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**THE EIGHTH AMENDMENT'S EXCESSIVE FINES CLAUSE
AND THE ARTIST**

**SUPREME COURT OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT**

Prince v. City of New York¹
(decided May 31, 2013)

I. INTRODUCTION

The New York State Supreme Court, Appellate Division, First Department recently held that a mandatory fine of \$2,000 imposed for removing a television antenna, made of recyclable material, from the top of a residential garbage receptacle violated the Excessive Fines clause of the New York State² and Federal Constitutions.³

II. DISCUSSION OF *PRINCE*

Petitioner, Albert Prince, a carpenter and sculptor, uses recyclable construction material for art installations.⁴ On February 23, 2011, Prince removed a television antenna from the top of a garbage pile consisting of many garbage bags.⁵ Prince placed the antenna in his vehicle and drove away.⁶ Shortly after removing the antenna and driving away, Prince was pulled-over by a New York City (“NYC”) Sanitation police officer.⁷ The officer “issued [Prince] a summons for unauthorized removal of residential recyclable material using a motor vehicle.”⁸ This was a violation of New York Municipal Code

¹ 966 N.Y.S.2d 16 (App. Div. 1st Dep’t 2013).

² N.Y. CONST. art. I, § 5.

³ U.S. CONST. amend. VIII; *Prince*, 966 N.Y.S.2d at 18.

⁴ *Prince*, 966 N.Y.S.2d at 18.

⁵ *Id.* at 17.

⁶ *Id.* at 17-18.

⁷ *Id.* at 18.

⁸ *Id.*

§ 16-118(7)(f)(1)(i).⁹ Subject to the payment of a \$2,000 fine, Prince's car was impounded, thus limiting his ability to work.¹⁰ That fine for \$2,000 was mandatory and could not be altered by the courts.¹¹

A. Procedural Background

One month after the incident, Prince had a hearing before an Administrative Law Judge of the Office of Administrative Trials and Hearings.¹² At that hearing, the Administrative Law Judge sustained the violation because Prince did not present a valid defense.¹³ Additionally, the Administrative Law Judge concluded that she lacked discretion to reduce the penalty.¹⁴

Prince then appealed to the NYC Environmental Control Board ("ECB").¹⁵ On appeal, the board was asked to consider whether or not the mandatory penalty was unconstitutional as an excessive fine in violation of the Eighth Amendment of the United States Constitution.¹⁶ The ECB concluded that it did not have authority to rule on the constitutional issue.¹⁷ Subsequent to that decision, Prince commenced an Article 78 proceeding against the City of New York.¹⁸ Prince argued that the fine was unconstitutionally excessive and asked that the fine be vacated.¹⁹ The New York State Supreme Court found no constitutional violations and dismissed the petition.²⁰ Prince then appealed to the Appellate Division, First Department.²¹

III. HISTORY OF THE EIGHTH AMENDMENT EXCESSIVE FINE'S CLAUSE IN THE SUPREME COURT

Before discussing the First Department's decision in *Prince*, it

⁹ *Prince*, 966 N.Y.S.2d at 18.

¹⁰ *Id.*

¹¹ *Id.* at 19.

¹² *Id.* at 18.

¹³ *Id.*

¹⁴ *Prince*, 966 N.Y.S.2d at 18.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Prince*, 966 N.Y.S.2d at 18.

²⁰ *Id.* at 19.

²¹ *Id.*

is important to first have an understanding of the United States Supreme Court's historical analysis relating to the Eighth Amendment's Excessive Fines clause.

The Supreme Court first considered the application of the Excessive Fines clause in the 1989 decision of *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*²² In *Browning-Ferris*, the Court held that the Excessive Fines clause would not be used to overturn a jury's award of punitive damages in a civil trial.²³ The importance of *Browning-Ferris* lies not in the decision, but in the fact that it was the Court's first articulation of the analysis it would use to determine whether or not there has been a violation of the Excessive Fines clause.²⁴

The *Browning-Ferris* case arises out of a unique set of facts involving waste-collection and disposal businesses.²⁵ Browning Ferris Industries, Inc. is the operator of a waste collection business.²⁶ In 1973, a Vermont subsidiary of Browning-Ferris Industries, Inc., (Browning-Ferris Industries of Vermont, Inc.) ("Browning-Ferris"), entered the Burlington Vermont trash collection market, and in 1976, offered a roll-off garbage collection service.²⁷ Kelco Disposal, Inc., owned by a former Browning-Ferris employee, entered the market as a direct competitor of Browning-Ferris.²⁸ Kelco, who gained a 43% market share, threatened the Browning-Ferris business and prompted Browning-Ferris to use predatory tactics to drive Kelco out of business.²⁹ Kelco sued Browning-Ferris alleging a violation of the Sherman Antitrust Act for the attempted monopolization of the roll-off market in Burlington.³⁰ Additionally, Kelco claimed interference with contractual relations.³¹ A jury for the United States District Court for the District of Vermont found Browning-Ferris liable on all counts.³² After a trial on damages, the jury rendered a verdict for

²² 492 U.S. 257 (1989).

²³ *Id.* at 260.

²⁴ *Id.* at 262.

²⁵ *Id.* at 260.

²⁶ *Id.*

²⁷ *Browning-Ferris*, 492 U.S. at 260.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 261.

³¹ *Id.*

³² *Browning-Ferris*, 492 U.S. at 262.

both compensatory and punitive damages³³ and *Browning-Ferris* subsequently appealed both the judgment of liability and damages to the United States Court of Appeals for the Second Circuit.³⁴ The Second Circuit affirmed the judgment and noted that if the Excessive Fines clause applied to the punitive damage award, the award was not disproportionate enough to be considered excessive.³⁵

The Supreme Court granted certiorari to review the question of whether the punitive damages awarded violated the Eighth Amendment's Excessive Fines clause.³⁶ The Court, in an opinion authored by Justice Blackmun,³⁷ held the Excessive Fines clause did not apply to the award of damages in a civil trial where the government did not prosecute the action and did not seek a share of the awarded damages.³⁸

The Court's decision presented an evaluation of the Eighth Amendment's historical development.³⁹ The Court initially noted that at the time of its adoption, the Eighth Amendment was subject to little debate because many of the original states had some equivalent protection against excessive fines.⁴⁰ The Court found there was no direct evidence of the meaning of the word "fine."⁴¹ Therefore, the Court looked at the plain meaning of the term fine, in the context of its adoption into the amendment, to determine fine meant a payment to the government as punishment for wrongdoing.⁴² From this conclusion, the Court held the Excessive Fines clause did not apply to a punitive damage award in a private civil trial.⁴³ The Court held the primary purpose of the Eighth Amendment was to protect the people from the government's abuse of its prosecutorial power.⁴⁴

The Court bolstered its finding by pointing to similar language in the English Bill of Rights.⁴⁵ The Court explained that in the

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Browning-Ferris*, 492 U.S. at 258.

³⁸ *Id.* at 264.

³⁹ *Id.* at 264-68.

⁴⁰ *Id.* at 264.

⁴¹ *Id.* at 265.

⁴² *Browning-Ferris*, 492 U.S. at 265.

⁴³ *Id.* at 266.

⁴⁴ *Id.*

⁴⁵ *Id.*

17th century, English judges imposed steep fines on the enemies of the king, an abuse of power remedied by the protection from Excessive Fines.⁴⁶ The Court understood the United States Constitution's Excessive Fines clause to be a derivative of the English Excessive Fines clause, which clearly supports the Court's decision, namely that the clause is a limit on the ability of the sovereign to use prosecutorial power.⁴⁷

Thus, the Court limited the application of the Excessive Fines clause to instances of fines imposed by the government.⁴⁸

IV. ANALYSIS OF THE FEDERAL EXCESSIVE FINES CASES RELIED UPON BY THE COURT IN *PRINCE*

Since the Supreme Court's decision in *Browning-Ferris*, the Court decided two other cases, discussed below, further expounding upon the application of the Eighth Amendment's Excessive Fines clause.

A. *Austin v. United States*⁴⁹

In August of 1990, Richard Austin was indicted for violating South Dakota's drug laws.⁵⁰ Austin pled guilty to possession of cocaine with the intent to distribute and he was subsequently sentenced to serve seven years in prison.⁵¹ The United States filed an *in rem* proceeding to recover Austin's mobile home and auto body shop, instrumentalities of his crime.⁵² At trial, Austin contended that forfeiture of the property violated his Eighth Amendment rights.⁵³ Here, the Supreme Court had to decide whether the civil proceeding requiring forfeiture of property was within the scope of the Eighth Amendment's Excessive Fines Clause.⁵⁴ The Supreme Court determined that punishments serving punitive and deterrent purposes come

⁴⁶ *Id.* at 267.

⁴⁷ *Browning-Ferris*, 492 U.S. at 267.

⁴⁸ *Id.* at 268.

⁴⁹ 509 U.S. 602 (1993).

⁵⁰ *Id.* at 604.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 605.

⁵⁴ *Austin*, 509 U.S. at 610.

under the protection of the Excessive Fines Clause.⁵⁵ The alternative—a fine serving a remedial purpose—is not protected by the Excessive Fines clause.⁵⁶ The Supreme Court did not evaluate the claim any further and provided no guidance for the District Court to determine what constitutes an excessive fine.⁵⁷

B. *United States v. Bajakajian*⁵⁸

In *Bajakajian*, the Supreme Court provided a proper framework for an Excessive Fines clause analysis.

In June of 1994, Hosep Bajakajian and his family attempted to leave the country with over \$300,000 in cash.⁵⁹ When first approached by a customs inspector, who informed Bajakajian of his duty to report all cash in his possession in excess of \$10,000, Bajakajian claimed that he had \$8,000 and his wife had \$7,000.⁶⁰ A subsequent search revealed that Bajakajian was actually in possession of \$357,144 in cash.⁶¹

Before trial, Bajakajian pled guilty to willfully transporting more than \$10,000 outside of the United States.⁶² Therefore, at trial, the court had to determine whether forfeiture of the total amount of money was an appropriate sentence.⁶³ After a bench trial, the trial court found the forfeiture imposed to be a violation of the Excessive Fines clause.⁶⁴ The Court of Appeals for the Ninth Circuit held that the forfeiture was a *per se* violation of the Excessive Fines clause and the Supreme Court granted certiorari.⁶⁵

The Supreme Court first had to determine whether the forfeiture of the currency was remedial or punitive.⁶⁶ Determining that the forfeiture was punishment, the Court then had to answer the question of whether the fine was excessive.⁶⁷ The Court developed its test for

⁵⁵ *Id.* at 618.

⁵⁶ *Id.* at 621.

⁵⁷ *Id.* at 622.

⁵⁸ 524 U.S. 321 (1998).

⁵⁹ *Id.* at 324-25.

⁶⁰ *Id.*

⁶¹ *Id.* at 325.

⁶² *Id.*

⁶³ *Bajakajian*, 524 U.S. at 325.

⁶⁴ *Id.* at 326.

⁶⁵ *Id.* at 327.

⁶⁶ *Id.*

⁶⁷ *Id.* at 328, 334.

excessiveness from the cases which interpreted the Cruel and Unusual Punishment clause to the Eighth Amendment and settled upon a test of proportionality.⁶⁸ The Court compared the punishment to the gravity of the offense, and if the punishment outweighed that gravity, the punishment was unconstitutional.⁶⁹ Ultimately, the Court in *Bajakajian* found the forfeiture “grossly disproportionate to the gravity of [the] offense.”⁷⁰

V. ANALYSIS OF NEW YORK'S EXCESSIVE FINES JURISPRUDENCE

A. *County of Nassau v. Canavan*⁷¹

This New York State Court of Appeals case dealt with the forfeiture of property which was used as the instrumentality of a crime—an automobile driven by an intoxicated individual.⁷² The defendant, Michael Canavan, was arrested and charged with driving while intoxicated in her 1995 Saturn automobile.⁷³ As incident to her crime, Canavan's car was seized and Nassau County instituted an action for forfeiture pursuant to the County's Administrative code.⁷⁴ In determining the question of whether the forfeiture violated the state and federal Excessive Fines Clause, the Court of Appeals followed the reasoning of *Austin* and *Bajakajian*.⁷⁵ The court first determined the forfeiture was a punishment.⁷⁶ Then the court applied the proportionality test.⁷⁷ The court considered multiple factors in making its determination as to whether the fine was disproportionate to the gravity of the offense.⁷⁸ The factors included:

[T]he seriousness of the offense, the severity of the harm caused and of the potential harm had the defendant not been caught, the relative value of the forfeited

⁶⁸ *Bajakajian*, 524 U.S. at 336-37.

⁶⁹ *Id.* at 337.

⁷⁰ *Id.* at 339-40.

⁷¹ 802 N.E.2d 616 (N.Y. 2003).

⁷² *Id.* at 620.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 621.

⁷⁶ *Canavan*, 802 N.E.2d at 621.

⁷⁷ *Id.* at 621-22.

⁷⁸ *Id.* at 622.

property and the maximum punishment to which the defendant could have been subject for the crimes charged, and the economic circumstances of the defendant.⁷⁹

The court ultimately determined that the forfeiture was not disproportionate to the harm caused by the offense of driving while intoxicated.⁸⁰

VI. THE FIRST DEPARTMENT'S DECISION IN *PRINCE*

A. Analysis of Whether the Civil Fine Could be Considered an Excessive Fine

The City of New York argued that the Excessive Fines clause jurisprudence was limited to the realm of criminal and not civil cases.⁸¹ However the court held that civil penalties are subject to analysis under the Excessive Fines jurisprudence.⁸² This holding is consistent with the discussion of the Excessive Fines clause in *Browning-Ferris*.⁸³ As previously noted, the United States Supreme Court has held the Excessive Fines clause “does not constrain an award of money damages in a civil suit when the government neither has prosecuted the action nor has any right to receive a share of the damages awarded.”⁸⁴ Though only dicta in *Browning-Ferris*, the Supreme Court strongly suggested that the application of the Excessive Fines clause is not confined to criminal cases.⁸⁵ Similarly, the Supreme Court in *Austin* further elaborated on the principle first enunciated in *Browning-Ferris* when it held payments exacted by the government as punishment clearly subject them to an analysis under the Excessive Fines clause.⁸⁶

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Prince*, 966 N.Y.S.2d at 20.

⁸² *Id.*

⁸³ *Browning-Ferris*, 492 U.S. at 263-64.

⁸⁴ *Id.* at 264.

⁸⁵ *Id.* at 263-64.

⁸⁶ *Austin*, 509 U.S. at 609-10.

B. Was the Fine A Punishment or Was the Fine Remedial?

The court in *Prince* began its Excessive Fines clause evaluation by determining whether or not the fine was more than remedial compensation for the harm.⁸⁷ The court correctly determined that the pertinent question was whether the fine constituted punishment.⁸⁸ The court followed *Austin*, noting any purely remedial fine cannot be said to fall under the Eighth Amendment.⁸⁹ Continuing to rely on *Austin*, the court noted that where a civil fine serves, at least in part, as a deterrent and is retributive, it is punitive and subject to the Excessive Fines clause.⁹⁰ The court in *Prince* did not recount the analysis conducted by the United States Supreme Court in *Austin* where the Court described in great detail the history and development of the Eighth Amendment to explain why there is constitutional protection from Excessive Fines.⁹¹ The court in *Prince* reviewed the facts and the legislative history of the pertinent ordinance and determined that the fine did not have the sole purpose of being remedial.⁹² The court looked specifically at the relationship of the fine to the actual loss sustained by the City as per *Bajakajian*.⁹³ Noting the legislative history, the court found clear evidence that the fine was intended to be a deterrent.⁹⁴ Therefore, the court properly concluded the penalty was subject to an Eighth Amendment analysis.⁹⁵

C. Application of the Proportionality Test

After its initial determination, the court then applied the proportionality test, continuing to apply principles of *Bajakajian*.⁹⁶ The court noted proportionality requires that the amount of the fine must bear a close relationship to the gravity of the offense that it punish-

⁸⁷ *Prince*, 966 N.Y.S.2d at 20.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 21; see *Austin*, 509 U.S. at 610-11 (discussing the history of the Eighth Amendment and punishment).

⁹² *Prince*, 966 N.Y.S.2d at 21.

⁹³ *Id.* (citing *Bajakajian*, 524 U.S. at 329) (noting that forfeiture did not serve the remedial purpose of compensating the government for a loss).

⁹⁴ *Prince*, 966 N.Y.S.2d at 21.

⁹⁵ *Id.*

⁹⁶ *Id.* at 21-22.

es.⁹⁷ The court then listed the appropriate factors that courts should consider in determining gross disproportionality: (1) “seriousness of the offense”; (2) “severity of the harm caused and the potential harm had the defendant not been apprehended”; (3) “the maximum fine to which the defendant could have been subject”; and (4) “the defendant’s economic circumstances.”⁹⁸ The court determined that the seriousness of the offense was minor; no significant harm was caused by Prince’s conduct and no potential harm was caused to either the owner of the antenna or anyone else in the area had Prince not been caught; Prince was subject to maximum punishment for the offense; Prince had limited economic circumstances—evidenced by the fact that he could not work without his van; and he was a first time offender.⁹⁹

VII. ANALYSIS OF THE APPROACHES

A. The United States Court of Appeals for the Second Circuit Dissects the Decisions of *Austin* and *Bajakajian*

The first Second Circuit case addressing the Excessive Fines clause was *United States v. Milbrand*.¹⁰⁰ In *Milbrand*, the United States government initiated an action for forfeiture of Marcia Milbrand’s eighty-five acre property in Pembroke, New York, which was used for growing marijuana.¹⁰¹

In August of 1990, police searched the property and found numerous marijuana plants being grown on the property by Marcia’s son, Mark.¹⁰² Mark was charged with and subsequently pled guilty, in state court, to criminal possession of marijuana.¹⁰³ The United States then brought an action for forfeiture of the land used to grow the marijuana.¹⁰⁴ At trial, Milbrand argued that the taking of her property violated the Excessive Fines clause.¹⁰⁵ The district court re-

⁹⁷ *Id.* at 22.

⁹⁸ *Id.*

⁹⁹ *Prince*, 966 N.Y.S.2d at 22.

¹⁰⁰ 58 F.3d 841 (2d Cir. 1995).

¹⁰¹ *Id.* at 842.

¹⁰² *Id.* at 843.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Milbrand*, 58 F.3d at 843.

jected the argument without much analysis.¹⁰⁶ The Second Circuit also rejected the Excessive Fines argument, but it provided some basic tenets for analyzing such a claim.¹⁰⁷ The court set forth a factor-based analysis for determining whether the forfeiture of property was a violation of the Excessive Fines clause.¹⁰⁸ It stated:

In our view, the factors to be considered by a court in determining whether a proposed *in rem* forfeiture violates the Excessive Fines Clause should include (1) the harshness of the forfeiture (*e.g.*, the nature and value of the property and the effect of forfeiture on innocent third parties) in comparison to (a) the gravity of the offense, and (b) the sentence that could be imposed on the perpetrator of such an offense; (2) the relationship between the property and the offense, including whether use of the property in the offense was (a) important to the success of the illegal activity, (b) deliberate and planned or merely incidental and fortuitous, and (c) temporally or spatially extensive; and (3) the role and degree of culpability of the owner of the property.¹⁰⁹

In applying these factors, the Second Circuit determined that the forfeiture was not excessive, and thus, did not violate the Eighth Amendment.¹¹⁰

Building on *Milbrand*, the Second Circuit next considered the Excessive Fines clause in *United States v. Collado*.¹¹¹ Similar to *Milbrand*, the *Collado* case involved forfeiture of property because of its use in drug related crimes.¹¹² Sofia Collado and her husband owned a three story building in Brooklyn, New York.¹¹³ The first floor contained a grocery store, which Collado operated.¹¹⁴ The other two floors were residential.¹¹⁵ In 1997, law enforcement authorities

¹⁰⁶ *Id.* at 844.

¹⁰⁷ *Id.* at 844, 847-48.

¹⁰⁸ *Id.* at 847-48.

¹⁰⁹ *Id.*

¹¹⁰ *Milbrand*, 58 F.3d at 848.

¹¹¹ 348 F.3d 323 (2d Cir. 2003).

¹¹² *Id.* at 325.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

uncovered a large-scale narcotics trafficking operation being operated out of the building by Collado's son, Ralph Collado, Jr.¹¹⁶ Ralph Collado, Jr. was arrested and convicted on narcotics charges.¹¹⁷ The United States brought a civil forfeiture suit against Collado's property to which Sofia Collado alleged an Excessive Fines clause violation.¹¹⁸ The district court rejected the argument that the government taking of the property violated the Excessive Fines clause.¹¹⁹ In addressing the Excessive Fines violation argument, the district court held the forfeiture was not "grossly disproportional to the gravity of the offense."¹²⁰ The Second Circuit distilled *Bajakajian* and enumerated the factors necessary to a proper Excessive Fines analysis:¹²¹

(a) the essence of the crime of the respondent and its relation to other criminal activity, (b) whether the respondent fit into the class of persons for whom the statute was principally designed, (c) the maximum sentence and fine that could have been imposed, and (d) the nature of the harm caused by the respondent's conduct.¹²²

After it applied the factors, the Second Circuit determined that there was no violation of the Excessive Fines clause.¹²³

The final Second Circuit case to consider is *von Hofe v. United States*.¹²⁴ In *von Hofe*, Harold and Kathleen von Hofe argued that the forfeiture of their home, where they grew marijuana, was an excessive fine in violation of the Eighth Amendment.¹²⁵ In 2001, local police officials and the Drug Enforcement Administration searched the von Hofes' home to find multiple marijuana plants and drug paraphernalia.¹²⁶ The von Hofes were adjudicated under state law, and the United States subsequently instituted a property forfeiture ac-

¹¹⁶ *Collado*, 348 F.3d at 325.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 326.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 328.

¹²¹ *Collado*, 348 F.3d at 328.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ 492 F.3d 175 (2d Cir. 2007).

¹²⁵ *Id.* at 179.

¹²⁶ *Id.*

tion.¹²⁷ The von Hofes challenged the action under the Excessive Fines clause, and the district court held there was no violation.¹²⁸

The Second Circuit evaluated the Eighth Amendment claim on appeal.¹²⁹ The Second Circuit focused its inquiry by considering the following:

- (1) [T]he harshness, or gross disproportionality, of the forfeiture in comparison to the gravity of the offense, giving due regard to (a) the offense committed and its relation to other criminal activity, (b) whether the claimant falls within the class of persons for whom the statute was designed, (c) the punishments available, and (d) the harm caused by the claimant's conduct; (2) the nexus between the property and the criminal offenses, including the deliberate nature of the use and the temporal and spatial extent of the use; and (3) the culpability of each claimant.¹³⁰

Here, the Second Circuit focused on the property aspects of the case.¹³¹ The court ultimately determined that forfeiture of Mr. von Hofe's interest in the property did not violate the Excessive Fines clause because of the extent of his criminal activity.¹³² Conversely, the court found that forfeiture of Mrs. von Hofe's interest was indeed in violation of the Excessive Fines clause because of her minimal involvement in the criminal activity.¹³³

As per *Canavan*, the New York Court of Appeals, in evaluating a claim under the Excessive Fines clause will evaluate a specific set of factors, but these factors are neatly enumerated compared to the Supreme Court cases.¹³⁴ New York looks at the severity of the harm caused and the potential harm had the defendant not been caught, the relative value of the forfeited property and the maximum punishment to which defendant could have been subject for the crimes charged, and the economic circumstances of the defendant.¹³⁵ It appears that

¹²⁷ *Id.*

¹²⁸ *Id.* at 181.

¹²⁹ *von Hofe*, 492 F.3d at 181.

¹³⁰ *Id.* at 186.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 188.

¹³⁴ *Canavan*, 802 N.E.2d at 622.

¹³⁵ *Id.*

the New York courts borrow heavily from *Bajakajian*, parsing its decision into a set of elements.¹³⁶

VIII. IMPLICATIONS OF THE HOLDING AND CONCLUSION

There are a wide range of punishments that may be considered proportional or not proportionate, thus indicating the need for a case by case determination. The only clarity we can gain from *Prince* and other federal decisions is the appropriate test of an excessive fine.¹³⁷

The First Department has applied the law analogously to the applicable federal jurisprudence.¹³⁸ The case was rightly decided; however, it is clear that each case raising such an issue will be decided on its own particular set of facts.

Based upon the cases from the United States Supreme Court, the case from the New York State Court of Appeals, and the Second Circuit, it is clear that courts do not confront Excessive Fines cases very often. Clearly the Excessive Fines cases, when decided, are important because there is not much case law to evaluate. Further, it is apparent that each case will be decided upon its individual facts. The *Prince* case stands out because it provides for a structured analysis of an Excessive Fines claim. The *Prince* case obviously suggested a violation of the Excessive Fines Clause, but cases of different facts may not provide such clear facts for adjudication. Ultimately, this case provides a clear analysis for future courts in New York to follow when confronted with a case of an alleged violation of the Excessive Fines clause.

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¹³⁶ *Bajakajian*, 524 U.S. at 336.

¹³⁷ *Id.*

¹³⁸ *Prince*, 966 N.Y.S.2d at 22.

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