight the government contends that its incursions are. *Cf. Off. of United States Tr. v. John Q. Hammons Fall 2006, LLC,* — U.S. —, 144 S. Ct. 1588, 1612, 219 L.Ed.2d 210 (2024) (Gorsuch, J., dissenting) (rejecting view that "supplying relief isn't worth the trouble because the constitutional violation at issue here was . . . 'short-lived and small'"). And so we have rightly checked the government's transgressions—even where the government contends that its violations were minor—in other realms of constitutional rights, such as free speech and free exercise.[8] Far from trivializing the Clause's "venerable lineage," *Timbs*, 586 U.S. at 151, 139 S.Ct. 682, our decision reflects the Founders' fear of governmental abuse through arbitrary fines and thus is consistent with the original meaning of the Eighth Amendment.

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8. *See, e.g., Klein v. City of San Clemente,* 584 F.3d 1196, 1207-08 (9th Cir. 2009) ("[T]his court and the Supreme Court have repeatedly held that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" (quoting *Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)); *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.,* 82 F.4th 664, 694 (9th Cir. 2023) (applying same standard in free exercise context); *see also Lorillard Tobacco Co. v. Reilly,* 533 U.S. 525, 567, 121 S.Ct. 2404, 150 L.Ed.2d 532 (2001) ("There is no *de minimis* exception for a speech restriction that lacks sufficient tailoring or justification."); *Ulrich v. City & Cnty. of San Francisco,* 308 F.3d 968, 977 (9th Cir. 2002) ("The denial of even a 'trivial' benefit may form the basis for a First Amendment claim where the aim is to punish protected speech.").

In short, while we remain deferential to the legislature's authority to fashion punitive fines, our Eighth Amendment jurisprudence does not allow imposing arbitrary sanctions. We stress that our holding is a narrow one: Based on the record before us at the summary judgment stage, we cannot conclude as a matter of law that the City's late payment penalty is not unconstitutionally excessive.

CONCLUSION

We **REVERSE** the district court's grant of summary judgment in the City's favor and **REMAND** for further proceedings consistent with this opinion.

BENNETT, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority that the district court did not err in rejecting Plaintiffs' as-applied challenge. But because the Excessive Fines Clause does not prohibit imposing the $63 late-fee penalty, I respectfully dissent.

I. The majority's opinion runs counter to the history of the Eighth Amendment.

In early England, "[t]he amount of an amercement was set arbitrarily, according to the extent to which the King or his officers chose to relax the forfeiture of all the offender's goods." *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 288, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989) (O'Connor, J., concurring in part and dissenting in part) (internal quotation marks omitted). Fines replaced imprisonment, but the amount of the fine bore no relation to the offense, rather it depended on the benevolence, or lack thereof, of the King. 2 F. Pollock & F. Maitland, The History of English Law 512-16 (2d ed. 1899). But after years of monarchs abusing power and under threat of civil war, King John agreed to Magna Carta, which placed limits on royal authority and its place above the law. The Excessive Fines Clause springs from Magna Carta's guarantee that "[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement." § 20, 9 Hen. III, ch. 14, in 1 Eng. Stat. at Large 5 (1225). Magna Carta required economic sanctions "be proportioned to the wrong" and "not be so large as to

deprive [an offender] of his livelihood." *Browning-Ferris,* 492 U.S. at 271, 109 S.Ct. 2909.

Although Magna Carta created a proportionality requirement, excessive fines persisted and became most prevalent in the 17th century during the reign of the Stuart kings. *See Timbs v. Indiana,* 586 U.S. 146, 152, 139 S.Ct. 682, 203 L.Ed.2d 11 (2019) (citing The Grand Remonstrance ¶¶ 17, 34 (1641), in The Constitutional Documents of the Puritan Revolution 1625-1660, pp. 210, 212 (S. Gardiner ed., 3d ed. Rev. 1906)); *Browning-Ferris,* 492 U.S. at 267, 109 S.Ct. 2909. In seeking to reaffirm Magna Carta's guarantee, the post-Glorious Revolution English Bill of Rights provided that "excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted." 1 Wm. & Mary, ch. 2, § 10, in 3 Eng. Stat. at Large 441 (1689).

As the Supreme Court has recognized, "it is clear that the Eighth Amendment was 'based directly on Art. I, § 9, of the Virginia Declaration of Rights,' which 'adopted verbatim the language of the English Bill of Rights.'" *Browning-Ferris,* 492 U.S. at 266, 109 S.Ct. 2909 (quoting *Solem v. Helm,* 463 U.S. 277, 285 n.10, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983)). In 1787, the constitutions of eight states prohibited excessive fines, but only three at the time of the founding mandated that penalties be proportionate to the crimes for which they were imposed. Steven G. Calabresi, Sarah E. Agudo & Kathryn L. Dore, *State Bills of Rights in 1787 and 1791: What Individual Rights are Really Deeply Rooted in American History and Tradition?,* 85 S. Cal. L. Rev. 1451, 1517, 1519 (2012).

When the Fourteenth Amendment was ratified in 1868, thirty-five states had excessive fines clauses in their state constitutions, but only nine required fines be proportionate to the offensive conduct. Steven G. Calabresi & Sarah E. Agudo, *Individual Rights Under State Constitutions When the Fourteenth Amendment Was Ratified in 1868: What Rights are Deeply Rooted in American History and Tradition,* 87 Tex. L. Rev. 7, 82-83 (2008).

The Supreme Court's jurisprudence on the Excessive Fines Clause has taken a similarly winding path. In 1833, the Supreme Court concluded that, even if "the excess of the fine were apparent on the record," there was no appellate jurisdiction to reverse a sentence from a lower court that imposed such an excessive fine. *Ex parte Watkins,* 32 U.S. 568, 574, 7 Pet. 568, 8 L.Ed. 786 (1833). For much of the 19th and early 20th centuries, discussion about the Excessive Fines Clause found a home in concurrences, dissents, and general dicta, and not as a dispositive topic in a majority opinion. *See, e.g., Pervear v. Massachusetts,* 72 U.S. 475, 479-80, 5 Wall. 475, 18 L.Ed. 608 (1866) (noting that the Eighth Amendment did not apply to states, but if it did, a fine of $50 and three months' imprisonment for operating an unlicensed liquor store would not be excessive);[1] *Waters-Pierce Oil Co. v. Texas,* 212 U.S. 86, 111-12, 29 S.Ct. 220, 53 L.Ed. 417 (1909) (assuming without deciding that an excessive fine, even if definite, would violate the Eighth Amendment

1. The Eighth Amendment's Excessive Fines Clause has since been incorporated by the Due Process Clause of the Fourteenth Amendment. *Timbs v. Indiana,* 586 U.S. 146, 150, 139 S.Ct. 682, 203 L.Ed.2d 11 (2019).

but that the Eighth Amendment did not "operate[ ] to control the legislation of the states," so the Court could only act if the fine was "so grossly excessive as to amount to a deprivation of property without due process of law"); *United States ex rel. Milwaukee Soc. Democratic Publ'g. Co. v. Burleson,* 255 U.S. 407, 435, 41 S.Ct. 352, 65 L.Ed. 704 (1921) (Brandeis, J., dissenting) (reasoning that the denial of certain mailing privileges which imposed daily-increasing costs on a newspaper could violate the Eighth Amendment as an "unusual" and "unprecedented" fine). In the 1970s, when the Court was presented with the issue of fines levied against the indigent, which resulted in imprisonment if the individual could not pay, the excessiveness of such fines was not addressed. Instead, the Court evaluated the claim as a violation of the Equal Protection Clause. *See Williams v. Illinois,* 399 U.S. 235, 238, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970); *Tate v. Short,* 401 U.S. 395, 398, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971). Around the early 1990s, the Supreme Court addressed the application of the Excessive Fines Clause to civil jury awards of punitive damages, *see Browning-Ferris,* 492 U.S. at 280, 109 S.Ct. 2909, and to civil forfeitures of a punitive nature, *see Austin v. United States,* 509 U.S. 602, 604, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993), but did not address what makes a fine "excessive."

It was not until *United States v. Bajakajian,* 524 U.S. 321, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998), that the Supreme Court adopted Magna Carta's proportionality and explained what renders a fine excessive: "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of

the forfeiture must bear *some* relationship to the gravity of the offense that it is designed to punish." *Id.* at 334, 118 S.Ct. 2028 (emphasis added). Still, the Court faced the difficult question of "just how proportional to a[n] . . . offense a fine must be, and the text of the Excessive Fines Clause does not answer it. Nor does its history." *Id.* at 335, 118 S.Ct. 2028. The Excessive Fines Clause "was little discussed in the First Congress and the debates over the ratification of the Bill of Rights." *Id.* Neither Magna Carta nor the English Bill of Rights, from which "the Clause was taken verbatim," answers the question of how to evaluate the proportionality of a particular civil fine. *Id.*

Instead, the Supreme Court looked to "other considerations in deriving a constitutional excessiveness standard." *Id.* at 336, 118 S.Ct. 2028. In prescribing the factors courts must consider in evaluating excessiveness and proportionality, the Supreme Court identified two relevant controlling principles. Turning first to the Court's Cruel and Unusual Punishments Clause jurisprudence, the Supreme Court explained "that judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Id.* (citing *Solem v. Helm*, 463 U.S. 277, 290, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) ("Reviewing courts . . . should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes")). The second consideration that guided the Supreme Court in establishing an excessiveness standard "is that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.* As these two principles "counsel against requiring

strict proportionality," the Supreme Court "adopt[ed] the standard of gross disproportionality articulated in [its] Cruel and Unusual Punishments Clause precedents." *Id.*[2] To carry out these principles and determine whether a fine is disproportional to the gravity of the defendant's offense, we look to four factors: "(1) the nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense." *Pimentel v. City of Los Angeles* (*Pimentel I*), 974 F.3d 917, 921 (9th Cir. 2020).

The majority errs by failing to abide by these principles, and in doing so, holds governments to a standard found neither in the precedent of the Supreme Court, our court, nor in the history of the Eighth Amendment. The majority neither gives legislative bodies the substantial deference that they are owed, nor does it adequately address how, even viewing *all* facts in Plaintiffs' favor, a $63 fine *could* be grossly disproportionate—especially in light of Plaintiffs' own expert testifying that *some* fine was appropriate and that even a $25 fine would be proportional.

II. Legislative bodies are owed substantial deference, which the majority improperly dismisses.

In *Pimentel I,* we found that the City's initial $63 fine for overstaying the allotted time at a parking meter

2. *Bajakajian* and these guiding principles still control. *See United States v. $132,245.00 in U.S. Currency,* 764 F.3d 1055, 1057-58 (9th Cir. 2014).

was "not grossly disproportionate to the offense and thus survives constitutional scrutiny." 974 F.3d at 920. As to the fourth *Bajakajian* factor, which predominates here, we explained:

> there is no real dispute that the City is harmed because overstaying parking meters leads to increased congestion and impedes traffic flow. Without material evidence provided by [Plaintiffs] to the contrary, we must afford "substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments."

Id. at 924 (quoting *Bajakajian,* 524 U.S. at 336, 118 S.Ct. 2028).

Indeed, we presume city ordinances serve a legitimate interest unless a party plausibly alleges otherwise. *Rosenblatt v. City of Santa Monica,* 940 F.3d 439, 452 (9th Cir. 2019); *see Towers v. City of Chicago,* 173 F.3d 619, 625-26 (7th Cir. 1999) (deferring to the city and concluding that a $500 fine was not excessive when the city "was entitled to take into consideration that the ordinances [imposing an administrative penalty to the owner of any vehicle containing illegal drugs or unregistered firearms] must perform a deterrent function"). Because the Supreme Court had noted the importance of the deference afforded to legislatures in fashioning fines, we held that the Eighth Amendment did not obligate "the City to commission quantitative analysis to justify the $63

parking fine amount," because "[t]hat amount bears 'some relationship' to the gravity of the offense," and "[w]hile a parking violation is not a serious offense, the fine is not so large, either, and likely deters violations." *Pimentel I,* 974 F.3d at 924. In short, in *Pimentel I* we adhered to the substantial deference owed to the City.

But here, the majority departs from that principle. The majority recognizes the harms that the City seeks to address through the late fee:

> [T]he monetary harms to the City are fairly obvious: administrative costs to collect the parking fines and the time-value of fees not collected timely. And as for non-monetary harms, the government has an interest in ensuring compliance with the law, even for a matter as seemingly trifling as timely payment of a parking ticket.

Maj. at 1069 (footnote omitted). It is therefore undisputed that the nonpayment of parking fines harms the City, and thus the City is owed "substantial deference" in determining the appropriate punishment. *Bajakajian,* 524 U.S. at 336, 118 S.Ct. 2028.

Despite recognizing the City's interest in the fine as addressing both monetary and non-monetary harms, the majority agrees with Plaintiffs, who have manufactured a factual dispute about the deterrent effect of the late fee by arguing that the City produced no evidence that the late fee had any deterrent effect on future parking meter violations or encouraged compliance.

But as we recognized in *Pimentel I,* and as the district court correctly recognized on remand, the City need not show "strict proportionality" between the fine amount and the seriousness of the offense, and it is well-established that monetary penalties provide a deterrent to unlawful conduct.

The majority also agrees with Plaintiffs' primary argument that the City's motive behind the late fee is to generate revenue, which supposedly per se renders the late fee excessive, or at the very least, provides a supposed disputed issue of material fact, thus precluding summary judgment. But by adopting this view, the majority injects itself into the legislative process and creates a requirement that courts parse a legislative body's motive in implementing a fine, including through holding a trial to determine such motive.

The majority's creation of this motivation inquiry begs several questions, not least of which is how a party or a court is to discern the legislative motive. Are we to look to the mayor who is the executive of the City but has no control over the amount of the late fee? Do we look to a majority of the City Council who vote for a particular late fee? Do we look to the City employees who explain the thought behind the late fee, but not necessarily why the City adopted it? The majority's unsupported focus on the "motivation" behind a fine improperly requires legislative bodies (at least in some circumstances)[3] to make specific

3. And if such findings are required for a $63 parking late fee, one can imagine a similar requirement for scores of what would have here-to-fore been thought to be routine fine settings.

findings on why they enact a certain fine, lest they be accused, as the City is here, of failing to provide sufficient evidence of why the City chose $63 and not $62.[4]

What is the extent of the burden the majority now places on legislative bodies? Must they show that the fine is rationally related to a legitimate government interest akin to rational basis review? Or does the majority hold legislative bodies to a higher standard of showing the fee is substantially related to furthering an important government interest akin to intermediate scrutiny? *Bajakajian* requires only that the amount of the forfeiture "bear *some relationship* to the gravity of the offense." 524

And so, scores of potential future federal court § 1983 actions and class actions.

4. The majority contradicts itself. In response to the questions I raise in this dissent concerning the majority's motivation inquiry, the majority attempts to cabin its holding "on the lack of *evidence* supporting the City's asserted rationale for setting the late payment penalty at $63 in 2012." Maj. at 1071. But even the majority is unclear about what the City could have done to meet its burden under the majority's new standard. In the majority's view, even had the City provided "testimony from a Rule 30(b)(6) witness, a declaration from a City official, or even a single piece of paper shedding light on the City's basis for the $63 late fee amount" it "would have *likely* prevailed." *Id.* (emphasis added). Even were the City to come forward with a declaration from a City official stating "we have evaluated the proportionality of the late fee and have set it at $63, which is sufficiently large to ensure timely payment but not so large as to be grossly disproportionate to the harm of untimely payment," the majority *still* leaves open the door that a litigant could invent a factual dispute requiring resolution from a jury about the City's motivation.

U.S. at 334, 118 S.Ct. 2028 (emphasis added). *Bajakajian* does not require that a legislative body affirmatively prove to a trier of fact that it was not motivated by revenue generation in implementing a fine. Dictating what a legislative body must say and do, when the Supreme Court has advised courts to afford "substantial deference" to that legislative body, is a stark overstep of the judiciary's role and improperly encroaches on the legislative body's ability to do its job.[5]

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5. The majority claims I "rely on the most extreme, rubber-stamp version of rational basis review in which we uphold a fine as long as we can divine a conceivable basis for it, even if the legislature never articulated that purpose and lacks any knowledge of how it came up with the fine amount." Maj. at 1072 n.7.

First, at no point in this dissent do I argue that rational basis review should apply. I mention the levels of scrutiny here because the majority's motivation inquiry seemingly *raises* the bar that legislative bodies must meet to justify the proportionality of a fine but does not clarify just how high that new threshold is.

Second, the existing low threshold a legislative body must meet comes not from my dissent, but from the Supreme Court and our precedent. *Bajakajian,* 524 U.S. at 336, 118 S.Ct. 2028; *Pimentel I,* 974 F.3d at 924; *Rosenblatt,* 940 F.3d at 452. "Reviewing courts, of course, should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes . . . ." *Solem v. Helm,* 463 U.S. 277, 290, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983). The only question before us is whether the amount of the forfeiture "bear[s] *some* relationship to the gravity of the offense that it is designed to punish." *Bajakajian,* 524 U.S. at 334, 118 S.Ct. 2028 (emphasis added). The majority cites no authority that imposes a more demanding standard or allows us to question the legislature's motive when it provides evidence justifying the late fee.

Similarly, even were it appropriate to look at the City's motivation behind the fine, the majority cannot rest its reasoning on the proposition that the City's late fee is excessive because its purpose is to generate revenue. First, neither the majority nor Plaintiffs point to any authority for the proposition that a legislature's imposition of a fine to generate revenue renders the fine disproportionate to the underlying offense. Indeed, as the majority recognizes, "our Excessive Fines Clause precedent does not establish that revenue-raising is an inherently improper aim that renders a fine grossly disproportionate." Maj. at 1070. But the majority creates such a standard by holding that "if revenue generation were the *sole* basis for the 100 percent late payment penalty, then the nexus between the amount of the late fee and the gravity of the underlying offense becomes all the more tenuous."[6] *Id.*

Finally, the majority claims that its holding is an evidentiary one, and not one that seeks to interrogate the legislature's motivation in implementing a fine. But strangely, at the same time the majority is saying it is *not* intending to interrogate the legislature as to motive, it is still focusing on the supposed flaw of relying on reasons "the legislature never articulated." Maj. at 1072 n.7. Despite its claim to the contrary, the majority *still* improperly believes that a legislature must sufficiently articulate to the majority's liking its purpose for passing every fine. If the legislature fails to preemptively meet the majority's indeterminate motivation standard, then it must prove its motivation to a jury. The separation of powers concerns underlying *Bajakajian* are even more prominent here, where the majority deems itself the arbiter of legitimate legislative motivations.

6. On this point, even the Plaintiffs disagree with the majority's motivation inquiry. When asked at oral argument whether a $10 fee that was created entirely for the purpose of revenue generation

Even if *one* of the City's motivations were to raise revenue, that would not render the fine excessive given other legitimate motivations to mitigate "fairly obvious" harms. The majority does not explain how, even if revenue generation were an illegitimate purpose (and it isn't), it would negate the other legitimate purposes the City had in implementing the late fee. The majority does not point to a similar case in which revenue generation was found to be such an illegitimate purpose that it tainted *any* other purpose in implementing a fine or fee.

But even moving beyond that flaw, fines, of course, generate revenue, and have always done so. "Criminal fines, civil penalties, civil forfeitures, and taxes all share certain features: They generate government revenues, impose fiscal burdens on individuals, and deter certain behavior." *Montana v. Kurth Ranch,* 511 U.S. 767, 778, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994). Revenue generation is an inherent characteristic of fines, not a constitutional flaw.[7]

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would violate the Eighth Amendment, Plaintiffs answered, "It is clear that a late penalty fee has some relationship to the loss of money for a period of time. So a $10 fee, given the discretion that is afforded to municipalities under the Eighth Amendment jurisprudence . . . I doubt there would be much of a challenge to that." Oral Arg. at 5:57-6:35.

Moreover, the majority's statement characterizes the proportionality issue as between the late fee and the original payment, and in doing so, the majority discards the very harms it earlier described as "fairly obvious."

7. To that extent, every fine benefits the government that receives revenue from its enforcement. Relying on a statement in a footnote from a portion of Justice Scalia's opinion in *Harmelin v.*

Michigan, 501 U.S. 957, 978 n.9, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) that was joined only by Chief Justice Rehnquist, the majority argues the fact that the City benefits from the fine makes "[r]eflexive deference [ ] inappropriate" here, especially as the City "has failed to offer any evidence that the late payment penalty was . . . set at an amount that would ensure compliance and deter both monetary and nonmonetary harm." Maj. at 1071-72. The majority also states: "[t]he City has provided no evidence to explain its late fee." Maj. at 1071. The majority's view comes with both a legal and factual error.

First, the majority is wrong in choosing to rely on a statement in *Harmelin* from two Justices (who dissented in *Bajakajian*), over *Bajakajian*'s deference standard. In *Harmelin,* Justice Scalia stated that "it makes sense to scrutinize governmental action more closely when the State stands to benefit." 501 U.S. at 978 n.9, 111 S.Ct. 2680. But seven years later, in *Bajakajian,* the Court adopted the Cruel and Unusual Punishments Clause standard of gross disproportionality to the Excessive Fines Clause and emphasized the deference owed to legislative bodies. 524 U.S. at 334-36, 118 S.Ct. 2028. If the majority were correct that we should defer less to the legislative body when government benefits, we would have to reject *Bajakajian*'s deference standard every time we evaluate a fine, because all fines generate revenue. That neither the majority opinion nor the dissent in *Bajakajian* even cite *Harmelin* is telling.

Factually, the majority either fails to evaluate evidence appropriately, or ignores evidence. We start with this standard: "Without material evidence provided by appellants to the contrary, we must afford 'substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments." *Pimentel I,* 974 F.3d at 924 (quoting *Bajakajian,* 524 U.S. at 336, 118 S.Ct. 2028). The majority cites to two individuals and their testimony about the late fee. First, the majority points to Jay Carsman, who had been retired from the City for four years before the late fee of $63 was even implemented. Carsman testified that the late fees "were adopted solely because the City sought to

Further, even under the majority's flawed view—assuming a trier of fact could somehow determine the motivation of a multi-person legislative body, and assuming the legislative body's motivation could be both determinable and dispositive[8]—no reasonable jury could

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increase revenue to its General Fund." As the majority recognizes, Carsman "lacks personal knowledge of the City's reason for setting the fine at $63," Maj. at 1073 n.3, and Carsman's testimony does not undercut the evidence the City produced that I later discuss, including City Controller Ron Galperin's letter that explained that the late fee was directly tied to the City's financial ability to conduct its parking program. As I also later note, the majority does not even discuss the Galperin letter.

The majority also points to Plaintiffs' expert, Jay Beeber, who stated broadly that he was "given no reason at all, let alone a rational reason," as to why the City set the late fine at $63. Maj. at 1070. Again, this is not contrary to Galperin's letter, it merely establishes that Beeber did not know the justifications for the late fine. Accordingly, it is not the City that has produced no evidence, rather it is Plaintiffs who have failed to do so. And again, as we said in *Pimentel I,* the Plaintiffs' failure to produce material evidence contradicting the evidence put forth by the City means "we *must* afford substantial deference" to the City. 974 F.3d at 924 (emphasis added) (quotation mark omitted) (quoting *Bajakajian,* 524 U.S. at 336, 118 S.Ct. 2028).

8. I believe this inquiry is a non-sequitur on many levels, the most basic one being that the inquiry doesn't remotely inform whether the fine is grossly disproportional to the harm. Every council member could have voted for a $1,000 late fee for a $63 parking ticket solely to deter the harms caused by late payment and nonpayment of the $63. But that wouldn't make the grossly disproportional $1,000 penalty constitutional. Similarly, every council member could have voted to impose a $25 late fee solely to

conclude that the revenue raising potential was the *sole* purpose behind the late fee.

Courts presume that city ordinances serve the city's legitimate interests, and it is the plaintiff's burden to rebut that presumption. *Rosenblatt,* 940 F.3d at 452. As we explained, "legislatures . . . retain broad authority to fashion fines" and the government need not show "strict proportionality" between the fine amount and the gravity of the underlying offense. *Pimentel I,* 974 F.3d at 924 (internal quotation marks and citation omitted). Plaintiffs have failed to meet their burden to overcome the presumption afforded to the City, even accepting the majority's flawed test.

III. The City met its "low burden" of showing the late fee is not disproportionate to the harm caused by untimely payment.

To evaluate the fourth *Bajakajian* factor, we look to "the monetary harm resulting from the violation," and "how the violation erodes the government's purposes for proscribing the conduct." *Pimentel I,* 974 F.3d at 923.

The proportionality of the City's late fee is informed by two legitimate purposes. First, the City explained how the $63 late fee protects it from substantial monetary harm. When taken in the aggregate, as we evaluated the

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raise revenue. That wouldn't render the obviously constitutional fee unconstitutional. We look to the excessiveness of a fine by evaluating the proportionality of the amount to the offense, not the "motivation."

initial $63 fine in *Pimentel I,* the City's cost to collect the initial fine would be heightened if every driver or many drivers failed to timely pay the initial fine. Before the district court, Plaintiffs argued that this monetary harm was "negligible," because the negative impact "amount[s] to nothing more than mailing another late notice." They renew this argument on appeal, arguing failure to pay the original parking fine within 21 days "imposes at most a negligible monetary cost" which is the "equivalent of a tiny amount of interest on the owed amounts after 21 days."

The majority looks at the proportional increase between the original parking fee and the late fee and holds that there is a factual dispute "about the City's basis for setting the late fee at 100 percent of the parking fine." Maj. at 1065. Respectfully, the inquiry is not whether the late fee is proportional to the original fee. It simply does not matter whether the late fee is 10 percent or 100 percent of the original parking fee.[9] The relevant question is whether

9. The majority claims it is "comparing the late fee amount to the harm caused by the offense of not paying the parking ticket timely," and not to the proportionality between the late fee and the original parking fine. Maj. at 1071 n.5. It is odd, then, that the majority continues to frame the issue before us as relating to "the City's basis for setting the late fee at *100 percent of the parking fine.*" Maj. at 1065 (emphasis added); *see id.* ("Nor should we presume that the City imposed a fairly hefty 100 percent late fee to ensure compliance with the law."); *id.* at 1065 ("The 100 percent late payment penalty traces back to the 1990s. . . . [T]he City implemented . . . increases. . . for all parking fines . . . [including] the 100 percent late penalty. . . . [T]he City Council increased the parking fine and the 100 percent late payment penalty . . . ."); *id.* at 1066 (Plaintiffs "adduced some evidence suggesting that the

the $63 late fee is grossly disproportionate to *the harms caused by non-payment.* In *Pimentel I,* we found the same fine amount of $63 to be constitutional under the Excessive Fines Clause. 974 F.3d at 923-24. The late fee mitigates both the monetary harms that flowed from the original parking violation, as well as new ones, such as untimely or nonexistent payments of the original fine. Following our analysis in *Pimentel I,* I would find that the $63 late fee is easily proportional (and certainly not grossly disproportional) to the recognized (and obvious) harms that flow from late payment of the original parking fine.

Creating, implementing, and enforcing a parking system the way the City believes will work best is an important interest. The harm in our overturning that system (or at least requiring a trial in the most routine circumstances) is readily apparent. In 2017, Ron Galperin, the City Controller, wrote a letter to the mayor and city council to discuss "Parking Citations and Revenue." After analyzing the City's citation program, Galperin found that "the City generated close to $148 million

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City set its late payment penalty at 100 percent of the parking fine solely to raise revenue."); *id.* at 1069 ("The tougher question is whether a 100 percent late fee of $63 for a $63 parking ticket. . . is 'grossly disproportional' to the gravity of nonpayment within 21 days."); *id.* at 1070, n. 3 ("Although Carsman lacks personal knowledge . . . his testimony may potentially bear on the City's basis for fixing the late fee at 100 percent of the fine."); *see also id.* at 1070-71. The percentage increase for the fine does not relate to any of the four *Bajakajian* factors. But the majority mentions the proportionality between the fine and late fee 17 times in its 23-page opinion, even though the majority says it is *not* focusing on this proportionality.

in gross ticket revenues in FY 2015-16, but some [75 percent] of ticket revenue went to overhead, salaries and administrative costs" of operating the City's Department of Transportation Citation Program. He advised that "[t]he remaining $41 million was available and used to help pay for City services through the General Fund," and he recommended the mayor and city council "act with caution when considering the reduction in parking fines." Therefore, by 2017, the "negligible" harm directly related to the City's ability to pay over $100 million in administrative costs.

Plaintiffs argue that this letter shows the City's intent was purely financial, because the City relied on revenue from parking fines and the late fee. But three-quarters of the fee generation went to administrative costs to implement and enforce the parking fines throughout the City. There are also administrative costs associated with enforcing the late fee itself, including tracking drivers who have failed to pay the late fee, notifying drivers of the late fee and, absent payment after the notification, sending the driver's information to a third-party contractor for more collection efforts. The size of the administrative costs alone reinforces the City's legitimate financial interest in the timely payment of parking fines—an interest which is directly supported by the late fee here.[10] With three-

10. Absent from the majority's opinion is any reference to Galperin's letter. The majority claims that its holding "just requires the government to provide some evidence that the fine amount was not wholly arbitrary." Maj. at 1072. But the Galperin letter (along with the entire record) demonstrates that the fine amount is not remotely arbitrary, much less *wholly arbitrary,*

quarters of the entire parking fine administrative scheme being supported by the funds received from the fees, if even a small portion of those fines are untimely paid, the City endures a significant harm of not being able to adequately fund its administrative scheme or being forced to take funds from one source to supplement the parking fine administration while waiting for parking violators to pay their original fines. A late fee both encourages timely payment of the original fee to avoid this problem in the first place and also rectifies the financial harm the City experiences when individuals fail to pay on time.

The costs of the entire parking enforcement department are supported by revenue generated from fines, both the initial fines and the late fee. The harder it is for the City to collect those payments, the higher the cost of the entire enforcement scheme. That makes the City's interest in timely payments, an interest supported by the late fee, all the more important as compared to the potential harm to the City.

Along with the monetary harm, the failure to pay the parking fine on time "erodes the government's purposes for proscribing the conduct." *Pimentel I,* 974 F.3d at 923. As we noted, the City has a legitimate interest in deterring parking violations and promoting compliance, "because overstaying parking meters leads to increased congestion and impedes traffic flow." *Id.* at 924. The late fee not only further protects the City's traffic-related interests by

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including because it was directly tied to the City's financial interest in the timely payment of parking fines.

strengthening the original fee and promoting its prompt payment, but it also helps protect the City's interest in ensuring its regulations are adequately enforced and followed.

The proportionality is highlighted by Plaintiffs' own admissions. Plaintiffs admitted that the City "may have a legitimate interest in timely collection of its fines" and conceded that *some* form of a late fee was appropriate when they argued below that the "initial [late] penalty should be no more than $25." Plaintiffs' counsel again confirmed at oral argument that one of their experts had stated that a late fee should exist and would be reasonable if priced at $25. Oral Arg. at 6:50-6:56. When asked at oral argument whether there was some number which Plaintiffs would say is "facially" constitutional, Plaintiffs responded "yes" but that it should go to a jury to decide whether $63 is too much. Oral Arg. at 6:57-8:45. Thus, the dispute here is not whether the City has a legitimate purpose in imposing the late fee, because Plaintiffs have already agreed that the City does. The real issue is whether $38, the difference between the City's late fee and what Plaintiffs contend is appropriate, renders the late fee so "grossly disproportionate" that the late fee is excessive and therefore unconstitutional.

The late fee here, on its face, is, as a matter of law, reasonable and not excessive. That should have ended the inquiry. In addition, on its face, that late fee is not grossly disproportionate to the harms it is intended to address. That too should have ended the inquiry. Application of the Excessive Fines Clause to the $63 late fee here trivializes

the monumental import of the documents from which the Clause sprung—Magna Carta, the English Bill of Rights, and the Virginia Declaration of Rights. And it trivializes the statute under which Plaintiffs bring their claim—42 U.S.C. § 1983.[11] But that is not the end of the flaws of the majority opinion. The majority places our court as the overseer of state and municipal legislative and executive authority, and mandate federal court *Civil Rights Act* review of the most routine of municipal decisions. This federalism flaws stands as important as the others just mentioned. Because I believe the $63 late fee clearly and undeniably passes constitutional muster, I respectfully dissent.

11. The majority rejects these contentions by citing to cases that discuss the importance of the First Amendment. Maj. at 1073-74, 1073 n.8. But a dispute about that $38 portion of a parking fine is simply not of the same constitutional import as government prohibiting a person from expressing views on government policy, *Klein v. City of San Clemente,* 584 F.3d 1196, 1199 (9th Cir. 2009), or a school district penalizing a student group based on its religious beliefs, *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.,* 82 F.4th 664, 671-72 (9th Cir. 2023) (en banc).

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED OCTOBER 30, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55946
D.C. No. 2:14-cv-01371-FMO-E
Central District of California, Los Angeles

JESUS PIMENTEL; DAVID R. WELCH; JEFFREY O'CONNELL; EDWARD LEE; WENDY COOPER; JACKLYN BAIRD; RAFAEL BUELNA, AND ALL PERSONS SIMILARLY SITUATED,

Plaintiffs-Appellants,

and

ANTHONY RODRIGUEZ,

Plaintiff,

v.

CITY OF LOS ANGELES,

Defendant-Appellee,

v.

ELEN KARAPETYAN,

Movant.

Appendix B

ORDER

Before: RAWLINSON, BENNETT, and LEE, Circuit Judges.

Judges Rawlinson and Lee voted to deny the petition for rehearing en banc. Judge Bennett voted to grant the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is **DENIED.**

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED SEPTEMBER 13, 2022

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 14-1371 FMO (Ex)

JESUS PIMENTEL, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

CITY OF LOS ANGELES,

Defendant.

Filed September 13, 2022

ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT

Having reviewed and considered all the briefing filed with respect to the cross motions for summary judgment filed by plaintiffs Jesus Pimentel ("Pimentel"), David Welch ("Welch"), Jeffrey O'Connell ("O'Connell"), Edward Lee ("Lee"), Wendy Cooper ("Cooper"), Jaclyn Baird ("Baird"), and Rafael Buelna ("Buelna") (collectively, "plaintiffs") (Dkt. 169) and the City of Los Angeles ("the

City" or "defendant") (Dkt. 170), the court finds that oral argument is not necessary to resolve the Motions, *see* Fed. R. Civ. P. 78(b); Local Rule 7-15; *Willis v. Pac. Mar. Ass'n*, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

INTRODUCTION

On February 24, 2014, Pimentel and Welch filed the instant action on behalf of themselves and all others similarly situated, alleging that the City had improperly levied fines and late payment penalties for parking meter violations. (*See* Dkt. 1, Complaint). The Complaint asserted causes of action for violations of the: (1) excessive fines clause of the Eighth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983; (2) excessive fines provision of Article I, Section 17 of the California Constitution; (3) due process clause of the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983; and (4) due process clause of Article I, Section 7(a) of the California Constitution. (*See id.* at ¶¶ 35-51). Pimentel, Welch, as well as additional plaintiffs O'Connell, Lee, Cooper, Baird, Buelna, Elen Karapetyan ("Karapetyan"),[1] and Anthony Rodriguez ("Rodriguez")[2]

1. Karapetyan was later dismissed without prejudice pursuant to the parties' stipulation. (*See* Dkt. 57, Court's Order of July 5, 2016, at 2); (Dkt. 170-1, Joint Brief [] ("Joint Br.") at 1 n.1).

2. Rodriguez was later dismissed with prejudice pursuant to a stipulation between his attorney and the City. (*See* Dkt. 159, Stipulation to Voluntarily Dismiss Plaintiff Anthony Rodriguez [] at 2); (Dkt. 170-1, Joint Br. at 1 n.1).

subsequently filed a First Amended Complaint ("FAC"), asserting the same causes of action. (*See* Dkt. 29, FAC at ¶¶ 56-72).

On September 29, 2015, the court granted in part and denied in part the City's motion to dismiss the FAC. (*See* Dkt. 43, Court's Order of September 29, 2015, at 17). The court granted the City's motion as to plaintiffs' due process claims and their claims for any monetary relief under the California Constitution, but permitted plaintiffs to proceed on their excessive fines claim under the federal and state constitutions. (*See id.*). Plaintiffs then filed the Second Amended Complaint ("SAC"), the operative complaint in this case, alleging their excessive fines claims. (*See* Dkt. 44, SAC at ¶¶ 56-66).

On May 21, 2018, the court granted the City's motion for summary judgment, finding that the initial $63 parking meter penalty and the late payment penalties were not grossly disproportionate to the underlying offenses within the meaning of the Eighth Amendment's excessive fines clause. (*See* Dkt. 131, Court's Order of May 21, 2018). Plaintiffs appealed to the Ninth Circuit. (*See* Dkt. 133, Notice of Appeal). The Ninth Circuit affirmed the grant of summary judgment in favor of the City as to the initial parking fine of $63, but remanded the case for the court to determine "whether the late payment penalty of $63 is grossly disproportionate to the offense of failing to pay the initial fine within 21 days." *Pimentel v. City of Los Angeles*, 974 F.3d 917, 925 (9th Cir. 2020). The parties subsequently filed cross-motions for summary judgment addressing that issue.

Appendix C

BACKGROUND[3]

Pursuant to its authority under California law, *see* Cal. Veh. Code §§ 40203.5(a)-(b), the Los Angeles City Council ("City Council") has adopted a penalty schedule for various parking violations, including for expired parking meters and late payments. (*See* Dkt. 170-2, Statement of Uncontroverted Facts [] ("SUF") at D1-D2); Los Angeles Municipal Code ("Mun. Code") § 88.13 (establishing violation for failure to pay for parking meter space); *id.* at § 89.60 (establishing fines and late payment penalties for parking violations). Since 2012, the initial penalty for a parking meter violation has been $63. (Dkt. 170-2, SUF at D3).

A person who has been ticketed for exceeding the time limit on a parking meter has the right to contest the parking meter violation. (*See* Dkt. 170-2, SUF at D5); Cal. Veh. Code § 40215(a) (providing that "a person may request an initial review" within 21 days "from the issuance of a notice of parking violation"); *id.* § 40215(b) (providing that "[i]f the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the mailing of the results of the issuing agency's initial review"). If the initial $63 fine is not timely paid, and all opportunities to contest the parking meter citation have been exhausted or waived, a late penalty of $63 is assessed. (*See* Dkt. 170-2, SUF at D4, D12); (Dkt. 169-2,

3. The following facts are undisputed. And because the parties are familiar with the facts, the court will repeat them below only as necessary.

Exh. 2(a), Deposition of Robert Andalon [] ("March 2017 Andalon Depo.") at 51). Another late payment penalty of $25 is imposed if the City does not receive payment within 58 days from the date the citation is issued. (Dkt. 170-2, SUF at D6); Mun. Code at §§ 88.13(a)-(b), 89.60. If payment is not made within 80 days from the date of the citation, a $3 Department of Motor Vehicle hold fee and a $27 collection fee are assessed, bringing the total amount owed to $181. (Dkt. 170-2, SUF at D7, D9). If the $181 is not paid after this point, no further penalties or fees are imposed. (*See id.* at D9).

LEGAL STANDARD

Rule 56(a) of the Federal Rules of Civil Procedure authorizes the granting of summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The standard for granting a motion for summary judgment is essentially the same as for granting a directed verdict. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511 (1986). Judgment must be entered "if, under the governing law, there can be but one reasonable conclusion as to the verdict." *Id.*

The moving party has the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each cause of action upon which the moving party seeks judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). If the moving party fails to carry its initial burden of production, "the

nonmoving party has no obligation to produce anything[.]" *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102-03 (9th Cir. 2000).

If the moving party has sustained its burden, the burden then shifts to the nonmovant to identify specific facts, drawn from materials in the file, that demonstrate that there is a dispute as to material facts on the elements that the moving party has contested. *See Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553; *Anderson*, 477 U.S. at 256, 106 S.Ct. at 2514 (a party opposing a properly supported motion for summary judgment "must set forth specific facts showing that there is a genuine issue for trial.").[4] A factual dispute is material only if it affects the outcome of the litigation and requires a trial to resolve the parties' differing versions of the truth. *SEC v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982). Summary judgment must be granted for the moving party if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552; *see Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512 (parties bear the same substantive burden of proof as would apply at a trial on the merits).

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4. "In determining any motion for summary judgment or partial summary judgment, the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the 'Statement of Genuine Disputes' and (b) controverted by declaration or other written evidence filed in opposition to the motion." Local Rule 56-3.

In determining whether a triable issue of material fact exists, the evidence must be considered in the light most favorable to the nonmoving party. *See Barlow v. Ground*, 943 F.2d 1132, 1134 (9th Cir. 1991). However, summary judgment cannot be avoided by relying solely on "conclusory allegations [in] an affidavit." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); *see also Matsushita Elec. Indus.* Co. *v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356 (1986) (more than a "metaphysical doubt" is required to establish a genuine issue of material fact). "The mere existence of a scintilla of evidence in support of the [nonmoving party's] position" is insufficient to survive summary judgment; "there must be evidence on which the [fact finder] could reasonably find for the [nonmoving party]." *Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512.

DISCUSSION

The Eighth Amendment of the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The excessive fines clause "limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense." *Timbs v. Indiana*, 139 S.Ct. 682, 687 (2019) (internal quotation marks omitted).

"The Supreme Court has held that a fine is unconstitutionally excessive under the Eighth Amendment if its amount 'is grossly disproportional to the gravity

of the defendant's offense.'"[5] *Pimentel*, 974 F.3d at 921 (quoting *United States v. Bajakajian*, 524 U.S. 321, 337, 118 S.Ct. 2028, 2038 (1998)). "To determine whether a fine is grossly disproportional to the underlying offense, four factors are considered: (1) the nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense." *Id.* Although these are known as the *Bajakajian* factors, "*Bajakajian* itself does not mandate the consideration of any rigid set of factors." *Id.* (internal quotation marks omitted).

In adopting "the standard of gross disproportionality" rather than "strict proportionality" between the fine and gravity of the offense, the Supreme Court emphasized two principles in *Bajakajian* that guide the court's analysis. *See* 524 U.S. at 336, 118 S.Ct. at 2037. First, "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Id.* Second, "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.*

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5. The parties agree that "[t]he same standard and case authority apply in evaluating Plaintiffs' claims under both the federal and state excessive fines constitutional provisions." (Dkt. 170-1, Joint Br. at 13); (*see also* Dkt. 43, Court's Order of September 29, 2015, at 9) ("Article 1, Section 17 of the California Constitution states, '[c]ruel or unusual punishment may not be inflicted or excessive fines imposed.' Cal. Const. art. I, § 17. 'This section is a state equivalent to the Eighth Amendment.'") (quoting *Brownlee v. Burleson*, 2006 WL 2354888, *7 (E.D. Cal. 2006)) (alterations in original).

Appendix C

As noted earlier, the Ninth Circuit remanded this case "for the court to determine under *Bajakajian* whether the late payment penalty of $63 is grossly disproportional to the offense of failing to pay the initial fine within 21 days." *Pimentel*, 974 F.3d at 925. With respect to the first *Bajakajian* factor, which considers the nature and extent of the underlying offense, "[c]ourts typically look to the violator's culpability to assess this factor." *Pimentel*, 974 F.3d at 922. Courts "review the specific actions of the violator rather than by taking an abstract view of the violation." *Id.* at 923. "Even if the underlying violation is minor, violators may still be culpable." *Id.*

Here, it is undisputed that plaintiffs are culpable because they violated Los Angeles Municipal Code § 89.60. (*See, e.g.*, Dkt. 44, SAC at ¶¶ 7, 9, 12, 14, 19, 22, 23, 26-27, 34)[6]; (*see* Dkt. 170-1, Joint Brief Regarding the Parties Cross-Motions for Summary Judgment ("Joint Br.") at 20); *see also Pimentel*, 974 F.3d at 923 ("[P]laintiffs are indeed culpable because there is no factual dispute that they violated Los Angeles Municipal Code § 88.13 for failing to pay for over-time use of a metered space."). Nonetheless, plaintiffs' culpability is low because the failure to timely

6. Although Buelna alleges that he was wrongly ticketed for an expired meter, (*see* Dkt. 44, SAC at ¶ 33), plaintiffs do not dispute that Buelna violated Los Angeles Municipal Code §§ 89.60 and 88.13(b) for purposes of the Motion. (*See*, *generally*, Dkt. 170, Joint Brief []); (Dkt. 173, Plaintiffs' Supplemental Brief []). Moreover, the Ninth Circuit accepted that Buelna committed the initial parking violation. *See Pimentel*, 974 F.3d at 923 (noting "there is no factual dispute that [plaintiffs] violated Los Angeles Municipal Code § 88.13").

pay the initial late payment penalty, as with the underlying parking violation, is minor. *See Pimentel*, 974 F.3d at 923 (concluding that plaintiffs' "culpability is low because the underlying parking violation is minor"). The court therefore finds "the nature and extent of [plaintiffs'] violations to be minimal but not de minimis." *Id.*

As for the second *Bajakajian* factor, the parties agree that there is no evidence showing that a late payment penalty for a parking meter violation relates to other illegal activities. (*See* Dkt. 170-2, SUF at P5); *Pimentel*, 974 F.3d at 923 (noting that "[t]his factor is not as helpful to our inquiry as it might be in criminal contexts" and "that there is no information in the record showing whether overstaying a parking meter relates to other illegal activities").

The third *Bajakajian* factor considers "whether other penalties may be imposed for the offense[.]" *Pimentel*, 974 F.3d at 921. With respect to the initial parking fine, the Ninth Circuit concluded that this factor did "not advance [the court's] analysis[,]" and noted that "[n]either party suggest[ed] that alternative penalties may be imposed instead of the fine[.]" *Id.* at 923. On remand, plaintiffs assert that the initial late payment penalty "should be no more than $25[,]" (Dkt. 170-1, Joint Br. at 34), and that the possibility of a lower late fee supports finding that the current $63 late fee is grossly disproportionate. (*See id.* at 33-34). Plaintiffs' contentions are unpersuasive.

As an initial matter, plaintiffs cite no authority supporting their contention that the possibility of a lower

late fee is a relevant consideration under *Bajakajian*. (*See, generally*, Dkt. 170-1, Joint Br. at 34). Moreover, it is unclear to what extent this factor is relevant in the context of late payment penalties for parking meter violations. *See, e.g.*, *Pimentel*, 974 F.3d at 923 (explaining that this factor "did not advance [the court's] analysis" because nothing in the record "suggest[ed] that alternative penalties may be imposed instead of the fine" for the parking violation). In *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110 (9th Cir. 2004), for example, the Ninth Circuit explained that the third *Bajakajian* factor involved consideration of "other penalties that the Legislature has authorized and the maximum penalties that could have been imposed under the Sentencing Guidelines as measures of the gravity of the offense." *Id.* at 1122 (internal quotation marks omitted); *see Pimentel*, 974 F.3d at 923 (citing *$100,348.00 in U.S. Currency* in concluding that the third factor did not apply).

Here, by contrast, there is no maximum penalty to consider. *See* Cal. Veh. Code § 40203.5(a); (Dkt. 170-1, Joint Br. at 33) (plaintiffs conceding that the state legislature "has not prescribed what late penalties the City can charge as to parking citations," including late payment penalties); cf. *$100,348.00 in U.S. Currency*, 354 F.3d at 1122 (noting that Congress and the Sentencing Guidelines set maximum fines for the criminal violation at issue). Nor do plaintiffs point to an alternative type of penalty available for non-payment of the initial parking violation fine or the late payment penalty. (*See, generally*, Dkt. 170-1, Joint Br. at 33-34). Indeed, other courts have concluded that "whether the maximum fine was imposed[] does

not fit well into the parking-ticket context, where there appears to be little discretion over the degree of any given penalty[.]" *Torres v. City of New York*, 2022 WL 743926, *14 (S.D.N.Y. 2022) (quoting *Tsinberg v. City of New York*, 2021 WL 1146942, *8 (S.D.N.Y. 2021)). In short, the court finds that this factor does not advance its analysis of whether the late fee is grossly disproportionate.[7] *See Pimentel*, 974 F.3d at 923 (same).

Turning to the fourth factor, the court considers the extent of the harm caused by the violation. *See Pimentel*, 974 F.3d at 921. Although "[t]he most obvious and simple way to assess this factor is to observe the monetary harm resulting from the violation[,]" the court's review of the fourth factor "is not limited to monetary harms alone." *Id.* at 923. "Courts may also consider how the violation erodes the government's purposes for proscribing the conduct." *Id.*

Here, the City contends that the late payment penalty causes both monetary harm and non-monetary harm. (*See* Dkt. 170-1, Joint Br. at 4, 23-26). The City asserts that it "has a substantial, legitimate interest in timely collection of the penalties and to ensure its laws are not violated,"

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7. To be clear, the court declines to adopt the City's sweeping assertion that "the late payment penalty cannot violate the Eighth Amendment as a matter of law because it does not exceed any limits prescribed by the authorizing statute." (Dkt. 170-1, Joint Br. at 18). If that were true, there would have been no need to engage in the gross-disproportionality analysis for the underlying parking violation, which likewise has no maximum penalty prescribed by the authorizing statute. *See* Cal. Veh. Code § 40203.5(a).

(*id.* at 4), as well as in "avoid[ing] collection efforts" and attempting "uniformity and consistency in processing citations to conserve resources." (*Id.* at 24). According to the City, plaintiffs "subverted" these interests "[b]y failing to timely pay or contest their parking meter citations or seeking an installment payment plan[.]" (*Id.*).

Plaintiffs respond that "the failure to pay within 21 days imposes at most a negligible monetary cost on the City, the monetary equivalent of a tiny amount of interest on the owed amounts[.]" (*See* Dkt. 170-1, Joint Br. at 32). Plaintiffs also contend that any negative impact on the City's "collection efforts" is minimal and "amount[s] to nothing more than mailing another late notice[.]" (*Id.*). According to plaintiffs, the "late payment penalty [] is of an entirely different nature and order of magnitude than the harm to the City that the appellate court focused on as to the initial meter violation [.]"[8] (*Id.*). Plaintiffs' contentions are unpersuasive.

As an initial matter, plaintiffs do not address the City's assertion that their failure to timely pay the underlying parking fines harms the City's efforts "to ensure its laws are not violated[.]" (Dkt. 170-1, Joint Br. at 4); (*see, generally, id.* at 29-34); *see Tsinberg*, 2021 WL 1146942, at *8 (recognizing that, in addition to the financial harm resulting from non-payment of parking tickets, New York City has a "separate, if less tangible, interest in

8. As for the initial parking violation, the Ninth Circuit noted that it was undisputed "that the City is harmed because overstaying parking meters leads to increased congestion and impedes traffic flow." *Pimentel*, 974 F.3d at 924.

promoting compliance with its laws, which is undermined even by small-scale disregard" of outstanding parking tickets). And to the extent plaintiffs suggest that the late payment penalty is entirely unrelated to the initial parking violation, (*see, e.g.*, Dkt. 170-1, Joint Br. at 5), the court disagrees. "Without the prospect of escalating fines, violators like [plaintiffs] would have little reason ever to pay their tickets to the City[,]" *Tsinberg*, 2021 WL 1146942, at *8, which would undermine the purpose of the original fine for the parking meter violation. *See Pimentel*, 974 F.3d at 924 (noting that it was undisputed "that the City is harmed because overstaying parking meters leads to increased congestion and impedes traffic flow").

As for plaintiffs' characterization of the monetary harm as "negligible[,]" (Dkt. 170-1, Joint Br. at 5, 32), they fail to appreciate the aggregate costs the City incurs in collection efforts. *See*, e.g., *Tsinberg*, 2021 WL 1146942, at *8 ("[A]lthough when Tsinberg's experience is viewed in isolation, his non-payment of five $65 tickets may not have meaningfully harmed the City of New York, the City must process an overwhelming volume of alleged parking violations."). Moreover, the late fees encourage payment of the original fine for the parking violation. Indeed, as the Ninth Circuit previously recognized, albeit in the context of the City's procedure for contesting parking citations, "[t]he City has an interest in promptly collecting parking penalties[,]" avoiding "the cost of further collection efforts[,]" and "conserving scarce administrative resources." *Yagman v. Garcetti*, 852 F.3d 859, 866 (9th Cir. 2017) (internal quotation marks omitted). In short, in light of the monetary and non-monetary

harms cited by the City, and "[w]ithout material evidence provided by [plaintiffs] to the contrary," the court "must afford 'substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments.'" *Pimentel*, 974 F.3d at 924 (quoting *Bajakajian*, 524 U.S. at 336, 118 S.Ct. at 2037).

Plaintiffs' argument that there is a factual dispute regarding the deterrent effect of the late payment penalty because there is "no quantitative or empirical evidence" that it "has any deterrent effect on future parking meter violations or encourages compliance[,]" (Dkt. 170-1, Joint Br. at 12- 13), is unpersuasive. The Ninth Circuit rejected this argument with respect to the initial parking fine, explaining that "legislatures . . . retain broad authority to fashion fines" and the government need not show "strict proportionality" between the fine amount and the gravity of the offense. *Pimentel*, 974 F.3d at 924 (internal quotation marks omitted). Moreover, it is well-established that monetary penalties provide a deterrent to unlawful conduct. *See, e.g.*, *Towers v. City of Chicago*, 173 F.3d 619, 625-26 (7th Cir.) ("[T]he City, in fixing the amount, was entitled to take into consideration that the ordinances must perform a deterrent function[] . . . . The $500 fine imposed in this case is large enough to function as a deterrent, but it is not so large as to be grossly out of proportion to the activity that the City is seeking to deter."); *Disc. Inn, Inc. v. City of Chicago*, 72 F.Supp.3d 930, 934-35 (N.D. Ill. 2014) (fine imposed for violation of vacant lot ordinance appeared "to serve as a deterrent" for Eighth Amendment purposes).

As for the City's justification for the $63 late payment fee, the City claims that it "encourage[s] timely payments and discourage[s] late payments." (Dkt. 170-1, Joint Br. at 3-4). According to the City, "[t]he late payment penalty was set at an amount to deter people from not paying their parking meter violation penalty on time." (*Id.* at 24); (*see* Dkt. 17-2, SUF at D17; Dkt. 169-2, Exh. 2(a), Andalon Depo. at 56-57, 85-86). Also, the late fee promotes the City's "interest to collect the money due to it promptly, to avoid collection efforts, and to try and achieve uniformity and consistency in processing citations to conserve resources." (Dkt. 170-1, Joint Br. at 24) (citing *Yagman*, 852 F.3d at 866).

There is no dispute that—at least to some extent—a late payment penalty encourages timely payments. Although plaintiffs purport to dispute this fact, (*see* Dkt. 170-2, SUF at D17), they nevertheless admit that "deterring late payment" is a "legitimate goal." (Dkt. 170-1, Joint Br. at 33); (*see id.* 32) (conceding that "the City may have a legitimate interest in timely collection of its fines"); (Dkt. 173, Plaintiffs' Supplemental Brief [] at 3) (same). Moreover, plaintiffs agree that some form of late fee is appropriate. (*See* Dkt. 170-1, Joint Br. at 34) (asserting that "[t]he initial penalty should be no more than $25").

Plaintiffs attempt to dispute the City's justifications for the late payment penalty by arguing that the City has not proffered evidence regarding its "'intent' in setting the late payment penalty rate." (Dkt. 170-2, SUF at D17). According to plaintiffs, the City's primary goal in raising the initial late payment penalty from $35 in 2002 to $63

in 2012 was to increase revenue to the General Fund. (*See* Dkt. 170-1, Joint Br. at 6-7, 34-36). But the City's intent to use the late payment penalty as a revenue source for its General Fund, even if it were mutually exclusive from the penalty's deterrent effect, does not necessarily render the penalty unconstitutionally excessive. As noted, the Supreme Court has held that policymakers should be afforded wide deference in setting fine amounts. *See Bajakajian*, 524 U.S. at 336, 118 S.Ct. at 2037 (explaining that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature[,]" and "[r]eviewing courts . . . should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes"). Moreover, in "adopt[ing] the standard of gross disproportionality" rather than "strict proportionality[,]" the Supreme Court emphasized "that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.* at 336, 118 S.Ct. at 2037.

Finally, the court is unpersuaded that it should incorporate a separate means-testing requirement in assessing whether the late fee is unconstitutionally excessive.[9] (*See* Dkt. 170-1, Joint Br. at 37-41). The Ninth

9. Nonetheless, the court notes that the City was, to some extent, attentive to the burden that parking fines can impose on low-income persons. Prior to July 2018, the City offered an installment payment plan for the initial parking fine and any late payment penalties that accrued. (*See* Dkt. 170-1, Joint Br. at 27); (Dkt. 170-2, SUF at D14; Dkt. 169-2, Exh. 2(a), Andalon Depo. at 112-16; *id.*, Exh. 2(b), Deposition of Roseanne Beacham ("Beacham

Circuit likewise "decline[d] [plaintiffs'] invitation to affirmatively incorporate a means-testing requirement for claims arising under the Eighth Amendment's Excessive Fines Clause[,]" and noted that "the Supreme Court expressly declined to address [this issue] in *Bajakajian*." *Pimentel*, 974 F.3d at 925; *see Timbs*, 139 S.Ct. at 688 (same).

In short, the court finds that the late fee "bear[s] some relationship to the gravity of the offense[.]" *Pimentel*, 974 F.3d at 924. Although a failure to timely pay the parking fine "is not a serious offense, the [late fee] is not so large, either," and it encourages timely payment and compliance with the law. *See id.*

Having considered the *Bajakajian* factors, the court concludes that the City's late payment penalty of $63 is not grossly disproportional to the underlying offense of failing to pay the initial parking fine within 21 days. This is consistent with decisions by other courts that have considered the excessive fines clause in the context of parking violations. *See, e.g.*, *Torres*, 2022 WL 743926, at *13-14 (multiple $95 parking tickets on the same day for the same parking violation not grossly disproportional); *Tsinberg*, 2021 WL 1146942, at *8-9 ($63 late payment

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Depo.") at 29-34; *id.*, Exh. 34, Remote Deposition of Mark Granado ("Granado Depo.") at 15-28, 36-37). Since July 2018—which is after the violations at issue in this case—late payment penalties may be waived under certain circumstances. (*See* Dkt. 170-1, Joint Br. at 27); (Dkt. 170-2, SUF at D14; Dkt. 169-2, Exh. 2(a), Andalon Depo. at 112-16; *id.*, Exh. 2(b), Beacham Depo. at 29-34; *id.*, Exh. 34, Granado Depo. at 15-28, 36-37).

penalty for $65 parking fine not grossly disproportional); *Popescu v. City of San Diego*, 2008 WL 220281, *4 (S.D. Cal. 2008) (initial parking fine of $47 that doubled after 30 days to $94 not grossly disproportional); *Wemhoff v. City of Baltimore*, 591 F.Supp.2d 804, 809 (D. Md. 2008) ($519 total penalty for parking violation not grossly disproportional); *Shibeshi v. City of New York*, 2011 WL 13176091, *2 (S.D.N.Y. 2011) (Plaintiff's "fines totaling $515.16 for four tickets, plus additional fees, are not disproportional, especially when he does not indicate any efforts to challenge those tickets that repeatedly notified him of the same alleged traffic violations."); *Conley v. City of Dunedin*, 2010 WL 146861, *5 (M.D. Fla. 2010) ($50 per day fine for parking an oversized truck not grossly disproportional).

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Defendant's Motion for Summary Judgment [] (**Document No. 170**) is **granted**.

2. Plaintiffs' Motion for Cross Summary Judgment [] (**Document No. 169**) is **denied**.

3. Judgment shall be entered accordingly.

Dated this 13th day of September, 2022.

/s/
Fernando M. Olguin
United States District Judge

APPENDIX D — ORDER AND AMENDED OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 11, 2020

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-56553
D.C. No. 2:14-cv-01371-FMO-E

JESUS PIMENTEL; DAVID R.WELCH; JEFFREY O'CONNELL; EDWARD LEE; WENDY COOPER; JACKLYN BAIRD; ANTHONY RODRIGUEZ; RAFAEL BUELNA, AND ALL PERSONS SIMILARLY SITUATED,

Plaintiffs-Appellants,

v.

CITY OF LOS ANGELES,

Defendant-Appellee.

ORDER AND AMENDED OPINION

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Argued and Submitted January 7, 2020
Pasadena, California

Appendix D

Filed July 22, 2020
Amended September 11, 2020

Before: Paul J. Watford, Mark J. Bennett, and Kenneth K. Lee, Circuit Judges.

Order;
Opinion by Judge Lee;
Concurrence by Judge Bennett

OPINION

LEE, Circuit Judge:

In the opening scene of *La La Land*, drivers stuck in traffic spontaneously sing and dance on top of their cars and in the streets. Hollywood, however, rarely resembles reality. On any given day, Los Angelenos sigh and despair when mired in traffic jams. One small way the City of Los Angeles tries to alleviate traffic congestion is to impose time restrictions—and fines—for limited public parking spaces. If a person parks her car past the allotted time limit and forces people to drive around in search of other parking spaces, she must pay a $63 fine. And if she fails to pay the fine within 21 days, the City will impose a late-payment penalty of $63.

Appellants, who had parking fines and late fees levied against them, challenge the Los Angeles parking ordinance as violating the Eighth Amendment's Excessive Fines Clause. We hold that the Excessive Fines Clause applies to municipal parking fines. We affirm the district

court's summary judgment order that the initial parking fine is not grossly disproportionate to the offense and thus survives constitutional scrutiny. But we reverse and remand for the district court to determine whether the City's late fee runs afoul of the Excessive Fines Clause.

BACKGROUND

The City of Los Angeles imposes civil fines for parking meter violations. The fine for overstaying the allotted time is $63. If the driver fails to pay that fine within 21 days, the City levies a late fee of another $63. After 58 days of nonpayment, the City issues a second late-payment penalty of $25; then after 80 days, the driver is subjected to a $3 Department of Motor Vehicles registration hold fee, as well as a $27 collection fee. In sum, a person who overstays a metered parking spot faces a fine of anywhere from $63 to $181, depending on her promptness of payment. Approximately $12.50 to $17.50 of the initial $63 is reserved for the County and State. The remainder is disbursed to the City's coffers.

Jesus Pimentel and the other appellants sued the City of Los Angeles under 42 U.S.C. § 1983, asserting that the fines and late payment penalties violate the Eighth Amendment's Excessive Fines Clause and the California constitutional counterpart, Article 1, Section 17. The district court granted summary judgment to the City, ruling that the fines and late fees were not "grossly disproportional" to the underlying offense of overstaying the parking time limit and therefore did not violate the Excessive Fines Clause. Appellants timely appealed.

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JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction under 28 U.S.C. § 1291. We review *de novo* the district court's grant of summary judgment. *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (en banc). "Viewing the evidence in the light most favorable to the nonmoving party, we must determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law." *Id.*

ANALYSIS

I. The Eighth Amendment's Excessive Fines Clause applies to municipal parking fines.

The Eighth Amendment of the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. Importantly here, the second clause—the Excessive Fines Clause—"limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense." *Austin v. United States*, 509 U.S. 602, 609-610, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (internal quotation marks and citation omitted).

The Excessive Fines Clause traces its lineage back to at least the Magna Carta which "guaranteed that '[a] Free-man shall not be [fined] for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement. . . ."

Timbs v. Indiana, 139 S. Ct. 682, 687, 203 L. Ed. 2d 11 (2019) (citation omitted). For centuries, authorities abused their power to impose fines against their enemies or to illegitimately raise revenue. *See id.* at 694 (Thomas, J., concurring) (noting, for example, that the Star Chamber "imposed heavy fines on the king's enemies"). That fear of abuse of power continued to the colonial times. During the founding era, fines were "probably the most common form of punishment," and this made "a constitutional prohibition on excessive fines all the more important." *Id.* at 695 (internal citations and quotation marks omitted). Like the other enumerated rights in the Bill of Rights, the Eighth Amendment was established to shield the people from governmental overreach. *See id.* at 696 (noting that the Eighth Amendment is "an admonition" against "arbitrary reigns" by the government). Indeed, as the Supreme Court recently stated, the "right against excessive fines . . . has been consistently recognized as a core right worthy of constitutional protection." *Id.* at 698.

The Supreme Court has held that a fine is unconstitutionally excessive under the Eighth Amendment if its amount "is grossly disproportional to the gravity of the defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 336-37, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). To determine whether a fine is grossly disproportional to the underlying offense, four factors are considered: (1) the nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense. *See United States v. $100,348 in U.S. Currency*, 354 F.3d

1110, 1122 (9th Cir. 2004) (enunciating the "*Bajakajian* factors"). While these factors have been adopted and refined by subsequent case law in this circuit, *Bajakajian* itself "does not mandate the consideration of any rigid set of factors." *United States v. Mackby*, 339 F.3d 1013, 1016 (9th Cir. 2003).

Excessive Fines Clause claims generally arise in the criminal forfeiture context. The Court in *Bajakajian*, for example, addressed the criminal forfeiture of a large sum of money for failing to report it during international travel in violation of federal law. 524 U.S. at 324. Many other courts in this circuit and elsewhere have mainly cited *Bajakajian* in similar criminal contexts. *See*, *e.g.*, *$100,348 in U.S. Currency*, 354 F.3d at 1113-14 (criminal money forfeiture for knowingly making false statements in connection with failure to report international transport of cash); *United States v. George*, 779 F.3d 113, 122 (2d Cir. 2015) (criminal forfeiture of a residence for its use in harboring an illegal alien); *United States v. Chaplin's, Inc.*, 646 F.3d 846, 849-50 (11th Cir. 2011) (criminal forfeiture of jewelry store's inventory for its use in a money laundering operation); *United States v. Cheeseman*, 600 F.3d 270, 273 (3d Cir. 2010) (criminal forfeiture of firearms and ammunition as a consequence of defendant's drug addiction); *United States v. Wallace*, 389 F.3d 483, 484 (5th Cir. 2004) (criminal forfeiture of an aircraft for defendant's knowing and willing operation of an unregistered aircraft).

While the Supreme Court has not yet addressed whether the Excessive Fines Clause applies only in

the criminal forfeiture realm, this court has applied *Bajakajian* to civil penalties imposed by federal law. In *Vasudeva v. United States*, for example, we reviewed the constitutionality of civil monetary penalties for trafficking in federal food stamps. 214 F.3d 1155, 1161-62 (9th Cir. 2000). Similarly, in *Balice v. U.S. Department of Agriculture*, we applied the *Bajakajian* factors to assess the constitutionality of civil fines levied pursuant to the Agricultural Marketing Agreement Act. 203 F.3d 684, 698-99 (9th Cir. 2000).

Today, we extend *Bajakajian*'s four-factor analysis to govern municipal fines. We do so because the final link in the chain connecting the Eighth Amendment to municipal fines is forged by the Supreme Court's recent *Timbs* decision. 139 S. Ct. 682, 203 L. Ed. 2d 11. The Supreme Court in *Timbs* incorporated the Excessive Fines Clause of the Eighth Amendment to the states through the Fourteenth Amendment. *Id.* at 686-87. We hold that the *Timbs* decision affirmatively opens the door for Eighth Amendment challenges to fines imposed by state and local authorities.

II. The initial fine of $63 does not violate the Excessive Fines Clause.

Appellants challenge the constitutionality of the City's initial parking fine of $63. Applying the *Bajakajian* factors, we conclude that the initial parking fine is not grossly disproportionate under the Eighth Amendment and affirm the district court's grant of summary judgment in favor of the City for the initial fine.

Looking to the first *Bajakajian* factor, we must determine the nature and extent of the underlying offense. *See $100,348 in U.S. Currency*, 354 F.3d at 1122. Courts typically look to the violator's culpability to assess this factor. In *Bajakajian*, for example, the Supreme Court assessed defendant Bajakajian's culpability based on his attempt to export over $350,000 in cash from the United States by concealing it during an international flight. 524 U.S. at 324-25. Bajakajian pleaded guilty to violating 31 U.S.C. § 5316, which requires anyone who transports more than $10,000 out of the country to report the transfer. *Id.* at 325. The federal government then sought forfeiture of the cash. *Id.* at 325-26. The Supreme Court found that Bajakajian's culpability was minimal because the crime was "solely a reporting offense." *Id.* at 337-38.

In *United States v. $100,348 in U.S. Currency*, this court found that culpability increased if defendant's violation involved reckless behavior. 354 F.3d at 1123. There, defendant had similarly failed to report the international export of a large sum of money, but he ignored several potential red flags. According to the defendant, a family friend had given him the money and instructed him to return with it to Israel. *Id.* at 1114-15. He did not ask about the source of the money but told his friend that he would not be responsible if anything happened to it. *Id.* at 1115. The defendant further testified that he asked essentially no questions about the money—nothing about its source, its purpose for being sent to Israel, or why the family friend hadn't entrusted him with traveler's checks instead. *Id.* at 1123. We found that his reckless behavior showed "more than a minimal level of culpability." *Id.*

So if culpability is high or behavior reckless, the nature and extent of the underlying violation is more significant. Conversely, if culpability is low, the nature and extent of the violation is minimal. It is critical, though, that the court review the specific actions of the violator rather than by taking an abstract view of the violation. *See United States v. 3814 NW Thurman St.*, 164 F.3d 1191, 1197 (9th Cir. 1999), *opinion amended on denial of reh'g sub nom.*, 172 F.3d 689 (9th Cir. 1999), *superseded by statute on other grounds*, 18 U.S.C. § 983(d) (2000).

We note that benign actions may still result in some non-minimal degree of culpability. The Seventh Circuit's decision in *Towers v. City of Chicago* is instructive. There, the Seventh Circuit reviewed a municipal ordinance that fined car owners who allowed their vehicle to be used to transport illegal guns or drugs by others, even if they were unaware that their vehicle was used for that purpose. 173 F.3d 619, 625-26 (7th Cir. 1999). The court emphasized the owners' failure to report their cars as stolen (which implies consent to use), and further noted that an owner necessarily accepts the risks when she lets another person borrow her vehicle. *Id.* The *Towers* court rejected "the notion that the plaintiffs must be considered completely lacking in culpability," even though the act triggering the fine was merely letting another person borrow their vehicle and nothing more. *Id.* at 625.

We find the Seventh Circuit's reasoning persuasive. Even if the underlying violation is minor, violators may still be culpable. Here, plaintiffs are indeed culpable because there is no factual dispute that they violated

Los Angeles Municipal Code § 88.13 for failing to pay for over-time use of a metered space. But we also conclude that appellants' culpability is low because the underlying parking violation is minor. We thus find that the nature and extent of appellants' violations to be minimal but not de minimis.

Moving to the second *Bajakajian* factor, we must determine whether the underlying offense relates to other illegal activities. *See $100,348 in U.S. Currency*, 354 F.3d at 1122. This factor is not as helpful to our inquiry as it might be in criminal contexts. We only note that there is no information in the record showing whether overstaying a parking meter relates to other illegal activities, nor do the parties argue as much.

Similarly, the third *Bajakajian* factor—whether other penalties may be imposed for the violation—does not advance our analysis. *See id.* Neither party suggests that alternative penalties may be imposed instead of the fine, and the record is devoid of any such suggestion.

Turning to the fourth factor, we must determine the extent of the harm caused by the violation. *See id.* The most obvious and simple way to assess this factor is to observe the monetary harm resulting from the violation. In *3814 NW Thurman St.*, this court held that because "neither creditors nor the government suffered any actual loss" from the violation, defendant's "violations were at the low end of the severity spectrum." 164 F.3d at 1198. In *Mackby*, on the other hand, we reviewed a civil fine imposed under the False Claims Act and were persuaded

that because the government was monetarily harmed by defendant's fraudulent conduct, the extent of the harm was significant. 339 F.3d at 1018-19.

But our review of the fourth *Bajakajian* factor is not limited to monetary harms alone. Courts may also consider how the violation erodes the government's purposes for proscribing the conduct. In *Vasudeva*, this court rejected the violators' claim that no harm resulted because the trafficked food stamps were never redeemed. 214 F.3d at 1161. We found that a narrow focus on monetary harms failed to capture the full scope of the injury. Instead, we held that trafficking in food stamps is harmful, regardless of redemption status, because the very act of trafficking undermines the viability of the program. *Id.* Similarly in *Mackby*, this court held that non-monetary injury may be considered in assessing the harm caused by the violation. There, defendant provided legitimate physical therapy services to Medicare patients but was ineligible to receive payment from the Medicare Part B program. 339 F.3d at 1014-15. The defendant fraudulently used the credentials of his father, a physician, to make claims against the program. *Id.* at 1015. The court held that fraudulent claims for otherwise legitimate services "make the administration of Medicare more difficult, and widespread fraud would undermine public confidence in the system." *Id.* at 1019; *see also Balice*, 203 F.3d at 699 (noting that the violation "undermined the Secretary's efforts to protect the stability of the almond market"); *Towers*, 173 F.3d at 625 (finding the violation harmed the City's interests in public safety even though the harm is "not readily quantifiable").

Here, there is no real dispute that the City is harmed because overstaying parking meters leads to increased congestion and impedes traffic flow. Without material evidence provided by appellants to the contrary, we must afford "substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments." *Bajakajian*, 524 U.S. at 336 (quoting *Solem v. Helm*, 463 U.S. 277, 290, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983)).

Pimentel further argues that the City has proffered no quantitative evidence showing that the initial fine deters parking violations or promotes compliance. While the Excessive Fines Clause curbs governmental overreach, the Supreme Court in *Bajakajian* also stated that legislatures nonetheless retain "broad authority" to fashion fines. *Id.* It further cautioned against "requiring strict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense." *Id.* Instead, the "amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Id.* at 334.

In light of that guidance from the Supreme Court, we do not believe that the Eighth Amendment obligated the City to commission quantitative analysis to justify the $63 parking fine amount. That amount bears "some relationship" to the gravity of the offense. While a parking violation is not a serious offense, the fine is not so large, either, and likely deters violations.

The most analogous case is the Seventh Circuit's decision in *Towers*. 173 F.3d 619. In that case, the fine

was $500 for the act of a car owner unwittingly allowing another to borrow their vehicle to be used for criminal ends. *Id.* at 626. The Seventh Circuit acknowledged that $500 is not a "trifling sum," but ruled that the City was "entitled to take into consideration that ordinances must perform a deterrent function." *Id.* The court thus held that a $500 fine is "large enough to function as a deterrent," but "is not so large as to be grossly out of proportion to the activity that the City is seeking to deter." *Id.* Likewise here, the $63 parking fine is sufficiently large enough to deter parking violations but is "not so large as to be grossly out of proportion" to combatting traffic congestion in one of the most congested cities in the country.

Pimentel argues that an Excessive Fines Clause analysis must incorporate means-testing to assess a violator's ability to pay. This is a novel claim in this circuit, and one the Supreme Court expressly declined to address in *Bajakajian. See* 524 U.S. at 340 n.15. The Court in *Timbs* likewise left the question open. *See* 139 S. Ct. at 688. We, too, decline Pimentel's invitation to affirmatively incorporate a means-testing requirement for claims arising under the Eighth Amendment's Excessive Fines Clause.

Considering the *Bajakajian* factors, we hold that the City's initial parking fine of $63 is not grossly disproportional to the underlying offense of overstaying the time at a parking space. We affirm the district court's grant of summary judgment in favor of the City of Los Angeles on this issue.

III. The district court erred by granting summary judgment in favor of the City of Los Angeles as to the late payment penalty of $63.

While we affirm the district court's grant of summary judgment on the initial parking fine, we cannot endorse the court's conclusion that the late fee does not constitute an excessive fine—at least based on the record presented to us. Notably, the district court did not apply the *Bajakajian* factors to the late fee. Instead, it rejected the challenge to the late fee in a footnote citing two cases that themselves only provide conclusory assertions. *See Pimentel v. City of Los Angeles*, No. CV-14-1371-FMO, 2018 U.S. Dist. LEXIS 85054, 2018 WL 6118600, at *6 n.12 (C.D. Cal. May 21, 2018) (citing *Wemhoff v. City of Baltimore*, 591 F. Supp. 2d 804, 809 (D. Md. 2008); *Popescu v. City of San Diego*, No. 06-CV-1577-LAB, 2008 U.S. Dist. LEXIS 5712, 2008 WL 220281, at *4 (S.D. Cal. Jan. 25, 2008)). We thus reverse and remand on this issue.

As the Supreme Court recently reminded us, the Excessive Fine Clause is "fundamental to our scheme of ordered liberty, with deep roots in our history and tradition." *Timbs*, 139 S. Ct. at 686-87 (internal quotation marks and alterations omitted). This right to be free from excessive governmental fines is not a relic relegated to the period of parchments and parliaments, but rather it remains a crucial bulwark against government abuse. The government cannot overstep its authority and impose fines on its citizens without paying heed to the limits posed by the Eighth Amendment. Yet in its brief to this court, the City of Los Angeles did not even bother addressing the

constitutionality of its late fee. Based on the record, we do not know the City's justification for setting the late fee at one hundred percent of the initial fine.

We remand for the court to determine under *Bajakajian* whether the late payment penalty of $63 is grossly disproportional to the offense of failing to pay the initial fine within 21 days.

CONCLUSION

We **AFFIRM** the grant of summary judgment in favor of the City for the initial parking fine of $63, and **REVERSE and REMAND** the grant of summary judgment in favor of the City for the late payment penalty of $63.

BENNETT, Circuit Judge, concurring in the judgment:

Because the City of Los Angeles conceded that the Excessive Fines Clause applied to parking "fines," I concur in the judgment. I write separately because I do not believe the Excessive Fines Clause should routinely apply to parking meter violations.

The Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, as *punishment* for some offense." *Austin v. United States*, 509 U.S. 602, 609-610, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (internal quotation marks and citation omitted). Thus, for example, the Excessive Fines Clause seldom applies to punitive damages awards in civil suits between

private parties because "the primary focus of the Eighth Amendment was the potential for governmental abuse of its 'prosecutorial' power, not concern with the extent or purposes of civil damages." *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 266-67, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989). The threshold question then is whether Los Angeles is using its government (sovereign) power to "extract payments" or whether it is acting in a proprietary capacity by merely "renting" out the parking spaces, analogous to a privately owned parking garage.[1]

Because "the Excessive Fines Clause of the 1689 Bill of Rights" is a "direct ancestor of our Eighth Amendment," *Browning-Ferris*, 492 U.S. at 268, I begin with the English common law understanding of sovereign power. English law did not distinguish between our modern conception of the government's rights arising from owning property and the exercise of sovereign power: "The king not only exercised the lawmaking powers of a sovereign; as the head of the feudal landholding system, he also maintained extensive proprietary rights." Michael C. Blumm & Lucas Ritchie, *The Pioneer Spirit and the Public Trust: The American Rule of Capture and State Ownership of Wildlife*, 35 Envtl. L. 673, 679 (2005). Within this framework, English courts had to determine whether the King's ownership derived from his powers as a sovereign or as a property owner. For example, English courts eventually determined that the King owned the wildlife in England under his sovereign power, or prerogative. *See*

1. On top of rent, Los Angeles also charges extra for "holdovers" and late payments.

Bowlston v. Hardy (1596) 78 Eng. Rep. 794, 794 (K.B.) (noting that no one could own wild animals except "by grant from the King, or by prescription . . . for the Queen hath the royalty in such things whereof none can have any property"). This "meant that the king was obligated to manage wildlife for the benefit of all the people of his kingdom rather than his own individual interest." Michael C. Blumm & Aurora Paulsen, *The Public Trust in Wildlife*, 2013 Utah L. Rev. 1437, 1454 (2013).

This view of sovereignty and property carried over into the laws of the United States, subject to modification by subsequent state and federal laws and the Constitution.[2] *Shively v. Bowlby*, 152 U.S. 1, 14, 14 S. Ct. 548, 38 L. Ed. 331 (1894). After the revolution, "all the rights of the crown and of parliament vested in the several states, subject to the rights surrendered to the national government by the constitution of the United States." *Id.* at 14-15.

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2. For example, New York City's water commission—a municipal body that could assert sovereign immunity—was nevertheless found to be potentially liable for the construction of a dam for drinking water because a private corporation could have built the dam. *See Bailey v. Mayor of New York*, 3 Hill 531 (N.Y. Sup. Ct. 1842). The court distinguished between the municipal entity acting as a public or government actor versus as a private entity. *Id.* at 539; *see also City of Logansport v. Pub. Serv. Comm'n*, 202 Ind. 523, 177 N.E. 249, 252 (Ind. 1931) (noting that the city was acting "in its private business capacity and not in its public governmental capacity" when it operated an electric utility and sold power to the public); *City of Tacoma v. City of Bonney Lake*, 173 Wn.2d 584, 269 P.3d 1017, 1020 (Wash. 2012) ("A city's decision to operate a utility is a proprietary decision, as is its right to contract for any lawful condition.").

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The California Supreme Court explained 130 years ago that municipal corporations, like Los Angeles, are "clothed with certain functions of local government, and invested with the management of public property within their respective boundaries." *Bd. of Educ. v. Martin*, 92 Cal. 209, 28 P. 799, 801 (Cal. 1891). While these corporations may own private property unrelated to their governmental functions, that "does not deprive [such property] of this public characteristic." *Id.* And when a municipality has set aside property like streets and public squares for public use, such property is public property. "The proprietary interest in all such property belongs to the public . . . whether the legal title to such property be in the municipality or any of its officers or departments, it is at all times held by it or them for the benefit of the whole public, and without any real proprietary interest therein." *Id.* at 802. While this suggests that Los Angeles—a California municipal corporation—is using its sovereign power when it "leases" parking spaces, that does not end the inquiry.[3]

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3. And there are at least fifty sets of such principles governing municipal corporations among the several states, and likely many more, as some states understandably treat large cities differently than small towns, and others' rules depend on the exact nature of the municipality—county, township, borough, city, town, or village. *See*, *e.g.*, *Chadwick v. Scarth*, 6 Mass. App. Ct. 725, 383 N.E. 2d 847 (Mass. App. Ct. 1978) (discussing the difference between a city or a town under Massachusetts law); *Walters v. Cease*, 388 P.2d 263, 264 n.1. (Alaska 1964) (noting that in Alaska "all local government powers are vested in boroughs and cities"); *see also generally* 1 McQuillin The Law of Municipal Corporations §§ 2:41-62 (3d ed. 2019).

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Today, our "[g]overnment plays many parts. When it acts in one of its many proprietary roles (employer, purchaser, or landlord, to name a few), it must be able to enforce reasonable and germane conditions." *Rucker v. Davis*, 237 F.3d 1113, 1138 (9th Cir. 2001) (Sneed, J., dissenting), *rev'd sub nom. Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S 125, 122 S. Ct. 1230, 152 L. Ed. 2d 258 (2002). Accordingly, in these circumstances, when the government is not acting in a sovereign capacity, the Supreme Court has found that traditional Constitutional constraints do not apply or are relaxed. *See*, *e.g.*, *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 96 S. Ct. 2488, 49 L. Ed. 2d 220 (1976) (recognizing that states acting as market participants rather than market regulators are not subject to the constraints of the Commerce Clause); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 587-88, 118 S. Ct. 2168, 141 L. Ed. 2d 500 (1998) (government's ability to allocate funding competitively is more flexible than through direct regulation).

Cities that meter on-street parking may thus be acting in a similar capacity as the owner of a private parking garage—both are leasing the spaces for a specific sum. And the Supreme Court has not, of course, recognized a constitutional guarantee to parking. *Cf. Lindsey v. Normet*, 405 U.S. 56, 74, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972) (no constitutional right to housing). Absent statutory restrictions, a private landlord may freely choose what rate it charges for parking, holdover and late fees included. I see no constitutional reason why cities like Los Angeles cannot similarly freely set parking rates, including holdover and late fees, unrestrained by the Constitution,

because "the definition of landlord-tenant relationships [is] [a] legislative, not judicial, function[]." *Id.*[4] Ensuring that the tenant timely vacates and pays is likely an appropriate sovereign/trustee function. Or to put it another way, Los Angeles should be able to generally structure its parking rates, including by deterring holdovers and encouraging prompt payment, restrained only by state law and its own municipal code and regulations.

The Supreme Court has called this government/property distinction (in other areas of law) a "quagmire that has long plagued the law of municipal corporations." *Indian Towing Co. v. United States*, 350 U.S. 61, 65, 76 S. Ct. 122, 100 L. Ed. 48 (1955). When *Indian Towing* was decided, tort law claims regularly turned on the distinction between the municipal government acting in its sovereign capacity or as a property owner, and states differed widely as to municipal liability.[5] *Id.* at 65 n.1. I think it an odd outcome for a municipality (located in a jurisdiction retaining common law sovereign immunity) acting as a

4. Because, as Rousseau noted, "the world of imagination is boundless," I am sure some creative municipality could devise a parking scheme that runs afoul of the Constitution. But that should not mean that *every* municipal parking scheme is subject to attack under the Excessive Fines Clause and the Civil Rights Acts.

5. Today most states have abrogated the common law doctrine of sovereign immunity and have replaced it with statutes granting immunity for some government actions but not others. *See* Hugh D. Spitzer, *Realigning the Governmental/Proprietary Distinction in Municipal Law*, 40 Seattle U. L. Rev. 173, 190 (2016). And the United States has done exactly that in the Federal Tort Claims Act. *See* 28 U.S.C. §§ 1346(b), 2671-2680.

private property owner to be nonetheless held liable for *civil rights violations* because it is using its government power[6] to collect parking charges.[7]

Finally, we all know that many municipalities rent out parking or otherwise charge for use of their property (including assessing holdover and late fees). I simply do not believe that every time a city or town does so, it should be subject to a § 1983 action. Even looking only at parking spaces, the potential for federal court litigation is endless. I see Los Angeles's charges, including its holdover and late fees, as routine. The Congress, in enacting the Civil Rights Acts following the adoption of the Fourteenth Amendment, certainly did not intend for those noble statutes to redress the types of "rights" asserted here. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 684, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) (quoting approvingly the characterization of the purpose of § 1983 as "in aid

6. Of course, it is that government power itself that brings section 1983 into play. But the Plaintiffs' complaint here primarily goes to the amounts assessed, and not the means of collection, and my concern is with routinely subjecting those *amounts* to federal court scrutiny.

7. Unsurprisingly, the National Park Service is putting meters on the National Mall in Washington, D.C., to "create more frequent turnover of limited parking spaces; [to] encourage the use of public transportation options, . . . and [to] provide revenue to create and improve affordable visitor transportation." National Park Service, https://www.nps.gov/nama/planyourvisit/parking-meter-faq.htm (last visited July 13, 2020). These are some of the same reasons Los Angeles has parking meters. I hope the Park Service's late charges are not "excessive," or the District of Columbia courts may soon have some increased activity.

of the preservation of human liberty and human rights"). And neither, I think, did the authors of the Eighth or Fourteenth Amendments. I believe applying the Excessive Fines Clause to the types of charges at issue, improperly trivializes the Eighth Amendment, the Fourteenth Amendment, and the Civil Rights Acts.[8]

But, because Los Angeles did not contest this issue either below or on appeal,[9] I concur in the judgment.

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8. I think that if federal courts must determine whether particular parking holdover or other charges violate the Excessive Fines Clause, there must be some ratio or amount below which the fine or penalty is unlikely to be or cannot be excessive as a matter of law. Absent such a ratio or amount, federal courts will need to apply *United States v. Bajakajian*, 524 U.S. 321, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998) in the way the majority did here, including, in every case, reviewing "the specific actions of the violator rather than by taking an abstract view of the violation." Maj. Op. at 10. I simply do not see that as an appropriate or productive way to proceed, even if courts must apply the Excessive Fines Clause to these types of parking charges. In an analogous context, the Supreme Court has suggested that a punitive damages award that is within a single digit multiplier of the compensatory damage award is "more likely to comport with due process." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003). Though such a "baseline" might cut back on litigation or simplify the required analysis, it also highlights the legislative nature of the judgments at issue in our passing on the constitutionality of different types of *parking* charges.

9. Oral Argument at 16:40-17:50, *Pimentel v. City of Los Angeles*, 18-56553 (9th Cir. Jan. 7, 2020).

APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED MAY 21, 2018

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 14-1371 FMO (Ex)

JESUS PIMENTEL, *et al.*,

Plaintiffs,

v.

CITY OF LOS ANGELES,

Defendant.

Filed May 21, 2018

ORDER RE: MOTION FOR SUMMARY JUDGMENT

Having reviewed and considered all the briefing filed with respect to defendant's Motion for Summary Judgment (Dkt. 110, "Motion"), the court finds that oral argument is not necessary and concludes as follows. *See* Fed. R. Civ. P. 78; Local Rule 7-15; *Willis v. Pac. Mar. Ass'n*, 244 F.3d 675, 684 n. 2 (9th Cir. 2001).

Appendix E

INTRODUCTION

On February 24, 2014, Jesus Pimentel ("Pimentel") and David R. Welch ("Welch") filed a Complaint on behalf of themselves and all persons similarly situated against the City of Los Angeles ("the City" or "defendant"). (*See* Dkt. 1, Complaint). The Complaint asserted causes of action for violations of the: (1) Excessive Fines Clause of the Eighth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983; (2) excessive fines provision of Article I, Section 17 of the California Constitution; (3) Due Process Clause of the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983; and (4) due process clause of Article I, Section 7(a) of the California Constitution. (*see id.* at ¶¶ 35-51). The court dismissed the original Complaint with leave to amend. (*See* Dkt. 26, Court's Order of June 17, 2014).

Pimentel, Welch, as well as additional plaintiffs Jeffrey O'Connell ("O'Connell"), Edward Lee ("Lee"), Wendy Cooper ("Cooper"), Jaclyn Baird ("Baird"), Anthony Rodriguez ("Rodriguez"), Rafael Buelna ("Buelna"), and Elen Karapetyan ("Karapetyan") (collectively, "plaintiffs"), subsequently filed a First Amended Complaint ("FAC"), asserting the same causes of action. (*See* Dkt. 29, FAC at ¶¶ 56-72). On September 29, 2015, the court granted in part and denied in part the City's motion to dismiss the FAC. (*See* Dkt. 43, Court's Order of September 29, 2015, at 17). The court granted the City's motion as to plaintiffs' due process claims and their claims for any monetary relief under the California Constitution, but permitted plaintiffs to proceed on their Excessive

Fines claim under the United States Constitution and the California Constitution. (*See id.*). Plaintiffs then filed the Second Amended Complaint ("SAC"), the operative complaint in this case, alleging their excessive fines claims. (*See* Dkt. 44, SAC at ¶¶ 56-66).

BACKGROUND[1]

Pursuant to its authority under California law to impose civil parking penalties, see Cal. Veh. Code §§ 40203.5(a)-(b), the Los Angeles City Council ("City Council") has adopted a penalty schedule for various parking meter violations. (*See* Dkt. 110-2, Statement of Uncontroverted Facts [] ("SUF") at D2-D3). These parking meter violations include failing to: (a) pay at a parking meter, *see* Los Angeles Municipal Code ("the Code" or "Mun. Code") § 88.13(a); (b) pay for "over-time" use of a metered space, *see id.* at § 88.13(b); (c) pay at a meter located at an airport, *see id.* at § 89.35.5(a); (d) remove a vehicle when an airport-located meter expires, *see id.* at § 89.35.5(b); and (e) pay for the over-time use of an airport-located parking meter. *see id.* at § 89.35.5(c).

Since 2012, the initial penalty for a parking meter violation has been $63. (Dkt. 110-2, SUF at D4); Mun. Code at §§ 88.13(a), 88.13(b), 89.35.5(a), 89.35.5(b) & 89.35.5(c). If the initial penalty is not timely paid, a late penalty of $63 is assessed. (*See* Dkt. 110-2, SUF at D6); Mun. Code at §§ 89.60, 88.13(a), 88.13(b), 89.35.5(a), 89.35.5(b) &

1. Unless otherwise indicated, the following facts are undisputed and/or contain disputes that are not material.

89.35.5(c). Another late payment penalty of $25 is imposed if the City does not receive payment within 58 days from the date the citation is issued. (Dkt. 110-2, SUF at D7); Mun. Code at §§ 88.13(a), 88.13(b), 89.35.5(a), 89.35.5(b) & 89.35.5(c). If payment is not made within 80 days from the date of the citation, a $3 Department of Motor Vehicle ("DMV") hold fee and a $27 collection fee[2] are assessed, bringing the total amount owed to $181. (Dkt. 110-2, SUF at D8-D9). If the $181 is not paid after this point, no further penalties or fees are imposed. (*see id.* at D10). In other words, the maximum possible monetary liability for a meter violation is $181. (*see id.* at D10-D11).

Revenue collected from parking meters—i.e., the money timely paid into parking meters and not derived from late penalties—is placed into a special parking revenue fund. (*See* Dkt. 110-2, SUF at D18). This fund is used to pay for parking meter maintenance, installation, repairs and security, as well as the design, construction and operation of off-street parking lots and other activities. (*see id.* at D19).

Approximately $12.50 to $17.50 of the initial $63 penalty is paid to the County of Los Angeles and the State of California. (*See* Dkt. 110-2, SUF at D12); (Dkt. 110-1, Joint Evidentiary Appendix RegardingDefendant's Motion for Summary Judgment ("Joint App'x")[3] at Exhibit

2. The collection fee was recently increased from $21 to $27. (*See* Dkt. 110-2, SUF at D9).

3. The parties failed to file their Joint Evidentiary Appendix on the Case Management/Electronic Case Files ("ECF") system. (*See, generally*, Dkt.).

("Exh.") 1, Declaration of Arlene N. Hoang at Exh. A, Defendant's March 16, 2017, Rule 30(b)(6)[4] Deposition of Robert Andalon ("Andalon Depo. II") at 131); (*id.* at Exh. 16, Andalon Depo. II at 29-30). Of the amount remaining after the county and state assessments, a portion goes to fund the City's parking enforcement operations and another portion goes to the City's "General Fund." (*See* Dkt. 110-2, SUF at D14-D15; Dkt. 110-1, Joint App'x at Exh. 1, Andalon Depo. II at 131; *see also id.* at Exh. 16, Andalon Depo. II; *id.* at Exh. 35, City Controller "Where Your Money Goes" Publication ("City WYMG Publication")). For fiscal year 2016, roughly 75 percent of revenue generated from parking citations, including but not limited to meter violations, went to funding parking enforcement operations, and the remaining 25 percent went to the City's General Fund.[5] (*See* Dkt. 110-2, SUF at D15). The City's General Fund pays for services such as the police and fire departments. (*See* Dkt. 110-1, Joint App'x at Exh. 35, City WYMG Publication; *id.* at Exh. 37, January 10, 2017, City Controller Press Release ("City Jan. 10, 2017, Press Rel."); *id.* at Exh. 39, City Controller "State Scoop" Publication ("City SS Publication")).

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4. Unless otherwise noted, all "Rule" references are to the Federal Rules of Civil Procedure.

5. Although plaintiffs dispute that 75 percent of "the funds from [ ] parking meter citations covers the City's expenses" for parking meter enforcement, they do not specifically dispute that some portion of the revenue from meter citations goes to enforcement costs. (*See, generally*, Dkt. 110-2, SUF at D15).

Appendix E

LEGAL STANDARD

Rule 56(a) of the Federal Rules of Civil Procedure authorizes the granting of summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The standard for granting a motion for summary judgment is essentially the same as for granting a directed verdict. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986). Judgment must be entered "if, under the governing law, there can be but one reasonable conclusion as to the verdict." *Id.*

The moving party has the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each cause of action upon which the moving party seeks judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). If the moving party fails to carry its initial burden of production, "the nonmoving party has no obligation to produce anything." *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102-03 (9th Cir. 2000).

If the moving party has sustained its burden, the burden then shifts to the nonmovant to identify specific facts, drawn from materials in the file, that demonstrate that there is a dispute as to material facts on the elements that the moving party has contested. *See Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553; *Anderson*, 477 U.S. at 256, 106 S.Ct. at 2514 (A party opposing a properly supported motion for summary judgment "must set forth specific

facts showing that there is a genuine issue for trial.").[6] A factual dispute is material only if it affects the outcome of the litigation and requires a trial to resolve the parties' differing versions of the truth. *See SEC v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982). Summary judgment must be granted for the moving party if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552; *see Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512 (parties bear the same substantive burden of proof as would apply at a trial on the merits).

In determining whether a triable issue of material fact exists, the evidence must be considered in the light most favorable to the nonmoving party. *See Barlow v. Ground*, 943 F.2d 1132, 1134 (9th Cir. 1991), *cert. denied*, 505 U.S. 1206, 112 S. Ct. 2995, 120 L. Ed. 2d 872 (1992). However, summary judgment cannot be avoided by relying solely on "conclusory allegations [in] an affidavit." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188, 111 L. Ed. 2d 695 (1990); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986) (more than a "metaphysical doubt" is required to establish a genuine issue of material

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6. "In determining any motion for summary judgment or partial summary judgment, the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the 'Statement of Genuine Disputes' and (b) controverted by declaration or other written evidence filed in opposition to the motion." Local Rule 56-3.

fact). "The mere existence of a scintilla of evidence in support of the plaintiff's position" is insufficient to survive summary judgment; "there must be evidence on which the [fact finder] could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512.

DISCUSSION

I. APPLICABILITY OF EXCESSIVE FINES CLAUSE.

Defendant contends, as "a threshold issue," that the Eighth Amendment's prohibition on excessive fines cannot be applied to decisions made by the Los Angeles City Council because: (1) "the United States Supreme Court has not addressed whether the Eighth Amendment applies to a fine adopted by [a] legislature[;]" and (2) the Eighth Amendment "has not been incorporated to the states through the Fourteenth Amendment."[7] (*See* Dkt. 112-1, Joint Brief Regarding Defendant the City of Los Angeles' Motion for Summary Judgment ("Joint Br.") at 3 & 14-16). According to defendant,"the Excessive Fines Clause was drafted in an era in which the amount of [fines] was determined solely by the judiciary" and therefore was not intended to apply to decisions made by legislatures. (*See* Dkt. 112-2, Joint Br. at 14). Defendant's contentions are unpersuasive.

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7. Defendant did not raise any of these "threshold" arguments in its motions to dismiss. (*See, generally*, Dkt. 12-1, Memorandum [ ]in Support of Defendant's Motion to Dismiss Complaint; Dkt. 30-1, Memorandum [ ] in Support of Defendant['s] Motion to Dismiss the Fist Amended Complaint).

Appendix E

The Supreme Court's excessive fines cases in the forfeiture context deal directly with statutory penalties developed by a legislative body, *i.e.*, the United States Congress. *See, e.g., United States v. Bajakajian*, 524 U.S. 321, 324, 118 S.Ct. 2028, 2031, 141 L. Ed. 2d 314 (1998) ("The question in this case is whether forfeiture" pursuant to 18 U.S.C. § 982(a)(1) "would violate the Excessive Fines Clause of the Eighth Amendment."). Also, while neither party identifies Supreme Court precedent applying the Excessive Fines Clause to a fine imposed by a state or municipal legislative body, (*see, generally*, Dkts. 112 & 113, Joint Br.), defendant itself relies on lower court cases which do so. (*See, e.g.*, Dkt. 113-2, Joint Br. at 35-37 (citing *Popescu v. City of San Diego*, 2008 U.S. Dist. LEXIS 5712, 2008 WL 220281, *4-5 (S.D. Cal. 2008) (applying Eighth Amendment to parking fines issued by the City of San Diego) & *Wemhoff v. City of Baltimore*, 591 F.Supp.2d 804, 808-09 (D. Md. 2008) (applying Eighth Amendment to Baltimore's parking fine schedule)). In short, defendant fails to persuade the court that the Eighth Amendment's protection against excessive fines should not apply here.

With respect to defendant's assertion that "the Excessive Fines Clause of the Eighth Amendment is not incorporated against the states through the Fourteenth Amendment[,]" (Dkt. 112-2, Joint Br. at 15), the Supreme Court has held that "[d]espite the broad discretion that States possess with respect to the imposition of criminal penalties and punitive damages, the Due Process Clause of the Fourteenth Amendment to the Federal Constitution imposes substantive limits on that discretion. That Clause makes the Eighth Amendment's prohibition against excessive fines and cruel and unusual

punishments applicable to the States." *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 433-34, 121 S.Ct. 1678, 1684, 149 L. Ed. 2d 674 (2001); *see also Wright v. Riveland*, 219 F.3d 905, 918-19 (9th Cir. 2000) (applying Eighth Amendment in reversing district court's dismissal of excessive fines claims challenging Washington state statute); *Popescu*, 2008 U.S. Dist. LEXIS 5712, 2008 WL 220281, at *4-5; *Wemhoff*, 591 F.Supp.2d at 808-09. Defendant's reliance on *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 130 S.Ct. 3020, 177 L. Ed. 2d 894 (2010), is unpersuasive. The majority opinion in *McDonald*—a pro-incorporation decision which held that the Second Amendment's right to bear arms is applicable against the States, *see id.* at 750, 130 S.Ct. at 3026—suggested in dicta that the Excessive Fines Clause of the Eighth Amendment had not been "fully incorporated" against the states. *See id.* at 765 n. 13, 130 S.Ct. at 3035 n. 13. The *McDonald* Court, however, failed to consider, let alone reverse, its own precedent in *Cooper. See, generally, id.* Under the circumstances, the court is persuaded that it is bound by the *Cooper* court's conclusion that the Eighth Amendment applies to the States.[8] *See Cooper*, 532 U.S. at 433-34, 121 S.Ct. at 1684.

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8. Defendant makes no argument regarding the applicability of the excessive fines provision under the California Constitution, (*see, generally*, Dkts. 112 & 113, Joint Br.), even though it agrees that the analysis under both constitutional provisions is identical. (*See* Dkt. 112-3, Joint Br. at 18); (*see also* Dkt. 43, Court's Order of September 29, 2015, at 9) ("Article 1, Section 17 of the California Constitution states, '[c]ruel or unusual punishment may not be inflicted or excessive fines imposed.' Cal. Const. art. I, § 17. 'This section is a state equivalent to the Eighth Amendment.'") (quoting *Brownlee v. Burleson*, 2006 U.S. Dist. LEXIS 61091, 2006 WL 2354888, *7 (E.D. Cal. 2006)) (alterations in original).

II. EXCESSIVE FINES CLAUSE.

Defendant asserts that the parking meter penalties caused by plaintiffs' violations approximate the negative impact on the community, local businesses, and the City's revenue. (*See* Dkt. 113-1, Joint Br. at 28-30). According to defendant, plaintiffs cannot overcome the wide deference owed to legislatures in setting appropriate penalty ranges for unlawful conduct and the "strong presumption" that a legislature's decision-making in this context is constitutional. (*See* Dkt. 112-3, Joint Br. at 24-25).

Plaintiffs respond that (1) they have made a *prima facie* showing of gross disproportionality between the offense and the penalties, (*see* Dkt. 112-3, Joint Br. at 21-24); (2) any deference "otherwise due [to] the City Council is greatly undermined" by the facts of this case, (*see* Dkt. 113-1, Joint Br. at 26-28); and (3) the City's proffered justifications for the penalty amounts are either "not supported by evidence" or "in material dispute." (*see id.* at 30-32). Plaintiffs attempt to dispute defendant's proposed undisputed facts by asserting 17 additional issues of material fact, (*see* Dkt. 110-2, SUF at P1-P17), that they claim preclude summary judgment.[9] (Dkt. 117, Plaintiffs' Supplemental Memorandum [] ("Pls.' Supp. Mem.") at 2-3).

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9. Many of the 17 "facts," however, are simply legal issues. (*See, e.g.*, Dkt. 110-2, SUF at P1 ("Whether the City's current fines/penalties for parking meter violations are excessive because they are grossly disproportionate to the gravity of the offense."); *id.* at P2 ("Whether a parking meter violation is a serious or criminal offense."); *id.* at P16 (whether the City "conce[ded] that the current fine[s are] excessive"); *id.* at P17 (whether generating income is a "proper justification" for the City's fine amounts)).

Appendix E

In evaluating a claim under the Excessive Fines Clause, "the standard of gross disproportionality" requires a court to "compare the amount of the forfeiture to the gravity of the [] offense. If the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." *Bajakajian*, 524 U.S. at 336-37, 118 S.Ct. at 2037-38. Courts "typically consider[] four factors in weighing the gravity of the defendant's offense: (1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused."[10] (Dkt. 43, Court's Order of September 29, 2015, at 10) (quoting *United States v. $132,245.00 in U.S. Currency*, 764 F.3d 1055, 1058 (9th Cir. 2014)) (alterations in original).

The City claims that the initial $63 penalty and subsequent late payment penalties are not grossly disproportionate because "parking meter violations affect traffic flow and traffic congestion, and cause premium spots in front of businesses to be monopolized." (*See* Dkt. 113-1, Joint Br. at 29). According to the City, parking meter violations deprive the City of revenue which is used to pay for the "maintenance, installation, repairs and security of parking meters, the design, construction and operation of off-street parking lots, and any other activities." (*Id.*). "Thus, the offense[s] committed by Plaintiffs in violating the parking meter laws harmed the community, local

10. In denying defendant's motion to dismiss, the court held that fact-based questions under these factors precluded a liability determination at the pleadings stage. (*See* Dkt. 43, Court's Order of September 29, 2015, at 10-11).

businesses and the City[.]"[11] (*Id.* at 29-30). The City also claims that it "has an interest in deterring" individuals from committing additional parking violations in the future. (*See* Dkt. 113-2, Joint Br. at 36).

Plaintiffs respond that the City's justifications "are either generalized assertions of harm without" factual support or, at minimum, raise factual disputes which preclude summary judgment. (*See* Dkt. 113-1, Joint Br. at 30). For instance, plaintiffs contend that the City's justification regarding the turnover of parking spaces is unsupported by the record. (*See* Dkt. 112-2, Joint Br. at 8; Dkt. 113-1, Joint Br. at 31). According to plaintiffs, the "way to reduce the amount of time meter vehicles are parked where turnover is desired is simply to cap the amount of time that can be purchased, rather than raising meter fines/penalties." (Dkt. 113-1, Joint Br. at 31). Finally, plaintiffs assert, in a conclusory manner, that "[p]arking meters have nothing to do with promoting or regulating traffic flow." (Dkt. 112-2, Joint Br. at 8). Plaintiffs' assertions are unpersuasive.

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11. The City relies primarily on the testimony of its Rule 30(b)(6) witness, Robert Andalon, the Chief Management Analyst at the City's Department of Transportation since 2000, (*see* Dkt. 110-1, Joint App'x at Exh. 15, September 7, 2016, Deposition of Robert Andalon ("Andalon Depo. I") at 8), to support its argument regarding the justifications for the penalty schedule. (*See* Dkt. 113-1, Joint Br. at 29-30) (citing Dkt. 110-1, Joint App'x at Exh. 1, Andalon Depo. II at 41 (traffic congestion and traffic flow) & 96 (revenue from parking meters)); (*see also id.* at Exh. 26) (Los Angeles Department of Transportation statement that "Parking meters and time limits are used to encourage turnover, allowing more people access to high-demand parking spaces.").

Appendix E

There is no dispute that—at least to some extent—drivers who commit parking meter violations affect traffic flow and congestion. Though plaintiffs purport to dispute this fact, they nevertheless admit that if "a vehicle is parked [in a space] outside" the time allotted by a meter, "it is possible, if there is traffic, it could affect traffic flow/congestion." (Dkt. 110-2, SUF at D16). Further, by limiting the time that drivers can remain in particular spaces, parking meters encourage turnover by allowing more people access to parking. (*see id.* at D17; Dkt. 110-1, Joint App'x at Exh. 1, Andalon Depo. II at 41). Plaintiffs attempt to dispute this fact by stating that the "City provided testimony that some [business owners] prefer longer [parking] time periods and some wanted shorter time limits" and that the "record is devoid of any evidence from any business owner or property owner concerning 'turnover' or 'access to high-demand parking spaces.'" (Dkt. 110-2, SUF at D17). However, that some business owners may prefer parking meters that allot more time to their customers has no bearing on whether the meters actually encourage turnover. In other words, plaintiffs' assertion about the City's lack of evidence relating to business owners and turnover of vehicles is insufficient to a raise a factual dispute. (*See* Dkt. 110-1, Joint App'x at Exh. 1, Andalon Depo. II at 41) ("[I]f individuals violate [parking meter payment requirements], [they] affect traffic congestion, traffic flow.").

Moreover, plaintiffs' argument that there is a factual dispute as to the deterrent effect of the penalties because there is "no empirical or other evidence" such as a "study or survey" to support the City's claim that penalties deter

violations, (*see* Dkt. 112-1, Joint Br. at 7; *see also* Dkt. 113-1, Joint Br. at 30-31), is unpersuasive. It is well-established that monetary penalties provide a deterrent to unlawful conduct. *See, e.g., Towers v. City of Chicago*, 173 F.3d 619, 625-26 (7th Cir.), *cert. denied* 528 U.S. 874, 120 S. Ct. 178, 145 L. Ed. 2d 150 (1999) ("[T]he City, in fixing the amount, was entitled to take into consideration that the ordinances must perform a deterrent function[]. . . . The $500 fine imposed in this case is large enough to function as a deterrent, but it is not so large as to be grossly out of proportion to the activity that the City is seeking to deter."); *Disc. Inn, Inc. v. City of Chicago*, 72 F.Supp.3d 930, 934-35 (N.D. Ill. 2014), *aff'd*, 803 F.3d 317 (7th Cir. 2015) (fine imposed for violation of vacant lot ordinance appeared "to serve as a deterrent" for Eighth Amendment purposes).

Plaintiffs also argue that the penalties in Los Angeles are 25 percent higher than the penalties in neighboring cities such as Beverly Hills, Santa Monica, and Long Beach, and that Los Angeles is the trend-setter in establishing "an ever-upward spiral" of increasing penalties in the area. (*See* Dkt. 112-2, Joint Br. at 8; Dkt. 113-1, Joint Br. at 32; Dkt. 113-2, Joint Br. at 38). According to plaintiffs, the City's initial penalty of $63 is "26.35% higher than the average of $50" for eight neighboring jurisdictions.[12]

12. The parties primarily address the $63 initial penalty throughout their briefing, and the court agrees that it is relevant figure for the excessive fines analysis in this case. *See, e.g., Wemhoff*, 591 F.Supp.2d at 809 (even where they can continue to accrue indefinitely, late penalties are "not an inevitable feature of the [initial] penalty"); *id.* ("The fact that the overall

(Dkt. 113-2, Joint Br. at 37). However, plaintiffs deny that comparisons to other large metropolitan cities around the country, such as New York City, Chicago, or San Francisco are appropriate. (*See* Dkt. 112-2, Joint Br. at 8; Dkt. 113-2, Joint Br. at 38). Plaintiffs also contest that the penalties provide a deterrent effect on future violations, claiming that there was "no recognizable change in compliance [with parking meters] when the initial fine was raised from $40 (in 2006) to $63." (Dkt. 113-1, Joint Br. at 30; *see id.* (deterrence not achieved because "vast majority of meter violations are unintentional and inadvertent."); Dkt. 110-1, Joint App'x at Exh.18, Deposition of Jay Beeber ("Beeber Depo.") at 94-96).[13] According to plaintiffs, the City's real motivation in adopting its penalty schedule, which increased on a yearly basis from 2006 to 2012, is to "increase revenue to its General Fund, rather than to deter violators, promote turnover at meters, or meet

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fine has now grown to hundreds of dollars is more a reflection of Mr. Wemhoff 's failure to timely pay or contest the original fine owed than it is a reflection of unconstitutional excess in the design of the late payment penalty."). The late penalties, which are subject to a separate disproportionality analysis vis a vis the underlying offense of nonpayment, are not grossly disproportionate in this case. *See, e.g., id.* (Nearly $500 in late fees not grossly disproportionate where initial penalty was $23); *Popescu*, 2008 U.S. Dist. LEXIS 5712, 2008 WL 220281, at *4 (late payment penalty of $47, which doubled initial penalty, along with additional $10 late fee, amounting to a total of $104 not grossly disproportionate).

13. The City objects to the testimony of Jay Beeber. (*See* Dkt. 113-1, Joint Br. at 33-34). The court need not resolve whether Beeber qualifies as an expert because, assuming he does and the court considers his testimony, the result is still the same.

underfunding [sic] of parking meter enforcement costs." (Dkt. 112-2, Joint Br. at 9). In the same vein, plaintiffs assert that meter penalties constituted 23 percent of all parking citations in fiscal year 2016, and that at least $41 million in parking violation revenue was transferred to the City's General Fund. (*See id.*).

Unlike arguments addressing the harm experienced by the City as a result of plaintiffs' offenses, arguments discussing penalties imposed by other cities and defendant's motivations in crafting the penalty schedule do not bear directly on the four factors courts consider when weighing the gravity of the relevant offense. *Cf. $132,245.00 in U.S. Currency*, 764 F.3d at 1058 (relevant factors include nature and extent of crime, relation to other illegal activities, other penalties that may be imposed, and the extent of the harm caused). Moreover, plaintiffs' comparison to penalties from neighboring jurisdictions shows that the City's initial penalty is only marginally higher than numerous other smaller cities in Los Angeles County. Indeed, plaintiffs admit that, on average, the City's $63 fine is only $13 higher than eight other cities in Los Angeles County. (*See* Dkt. 113-2, Joint Br. at 37). The differential is only $5 dollars when compared to Beverly Hills and only $10 when compared to Santa Monica and West Hollywood.[14] (*See* Dkt. 113-1, Joint Br. at 32).

14. Because plaintiffs make no argument as to whether these substantially similar fines are also excessive, (*see, generally*, Dkts. 112 & 113, Joint Br.), the court is left to question whether plaintiffs' position is that a fine is excessive, as a matter of law, based on a difference of $5 or $10.

Additionally, comparing the City's penalties to those imposed in other major metropolitan areas—such as New York City and Chicago, where initial meter penalties may amount to $65, or San Francisco where penalties can reach $76, (*see* Dkt. 113-1, Joint. Br. at 33)—shows that the City's penalties are lower than those imposed in other large cities. Plaintiffs argue that other large cities are not necessarily good comparators because their penalty schedules "may well involve lower fine to meter pricing ratios[.]" (*See* Dkt. 112-2, Joint Br. at 8). For example, plaintiffs assert that as "a matter of simple arithmetic," for an individual who overstays a one-dollar-per-hour meter[15] by six minutes, the applicable meter payment to fine "ratio is 630 to 1," *i.e.*, $63 for $0.10 of parking time, and that "it is 210 to 1 as to a person who is less than 18 minutes over the meter, . . . 126 times the additional amount a person who is less than 30 minutes over the meter, . . . and the ratio of fine to damages is 63 to 1 as to a person who pays for none of that hour." (Dkt. 112-3, Joint Br. at 23). However, plaintiffs fail to provide to the court the actual fine to meter pricing ratios from the other cities, and plaintiffs cite no authority supporting their argument that a fine can be deemed unconstitutionally excessive simply on the basis that its ratio to the underlying cost of parking is too high. (*See, generally*, Dkts. 112 & 113). In addition, because the $63 penalty is a one-time flat fee, the ratio of the penalty to the underlying parking cost of accrual diminishes over time. *See Wemhoff*, 591 F.Supp.2d at 809 ("the penalty's rate of accrual cannot be deemed

15. Plaintiffs assert, without citation to evidence, that "most parking meters in the City" charge a $1 per hour rate. (*See* Dkt. 112-1, Joint. Br. at 6).

unconstitutionally excessive. Because the $16 per month penalty is a flat fee, the rate of accrual diminishes over time.").

Plaintiffs argue that the typical deference due under the proportionality analysis does not apply here because the City's primary goal in raising the initial penalty from $40 to $63 was to increase revenue to the General Fund.[16] (*See* Dkt. 113-1, Joint Br. at 26-27). But the City's intent to use the meter penalty as a revenue source for its General Fund, even if it were mutually exclusive from the penalty's deterrent effect, does not render the penalty unconstitutionally excessive. The Supreme Court has held that policy makers are to be afforded wide deference in setting fine amounts. *See Bajakajian*,

16. Plaintiffs appear to mischaracterize the City's position regarding deference, claiming that the City asserts that "determination of fines is immune from court review under the Excessive Fines Clause[.]" (*See* Dkt. 113-1, Joint Br. at 26). But the City does not claim that its decisionmaking is "immune" from review. (*See, generally*, Dkt. 112-3, Joint Br. at 24-25). In addition, plaintiffs' reliance on *Hale v. Morgan*, 22 Cal.3d 388, 149 Cal. Rptr. 375, 584 P.2d 512 (1978), (Dkt. 113-1, Joint Br. at 26-27), for the proposition that less deference should be afforded to the City is unpersuasive. In *Hale*, a case concerning due process claims which are no longer at issue here, (*see* Dkt. 42, Court's Order of September 29, 2015, at 17), the court held that a statute which provided a "mandatory, mechanical, potentially limitless" fine for housing violations could be unconstitutionally excessive in some circumstances, such as in regard to the $17,300 fine at issue in that case. *See* 22 Cal.3d at 404-05. The *Hale* court did not address Eighth Amendment claims or address the Supreme Court's *Bajakajian* decision. *See, generally*, 22 Cal.3d 388, 149 Cal. Rptr. 375, 584 P.2d 512.

524 U.S. at 336, 118 S.Ct. at 2037 ("judgments about the appropriate punishment for an offense belong in the first instance to the legislature [and r]eviewing courts should grant substantial deference to the broad authority that legislatures necessarily possess in determining . . . questions of legislative policy.") (internal quotation marks, citations, and ellipses omitted). Thus, even if the "amount of the fine seems less designed to punish or deter parking violators or protect public safety than to generate revenue[,]" such motivation does not necessarily amount to a violation of the Excessive Fines Clause. *See Popescu*, 2008 U.S. Dist. LEXIS 5712, 2008 WL 220281, at *4 n. 2 (a city's intent to increase revenue through parking citation does not necessarily defeat summary judgment).

Further, plaintiffs fail to address how, if at all, the $12.50 to $17.50 state and county assessments affect the proportionality analysis. (*See, generally*, Dkts. 112 & 113). For example, plaintiffs fail to explain whether the assessment amounts should be deducted from the analysis because the City has no control over that amount. (*See, generally, id.*). Likewise, while the record is unclear as to what portion of the meter penalty goes to fund parking meter enforcement as opposed to what portion goes to the General Fund, it is undisputed that at least some amount—perhaps as much as 75 percent—is used to fund enforcement. (*See, e.g.*, Dkt. 110-2, SUF at D15) (for fiscal year 2016, roughly 75 percent of revenue generated from all parking citations, including but not limited to meter violations, went to funding parking enforcement operations, and the other 25 percent was contributed to the City's General Fund). Yet plaintiffs fail to address how

the distribution of penalty revenues should be considered in the proportionality analysis.[17] (*See, generally*, Dkts. 112 & 113).

Moreover, while the court disagrees with defendant regarding whether plaintiffs' ability to pay the penalty is relevant to the proportionality analysis,[18] (*see* Dkt. 43, Court's Order of September 29, 2015, at 11) (Ability to pay "is relevant to the proportionality analysis.") (citing, e.g., *Bajakajian*, 524 U.S. at 335-36, 118 S.Ct. at 2037 (discussing precedent requiring that fines should be "proportioned to the offense and that they should not deprive a wrongdoer of his livelihood")); *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal.4th 707, 728, 36 Cal. Rptr. 3d 814, 124 P.3d 408 (2005) (citing with approval *City and Cnty. of San Francisco v. Sainez*, 77 Cal.App.4th 1302, 1320-22, 92 Cal. Rptr. 2d 418 (2000) (review denied May 10, 2000) ("we agree, that in the case of fines . . . the defendant's ability to pay is a factor

17. The court raised this issue as a concern in one of its previous orders. (*See* Dkt. 43, Court's Order of September 29, 2015, at 10) (querying as to what "portion of defendant's $63 initial penalty or $126 or $175 increased penalty is punitive and what portion bears some relationship to the gravity of the offense[.]").

18. The court is unpersuaded by the City's reliance on *United States v. Emerson*, 107 F.3d 77 (1st Cir. 1997) and *Duckworth v. U.S. ex rel. Locke*, 705 F. Supp. 2d 30 (D.D.C. 2010) to support the argument that "ability to pay is not a [proper] consideration" here. (*See* Dkt. 113-1, Joint Br. at 34). *Emerson* was decided before the Supreme Court's decision in *Bajakajian*, and *Duckworth*'s analysis appears to rely, almost exclusively, on *Emerson*. *See Duckworth*, 705 F. Supp. 2d at 48.

under the Excessive Fines Clause.") (internal quotation marks and citation omitted)), this factor alone cannot defeat summary judgment. Plaintiffs appear to "raise[] only a facial challenge to the fines imposed" and a "facial challenge to a legislative Act, is of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *Disc. Inn, Inc.*, 72 F.Supp.3d at 935; (*see* Dkt. 44, SAC at ¶ 47) (The "class is defined as all persons who are or were assessed and/or paid the penalties under the Schedule for parking at an unpaid or expired meter[.]"). Further, plaintiffs' SAC does not single out the poorest residents for the excessive fines claim, as the class definition includes "all persons" assessed a meter penalty. (*See* Dkt. 44, SAC at ¶ 47). In any event, plaintiffs have identified no authority to support their contention that a parking ticket in the amount of $63, even for low-income persons, is unconstitutionally excessive. (*See, generally*, Dkts. 112 & 113, Joint Br.).

In short, there is no genuine dispute that plaintiffs' meter violations impose harm on the City through their effects on traffic flow, congestion, and fiscal loss. Even if the harm imposed is minimal, the $63 penalty is not grossly disproportionate to the harm as to violate the Eighth Amendment or the California Constitution. Indeed, plaintiffs have not cited to a single case in which an excessive fines claim for a parking or other traffic citation survived summary judgment. (*See, generally*, Dkts. 112 & 113, Joint Br.). To the contrary, all of the Eighth Amendment cases cited by the parties in the context of parking violations, and all of the authorities found by the court on its own review, support dismissal here. *See, e.g.*,

Popescu, 2008 U.S. Dist. LEXIS 5712, 2008 WL 220281, at *4 ($47 initial penalty); *Wemhoff*, 591 F.Supp.2d at 809 ($519 total penalty); *Shibeshi v. City of New York*, 2011 U.S. Dist. LEXIS 164059, 2011 WL 13176091, *2 (S.D.N.Y. 2011), *aff'd*, 475 F.Appx. 807 (2d Cir. 2012) (Plaintiff's "fines totaling $515.16 for four tickets, plus additional fees, are not disproportional, especially when he does not indicate any efforts to challenge those tickets that repeatedly notified him of the same alleged traffic violations."); *Towers*, 173 F.3d at 625-26 ("The $500 fine imposed in this case is large enough to function as a deterrent, but it is not so large as to be grossly out of proportion to the activity that the City is seeking to deter."); *Disc. Inn, Inc.*, 72 F.Supp.3d at 934-35 (facial challenge to maximum fines of $1,200 and $600 unsuccessful because fines not "grossly disproportionate to the offenses under all circumstances").

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Defendant's Motion for Summary Judgment (Document No. 110) is **granted**.

2. Plaintiffs' Motion for Class Certification (Document No. 119) is **denied** as **moot**.[19]

19. While courts typically resolve the issue of class certification before summary judgment, it is appropriate under the circumstances of this case for the court to first rule on the issue of summary judgment. *See, e.g., Eller v. EquiTrust Life Ins. Co.*, 778 F.3d 1089, 1092 (9th Cir. 2015) (affirming district court where it granted summary judgment to defendant and then "denied class certification as moot").

3. Judgment shall be entered accordingly.

Dated this 21st day of May, 2018.

/s/
Fernando M. Olguin
United States District Judge

APPENDIX F — RELEVANT STATUTORY PROVISIONS, SECTIONS 88.13 AND 89.60

SEC. 88.13. FAILURE TO PAY FOR A PARKING METER SPACE.

(Title and Section Amended by Ord. No. 180,092, Eff. 9/7/08.)

(a) It shall be unlawful for any person to park, or to cause, allow, permit or suffer to be parked, a vehicle in any parking meter space, except as provided by Sections 88.01.1, 88.03.1 and 88.06.1, without immediately making or causing to be made a lawful payment at an applicable parking meter as provided in Section 88.07.

(b) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle to remain in any parking meter space for more than the time indicated by posted signs or on an applicable parking meter indicating the maximum parking time allowed in such parking meter space, or during any time the applicable parking meter is indicating that the time has elapsed for which lawful payment has been made for said parking meter space; provided, however, that the provisions of this Section shall not apply to any vehicle described in Section 80.05, vehicles owned by the City of Los Angeles, or vehicles operated pursuant to Sections 88.01.1, 88.03.1 and 88.06.1.

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SEC. 89.60. AUTHORITY.
(Amended by Ord. No. 182,183, Eff. 8/11/12.)

Pursuant to the authority of State law, a schedule of civil parking penalties is hereby established for the violation of any regulation governing the standing or parking of a vehicle under the California Vehicle Code or other State law, any Federal law, and provisions of the Los Angeles Municipal Code or of the Los Angeles Administrative Code. The following fines and late payment penalties are hereby established:

LOS ANGELES MUNICIPAL CODE

SECTION	DESCRIPTION	FINE	WITH LATE PENALTY
80.25(b)	PARKING NEAR EMERGENCY VEHICLE	$63	$126
80.36.11(d)(1)	STOPPING, STANDING, OR PARKING OF A TOUR BUS ON A STREET DETERMINED TO BE UNSAFE FOR THE OPERATION OF A TOUR BUS (Added by Ord. No. 186,561, Eff. 4/15/20.)		

	FOR FIRST VIOLATION	$300	$350
	FOR SECOND VIOLATION WITHIN TWELVE MONTHS OF FIRST VIOLATION	$600	$650
	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN TWELVE MONTHS OF FIRST VIOLATION	$900	$950
80.49	WRONG SIDE/ NOT PARALLEL - OVER 18" FROM CURB	$63	$126
80.51(a)	PARKING ON LEFT SIDE OF ROADWAY	$58	$116
80.53	PARKING WITHIN A PARKWAY	$63	$126
80.54(h)1.	OVERNIGHT PARKING WITHOUT PERMIT	$68	$136
80.55(a)1.	HAZARDOUS AREA	$58	$116

80.55(a)2.	30 FEET OF INTERSECTION - BUSINESS DISTRICT	$58	$116
80.55(a)3.	25 FEET CROSSWALK	$58	$116
80.55.1	STOPPING, STANDING, OR PARKING WITHIN 15 FEET OF A DRIVEWAY USED BY EMERGENCY VEHICLES (Added by Ord. No. 186,219, Eff. 8/12/19.)	$68	$136
80.56(e)1.	PASSENGER ZONE (WHITE)	$58	$116
80.56(e)2.	LOADING ZONE (YELLOW)	$58	$116
80.56(e)3.	SHORT TIME LIMIT ZONE (GREEN)	$58	$116
80.56(e)4.	NO STOPPING ZONE (RED)	$93	$186
80.58(1)	PREFERENTIAL PARKING	$68	$136
80.58.1	CARSHARE PARKING	$163	$326

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80.58.2	SPECIAL EVENT PARKING (**Added by Ord. No. 183,135, Eff. 7/8/14.)**		
	FOR FIRST VIOLATION	$150	$300
	FOR SECOND VIOLATION WITHIN TWELVE MONTHS OF FIRST VIOLATION	$200	$400
	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN TWELVE MONTHS OF FIRST VIOLATION	$250	$500
80.61	ALLEY - STANDING IN	$68	$136
80.66.1(d)	RESTRICTED ZONES	$68	$136
80.69(a)	STOPPING OR STANDING PROHIBITED	$93	$186
80.69(b)	PARKING PROHIBITED/ STREET CLEANING	$73	$146
80.69(c)	PARKING TIME LIMITS	$58	$116

80.69(d)	PARKING OF VEHICLES MORE THAN SIX FEET HIGH	$58	$116
80.69.1(a)	PARKING TRAILER - VEHICLE CAPABLE OF TOWING	$78	$156
80.69.1(c)	UNHITCHED TRAILER:		
	FOR FIRST VIOLATION	$78	$156
	FOR SECOND VIOLATION WITHIN TWELVE MONTHS OF FIRST VIOLATION	$103	$206
	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN TWELVE MONTHS OF FIRST VIOLATION	$133	$266

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80.69.2	PARKING OR STANDING A COMMERCIAL VEHICLE OR COMMERCIAL TRAILER ON A CITY STREET **(Amended by Ord. No. 187,235, Eff. 11/22/21.)**		
	FOR FIRST VIOLATION	$500	$50
	FOR SECOND VIOLATION WITHIN TWELVE MONTHS OF FIRST VIOLATION	$750	$50
	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN TWELVE MONTHS OF FIRST VIOLATION	$1,000	$50
80.69.4	PARKING OF OVERSIZE VEHICLES		
	FOR FIRST VIOLATION	$73	$146

	FOR SECOND VIOLATION WITHIN TWELVE MONTHS OF FIRST VIOLATION	$98	$196
	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN TWELVE MONTHS OF FIRST VIOLATION	$128	$256
80.70	PARKING IN ANTI-GRIDLOCK ZONE	$163	$326
80.71.3	PARKING IN FRONT YARD		
	FOR FIRST VIOLATION	$68	$136
	FOR SECOND VIOLATION WITHIN ONE YEAR OF FIRST VIOLATION	$93	$186
	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN ONE YEAR OF FIRST VIOLATION	$143	$286

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80.71.4	PARKING ON PRIVATE DRIVEWAY OR PROPERTY	$68	$136
80.72	PARKING ON RED FLAG DAY	$68	$136
80.72.5	PARKING ON PRIVATE STREET	$93	$186
80.73(a)	PEDDLING VEHICLES	$68	$136
80.73(b)2.A. (3), (4), (5)	CATERING VIOLATION - DISTANCE LIMITATIONS	$68	$136
80.73(b)2.F.	CATERING VIOLATION - TIME LIMITS		
	FOR FIRST VIOLATION	$73	$146
	FOR SECOND VIOLATION WITHIN TWELVE MONTHS OF FIRST VIOLATION	$123	$246
	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN TWELVE MONTHS OF FIRST VIOLATION	$173	$346

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80.73(d)	"FOR HIRE" WITHOUT PERMIT	$68	$136
80.73(f)	VIOLATING PROVISIONS OF PERMIT TO PARK	$68	$136
80.73.1	STORING VEHICLES IN STREET	$93	$186
80.73.2	USE OF STREET FOR STORAGE OF VEHICLES	$68	$136
80.74	CLEANING VEHICLE IN STREET	$53	$106
80.75.1	AUDIBLE STATUS INDICATOR	$58	$116
85.01	REPAIRING VEHICLE IN STREET	$53	$106
87.53	MOBLIE BILLBOARD	$255	$510
87.55	PARKING OF VEHICLES WITH FOR SALE SIGNS		
	FOR FIRST VIOLATION	$105	$210
	FOR SECOND VIOLATION	$255	$510

	FOR THIRD AND SUBSEQUENT VIOLATIONS	$505	$1,010
88.03(a)	PARKING OUTSIDE SPACE INDICATED	$58	$116
88.13(a)	METER - FAILURE TO PAY	$63	$126
88.13(b)	OVERTIME USE OF METER SPACE	$63	$126
88.53	OFF-STREET PARKING OUTSIDE SPACE INDICATED	$58	$116
88.63(a)	OFF-STREET METER - FAILURE TO PAY	$58	$116
88.63(b)	OFF-STREET OVERTIME USE OF METER SPACE	$58	$116
88.64(a)	FAILURE TO OBEY OFF-STREET PARKING SIGNS	$63	$126
88.64(b)	OFF-STREET PARKING - TIME LIMITS	$63	$126

88.66	ELECTRIC CHARGING STATION SPACES **(Added by Ord. No. 185,744, Eff. 10/15/18.)**	$58	$116

LOS ANGELES MUNICIPAL CODE—AIRPORTS

SECTION	DESCRIPTION	FINE	WITH LATE PENALTY
89.35.5(a)	FAILURE TO PAY METER	$63	$126
89.35.5(b)	FAILURE TO REMOVE VEHICLE WHEN METER EXPIRES	$63	$126
89.35.5(c)	OVERTIME USE OF METER SPACE	$63	$126
89.36	NO STOPPING - RED CURB	$93	$186
89.37	PARKING AT GREEN CURB	$58	$116
89.38	PARKING AT YELLOW CURB	$58	$116
89.39	PARKING AT WHITE CURB	$58	$116

89.39.1(a)	STOPPING OR STANDING PROHIBITED	$93	$186
89.39.1(b)	PARKING PROHIBITED	$68	$136
89.39.1(c)	PARKING TIME LIMITS	$58	$116
89.39.2	PARKING RESTRICTED TO HOTEL-MOTEL VEHICLES	$58	$116
89.40(a)	PARKING OUTSIDE PAINTED LINES	$58	$116
89.40(b)	USING MORE THAN ONE SPACE	$58	$116
89.42	PARALLEL PARKING - RIGHT WHEELS 18" FROM CURB	$63	$126
89.43	PARKING IN CROSSWALK	$68	$136
89.44(c)	VIOLATION OF EMERGENCY RULES OR SIGNS	$58	$116
89.45	PARKING "FOR HIRE" VEHICLES	$58	$116

89.46	PARKING RESTRICTED TO "FOR HIRE" VEHICLES	$58	$116
171.04(c)	RESTRICTED/ PRIVATE PARKING AREA	$93	$186
171.04(h)	LOADING/ UNLOADING ONLY	$93	$186

LOS ANGELES MUNICIPAL CODE—HARBOR

SECTION	**DESCRIPTION**	**FINE**	**WITH LATE PENALTY**
87.02	NO PARKING NEAR FIRE HYDRANT	$68	$136
87.03	PARALLEL PARKING REQUIRED	$58	$116
87.04	PARKING TIME LIMITED - SPECIFIED STREETS	$58	$116
87.05	PARKING PROHIBITED - SPECIFIED STREETS	$68	$136

87.06	PARKING PROHIBITED - CERTAIN STREETS	$68	$136
87.09(a)	WITHIN 6 FEET OF RAILROAD TRACK	$63	$126
87.09(b)	NO PARKING OR STANDING - POSTED AREAS	$93	$186
87.09(c)	EXCESS OF TIME LIMIT	$58	$116
87.09(d)	LOADING ZONES	$58	$116
87.09(e)	TEMPORARY NO PARKING	$68	$136
87.09(h)	PARKING IN MORE THAN ONE ALLOCATED SPACE	$58	$116
87.09(k)	PARKING OTHER THAN BETWEEN PAINTED LINES	$58	$116
87.11	RECREATION VEHICLE OVERNIGHT	$93	$186

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LOS ANGELES MUNICIPAL CODE—PARKS

SECTION	DESCRIPTION	FINE	WITH LATE PENALTY
63.44 k.2.	NO PARKING BETWEEN POSTED HOURS	$68	$136
63.44 k.7.	NO PARKING EXCEPT WITHIN STALLS - PARKING SLOT	$58	$116
63.44 k.8.	SIGNS POSTED - NO PARKING	$68	$136
86.03	PARKING IN PROHIBITED AREA	$68	$136
86.06	NO PARKING OTHER THAN POSTED AREA	$58	$116

CALIFORNIA VEHICLE CODE

SECTION	DESCRIPTION	FINE	WITH LATE PENALTY
4000(a)(1)	NO EVIDENCE OF CURRENT REGISTRATION	$50	$135

4152.5	FAILURE TO APPLY FOR REGISTRATION - FOREIGN VEHICLE	$25	$66
4454(a)	FAILURE TO MAINTAIN REGISTRATION CARD WITH VEHICLE	$25	$66
4462(b)	REGISTRATION PRESENTED FOR WRONG VEHICLE	$25	$66
5200	LICENSE PLATE DISPLAY SPECIFIED	$25	$66
5201	PLATES IMPROPERLY POSITIONED	$25	$66
5201(f)	ILLEGAL PLATE COVERS	$25	$66
5202	PERIOD OF DISPLAY OF PLATE SPECIFIED	$25	$66
5204(a)	CURRENT TAB IMPROPERLY ATTACHED	$25	$66

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21113(a)	UNLAWFUL DRIVING OR PARKING ON PUBLIC GROUNDS	$63	$126
21210	BICYCLE PARKED - IMPEDING PEDESTRIAN TRAFFIC PROHIBITED	$53	$106
21211(b)	BLOCKING A BIKE PATH OR BIKE LANE	$93	$186
22500(a)	PARKING WITHIN INTERSECTION	$68	$136
22500(b)	PARKING ON CROSSWALK	$68	$136
22500(c)	PARKING/SAFETY ZONE AND CURB	$68	$136
22500(d)	PARKING FIRE STATION ENTRANCE	$68	$136
22500(e)	BLOCKING DRIVEWAY	$68	$136
22500(f)	PARKING ON SIDEWALK	$68	$136
22500(g)	PARKING ALONG EXCAVATION	$68	$136
22500(h)	DOUBLE PARKING	$68	$136

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22500(i)	PARKING IN BUS ZONE	$293	$381
22500(j)	PARKING IN TUNNEL	$68	$136
22500(k)	PARKING ON BRIDGE	$68	$136
22500(l)	BLOCKING DISABLED ACCESS RAMP	$363	$406
22500.1	STOPPING IN DESIGNATED FIRE LANE	$63	$126
22502(a)	PARKING 18" FROM CURB	$63	$126
22502(e)	CURB PARKING ONE-WAY ROADWAY	$63	$126
22504(a)	UNINCORPORATED AREA STOPPING	$63	$126
22505(b)	UNAUTHORIZED STOPPING ON STATE HIGHWAY PROHIBITED	$63	$126
22507.8(a)	*DISABLED PARKING - ON/ OFF STREET	$363	$406

22507.8(b)	DISABLED PARKING - OBSTRUCT ACCESS	$363	$406
22507.8(c)1	DISABLED PARKING - BOUNDARIES	$363	$406
22507.8(c)2	DISABLED PARKING - CROSSHATCHED	$363	$406
22510	PARKING IN SNOW REMOVAL AREAS	$63	$126
22511.56(b)	MISUSE OF DISABLED PERSON PARKING PRIVILEGES	$363	$406
22511.57(a)	DISABLED PLACARD - USE OF LOST, STOLEN, REVOKED OR EXPIRED PLACARD (**Added by Ord. No. 186,068, Eff. 5/27/19.**)	$1,100	$1,125

22511.57(b)	DISABLED PLACARD - NOT USED FOR TRANSPORT OF PERSON ISSUED PLACARD (**Added by Ord. No. 186,068, Eff. 5/27/19.**)	$1,100	$1,125
22511.57(c)	DISABLED PLACARD - USE OF COUNTERFEIT, FORGED, ALTERED OR MUTILATED PLACARD (**Added by Ord. No. 186,068, Eff. 5/27/19.**)	$1,100	$1,125
22513(b)(c)	TOW CARS - PARKING ON FREEWAY RESTRICTED	$63	$126
22514	FIRE HYDRANTS	$68	$136
22515	UNATTENDED VEHICLE	$63	$126
22520.5(a)	VENDING ON FREEWAY RIGHT-OF-WAY PROHIBITED	$63	$126

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22520.6(a)	UNAUTHORIZED ACTIVITIES AT HIGHWAY REST AREA/ VISTA POINT PROHIBITED	$63	$126
22521	PARKING ON RAILROAD TRACKS	$63	$126
22522	PARKING NEAR SIDEWALK ACCESS RAMP	$363	$406
22523(a)(b)	VEHICLE ABANDONMENT PROHIBITED	$143	$286
22526(a)(b)	BLOCKING INTERSECTION (GRIDLOCK) PROHIBITED – A STOPPING VIOLATION ISSUED ON A NOTICE TO APPEAR:		
	FOR FIRST VIOLATION	$93	$186

	FOR SECOND VIOLATION WITHIN ONE YEAR OF FIRST VIOLATION	$143	$286
	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN TWO YEARS OF FIRST VIOLATION	$358	$396
22526(c)	BLOCKING RAIL TRANSIT CROSSING DUE TO LOW UNDERCARRIAGE (GRIDLOCK) PROHIBITED – A STOPPING VIOLATION ON A NOTICE TO APPEAR:		
	FOR FIRST VIOLATION	$113	$226
	FOR SECOND VIOLATION WITHIN ONE YEAR OF FIRST VIOLATION	$153	$306

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	FOR THIRD AND SUBSEQUENT VIOLATIONS WITHIN TWO YEARS OF FIRST VIOLATION	$368	$416
22951	PARKING LOT - STREET AND ALLEY PARKING	$63	$126
23333	VEHICULAR CROSSING - UNAUTHORIZED STOPPING OR STANDING	$63	$126
25300(b)(c)(e)	WARNING DEVICE ON DISABLED VEHICLES SPECIFIED	$25	$66
31303(d)	PARKING HAZARDOUS WASTE CARRIER IN RESIDENTIAL AREA	$383	$576

* Citation may be cancelled with proof of valid placard per CVC § 40226 and payment of a $25 administrative fee.

Appendix F

CALIFORNIA CODE OF REGULATION—TITLE 14 DEPARTMENT OF PARKS AND RECREATION

SECTION	DESCRIPTION	FINE	WITH LATE PENALTY
4326	VIOLATION OF POSTED ORDERS	$68	$136

Any federal, state or local standing or parking regulation constituting a violation for which no provision is made in this schedule shall have a fine of $63 and with late penalty of $126 and a second late payment penalty of $151.

The parking fines and late payment penalties listed here for a section shall apply to all unlisted subsections.

A parking fine shall be increased by a late payment penalty if payment is received more than 14 days from the mailing date of a notice of delinquent parking violation. For the purposes of this schedule, the penalties are added to the original fine and included under the "fine with late penalty" amounts listed above.

The second late payment penalty will be applied only if payment is received more than 58 days from the date of issuance. For purposes of this schedule, the second penalty is added to the "fine with second penalty" amount.

Any surcharges or assessments, including any penalties or other fees, mandated by State law for a

violation and not included in the fine and late penalties shall be added to the fine for the violation.

A parking fee shall be increased by the current DMV charge when a hold vehicle registration renewal is placed with the Department of Motor Vehicles.

A parking fine shall be increased by the amount of the fee that is charged to the City upon assignment as a delinquent account for Special Collection processing and/or if the City assigns to an outside collection agency or independent third party collectors.