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[Petitioner's note: The court below amended two paragraphs of this opinion by order dated November 29, 2023. The amendments are incorporated into the opinion below, set off in brackets, for the convenience of the Court.]

THIS OPINION WAS FILED
FOR THE RECORD AT 8 A.M. ON
SEPTEMBER 28, 2023
ERIN L. LENNON
SUPREME COURT CLERK

THE SUPREME COURT OF WASHINGTON

GENE GONZALES and SUSAN GONZALES, HORWATH FAMILY TWO, LLC, and THE WASHINGTON LANDLORD ASSOCIATION, Petitioners, v. GOVERNOR JAY INSLEE and STATE OF WASHINGTON, Respondents.	No. 100992-5 En Banc Filed: September 28, 2023

GONZÁLEZ, C.J.— The COVID-19 pandemic was a worldwide emergency. COVID-19 killed millions of

people, destroyed livelihoods, and is still having profound effects. As it spread throughout the nation, governors and federal officials responded under their emergency powers to save lives and livelihoods.

Our governor has enhanced powers to act in an emergency under RCW 43.06.220 and related statutes. *See Cougar Bus. Owners Ass'n v. State*, 97 Wn.2d 466, 472–75, 647 P.2d 481 (1982), *overruled in part on other grounds by Chong Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019). The petitioners contend the governor exceeded his authority here and violated their statutory and constitutional rights. History is unfortunately replete with times that real or perceived emergencies were used by those in power to violate fundamental rights: suspects have been tried before improper courts, habeas corpus has been effectively suspended, and citizens and lawful residents of the country have been interned and deported under the press of perceived emergencies. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004) (plurality opinion); *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 18 L. Ed. 281 (1866); *Ex parte Merryman*, 17 F. Cas. 144 (Taney, Circuit Justice, C.C.D. Md. 1861) (No. 9,487); *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984); Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503, 521 (1998). In more deliberate times, we hope, these violations of rights would not have survived the checks and balances of a democratic society operating under law. As the United States Supreme Court observed long ago, "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of [people], at all times, and under all circumstances."

Milligan, 71 U.S. at 120–21. The same is true of our state constitution.

In an attempt to both empower and properly constrain the governor's use of power in emergencies, our legislature has enacted and revised laws concerning the executive's emergency powers. *See* RCW 38.52.050; RCW 43.06.010, .200–.270. Under these laws, the governor is empowered to prohibit "activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace." RCW 43.06.220(1)(h).

Acting under these laws, Governor Inslee imposed a moratorium on evicting people from their homes for failing to pay rent from March 2020 through June 2021. Proclamation 20-19.6.[1] We are asked whether this eviction moratorium was lawful. We conclude that it was and affirm the courts below.

BACKGROUND

In early January 2020, the CDC (United States Centers for Disease Control and Prevention) warned of a cluster of pneumonia cases in Wuhan, China. Less than two weeks later, COVID-19 was first confirmed in Washington State. By the end of the month, the World Health Organization declared the COVID-19 outbreak "a 'public health emergency of international concern'" and the United States Health and Human Services Secretary declared a public health emergency. Clerk's Papers (CP) at 544. The first confirmed COVID-19 death followed soon after.

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[1] Proclamation by Governor Jay Inslee, No. 20-19.6 (Wash. Mar. 18, 2021), https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-19.6.pdf [https://perma.cc/X9AS-5MTR].

The virus that causes COVID-19 easily spreads from person to person.[2] It can be spread when a person carrying the virus talks, sneezes, or coughs, and it can be spread by a person who has no symptoms. The risk of transmission is significantly higher indoors. A significant portion of those who contracted COVID-19, especially in those early days, required hospitalization and intensive care.

COVID-19 threatened to overwhelm our health care system. Initially, treatment was difficult and there were few helpful medical interventions. One thing was clear: physical distance greatly reduced the chance of transmission.

As COVID-19 was spreading quickly through our state, Governor Inslee declared a state of emergency. He limited public gatherings, closed schools, and closed most public venues. Nonetheless, the disease continued to spread and by mid-March 2020, Washington had the highest number of COVID-19 cases and one of the highest per capita rates of infection of any state in the country. By the end of March 2020, hundreds of new cases were being confirmed in Washington every day, with likely thousands more unreported.

In response, the governor escalated his attempts to slow the transmission of COVID-19. Among other things, he directed Washington residents to stay home except for certain essential activities and jobs and categorically prohibited both public and private gatherings. This slowed the transmission of COVID-

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[2] COVID-19 is a disease caused by the SARS-CoV-2 virus, which is a coronavirus not identified in humans prior to December 2019.

19. It also had an obvious and immediate effect on many people's incomes. Over 1.6 million people in Washington filed initial unemployment claims between March and December 2020.

It was clear that the COVID-19 pandemic would cause significant and widespread financial hardship, particularly on those with low and moderate incomes. It was also clear that mass evictions during a pandemic would increase COVID-19 transmission by forcing people into crowded courthouses for eviction proceedings, into crowded homeless shelters and encampments, and into the increasingly crowded homes of friends and family.

In response, the governor issued another proclamation that briefly suspended most residential evictions. Proclamation 20-19.[3] That moratorium was extended and modified over the next year and a half as the pandemic continued to spread. *See* Proclamation 21-09.01;[4] CP at 687–90. The CDC followed suit with a nationwide residential eviction moratorium.

While the specifics of the eviction moratoriums shifted over time, generally speaking, they prohibited residential landlords from initiating or enforcing, and law enforcement from assisting in, an eviction based on the failure to pay rent. Proclamation 20-19, at 2–3.

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[3] Proclamation by Governor Jay Inslee, No. 20-19 (Wash. Mar. 18, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-19%20-%20COVID-19%20Moratorium%20on%20Evictions%20%28tmp%29.pdf [https://perma.cc/BBN9-QEM8]. This moratorium has since expired.

[4] Proclamation by Governor Jay Inslee, No. 21-09.01 (Wash. Sept. 24, 2021), https://governor.wa.gov/sites/default/files/proclamations/proc_21-09.1.pdf [https://perma.cc/4U29-R95L].

The obligation to pay rent, of course, continued, and evictions were allowed for other reasons, such as in response to a significant risk to the health or safety of others created by the resident or when the owner planned to personally occupy or sell the property. In the second proclamation, landlords were prohibited from treating any unpaid rent that was the result of COVID-19 as an enforceable debt unless the landlord established that the tenant was offered, and refused or failed to comply with, a reasonable repayment plan. Proclamation 20-19.1, at 4.[5]

The record suggests that without these moratoriums, up to 790,000 people in Washington would have been evicted from their homes during the pandemic. Verbatim Rep. of Proc. (VRP) at 15. It also suggests there would have been up to 59,000 additional COVID-19 cases and 621 more deaths in our state. *Id.*

As vaccinations were increasingly available and the moratorium wound down, the legislature enacted a rental assistance program and an eviction resolution pilot program. LAWS OF 2021, ch. 115. Among other things, the legislature created a mechanism and funding to compensate, at least partially, landlords whose tenants defaulted on rent despite being offered reasonable repayment plans. LAWS OF 2021, ch. 115 §§ 4–5; RCW 59.18.630; RCW 43.31.605.

The eviction moratorium never relieved tenants of the obligation to pay rent. Some tenants did stop

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[5] Proclamation by Governor Jay Inslee, No. 20-19.1 (Wash. Apr. 16, 2020), https://governor.wa.gov/sites/default/files/proclamations/20-19.1%20-%20COVID-19%20Moratorium%20on%20Evictions%20Extension%20%28tmp%29.pdf [https://perma.cc/G9YP-7HYP].

paying their rent and that failure imposed a significant hardship on some landlords. Gene and Susan Gonzales, Horwath Family Two, LLC, and the Washington Landlord Association (collectively petitioners) brought an injunctive and declaratory judgment action against Governor Inslee and the State in Lewis County Superior Court. They contend, among other things, that the governor had exceeded his statutory emergency powers under RCW 43.06.220. They also argue that if the statute had authorized the moratorium, it unconstitutionally delegated legislative powers to the governor; that the eviction moratorium unconstitutionally impaired contracts in violation of the state constitution; that it constituted a taking under the state constitution; that it violated the petitioners' right of access to the courts; and that it violated separation of powers.

The State successfully moved to transfer the case to Thurston County Superior Court. There, the trial court dismissed the case at summary judgment. The Court of Appeals affirmed, and we granted review. *Gonzales v. Inslee*, 21 Wn. App. 2d 110, 504 P.3d 890, *review granted*, No. 100992-5 (Wash. Oct. 14, 2022). Appleseed Foundation, Alliance for Justice, and Western Center on Law and Poverty; City of Seattle; and the King County Bar Association Housing Justice Project filed amici briefs in support of the State. Rental Housing Association of Washington, Pacific Legal Foundation, and Citizen Action Defense Fund filed amicus briefs in support of the petitioners.

ANALYSIS

This case presents only questions of law. Our review is de novo. *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 782, 295 P.3d 1179 (2013) (citing *Udall v.*

T.D. Escrow Servs., Inc., 159 Wn.2d 903, 908, 154 P.3d 882 (2007)).

1. MOOTNESS

The State argues that this case is moot because the moratorium has expired. But this court will, from time to time, consider moot questions when "'it can be said that matters of continuing and substantial public interest are involved.'" *In re Dependency of M.S.R.*, 174 Wn.2d 1, 11, 271 P.3d 234 (2012) (quoting *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). To determine whether it is appropriate to reach a moot question, we may consider (1) whether the case is a matter of public concern or simply a private dispute, (2) the need for an authoritative determination to guide public officials in the future, (3) the likelihood of reoccurrence, and (4) the quality of the advocacy. *Randy Reynolds & Assocs. v. Harmon*, 193 Wn.2d 143, 152–53, 437 P.3d 677 (2019). We find that all four factors weigh in favor of considering this case on the merits.

The power of the governor under the emergency statutes is a matter of public concern. Undoubtedly, our state will face crises again that will call for the use of emergency power. It is appropriate for this court to consider whether that power was used lawfully here to guide its use in the future. Finally, the quality of advocacy on both sides and from amici is excellent. We decline to dismiss this appeal as moot.

2. VENUE

The petitioners argue that venue was improperly transferred from Lewis County to Thurston County. In actions "[a]gainst a public officer . . . for an act done by him or her in virtue of his or her office," venue shall

be "in the county where the cause, or some part thereof, arose." RCW 4.12.020(2). "When this statute applies, venue in the specified county is mandatory." *Johnson v. Inslee*, 198 Wn.2d 492, 496, 496 P.3d 1191 (2021) (citing *Eubanks v. Brown*, 180 Wn.2d 590, 595–96, 327 P.3d 635 (2014)).

The governor is a public officer. *Id.* His emergency proclamations are acts done in Thurston County by the virtue of his office. *Id.* at 498; *see also* CP at 699–701. Venue was appropriately transferred.

3. STATUTORY AUTHORITY

The petitioners contend that the eviction moratorium was not a proper exercise of the governor's statutory authority under RCW 43.06.220. Most relevantly, under this statute:

> (1) The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:
>
> . . . .
>
> (h) Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.[6]
>
> (2) The governor after proclaiming a state of emergency and prior to terminating such may, in the area described by the proclamation, issue an order or orders concerning waiver or

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[6] The petitioners do not challenge the governor's reasonable belief that the moratorium was necessary to help preserve and maintain life, health, property, or the public peace.

> suspension of statutory obligations or limitations in the following areas:
>
> . . . .
>
> (g) Such other statutory and regulatory obligations or limitations prescribing the procedures for conduct of state business . . . .

RCW 43.06.220.

The petitioners argue that properly understood, the eviction moratoriums did not merely prohibit the activity of initiating or enforcing an eviction or a debt under .220(1)(h). Instead, the petitioners contend, the eviction moratoriums waived or suspended statutes outside of the enumerated categories in RCW 43.06.200(2). Most specifically, the petitioners point to the tenants' obligation to pay rent under RCW 59.18.080 and RCW 59.18.130. Appellants' Suppl. Br. at 36. RCW 59.18.080 provides in relevant part that "[t]he tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded him or her under the provisions of this chapter." RCW 59.18.130 provides, relevantly, that "[e]ach tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations."

"Suspend" is defined, most relevantly, as "to cause to stop temporarily . . . to set aside or make temporarily inoperative . . . to defer to a later time on specified conditions . . . to hold in an undetermined or undecided state awaiting further information."

MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1259 (11th ed. 2014). An "obligation" is "[a] legal or moral duty to do or not do something." BLACK'S LAW DICTIONARY 1292 (11th ed. 2019). A "statutory obligation" is "[a]n obligation—whether to pay money, perform certain acts, or discharge duties—that is created by or arises out of a statute, rather than based on an independent contractual or legal relationship." *Id.* at 1294.

We agree with the courts below that the governor did not waive or suspend the tenant's obligation to pay rent under either RCW 59.18.080 or .130. In fact, the proclamations emphasized that tenants should and must pay rent. *See* Proclamation 20-19.1, at 2. The obligation to pay rent was never waived or suspended, regardless of whether some tenants took advantage of the fact they would not be immediately evicted if they stopped paying.

[The petitioners also argue that the governor exceeded his authority by suspending their rights and their tenants' obligations under RCW 59.18.050, .080, 140(1), .160(1), 130, .170 and RCW 59.12.030. These statutes generally require tenants to follow their rental agreements and allow landlords to bring eviction actions under certain conditions. To the extent these statutes require the tenants to obey the law and their contracts, they were not suspended. Nothing in the proclamations relieved tenants of those obligations. To the extent these statutes create a mechanism for landlords to enforce their legal rights in court, those statutes do not establish statutory

obligations or limitations and thus fall outside of RCW 43.06.220(2)].[7]

We hold that the governor acted within his statutory authority in prohibiting certain activities under RCW 43.06.220(1)(h) and that the petitioners have identified no statutory obligations or limitations that were waived or suspended for purposes of RCW 43.06.220(2). Nothing in RCW 43.06.220 suggests the governor is limited to prohibiting activities that are untouched by statutes. As no identified statutory obligations or limitations were waived or suspended, we do not reach the petitioners' argument that allowing the governor to suspend a statute under these circumstances would violate separation of powers by improperly delegating power to the governor or that allowing the governor to suspend a statute under .220(1)(h) would render .220(2) and .220(4) superfluous.

---

[7] While not identified by the petitioners as a statute that was suspended or limited, we note that RCW 59.18.650 squarely concerns landlords' right to evict. But this statute was enacted in 2021 and became effective May 10, 2021, long after the eviction moratorium was put in place and about seven weeks before it was rescinded. LAWS OF 2021, ch. 212, § 7; Proclamation 20-19.6, at 4. This lengthy and detailed statute sets forth the lawful reasons a landlord has to evict, refuse to continue a tenancy, or end a period tenancy and structures how that right may be enforced. RCW 59.18.650(1)(a) ("A landlord may not evict a tenant, refuse to continue a tenancy, or end a periodic tenancy except for the causes enumerated in subsection (2) of this section and as otherwise provided in this subsection.") Nothing in RCW 59.18.650 or its legislative history suggests the legislature meant to use it to vacate the eviction moratorium those last few weeks it was in effect.

4. CONTRACTS CLAUSE

The petitioners argue that the eviction moratorium violates article I, section 23 of the state constitution. That section states that "[n]o bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed." WASH. CONST. art. I, § 23. We apply a three-part test to such challenges, asking, "(1) Does a contractual relationship exist, (2) does the legislation substantially impair the contractual relationship, and (3) if there is substantial impairment, is the impairment reasonable and necessary to serve a legitimate public purpose?" *Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 414, 377 P.3d 199 (2016) (citing *Wash. Educ. Ass'n v. Dep't of Ret. Sys.*, 181 Wn.2d 233, 243, 332 P.3d 439 (2014)); *see also Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 431, 54 S. Ct. 231, 78 L. Ed. 413 (1934) ("The obligations of a contract are impaired by a law which renders them invalid, or releases or extinguishes them." (citing *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.)122, 197–98, 4 L. Ed. 529 (1819))).

A contractual relationship exists, so the first factor is met. The State contends that the moratorium did not substantially impair that relationship under *Blaisdell*, 290 U.S. 398. *Blaisdell* upheld the constitutionality of a Minnesota state statute that put a temporary moratorium on foreclosures and execution sales during an economic crisis. *See id.*, 290 U.S. at 416, 439–40.

The petitioners argue *Blaisdell* is inapplicable because the Minnesota statute required those who benefited from the moratorium to pay the de facto rental value of their property. *See id.*, 290 U.S. at 445.

But nothing in the governor's proclamations relieved the tenants' obligation to pay rent.

Courts around the country have concluded that COVID-19 eviction moratoriums do not violate contracts clause protections. *See, e.g.*, *Farhoud v. Brown*, 3:20-cv-2226-JR, 2022 WL 326092, at *9 (D. Or. Feb. 3, 2022); *Apt. Ass'n of L.A. County, Inc. v. City of Los Angeles*, 10 F.4th 905, 914 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 1699 (2022); *Jevons v. Inslee*, 561 F. Supp. 3d 1082, 1100 (E.D. Wash. 2021), *vacated as moot*, No. 22-35050, 2023 WL 5031498 (9th Cir. Aug. 8, 2023) (holding that "the eviction moratorium does not substantially impair Plaintiffs' lease agreements. Even if the Court were to find that the moratorium operated to substantially impair Plaintiffs' contractual rights, Plaintiffs' Contracts Clause claim fails because the eviction moratorium advances a significant and legitimate public purpose in an appropriate and reasonable way"); *S. Cal. Rental Hous. Ass'n v. County of San Diego*, 550 F. Supp. 3d 853, 864 (S.D. Cal. 2021).

We conclude that the eviction moratorium did not substantially impair any contractual obligation or relationship. As in *Blaisdell*, it merely delayed the execution of a particular judicial remedy for the failure to pay rent in a highly regulated field.

5. TAKINGS

The petitioners argue that the eviction moratorium was a per se physical taking of their property requiring just compensation under article I, section 16 of the state constitution. Appellants' Suppl.

Br. at 11.[8] The petitioners do not bring a claim under the federal takings clause and do not argue that the moratorium was a regulatory taking. They call to our attention the United States Supreme Court's recent opinion interpreting the federal takings clause in *Cedar Point Nursery v. Hassid*, __ U.S. __, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021). *Cedar Point* held, among other things, that the right to exclude was an essential attribute of property that was protected by the federal takings clause. *Id.* at 2080. We have not yet had occasion to consider whether the right to exclude is accorded similar protection under article I, section 16.

Assuming without deciding that *Cedar Point* applies to article I, section 16, we do not find it helpful. *Cedar Point* concerned a statute that allowed union organizers to come onto property without the property owner's permission. *Id.* There has been no similar intrusion here. The tenants are on the landlords' property with the landlords' permission under a type of property arrangement that preexists the state and federal constitutions. *See* 2 FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I, at 129–34 (2d ed. 1898) (discussing the landlord/tenant common law). Government regulation of that voluntary relationship, without more, is not a taking. *Chong Yim v. City of Seattle*, 194 Wn.2d 651, 673, 451 P.3d 675 (2019); *see also Yee v. City of Escondido*, 503 U.S. 519, 532, 112 S. Ct. 1522, 118 L. Ed. 2d 153

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[8] We recognize it is unclear whether a takings claim is appropriately brought in a declaratory judgment and injunctive action as the remedy is damages. Given the importance of the issue, we have elected to reach the merits.

(1992) (finding extensive regulation of mobile home parks was not a per se taking). "'This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails.'" *Yee*, 503 U.S. at 528–29 (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982)). We note that other courts have concluded, even after *Cedar Point*, that COVID-19 eviction moratoriums are not per se takings. *E.g.*, *Jevons*, 561 F. Supp. 3d at 1106 ("the moratorium does not constitute a per se taking because the moratorium did not require Plaintiffs to submit to physical occupation or invasion of their land and did not appropriate Plaintiffs' right to exclude").

We conclude that the moratoriums were not a physical taking of the petitioners' property under article I, section 16 of the state constitution.[9]

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[9] We are not without sympathy to the fact that the petitioners have been made to bear the cost of accommodating a public need. We note that both Congress and the Washington State Legislature have appropriated significant funds to defray at least some of that cost in situations where the tenants have not paid rent and have avoided paying their debts. *See* LAWS OF 2021, ch. 334, § 129(45) (appropriating $658 million for emergency rental and utility assistance); American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3201, 135 Stat. 4, 54–58 (2021); Consolidated Appropriations Act, 2021, Pub. L No. 116-260, 134 Stat. 1182 (2020); *see also Treasury Rent Assistance Program (T-RAP)*, WASH. ST. DEP'T OF COM., https://www.commerce.wa.gov/serving-communities/homelessness/cares-act-and-state-rentassistance [https://perma.cc/6VBV-GNH3].

6. ACCESS TO THE COURTS

The moratoriums temporarily prevented landlords and their agents from initiating or enforcing, and law enforcement from assisting in, evictions based on the failure to pay rent. The petitioners contend that the eviction moratoriums denied them access to the courts and violated separation of powers. The State contends that the right of access to the courts is subject to rational basis review and that any limitations survive that review.

The right of access to the courts is "'the bedrock foundation upon which rest all the people's rights and obligations.'" *Putman v. Wenatchee Valley Med. Ctr., PS*, 166 Wn.2d 974, 979, 216 P.3d 374 (2009) (quoting *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991)). "It is the duty of the courts to administer justice by protecting the legal rights and enforcing the legal obligations of the people." *Id.* (citing *John Doe*, 117 Wn.2d at 780).

We recognize that this court, relying exclusively on federal precedent, wrote that "[a]ccess to the courts is not recognized, of itself, as a fundamental right." *Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 562 & n.6, 800 P.2d 367 (1990) (citing *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971); *United States v. Kras*, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973); *Ortwein v. Schwab*, 410 U.S. 656, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973)). But that was in the context of an equal protection and due process challenge to a statute that required arbitration of certain consumer protection claims, subject to a trial de novo review in court. *Id.* at 562–63 (citing RCW 19.118.100(3)). The court did not consider whether the

statute violated the right to access to the courts under article I, section 10 of our state constitution.

Similarly, in a case that involved a trial court's power to restrain a litigant who was filing so many motions that it threatened to preempt the family law calendar, the Court of Appeals observed that "'[t]here is no absolute and unlimited constitutional right of access to courts. All that is required is a reasonable right of access—a reasonable opportunity to be heard.'" *In re Marriage of Giordano*, 57 Wn. App. 74, 77, 787 P.2d 51 (1990) (alteration in original) (quoting *Ciccarelli v. Carey Canadian Mines, Ltd.,* 757 F.2d 548, 554 (3d Cir. 1985)). Again, the court relied on only federal cases and did not consider whether there was a right of access to the courts under the state constitution.

We take this opportunity to make clear that our constitution "amply and expressly" protects access to courts. *Hous. Auth. v. Saylors*, 87 Wn.2d 732, 742, 557 P.2d 321 (1976). As we have said before:

> Our constitution mandates that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." CONST. art. 1, § 10. That justice which is to be administered openly is not an abstract theory of constitutional law, but rather is the bedrock foundation upon which rest all the people's rights and obligations. In the course of administering justice the courts protect those rights and enforce those obligations. Indeed, the very first enactment of our state constitution is the declaration that governments are established to protect and maintain individual rights.

> CONST. art. 1, § 1. CONST. art. 1, §§ 1-31 catalog those fundamental rights of our citizens.

John Doe, 117 Wn.2d at 780–81 (alteration in original).

To the extent the Court of Appeals opinion suggests that access to the courts is subject to only rational basis review, we disagree. Something more is required. But this case does not give us an opportunity to squarely examine the appropriate test for deprivations of the right to access the courts or whether, under the state constitution, the level of protection provided depends on the right asserted. While the petitioners argue persuasively that the right is due more than rational basis review, the parties have not presented meaningful argument on the exact contours of the appropriate test. But even under the most stringent test, strict scrutiny, the governor's eviction moratorium survives.

Under strict scrutiny review, we uphold State action if it is necessary to achieve a compelling state interest. *State v. Smith*, 117 Wn.2d 263, 277, 814 P.2d 652 (1991) (citing *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987)). The action must also be narrowly tailored to serve that compelling purpose. *In re Parentage of L.B.*, 155 Wn.2d 679, 710, 122 P.3d 161 (2005) (citing *In re Custody of Smith*, 137 Wn.2d 1, 15, 969 P.2d 21 (1998)).

The State has amply established that the need was compelling. It has also established that it was necessary and sufficiently narrowly tailored to accomplish that purpose. The eviction moratorium was narrow in scope, targeting evictions based on the failure to stay current on rent due to the enormous

economic hardship caused by COVID-19. The moratorium was also narrowed over time. *See* Proclamation 20-19.6. Tenants were never relieved of the obligation to pay rent and landlords were not denied the right to enforce that obligation in court, simply delayed during the pendency of the emergency. Accordingly, we hold the right to access the courts was not infringed.

7. SEPARATION OF POWERS

The petitioners contend the governor's eviction moratorium infringed on the power of the courts, violating separation of powers. The separation of powers between the three branches of government is embedded in our constitutional structure. *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009) (quoting *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994)). Separation of powers "'does not depend on the branches of government being hermetically sealed off from one another,'" but it instead operates to ensure "that the fundamental functions of each branch remain inviolate." *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 504, 198 P.3d 1021 (2009) (quoting *Carrick*, 125 Wn.2d at 135). If "'the activity of one branch threatens the independence or integrity or invades the prerogatives of another,' it violates the separation of powers." *Putman*, 166 Wn.2d at 980 (internal quotation marks omitted) (quoting *City of Fircrest v. Jensen*, 158 Wn.2d 384, 394, 143 P.3d 776 (2006)).

The petitioners argue that the governor's Proclamation 20-19.6 violated separation of powers principles because the Governor limited the landlords' ability to file unlawful detainer actions. Appellants'

Suppl. Br. at 17–18. The petitioners argue that this limitation infringed on the power of the judiciary. *Id.*

It is certainly true that this limitation affected the judiciary. But it affected only the judiciary's treatment of unlawful detainer actions. And unlawful detainer actions were created by the legislature in the first place. RCW 59.18.410; RCW 59.12.030. The legislature provided extensive details on when, where, and how to file those actions, as well as on how the courts should address them. Ch. 59.18 RCW. The legislature has the power (within constitutional limits) to limit, alter, or even completely eliminate unlawful detainer actions. *District of Columbia v. Towers*, 250 A.3d 1048, 1054 (D.C. 2021) (in context of claim by property owners challenging temporary moratorium on filing complaints seeking judgment of possession during COVID-19 pandemic, court holds that claims—there, claims for a judgment of possession and eviction—that are created by the legislature "can likewise be constricted" by the legislature); *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.*, 158 Wn.2d 603, 617, 146 P.3d 914 (2006) ("a cause of action that exists only by virtue of a statute is not a vested right, and it can be retroactively abolished by the legislature"). The legislature did far less than eliminate unlawful detainer claims in this case: it delegated to the governor the authority to limit or alter the unlawful detainer statutes in times of emergency, and the governor used that authority to postpone property owners' ability to file such actions. Neither the legislature nor the governor improperly invaded the judiciary's authority.

We held recently, "Courts generally exercise their power only when a legal action is before them. Proclamation 20-19 does not limit what courts may do when an unlawful detainer action is filed but, rather, temporarily limits the filing of particular unlawful detainer actions in the first instance." *In re Recall of Inslee*, 199 Wn.2d 416, 427, 508 P.3d 635 (2022). Since the legislature created all the rules concerning the content and timing of unlawful detainer actions, it can "temporarily limit[] the filing of particular unlawful detainer actions in the first instance." *Id.* We conclude the temporary moratorium does not violate separation of powers.

CONCLUSION

We hold that this case is not moot, venue was properly transferred, and the governor acted within his statutory and constitutional authority in imposing a brief moratorium on evictions based on the failure to pay rent. Accordingly, we affirm the courts below and remand to trial court for any further proceedings necessary to implement this decision.

s/ Gonzalez, C.J.
González, C.J.

WE CONCUR:

s/ Gordon McCloud, J.

s/ Yu, J.

s/ Montoya-Lewis, J.

s/ Stephens, J.

No. 100992-5

JOHNSON, J. (dissenting)—This case concerns a challenge to the scope and limitation of the emergency powers statute, RCW 43.06.220, and whether the governor exceeded statutory or constitutional authority in issuing eviction moratorium proclamations in response to the COVID-19 pandemic. I would hold that the governor exceeded statutory authority when issuing the eviction moratorium proclamations.

The executive branch has historically led Washington's response to emergencies, and the proclamation of an emergency and the governor's issuance of executive orders to address that emergency are "by statute committed to the sole discretion of the Governor." *Cougar Bus. Owners Ass'n v. State*, 97 Wn.2d 466, 476, 647 P.2d 481 (1982), *overruled in part by Chong Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019). RCW 43.06.010(12) empowers the governor to "proclaim a state of emergency" in response to a disaster that threatens "life, health, property, or the public peace," and an emergency proclamation unlocks "the powers granted the governor during a state of emergency."

Those powers are outlined in RCW 43.06.220. Here, Governor Inslee issued the eviction moratorium proclamations under RCW 43.06.220(1)(h), which states:

> (1) The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:
>
> . . . .

> (h) *Such other activities* as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

(Emphasis added.)

The eviction moratorium proclamations prohibited landlords from (1) treating unpaid rent as an enforceable debt without first offering a reasonable repayment plan and (2) pursuing eviction unless (a) it was "necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident," (b) the landlord intended to personally occupy the premises as a primary residence, or (c) the landlord intended to sell the property. Proclamation 20-19.6,[1] at 5.

The Landlords[2] argue Governor Inslee lacked authority under RCW 43.06.220(1)(h) to issue the eviction moratorium proclamations. In their view, the proclamations suspended their statutory right to evict and the statutory obligation to pay rent. They argue subsection (1)(h) does not authorize the moratorium's prohibitions because a prohibition of "activities" does not encompass the suspension of statutes. Thus, the governor exceeded his authority under subsection (1)(h) in issuing the moratorium. The State counters, and the Court of Appeals agreed, the moratorium prohibited conduct without suspending any statute. It prohibited certain specified conduct or "activities,"

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[1] Proclamation by Governor Jay lnslee, No. 20-19.6 (Wash. Mar 18, 2021), https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-19.6.pdf [https://perma.cc/X9AS-5MTR].

[2] Petitioners are Gene and Susan Gonzales, Horwath Family Two LLC, and the Washington Landlord Association (collectively Landlords).

such as evicting tenants, which was subject to exceptions, and treating unpaid rent as an enforceable debt without first offering a reasonable repayment plan. The Court of Appeals concluded the moratorium did not suspend any statutes and nothing in subsection (1)(h) suggests the governor is not authorized to prohibit activities that may involve or impact statutory rights and obligations. The Court of Appeals did not resolve the question of whether subsection (1)(h) authorizes the suspension of statutes.

For reasons explained below, I would conclude the moratorium's prohibition on evictions suspended certain statutes that provide landlords *the statutory remedy of eviction*. I would also conclude that subsection (1)(h) does not authorize the suspension of statutes.[3]

The moratorium did not expressly suspend any statutes. However, the Landlords argue the moratorium had the effect of suspending statutes relating to the remedy of seeking eviction and the obligation to timely pay rent. To support their position, the Landlords point to dictionary definitions of the word "suspend." These definitions include "'to stop temporarily,'" to "'make temporarily inoperative,'" or "'to defer to a later time on specified

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[3] At the Court of Appeals, the State argued that even if the court concludes subsection (1)(h) does not authorize the suspension of statutes, the resolution of the case would be the same because the legislature's enactment of Engrossed Second Substitute Senate Bill 5160 (2021) ratified the governor's reliance on subsection (1)(h) to issue the eviction moratorium. The State did not renew this argument before this court, and it was not briefed by either party.

conditions.'" Appellants' Suppl. Br. at 36 (quoting MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/suspend). They argue that by delaying a landlord's ability to seek an eviction for nonpayment of rent, the moratorium suspended (or made "temporarily inoperative") the statutory remedy of eviction and the statutory obligation to timely pay rent.

The Landlords argue, and I agree, the moratorium had the effect of suspending those statutes that provide landlords the remedy of seeking an eviction by, in effect, limiting or altering the statutory conditions under which a landlord could seek eviction. Before the Court of Appeals, the Landlords pointed generally to chapter 59.12 RCW (forcible entry and forcible and unlawful detainer), and the Residential Landlord-Tenant Act of 1973, chapter 59.18 RCW, as a collection of statutes that provide landlords the remedy of eviction under certain circumstances. For instance, RCW 59.18.180(2) provides a landlord may commence an action in unlawful detainer against a tenant where the tenant fails to substantially comply with their statutory duties under RCW 59.18.130 or 59.18.140. And RCW 59.18.130 requires a tenant timely pay rent ("[T]enant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law.").

Thus, the moratorium suspended (or made inoperable) RCW 59.18.180(2) by prohibiting landlords from seeking an eviction for nonpayment of rent where the statute establishes that as a basis for eviction. This same reasoning applies to the various permissible causes for an unlawful detainer action

under RCW 59.18.180 that do not fall within the three exceptions provided in the moratorium. The moratorium deprived landlords of this statutory remedy.

I would conclude that the moratorium's prohibition on evictions, which restricted the circumstances under which a landlord could seek to evict a tenant, constitutes a statutory suspension. Because the eviction prohibition suspended statutes, I now turn to whether subsection (1)(h) authorizes the governor to suspend statutes.

RCW 43.06.220(1)(h) provides:

> (1) The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:
>
> . . . .
>
> (h) Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

The Court of Appeals concluded RCW 43.06.220(1)(h) is unambiguous. It reasoned the term "activities" is "extremely broad, and is broad enough to include the actions the proclamations prohibited regarding evictions and unpaid rent." *Gonzales v. Inslee*, 21 Wn. App. 2d 110, 128, 504 P.3d 890, *review granted*, No. 100992-5 (Wash. Oct. 14, 2022). I disagree.

"Activity" is defined as a "pursuit" and "an organizational unit for performing a specific function." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 22

(2002). It is also defined as "behavior or actions of a particular kind." MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriamwebster.com/dictionary/activity (last visited Sept. 25, 2023). Put simply, an activity is "the doing of something." CAMBRIDGE ONLINE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/activity (last visited Sept. 25, 2023).

Because the term "activities" is defined broadly and encompasses "behaviors," "actions," or "the doing of something," it may appear, at first glance, that subsection (1)(h) is broad enough to authorize the suspension of statutes. However, a close examination of the statutory language and expressed legislative intent shows the term "activities" is limited under the statute. Because a statute's plain meaning "'is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question,'" we also look to RCW 43.06.220(2) and the legislature's expressed intent. *Hardel Mut. Plywood Corp. v. Lewis County*, 200 Wn.2d 199, 202, 515 P.3d 973 (2022) (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)).

RCW 43.06.220(2) provides that during a state of emergency, the governor may "issue an order or orders concerning waiver or suspension of statutory obligations or limitations" in certain specified areas. RCW 43.06.220(2) (identifying those areas to include permits for industrial, business, or medical uses of alcohol, or "[s]uch other statutory and regulatory obligations or limitations prescribing the procedures for conduct of state business"). This authority to suspend certain expressed statutory obligations or

limitations is further restricted by RCW 43.06.220(4), which states that no order under subsection (2) may continue for longer than 30 days "unless extended by the legislature through concurrent resolution."

The Landlords argue that if the term "activities" under subsection (1)(h) is interpreted to encompass suspension of statutes generally, then RCW 43.06.220(2) would be rendered superfluous. The State seems to argue that subsection (1)(h) authorizes the suspension of a statute, such as a statutory right or remedy, without rendering subsection (2) superfluous. The State notes the moratorium impacted a statutory remedy, not a statutory obligation or limitation, and because RCW 43.06.220(2) authorizes the waiver or suspension of statutory *obligations* or *limitations*, the restriction in subsection (2) does not apply.

In the State's view, subsection (2) and its restrictions "do[] not apply to emergency suspension or waiver of any and all statutory obligations—only those that fall into either the six enumerated areas or the residual clause." Suppl. Br. of Gov. Jay Inslee & State of Wash. at 18. Therefore, if subsection (1)(h) authorizes the suspension of statutes, then subsection (2) should be read as imposing restrictions on that authorization but only when the statute in question imposes an obligation or limitation. If the statute in question does not impose an obligation or limitation in an area identified by the statute, then subsection (2)'s restrictions on suspending statutes do not apply. I disagree. This interpretation is not supported by the language of the statute or the expressed legislative intent.

Both sections are written as grants of authority; subsection (2) is not written as a restriction or limitation of the general grant under subsection (1). RCW 43.06.220(1)(h) provides, "The governor after proclaiming a state of emergency . . . may . . . issue an order prohibiting . . . [s]uch other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace." RCW 43.06.220(2) mirrors subsection (1)'s grant of authority and expressly outlines the conditions under which the governor may suspend a statute. RCW 43.06.220(2) provides, "The governor after proclaiming a state of emergency . . . may . . . issue an order or orders concerning waiver or suspension of statutory obligations or limitations in the following areas." It must be a statutory (or regulatory) obligation or limitation in the six listed areas of subsections (a) through (f) or prescribe the procedure for conduct of state business or the orders, rules, or regulations of any state agency when strict compliance would prevent, hinder, or delay necessary action to address the emergency. RCW 43.06.220(2). If subsection (1)(h) is read to authorize the suspension of statutes generally, then the general grant of power in subsection(1)(h) would subsume the limited grant of power in subsection (2), rendering subsection (2) unnecessary and thus superfluous.

Further, the legislature's expressed intent is helpful to this analysis and supports the conclusion that subsection (1)(h) does not authorize the suspension of statutes. The legislature amended RCW 43.06.220 in 2019 and included the following section clarifying its intent:

(1)(a) The legislature finds that the governor has broad authority to proclaim a state of emergency in any area of the state under RCW 43.06.010(12), and to exercise emergency powers during the emergency. These emergency powers have *historically included the ability under RCW 43.06.220(1)(h) to temporarily waive or suspend statutory obligations* by prohibiting compliance with statutory provisions during a proclaimed state of emergency when the governor reasonably believed it would help preserve and maintain life, health, property, or the public peace.

(b) The legislature further finds that, in response to issues arising from flooding events in 2007, RCW 43.06.220(2) was amended by chapter 181, Laws of 2008, to *explicitly authorize the governor to temporarily waive or suspend a set of specifically identified statutes*. This amendment has become problematic for subsequent emergency response activities because *it has inadvertently narrowed the governor's ability to waive or suspend statutes under RCW 43.06.220(1)(h) by issuing orders temporarily prohibiting compliance with statutes not expressly identified in RCW 43.06.220(2).*

(2) The legislature intends to allow the governor to immediately respond during a proclaimed state of emergency by temporarily waiving or suspending other statutory obligations or limitations prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state

> agency, if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the emergency.

LAWS OF 2019, ch. 472, § 1 (emphasis added).

The legislature amended RCW 43.06.220 with the specific focus of clarifying the scope of the governor's emergency power to waive or suspend statutes. In its findings and intent, the legislature acknowledged that historically subsection (1)(h) was interpreted to allow the governor to suspend or waive statutory *obligations* by *prohibiting compliance* with certain statutes. The legislature added subsection (2) to expressly authorize the governor to suspend statutory obligations or limitations. However, the addition of subsection (2) "inadvertently narrowed" that authorization by restricting the governor's ability to suspend statutory obligations or limitations to only those six specified areas. *See* RCW 43.06.220(2)(a)–(f). To remedy this restriction, the legislature amended subsection (2) by adding subsection (2)(g)[4] to broaden the governor's power to temporarily waive or suspend statutory obligations or limitations beyond the six enumerated areas in (2)(a) through (f). This recently broadened

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[4] "(2) The governor after proclaiming a state of emergency and prior to terminating such may, in the area described by the proclamation, issue an order or orders concerning waiver or suspension of statutory obligations or limitations in the following areas:

". . . .

"(g) Such other statutory and regulatory obligations or limitations prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency."

grant of authority under subsection (2)(g) is cabined. The broadened authorization permits the governor to waive or suspend statutory and regulatory obligations or limitations that prescribe the procedures for conduct of state business or the orders, rules, or regulations of any state agency. That is, the governor is authorized only to waive or suspend statutory obligations or limitations for certain executive functions.[5] And that restricted authorization to suspend certain statutes derives from subsection (2), not subsection (1)(h).

I would conclude RCW 43.06.220(1)(h) does not authorize the governor to suspend statutes, and therefore, the governor lacked authority to prohibit landlords from seeking the remedy of eviction as permitted by statute. The Court of Appeals and summary judgment for the State should be reversed on this basis and the case remanded to the superior court.

s/ *Johnson, J.*

s/ *Madsen, J.*

s/ *Owens, J.*

s/ *Whitener, J.*

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[5] I agree with the majority's conclusion that the statutes that provide landlords the remedy of eviction are not statutory obligations or limitations that fall within RCW 43.06.220(2). *See* majority at 12.

FILED
SUPREME COURT
STATE OF WASHINGTON
11/29/2023
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GENE GONZALES and SUSAN GONZALES, HORWATH FAMILY TWO, LLC, and THE WASHINGTON LANDLORD ASSOCIATION, Petitioners, v. GOVERNOR JAY INSLEE and STATE OF WASHINGTON, Respondents.	)	No. 100992-5 **ORDER AMENDING OPINION**

It is hereby ordered that the majority opinion of González, C.J., filed September 28, 2023, in the above entitled case is amended as indicated below.

On page 12, line 7 of the slip opinion, beginning with "The Petitioners", delete all text down to and

including "RCW 43.06.220(2)," on page 13, line 2, and insert:

> The petitioners also argue that the governor exceeded his authority by suspending their rights and their tenants' obligations under RCW 59.18.050, .080, 140(1), .160(1), 130, .170 and RCW 59.12.030. These statutes generally require tenants to follow their rental agreements and allow landlords to bring eviction actions under certain conditions. To the extent these statutes require the tenants to obey the law and their contracts, they were not suspended. Nothing in the proclamations relieved tenants of those obligations. To the extent these statutes create a mechanism for landlords to enforce their legal rights in court, those statutes do not establish statutory obligations or limitations and thus fall outside of RCW 43.06.220(2).

Retain "7" after "RCW 43.06.220(2)." at the end of the paragraph, and the text of footnote 7.

DATED this 29th day of November, 2023

s/ Gonzalez, C.J.
Chief Justice

APPROVED:

s/ Johnson, J.	*s/ Gordon McCloud, J.*
s/ Madsen, J.	*s/ Yu, J.*
s/ Owens, J.	*s/ Montoya-Lewis, J.*
s/ Stephens, J.	*s/ Whitener, J.*

Filed
Washington State
Court of Appeals
Division Two
February 23, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Gene GONZALES and Susan Gonzales, Horwath Family Two, LLC, and the Washington Landlord Association Appellants, v. Governor Jay INSLEE and State of Washington, Respondents	No. 55915-3-II

¶1 Maxa, J. — Gene and Susan Gonzales, Horwath Family Two LLC, and the Washington Landlord Association (collectively the appellants) appeal the trial court's grant of summary judgment in favor of Governor Jay Inslee and the State (collectively the State) dismissing their declaratory judgment action challenging Governor Inslee's proclamations ordering a temporary eviction moratorium related to COVID-19.

¶2 In February 2020, Governor Inslee declared a state of emergency in Washington because of COVID-

19. In March 2020, he issued a proclamation placing a temporary moratorium on most evictions. The moratorium was amended and extended by several subsequent proclamations until the last version expired on June 30, 2021. The governor then issued an eviction bridge proclamation, which expired on October 31, 2021.

¶3 Gonzales and Horwath provided rental housing in Lewis County, and their tenants had not paid rent since the governor's proclamation was issued. The appellants filed this action in Lewis County, seeking a declaration that the governor had no statutory authority to issue the eviction moratorium and the moratorium violated several constitutional provisions. The State then filed a motion to transfer venue to Thurston County, which the Lewis County trial court granted.

¶4 We hold that (1) this appeal is not moot because the case presents issues of substantial public interest, (2) the Lewis County trial court did nor err in transferring venue to Thurston County, (3) the governor had authority to issue the proclamations under RCW 43.06.220(1)(h), (4) RCW 43.06.220(1)(h) did not violate the constitutional prohibition against the delegation of legislative authority, (5) the proclamations did not violate the separation of powers doctrine or deny access to the courts, (6) the proclamations did not constitute a taking of the appellants' property, and (7) the proclamations did not constitute an unconstitutional impairment of the appellants' contracts with their tenants.

¶5 Accordingly, we affirm the trial court's grant of summary judgment in favor of the State.

FACTS

Background

¶6 In response to the COVID-19 pandemic, on February 29, 2020 Governor Inslee declared a state of emergency in Washington. On March 18, 2020, the governor issued Proclamation 20-19,[1] which prohibited certain activities related to residential evictions under the authority of RCW 43.06.220(1)(h). The effect was to put a temporary moratorium on most residential evictions. The moratorium aimed to protect those with the inability to pay rent from being evicted from their homes in the midst of the pandemic. The purpose of the moratorium was to prevent increasing risks to life, health, and safety from the pandemic.

¶7 The governor issued subsequent proclamations that extended the eviction moratorium several times and provided much more detailed provisions:

[1] Proclamation of Governor Jay Inslee, No. 20-19 (Wash. Mar. 18, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-19%20-%20COVID-19%20Moratorium%20on%20Evictions%20%28tmp%29.pdf

Proclamations 20-19.1[2], 20-19.2[3], 20-19.3[4], 20-19.4[5], and 20-19.5.[6] The final proclamation regarding the eviction moratorium, Proclamation 20-19.6[7], expired on June 30, 2021 and was not renewed. These proclamations prohibited landlords and related persons from engaging in a number of activities regarding evictions, which essentially prevented most evictions. One exception was if eviction was necessary because the tenant was creating a "significant and immediate risk to the health or safety of others." Proclamation 20-19.1, at 3. An exception later was added for when the landlord planned to personally occupy or sell the rented premises.

¶8 The proclamations also prohibited landlords from treating unpaid rent resulting from COVID-19

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[2] Proclamation of Governor Jay Inslee, No. 20-19.1 (Wash. Apr. 16, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-19.1%20-%20COVID-19%20Moratorium%20on%20Evictions%20Extension%20%28tmp%29.pdf

[3] Proclamation of Governor Jay Inslee, No. 20-19.2 (Wash. June 2, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-19.2%20Coronavirus%20Evictions%20%28tmp%29.pdf

[4] Proclamation of Governor Jay Inslee, No. 20-19.3 (Wash. July 24, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-19.3%20Coronavirus%20Evictions%20%28tmp%29.pdf

[5] Proclamation of Governor Jay Inslee, No. 20-19.4 (Wash. Oct. 14, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-19.4.pdf

[6] Proclamation of Governor Jay Inslee, No. 20-19.5 (Wash. Dec. 31, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-19.5.pdf

[7] Proclamation of Governor Jay Inslee, No. 20-19.6 (Wash. Mar. 18, 2021), https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-19.6.pdf

as an enforceable debt, unless the landlord offered and the tenant refused a reasonable repayment plan.

¶9 In April 2021, the legislature enacted Engrossed Second Substitute Senate Bill (E2SSB) 5160. Laws of 2021, ch. 115. Section 1 of E2SSB 5160 noted the governor's temporary moratorium on evictions "to reduce housing instability and enable tenants to stay in their homes." Laws of 2021, ch. 115, § 1. E2SSB stated that the governor's eviction moratorium would end on June 30, 2021. RCW 59.18.630.

¶10 E2SSB 5160 provided a number of protections for tenants, including that landlords must offer tenants a reasonable schedule for repayment of unpaid rent accruing between March 1, 2020 and six months after expiration of the eviction moratorium. RCW 59.18.630. In addition, the legislation provided for the development of court-based eviction pilot programs to facilitate the resolution of nonpayment of rent cases between landlords and tenants. Laws of 2021, ch. 115, § 7. E2SSB 5160 also allowed landlords to recover up to $15,000 from the State in unpaid rent if the tenant voluntarily vacated a tenancy or if a tenant defaulted on a payment plan. RCW 43.31.605(1)(d)(i). And it was required that landlords be given the opportunity to apply for certain rental assistance programs. Laws of 2021, ch. 115, § 12.

¶11 On June 29, 2021, the governor issued Proclamation 21-09[8] as a temporary bridge between the expired eviction moratorium and the

[8] Proclamation by Governor Jay Inslee, No. 21-09 (Wash. June 29, 2021), https://www.governor.wa.gov/sites/default/files/proclamations/proc_21-09.pdf

implementation of E2SSB 5160. This proclamation continued to prohibit evictions until certain provisions of E2SSB 5160 were implemented. Proclamation 21-09 was extended once, Proclamation 21-09.1[9], and expired on October 31, 2021.

Lawsuit and Summary Judgment

¶12 Gonzales and Horwath provided rental housing in Lewis County. Tenant X had been with the Gonzaleses since 2019. Tenant X had not paid rent or utilities since June 2020. The Gonzaleses asked tenant X if they planned to pay utilities and tenant X reportedly responded with "[w]hy should I pay them anything; they can't shut me off due to the Pandemic." Clerk's Papers at 252.

¶13 Tenant Y rented with Horwath. Tenant Y had not paid rent since February 2020 or utilities since March 2020. A rental management company attempted to contact tenant Y about finding a solution for paying and to inquire about tenant Y's plans or ability to pay. Tenant Y did not respond to the inquiries. No repayment plan was offered because tenant Y would not respond to any communications.

¶14 In December 2020, Gonzales and Horwath, joined by the Washington Landlord Association, filed a declaratory judgment action in Lewis County against Governor Inslee and the State. They sought an order declaring that the governor's proclamations ordering an eviction moratorium were void as being without statutory authority and unconstitutional under various provisions, and an order declaring that

[9] Proclamation by Governor Jay Inslee, No. 21-09.1 (Wash. Sept. 24, 2021), https://www.governor.wa.gov/sites/default/files/proclamations/proc_21-09.1.pdf

the proclamations had caused an unconstitutional taking without compensation.

¶15 The State filed a motion to change venue from Lewis County to Thurston County. The Lewis County trial court granted the motion under RCW 4.12.020(2) because the case involved a lawsuit against a public officer for an act done by the governor in virtue of his office.

¶16 Both parties subsequently filed summary judgment motions. The parties submitted declarations supporting the facts stated above. The trial court granted the State's motion on all claims and denied the appellants' motion.

¶17 The appellants appeal the trial court's summary judgment order.

ANALYSIS

A. SUMMARY JUDGMENT STANDARD

¶18 Where the parties do not dispute the material facts of the case, we will affirm a grant of summary judgment if the moving party is entitled to judgment as a matter of law. Wash. State Legislature v. Inslee, 198 Wn.2d 561, 569, 498 P.3d 496 (2021).

B. LANGUAGE OF PROCLAMATIONS

1. Preamble

¶19 Proclamation 20-19 and subsequent versions all contained similar preamble language explaining the basis of the eviction moratorium:

> WHEREAS, the COVID-19 pandemic is expected to cause a sustained global economic slowdown, which is anticipated to cause an economic downturn throughout Washington

> State with layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity … ; and
>
> WHEREAS, many in our workforce expect to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and
>
> WHEREAS, the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health, and safety risks to a significant percentage of our people from the COVID-19 pandemic; and
>
> . …
>
> WHEREAS, a temporary moratorium on evictions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic.

Proclamation 20-19, at 1–2 (boldface omitted).

¶20 Proclamation 20-19.1 and subsequent versions added the following to the preamble:

> WHEREAS, tenants, residents, and renters who are not materially affected by COVID-19

> should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and
>
> . …
>
> WHEREAS, it is critical to protect tenants and residents of traditional dwellings from homelessness … ; and
>
> . …
>
> WHEREAS, a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities or employment in essential business services, and promote public health and safety by reducing the progression of COVID-19 in Washington State.

Proclamation 20-19.1, at 1–2 (boldface omitted).

¶21 Proclamation 20-19.4 added the following: "WHEREAS, hundreds of thousands of tenants in Washington are unable to pay their rent, reflecting the continued financial precariousness of many in the state." Proclamation 20-19.4, at 3 (boldface omitted). Proclamation 20-19.5 stated, "WHEREAS, as of November 2020, current information suggests that at least 165,000 tenants in Washington will be unable to pay their rent in the near future, reflecting the continued financial precariousness of many in the state." Proclamation 20-19.5, at 2 (boldface omitted). Proclamation 20-19.6 stated, "WHEREAS, as of March 2021, current information suggests that at

least 76,000 tenants in Washington will be unable to pay their rent in the near future, reflecting the continued financial precariousness of many in the state." Proclamation 20-19.6, at 3 (boldface omitted).

2. Eviction Moratorium

¶22 Proclamation 20-19 stated that landlords generally were prohibited under RCW 43.06.220(1)(h) from engaging in the following activities: (1) "serving a notice of unlawful detainer for default payment of rent," (2) "issuing a 20-day notice for unlawful detainer," and (3) "initiating judicial action seeking a writ of restitution involving a dwelling unit if the alleged basis for the writ is the failure of the tenant or tenants to timely pay rent." Proclamation 20-19, at 2–3.

¶23 Proclamation 20-19.1 adopted different and expanded language, generally prohibiting, under RCW 43.06.220(1)(h), landlords from engaging in a number of activities, including (1) "serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling … , including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate"; and (2) "seeking or enforcing, or threatening to seek or enforce, judicial eviction orders." Proclamation 20-19.1, at 3–4. All the subsequent proclamations contained these prohibitions.

¶24 Proclamation 20-19.1 and subsequent proclamations contained an exception if the prohibited eviction activities were "necessary to respond to a significant and immediate risk to the health or safety of others created by the resident."

Proclamation 20-19.1, at 3. Proclamation 20-19.2 and subsequent proclamations added an exception for when the property owner planned to personally occupy or sell the rental property. Proclamation 20-19.2, at 3.

¶25 Proclamation 20-19.1 also contained the following provision:

> Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020.

Proclamation 20-19.1, at 4. However, this prohibition contained the following exception:

> This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.

Proclamation 20-19.1, at 4 (emphasis omitted). All the subsequent proclamations contained these provisions.

3. Conclusion Language

¶26 Proclamation 20-19.1 contained the following conclusion language: "FURTHERMORE, it is the

intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state." Proclamation 20-19.1, at 5 (boldface omitted). All the subsequent proclamations contained this provision.

¶27 Beginning with Proclamation 20-19.3 in July 2020, all the proclamations contained the following provision:

> MOREOVER, as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional direction concerning the specific parameters for reasonable repayment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law.

Proclamation 20-19.3, at 7 (boldface omitted).

C. MOOTNESS OF APPEAL

¶28 The State argues that the issue is moot because the moratorium has expired. The appellants argue that even if the case is moot, it should be resolved because there are matters of substantial public interest. We agree with the appellants.

¶29 An appeal is moot if we no longer can provide effective relief. *Dzaman v. Gowman*, 18 Wn. App. 2d

469, 476, 491 P.3d 1012 (2021). However, we may exercise our discretion to review a moot appeal when it involves issues of continuing and substantial public interest. *Id.* Three factors determine whether we will exercise our discretion: "'(1) the public or private nature of the question presented, (2) the desirability of an authoritative determination to provide future guidance to public officers, and (3) the likelihood that the question will recur.'" *Id.* (quoting *Thomas v. Lehman*, 138 Wn. App. 618, 622, 158 P.3d 86 (2007)).

¶30 These three factors support considering this appeal. At first glance, this appeal appears to be moot because the eviction moratorium expired in June 2021 and the bridge moratorium expired in October 2021. But the COVID-19 pandemic is not over. And because the pandemic persists, it is possible that the governor may institute another, similar eviction moratorium in the future. Therefore, this case presents issues of continuing and substantial public interest.

D. CHANGE OF VENUE

¶31 The appellants argue that the Lewis County trial court improperly transferred venue to Thurston County. We disagree.

¶32 The venue of an action is determined by statute. *Clark County v. Portland Vancouver Junction R.R., LLC*, 17 Wn. App. 2d 289, 292, 485 P.3d 985 (2021). When two different venue statutes apply to a lawsuit, we will apply "'mandatory statutes to the exclusion of permissive ones and specific statutes to the exclusion of general ones.'" *Id.* at 293 (quoting *Ralph v. Weyerhaeuser Co.*, 187 Wn.2d 326, 338, 386 P.3d 721 (2016)).

¶33 RCW 4.12.010(1) states that venue shall be in the county where the subject of the action is located "for any injuries to real property." RCW 4.92.010 states that the venue of lawsuits against the State shall be in one of several places, including the county of the residence of one or more plaintiffs and "[t]he county in which the real property that is the subject of the action is situated." The appellants rely on these statutes to argue that venue was proper in Lewis County, where they resided and where their rental properties were located.

¶34 However, RCW 4.12.020(2) states that for actions "[a]gainst a public officer … for an act done by him or her in virtue of his or her office," venue shall be "in the county where the cause, or some part thereof, arose." The State relies on this statute to argue that venue was proper only in Thurston County, where the governor issued the proclamations.

¶35 The Supreme Court has stated that when RCW 4.12.020(2) applies, "venue in the specified county is mandatory." *Johnson v. Inslee*, 198 Wn.2d 492, 496, 496 P.3d 1191 (2021). Therefore, the only question here is whether RCW 4.12.020(2) applies to this action.

¶36 The Supreme Court's decision in *Johnson* resolves this issue. In that case, a State employee filed a lawsuit against Governor Inslee and other State entities in Franklin County, challenging the governor's proclamation requiring all State employees to be vaccinated against COVID-19. 198 Wn.2d at 494–95.

¶37 Regarding where the cause of action arose, the court relied on cases from other states to conclude that

"it is the official act itself—the act for which redress is sought—that 'gives rise' to the cause of action, and thus venue is proper in the county where the act is made." *Id.* at 496–97. Therefore, the court held that the cause of action regarding the governor's proclamation arose only in Thurston County, where he performed the act of issuing it. *Id.* at 498–99. The court stated, "To conclude otherwise would mean a statewide public official such as the governor could be haled into superior courts throughout the state to defend similar suits challenging a single act having statewide effect, as this case itself exemplifies." *Id.* at 497.

¶38 Regarding the "in virtue of office" requirement, the court stated, "[R]egardless of whether the governor exceeded his constitutional authority, which has not yet been determined, he plainly acted 'in virtue of his … office' in issuing emergency proclamations pursuant to his statutory authority under RCW 43.06.220." *Id.* at 498 (second alteration in original). The court concluded, "The governor issued his proclamations 'in virtue' of his 'office' within the meaning of RCW 4.12.020(2)." *Id.*

¶39 Based on this analysis, the court held that Thurston County was the mandatory venue for the action challenging the governor's vaccine proclamation. *Id.* at 498–99.

¶40 The appellants argue that *Johnson* is distinguishable because that case did not involve real property. They claim that RCW 4.12.020(2) cannot trump RCW 4.12.010(1) and RCW 4.92.010. But the court in *Johnson* expressly stated that RCW 4.12.020(2) is mandatory if that statute applies. 198 Wn.2d at 496. Therefore, it does trump other venue

statutes. *See Portland Vancouver Junction R.R.*, 17 Wn. App. 2d at 293.

¶41 The appellants also argue under RCW 4.12.020 that "some part" of their cause of action arose in Lewis County because their injuries occurred in Lewis County. But the same was true in *Johnson*, and the court in that case rejected a similar argument. 198 Wn.2d at 497 n.6. The court expressly held that the "cause of action challenging the lawfulness of the proclamations 'arose' only in Thurston County." *Id*. at 498–99 (emphasis added).

¶42 We hold that the Lewis County trial court did not err in transferring venue to Thurston County.

E. GOVERNOR'S AUTHORITY UNDER RCW 43.06.220(1)(H) TO ISSUE PROCLAMATIONS

¶43 Appellants argue that the governor did not have authority under RCW 43.06.220(1)(h) to issue Proclamation 20-19 and the subsequent proclamations. We disagree.

1. Legal Principles

¶44 "The executive branch has historically led Washington's response to emergencies." *Colvin v. Inslee*, 195 Wn.2d 879, 895, 467 P.3d 953 (2020). RCW 43.06.010(12) states, "The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected." A declaration of a state of emergency activates the governor's broad powers in emergencies. *Colvin*, 195 Wn.2d at 895. Various statutes "evidence a clear intent by the Legislature to delegate requisite police

power to the Governor in times of emergency. The necessity for such delegation is readily apparent." *Cougar Bus. Owners Ass'n v. State*, 97 Wn.2d 466, 474, 647 P.2d 481 (1982), overruled in part by *Chong Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019).

¶45 RCW 43.06.220(1) provides:

> The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:
>
> . ...
>
> (h) *Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.*

(Emphasis added.)

¶46 RCW 43.06.220(2) states, "The governor after proclaiming a state of emergency and prior to terminating such may, in the area described by the proclamation, issue an order or orders concerning waiver or suspension of statutory obligations or limitations" in certain specified areas. A waiver or suspension of statutory obligations or limitations under subsection (2) may not continue for longer than 30 days unless extended by the legislature. RCW 43.06.220(4).

¶47 We review de novo issues of statutory interpretation. *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 722, 406 P.3d 1149 (2017). The goal in interpreting a statute is to determine and give effect to the legislature's intent. *Id*. The court considers the language of the statute, the context of the statute,

related statutes, and the statutory scheme as a whole. *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014). The interpretation ends if the plain language is unambiguous. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). But if more than one reasonable interpretation exists, the court will resolve it by turning to other sources of legislative intent, including statutory construction, legislative history, and case law. *Id.*

2. Analysis

¶48 Here, the plain language of RCW 43.06.220(1)(h) is unambiguous. The governor may issue an order prohibiting any activities the governor reasonably believes should be prohibited "to help preserve and maintain life, health, property or the public peace." RCW 43.06.220(1)(h). The term "activities" is extremely broad, and is broad enough to include the actions the proclamations prohibited regarding evictions and unpaid rent. And the proclamation preambles made it clear that the governor reasonably believed that prohibiting those activities was necessary to preserve life, health, and property.

¶49 The appellants argue that the proclamations suspended rights and obligations established by various statutes, including the obligation of tenants to pay rent and the right of landlords to evict tenants who do not pay rent. They emphasize that RCW 43.06.220(1)(h) does not authorize the governor to suspend the operation of statutes. And they claim that if RCW 43.06.220(1)(h) is interpreted to allow the suspension of statutes, subsection (2)—which does expressly authorize the suspension of statutory

obligations or limitations in certain areas—would be rendered superfluous.

¶50 However, none of the proclamations stated that the governor was suspending any statutes. Tenants still were subject to the statutory obligation to pay rent set forth in RCW 59.18.110; they simply could not be evicted for failing to pay rent. The moratorium may have delayed the ability of landlords to exercise the statutory remedy of eviction stated in RCW 59.12.030 in many cases, but the operation of that statute was not suspended. The wrongful detainer statute still could be invoked if "necessary to respond to a significant and immediate risk to the health or safety of others created by the resident," Proclamation 20-19.1, at 3, or if the property owner planned to personally occupy or sell the rental property.

¶51 Instead of suspending any statutes, the governor prohibited certain specific activities, as RCW 43.06.220(1)(h) expressly authorized. Nothing in RCW 43.06.220(1)(h) suggests that the governor is not authorized to prohibit activities that may involve statutory rights and obligations.

¶52 We hold that RCW 43.06.220(1)(h) authorized the governor to issue the proclamations providing for an eviction moratorium.[10]

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[10] The State argues that even if the proclamations exceeded the governor's authority under RCW 43.06.220(1)(h), the legislature's enactment of E2SSB 5160 ratified the governor's reliance on that statute to issue the eviction moratorium. Because we hold that the governor did have authority, we do not address this issue.

F. DELEGATION OF LEGISLATIVE AUTHORITY

¶53 Appellants argue that if RCW 43.06.220(1)(h) authorized the issuance of an eviction moratorium, it violated the constitutional prohibition of delegation of legislative authority. We disagree.

¶54 Article II, section 1 (amendment 72) of the Washington Constitution states that "[t]he legislative authority of the state of Washington shall be vested in the legislature." As a result, the legislature cannot delegate purely legislative functions to other branches of government. *Auto. United Trades Org. v. State*, 183 Wn.2d 842, 859, 357 P.3d 615 (2015). "These nondelegable powers include the power to enact, suspend, and repeal laws." *Diversified Inv. P'ship v. Dep't of Soc. & Health Servs.*, 113 Wn.2d 19, 24, 775 P.2d 947 (1989).

¶55 As noted above, none of the proclamations stated that the governor was suspending any statutes. And the proclamations did not suspend the operation of any statutes. Instead, the governor prohibited certain specific activities as RCW 43.06.220(1)(h) expressly authorized.

¶56 We hold that RCW 43.06.220(1)(h) did not violate the constitutional prohibition of delegation of legislative authority.

G. SEPARATION OF POWERS AND DENIAL OF ACCESS TO COURTS

¶57 Appellants argue that the proclamations violated the separation of powers doctrine and denied them access to the courts for judicial relief. We disagree.

1. Separation of Powers

¶58 The Washington Constitution does not contain a formal separation of powers clause, but "'the very division of our government into different branches has been presumed throughout our state's history to give rise to a vital separation of powers doctrine.'" *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009) (quoting *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994)). The doctrine ensures "that the fundamental functions of each branch remain inviolate." *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 504, 198 P.3d 1021 (2009). A branch violates the separation of powers doctrine when an action "'threatens the independence or integrity or invades the prerogatives of another.'" *City of Fircrest v. Jensen*, 158 Wn.2d 384, 394, 143 P.3d 776 (2006) (internal quotation marks omitted) (quoting *State v. Moreno*, 147 Wn.2d 500, 505–06, 58 P.3d 265 (2002)).

¶59 Here, the proclamations do not interfere with a court's authority in any way. None of the proclamation provisions are directed to the courts, and the proclamations do not purport to prevent the courts from taking any actions. For example, the proclamations do not prohibit courts from issuing eviction orders or otherwise resolving disputes between landlords and tenants. Instead, the proclamations' prohibitions are directed at landlords and related persons. Preventing a person from requesting or enforcing eviction orders does not invade the prerogatives of the judicial branch. Therefore, we hold that the proclamations did not violate the separation of powers doctrine.

2. Access to Courts

a. Legal Principles

¶60 "The people have a right of access to courts; indeed, it is 'the bedrock foundation upon which rest all the people's rights and obligations.'" *Putman v. Wenatchee Valley Med. Ctr., PS*, 166 Wn.2d 974, 979, 216 P.3d 374 (2009) (quoting *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991)). The right of access to courts derives in part from the First Amendment to the United States Constitution and article I, section 4 of the Washington Constitution. *Leishman v. Ogden Murphy Wallace, PLLC*, 196 Wn.2d 898, 914, 479 P.3d 688 (2021). There also is a due process component. *In re Marriage of Giordano*, 57 Wn. App. 74, 77, 787 P.2d 51 (1990). The right of access is implicated where there is a delay or total blockage of a person's ability to file suit. *Musso-Escude v. Edwards*, 101 Wn. App. 560, 566, 4 P.3d 151 (2000).

¶61 However, "'[t]here is no absolute and unlimited constitutional right of access to courts. All that is required is a reasonable right of access—a reasonable opportunity to be heard.'" *Giordano*, 57 Wn. App. at 77 (quoting *Ciccarelli v. Carey Can. Mines, Ltd.*, 757 F.2d 548, 554 (3d Cir. 1985)). "[W]hen access to the courts is not essential to advance a fundamental right … access may be regulated if the regulation rationally serves a legitimate end." *Giordano*, 57 Wn. App. at 77; *see also Yurtis v. Phipps*, 143 Wn. App. 680, 694, 181 P.3d 849 (2008). And access to the courts itself is not a fundamental right. *Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 562, 800 P.2d 367 (1990).

b. Analysis

¶62 Here, the governor's proclamations did not completely restrict access to the courts. There were exceptions to the eviction moratorium if the tenant created health or safety risks to others, and if the property owner planned to personally occupy or sell the rental property. Landlords could treat unpaid rent as an enforceable obligation and could sue on that obligation if the tenant refused or failed to comply with a reasonable repayment plan. And a landlord's ability to bring eviction proceedings only was delayed until the expiration of the final proclamation, not extinguished completely.

¶63 Because the proclamations regulated but did not completely deny access to the courts, we analyze the appellants' access to courts claim under a rational basis approach. *See Giordano*, 57 Wn. App. at 77. Under this approach, the question is whether the eviction moratorium "rationally serves a legitimate end." *Id*.

¶64 The State's purpose in preventing the spread and transmission of COVID-19 undoubtedly is significant and important. *See, e.g.*, *Roman Cath. Diocese of Brooklyn v. Cuomo*, ___ U.S. ___, 141 S. Ct. 63, 67, 208 L. Ed. 2d 206 (2020) (stating that "[s]temming the spread of COVID-19 is unquestionably a compelling interest"). So is preventing widespread homelessness caused by economic distress related to the COVID-19 pandemic.

¶65 In addition, the eviction moratorium was a rational means to achieve this important purpose. As the governor noted in his proclamations, the COVID-19 pandemic was causing adverse economic

consequences for a large number of people, potentially resulting in a widespread inability to pay rent and evictions. Evictions would increase the health and safety risks from the pandemic for people forced into homelessness. Conversely, a moratorium on evictions would allow people to stay in their homes, thereby promoting health and safety and helping to prevent the progression of the pandemic.

¶66 Several federal cases have rejected access to courts challenges to restrictions on evictions related to COVID-19. *Heights Apts., LLC v. Walz*, 510 F. Supp. 3d 789, 810–11 (D. Minn. 2020), *appeal filed*, No. 21-1278 (8th Cir. Feb. 5, 2021); *Baptiste v. Kennealy*, 490 F. Supp. 3d 353, 393–96 (D. Mass. 2020); *Elmsford Apt. Assocs. v. Cuomo*, 469 F. Supp. 3d 148, 174–75 (S.D.N.Y. 2020), *appeal dismissed*, 860 F. App'x 215 (2d Cir. 2021).

¶67 The appellants rely on a trial court decision from the District of Columbia in which the court ruled that an eviction moratorium violated the constitutional right to access using an intermediate scrutiny analysis. However, the D.C. Court of Appeals reversed this decision and held that the moratorium did not violate the right to access. *District of Columbia v. Towers*, 260 A.3d 690, 693–96 (D.C. App. 2021).

¶68 We hold that the eviction moratorium did not violate the appellants' right of access to the courts.

H. TAKING PROPERTY WITHOUT COMPENSATION

¶69 The appellants argue that the temporary eviction moratorium constituted a per se physical taking of their property because the moratorium

deprived them of the right to evict tenants from their property. We disagree.[11]

1. Legal Principles

¶70 The Fifth Amendment to the United States Constitution states that private property shall not be "taken for public use, without just compensation." Article I, section 16 of the Washington Constitution provides, "No private property shall be taken or damaged for public or private use without just compensation having been first made." Washington courts generally apply the federal takings analysis. *See Chong Yim*, 194 Wn.2d at 688–89.

¶71 There are two general types of takings: (1) a physical taking, where "the government authorizes a physical occupation of property"; and (2) a regulatory taking, "where the government merely regulates the use of property." *Yee v. City of Escondido*, 503 U.S. 519, 522, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992). The first type is subject to a per se rule: if a physical taking has occurred, the government must pay compensation. *Cedar Point Nursery v. Hassid*, ___ U.S. ___, 141 S. Ct. 2063, 2071, 210 L. Ed. 2d 369 (2021). "Whenever a regulation results in a physical appropriation of property, a per se taking has occurred." *Id.* at 2072. In addition, "a physical

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[11] There is some question whether the appellants are entitled to an equitable remedy—a declaratory judgment—on their takings claim. The remedy for a government taking is compensation through a damages award, but the appellants' complaint does not request damages. However, the State does not argue that we should decline to address the takings claim, and therefore we do not address this issue.

appropriation is a taking whether it is permanent or temporary." *Id*. at 2074.

¶72 The second type of taking is analyzed using a flexible balancing test adopted in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978). *Cedar Point Nursery*, 141 S. Ct. at 2072.

¶73 The appellants allege only that the temporary eviction moratorium constituted a physical, per se taking. They do not argue that the moratorium was a regulatory taking under *Penn Central*.

2. Analysis

¶74 The appellants argue that the eviction moratorium constituted a physical, per se taking because it required them to allow tenants to reside in their property without the payment of rent. Relying on *Cedar Point Nursery*, they claim that precluding evictions essentially forced them to submit to a physical occupation of their property.

¶75 This argument is inconsistent with the United States Supreme Court's analysis in *Yee*. In that case, mobile park owners who rented pads to the owners of mobile homes challenged a state statute that among other things (1) limited their ability to terminate a mobile home owner's tenancy, (2) did not allow them to remove a mobile home if it was sold, and (3) required them to continue renting to a mobile home purchaser as long as the purchaser had the ability to pay rent. *Yee*, 503 U.S. at 524. The City of Escondido subsequently adopted a rent control ordinance that dictated the rent the mobile park owners could charge. *Id*. at 524–25. The mobile park owners argued that the statute and ordinance resulted in a physical, per se

taking because they were precluded from fully using and occupying their property. *Id*. at 525. Instead, the right to physically occupy their property—at submarket rent—essentially had been transferred indefinitely to the mobile home owners and their successors. *Id*. at 527.

¶76 The Court stated that this argument was inconsistent with the law of physical takings. *Id*. The Court stated, "The government effects a physical taking only where it requires the landowner to submit to the physical occupation of his land. 'This element of required acquiescence is at the heart of the concept of occupation.'" *Id*. (quoting *Fed. Commc'ns Comm'n v. Fla. Power Corp.*, 480 U.S. 245, 252, 107 S. Ct. 1107, 94 L. Ed. 2d 282 (1987)). However, the Court emphasized that the statute and the ordinance had not required the occupation of the mobile park—the mobile park owners had voluntarily rented their property to the mobile home owners. *Yee*, 503 U.S. at 527. "Put bluntly, no government has required any physical invasion of petitioners' property. Petitioners' tenants were invited by petitioners, not forced upon them by the government." *Id*. at 528.

¶77 The Court concluded:

> On their face, the state and local laws at issue here merely regulate petitioners' use of their land by regulating the relationship between landlord and tenant. "This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails."

Id. at 528–29 (quoting *Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 440, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982)).

¶78 The appellants rely on *Cedar Point Nursery*. In that case, a labor regulation required agricultural employers to permit union organizers on their property for three hours a day, 120 days per year, for the purpose of soliciting employees to join or form a union. *Cedar Point Nursery*, 141 S. Ct. at 2069. The Court emphasized that the regulation allowed union organizers to physically enter and occupy the property. *Id*. at 2072. "The regulation appropriates a right to physically invade the growers' property—to literally 'take access,' as the regulation provides." *Id*. at 2074. Therefore, the Court held that the regulation was a per se physical taking. *Id*.

¶79 This case is similar to *Yee* and is dissimilar to *Cedar Point Nursery*. As in *Yee*, the eviction moratorium did not require the appellants to submit to the physical occupation of their property. Instead, the appellants were the ones who invited their tenants to occupy their rental property. And unlike in *Cedar Point Nursery*, the moratorium did not require that the appellants allow third parties to enter and take access to their property. The proclamations merely operated to "regulate [appellants'] use of their land by regulating the relationship between landlord and tenant." *Yee*, 503 U.S. at 528. Therefore, we conclude that the eviction moratorium did not constitute a physical per se taking.

¶80 This conclusion is supported by federal courts in Washington and in other jurisdictions that have ruled that eviction moratoriums do not constitute an unconstitutional physical taking without

compensation. *E.g.*, *Jevons v. Inslee*, 2021 WL 4443084, at *11–15, 2021 U.S. Dist. LEXIS 183567, at *35–50 (E.D. Wash. 2021), *appeal filed*, No. 22-35050 (9th Cir. Jan. 18, 2022); *El Papel, LLC v. Durkan*, No. 2:20-cv-01323-RAJ-JRC, 2021 WL 4272323, at *15–17, 2021 U.S. Dist. LEXIS 181390, at *43–47 (W.D. Wash. Sept. 15, 2021) (Magistrate's report and recommendation); *Heights Apts.*, 510 F. Supp. 3d at 812; *Baptiste*, 490 F. Supp. 3d at 388; *Auracle Homes, LLC v. Lamont*, 478 F. Supp. 3d 199, 220–21 (D. Conn. 2020); *Elmsford Apt. Assocs.*, 469 F. Supp. 3d at 162–64.

¶81 We hold that the eviction moratorium did not constitute an unconstitutional taking without compensation.[12]

I. IMPAIRMENT OF CONTRACTUAL RELATIONSHIP

¶82 The appellants argue that the temporary eviction moratorium unconstitutionally impaired their contractual relationship with their tenants. We disagree.

1. Legal Standard

¶83 Article I, section 10 of the United States Constitution states, "No State shall … pass any … law impairing the obligation of contracts." Article I, section 23 of the Washington Constitution provides that "[n]o … law impairing the obligations of contracts

[12] The appellants also briefly argue that the eviction moratorium took the rental income to which they were entitled. But it is undisputed that the moratorium did not eliminate the appellants' ability to collect the full amount of past rent due, as long as they offered a reasonable repayment plan to their tenants.

shall ever be passed." The standards under the two provisions are the same. *Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 414, 377 P.3d 199 (2016).

¶84 "[A] constitutional violation will be found only if the challenged action substantially impairs an existing contract and, even then, only if the action was not reasonable and necessary to serve a legitimate public purpose." *Id.* We apply a three-part test: "(1) Does a contractual relationship exist, (2) does the legislation substantially impair the relationship, and (3) if there is a substantial impairment, is the impairment reasonable and necessary to serve a legitimate public purpose?" *Id.*

¶85 If the government is not one of the contracting parties, as here, the court must "'defer to legislative judgment as to the necessity and reasonableness of a particular measure.'" *Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 413, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983) (quoting *U.S. Tr. Co. v. New Jersey*, 431 U.S. 1, 22–23, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977)).

¶86 Both parties discuss *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413 (1934). In that Great Depression-era case, the United States Supreme Court upheld a mortgage moratorium law that, among other things, extended mortgagors' redemption period following a foreclosure sale for up to two years. *Id.* at 416–18. The Court stated that a law may not release or extinguish contractual obligations without violating the contract clause. *Id.* at 431. As a result, the contract clause may not be interpreted to "permit the state to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them." *Id.*

at 439. However, the Court stated that the constitutional prohibition against the impairment of contracts should be not be [sic] construed to prevent "limited and temporary interpositions with respect to the enforcement of contracts if made necessary by a great public calamity," including urgent public need related to economic causes. *Id.* (emphasis added).

¶87 Regarding the statute at issue, the Court noted that the mortgage debt was not impaired, the validity of the foreclosure sale and the mortgagee's ability to obtain a deficiency judgment were not affected, and the mortgagor was required to pay the rental value of the home during the extended possession. *Id.* at 445. "The mortgagee-purchaser during the time that he cannot obtain possession thus is not left without compensation for the withholding of possession." *Id.* Therefore, the Court held that the statute did not violate the contracts clause. *Id.* at 447.

2. Analysis

a. Substantial Impairment

¶88 To determine whether there is a substantial impairment of a contractual relationship, we consider "the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." *Sveen v. Melin*, ___ U.S. ___, 138 S. Ct. 1815, 1822, 201 L. Ed. 2d 180 (2018). All three considerations support the conclusion that the eviction moratorium does not substantially impair the appellants' contracts with their tenants.

¶89 First, the eviction moratorium did not undermine landlords' contractual bargain. The

moratorium did not extinguish the contractual obligations of tenants to pay rent. Instead, the moratorium temporarily delayed landlords' ability to exercise the remedy of eviction for nonpayment of rent.

¶90 The appellants claim that the moratorium imposed a permanent prohibition against landlords treating any unpaid rent as an enforceable debt. However, this claim is inaccurate. The proclamations state that unpaid rent would not be an enforceable debt only if (1) nonpayment occurred after February 29, 2020, (2) "non-payment was as a result of the COVID-19 outbreak," and (3) the landlord failed to offer the tenant a reasonable repayment plan. Proclamation 20-19.1, at 4. Assuming a landlord offered a reasonable repayment plan, all unpaid rent would be an enforceable debt.

¶91 The appellants argue that allowing landlords to treat unpaid rent as an enforceable debt only if they offer a reasonable payment plan was illusory for landlords, like Horwath, whose tenants refused to communicate with them. They emphasize that the repayment plan condition required that the offered plan be "reasonable based on the individual financial, health, and other circumstances of that resident." Proclamation 20-19.1, at 4. According to the appellants, it would be impossible for landlords to offer the required repayment plan if they had no information regarding their tenants' "financial, health, and other circumstances" and no way of forcing tenants to provide such information.

¶92 However, a trial court assessing whether a prepayment plan was reasonable undoubtedly would base its assessment on the information available to

the landlord. For example, the landlord could make assumptions based on the financial information about the tenants obtained at the inception of the lease. A trial court would not penalize a landlord by rendering unpaid rent an unenforceable debt when the landlord made a good faith effort to design a reasonable repayment plan despite the tenant's failure to cooperate.

¶93 Second, the moratorium did not completely interfere with landlords' reasonable expectations. There is no question that the rental housing industry generally has been regulated heavily, such as in the Residential Landlord-Tenant Act of 1973, chapter 59.18 RCW, and the forcible entry and unlawful detainer statute, chapter 59.12 RCW. This pervasive regulation put landlords on notice that the government might intervene further in the landlord-tenant relationship.

¶94 Third, the eviction moratorium gave landlords the ability to safeguard and reinstate their rights. The moratorium was temporary, and following its expiration landlords retained all available remedies for nonpayment of rent. The moratorium merely delayed the exercise of those remedies. And as noted above, even during the moratorium landlords could treat unpaid rent as an enforceable obligation if they offered tenants a reasonable repayment plan.

¶95 Federal courts in Washington and in other jurisdictions have ruled that eviction moratoriums do not substantially impair contractual relationships between landlords and tenants. *E.g., Jevons*, 2021 WL 4443084, at *8–9, 2021 U.S. Dist. LEXIS 183567, at *25–30; *Heights Apts.*, 510 F. Supp. 3d at 808–09;

Auracle Homes, 478 F. Supp. 3d at 224–25; *Elmsford Apt. Assocs.*, 469 F. Supp. 3d at 171–72.

¶96 We conclude that the eviction moratorium did not substantially impair the appellants' rental contracts.

b. Reasonable and Necessary Means

¶97 Even if we were to assume that the eviction moratorium substantially impaired the appellants' contractual relationship with their tenants, the moratorium did not violate the contracts clause because it was "reasonable and necessary to serve a legitimate public purpose." *Lenander*, 186 Wn.2d at 414.

¶98 The appellants do not dispute that the eviction moratorium served a legitimate public purpose: to prevent widespread homelessness and the further spread of COVID-19. They argue only that the moratorium did not advance this purpose in an appropriate and reasonable manner. And they focus only on the fact that the eviction moratorium applied to all tenants, including those who suffered no economic hardship or inability to pay as a result of the COVID-19 pandemic.

¶99 However, this case does not involve government contracts, so we must defer to the governor's judgment as to the best way to achieve the compelling government purpose. *See Energy Rsrvs. Grp.*, 459 U.S. at 413. Requiring tenants to prove financial hardship in order to stop eviction proceedings would create further uncertainty and would force tenants to expend limited personal and financial resources to maintain their homes. And some tenants may not have the ability to gather

sufficient evidence to prove an inability to pay, and therefore would lose their homes despite suffering pandemic-related economic distress. Finally, requiring proof of financial hardship potentially would have created the need for thousands of tenants to appear in court, further risking exposure to and spread of COVID-19.

¶100 In addition, the governor's proclamations required tenants to pay rent if they had the financial resources to pay. Proclamation 20-19.1 and all subsequent proclamations contained the statement that "tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic." Proclamation 20-19.1, at 2.

¶101 We conclude that the temporary eviction moratorium was reasonable and necessary to serve the legitimate public purpose of preventing homelessness and the spread of COVID-19.

¶102 Accordingly, we hold that the eviction moratorium did not unconstitutionally impair the appellants' contractual relationship with their tenants.

CONCLUSION

¶103 We affirm the trial court's grant of summary judgment in favor of the State.

WORSWICK, J., and HULL, J. PRO TEM.[*], concur.

[*] Judge Kevin Hull is serving as a judge pro tempore of the court pursuant to RCW 2.06.150(1).

Honorable Erik D. Price, Judge

SUPERIOR COURT OF WASHINGTON

THURSTON COUNTY

GENE GONZALES. et al., Plaintiffs, v. GOVERNOR JAY INSLEE. et al., Defendants.	)	No. 20-2-02525-34 **Amended (to add documents) Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Motion for Partial Summary Judgment**

THIS MATTER having come before the Court on May 21, 2021 on Plaintiffs' Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment. Richard M. Stephens appeared and argued on behalf of Plaintiffs and Assistant Attorney General Zachary Pekelis Jones appeared and argued on behalf of Defendants. This Court heard the arguments of counsel and considered the following pleadings:

1. Plaintiffs' Motion for Partial Summary Judgment;

2. Declaration of Sue Horwath in Support of Plaintiffs' Motion for Partial Summary Judgment;

3. Declaration of Susan Gonzales in Support of Plaintiffs' Motion for Partial Summary Judgment;

4. Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment;

5. Declaration of Kathryn Leathers;

6. Declaration of Jim Baumgart;

7. Declaration of Zachary Pekelis Jones;

8. Plaintiffs' Reply in Support of Motion for Partial Summary Judgment;

9. Declaration of Richard M. Stephens in Support of Plaintiffs' Reply in Support of Motion for Partial Summary Judgment;

10. Declaration of Fred Lofgren in Support of Plaintiffs' Reply in Support of Motion for Partial Summary Judgment;

11. Defendants' Motion for Summary Judgment;

12. Second Declaration of Zachary Pekelis Jones;

13. Plaintiffs' Opposition to Defendants' Motion for Summary Judgment;

14. Declaration of Susan Gonzales in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment;

15. Declaration of Tami Rodriguez in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment; and

16. Defendants' Reply in Support of Motion for Summary Judgment;

17. Third Declaration of Zachary Pekelis Jones;

And the other papers, pleadings, and records in the above-captioned matter.

The Court having heard all argument and considered the entirety of the record and all filings herein, IT IS HEREBY ORDERED that Plaintiffs' Motion for Partial Summary Judgment is DENIED and Defendants' Motion for Summary Judgment is GRANTED as to all five of Plaintiffs' claims.

DATED this 21 day of May, 2021.

s/ Erik D. Price

THE HONORABLE ERIK D. PRICE
Thurston County Superior Court Judge

Presented by:

ROBERT W. FERGUSON Attorney General
s/ Zachary Pekelis Jones
ZACHARY PEKELIS JONES, WSBA #44557
BRIAN ROWE, WSBA #56817
Assistant Attorneys General
JEFFREY T. EVEN, WSBA #20367
Deputy Solicitor General
Attorneys for Defendants
Approved as to form:
STEPHENS & KLINGE LLP
/s/ *Richard M. Stephens*
RICHARD M. STEPHENS, WSBA #21776
Attorney at Law
Attorney for Plaintiffs

FILED
SUPREME COURT
STATE OF WASHINGTON
11/29/2023
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

GENE GONZALES and SUSAN GONZALES, HORWATH FAMILY TWO, LLC, and THE WASHINGTON LANDLORD ASSOCIATION, Petitioners, v. GOVERNOR JAY INSLEE and STATE OF WASHINGTON, Respondents.	**ORDER DENYING FURTHER RECONSIDERATION** No. 100992-5

The Court considered the Petitioners' "Appellants' Motion for Reconsideration". The Court entered an "ORDER AMENDING OPINION" in this case on November 29, 2023.

Now, therefore, it is hereby

ORDERED:

That further reconsideration is denied.

DATED at Olympia, Washington this 29th day of November, 2023.

For the Court

s/ *González, C.J.*
CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
11/30/2023
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

GENE GONZALES and SUSAN GONZALES, HORWATH FAMILY TWO, LLC, and THE WASHINGTON LANDLORD ASSOCIATION, Petitioners, v. GOVERNOR JAY INSLEE and STATE OF WASHINGTON, Respondents.	**M A N D A T E** Supreme Court No. 100992-5 Court of Appeals No. 55915-3-II Thurston County Superior Court No. 20-2-02525-34 **COURT ACTION REQUIRED**

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Thurston County

The opinion of the Supreme Court of the State of Washington was filed on September 28, 2023. The Petitioners filed a motion for reconsideration on October 18, 2023. An "ORDER AMENDING

OPINION" and an "ORDER DENYING FURTHER RECONSIDERATION" were filed on November 29, 2023. This case is now final. This case is mandated to the superior court for further proceedings in accordance with the attached true copy of the opinion and order amending opinion.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this Court at Olympia, Washington, on November 30, 2023.

s/ Sarah R. Pendleton

SARAH R. PENDLETON
Deputy Clerk of the Supreme Court State of Washington

cc: Presiding Judge, Thurston County Superior Court
Clerk, Thurston County Superior Court
Richard M. Stephens
Brian Hunt Rowe
Jeffrey Todd Even
Cristina Marie Hwang Sepe
Reporter of Decisions

STATE OF WASHINGTON

OFFICE OF GOVERNOR JAY INSLEE

PROCLAMATION BY THE GOVERNOR EXTENDING AND AMENDING 20-05 AND 20-19, et seq.

20-19.6

Evictions and Related Housing Practices

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

WHEREAS, the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington State with

unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

WHEREAS, many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

WHEREAS, the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

WHEREAS, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

WHEREAS, under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

WHEREAS, on May 29, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-626, and ordered that courts should begin to hear non-emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

WHEREAS, the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 "that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;" and

WHEREAS, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities; transient housing in hotels and motels; "Airbnb's"; motor homes; RVs; and camping areas; and

WHEREAS, due to the impacts of the pandemic, individuals and families have had to move in with friends or family, and college students have had to return to their parents' home, for example, and such residents should be protected from eviction even though they are not documented in a lease. However, this order is not intended to permit occupants

introduced into a dwelling who are not listed on the lease to remain or hold over after the tenant(s) of record permanently vacate the dwelling ("holdover occupant"), unless the landlord, property owner, or property manager (collectively, "landlord") has accepted partial or full payment of rent, including payment in the form of labor, from the holdover occupant, or has formally or informally acknowledged the existence of a landlord-tenant relationship with the holdover occupant; and

WHEREAS, a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

WHEREAS, as of March 2021, current information suggests that at least 76,000 tenants in Washington will be unable to pay their rent in the near future, reflecting the continued financial precariousness of many in the state. According to the state's unemployment information, significantly more people are claiming unemployment benefits in Washington now versus a year ago. This does not account for the many thousands of others who are filing claims with separate programs such as Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation: in December 2020, nearly 275,000 new and ongoing claims for unemployment-related assistance were filed; and

WHEREAS, a temporary moratorium on evictions and related actions will reduce housing instability,

enable residents to stay in their homes unless conducting essential activities, employment in essential business services, or otherwise engaged in permissible activities, and will promote public health and safety by reducing the progression of COVID-19 in Washington State; and

WHEREAS, I issued Proclamations 20-25, 20-25.1, 20-25.2,and 20 25.3 (Stay Home – Stay Healthy), and I subsequently issued Proclamation 20-25.4 ("Safe Start – Stay Healthy" County-By-County Phased Reopening), wherein I amended and transitioned the previous proclamations' "Stay Home – Stay Healthy" requirements to "Safe Start – Stay Healthy" requirements, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4, et seq., and according to the phase each county was subsequently assigned by the Secretary of Health; and

WHEREAS, when I issued Proclamation 20-25.4 on May 31, 2020, I ordered that, beginning on June 1, 2020, counties would be allowed to apply to the Department of Health to move forward to the next phase of reopening more business and other activities; and by July 2, 2020, a total of five counties were approved to move to a modified version of Phase 1, 17 counties were in Phase 2, and 17 counties were in Phase 3; and

WHEREAS, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remained in place while I worked with the Department of Health and other

epidemiological experts to determine appropriate strategies to mitigate the increased spread of the virus, and those strategies included dialing back business and other activities; and

WHEREAS, on July 23, 2020, in response to the statewide increased rates of infection, hospitalizations, and deaths, I announced an expansion of the Department of Health's face covering requirements and several restrictions on activities where people tend to congregate; and

WHEREAS, on October 6, 2020, due to the increased COVID-19 infection rates across the state, I announced that all counties would remain in their current reopening phases as a result of the continuing surge in COVID-19 cases across the state; and

WHEREAS, positive COVID-19-related cases and hospitalizations steadily rose from early September 2020, through early January, 2021, and the number of COVID-19 cases and COVID-19-related hospitalizations continue to put our people, our health system, and our economy in a precarious position; and

WHEREAS, when I issued Proclamation 20-19.3 on July 24, 2020, the Washington State Department of Health reported at least 51,849 confirmed cases of COVID-19 with 1,494 associated deaths; and as of March 15, 2020, there are at least 330,367 confirmed cases with 5,149 associated deaths; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-19, et seq., are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until 11:59 p.m. on June 30, 2021, as provided herein.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support

implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

ACCORDINGLY, based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, effective immediately and until 11:59 p.m. on June 30, 2021, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of

unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of this Proclamation. This prohibition does not apply to emergency shelters where length of stay is conditioned upon a resident's participation in, and compliance with, a supportive services program. Emergency shelters should make every effort to work with shelter clients to find alternate housing solutions. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury, and does not dispense landlords, property owners, or property managers from their notice obligations prior to entering the property, or from wearing face coverings, social distancing, and complying with all other COVID-19 safety measures upon entry, together with their guests and agents. Any eviction or termination of tenancy notice served under one of the above exceptions must independently comply with all applicable

requirements under Washington law, and nothing in this paragraph waives those requirements.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury.
- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that (a) the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary

residence, or (ii) sell the property. Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution that contain the findings required by this paragraph.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.
- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.
- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency proclaimed in all counties in Washington State.

This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable repayment plan shall be a defense to any lawsuit or other attempts to collect.**

- Nothing in this order precludes a landlord, property owner, or property manager from engaging in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. "Customary and routine" means communication practices that were in place prior to the issuance of Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a resident of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation without threatening eviction; or are otherwise consistent with this order. Within these communications and parameters, it is permissible for landlords, property owners and property managers to provide information to residents regarding

financial resources, including coordinating with residents in applying for rent assistance through the state's Emergency Rent Assistance Program (ERAP) or an alternative state rent assistance program, and to provide residents with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling or parcel of land occupied as a dwelling. This prohibition does not apply to a landlord, property owner, or property manager who provides (a) advance notice of a rent increase required by RCW 59.20.090(2) (Manufactured/Mobile Home Landlord-Tenant Act), or (b) notice of a rent increase specified by the terms of the existing lease, provided that (i) the noticed rent increase does not take effect until after the expiration of Proclamation 2019, et seq., and any modification or extension thereof, and (ii) the notice is restricted to its limited purpose and does not contain any threatening or coercive language, including any language threatening eviction or describing unpaid rent or other charges. Unless expressly permitted in this or a subsequent order, under no circumstances may a rent increase go into effect while this Proclamation, or any extension thereof, is in effect. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19,

whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

- Landlords, property owners, and property managers are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.

- The preceding prohibitions do not apply to operators of long-term care facilities licensed or certified by the Department of Social and Health Services to prevent them from taking action to appropriately, safely, and lawfully transfer or discharge a resident for health or safety reasons, or a change in payer source that the facility is unable to accept, in accordance with the laws and rules that apply to those facilities. Additionally, the above prohibition against increasing, or threatening to increase, the rate of rent for any dwelling does not apply to customary changes in the charges or fees for cost of care (such as charges for personal care, utilities, and other reasonable and customary

operating expenses), or reasonable charges or fees related to COVID-19 (such as the costs of PPE and testing), as long as these charges or fees are outlined in the long-term care facility's notice of services and are applied in accordance with the laws and rules that apply to those facilities, including any advance notice requirement.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity; (b) as it relates to "significant and immediate" risk to the health and safety of others, includes any behavior by a resident which is imminently hazardous to the physical safety of other persons on the premises (RCW 59.18.130 (8)(a)); (c) cannot be established on the basis of the resident's own health condition or disability; (d) excludes the situation in which a resident who may have been exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (e) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

FURTHERMORE, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak—that is, a wave of statewide

homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

ADDITIONALLY, it is also the intent of this order to extend state emergency rent assistance programs and to incorporate the newly approved federal rental assistance funding. The goal is to continue to provide a path for eligible tenants to seek rental assistance, but to now also allow landlords, property owners, and property managers to initiate an application for rental assistance. This process should be collaborative, and I encourage the nonprofit and philanthropic communities to continue their support of programs that help educate and inform both parties of the benefits of these rental assistance programs. Although a new program may need to be created for the newly approved federal rental assistance, all counties should consider the existing program in King County as a model for creating this path for landlords and property owners and property managers.

ADDITIONALLY, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, et seq., is to provide relief to those individuals who have been impacted by the COVID-19 crisis. Landlords and tenants are expected to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment

solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike. I strongly encourage landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

MOREOVER, as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional direction concerning the specific parameters for reasonable repayment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 18th day of March, A.D., Two Thousand and Twenty-One at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State