

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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

Plaintiff,

v.

SPOKANE COUNTY, a municipal  
corporation,

Defendant,

v.

ATTORNEY GENERAL FOR THE STATE OF  
WASHINGTON,

Intervenor Defendant.

No. CV-05-180-FVS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

**BEFORE THE COURT** is Plaintiff's Motion for Partial Summary Judgment (Ct. Rec. 27) and Defendant's Motion for Failure to State a Claim; Alternatively for Summary Judgment (Ct. Rec. 36). Plaintiff is represented by Breean Beggs. Defendant Spokane County is represented by James Kaufman and Frank Conklin. Timothy Ford represents the Washington State Attorney General.

**I. BACKGROUND**

Plaintiff, Shawn Huss, filed suit individually and on behalf of a class of others similarly situated, under 42 U.S.C. §§ 1983 and 1988,

1 seeking both monetary damages and declaratory and injunctive relief.  
2 Plaintiff alleges the official booking fee policy of the Spokane  
3 County Jail (the Jail) and RCW 70.48.390 are facially unconstitutional  
4 by depriving persons of their property without due process of law in  
5 violation of the Fourteenth Amendment of the United States  
6 Constitution.

7 In May 1999, the Washington legislature passed RCW 70.48.390,  
8 authorizing city, county, and regional jails to take a \$10.00 booking  
9 fee from the person of each individual booked into jail. In May 2003,  
10 the Washington legislature amended RCW 70.48.390, allowing jails to  
11 require each person who is booked into jail to pay a fee based on the  
12 jail's actual booking costs or one hundred dollars, whichever is less.  
13 The "fee is payable immediately from any money then possessed by the  
14 person being booked" into jail. RCW 70.48.390.

15 In accordance with RCW 70.48.390, on or about February 24, 2004,  
16 the Spokane County Board of Commissioners passed Resolution 04-0160,  
17 which authorized the Jail to develop and implement a procedure to  
18 collect a fee from persons booked into jail. On May 5, 2004, pursuant  
19 to Resolution 04-0160, the Jail adopted an official policy<sup>1</sup> ("Policy")  
20 authorizing the collection of a booking fee. Under this Policy,  
21 federal inmates are charged the federal daily rate while non-federal  
22 inmates are charged the actual jail booking costs--\$89.12. Pursuant  
23 to the statute, the Policy allows the fees to be taken directly from  
24 any funds found on the person at the time of booking. If the person

25  
26 <sup>1</sup> Policy 2.00.00 Booking

1 does not have adequate funds to cover the booking fee at the time, a  
2 charge is assessed to the person's account. The Policy does not  
3 provide a mechanism for determining whether the money taken from the  
4 person is exempt public benefits or the property of a third person.  
5 The Policy does not provide for a pre-deprivation hearing or any other  
6 opportunity for persons to contest the taking of their money.  
7 Instead, the Jail adopted a separate reimbursement policy. Under this  
8 reimbursement policy, the individual is required to prove his charges  
9 were dropped or that he was acquitted, and then, upon investigation by  
10 the Spokane County Jail Staff, the inmate may<sup>2</sup> be reimbursed for his  
11 intake fee.

12 In the present case, Mr. Huss was arrested based on a domestic  
13 violence complaint and booked into the Spokane County Jail on October  
14 31, 2004. Mr. Huss' wallet was inventoried as personal property that  
15 would be returned upon his release, but the Jail took all of the money  
16 from Mr. Huss' wallet (\$39.30) as payment on the booking fee (\$89.12).  
17 The Spokane County jail did not inform Mr. Huss he was being charged a  
18 booking fee, that there was a reimbursement policy in place, or that  
19 the money was required to be returned if his charges were dropped or  
20 he was acquitted. Mr. Huss was released from jail the next day after  
21 all of the charges were dropped. Upon his release, his money was not  
22 returned and he did not receive a copy of the Jail's reimbursement  
23

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25 <sup>2</sup> The "Spokane County Jail Claim Form For Reimbursement of  
26 Intake Fees" specifically states that the Jail Staff will  
investigate all claims and the decision to honor the claim is  
based on that investigation.

1 policy. The Spokane County Jail eventually returned Mr. Huss' money  
2 on February 23, 2005, approximately four months after the charges  
3 against him were dropped, and after Mr. Huss' lawyer sent a letter to  
4 Spokane County stating the Jail's booking fee policy was  
5 unconstitutional.

6 In January 2005, the Jail modified its forms and procedures  
7 related to the collection of booking fees. It is now a requirement  
8 that each person booked into jail receive paperwork outlining methods  
9 for obtaining reimbursement. Further, persons who are released and  
10 not charged within 72 hours, automatically, without request, have  
11 their booking fees returned if paid in part or in full. The Jail also  
12 automatically voids any *unpaid* booking fee for all inmates who are  
13 found not-guilty, acquitted, or have their charge dismissed.

14 Plaintiff moves for partial summary judgment, requesting a ruling  
15 that the Spokane County Jail's booking fee policy and RCW 70.48.390  
16 are facially unconstitutional in that they permit Spokane County to  
17 deprive persons of their property without due process of law in  
18 violation of the Fourteenth Amendment. Defendant filed a cross-motion  
19 for summary judgment.<sup>3</sup> Pursuant to 28 U.S.C. § 2403(b), the Court  
20

21 <sup>3</sup> Defendant's motion, which is captioned "Motion to Dismiss  
22 for Failure to State a Claim, Alternatively for Summary Judgment"  
23 argues Plaintiff's Complaint should be dismissed in its entirety  
24 because (1) Plaintiff cannot claim punitive damages from a  
25 subdivision of a state; (2) Plaintiff cannot assert a takings  
26 claim because he has not exhausted his administrative remedies;  
27 (3) Plaintiff's rights under the due process clause have not been  
28 violated; and (4) Plaintiff cannot prove Spokane County  
29 Resolution 04-0169 and RCW 70.48.390 are unconstitutional on  
30 their face. After Defendant filed its motion to dismiss, the  
31 Court permitted Plaintiff to amend his Complaint to remove the

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1 informed the Attorney General of the State of Washington that the  
2 constitutionality of a state statute was being challenged and permitted  
3 the Attorney General an opportunity to intervene. The Attorney  
4 General submitted briefing in opposition to Plaintiff's motion for  
5 partial summary judgment and Plaintiff was allowed to reply.

## 6 II. DISCUSSION

7 "A facial challenge to a legislative Act is, of course, the most  
8 difficult challenge to mount successfully, since the challenger must  
9 establish that no set of circumstances exists under which the  
10 [statute] would be valid." *United States v. Salerno*, 481 U.S. 739,  
11 745, 107 S.Ct. 2095, 2100, 95 L.Ed.2d 697 (1987); see also *In re*  
12 *Detention of Turay*, 139 Wash.2d 379, 417 n. 27, 986 P.2d 790 (1999)  
13 (stating that a facial challenge must be rejected unless there exists  
14 no set of circumstances in which the statute can be applied  
15 constitutionally). Thus, to succeed on his facial challenge,  
16 Plaintiff must demonstrate there are no circumstances under which the  
17 Jail's booking fee policy can be applied constitutionally and it is  
18 not possible for any jail to constitutionally implement RCW 70.48.390,  
19 which provides;

20 A governing unit **may require** that each person who is booked  
21 at a city, county, or regional jail pay a fee based on the  
22 jail's actual booking costs or one hundred dollars,  
whichever is less, to the sheriff's department of the county  
or police chief of the city in which the jail is located.

23  
24 mention of punitive damages and all Fifth Amendment claims.  
25 Thus, the only remaining issues in Defendant's motion are also  
26 the subject of Plaintiff's motion for partial summary judgment.  
Accordingly, the Court views Defendant's motion as a cross-motion  
for summary judgment.

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1        **The fee is payable immediately from any money then possessed**  
2        **by the person being booked, or any money deposited with the**  
3        **sheriff's department or city jail administration on the**  
4        **person's behalf. If the person has no funds at the time of**  
5        **booking or during the period of incarceration, the sheriff**  
6        **or police chief may notify the court in the county or city**  
7        **where the charges related to the booking are pending, and**  
8        **may request the assessment of the fee. Unless the person is**  
9        **held on other criminal matters, if the person is not**  
10       **charged, is acquitted, or if all charges are dismissed, the**  
11       **sheriff or police chief shall return the fee to the person**  
12       **at the last known address listed in the booking records.**

13       WASH. REV. CODE ANN. § 70.48.390 (2002) (emphasis added).

14       **A. State's Argument**

15       The State argues RCW 70.48.390 is not facially unconstitutional  
16       because it is not mandatory and does not expressly preclude the  
17       application of a pre-deprivation or post-deprivation hearing to  
18       satisfy due process. Although the statute is not mandatory, the  
19       State's argument ignores the express language in the statute stating  
20       that if a booking fee policy is enacted, the booking fee is "payable  
21       immediately from any money then possessed by the person being booked"  
22       into jail. RCW 70.48.390. The State fails to show how a pre-  
23       deprivation hearing could be held when the statute requires immediate  
24       payment.

25       **B. Defendant's Arguments**

26       Defendant contends Plaintiff must first exhaust his  
27       administrative remedies before bringing this due process claim under  
28       28 U.S.C. § 1983. Defendant relies on *Parratt v. Taylor*, 451 U.S.  
29       527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) and *Hudson v. Palmer*, 468  
30       U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984). Defendant's reliance  
31       on these cases is misplaced.

1 In *Parratt*, a state prisoner brought a Section 1983 action when  
2 prison officials negligently lost the prisoner's hobby kit he had  
3 ordered by mail. The prisoner did not dispute that under state law a  
4 tort claim procedure was available by which he could recover the value  
5 of his hobby kit. The Supreme Court ruled that the tort remedy was  
6 all the process the prisoner was due because the loss of his property  
7 was the result of a random and unauthorized act. The *Parratt* Court  
8 reasoned:

9 It is difficult to conceive of how the State could provide a  
10 meaningful hearing before the deprivation takes place. The  
11 loss of property, although attributable to the State as  
12 action under "color of law," is in almost all cases beyond  
the control of the State. Indeed, in most cases it is not  
only impracticable, but impossible, to provide a meaningful  
hearing before the deprivation.

13 *Parratt*, 450 U.S. at 451, 101 S.Ct. at 1916. In *Hudson*, the Supreme  
14 Court extended the reasoning in *Parratt* to unauthorized, intentional  
15 deprivations of property by state employees. *Zinermon v. Burch*, 494  
16 U.S. 113, 128, 110 S.Ct. 975, 985, 108 L.Ed.2d 100 (1990).

17 Neither *Parratt* nor *Hudson* are controlling of the issue before  
18 the Court. In *Parratt* and *Hudson*, the loss was the result of  
19 unauthorized acts by state employees. Here, in contrast, the loss  
20 complained of by Plaintiff is the result of a policy established  
21 pursuant to statute. *Parratt* was not designed to reach such a  
22 situation. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-36,  
23 102 S.Ct. 1148, 1158, 71 L.Ed.2d 265 (1982). *Parratt* and *Hudson* did  
24 not hold that post-deprivation remedies are sufficient to satisfy due  
25 process if the deprivation of property is caused by conduct pursuant  
26 to an established policy. Rather, "*Parratt* and *Hudson* represent a

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1 special case of the general *Mathews v. Eldridge* analysis, in which  
2 post-deprivation tort remedies are all the process that is due, simply  
3 because they are the only remedies the state could be expected to  
4 provide." *Winermon*, 494 U.S. at 128, 110 S.Ct. at 985. *Parratt* is  
5 not an exception to the *Mathews* balancing test, but rather an  
6 application of that test to an unusual case. *Id.*

7 The Court also rejects Defendant's argument that due process is  
8 satisfied because the police had probable cause to arrest Plaintiff.  
9 Taking Defendant's argument to its logical extreme, no citizen subject  
10 to arrest, guilty or innocent, has a right to his or her property  
11 until guilt or innocence has been determined. The Court will not  
12 reach such an extreme conclusion.

### 13 C. Due Process Analysis

14 The Fourteenth Amendment guarantees that in all cases where a  
15 person stands to be deprived of life, liberty or property by the  
16 government, he is entitled to due process of law. *Kentucky Dept. of*  
17 *Corrections v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 1909, 104  
18 L.Ed.2d 506 (1989). Procedural due process questions are examined in  
19 two steps: "the first asks whether there exists a liberty or property  
20 interest which has been interfered with by the State; the second  
21 examines whether the procedures attendant upon that deprivation were  
22 constitutionally sufficient." *Id.* (citation omitted). Here,  
23 Defendant concedes that the seizure of Plaintiff's money implicates a  
24 protectible property interest. Therefore, the only issue is what  
25 "process" is due to protect against an erroneous deprivation of that  
26 interest. *Mackey v. Montrym*, 443 U.S. 1, 10, 99 S.Ct. 2612, 2617, 61

1 L.Ed.2d 321 (1979).

2 In *Matthews v. Eldridge*, the Supreme Court set forth three  
3 factors that normally determine whether an individual has received the  
4 "process" that the Constitution finds "due":

5 First, the private interest that will be affected by the  
6 official action; second, the risk of an erroneous  
7 deprivation of such interest through the procedures used,  
8 and the probable value, if any, of additional or substitute  
9 procedural safeguards; and finally, the Government's  
10 interest, including the function involved and the fiscal and  
11 administrative burdens that the additional or substitute  
12 procedural requirement would entail.

13 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976). By  
14 weighing these concerns, courts can determine whether a State has met  
15 the fundamental requirement of due process; "the opportunity to be  
16 heard at a meaningful time and in a meaningful manner." *Id.* at 333,  
17 96 S.Ct. at 902 (citation omitted). "Applying this test, the  
18 [Supreme] Court usually has held that the Constitution requires some  
19 type of hearing before the State deprives a person of liberty or  
20 property." *Zinermon*, 494 U.S. at 127, 110 S.Ct. at 984. "If there  
21 are no extraordinary circumstances, then some type of prior hearing is  
22 required and an analysis of the three factors under *Matthews*  
23 determines the formality and procedural requisites of the hearing."  
24 *Tellevik*, 120 Wash.2d at 82, 838 P.2d at 118 (citing *Matthews*). If  
25 the risk of erroneous deprivation to a property interest is great  
26 compared to the government's interest, then due process generally will  
require a pre-deprivation evidentiary hearing. *Id.* at 82, 83 P.2d at  
118.

In the present case, Plaintiff argues persons are entitled to a

1 pre-deprivation hearing before the Jail can take their personal  
2 property to satisfy a booking fee. Defendant argues Plaintiff is not  
3 entitled to a pre-deprivation hearing because the post-deprivation  
4 hearing available to Plaintiff satisfies his due process rights.  
5 Defendant relies on *Mackey v. Montrym*, 443 U.S. 1, 99 S.Ct. 2612, 61  
6 L.Ed.2d 321 (1979), arguing it is dispositive of the issue before the  
7 Court.

8 In *Mackey*, the Supreme Court upheld a Massachusetts statute  
9 mandating a 90-day suspension of a driver's license for refusing to  
10 take a breath-analysis test upon arrest for driving while under the  
11 influence. 443 U.S. at 19, 99 S.Ct. at 2621. Applying the *Mathews*  
12 balancing test, the Supreme Court held that the state's "compelling  
13 interest in highway safety justifies" the automatic suspension of a  
14 driver's license "pending the outcome of the "prompt post-suspension  
15 hearing available." *Id.* The Supreme Court recognized that  
16 individuals have a strong property interest in their driver's license,  
17 but concluded the immediate post-suspension hearing before the  
18 Registrar of Motor Vehicles to correct any clerical errors and to  
19 resolve questions as to whether grounds exist for suspension of the  
20 driver's license, was sufficient to satisfy the due process  
21 requirement. See *id.* at 7-8, n. 5, 99 S.Ct. at 2612, n. 5.

22 Similarly, Defendant argues due process is satisfied by the  
23 availability of a post-deprivation hearing. But neither the Policy  
24 nor the statute at issue in this case provide for a prompt post-  
25 deprivation hearing. Instead, Defendant refers to Washington's  
26 "comprehensive statutory procedure" whereby citizens may file claims

1 against governmental entities to seek the return of personal property.  
2 Defendant did not provide the Court with a citation for this  
3 "comprehensive statutory procedure" or explain how this satisfies due  
4 process. Nothing before the Court demonstrates that a "prompt"  
5 hearing is required under this comprehensive statutory procedure.

6 Moreover, even if a prompt post-deprivation hearing was provided  
7 pursuant to the Jail's Policy, Defendant has not shown that this  
8 affords adequate due process. In *Mackey*, the "prompt post-  
9 deprivation" hearing was sufficient to ensure adequate due process for  
10 the automatic suspension of a driver's license because of the state's  
11 "compelling interest in highway safety." Here, Defendant has not  
12 shown it has a compelling interest in collecting a booking fee prior  
13 to a determination of guilt. Contrary to Defendant's position, *Mackey*  
14 is not dispositive of the issue before the Court. *Mackey*, however,  
15 does illustrate that the issue before the Court is governed by the  
16 *Matthews* balancing test.

17 While the Defendant concludes that "*Matthews v. Eldridge* supports  
18 Spokane County," it does not provide the Court with any analysis of  
19 the *Matthews* factors. The State also declined to address the *Matthews*  
20 balancing test.

21 The first *Matthews* factor requires identification of the nature  
22 and weight of the private interest affected by the action challenged.  
23 *Matthews*, 424 U.S. at 335, 96 S.Ct. at 903. The private interest at  
24 issue here is a person's interest in the continued possession and use  
25 of his money. This is certainly a significant interest.

26 "The duration of any potentially wrongful deprivation of a

1 property interest is an important factor in assessing the impact of  
2 official action on the private interest involved." *Mackey*, 443 U.S.  
3 at 12, 99 S.Ct. at 2618 (citation omitted). RCW 70.48.390 states only  
4 that the booking fee must be returned if the person "is not charged,  
5 is acquitted, or if all charges are dismissed." For those persons who  
6 are entitled to have their booking fee returned, the statute permits  
7 the wrongful deprivation of a person's money for a considerable length  
8 of time (i.e. until such time that the person is exonerated).

9 Although the charges were dropped against Plaintiff one day after he  
10 was arrested, Plaintiff's money was not returned for several months.  
11 Under the present Policy, as it was amended in January 2005, Plaintiff  
12 and others in his situation would only be deprived of their money for  
13 a short period of time because the Policy now requires the automatic  
14 return of the booking fee to those persons who are released and not  
15 charged within 72 hours. For persons who are not released within 72  
16 hours, however, the duration of the deprivation is dependent on the  
17 time it takes to navigate through the reimbursement process.

18 Under the second prong of *Matthews*, the Court evaluates the risk  
19 of erroneous deprivation at stake, and the probable value, if any, of  
20 additional or substantive safeguards. *Matthews*, 424 U.S. at 335, 96  
21 S.Ct. at 903. Plaintiff relies on *City of Redmond v. Moore*, 91 p.3d  
22 875, 151 Wash.2d 664 (2004), in which the Washington Supreme Court  
23 held that the statute providing for mandatory suspension, without an  
24 administrative hearing, of driver's licenses for failure to resolve  
25 traffic infractions violated procedural due process. When reviewing  
26 the statute under *Matthews*, the *Redmond* Court focused, in part, on the

1 fact that the "possibility exists that error in a conviction record  
2 could result in the revocation of the license of an innocent  
3 motorist." *City of Redmond*, 151 Wash.2d at 672, 91 P.3d at 879. Like  
4 the statute at issue in *City of Redmond*, Plaintiff argues the Jail's  
5 Policy and RCW 70.48.390 subject inmates to unreasonable risks of  
6 error.

7 Under the Policy and the statute the booking fee must be returned  
8 to all individuals who are acquitted, found not guilty, or whose  
9 charges are dropped. Thus, those individuals are wrongly deprived of  
10 their right to use and possess their money from the time of booking  
11 until such time as they are exonerated. The risk of erroneous  
12 deprivation is therefore inevitable in some circumstances. Further,  
13 neither the Policy nor the statute provide a mechanism for determining  
14 whether the money taken to satisfy the booking fee is exempt public  
15 benefits or is actually the property of a third person. Moreover, the  
16 Policy provides no safeguards guaranteeing the person's money will be  
17 returned in the event the person is acquitted or the charges are  
18 dropped later than 72 hours after the time of booking. For those  
19 individuals who happen to have money in their possession at the time  
20 of booking, the statute and the Jail's Policy place the burden of  
21 recovering the money on the incarcerated citizen.

22 The Court determines that the deprivation of property occurs at  
23 the moment the booking fee is separated from the remainder of the  
24 individual's personal property. It is clear there is no hearing or  
25 determination of guilt before this deprivation occurs. Consequently,  
26 the risk of erroneous deprivation is great.

1 Under the third prong of *Matthews*, the Court must evaluate the  
2 State's interest behind the statute, including the function involved,  
3 and any fiscal and administrative burdens that additional or  
4 substitute procedural requirements would entail. *Matthews*, 424 U.S.  
5 at 335, 96 S.Ct. at 903. The parties agree the primary purpose of the  
6 booking fee is to raise revenue for the municipality. The interest  
7 that must be considered, however, is not the State's general interest  
8 in collecting a booking fee, but the specific interest in collecting  
9 the booking fee without a determination of guilt and without notifying  
10 the individual at the time of booking. See *United States v. James*  
11 *Daniel Good Real Property*, 510 U.S. 43, 56, 114 S.Ct. 492, 502, 126  
12 L.Ed.2d 490 (1993) (discussing third consideration under *Matthews*);  
13 see also *Connecticut v. Doehr*, 501 U.S. 1, 15-16, 111 S.Ct. 2105,  
14 2115, 115 L.Ed.2d 1 (1991) (analyzing the extent of the plaintiff's  
15 interest in ex parte attachment of property, not the plaintiff's  
16 general interest in property attachment). The presence or absence of  
17 exigent circumstances is also a critical part of the third *Matthews*  
18 factor. See *Doehr*, 501 U.S. at 15-16, 111 S.Ct. at 2115-16.

19 Defendant has not shown its interest would be burdened by  
20 providing notice and hearing before confiscating a person's money to  
21 satisfy the booking fee or by waiting for a finding of guilt and  
22 assessing the booking fee as a court cost. The Court is unaware of  
23 any exigent circumstances that warrant the postponement of notice and  
24 hearing until after the booking fee is collected.

25 **V. CONCLUSION**

26 Under *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, the Court

1 concludes the Spokane County Jail's Policy and RCW 70.48.390 are  
2 facially unconstitutional in that they deprive persons of their  
3 property without due process of law in violation of the Fourteenth  
4 Amendment. Since the statute requires immediate payment of the  
5 booking fee from any money then possessed by the person being booked,  
6 there exists no set of circumstances in which RCW 70.48.390 and the  
7 Jail's Policy can be applied constitutionally. The statute and the  
8 Policy affect a significant private interest and the risk of erroneous  
9 deprivation is extreme compared to the municipality's interest in  
10 increasing revenue. In this situation, due process requires a pre-  
11 deprivation hearing. Neither the Policy nor the statute, however,  
12 provide notice and a hearing before taking a person's money to satisfy  
13 the booking fee. Accordingly,

14 **IT IS HEREBY ORDERED:**

- 15 1. Plaintiff's Motion for Partial Summary Judgment (Ct. Rec.  
16 27) is **GRANTED**.
- 17 2. Defendant's Motion for Failure to State a Claim;  
18 Alternatively for Summary Judgment (Ct. Rec. 36) is **DENIED**.

19 **IT IS SO ORDERED.** The District Court Executive is hereby  
20 directed to enter this Order and furnish copies to counsel.

21 **DATED** this 29th day of August, 2006.

22 s/ Fred Van Sickle  
23 Fred Van Sickle  
24 United States District Judge  
25  
26