No. 23-935

In the Supreme Court of the United States

GENE GONZALES AND SUSAN GONZALES,
HORWATH FAMILY TWO, AND
THE WASHINGTON LANDLORD ASSOCIATION,

PETITIONERS,

v.

GOVERNOR JAY INSLEE AND STATE OF WASHINGTON,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE WASHINGTON SUPREME COURT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

In response to the COVID-19 pandemic, Washington's Governor issued several emergency orders, including an order temporarily prohibiting certain residential evictions. The order contained exceptions to allow evictions for safety and health reasons or so landlords could personally occupy or sell their properties, and it did not eliminate or forgive rent obligations. Petitioners filed suit in Washington State court, raising claims only under Washington law and seeking only a forward-looking declaration that the order violated the Washington Constitution. The eviction order ended in June 2021, both by its own terms and under a new Washington statute that implemented a new set of tenant protections not at issue here. The questions presented are:

1. This Court may review state judgments "where any . . . right . . . is specially set up or claimed under the Constitution" of the United States. 28 U.S.C. § 1257(a). Does this Court have jurisdiction under 28 U.S.C. § 1257(a) to review a state court judgment where no federal claims were presented to or addressed by the state supreme court?

2. The Governor's emergency order expired on June 30, 2021, by its own terms and by operation of statute, and the only relief petitioners seek is invalidation of the order. Because petitioners can obtain no effective relief, is this case moot?

3. Did the Washington Supreme Court properly reject petitioners' physical takings challenge under Washington's Constitution?

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INTRODUCTION

The Court lacks jurisdiction to hear this case, and there is no basis for certiorari in any event. Petitioners raised only state law claims below, so no federal question is presented. Moreover, the policy they challenge expired three years ago, so the case is moot. And the decision below creates no conflict with other courts. The Court should deny certiorari.

In 2020, in response to the COVID-19 pandemic, Washington's Governor declared a state of emergency and issued a number of emergency orders, including the one at issue here. To prevent a catastrophic increase in homelessness and an influx of people to congregate shelters, the Governor temporarily barred certain residential evictions, though his order contained exceptions to allow evictions for safety and health reasons or so landlords could personally occupy or sell their properties. The order did not eliminate or forgive rent obligations.

Petitioners filed suit in state court challenging the order, raising only state law claims. While their case was pending, the order they challenged expired by its own terms and was explicitly terminated by statute, and the Governor ended the state of emergency, removing his authority to issue emergency orders. The Washington Supreme Court recognized that the case was moot, but decided it anyway under a state doctrine allowing courts to decide important issues in moot cases. The court rejected all of petitioners' claims.

Petitioners now seek this Court's review, but the Court lacks jurisdiction and the case fails this Court's normal certiorari standards as well.

This Court has jurisdiction to hear cases arising out of state courts "where any . . . right . . . is specially set up or claimed under the Constitution" of the United States, 28 U.S.C. § 1257(a), but here, petitioners raised no such claim. In the Washington courts, petitioners raised claims only under state statutory and constitutional provisions, and the Washington Supreme Court decided their takings claim only under article I, section 16 of Washington's Constitution. There is no basis for jurisdiction here.

This case is also moot. Petitioners sought only a declaration that the Governor's eviction order was invalid, but the order expired by its own terms three years ago, and was terminated by statute as well. There is no relief this Court could grant. The Washington Supreme Court reached the merits under a state law "public interest exception" to mootness, but no federal exception to mootness applies.

Finally, even if the Court could decide this case, there is no reason it should. The Washington Supreme Court's decision is consistent with this Court's precedents. And courts across the country have almost uniformly rejected physical takings challenges to temporary eviction moratoria during the pandemic. There is no conflict justifying review. Indeed, this Court recently denied a petition that squarely presented a physical takings challenge under the U.S. Constitution to the City of Seattle's eviction moratorium. *See El Papel, LLC v. City of Seattle*, 144 S. Ct. 827 (2024). Nothing has changed since then that would warrant this Court's review. The Court should deny certiorari.

JURISDICTION

Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1257(a), which permits review of state court judgments "where any title, right, privilege, or immunity is specially set up or claimed under the Constitution" of the United States. As detailed below, this Court lacks jurisdiction because petitioners' complaint raised claims only under the Washington Constitution, not the federal one, and the lower court opinion resolved only state law questions.

COUNTERSTATEMENT OF THE CASE

A. The COVID-19 State of Emergency

The outbreak of COVID-19 was a global public health disaster that upended life for everyone. COVID-19 is a highly contagious virus that has caused more than 1.1 million deaths in the United States and 16,000 deaths in Washington.[1]

Washington State confirmed the first case of COVID-19 in the United States and was the country's first epicenter. In response, on February 29, 2020, the Governor issued Proclamation 20-05, declaring a state of emergency in Washington State due to COVID-19. Proclamation by Governor Jay Inslee, No. 20-05 (Wash. Feb. 29, 2020), https://perma.cc/63QA-HEA7.

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[1] Centers for Disease Control and Prevention, COVID-19 Data Tracker, *United States COVID-19 Hospitalizations, Deaths, Emergency Department (ED) Visits, and Test Positivity by Geographic Area*, https://covid.cdc.gov/covid-data-tracker/#maps_deaths-total (last visited May 13, 2024).

By mid-March 2020, Washington had one of the highest per capita rates of infection of any state in the country. Pet. App. 4a.

With few proven therapeutics and no vaccine in the early part of the pandemic, a primary strategy to slow COVID-19's spread was to promote physical distance to reduce the chance of transmission. Pet. App. 4a.

B. The Risks and Costs of Mass Evictions

From the outset, the Governor's Office understood that the COVID-19 pandemic would significantly reduce economic output and income, causing widespread financial harm. Against that backdrop, the Governor's Office anticipated that, without countermeasures, the COVID-19 pandemic's economic dislocations would result in mass evictions, exacerbating housing instability and homelessness in the State. Pet. App. 5a. Mass evictions would not only displace people at the very time that it was critical to stay home, but would also force many into congregate settings like shelters and over-occupied homes, further spreading COVID-19. Pet. App. 5a. Allowing evictions would also flood the court system with unlawful detainer filings, forcing tenants to risk their health to appear in housing courts that are crowded even in normal times. Pet. App. 5a.

Through December 2020, over 1.6 million Washingtonians filed unemployment claims, Pet. App. 5a, and the State's unemployment rate exceeded its Great Recession peak. Due to the economy's fragility, housing instability remained a significant concern. Census survey data reported that, in March 2021, 10.7% of renters in Washington were

behind on their rent, and around 17.8% of renters reported having little or no confidence in their ability to make rent.[2] Up to 790,000 people in Washington would be at risk of eviction without an eviction moratorium. Pet. App. 6a. The consequences of mass evictions during the early stages of the pandemic could have been catastrophic. They would have resulted in—according to projections performed by the University of Washington's Institute for Health Metrics and Evaluation—up to 59,000 more eviction-attributable COVID-19 cases and 621 more deaths in the State. Pet. App. 6a.

C. The Governor's (Now-Expired) Emergency Orders on Evictions and Follow-Up Legislation

Given the dangers of mass evictions amidst the COVID-19 pandemic, on March 18, 2020, Governor Inslee issued Proclamation 20-19, temporarily prohibiting most residential evictions pursuant to his emergency powers. Proclamation by Governor Jay Inslee, No. 20-19 (Wash. Mar. 18, 2020), https://perma.cc/CVS9-3EK3; Wash. Rev. Code § 43.06.220(1)(h).[3] Correctly predicting COVID-19

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[2] U.S. Census Bureau, *Week 27 Houshold Pulse Survey: March 17 – March 29*, Housing Tables 1b, 2b (WA tab), https://www.census.gov/data/tables/2021/demo/hhp/hhp27.html (last visited May 10, 2024).

[3] Jurisdictions around the country enacted eviction moratoria, which significantly reduced the rates of eviction filings during the pandemic. Emily A. Benfer, et al., *COVID-19 Housing Policy: State and Federal Eviction Moratoria and Supportive Measures in the United States During*

to "cause a sustained global economic slowdown," the Governor determined that "the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes," which in turn would "increas[e] the life, health, and safety risks to a significant percentage of our people from the COVID-19 pandemic[.]" Proclamation 20-19 at 1. The Governor amended and extended the Proclamation as the pandemic and recession persisted, culminating in Proclamation 20-19.6, which expired on June 30, 2021. Proclamation by Governor Jay Inslee, No. 20-19.6 (Wash. Mar. 18, 2021), https://perma.cc/7QP4-Y7WT (Pet. App. 79a-95a).

The Governor's Office sought input from stakeholders on crafting amendments, including from residential property owners and managers. Based on their input, the Governor added several exceptions to protect property owners. In its final (and long-expired) form, the Proclamation allowed property owners to pursue eviction if: (1) it was "necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident"; (2) the landlord intended to "personally occupy the premises as [a] primary residence" (with timely notice to the tenant); or (3) the landlord intended to "sell the property" (also with timely notice). Pet. App. 87a; *see also* Pet. App. 6a.

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the Pandemic 33 Hous. Pol'y Debate 1390, 1394, 1397 (2022), https://www.tandfonline.com/doi/full/10.1080/10511482.2022.2076713.

The Proclamation also provided a mechanism to collect unpaid rent during the eviction moratorium. Though it prohibited landlords from treating unpaid rent "as an enforceable debt or obligation that is owing or collectable," that prohibition applied only when nonpayment was "a result of the COVID-19 outbreak and occurred on or after February 29, 2020[.]" Pet. App. 89a. Thus, the Proclamation permitted action other than eviction to collect unpaid rent that predated or was unrelated to the pandemic. The Proclamation also permitted a landlord to collect *any* unpaid rent if a tenant refused or failed to comply with an offered "re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident." Pet. App. 90a. The Proclamation did not forgive any unpaid rent and stressed that tenants "who are not materially affected by COVID-19 should and must continue to pay rent[.]" Pet. App. 80a.

D. Federal and State Assistance Measures

In March 2020, Congress provided $150 billion in direct assistance for state, territorial, and tribal governments. CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). From this fund, Washington distributed more than $100 million in rental-assistance grants.[4] Congress later enacted legislation giving more than $21 billion in rental assistance. American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4.

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[4] Wash. Dep't of Com., *$100 million rental assistance headed to Washington communities* (Aug. 3, 2020), https://www.commerce.wa.gov/news/community-grants/100-million-rental-assistance-headed-to-washington-communities/.

In February 2021, the Washington State Legislature adopted a $2.2 billion COVID relief bill. Engrossed Substitute H.B. 1368, 67th Leg., Reg. Sess. (Wash. 2021), *enacted as* 2021 Wash. Sess. Laws 41-53 (ch. 3). The bill provided Washington's Department of Commerce $325 million to administer an emergency rental and utility assistance program, which provided grants to local housing providers. *Id.* at 42. It also sent $40 million toward other housing programs, including grants to landlords who lost "rental income from elective nonpayor tenants during the state's eviction moratorium[,]" *id.* at 43. The State also appropriated another $658 million to Washington's Department of Commerce to administer rental and utility assistance. Engrossed Substitute S.B. 5092, 67th Leg., Reg. Sess. (Wash. 2021), *enacted as* 2021 Wash. Sess. Laws 3238-4003 (ch. 334).

The Legislature additionally created a permanent revenue source for eviction prevention and housing stability services, including rental assistance. Engrossed Second Substitute H.B. 1277, 67th Leg., Reg. Sess. (Wash. 2021), *enacted as* 2021 Wash. Sess. Laws 1448-59 (ch. 214).

The Legislature also enacted Engrossed Second Substitute S.B. 5160, 67th Leg., Reg. Sess. (Wash. 2021), *enacted as* 2021 Wash. Sess. Laws 609-32 (ch. 115), to provide durable tenant protections during and after the COVID-19 state of emergency. This law ended the eviction moratorium instituted through Proclamation 20-19.6 on June 30, 2021. Wash. Rev. Code § 59.18.630. The law requires that if a tenant had remaining unpaid rent that accrued between March 1, 2020, and the end of the public health

emergency, a landlord must offer that tenant a reasonable plan for rent repayment whose monthly payments cannot exceed one-third of the monthly rent during the period of non-payment. *Id*. But if that tenant "fails to accept the terms of a reasonable repayment plan within 14 days of the landlord's offer," the landlord may pursue an unlawful detainer action, subject to requirements of the eviction resolution pilot program. *Id.* If a tenant defaults on the repayment plan, the landlord may apply for reimbursement from the Landlord Mitigation Program or proceed with an unlawful detainer action. *Id.* The law provides that landlords are eligible to file certain reimbursement claims up to $15,000 for unpaid rent. Wash. Rev. Code § 43.31.605(1)(c).

Because the new programs in E2SSB 5160 took time to implement, the Governor issued Proclamation 21-09 as a bridge to meet the emergency and ensure the protections of the new law were respected until certain provisions were implemented. Proclamation 21-09, as amended, expired on October 31, 2021. Proclamation by Governor Jay Inslee, No. 21-09.2 (Wash. Sept. 30, 2021), https://perma.cc/K6U8-TWFD.

The Governor ultimately terminated the state of emergency, effective October 31, 2022. Proclamation by Governor Jay Inslee, No. 20-05.1 (Wash. Oct. 28, 2022), https://perma.cc/N24H-78SV (BIO App. 45a-48a).

E. Procedural Background and Other Challenges to the Proclamation

Petitioners are residential property owners and an association of such owners. They filed their lawsuit in December 2020 in state court, mounting a facial challenge to Proclamation 20-19 solely under state law. Petitioners claimed (1) the Proclamation exceeded the Governor's emergency powers under state statute; (2) the emergency powers statute itself unconstitutionally delegated legislative powers to the Governor; and (3) the Proclamation violated the Washington Constitution's (a) separation of powers doctrine (b) Petition Clause, (c) Takings Clause, and (d) Contracts Clause. Relevant here, petitioners alleged a physical takings claim only under article I, section 16 of Washington's Constitution. *See* BIO App. 21a-23a. They did not press a partial regulatory taking claim under the theory that the Proclamation went too far. Petitioners only sought declaratory relief and did not seek damages.

On cross-motions for summary judgment, the state trial court ruled for the Governor and the State on all claims. Pet. App. 72a-74a. While on appeal at the state court of appeals, the Proclamation expired on its own terms and by operation of statute on June 30, 2021. *See supra* pp. 8-9 (describing E2SSB 5160, which offered tenant protections during and after the public health emergency). The court of appeals recognized the case was moot, but exercised its discretion to review the moot appeal under a state law exception for moot appeals that involve continuing and substantial public interest. Pet. App. 47a-48a. The court went on to affirm the trial court in full. Specific to the physical takings

claim, the court held the Proclamation did not effect an unconstitutional physical taking under article I, section 16 of Washington's Constitution. Pet. App. 64a.

Petitioners then obtained review from the Washington Supreme Court. Pet. App. 7a. The court also applied the state public interest exception to mootness, explaining that exploring the emergency powers of the Governor was a matter of public concern. Pet. App. 8a. On the merits, the state high court affirmed the court of appeals. Regarding the takings claim, the Washington Supreme Court squarely identified that the claim was presented under article I, section 16 of the Washington Constitution. Pet. App. 14a. The court then unanimously concluded the moratorium "w[as] not a physical taking of the petitioners' property under article I, section 16 of the state constitution." Pet. App. 16a. Because petitioners had not presented any claims under the U.S. Constitution, the court did not issue any holding with respect to the Fifth Amendment of the U.S. Constitution.

Apart from the instant case that made its way through state courts, landlords brought two other facial challenges to the Governor's Proclamation delaying certain residential evictions. In the second challenge, trial counsel in this case represented a different set of landlords who pursued state *and* federal constitutional claims and brought suit for declaratory and injunctive relief in the United States District Court for the Eastern District of Washington. The district court granted summary judgment in favor

of the state defendants, including on the landlords' per se physical takings claim under the Fifth Amendment. *Jevons v. Inslee*, 561 F. Supp. 3d 1082 (E.D. Wash. 2021), *vacated as moot*, No. 22-35050, 2023 WL 5031498 (9th Cir. Aug. 8, 2023) (unpublished), *cert. denied*, 144 S. Ct. 500 (2023). Because the Governor's eviction moratorium order ended while the appeal was pending, the Ninth Circuit vacated and remanded the case with instructions to the district court to dismiss the case as moot. *Jevons*, 2023 WL 5031498. This Court denied the petition for certiorari. *Jevons*, 144 S. Ct. 500.

In the third case, counsel from the Pacific Legal Foundation (Supreme Court counsel in this matter) represented a set of landlords who challenged the Governor's Proclamation, as well as the City of Seattle's ordinance on evictions, in the United States District Court for the Western District of Washington. There, too, the landlords pressed a per se physical takings theory under the Fifth Amendment. After denying the landlords' motion for a preliminary injunction, the magistrate judge recommended that the claims for declaratory and injunctive relief against the State be dismissed as moot and that the State's and City's motions for summary judgment otherwise be granted. *El Papel LLC v. Durkan*, No. 2:20-cv-01323-RAJ-JRC, 2021 WL 4272323 (W.D. Wash. Sept. 15, 2021). The district court largely adopted the report and recommendation. *El Papel LLC v. Durkan*, No. 2:20-cv-01323-RAJ, 2022 WL 2828685 (W.D. Wash. July 20, 2022). On appeal, because the landlords sought nominal damages, the

Ninth Circuit determined a court could grant effectual relief if the landlords were to prevail. *El Papel, LLC v. City of Seattle*, No. 22-35656, 2023 WL 7040314, at *1 (9th Cir. Oct. 26, 2023) (unpublished), *cert. denied*, 144 S. Ct. 827 (2024). However, their Fifth Amendment takings claim could not lie against Governor Inslee and Attorney General Ferguson because they were sued in their official capacities. *Id.* The Ninth Circuit went on to affirm dismissal of the Takings Clause claim against the City of Seattle's COVID-19 moratorium, holding this Court's decision in *Yee v. City of Escondido*, 503 U.S. 519 (1992), controlled and foreclosed the claim. *Id.* at *2. This Court denied the landlords' petition for certiorari, a petition that makes largely the same arguments as the petition filed here (except that it sought review of a federal question actually presented below). *El Papel,* 144 S. Ct. 827; *see* Pet. for a Writ of Certiorari, *El Papel*, No. 23-807 (U.S. Jan. 23, 2024).

REASONS FOR DENYING THE PETITION

A. This Court Lacks Jurisdiction to Consider the Federal Takings Question Because Petitioners Never Asserted One Below

This Court lacks jurisdiction to consider the question presented because petitioners never presented the federal takings issue to the Washington Supreme Court, and the court never addressed it.

Petitioners attempt to invoke this Court's jurisdiction under 28 U.S.C. § 1257(a). That statute authorizes this Court to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any . . .

right . . . is *specially set up* or *claimed* under the Constitution or the treaties or statutes of . . . the United States." 28 U.S.C. § 1257(a) (emphasis added). In interpreting this statute and its predecessors, this Court has held that it will not consider a federal law issue unless it "was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review." *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (per curiam); *see also Yee*, 503 U.S. at 533 (declining to review claim petitioners did not include in their complaint and did not raise before the state court of appeals); *Illinois v. Gates*, 462 U.S. 213, 218, (1983) (tracing this principle back to *Crowell v. Randell*, 35 U.S. (10 Pet.) 368, 392 (1836), and *Owings v. Norwood's Lessee*, 9 U.S. (5 Cranch) 344 (1809)).[5]

The party seeking certiorari bears the burden of demonstrating it properly presented any federal issue "'at the time and in the manner required by the state law'" and that the state court had "'a fair opportunity to address the federal question that is sought to be presented here.'" *Adams*, 520 U.S. at 86-87. To ensure compliance with this burden, Rule 14.1(g)(i) requires a petitioner seeking review of a state court judgment to specify "the stage in the proceedings, both in the court of first instance and in

[5] While this Court has not definitively resolved whether the presentation requirement is jurisdictional or prudential, it has applied the rule in cases seeking review of state court judgments with "very rare exceptions." *Adams*, 520 U.S. at 86 (quoting *Yee*, 503 U.S. at 533).

the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts[.]"

Petitioners do not even attempt to comply with Rule 14.1(g)(i). Nor could they: they never asserted a federal takings claim in any state court. Instead, they carefully crafted their complaint to raise state law claims only, including their takings claim solely under article I, section 16 of the Washington Constitution. BIO App. 10a-24a. That no federal takings claim was properly presented is also clear from the question petitioners framed for review to the Washington Supreme Court: "Whether the requirement that Housing Providers continue to provide housing to tenants who do not pay rent or who violate other conditions of the tenancy causes a taking of property that requires payment of just compensation under Article I, Section 16 of the constitution?" Pet. for Review, *Gonzales v. Inslee*, No. 100992-5, 2022 WL 18144308, at *5 (Wash. June 3, 2022). Petitioners attempt to gloss over their failure to raise a federal issue, but none of their arguments support this Court's jurisdiction over a state court judgment addressing solely state law issues.

Petitioners argue that Washington courts follow federal law with respect to takings. Pet. 1-2 (quoting *Yim v. City of Seattle*, 451 P.3d 675, 682 (Wash. 2019)). But the Washington Supreme Court explicitly recognized that it had "not yet had occasion to consider whether the right to exclude," as asserted by petitioners, "is accorded similar protection under article I, section 16" as under federal law. Pet. App. 15a. The court below further explained that

it did not need to resolve this question to reject petitioners' state law claim. Petitioners thus have no basis to argue that Washington courts necessarily follow federal law in interpreting the per se takings claim petitioners asserted below. Pet. App. 15a; *cf. Vlaming v. W. Point Sch. Bd.*, 10 F.4th 300, 308 (4th Cir. 2021) (dismissing case for lack of federal jurisdiction where state court could, but was not required to, follow federal law in resolving state constitutional question).

But even if Washington courts analyzed the state's Takings Clause strictly in parallel with the federal one, it would not change the "fundamental" principle of federalism that state supreme courts remain the ultimate expositors of state law. *Florida v. Powell*, 559 U.S. 50, 56 (2010) ("'It is fundamental . . . that state courts be left free and unfettered . . . [when] interpreting their state constitutions'" (quoting *Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940))); *see also Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) ("Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights."); *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 488 (1976) ("We are, of course, bound to accept the interpretation of [state] law by the highest court of the State.").

Petitioners also cite "independent and adequate state grounds" case law to argue that this Court should presume the Washington Supreme Court relied on federal law in resolving petitioners' takings claim because the court did not expressly identify state law as independent and adequate grounds for its decision. Pet. 2. But the independent

and adequate state grounds rule only applies where "the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character." *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935). In such cases, this Court has recognized that its jurisdiction "fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Id.* In applying the rule, this Court will presume that federal law controlled the state court's determination "where there is strong indication . . . that the federal constitution as judicially construed controlled the decision below," *Michigan v. Long*, 463 U.S. 1032, 1040 (1983) (alteration in original) (quoting *National Tea Co.*, 309 U.S. at 556), unless the "state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds," *id.* at 1041.

This rule has no application here because the state court did not decide petitioners' claim on both state and federal grounds. *Fox Film Corp.*, 296 U.S. at 210. Each of the cases cited by petitioners applied the independent and adequate grounds rule when the state court cited both state and federal ground for its decision. Pet. 2 (citing *Powell*, 559 U.S. at 56 (state court judgment addressed warnings provided before custodial interrogation under federal and state constitution); *Ohio v. Robinette*, 519 U.S. 33, 36-37 (1996) (state court judgment addressed rights "guaranteed by the federal and Ohio Constitutions"); *Long*, 483 U.S. at 1038 n.3 (similar)). Here, in contrast, the Washington Supreme Court specifically

noted that petitioners never raised a federal claim. Pet. App. 15a ("The petitioners do not bring a claim under the federal takings clause . . . ."). The court explicitly decided the claim solely on state law grounds, resting its holding that the eviction moratorium orders challenged by petitioners "were not a physical taking of the petitioners' property under article I, section 16 of the state constitution." Pet. App. 16a. The *Long* presumption does not apply to an exclusively state law judgment.

Petitioners strictly brought state law claims (thereby avoiding removal to federal court). They never presented a federal takings argument to the state courts below. Their attempt to have this Court supervise the highest state court's interpretation of state constitutional law must be rejected. This Court lacks jurisdiction over the federal issue raised by petitioners.

B. This Court Lacks Jurisdiction Because the Case is Moot

Three separate events have mooted this case. First, by its own terms, the challenged Proclamation expired over thirty-four months ago, on June 30, 2021. *See* Pet. App. 86a (order in effect "until 11:59 p.m. on June 30, 2021"). Second, by enacting E2SSB 5160, Washington's Legislature independently sealed the end of the eviction moratorium. *See* Wash. Rev. Code § 59.18.630(1) ("The eviction moratorium instituted by the governor of the state of Washington's proclamation 20-19.6 shall end on June 30, 2021"). Third, the state of emergency—the predicate

condition for the Governor's exercise of emergency power in issuing the Proclamation and continuation of the moratorium—ended on October 31, 2022, extinguishing the Governor's authority to revive or proclaim another emergency order on evictions. *See* BIO App. 45a-48a.

Petitioners only sought equitable relief. *See* BIO App. 32a (for petitioners' takings claim, "Plaintiffs seeks [sic] a declaratory judgment of rights and obligations under the Washington Uniform Declaratory Judgment Act, [Wash. Rev. Code §] 7.24.010 and Civil Rule 57"); BIO App. 25a (prayer for relief). Any award of declaratory relief adjudicating the past validity of an expired emergency order would only concern dead issues in which this Court would give an advisory opinion. *See Trump v. Hawai'i*, 583 U.S. 941 (2017) ("Because those provisions of the [Executive] Order have 'expired by [their] own terms[,]' the appeal no longer presents a 'live case or controversy.'" (second brackets in original)); *Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412, 415 (1972) (holding case moot and declaratory relief "inappropriate" after statute had been repealed). Accordingly, petitioners' case is moot—there is "no longer a 'Case' or 'Controversy' for purposes of Article III"—because "the issues presented are no longer 'live'" and petitioners "'lack a legally cognizable interest in the outcome.'" *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982)).

Though the Washington Supreme Court acknowledged the appeal was moot, it applied the "continuing and substantial public interest" exception under Washington law to exercise its discretion and decide the appeal. *See* Pet. App. 8a (citing *In re Dependency M.S.R.*, 271 P.3d 234 (Wash. 2012)). But there is no federal counterpart or "public importance" exception to Article III's jurisdictional requirements, so the only reason the state court found the case was not moot has no hold here. *See Doremus v. Bd. of Educ. of Borough of Hawthorne*, 342 U.S. 429 (1952) (holding there was no case or controversy within the jurisdiction of the Court, despite a state court judgment reaching the merits of a First Amendment claim); *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959) (this Court "decides questions of public importance" only "in the context of meaningful litigation"); *see also Jevons*, 2023 WL 5031498 (holding federal Takings Clause challenge to same eviction moratorium was moot because it only sought retrospective declaratory and injunctive relief); *36 Apt. Assocs., LLC v. Cuomo*, 860 F. App'x 215, 217 (2d Cir. 2021) (summary order) (dismissing challenge to New York's eviction moratorium because, *inter alia*, it expired on its own terms and "the intervening passage of legislation").

Nor can either of the two federal exceptions to Article III mootness apply here. The first exception, for "voluntary cessation," allows a court to overlook mootness if the defendant cannot show that the

challenged practice "cannot 'reasonably be expected to recur.'" *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 240 (2024). The exception is intended to prevent gamesmanship by defendants who "engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where [they] left off, repeating this cycle" until they achieve "all [their] unlawful ends." *Already*, 568 U.S. at 91.

Here, the triple confirmation of the eviction moratorium's end makes clear that petitioners have no reasonable expectation of recurrence. The Proclamation expired, the Legislature inscribed its termination into statute, and the Governor's predicate emergency powers authority to proclaim or continue it terminated. Moreover, the Proclamation has been (unsuccessfully) challenged several times, *see supra* pp. 11-13; the Governor ended Proclamation 20-19 not to avoid litigation but in response to substantial progress made in combatting the pandemic and legislation giving tenants and landlords a glidepath following the Proclamation's end.

The second mootness exception, for actions "capable of repetition, yet evading review," applies "where (1) 'the challenged action is in its duration too short to be fully litigated prior to cessation or expiration,' and '(2) there is a reasonable expectation that the same complaining party will be subject to the same action again,'" *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016) (source alterations accepted) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)). With respect to the second prong of the analysis, the party raising the exception bears the

burden of making a "reasonable showing that [they] will again be subjected to the alleged illegality." *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983).

The "capable of repetition, yet evading review" exception is also inapplicable because the Governor's emergency order was not too short to be fully litigated prior to its cessation or expiration. It lasted for fifteen months. Petitioners did not seek preliminary injunctive relief, and instead litigated their case through summary judgment in the trial court. Petitioners' case was among several parallel challenges to Washington's eviction moratorium to fail on the merits. *See El Papel*, 2023 WL 7040314, at *2; *Jevons*, 561 F. Supp. 3d 1082. Moreover, this Court has had occasion to consider non-moot constitutional challenges to other eviction moratoria but declined. *See, e.g.*, *Apt. Ass'n of L.A. Cnty., Inc. v. City of Los Angeles*, 142 S. Ct. 1699 (2022) (denying petition in Contracts Clause challenge to City of Los Angeles' moratorium); *El Papel*, 144 S. Ct. 827 (denying petition in Takings Clause challenge to City of Seattle's moratorium).

The several and definitive confirmations of the eviction moratorium's termination distinguish this case from other pandemic-era cases that this Court determined were not moot. In both *Tandon* and *Roman Catholic Diocese*, restrictions on religious gatherings remained in place, even though some categorizations were modified and "goalposts" moved. *Tandon v. Newsom*, 593 U.S. 61, 64 (2021); *see also Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 20 (2020). Here, neither the challenged

measure nor the predicate state of emergency is in place.[6] And it would be pure speculation that the Governor would again declare a state of emergency related to COVID-19 to then again delay certain residential evictions. Finally, the Governor's extant statutory authority to declare a state of emergency and issue emergency orders is not a "constant threat" that excludes the possibility of mootness. *Roman Catholic Diocese*, 592 U.S. at 20. To take that view would be to preclude any case involving government action from becoming moot so long as the government has authority to act. The Governor's Proclamation limiting evictions expired almost three years ago, the Legislature independently ended it and enacted follow-up legislation, and the termination of the state of emergency triply confirmed the end of the eviction moratorium.

Because this case is plainly moot, without exception, the Court should deny the Petition.

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[6] Circuit courts around the country have consistently held that challenges to state COVID-19 restrictions were moot where the challenged policies had expired and there was no reasonable prospect they would be re-adopted. *See, e.g.*, *Brach v. Newsom*, 38 F.4th 6 (9th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 854 (2023); *Resurrection Sch. v. Hertel*, 35 F.4th 524 (6th Cir.) (en banc), *cert. denied*, 143 S. Ct. 372 (2022); *Bos. Bit Labs, Inc. v. Baker*, 11 F.4th 3 (1st Cir. 2021); *County of Butler v. Governor of Pennsylvania*, 8 F.4th 226 (3d Cir. 2021), *cert. denied sub nom. Butler County v. Wolf*, 142 S. Ct. 772 (2022); *Spell v. Edwards*, 962 F.3d 175 (5th Cir. 2020).

C. None of the Standard Criteria for Certiorari Are Satisfied

1. The Washington Supreme Court properly rejected petitioners' physical takings claim under state law, and there is no conflict with the decisions of this Court

The Governor's emergency order did not take property for the government or someone else. Instead, it regulated tenancies that began with the voluntary invitation of landlords, and thus did not effect a per se physical taking. The state supreme court's rejection of petitioners' physical takings theory under the state constitution did not depart from this Court's precedents and does not require this Court's intervention.

Physical takings "are relatively rare" and "easily identified." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 324 (2002). The "essential question" is "whether the government has physically taken property for itself or someone else—by whatever means[.]" *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021). When "a regulation results in physical appropriation of property, a *per se* taking has occurred[.]" *Id.*

Below, the Washington Supreme Court focused on the voluntary nature of the relationship between tenants and landlords, explaining that tenants do not intrude on landlords' property when they

are there "with the landlords' permission[.]" Pet. App. 15a. Thus, "[g]overnment regulation of that voluntary relationship without more, is not a taking." Pet. App. 15a (citing *Yim*, 451 P.3d 675; *Yee*, 503 U.S. 519).

That holding is consistent with this Court's precedents under the Fifth Amendment. *See, e.g.*, *Block v. Hirsh*, 256 U.S. 135, 157-58 (1921) (Washington, D.C. WWI regulation controlling rents and restricting evictions except in cases of owner occupancy did not violate the Takings Clause). In *Loretto*, for example, this Court found a physical taking when the government forced a property owner to accept the installation of cable equipment on the owner's property—a "permanent physical occupation" that the owner never invited. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 421 (1982). Though the apartment owner had rented the property to a tenant, the owner had not invited the installation of a third party's cable equipment. This Court contrasted the uninvited physical installation with "substantial regulation of an owner's *use* of his own property[,]" which "the Court has often upheld[.]" *Id.* at 426 (emphasis added). What mattered was the government's imposition of a physical invasion by an uninvited "stranger." *Id.* at 434, 436. The "stranger" was not a tenant—whose relationship with a landlord the government has "broad power to regulate"—but an uninvited third party. *Id.* at 440. This Court rejected the notion that this "physical occupation rule w[ould] have dire consequences for the government's power to adjust landlord-tenant relationships." *Id.* Rather, under *Loretto*, a state's "broad" power to

regulate landlord-tenant relations extends so long as the government does not compel "the permanent occupation of the landlord's property by a third party." *Id.* Unlike the cable installations in *Loretto*, here, petitioners' tenants were not foreign fixtures on their properties but were people they had voluntarily invited onto their properties. The Proclamation thus falls outside *Loretto*'s "very narrow" definition of a physical taking. *Id.* at 441.

If *Loretto* had left any doubts that landlord-tenant regulations fall outside the physical occupation rule, this Court dispelled them in *Yee*, 503 U.S. 519. In *Yee*, mobile home park owners challenged an ordinance that, along with a state law, they claimed prevented them from either "set[ting] rents," "decid[ing] who their tenants will be," "evict[ing] a mobile home owner," or "easily convert[ing] the property to other uses." *Id.* at 526-27. These laws, the owners contended, made "the mobile home owner . . . effectively a perpetual tenant of the park." *Id.* at 527. They argued for a *per se* taking under *Loretto*, because "what has been transferred from park owner to mobile home owner is no less than a right of physical occupation of the park owner's land." *Id.* This Court rejected the park owners' expansive theory of physical takings. *See id.* at 532. Reiterating the central holding in *Loretto*, this Court explained that "[t]he government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land." *Id.* at 527. The mobile home laws did "no such thing" because the park owners had "voluntarily rented their land to mobile home owners." *Id.* Given that voluntary acquiescence,

the laws "merely regulate[d] petitioners' *use* of their land by regulating the relationship between landlord and tenant[,]" and did not constitute a physical taking. *Id.* at 528.[7]

The emergency order petitioners challenge did not force landowners to become landlords and did not compel landlords to let strangers onto their properties. Nor did it undo any of their tenants' obligations, including the obligation to pay rent. Instead, the Proclamation regulated the landlord-tenant relationship by putting the remedy of eviction on pause in some situations. As in *Yee*, because petitioners "voluntarily open[ed] their property to occupation by others," they "cannot assert a *per se* right to compensation based on their inability to exclude particular individuals." *Id.* at 531. Because landlords voluntarily invited tenants onto their properties and had thus subjected the use of their properties to regulation, the Proclamation's regulation of their rental relationships effected no physical taking.

Petitioners cannot manufacture a conflict with cases about the government taking actual possession or imposing physical easements to force a landowner to suffer an original invasion. *See* Pet. 26; *E.g.*, *Kaiser Aetna v. United States*, 444 U.S. 164 (1979) (government granting the public a right of

[7] This Court noted that "[a] different case would be presented were the statute . . . to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy." *Yee*, 503 U.S. at 528.

access to a previously private lagoon constituted a compensable taking). These cases do not apply where a landlord voluntarily invites a tenant onto the property.

This is particularly true of *Cedar Point Nursery*, 594 U.S. 139.[8] *Cedar Point* addressed an access regulation forcing certain property owners (agricultural employers) to suffer an intermittent invasion by third parties they never invited onto their land (union organizers). *Id.* at 143-44. The only new issue in *Cedar Point* was whether the law created any less a physical invasion for purposes of a *per se* taking when the imposition of uninvited third parties did not span every hour of every day of the year but was "temporary" in the sense that it was "intermittent." *Id.* at 153.

Cedar Point in no way disturbs this Court's precedent that "statutes regulating the economic relations of landlords and tenants are not *per se* takings." *Fed. Commc'n Comm'n. v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987); *see also id.* ("This element of required acquiescence is at the heart of the concept of occupation."). Rather, *Cedar Point* confirmed that

[8] Petitioners called the Washington Supreme Court's attention to *Cedar Point*. The court explained that though it had not yet had occasion to consider "whether the right to exclude is accorded . . . protection under article I, section 16," it assumed *Cedar Point* could apply but did not find the case to be helpful to the issue at hand. Pet. App. 15a. Instead, the court focused on the voluntary nature of the relationship between landlords and tenants, which was absent in *Cedar Point*.

a *per se* takings claim turns on "whether the government has physically taken property . . . or has instead restricted a property owner's ability to use his own property." *Cedar Point Nursery*, 594 U.S. at 149. *Cedar Point* did not overrule or undermine *Yee* but cited it favorably for general takings principles. *Id.* And in *Cedar Point*, this Court distinguished laws that regulate how landowners must treat those they have already invited onto their land: "Limitations on how a business generally open to the public may treat individuals on the premises are readily distinguishable from regulations granting a right to invade property closed to the public." *Id*. at 156-57 (distinguishing *PruneYard v. Robins*, 447 U.S. 74 (1980)). *Yee* makes clear that the same is true for rental property: limitations on how a landlord may treat tenants she has voluntarily invited onto her property are distinct from regulations granting a right to invade property closed to the public. *See Yee*, 503 U.S. at 527-28, 531. It is the invitation that "'makes the difference.'" *Id.* at 532.

As this Court explained in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 130 n.27 (1978), it is a "fallacy" to contend that "a 'taking' must be found to have occurred whenever the land-use restriction may be characterized as imposing a 'servitude' on the claimant's parcel." This is because restrictions on the economic use of land are not physical occupations. They do not "destroy[] *each* of the[] rights" to "possess, use and dispose of" the land. *Loretto*, 458 U.S. at 420, 435. Indeed, under the Governor's Proclamation, landlords remained free to

retake possession or dispose of their properties. Pet. App. 87a. Instead, regulations that temporarily regulate landlords' use of their properties are subject to a partial regulatory takings standard, which petitioners eschewed below. *See Tahoe-Sierra Pres. Council*, 535 U.S. at 334-42; Pet. App. 15a. The key, again, is that the tenancies began with landlords' voluntary invitations, which subjected landlords to regulation of the use of their properties.

Petitioners latch onto a sentence from *Alabama Ass'n of Realtors v. Department of Health & Human Services*, 594 U.S. 758 (2021)—an order this Court issued in response to an emergency motion for injunctive relief—to try to create a conflict. *See* Pet. 26-27. *Ala. Ass'n of Realtors*, 594 U.S. at 760-61, dealt with a challenge to an eviction moratorium enacted by the Centers for Disease Control and Prevention (CDC). The trial court ruled that the CDC lacked authority to enact the moratorium, but the court stayed its order pending appeal. *Id*. The issue before this Court was whether to grant the plaintiffs' emergency motion to vacate the stay pending the CDC's appeal. *Id*. at 762. On the likelihood-of-success prong, this Court did not decide a takings claim; it determined only that, although Congress could adopt a moratorium, the CDC lacked authority to do it administratively. *Id.* at 766. Turning to the equities, this Court concluded its list of harms landlords would suffer with the sentence petitioners invoke: "And preventing them from evicting tenants who breach their leases intrudes on one of the most

fundamental elements of property ownership—the right to exclude." *Id.* at 765 (citing *Loretto*, 458 U.S. 435); *see* Pet. i, 7, 27.[9] But this Court did not address a takings claim, and did not mention or call *Yee* into doubt. And in distinguishing the federal agency's scope of authority, this Court recognized that landlord-tenant relationships fall under "the particular domain of state law." *Id.* at 764.

There is no conflict between the Washington Supreme Court's decision and this Court's precedents justifying certiorari.

2. The Washington Supreme Court's decision does not involve an important question of federal law that conflicts with circuit courts or state courts of last resort

Petitioners fail to identify any meaningful conflict between the Washington Supreme Court's decision and circuit courts and other state courts of last resort.

As petitioners recognize, federal courts have nearly uniformly rejected *per se* physical takings challenges under the U.S. Constitution to temporary state and local regulations delaying evictions during the COVID-19 pandemic. Pet. 20-21; *see El Papel*, 2023 WL 7040314, at *2; *Jevons*, 561 F. Supp. 3d at 1106; *Williams v. Alameda County*, 642 F.

[9] *Yee* too acknowledged this principle while nevertheless rejecting a per se physical invasion takings claim. 503 U.S. at 528 ("'the right to exclude is doubtless . . . one of the most essential sticks in the bundle of rights that are commonly characterized as property'" (quoting *Kaiser Aetna*, 444 U.S. at 176)).

Supp. 3d 1001, 1017 (N.D. Cal. 2022), *motion to certify appeal denied*, 657 F. Supp. 3d 1250 (N.D. Cal. 2023); *GHP Mgmt. Corp. v. City of Los Angeles*, No. CV 21-06311, 2022 WL 17069822, at *2-4 (C.D. Cal. Nov. 17, 2022); *Stuart Mills Props., LLC v. City of Burbank*, No. 2:22-cv-04246-RGK-AGR, 2022 WL 4493573, at *3 (C.D. Cal. Sept. 19, 2022); *Farhoud v. Brown*, No. 3:20-cv-2226-JR, 2022 WL 326092, at *10 (D. Or. Feb. 3, 2022); *Gallo v. District of Columbia,* 610 F. Supp. 3d 73, 87-90 (D.D.C. 2022), *recons. granted on other grounds,* 659 F. Supp. 3d 21 (D.D.C. 2023); *S. Cal. Rental Hous. Ass'n v. County of San Diego*, 550 F. Supp. 3d 853, 865-66 (S.D. Cal. 2021); *Elmsford Apt. Assocs., LLC v. Cuomo*, 469 F. Supp. 3d 148, 163-64 (S.D.N.Y. 2020), *appeal dismissed sub nom. 36 Apt. Assoc., LLC v. Cuomo*, 860 F. App'x 215 (2d Cir. 2021); *Baptiste v. Kennealy*, 490 F. Supp. 3d 353, 387-88 (D. Mass. 2020); *Auracle Homes, LLC v. Lamont*, 478 F. Supp. 3d 199, 220-21 (D. Conn. 2020); *but see Heights Apts., LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022), *denying reh'g and reh'g en banc*, 39 F.4th 479 (8th Cir. 2022) (discussed *infra* pp. 33-34).[10] The Court has denied certiorari in several of these petitions. *See El Papel*, 144 S. Ct. 827; *Jevons*, 144 S. Ct. 500; *see also Apt. Ass'n of L.A. Cnty.*, 142 S. Ct. 1699 (Contracts Clause challenge). Nothing has changed in the interim to make the issue any more worthy of this Court's review.

[10] Courts have likewise rejected business owners' claims that COVID-related restrictions effected per se physical takings. *See Skatemore, Inc. v. Whitmer*, 40 F.4th 727, 739 (6th Cir.), *cert. denied*, 143 S. Ct. 527 (2022) (collecting cases).

This leaves two decisions petitioners say conflict with the state supreme court's decision. But neither of these decisions addressing federal claims conflict with the Washington Supreme Court's determination that Washington's eviction moratorium did not violate Washington's constitution. There is no conflict here.

Even setting this aside, petitioners overstate any alleged conflict. The first case cited by petitioners, dealt with a series of COVID-19-related executive orders that required landlords to forbear evicting tenants with overdue rent. *Heights Apts.*, 30 F.4th at 724-25. The Eighth Circuit held the landlord plausibly alleged a per se takings claim. *Id.* at 733. The panel purported to distinguish *Yee*, assuming that "[t]he landlords in *Yee* sought to exclude future or incoming tenants rather than existing tenants," while the Minnesota restrictions "forbade the nonrenewal and termination of ongoing leases, even after they had been materially violated . . . ." *Id.* But as Judge Colloton identified, the panel ignored that the *Yee* petitioners, too, complained that they were unable to evict present tenants. This Court nevertheless "held that the disputed laws did not effect a *per se* taking, because the landlords 'voluntarily rented their land to mobile home owners,' and a landlord who wished to 'change the use of his land' could 'evict his tenants, albeit with 6 or 12 months[']notice.'" *Heights Apts., LLC v. Walz*, 39 F.4th 479, 480 (8th Cir. 2022) (Colloton, J., dissenting from denial of rehearing en banc) (quoting *Yee*, 503 U.S. at 527-28). Because the panel began from the mistaken premise that the *Yee* petitioners

were not trying to evict present tenants, it "never addressed why the scheme in *Yee* that allowed a landlord to evict existing tenants only for limited reasons after up to twelve months' notice did not constitute a *per se* taking, while a temporary eviction moratorium during a pandemic ostensibly does." *Id.* The Eighth Circuit's disregard of *Yee* rests on misinterpretation, stands alone, and creates no meaningful conflict warranting this Court's review. *See, e.g.*, *Cmty. Hous. Improvement Program v. City of New York*, 59 F.4th 540, 552 (2d Cir.), *cert. denied*, 144 S. Ct. 264 (2023) ("The caselaw is exceptionally clear that legislatures enjoy broad authority to regulate land use without running afoul of the Fifth Amendment's bar on physical takings." (citing *Yee*, 503 U.S. at 527)); *El Papel*, 144 S. Ct. 827 (denying petition invoking *Heights Apartments*).

The second primary case petitioners identify as a source of conflict is *Cwynar v. City & County of San Francisco*, 109 Cal. Rptr. 2d 233 (Cal. Ct. App. 2001). There, the California Court of Appeal held that landlords could sufficiently state a claim that San Francisco effected per se taking of their property under the U.S. and California Constitutions where a city ordinance limited their ability to evict tenants for owner or family occupation. *Id.* at 250. Here, in contrast, the Proclamation neither compelled landowners to become landlords nor refrain *in perpetuity* from ending a landlord-tenant relationship. It also allowed landlords to evict in order to personally occupy or sell their properties. Those differences, along with the obvious difference between the

Washington Supreme Court interpreting its state constitution and a California intermediate court interpreting California and federal law, do not warrant this Court's attention.

Finally, petitioners implore this Court to take on this case to correct the purported "repeated distortions of *Yee* at the expense of private property rights." Pet. 8; *see* Pet. 15-23. But petitioners' arguments only highlight that circuit courts have applied *Yee*'s principles uniformly. And petitioners neglect to note that in many of the examples they cite, this Court declined to accept review where physical takings claims and arguments about the alleged misapplication of *Yee* were pressed. *See, e.g.*, *74 Pinehurst LLC v. New York*, No. 22-1130, 2024 WL 674658 (U.S. Feb. 20, 2024) (denying petitions challenging state and city rent stabilization laws); *Cmty. Hous. Improvement Program*, 144 S. Ct. 264 (denying petition challenging city rent stabilization law); *Kagan v. City of Los Angeles*, 144 S. Ct. 71 (2023) (denying petition challenging city ordinance that limited the grounds on which landlords could evict their tenants); *Harmon v. Kimmel*, 566 U.S. 962 (2012) (denying petition challenging city rent stabilization law).

D. Petitioners' Desired Outcome Would Upend Regulations for Housing Conditions and the Landlord-Tenant Relationship

Petitioners' central argument is that any regulation that "expand[s] the occupancy that was consented to" is a per se physical taking. *See* Pet. 28. But this argument runs headlong into this Court's

holdings that "[s]tates 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." *Loretto*, 458 U.S. at 440; *accord Yee*, 503 U.S. at 528-29; *Fla. Power Corp.*, 480 U.S. at 252.

Moreover, petitioners' theory that a government effects a per se physical taking when it "compels an occupation that is contrary to a property owner's consent, the lease, and the law of unlawful detainer," Pet. 28, can lead to dangerous consequences. Imagine a landlord and an unmarried couple enter into a lease that limits tenants to those who are married despite a state law outlawing housing discrimination based on marital status. *See, e.g.*, Wash. Rev. Code § 49.60.222. The tenants later reveal to the landlord that they are unmarried, and the landlord wishes to evict them. Under petitioners' theory, prohibiting that eviction would effect a per se physical taking because the tenants violated the lease term and the landlord's consent. But if that were the case, any antidiscrimination housing law that overrides lease terms discriminating by race, religion, or age would effect a per se physical taking. That cannot be the law, and it isn't. *See Yee*, 503 U.S. at 529 (the government may require a landlord "to accept tenants he does not like without automatically having to pay compensation" (citation omitted)); *cf. Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964) (rejecting takings challenge to public accommodations provisions of the Civil Rights Act of 1964).

Petitioners' expansive view that any limitation on their right to exclude a tenant effects a physical taking does not square with this Court's precedents and would upend myriad housing regulations. The Court should decline their invitation to do so and deny their petition.

E. It Would Be Especially Inappropriate to Grant Certiorari Here Where this Case has Insurmountable Jurisdictional Defects and the Court has Recently Denied Other Petitions Presenting this Question

As detailed above, this case has irredeemable jurisdictional defects: there is no federal question presented and the case is moot. As also detailed above, dozens of lawsuits have been filed since the COVID-19 pandemic's outset challenging state and local eviction limitations, and this Court has denied certiorari in many such cases that sought to raise the same issues petitioners purport to raise here. *See supra* pp. 31-32, 37. This combination makes it particularly inappropriate to grant certiorari here. If this issue required the Court's attention, there were any number of prior opportunities for the Court's review that would not have required ignoring jurisdictional defects. The Court should deny certiorari here.

CONCLUSION

The petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED.

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APPENDIX

SUPERIOR COURT OF WASHINGTON
FOR LEWIS COUNTY

Gene Gonzales and Susan Gonzales, Horwath Family Two, LLC, and the Washington Landlord Association, Plaintiffs, vs. Governor Jay Inslee and State of Washington, Defendants.	No. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs allege as follows:

INTRODUCTION

1. In the wake of the novel coronavirus, Defendant Jay Inslee, Governor of the State of Washington, ("Defendant" or "Governor") hastily instituted a series of emergency proclamations numbered as Proclamation 20-19 through 20-19.4 which prohibit people who provide rental housing from exercising their contractual and statutory remedies to evict tenants who have no right to remain in their property. These includes tenants who refuse to pay rent for any or no reason whatsoever, knowing that they cannot be evicted for not paying rent and

cannot be charged any late fees or be subject to an enforceable debt or obligation that is collectable for being delinquent on rental payments.

2. Plaintiffs are sympathetic to tenants who have actually suffered hardship due to the COVID-19 Pandemic. Plaintiffs have every incentive to work with those tenants who do not have the financial means to pay all or some portion of their rent. However, the Proclamations actively undermine any such attempts at cooperation and allow tenants who have the ability to pay all or some of their rent to ignore and ultimately escape their contractual obligations for the foreseeable future regardless of whether they have been financially harmed by the Pandemic.

3. While many businesses have suffered as a result of the Pandemic, the owners of rental property are the only people who are required by any of the Governor's emergency proclamations to continue to provide a good or service without charge. Stores and restaurants lost business opportunities due to the Pandemic, but they were not required to continue to provide goods or food to customers without an ability to charge for the items they sold. The Governor's Proclamations regarding eviction require housing providers to continue to provide rental housing without an ability to insist that tenants pay for the privilege they agreed to when they voluntarily entered into their leases.

4. Additionally, the owners of rental property are still required to pay property taxes and for maintenance and, in many situations, pay for

sewer, water, garbage services or mortgages on the properties even though the tenants in their property are not paying rent.

5. The Proclamations violate the rights of people who provide rental housing by destroying a fundamental feature of their contracts, oppressively placing on them the burden of providing free housing to any and all tenants instead of properly spreading the burden on the public as a whole, and essentially mandating that their property be used for private use by tenants, a burden which is absolutely prohibited by Article I, Section 16 of the Washington state constitution.

6. "To be sure, individual rights secured by the Constitution do not disappear during a public health crisis." *In re Abbot*, 954 F.3d 772, 784 (5th Cir. 2020). Fundamental and unalienable rights are by their very nature "essential" – they are the same essential rights which led to the founding of this country and this state. For, "[h]istory reveals that the initial steps in the erosion of individual rights are usually excused on the basis of an 'emergency' or threat to the public. But the ultimate strength of our constitutional guarantee lies in the unhesitating application in times of crisis and tranquility alike." *United States v. Bell*, 464 F.2d 667, 676 (2d Cir. 1972) (Mansfield, J., concurring).

7. "Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the federal government and its limitations

of the power of the States were determined in light of emergency, and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system." *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 389, 426 (1934).

PARTIES

8. Plaintiffs Gene Gonzales and Susan Gonzales are the owners of properties which they lease to tenants in Centralia, Washington.

9. Plaintiff Horwath Family Two, LLC is a limited liability company organized in the State of Washington and the owner of residential property which it leases to tenants in Centralia, Washington.

10. Plaintiff Washington Landlord Association (WLA) is a nonprofit association of landlords organized under the laws of the State of Washington with members in Lewis County.

11. Defendant Jay Inslee is the chief executive officer and Governor of the State of Washington.

12. The State of Washington is duly organized state government within the United States of America.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter under Article IV, Section 6 of the Washington Constitution because jurisdiction has not been vested exclusively by law in another court.

14. Venue is proper in this Court because all causes of action in this case arose in Lewis County and this action is against a public officer for acts done in virtue of his office. RCW 4.12.020.

FACTS

A. Plaintiffs' Situations

15. Plaintiffs Gene Gonzales and Susan Gonzales own several residential properties which they lease to tenants in Centralia, Washington.

16. At least one of those tenants has not paid rent for several months and Plaintiffs are informed and believe that tenant has not suffered any reduction in income due to Covid-19. That tenant has violated rules of the tenancy and has not paid the bill for electricity for several months which will likely become a lien on the Plaintiffs' property. Plaintiffs Gene and Susan Gonzales are unable to evict that tenant because of the Governor's Proclamations.

17. Plaintiff Horwath Family Two, LLC owns a residential property located in Centralia, Washington which it leases to a tenant who has not made a rental payment since of March of 2020.

18. Plaintiff Horwath Family Two, LLC is informed and believes that this tenant has not paid for electrical service since and is concerned that the electric utility will place a lien on this Plaintiff's property even though the tenant is responsible for paying for electricity. The tenant has not responded to Plaintiffs' repeated efforts to communicate to work out make payment options.

19. Plaintiff Horwath Family Two, LLC has other rental properties and has worked with other tenants to find equitable solutions if the tenants are having difficulty paying for rent for any reason, including COVID-19-related reasons, such as loss or reduction in employment.

20. Plaintiff Washington Landlord Association (WLA) is a nonprofit association organized under the laws of the State of Washington, representing the interests of landlords in Washington State. The WLA has members in Lewis County who lease residential property and are affected by the Governor's Proclamations challenged herein. Representing the interests of landlords in litigation such as this case is within the mission of the WLA.

B. The Outbreak of COVID-19

19. The global COVID-19 pandemic ("Pandemic") brought on by the Novel Coronavirus has caused catastrophic and unprecedented economic damage across the globe, and with it, significant loss of life and fundamental changes to both world and national economies. The Pandemic has turned the world upside-down, causing profound damage to the lives of all Americans and to the national economy. To be sure, State of Washington and U.S. officials have faced tremendous adversity in planning, coordinating, and at times, executing effective nationwide and statewide policies to protect the general public's health, safety and welfare during this time of crisis. However, the Proclamations, as well-intentioned as they may be, have had an unlawful and disparate impact on housing providers.

20. In response to the outbreak in the State of Washington, on February 29, 2020, Governor Inslee issued a "State of Emergency" Order to address the threat of the spread of the Pandemic throughout Washington's communities. Governor Inslee subsequently issued Proclamation No. 20-25 on March 23, 2020, which, among other things, mandated that "all individuals living in the State of Washington" were to "stay home or at their place of residence except as needed to maintain the continuity of operations of the critical infrastructure sectors and other "essential services."

C. The Governor's Eviction Related Proclamations

21. On March 18, 2020, Governor Inslee issued Proclamation 20-19. In relevant part, the Order purported to suspend provisions of state law that would allow the providers of residential rental housing to evict tenants even if they were able to pay rent but chose not to do so. The Proclamation stated it was to remain in effect until April 17, 2020.

22. On April 16, 2020, Governor Inslee issued Proclamation No. 20-19.1 which remained in effect until June 4, 2020. This Proclamation, like the others before it, has three provisions which Plaintiffs contend are in violation of constitutional rights as explained below. Those provisions are:

a. A prohibition on evictions (Eviction Moratorium), which is not tied to anything related to the Pandemic. However, it is subject to exceptions where the lessor (a) provides an affidavit that the eviction 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 intent to (i) personally occupy the premises as a primary residence, or (ii) sell the property.

b. A prohibition on imposing fees for late payment (Suspension of Late Fees), regardless of whether the Pandemic has impacted the tenant's ability to pay and the inability to treat unpaid rent as a debt or financial obligation. The inability to treat unpaid debt as a financial obligation of the tenant is lifted only if the lessor offers the tenant and the tenant refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health, and other circumstances of that resident. However, there is no corresponding obligation of tenants to cooperate with the development of a repayment plan and tenants may refuse to provide information that would enable the creation of a repayment plan that is reasonable based on the tenant's financial, health and other circumstances.

23. On June 2, 2020, Governor Inslee issued Proclamation 20-19.2, which was to remain in effect until August 1, 2020. On July 24, 2020, Governor Inslee issued Proclamation 20-19.3, which was to remain in effect until October 15, 2020. On October 14, 2020, Governor Inslee issued Proclamation 20-19.4, a true and correct copy of which is attached hereto as Appendix A. It remains in effect until December 31, 2020. The restrictions described above are included in all of these Proclamations with some variation in each.

24. While purportedly intended to provide relief to tenants impacted by the Pandemic, the Proclamations are not tailored to a tenant's actual inability to pay rent and significantly (and needlessly) infringe on the constitutional rights of housing providers within the State of Washington. This action seeks a ruling that Proclamations 20-19 through 20-19.4 are illegal and the enforcement of Proclamation 20-19.4 should be enjoined.

25. Proclamation 20-19.4, among other things, prohibits housing providers from initiating or continuing residential eviction proceedings based upon non-payment of rent. While Proclamation 20-19.4 provides no relief for housing providers and requires them to continue meeting their contractual and statutory obligations as lessors, it completely abrogates the material obligations of lessees and eliminates all the contractual remedies housing providers ordinarily have when tenants breach their lease provisions. Under the Proclamations, tenants may continue to occupy their respective premises at no charge, utilizing the water, power, trash, sewage, and other fees that the housing providers must continue to pay without reimbursement. By stripping all remedies away from owners – without requiring tenants to demonstrate an inability to pay rent – the Proclamations create a legal disincentive for tenants who can pay all or some of what they owe from doing so because there is no recourse for such calculated behavior.

26. The Proclamations fail to address how a housing provider would be able to collect rent from those tenants who take advantage of the Eviction Moratorium. Indeed, the Governor has banned

housing providers from pursuing their primary remedy (eviction) needed to mitigate damages where the tenant fails to pay rent and then went a step further by proclaiming that such nonpayment could not be enforced as a debt or legal obligation. Every month a housing provider is prevented from renting its unit to a paying tenant is a month for which the housing provider cannot mitigate any damages. This Eviction Moratorium forces owners to allow tenants who have stopped paying and to continue to occupy their units for many months and likely well into 2021 and beyond. Because unpaid rent is declared to not be an enforceable debt or obligation under the Proclamations, there is no hope for housing providers to be made whole.

27. The impact of the Proclamations is thus particularly devastating because housing providers are forced to give up collection of rent and effectively give interest-free loans of an indefinite time period to tenants regardless of whether those tenants have any Pandemic-related inability to pay. The Proclamations also require housing providers to financially support their tenants during the Pandemic by subsidizing tenants' rent, utilities and other charges without any support to the housing provider.

FIRST CAUSE OF ACTION

Governor's lack of authority to issue Proclamations 20-19 through 20-19.4

21. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though set forth in full here.

22. Proclamation 20-19.4 asserts that the Governor has exercised his "emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations."

23. Proclamation 20-19.4 also asserts that the Governor is operating "under Chapters 38.08, 38.52 and 43.06 RCW" in proclaiming that a State of Emergency exists 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" December 31, 2020. "Accordingly, based on the above noted situation and under the provisions of RCW 43.06.220(1)(h) . . . I prohibit the following activities related to residential dwellings and commercial rental properties in Washington state" after which is included the provision on evictions.

24. The Proclamations challenged herein are not authorized by RCW 43.06.220. This is evident from the different language in Subsections (1) and (2). Subsection (2) authorizes the Governor to "issue an order or orders concerning waiver or suspension of statutory obligations or limitations" in limited areas. RCW 43.06.220(4) states: "No order or orders concerning waiver or suspension of statutory obligations or limitations under subsection (2) of this section may continue for longer than thirty days unless extended by the legislature through concurrent resolution. If the legislature is not in session, the waiver or suspension of statutory obligations or limitations may be extended in writing by the leadership of the senate and the house of

representatives until the legislature can extend the waiver or suspension by concurrent resolution." However, "leadership" of the legislature is not the legislature.

25. Subsection (1) of RCW 43.06.220(1) provides that the Governor may prohibit certain activities. Subsection (h) includes the catch all provision which the Governor cites in his Proclamations that he may prohibit "[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."

26. Subsection (2) provides strictures on suspending statutory obligations. If Subsection (1)(h)'s reference to "other activities" includes statutory obligations a the Proclamations suggest, that conclusion makes Subsection (2) meaningless, a result which is contrary to the standards of statutory construction.

27. If the Proclamations are otherwise lawful, they suspend the following statutory obligations:

a. RCW 59.12.030 provides that tenants are liable for unlawful detainer if the tenant remains after the lease term has ended, if the tenant is in default in the payment of rent or if the tenant fails to comply with requirements of the lease after ten days notice, if the tenant commits or causes waste, carries on an unlawful business or allows a nuisance to occur or if the person has no right to enter the property at all.

b. RCW 59.18.080 requires that "The 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."

c. RCW 59.18.130 provides that "Each 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[.]"

d. RCW 59.18.130(1)-(10) sets forth ten enumerated statutory obligations of tenants.

e. RCW 59.18.140 provides that "(1) The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his or her dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his or her initial occupancy of the dwelling unit and thus become part of the rental agreement."

f. RCW 59.18.160 provides that the lessor may (1) Bring an action in an appropriate court, or at arbitration if so agreed for any remedy provided under this chapter or otherwise provided by law.

g. RCW 59.18.170 provides that landlords may charge late fees if rent is paid more than five days late.

h. RCW 59.18.050 provides: "The district or superior courts of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter within the respective jurisdictions of the district or superior courts as provided in Article IV, section 6 of the Constitution of the state of Washington."

28. In *Faciszewski v. Brown*, 187 Wn.2d 308 (2016), the Court explained: "To regain possession of the property, the landlord may file an unlawful detainer action against the tenant. RCW 59.12.070. Upon filing an unlawful detainer action, the landlord may request the court to issue a writ of restitution restoring the property to the landlord. RCW 59.12.090. For residential property, a landlord seeking a writ of restitution must request a show cause hearing. RCW 59.18.370." *Id.* at 314.

29. Proclamation by the Governor 20-19.4 waives, suspends, amends, modifies and otherwise limits the statutory obligations and limitations imposed on landlords and tenants in the Residential Landlord-Tenant Act of 1973, Chapter 59.18 RCW.

30. Proclamation by the Governor 20-19.4 waives, suspends, amends, modifies and otherwise limits the statutory obligations and limitations imposed on landlords and tenants in the Unlawful Detainer statute, chapter 59.12 RCW.

31. The Governor has no authority to waive statutory obligations in regard to the providers of rental housing to evict tenants under RCW 43.06.220(1) or (2).

32. Plaintiffs seek a declaratory judgment of rights and obligations under the Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil Rule 57 as to the allegations above. An actual dispute exists between Plaintiffs and Defendants whose interests are genuinely opposing in nature. These disputed interests are direct and substantial. A judicial determination can provide a final and conclusive resolution as to the parties' rights and responsibilities.

SECOND CAUSE OF ACTION

RCW 43.06.220 Unlawfully Delegates Legislative Powers and Violates the Separation of Powers Principle

33. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though set forth in full here.

34. RCW 43.06.220 purports to give the Governor pure legislative power to suspend laws, even though it is subject to certain conditions. The Washington constitution gives the Governor only a limited role in the legislative process, namely the power to veto. *See Washington State Grange v. Locke*,153 Wn.2d 475, 487 (2005) and that power is limited to the time period before the new legislation becomes effective and is subject to an overriding vote of the legislature. Article III, Section 12 of the Washington constitution. In light of the limited

legislative role of the Governor, the constitution does not allow the legislature to delegate its legislative power to repeal or suspend a law to any other person.

35. While there have been disputes as to whether the legislature has properly delegated legislative power to administrative agencies that promulgate rules, *State v. Crown Zellerbach Corp.*, 92 Wn.2d 894 (1979), there is no authority to suggest the legislature can delegate pure legislative authority (such as the repeal or suspension of laws) to anyone, including the Governor, a fraction of the legislature or any other person entity, elected or otherwise.

36. "Under art. II, § 1, [t]he legislative authority of the State is vested in the Legislature . . . and it is unconstitutional for the Legislature to abdicate or transfer its legislative function to others." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 234 (2000). This includes an inability to transfer legislative functions even to the people even the people have a power to legislate through the initiative process. *Amalgamated Transit Union*, 142 Wn.2d at 204.

37. "There is no question that under art. II, § 1 the Legislature cannot delegate its legislative authority. As noted, '[I]t is unconstitutional for the legislature to abdicate or transfer to others its legislative function.'" *King County v. Taxpayers of King County*, 133 Wn.2d 584, 605 (1997) (quoting *Keeting v. PUD No. 1 of Clallam County*, 49 Wn.2d 761, 767 (1957)). The Supreme Court concluded that unconstitutional delegation of legislative power occurred by giving voters power to determine whether a proposal should be enacted.

38. Therefore, there is no authority that the legislature can delegate to anyone—even the Governor—the quintessential legislative power to enact, amend or suspend laws. The Proclamations purport to suspend numerous laws.

39. Nevertheless, Washington's governmental structure is not without solutions. In times of emergencies, the Governor has the power to call the legislature back into session to amend, repeal or suspend laws when the legislative branch determines such amendment, repeal or suspension is appropriate. Article II, Section 12(2) and Article III, Section 7. However, the Governor has chosen not to call the legislature back into session to deal with the Covid-19 Pandemic and determine what laws should be suspended or replaced or supplemented with others.

40. "'The Legislature is prohibited from delegating its purely legislative functions' to other branches of government." *Auto. United Trades Org. v. State*, 183 Wash.2d 842, 859 (2015) (AUTO) (quoting *Diversified Inv. P'ship v. Dep't of Soc. & Health Servs.*, 113 Wash.2d 19, 24 (1989)).

41. The unlawful delegation of legislative authority is born out of the separation of powers doctrine, inherent in both Washington and federal jurisprudence. The principal function of the separation of powers doctrine is to provide a "safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). The separation of powers doctrine "serves mainly to ensure that the fundamental functions of each branch remain inviolate." *Colvin v. Inslee*, 195 Wn.2d 879,

892 (2020) (quoting *Carrick v. Locke*, 125 Wn.2d 129, 134 (1994)). The Washington State 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 (2009) (quoting *Carrick*, 125 Wn.2d at 135).

42. In light of that doctrine, "it is unconstitutional for the Legislature to abdicate or transfer its legislative function to others." *Brower v. State*, 137 Wash.2d 44, 54 (1998) (citation omitted).

43. Washington law recognizes that one branch of government cannot overwrite the legislative branch. *See State v. Munson*, 23 Wn. App. 522, 525 (1979) (citing *State v. Thompson*, 111 Wash. 525, 527 (1920)).

44. Hence, even if RCW 43.06.220 were deemed to authorize the Governor's Proclamations challenged herein, RCW 43.06.220 is an unconstitutional delegation of legislative power to the Governor which violates the separation of powers doctrine.

45. Plaintiffs seek a declaratory judgment of rights and obligations under the Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil Rule 57 as to the allegations above. An actual dispute exists between Plaintiffs and the Governor whose interests are genuinely opposing in nature. These disputed interests are direct and substantial. A judicial determination can provide a final and conclusive resolution as to the parties' rights and responsibilities.

THIRD CAUSE OF ACTION

Unconstitutional Interference with Power of the Judiciary and Right to Petition Government for Redress of Grievances

46. Plaintiff incorporates by reference each and every allegation contained in previous paragraphs as though set forth in full here.

47. Proclamation 20-19.4 prohibits the following:

> 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.

48. Plaintiffs have a statutory right to seek eviction of tenants. This provision of the Proclamation interferes with Plaintiffs' constitutional right to seek redress in the judicial branch of government, but also interferes with the judicial branch's independent

power to resolve disputes and thereby violates the separation of power doctrine inherent in the constitution.

49. In *Waples v. Yi*, 169 Wn.2d 152 (2010), the Court concluded that the notice requirement in a statute conflicted with a court rule on the commencement of a lawsuit and for that reason the statute was in violation of the separation of powers as intruding on the inherent power of the judiciary.

50. The Legislature cannot exercise or prevent the exercise of judicial powers by the judiciary. *O'Connell v. Conte*, 76 Wn.2d 280 (1969) (legislative determination that attorney general should be guardian for incompetent persons invaded the judiciary's role).

51. The Proclamations challenged herein invade the judiciary's role in resolving disputes involving tenants and their violation of conditions of their lease or failure to pay rent. The judiciary's power to resolve these disputes is inherent in the judicial branch and is supported by existing statutory law. The Proclamations violate the power of the judiciary and the right of owners of rental property to seek relief from the judiciary.

52. Plaintiffs seek a declaratory judgment of rights and obligations under the Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil Rule 57 as to the allegations above. An actual dispute exists between Plaintiffs and Defendants whose interests are genuinely opposing in nature. These disputed interests are direct and substantial. A

judicial determination can provide a final and conclusive resolution as to the parties' rights and responsibilities.

FOURTH CAUSE OF ACTION

Violation of the Takings Clause of Art. I, § 16 of the Washington Constitution

46. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

47. Article I, Section 16 of the Washington Constitution provides that just compensation be provided prior to any taking of property for public use and prohibits taking of private property for private use.

48. The State Supreme Court has concluded that the standards for finding a taking of property without formal condemnation are the same as finding a taking under the Fifth Amendment to the United States Constitution. *Yim v. City of Seattle* (*Yim I*), 194 Wn. 2d 651, 672 (2019). When the state requires a physical occupation of private property, that is considered a *per se* taking under federal law and now under state law. Federal law is also clear that occupation of private property is a *per se* taking even if the occupation is temporary or less than permanent. *Arkansas Game and Fish v United States*, 568 U.S. 23 (2012).

49. Washington courts have routinely held that the Washington Constitution provides just compensation to property owners when their land is taken because the law seeks to bar the government

from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. "The talisman of a taking is government action which forces some private persons alone to shoulder affirmative public burdens, 'which, in all fairness and justice, should be borne by the public as a whole.'" *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 964 (1998) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

50. Prohibiting Plaintiffs from rightfully collecting rent from its tenants in the State of Washington, in exchange for the tenants' lawful possession of Plaintiffs' properties, despite other compliance measures being taken to satisfy the public health interests at stake and to financially compensate those affected by COVID-19, violates Plaintiffs' fundamental Constitutional rights.

51. Additionally, the taking of Plaintiffs' property interests are not for public use at all, but for the private use of tenants. No member of the public, much less the public as a whole, has a right to use those tenancies or avoid paying rent for occupying a property. Unlike the Fifth Amendment to the United States Constitution, Article I, Section 16 of the Washington constitution is explicit: "Private property shall not be taken for private use." *See also State ex rel. Washington State Convention and Trade Center v. Evans*, 136 Wn.2d 811 (1998) ("The constitution prohibits the taking of private property for a private use.") The Proclamations are in violation of the explicit prohibition in Article I, Section 16 of the Washington state constitution on the state taking private property for private use.

52. Plaintiffs seeks a declaratory judgment of rights and obligations under the Washington Uniform Declaratory Judgment Act, RCW 7.24.010 and Civil Rule 57. An actual dispute exists between Plaintiffs and Defendants whose interests are genuinely opposing in nature. These disputed interests are direct and substantial. A judicial determination can provide a final and conclusive resolution as to the parties' rights and responsibilities.

FIFTH CAUSE OF ACTION

Unconstitutional Impairment of Contracts

53. Plaintiffs incorporate by reference each and every allegation contained in previous paragraphs as though set forth in full here.

54. Plaintiffs have contracts with their tenants that require the payment of rent as well as impose other conditions of the tenancy and allow for eviction if rent is not paid without the consent of Plaintiffs.

55. The Proclamations challenged herein completely destroys that essential portion of the contract that a tenant must either pay rent, obtain Plaintiffs' consent or be evicted. The Proclamations violate the impairment of contracts clause in Article I, Section 23 of the Washington constitution.

56. An unconstitutional impairment of contracts occurs when "the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). Furthermore, "[t]he impaired relationship must be a 'contract' in the usual

sense of the word 'signifying an agreement of two or more minds, upon sufficient consideration, to do or not to do certain acts.'" *Haberman v. Wash. Pub. Power Supply System*, 109 Wn.2d 107, 145 (1987) (quoting *Crane v. Hahlo*, 258 U.S. 142, 146 (1922)). Plaintiffs' leases with their tenants are contracts under Washington law.

57. "A contract is impaired by a statute which alters its terms, imposes new conditions or lessens its value." *Caritas Servs., Inc. v. Dep't of Soc. & Health Servs.*, 123 Wn.2d 391, 404 (1994). An impairment may be substantial if a party relied on the supplanted clause. *Id.* at 405. In entering into leases, Plaintiffs relied upon the provision of the leases that require payment of rent as a condition of occupying Plaintiffs' property and that eviction could be the result if rent was not paid.

58. The Proclamations have altered the terms of Plaintiffs' contracts, essentially added the condition that there would be no eviction, regardless of ability to pay, when rent is not paid, and lessened the value of the lease to Plaintiffs.

59. Plaintiffs seek a declaratory judgment of rights and obligations under the Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil Rule 57 as to the allegations above. An actual dispute exists between Plaintiffs and Defendants whose interests are genuinely opposing in nature. These disputed interests are direct and substantial. A judicial determination can provide a final and conclusive resolution as to the parties' rights and responsibilities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs now respectfully request the Court to award the following relief:

A. An order declaring the Governor's Proclamations 20-19 through 20-19.4 are void as being without statutory authority;

B. An order declaring RCW 43.05.220 to be an unconstitutional delegation of legislative power to the Governor;

C. An order declaring Proclamations 20-19 through 20-19.4 violate the separate of powers doctrine and violate Plaintiffs' right to seek redress of grievances in the judiciary;

D. An order declaring Proclamations 20-19 through 20-19.4 as causing an unconstitutional taking or damaging of property by mandating physical occupancy of property by tenants without first payment of compensation and for private and nonpublic use;

E. An order declaring Proclamations 20-19 through 20-19.4 to constitute an unconstitutional impairment of contract;

F. An order awarding costs and attorney fees in this action; and

B. Such other and further relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED this 1st day of December 2020.

Stephens & Klinge LLP

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By: _____
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APPENDIX A

JAY INSLEE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

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

20-19.4

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; "Airbnbs"; 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, hundreds of thousands of tenants in Washington are unable to pay their rent, reflecting the continued financial precariousness of many in the state. According to the unemployment information from the Washington State Employment Security

Department website as of October 7, 2020, current data show there are more than six times as many people claiming unemployment benefits in Washington than there were a year ago, and almost 100,000 more people claiming unemployment benefits than at the peak of the Great Recession; 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 remains in place while I work with the Department of Health and other epidemiological experts to determine appropriate strategies to mitigate the recent increased spread of the virus, and those strategies may include 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, 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 today, as of October 11, 2020, there are at least 93,862 confirmed cases with 2,190 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 (DOH) 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 December 31, 2020, 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 December 31, 2020, 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 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 re-payment 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, 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 20-19.4, 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, 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.

ADDITIONALLY, I want to thank the stakeholders and legislators who participated in the eviction moratorium workgroup with my executive senior policy advisors. The workgroup discussed a broad range of issues, and that discussion informed the modifications reflected in this order. I am directing my policy advisors to continue to work with stakeholders over the next 30 days to consider

additional amendments to the moratorium to ensure that the moratorium's protections for non-payment of rent apply narrowly to those persons whose ability to pay has been directly or indirectly materially impacted by the COVID-19 virus.

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 re- payment 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 14th day of October, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/

Jay Inslee, Governor

BY THE GOVERNOR:

/s/

Secretary of State

JAY INSLEE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

PROCLAMATION BY THE GOVERNOR

20-05.1
Terminating the COVID-19 State of Emergency

WHEREAS, On January 21, 2020, the Washington State Department of Health confirmed the first case of the novel coronavirus (COVID-19) in the United States in Snohomish County, Washington, and local health departments and the Washington State Department of Health worked to identify, contact, and test others in Washington State potentially exposed to COVID-19 in coordination with the United States Centers for Disease Control and Prevention (CDC); and

WHEREAS, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person; and

WHEREAS, On January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for COVID-19, beginning on January 27, 2020; and

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 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 statutory and regulatory obligations and limitations; and

WHEREAS, although COVID-19 continues as an ongoing and present threat in Washington State, the measures we have taken together as Washingtonians over the past 31 months, including the willingness of most Washingtonians to take advantage of the remarkable, life-saving vaccines being administered throughout the state, have made a difference and have altered the course of the pandemic in fundamental ways; and

WHEREAS, while COVID-19 appears to be here to stay, recent advances in medicine, including the availability of bivalent COVID-19 boosters for people 5 years and older and vaccines for children 6 months and older, as well as treatments like antivirals, are reasons to be hopeful that we will have the tools to protect ourselves and communities from severe disease and death to the greatest extent possible; and

WHEREAS, although Department of Health statistics reflect the continued persistence of COVID-19 in the state, including continued hospitalizations and deaths due to COVID-19, health experts and epidemiological modeling experts believe that as a state we have made adequate progress against COVID-19 to end the state of emergency; and

WHEREAS, the Secretary of Health's face covering order, issued under public health authorities provided by RCW 43.70.130, RCW 70.05.070, and WAC 246-100-036, will remain in effect until public health authorities determine it is no longer necessary for control of transmission of SARS- CoV-2; and

WHEREAS, the Washington State Department of Health will continue to monitor COVID-19 disease activity in the state and carry out public health activities that help prevent severe disease and death from COVID-19.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapter 43.06 RCW, do hereby proclaim that, although the threat of COVID-19 remains in all counties in the state of Washington, a State of Emergency Proclamation is no longer necessary to continue to respond to this disease.

As a result, I hereby declare the termination of the state of emergency proclaimed in Proclamation 20-05 and rescind and terminate Proclamation 20-05, and I also hereby rescind all COVID-19 emergency proclamations issued pursuant to Proclamation 20-05, effective October 31, 2022, at 11:59 PM.

Signed and sealed with the official seal of the state of Washington this 28th day of October, A.D., Two Thousand and Twenty-Two at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State