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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

SHAWN HUSS, a single man, and
others similarly situated,

Plaintiff,

vs.

SPOKANE COUNTY, a municipal
corporation,

Defendant.

Case No.: CV-05-180-FVS

PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

CLASS ACTION CERTIFICATION
PENDING

COMES NOW the Plaintiff, SHAWN HUSS, by and through his attorney,
BREEAN BEGGS and respectfully requests that this Court grant his motion for
partial summary judgment on liability.

This motion is made pursuant to FRCP 56(a), (c). Pursuant to FRCP 56(c)
“[t]he judgment sought shall be rendered forthwith if ... there are no genuine
issues as to any material fact and that the moving party is entitled to a judgment as
a matter of law.” Summary judgment may be issued on liability alone even there is
a genuine issue as to the amount of damages. Id. The Defendant's booking fee

1 policy and R.C.W. 70.48.390 are facially unconstitutional in that they allowed the
2 Defendant to deprive the Plaintiff of his money without even a modicum of a
3 hearing in violation of his constitutionally protected rights under the Fourteenth
4 Amendment of the Unites States Constitution. Because there are no issues of
5 material fact in contention, the Plaintiff is entitled to summary judgment on
6 liability as a matter of law.
7

8
9 This motion is supported by the attached documents:

10 Statement of Undisputed Facts

11 Memorandum of Authorities

12 and the following documents previously filed with the court on July 14, 2005:
13

14 Declaration of Breean L. Beggs (Docket No. 7)

15 Declaration of Shawn Huss, proposed class representative (Docket No. 8).
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1 Therefore, Mr. Huss respectfully requests that this Court grant his motion for
2 partial summary judgment as a matter of law and award him attorney's fees on this
3 motion pursuant to 42 U.S.C. §§ 1983 & 1988.
4

5 DATED this 22nd day of November, 2005.

6 CENTER FOR JUSTICE

7 s/Breean L. Beggs

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14 Attorney for Plaintiff Shawn Huss
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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2005, I presented the foregoing Plaintiff's Motion for Partial Summary Judgment to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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HON. FRED VAN SICKEL

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

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Plaintiffs,

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Case No.: CV-05-180-FVS

STATEMENT OF UNDISPUTED FACTS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

CLASS ACTION CERTIFICATION
PENDING

1. On or about May 14, 1999, the Washington legislature passed RCW 70.48.390, amending RCW 70.48, which authorized city, county, and regional jails to take a \$10.00 booking fee from the person of each individual booked. (SHB 1143 (1999).) See Ex. A, attached to the Dec. of Breean Beggs in Support (Docket No. 7).

2. On or about May 7, 2003, the 58th legislature of Washington amended RCW 70.48.390 to allow jails to increase the booking fee to their actual booking cost or \$100.00, whichever is less. (SHB 1232 (2003).) RCW 70.48.390. Id.

Statement of Undisputed Facts - 1

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1 3. RCW 70.48.390 provides:

2 A governing unit may require that each person who is booked at a
3 city, county, or regional jail pay a fee based on the jail's actual
4 booking costs or one hundred dollars, whichever is less, to the
5 sheriff's department of the county or police chief of the city in which
6 the jail is located. **The fee is payable immediately from any money**
7 **then possessed by the person being booked, or any money**
8 **deposited with the sheriff's department or city jail**
9 **administration on the person's behalf.** If the person has no funds at
10 the time of booking or during the period of incarceration, the sheriff
11 or police chief may notify the court in the county or city where the
12 charges related to the booking are pending, and may request the
13 assessment of the fee. Unless the person is held on other criminal
14 matters, if the person is not charged, is acquitted, or if all charges are
15 dismissed, the sheriff or police chief shall return the fee to the person
16 at the last known address listed in the booking records.

17 RCW 70.48.390 (emphasis added).

18 4. The statute does not provide any provision for either a pre- or post-
19 deprivation hearing before the individual is deprived of his or her money. Id.

20 5. On or about November 19, 2003, Lt. Edee Hunt and Tim O'Brien, Spokane
21 Deputy Prosecuting Attorney, sent a memorandum to the Spokane Board of
22 County Commissioners regarding the collection of booking fees. Id.

23 6. On or about February 24, 2004, the Spokane County Board of
24 Commissioners passed resolution 04-0160 which authorizes the Spokane County
25 Jail to develop and implement a procedure to collect a booking fee from persons
booked in the Spokane County Jail in accordance with RCW 70.48.390. Id.

1 7. Pursuant to Spokane County Resolution 04-0160, the Spokane County Jail
2 adopted an official policy authorizing the collection of an intake fee. Inmates are
3 charged the actual jail booking cost, calculated at \$89.12 as of May, 2004. See
4 Ex. A and B, Dec. of Beggs (Docket No. 7).

6 8. The official policy allows fees to be taken directly from the person of the
7 inmate at the time of booking. If the person does not have adequate fees on his or
8 her person at the time of booking, a charge is assessed to the person's account.

10 9. Spokane's policy does not provide for a pre-deprivation hearing or any other
11 opportunity for the inmate to contest the seizure of his/her money. Nor does
12 Spokane County have any policy in place to determine whether the funds are
13 exempt public benefits or the property of a third party. Id.

15 10. Spokane adopted a reimbursement policy that places the burden on the
16 inmate to prove that the charges were dropped or that he was acquitted in order to
17 redeem his funds. Specifically, the policy states "... *it is your responsibility to*
18 *provide the proof from the Courts that your charges have been dismissed or you*
19 *have been acquitted*" and that only upon an investigation by the Spokane County
20 Jail Staff *may* the individual receive his/her funds back. (emphasis added). See Ex.
21 C, Dec. of Beggs (Docket No. 7).

24 11. Neither Spokane County's booking fee policy, nor RCW 70.48.390 provide

1 means for individuals to redeem any interest generated on their confiscated funds.
2 Id.; R.C.W. 70.48.390.

3
4 12. Prior to enacting its booking fee, Spokane County contacted at least five
5 other Washington counties to research how they implemented RCW 70.48.390.
6 See Ex. D, Dec. of Beggs (Docket No. 7). At least one county chose not to
7 implement a booking fee because of potential constitutional conflicts; several other
8 counties had enacted booking fee policies that were clearly illegal because they did
9 not return the money if the person was not convicted. Id.

10
11 13. The official booking fee policy number 2.00.00, as described above, was
12 implemented on May 5, 2004. See Ex. B, Dec. of Beggs (Docket No. 7).

13
14 14. On or about October 31, 2004, Plaintiff Shawn Huss was arrested based on
15 a frivolous domestic violence complaint. See Exhibit A, attached to the
16 Declaration of Shawn Huss in Support (Docket No. 8).

17
18 15. He was taken to the Spokane County Jail. Dec. of Huss (Docket No. 8).

19
20 16. Upon being booked, his wallet was inventoried as personal property that
21 would be returned to him upon release. Unbeknownst to Mr. Huss, Spokane
22 County seized \$39.20 from Mr. Huss's wallet for the County's use and benefit. Id.

23
24 17. This was all of the money in Mr. Huss' wallet and all that he had to provide
25 for himself and his family until his next paycheck. Id.

1 18. At the time of the property seizure, Spokane County did not inform Mr.
2 Huss that it was charging him a booking fee, that the statute mandated return of the
3 fee upon dismissal of charges, or the process for obtaining a refund. Id.
4

5 19. Mr. Huss was released from the Spokane County Jail the next day, and all
6 charges were dropped. Id., Ex. A (Docket No. 8).
7

8 20. Upon release his funds were not returned to him, nor was he provided with
9 Spokane County Jail's Reimbursement Form or any other means to get his funds
10 back. Dec. Huss (Docket No. 8).
11

12 21. Mr. Huss lives on a limited income and was dependant on the \$39.20 to
13 feed and provide for his family until his next paycheck.. Id.
14

15 22. Pursuant to Spokane County's reimbursement policy in place at the time
16 Mr. Huss was booked, Mr. Huss must waive his rights to any due process in order
17 to redeem his money. See Ex. C, Dec. of Beggs (Docket No. 7). Spokane County
18 refunded Mr. Huss's money only after receiving notice that Mr. Huss intended to
19 initiate this action.
20

21 23. To date, Defendant has not refunded the interest on Mr. Huss's seized
22 money or compensated him for the deprivation of his constitutional rights. Dec.
23 Huss (Docket No. 8).
24

25 24. Upon belief, since May 5, 2004, Spokane County has seized hundreds of

1 thousands of dollars from thousands of inmates at the Spokane County Jail under
2 the same procedure used with Mr. Huss, including failure to provide an adequate
3 pre-deprivation hearing.
4

5 Dated this 22nd day of November, 2005.

6 s/Breean L. Beggs
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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2005, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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HON. FRED VAN SICKLE

UNITED STATES DISTRICT COURT
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Case No.: CV-05-180-FVS

PLAINTIFF'S MEMORANDUM OF
AUTHORITIES IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT

CLASS ACTION CERTIFICATION
PENDING

I. INTRODUCTION

COMES NOW the Plaintiff, Shawn Huss, on his own behalf and on behalf of the class of similarly situated individuals from whom an intake fee was seized by Spokane County without due process of law. Plaintiff requests that this Court find that Spokane County's official booking fee policy and RCW 70.48.390 are facially unconstitutional in that they unlawfully allow Spokane County to deprive persons of their property without due process of law in violation of their rights under the Fourteenth Amendment of the U.S. Constitution. Plaintiff has filed a

1 motion to certify the class which is pending before this Court.

2 **II. FACTS**

3 The Plaintiff has filed a separate statement of undisputed facts concurrently
4 with this motion as required by Local Rule ("LR") 56.
5

6 **III. ANALYSIS**

7 Summary judgment is proper if the movant demonstrates that there is "no
8 genuine issue of material fact and that the moving party is entitled to judgment as a
9 matter of law." Fed. R. Civ. P. 56(c). While the party moving for summary
10 judgment has the initial burden to show the absence of a genuine issue concerning
11 any material fact, once that party's burden is met, the burden shifts to the non-
12 moving party to establish existence of an issue of fact regarding an element
13 essential to that party's case, and on which that party will bear the burden of proof
14 at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986); Adickes v. S.H.
15 Kress & Co., 398 U.S. 144, 159 (1970). Even in the light most favorable to the
16 Defendant, there are no material facts in dispute and because reasonable minds can
17 only reach one conclusion, the Plaintiff is entitled to a finding of liability under
18 U.S.C. § 1983, against the Defendant for the illegal deprivation of his property
19 without due process of law in violation of his constitutionally protected rights.
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A. SPOKANE COUNTY’S OFFICIAL BOOKING FEE POLICY AND RCW 70.48.390 ARE FACIALLY UNCONSTITUTIONAL AND MUST BE STRUCK DOWN.

The Defendant’s official booking fee policy, enacted pursuant to Spokane County Resolution 04-0160 as authorized by RCW. 70.48.390, is facially unconstitutional in that it allows Spokane County to deprive the Plaintiff, and others similarly situated, of their property without due process of law in violation of the Fourteenth Amendment of the United States Constitution.

A statute may be found to be unconstitutional on its face or unconstitutional as applied. City of Redmond v. Moore, 151 Wash.2d 664, 668-69, 91 P.3d 875, 878 (2004). A statute is rendered facially unconstitutional if it cannot be constitutionally applied under any circumstance. Wash. State Republican Party v. Wash. State Pub. Disclosure Comm’n, 141 Wash.2d 245, 282, 4 P.3d 808 (2000).

A statute which is found to be facially unconstitutional is rendered totally inoperative. In re Det. of Turay, 139 Wash.2d 379, 417, 986 P.2d 790 (1999).

Alternatively, a statute may be found unconstitutional as-applied, if it is found to be unconstitutional in the specific context alleged by the party. Id. “Holding a statute unconstitutional as-applied prohibits future application of the statute in a similar context, but the statute is not totally invalidated.” Wash. State Republican Party, 141 Wash.2d at 282, 4. P.3d 808.

1 The general rule is that if a portion of a statute is found to be invalid, the
2 entire statute will be struck down unless the invalid portion is severable and it can
3 be reasonably believed that the legislature would have passed the one without the
4 other, or unless the elimination of the invalid part would render the remainder of
5 the act incapable of accomplishing the legislative purpose. State ex rel. Distilled
6 Spirits Institute, Inc. v. Kinnear, 80 Wash.2d 175, 176-177, 492 P.2d 1012,
7 1013 (1972) (citing Boeing Co. v. State, 74 Wash.2d 82, 442 P.2d 970 (1968));
8 Hogue v. Port of Seattle, 54 Wash.2d 799, 341 P.2d 171 (1959)).
9

11 It is well established that the power of the legislature to enact all reasonable
12 laws is plenary except where it is prohibited, either expressly or by inference, by
13 the state or federal constitution; this power extends not only to scope of laws
14 enacted, but also to procedural means incident to their enactment. Kinnear, 80
15 Wash.2d at 183, 492 P.2d at 1016; see also Public Utility Dist. No. 1 of Snohomish
16 County v. Taxpayers and Ratepayers of Snohomish County, 78 Wash.2d 724, 728-
17 29, 479 P.2d 61 (1978) (“[the] state constitution is not a grant of, but limit on, the
18 legislature's law-making power;” and courts may find restriction on legislative
19 authority where it is expressly or fairly implied in wording of the federal or state
20 constitution).
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24 Spokane County's booking fee policy and RCW 70.48.390 are facially
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1 unconstitutional in that they deprive individuals of their property without due
2 process of law in violation of the Fourteenth Amendment of the United States
3 Constitution. The statute is wholly unconstitutional on its face because the
4 deprivation of property from any person without a hearing is *per se*
5 unconstitutional. Without the ability to seize money from a person without a
6 hearing, the statute's entire purpose is frustrated. Because Washington courts do
7 not allow an otherwise unconstitutional statute to be saved by reading
8 constitutional requirements into it that are not there, Spokane's booking fee policy
9 and RCW 70.48.390 are constitutionally deficient and must be struck down in their
10 entirety. See Olympic Forest Products v. Chausse Corp., 82 Wash. 2d 418, 434,
11 511 P.2d 1002 (1973).

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15 **B. THE STATUTE VIOLATES MR. HUSS'S RIGHTS PROTECTED BY**
16 **THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION.**

17 Procedural due process issues arise when a person is deprived of life, liberty,
18 or property without due process of law. U.S. CONST. amend. XIV. The due
19 process clause has been divided into two prongs: substantive and procedural.
20 Substantive due process guards against arbitrary and capricious government
21 actions while procedural due process requires notice and an opportunity to be
22 heard prior a deprivation of life, liberty, or property.
23

24 Procedural due process questions are examined in two steps: first, whether a
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1 liberty or property interest exists and has been interfered with by the state, and
2 second, whether the procedures attendant upon that deprivation were
3 constitutionally sufficient. Kentucky Department of Corrections v. Thompson, 490
4 U.S. 454, 460, 109 S.Ct. 1904, 1909, 104 L.Ed.2d 506 (1989). The “fundamental
5 requirement of [procedural] due process is the opportunity to be heard ‘at a
6 meaningful time and in a meaningful manner.’” Mathews v. Eldridge, 424 U.S.
7 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (quoting Armstrong v. Manzo, 380
8 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)). Mathews established a
9 three-part test for evaluating whether procedural safeguards are sufficient by taking
10 into account the following factors:
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14 First, the private interest that will be affected by the official action;
15 second, the risk of an erroneous deprivation of such interest through
16 the procedures used, and the probable value, if any, of additional or
17 substitute procedural safeguards; and finally, the Government’s
18 interest, including the function involved and the fiscal and
19 administrative burdens that the additional or substitute procedural
20 requirement would entail.

21 Redmond, 151 Wash.2d at 669, 91 P.3d at 669 (quoting Mathews, 424 U.S.
22 at 335).

23 It is well established that, absent exigent circumstances, both real and
24 personal property may not be seized without due process of law. In Redmond, the
25 Washington Supreme Court held that laws which deprived persons of their driver’s

1 licenses without a hearing were invalid under Matthews in that they deprived
2 persons of a private interest without due process of law. Redmond, 151 Wash.2d
3 at 677, 91 P.3d at 882. The Court mandated a pre-deprivation hearing even though
4 the vast majority of suspensions were deemed to be appropriate.
5

6 In Tri-State Development, Ltd. v. Johnston, 160 F.3d 528 (9th Cir. 1998),
7 the Ninth Circuit held that RCW 6.25.070, which allowed for a pre-judgment writ
8 of attachment to real property without prior notice or a hearing, was facially
9 unconstitutional in that it violated due process. Even though the statute provided
10 prompt notice of the seizure and the right to an early post-deprivation hearing, the
11 Court found that it failed the Matthews test. Id. at 531. The U.S. Supreme Court
12 has established a long line of cases, both pre-and-post Matthews, overruling
13 statutes because they lacked sufficient safeguards to protect individual due process
14 rights. E.g., U.S. v. James Daniel Good Real Property, 510 U.S. 43, 114 S.Ct 492,
15 126 L.Ed 490 (1993) (invalidating a federal government seizure of real property
16 due to its connection with a drug crime); North Georgia Finishing Inc. v. Di-Chem,
17 Inc., 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed.2d 751 (1975) (invalidating a Georgia
18 garnishment statute for lack of due process); Fuentes v. Shevin, 407 U.S. 67, 92
19 S.Ct. 1983, 32 L.Ed. 556 (1972) (overturning the prejudgment replevin laws of
20 Florida and Pennsylvania).
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1 **1. Mr. Huss has a strong property interest in his personal funds.**

2 Applying the Matthews test to the present case reveals that Spokane
3
4 County's booking fee policy and RCW 70.48.390 are constitutionally deficient in
5 that they allow the municipality to deprive individuals of an essential property
6 right without due process of law. The first factor requires identification of the
7 nature and weight of the private interest affected by the official action challenged.
8
9 A person has a substantial property right in his or her personal money. Perhaps no
10 other piece of property is more essential to providing basic food and shelter for
11 one's self and one's family. Without money a person cannot pay his or her rent or
12 mortgage, purchase food, pay for gasoline, or pay for public transportation. Under
13 Spokane County's booking fee policy, the jail's booking agent was able to empty
14 the Plaintiff's wallet, leaving the Plaintiff without recourse until he was able to
15 prove that the charges against him had been dropped or that he had been acquitted.
16
17 By that time it was too late as the damage had been done. As the Court stated in
18 North Georgia Finishing, "...a bank account [is] surely a form of property...;" 419
19 U.S. at 606. Surely, an individual's personal funds found in his or her wallet is
20 equally important.
21

22 Several cases have found a protected property interest in both an inmate's
23 funds voluntarily placed in a trust account and in the interest generated on those
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1 funds. In Tellis v. Godinez, 5 F.3d 1314 (9th Cir. 1993), the Court held that an
2 inmate had a recognizable property interest in the interest earned on the funds in
3 his “personal property fund” and that the money earned must be credited to the
4 fund. The Ninth Circuit broadened the Tellis rule in Schneider v. California
5 Department of Corrections, holding that there was a recognizable property interest
6 in “all” of the interest earned on an inmate’s trust account. 151 F.3d 1194, 1200-
7 01 (9th Cir. 1998). The Washington Supreme Court adopted a similar approach in
8 Dean v. Lehman, 143 Wash.2d 12, 35-36, 18 P.3d 523, 536 (2001) (holding that an
9 inmate possesses a property interest in the interest earned on his inmate trust
10 account which cannot be taken without just compensation).

11
12 In each of the above cases the property was voluntarily placed in an inmate
13 trust account. Meanwhile, in this case, Plaintiff’s property was seized from his
14 person without consent and without even a modicum of a hearing. Absent a
15 hearing, an individual is without a chance to object to the seizure of his property,
16 nor is there a method of determining whether the money is being rightfully taken
17 or is exempt in that it derives from public benefits or is the property of a third
18 party. Thus, a substantial risk exists that individuals, such as Mr. Huss, will be
19 wrongly deprived of their property.

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21 In consideration of the importance of the property interest which Mr. Huss
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1 and other individuals are deprived of through Spokane County's booking fee
2 policy, we can look at the rules regulating collection on judgments and
3 garnishment. Funds which derive from public benefits—SSA, SSI, and TANF—
4 are exempt from garnishment because these funds are needed to provide the
5 necessary life support for an individual and his/her family. 42 U.S.C. § 407; see
6 also RCW 6.27.150 (exempting up to seventy-five percent of a person's income
7 from garnishment; RCW 6.15.040 (exempting community property from
8 garnishment). Under these provisions a person who is subject to collection under a
9 judgment is protected in that he/she will not be left without the means to house and
10 feed himself/herself and his/her family.
11

12
13
14 Spokane County did not consider any of this in regard to Mr. Huss. He was
15 stripped of all the money on his person, leaving him with nothing until his next
16 paycheck. These statutes alone provide evidence of the substantial weight this
17 Court should apply to Mr. Huss's property interest in his own money.
18

19 Additionally, "[t]he duration of any potentially wrongful deprivation of a property
20 interest is an important factor in assessing the impact of official action on the
21 private interest involved." Redmond, 151 Wash.2d at 671, 91 P.3d at 879 (quoting
22 Mackey v. Montrym, 443 U.S. 1, 12, 99 S.Ct. 2612 (1979)). Like in Redmond,
23
24 Spokane County's policy leaves the individual to his or her own devices in
25

1 requesting that their property be returned. Id. (“[t]he public is left to its own
2 devices to secure a timely hearing from a court to reverse the error.”) Pursuant to
3 Spokane County’s booking fee policy and application of RCW 70.48.390, an
4 individual who has been unlawfully deprived of his or her money must petition the
5 County and prove that the charges against him have been dropped, or that he has
6 been acquitted in order to receive his property back. This process could potentially
7 take months, especially if the case goes to trial. Meanwhile, Spokane County is
8 able to receive the interest generated by the confiscated funds and no part of the
9 statute requires the return of such interest. In analyzing a due process case, once a
10 protected property interest is found, the Court must decide what process is due as a
11 matter of law. Quick v. Jones, 754 F.2d 1521, 1523 (9th Cir. 1984); Belnap v.
12 Chang, 707 F.2d 1100, 1002 (9th Cir. 1983).

16 **2. Spokane County erroneously deprived Mr. Huss of his personal**
17 **funds without due process of law.**

18 The second Matthews factor is the risk of an erroneous deprivation of the
19 interest at stake through the procedures used and the probable value, if any, of
20 additional or substitute safeguards. Redmond, 151 Wash.2d at 672, 91 P.3d at 879
21 (citing Warner v. Trombetta, 348 F.Supp. 1068 (M.D.PA. 1972), aff’d 410 U.S.
22 919, 93 S.Ct. 1392, 35 L.Ed.2583 (1973)). The central holding in both Redmond
23 and Warner stressed that the “possibility exists that error in a conviction record
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25

1 could result in the revocation of the license of an innocent motorist.” Id. Under
2 the situations posed in each case, the respective Courts found that the lack of
3 essential due process and the opportunity for some sort of meaningful hearing prior
4 to the revocation of an operator’s license violated due process.
5

6 As the statutes at issue in Warner and Redmond subjected the drivers to an
7 unreasonable risk of error, Spokane County’s booking fee policy and RCW
8 70.48.390 also subject individuals to deprivation of property without any due
9 process whatsoever. Spokane County’s policy of seizing cash for intake booking
10 fees violates Mr. Huss’s right to use of his personal property. First, it does not
11 provide him with an opportunity to object to the deprivation of his property and to
12 assert a reason, such as indigent status or its source as government benefits or any
13 other exemption outlined above, that would prevent the County from taking his
14 money. Second, the County does not provide any type of hearing prior to taking
15 the property and then places the burden on the individual (Mr. Huss) to get his
16 money back. Third, there are no procedural safeguards guaranteeing that Mr.
17 Huss’s property will be returned in the event that that he is not charged or is
18 acquitted. Thus, the risk of erroneously depriving an individual of his property is
19 unreasonably high.
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1 **3. Mr. Huss' strong interest in his personal funds significantly**
 2 **outweighs the Defendant's parochially conceived welfare.**

3 Finally, the third Matthews factor requires consideration of the State's
 4 interest in the fiscal and administrative burden that additional or substitute
 5 procedural requirements would entail. Nguyen v. Dep't of Health Med. Quality
 6 Assurance Comm'n, 144 Wash.2d 516, 532, 29 P.3d 689 (2001). In Redmond, the
 7 Court explained why a mandatory hearing was essential prior to depriving an
 8 individual of their driver's license: "[t]he hearing requirement is for the benefit of
 9 the few, [like Mr. Huss], who should not have had their money seized." 151
 10 Wash.2d at 677, 91 P.3d at 882. The fact that providing hearings for the several
 11 hundred thousand license suspensions each year would be expensive or onerous
 12 was not sufficient to create an exception to the hearing requirement. Id.

13 In U.S. v. Good, the Court explained that "the purpose of an adversary
 14 hearing is to ensure the requisite neutrality that must inform all governmental
 15 decision making. That protection is of particular importance where ... [as here] ...
 16 the Government has a direct pecuniary interest in the outcome of the proceeding."
 17 510 U.S. at 56-67 (citing Hermelin v. Michigan, 501 U.S. 957, 979 (1991)
 18 (opinion of Scalia, J.) ("*it makes sense to scrutinize governmental action more*
 19 *closely when the State stands to benefit*") (emphasis added). The Washington
 20 Supreme Court has reached a similar conclusion when analyzing a local
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1 government's right to violate individual constitutionally-protected rights for the
 2 purpose of raising revenue:

3
 4 While local governments exist to provide necessary public services to
 5 those living within their borders and to avoid harms in their protection
 6 of the public's health, safety, and general welfare, exercise of this
 7 authority must be reasonable and rationally related to a legitimate
 purpose of government such as avoiding harm or protecting health,
 safety and general, *not local or parochially conceived, welfare.*

8 Norco Const., Inc. v. King County, 97 Wash.2d 680, 685, 649 P.2d 103, 106
 9 (1982) (citing Save a Valuable Environment v. Bothell, 89 Wash.2d 862, 576 P.2d
 10 401 (1978); Farrell v. Seattle, 75 Wash.2d 540, 452 P.2d 965 (1969); Southern
 11 Burlington County NAACP v. Mount Laurel, 67 N.J. 151, 177-78, 336 A.2d 713
 12 (1975)) (emphasis added.); see also Brower v. State, 137 Wash.2d 44, 58, 969
 13 P.2d 42, 51 (1998) (holding that legislative rights of the people reserved in state
 14 constitutions are to be liberally construed in order to preserve them and render
 15 them effective).

16
 17 The primary purpose of the booking fee policy is to raise revenue for the
 18 municipality. Thus, the County's primary interest was in seizing Mr. Huss's
 19 property; it was less motivated to conduct the requisite evaluation that Mr. Huss's
 20 charges were dropped or that he was acquitted, and to refund his money as required
 21 by law. Instead, Spokane County's official policy put the onus on Mr. Huss to
 22 have his money refunded. Justice Scalia's advice rings true: where Spokane
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1 County stands to benefit from the deprivation, it is necessary to scrutinize the
2 government's actions more closely and to require that the County wait until after
3 an individual has been convicted before attempting to collect a booking fee.
4

5 The result of finding Spokane County and RCW 70.48.390 facially
6 unconstitutional simply requires that the Defendant wait until the proceeding has
7 been completed and a finding of guilt established prior to collecting a booking fee.
8
9 This will not necessitate an additional hearing, nor will it deprive the County of
10 any money which it could have rightfully acquired from all those who were booked
11 and convicted. Thus, the County's right to recoup its booking costs will only be
12 delayed—not destroyed.
13

14 **4. Mr. Huss is not required to exhaust administrative resources prior to**
15 **bringing a claim under the due process prong of the Fourteenth**
16 **Amendment.**

17 There is no duty to exhaust administrative remedies in order to bring a claim
18 under 42 USC § 1983 for violations of an individual's right to procedural due
19 process under the Fourteenth Amendment. The Defendant has claimed in its
20 Answer to Plaintiff's amended complaint that Plaintiff's claims are not ripe
21 because the Plaintiff failed to exhaust administrative remedies. Defendant's
22 Answer (CR 21 ¶¶ 5 & 29 & p.12 (F)). In the 1982 decision in Patsy v. Board of
23 Regents, 457 U.S. 496, 517 (1982), the U.S. Supreme Court held that "exhaustion
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1 of state administrative remedies should not be required as a pre-requisite to §
2 1983.” Further, where such a remedy is inadequate exhaustion is never required.

3
4 The application of Matthews and Redmond to Spokane’s ordinance and
5 RCW 70.48.390 shows that they are constitutionally defective because the County
6 fails to provide an adequate pre-deprivation hearing and keeps the money even
7 after the statute requires it to be sent to the last known address of the former
8 inmate. Spokane County’s policy of seizing cash for intake booking fees violates
9 Mr. Huss’s and others similarly situated right to use of their personal property.
10 Therefore, Spokane County has violated Mr. Huss’s due process rights under the
11 Federal Constitution.
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14 **C. DEFENDANTS ACTIONS WERE BASED ON AN ACCEPTED**
15 **MUNICIPAL POLICY. THIS POLICY WAS THE MOVING FORCE**
16 **BEHIND THE DEPRIVATION OF PLAINTIFF’S CIVIL RIGHTS.**

17 Spokane County resolution 04-0160 and RCW 70.48.390 were the “moving
18 force of constitutional violation”. Monell v. Department of Social Services, 436
19 U.S. 658, 694 (1978); Polk County v. Dodson, 454 U.S. 312, 326, 102 S.Ct. 445,
20 454, 70 L.Ed.2d 509 (1981). There must be a direct link between the municipal
21 policy or custom, and the alleged constitutional violation. City of Canton v.
22 Harris, 489 U.S. 378, 385, 391, 109 S.Ct. 1197, 1203, 1206, 103 L.Ed.2d 412
23 (1989). It is clear from the record that Mr. Huss’s property was taken pursuant to
24
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1 Spokane County Resolution 04-0160, which was passed in order to take booking
2 fees as authorized under RCW 70.48.390.

3
4 The Plaintiff was wrongfully deprived of his money without any pre-
5 deprivation hearing in violation of his clearly protected constitutional rights under
6 the Fourteenth Amendment. This is the type of blatant abuse of power that flies in
7 the face of clearly established Constitutional rights and is inappropriate for
8 qualified immunity. Orin v. Barclay, 272 F.3d 1207 (9th Cir. 2001). Further,
9 qualified immunity is simply unavailable where conduct violates clearly
10 established constitutional rights. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).
11 Even if the Defendants claim that they acted in “good faith” Washington has
12 rejected the “good faith” doctrine. The exclusion of this doctrine “serves not
13 merely as a remedial measure for unconstitutional government actions, but rather
14 to assure judicial integrity and preserve the individual's right to privacy.” State v.
15 White, 97 Wash. 2d 92, 109-10, 640 P.2d 1061 (1982). In this case, the
16 Defendants had the opportunity and duty to diligently research the law prior to
17 enacting its official booking fee policy. It failed to use reasonable diligence and its
18 official policy and procedures disregard Mr. Huss’s clearly established
19 constitutional rights. This municipal policy was clearly the moving force which
20 led Spokane County to deprive the Plaintiff of his constitutionally protected rights.
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1 Thus, because reasonable minds can only reach one conclusion, Spokane County is
2 liable for its actions as a matter of law.

3
4 **IV. CONCLUSION**

5 Spokane County's official booking fee policy and RCW 70.48.390 are
6 facially unconstitutional in that they deprive individuals of their property without
7 due process of law in violation of the Fourteenth Amendment of the U.S.
8 Constitution. Because both Spokane County's booking policy and RCW 70.48.390
9 allow the County to convert an individual's personal funds to their own use
10 without notice or an opportunity to be heard, they are illegal and must be struck
11 down. This Court should hold Spokane County liable as a matter of law and grant
12 the Plaintiff's motion for partial summary judgment.
13
14

15 Dated this 22rd day of November, 2005.

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25

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2005, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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