NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

HENRY EUGENE GOSSAGE, an individual,
Appellant
v.
REALITY HOMES, INC., a Washington Corporation; Savings Account Number 70003287315; Thomas Fancher and "Jane Doe" Fancher, married adults, including any marital estate; Jamie Hankel and " Jane Doe" Hankel, married adults, including any marital estate; Lowell Hankel, JR. and " Jane Doe" Hankel, JR., married adults, including any marital estate,
Respondents.

Petition for a Writ of Certiorari
to the Supreme Court for the State of Washington

PETITION FOR WRIT OF CERTIORARI

Henry Eugene Gossage
Pro se Veteran
Appellant
P.O. Box 1102
Ocean Shores, WA 98569

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

HENRY EUGENE GOSSAGE, an individual,
Appellant

v.

REALITY HOMES, INC., a Washington Corporation; Savings Account Number 70003287315; Thomas Fancher and "Jane Doe" Fancher, married adults, including any marital estate; Jamie Hankel and " Jane Doe" Hankel, married adults, including any marital estate; Lowell Hankel, JR. and " Jane Doe" Hankel, JR., married adults, including any marital estate,
Respondents.

Petition for a Writ of Certiorari
to the Supreme Court for the State of Washington

PETITION FOR WRIT OF CERTIORARI

Henry Eugene Gossage
Pro se Veteran
Appellant
P.O. Box 1102
Ocean Shores, WA 98569

QUESTIONS PRESENTED

The Washington State Court of Appeals Division II and State Supreme Court has created an unworkable legal standard to Deny the prevailing unrepresented litigant the right to judicial appeal for a new civil Trial de Novo from the arbitrator decision/award. Washington State Supreme Court prior decisions support the right to judicial review, appeal, or trial de nova after an arbitrator decision/award.

Discriminatory, Unconscionable, Implicit, or subtle bias in Constitutional Due Process and Equal Protection of the Law is implicated when a party "makes prima facie showing" Pierce County and Court of Appeals Division II decision are in direct conflict with Washington State Supreme Court and Court of Appeals Division I, requiring an evidentiary hearing.

The questions presented are:

1. Whether the Pierce County Superior Court decision to strike the right to "Request for Trial de Novo" or judicial review or appeal from the December 8, 2021, arbitration decision/award is in error, violating Petitioner 14th Amendment due process and equal protection clause under Washington Law?
2. Whether Pierce County Superior Court and Washington Court of Appeals Division II denied Henry Gossage's "Request for Trial de Novo", directly conflicts with *Optimer Intern., Inc. v. Rp Bellevue*, LLC, 170 Wash.2d 768 (2011), "the right judicial

review cannot be forfeited or waived by lease or contract".

3. Whether Washington Court of Appeals Division II and State Supreme Court violates U.S. Constitution 14th Amendment due process and equal protection clause by denying Petitioner the right to judicial appeal from an arbitrator decision and reconsideration of that right, that are in direct conflict with that Courts prior precedence?

PARTIES TO THE PROCEEDINGS

Petitioner, Henry E. Gossage was the plaintiff and prevailing party in arbitration and appellant in the Washington Supreme Court, Division II Washington Court of Appeals, and Pierce County Superior Court.

Respondent, Reality Homes, et al. are the defendants' in arbitration and appellee in the Washington Supreme Court, Division II Washington Court of Appeals, and Pierce County Superior Court.

RELATED PROCEEDINGS

1. December 5, 2021, Amended Pierce County Complaint 20-2-05978-7. (Appendix A-31)
2. January 27, 2021, Statement of Arbitrability was filed in Pierce County. (Appendix A-28)
3. December 8, 2021, Pierce County Arbitrator awarded the prevailing party, Henry Gossage damages in the amount of $10,500 in *Gossage v. Reality Homes*, No. 20-2-05978-7. (Appendix A-21)
4. December 24, 2004, Henry Gossage filed a request for "Trial de Nova" under SCCAR 7.1. (Appendix A-19)
5. January 19, 2022, The Superior Court of Washington, Pierce County struck all previous proceedings and set for trial Pierce County Local Mandatory Arbitration Rules 7.1(c). (Appendix A-21)
6. January 28, 2022, Defendants filed a Motion to Strike "Request for a Trial de Novo". (Appendix A-17)
7. February 18, 2022, Pierce County Granted Reality Homes "Motion to Strike" plaintiff's request for Trial de Nova and for attorney fees and costs. Plaintiff's request for Trial de Nova is hereby stricken. (Appendix A-14)
8. January 10, 2023, Court of Appeals Division II Affirmed *Gossage v. Reality Homes*, No. 57120-0-II in an Unpublished decision, "Granting Reality Homes Motion to Strike". (Appendix A-4)
9. June 7, 2023, The Washington Supreme Court denied petitioner's Motion for Discretionary Review in *Gossage v. Reality Homes*, No. 101780-4, Division

II Washington Court of Appeals No. 57120-0-II. (Appendix A-2)

10. June 26, 2023, Motion for Reconsideration, denied. (Appendix A-3)

TABLE OF CONTENTS

TABLE OF AUTHORITIES
CASES

WASHINGTON STATUTES (2005) CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

PETITION FOR A WRIT OF CERTORARI

It's clear from the decision from the Washington State Court, U.S. Constitution 14th Amendment due process and equal protection of the law does not apply to the unrepresented appearing before the court without paid legal representation. *See Haines v. Kerner*, 404 U.S. 519 (1972); *Estelle v. Gamble*, 429 U.S. 97 (1976). Reality Homes counsel failure to "timely" respond to Henry Gossage's request for trial de novo is fatal to their "Motion to Strike", mandates reversal and granting Petitioner timely "Request Trial de Novo" (Appendix A-16). *Kontrick v. Ryan*, 540 U.S. 443 (2004).

Henry Gossage is the PREVAILING party in arbitration, the PRIMARY issue before this Court, is whether or not under Washington State Law (RCW 7.04A or RCW 7.06) either party has a Constitutional or statutory protected right to "Request for Trial de Novo" review, Appeal, or Judicial Review from Gregory J. Wall's December 8, 2021, arbitration decision and award? Whether a "Request for Trial de Novo" review by either party must file or respond to within 20 days after the arbitration decision or after a trial de novo is filed?

The language in Washington State arbitration statutes (RCW 7.04A or RCW 7.06) does not prohibit judicial review, appeal, or trial de novo. This was settled in *Optimer Intern., Inc. v. Rp Bellevue*, LLC, 170 Wash.2d 768, 772 (2011) (Appendix A-39), "**prohibits waiver or variation of judicial review explicit**". ***See***

also Trial de Novo in *Bearden v. McGill*, 190 Wash. 2d 444 (2018); *Nelson v. Erickson*, 92489-9 (Wash. 2016); *Williams v. Tilaye*, 174 Wash. 2d 57 (2012); *Hanson, v. Luna-ramirez*, 82252-7 (Wash. Ct. App. 2021); "**trial de novo"** is the sole method to seek judicial review from mandatory arbitration" *Malted Mousse, Inc. v. Steinmetz*, 150 Wash.2d 518, 521 (2003).

As a result, without opinion, the Pierce County Superior Court ensured Reality Homes is effectively "judicial review proof" by accepting their Motion to Strike verbatim, and the Court erred in striking Gossage's request for "Trial de Novo" after the December 6, 2021, arbitration award. The arbitration award on its face was unreasonable that contradicts the basic theory of all tort law, **is to make plaintiffs whole**, this was not the case. *Moe Insurance v. Paulson Const., Inc.*, 169 P.3d 1, 6 (Wash. 2007).

The Washington State Court created a unique standard to deny a constitutional protected right granted by statute to the unrepresented litigant appearing before the Court. Washington State statute grants the litigant the right to "trial de novo" or appeal from the arbitrator decision/award for a new civil trial, where judicial bias implicitly or unconsciously affects the award. Washington Court of Appeals held that the Washington Arbitration Law prohibited waiver of judicial review and that this was constitutional. *Optimer Intern., Inc. v. Rp Bellevue*, LLC, 151 Wash. App. 954, 963-64 (2009). Under this standard, a prima facie due process violation is implicated where Division II Washington State Court of Appeals has adopted "Abrogation of the

Law" by contract and their decision in *Gossage v. Reality Homes* is in direct conflict with long history of State Supreme Court precedence. *Optimer Intern., Inc. v. Rp Bellevue*, LLC, 170 Wash.2d 768 (2011); *Wolff v. McDonnell*, 418 U.S. 539 (1974). The *Optimer* Court held, waiver of the judicial review established by statute is prohibited. This serious due-process and equal-protection violations is a cause under these standards to warrant this Court's immediate attention.

Petitioner appealed, moving for a new "trial de nova" after the arbitrator returned a damage award of $10,500 is unreasonable and did not "*make Henry Gossage whole*", instead of the $100,000+ Petitioner was seeking for house repairs. This Court should summarily reverse the Washington State Court, based on conflicting and outlier opinions. See, e.g., *Sears v. Upton*, 561 U.S. 945, 946 (2010) (summarily reversing because "it is plain from the face of the state court's opinion that it failed to apply the correct prejudice inquiry we have established"). This standard violates due process where the Court submits to the "abrogation of the law by contract", where Reality Homes construction contract (A-39) supersedes and violates Washington State law (RCW 7.04A, RCW 7.06), State Constitution, and Consumer Protection Act (RCW 19.86).

Alternatively, the Court should either grant this petition for plenary review, or hold this petition and grant, vacate, and remand in light any cases pending before this Court addressing the constitutional ramification where parties are prohibited from altering these boundaries of

review and any efforts to alter these fundamental provisions of the Act by agreement are inoperative, holding that "Litigants cannot . . . create their own boundaries of review."). *see Optimer Intern., Inc. v. Rp Bellevue*, LLC, 170 Wash.2d 768 (2011); *Optimer Intern., Inc. v. Rp Bellevue,* 151 Wn. App. 954 (Wash. Ct. App. 2009). Whether any agreement in a lease or contract that is in violation of **RCW 7.04A or RCW 7.06** is subject to "Consumer Protection (complaint) Violation" (**RCW 19.86**). *Washington State Attorney General v. Federal Way Discount Guns*, "King County Superior Court Judge Wyman Yip granted Ferguson's motion for partial summary judgment, agreeing that Federal Way Discount Guns and Baghai each violated Washington's Consumer Protection Act." (April7, 2023)

The "abrogation of the law by contract", where litigants create their own boundaries within a contract that can be injected into court's decision making. *see Students for Fair Admissions v. President & Fellows of Harvard Coll. & Univ. of N.C., et al.*, Nos. 20-1199 & 21-707. This Court's review is needed now to resolve these conflicting implicit-bias standard, leaving the unrepresented litigant "operating in the shadow of . . . a rule . . . the constitutionality of which is in serious doubt." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 486 (1975).

OPINIONS BELOW

The Washington Supreme Court (Appendix A-2) June 7, 2023, ORDER denying petition for review is unreported. Petitioner's Motion for Reconsideration was denied on June 26, 2023, in a court letter (A-3).

January 10, 2023, unpublished opinion from the Washington State Court of Appeals Division II in unreported (A-4).

February 18, 2022, Pierce County Superior Court for the State of Washington ORDER striking Petitioner's Request for "Trial de Nova" is unreported and in the Court record (A-14).

STATEMENT OF JURISDICTION

The Washington Supreme Court denied petitioner's motion for discretionary review on June 7, 2023, violating petitioner's Constitutional due process right to appeal (trial de nova) from the December 8, 2021, arbitrator decision and denied petitioner's motion for reconsideration on June 26, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const., amend. XIV, § 1.

See Appendix A-36 for text.

FACTUAL BACKGROUND

Henry Gossage timely requested a Trial de Novo on December 24, 2021 (A-19). Henry Gossage sought judicial review, trial de nova from an unreasonable arbitration award on its face, where the basic theory of all tort law, is to make plaintiff whole.

Fifty-One days after the arbitration award was filed on December 8, 2021 (A-21), and Thirty-Five days after request for trial de novo was filed (A-19), Reality Homes filed an Untimely Motion to Strike (A-17) in Superior Court to strike Petitioner's Request for Trial de Novo on January 28, 2021, asserting that Petitioner was not entitled to a trial de novo. The Court granted Reality Homes Motion to Strike and Awarded fees on February 18, 2022 (A-14).

In an unpublished opinion, Divison II Court of Appeals for Washington affirmed Pierce County

Court "Motion to Strike" on January 10, 2023 (A-4). The Washington State Supreme Court denied Petitioner's request for discretionary review without opinion (A-2) and Reconsideration (A-3).

The action by the Pierce County Superior Court and Division II Court of Appeals are inconsistent with protections already and clearly recognized as an important constitutional right to trial de novo in previous State Supreme Court precedence. *Dairy Queen v. Wood*, 369 U.S. 469, 470 (1962); *Optimer Intern., Inc. v. Rp Bellevue, LLC*, 170 Wash.2d 768,772 (2011); *Williams v. Tilaye*, 174 Wash. 2d 57, (2012). "In many civil cases, arbitration is mandatory. **After arbitration, either party can request a full trial**", *Bearden v. McGill*, 190 Wash. 2d 444 (2018); *Nelson v. Erickson*, 92489-9 (Wash. 2016). (Appendix A 39-47)

The Washington State Court has altered the boundaries of review after arbitration and judicial review towards the unrepresented Petitioner in **"Striking"** Petitioner Request for Trial de Novo (A-19), through the court's careful implementation and argument of repealed laws and "common-law arbitration", violating Petitioner's Constitution due process and equal protection of the law. *Dickie Mfg. v. Sound Construction*, 92 Wash. 316, 318 (1916). The Due Process Clause allows flexibility in ensuring that Reality Homes is not effectively "judgment proof", so too does it prevent self-designed contracts that would unfairly enable them to obtain default judgments against unwitting customers. *United States* v. *Rumely,* 345 U.S. 41,

44 (1953) (courts must not be "blind" to what "[a]ll others can see and understand").

The Washington Arbitration Act (WAA, RCW 7.06) allowed both Parties limited judicial review and were prohibited from altering these boundaries of review. The Revised Washington Arbitration Act (RUAA RCW 7.04A) made this prohibition on waiver or variation of judicial review explicit. RCW 7.04A.040(3). *See* ***Optimer Intern., Inc. v. Rp Bellevue, LLC*, 170 Wash.2d 768, 772 (2011)**; *Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d at 885, 893 (2001) ("arbitration in Washington is exclusively statutory").

Reality Homes never challenged "The Statement of Arbitrability" (A-28) and "Arbitration Award" (A-21) is part of the written record, both triggering the right to appeal. Henry Gossage timely challenged the arbitration award. Both Parties have the statutory right to appeal to Request Trial de Novo and this right cannot be waived or **abrogated by contract**:

1. The Statement of Arbitrability (Appendix A-28) on January 27, 2021, stated, "in cases where an Arbitration Award is filed and there is no timely request for trial de novo";
2. Gregory J. Wall arbitration award on December 8, 2021, stated, twenty days after the award has been filed with the clerk, if no party has sought a trial de novo under SCCAR 7.1 (Appendix A-21)

A. Reality Homes created its own one-sided generic consumer construction contract favoring the company. On May 12, 2016,

Petitioner Henry Gossage signed and agreed with Reality Homes to construct a new home located in Ocean Shores, Washington. Within Reality Homes this one-sided contract section P, disputes arbitration states in part (Appendix A-39):

1. [A]ny suit must be filed in Pierce County Superior Court, and decided according to the Mandatory Arbitration rules of that County;
2. [S]hall be decided according to the Mandatory Arbitration rules of that county;
3. Each Party waives a jury trial;
4. Waives the mandatory arbitration dollar limits;
5. The arbitrator award shall be final and binding;
6. [B]oth parties waive their right to file any appeal for a trial de nova.
7. Both parties each waive their right to file an appeal for a right to trial de nova.

B. Construction began in August 2016 and completed in October 2017. The contract stated a 150-day completion date.

C. Petitioner filed Amended Complaint for $100,000+ damages filed in 2019.

D. December 8, 2021, Arbitrator Wall awarded the prevailing party Henry Gossage, $10,200.

E. Henry Gossage filed a request for trial de nova from the December 8, 2021, arbitration decision and award on December 24, 2021.

The arbitration award was unreasonable on its face, contradicting the basic theory of all tort law, is to make plaintiffs whole (A-24). *Moe Insurance v. Paulson Const., Inc.*, 169 P.3d 1, 6 (Wash. 2007). This is also supported by Reality Homes seeking fees and costs to enforce the unreasonable arbitration award and disputing the right to request trial de nova. *Optimer Intern., Inc. v. Rp Bellevue, LLC*, 170 Wash.2d 768 (2011).

Request for Attorney Fees and Cost

Petitioner's "Request for Trial de Nova" is not frivolous, the Court of Appeals stated in its opinion,

> Reality argues that it is entitled to attorney fees and costs pursuant to RAP 18.9(a) because Gossage's appeal is frivolous. **Although Gossage did not prevail, his appeal was not frivolous and Reality is not entitled to attorney fees on this basis**. (Appendix A-13)

Reality Homes is not the prevailing party, rather than the losing party in arbitration and therefore should not be entitled to any fees.

Pending Certiorari, there is no prevailing party. Consequently, Reality Homes is not entitled to the $22,000+ awarded by the lower court to Reality Homes is inappropriate and a fundamental due process violation. *McGary v. Westlake Investors*, 99 Wash. 2d 280, ¶7(1983); *Toussaint v. McCarthy,* 826 F.2d 901, 903-04 (CA9.1987). Discrepancies in "requested

fees and costs" are extreme and inconsistent at each level of litigation is a violation of due process and equal protection of the law.

Special circumstances warrant that mitigate against making such an award to Reality Homes:

1. This case is pending Certiorari.
2. Petitioner is the prevailing party in arbitration.
3. Respondents was not the prevailing party in arbitration.
4. No one was the prevailing party in the court below.

FIRST and foremost, Henry Gossage is the prevailing in this arbitration case, but pursued the right to "Request for Trial de Nova" the arbitrators unreasonable award to make damage repairs. This $10,200 arbitration award was unreasonable on its face by contradicting the basic theory of all tort law, which is to make plaintiffs whole. In essence the arbitrator repair damage award was unreasonable and extremely low, amounting to Reality Homes as the prevailing party.

SECOND, Henry Gossage's arbitration fees and costs amounted to about $6,000 (Attorney Fees), $20,000 (Expert Witness Expenses), and $1,000 (Fees).

THIRD, Henry Gossage requested a trial de novo after mandatory arbitration "fails to improve" his or her position at the trial, then the opposing party may move for the requesting party to pay the reasonable attorney fees incurred as a result of the trial de novo. *Bearden v. McGill*, 190 Wash. 2d 444 (2018). We never went to trial,

therefore Reality Homes requested should be denied.

FOURTH, the appearance Reality Homes padded their books to obtain unreasonable legal fees by their overzealous counsel is unwarranted. Reality is seeking $23,000, which amounts to more than 200% of Petitioner's $10,200 arbitration award or 400% of attorney arbitration litigation fees. Reality Homes padded its attorney bill, with intention to recover all its litigation costs and turn a profit against the unrepresented litigant.

The common practice of staying a court proceeding during the pendency of an appeal reflects common sense. *Griggs v. Provident Consumer Discount Co.*, 459 U. S. 56 (1982). The court may grant an award of attorney fees to a prevailing respondent in a frivolous appeal. *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691 (1987). When an appeal presents no debatable issues upon which reasonable minds could differ, and lacks merit such that no reasonable possibility of reversal exists, it is frivolous. Mahoney, 107 Wn.2d at 691. "The record should be examined as a whole, and doubts should be resolved in favor of the appellant." Mahoney, 107 Wn.2d at 691-692. "An appeal that is affirmed simply because the arguments are rejected is not frivolous." *In re Marriage of Schnurman*,178 Wn. App. 634, 644 (2013). *Pomaikai, Llc, Res. v. Boris Povzner*, 79180-0 (Wash. Ct. App. 2019)

REASONS FOR GRANTING THE PETITION

This is an important issue that requires this Courts immediate attention to take corrective action where Pierce County and Court of Appeals Division II violated the unwary or unrepresented litigant Constitutional protected right (RCW 7.04A, RCW 7.06, Appendix A-36, A-37) to judicial review/appeal is denied by the courts subtle attempt to repeal by implication where the waiver of right to "judicial review" was settled in *Optimer*.

Petitioner right to judicial review for a new trial, "Trial de Novo" was settled in *Optimer Intern., Inc. v. Rp Bellevue, LLC*, 170 Wash.2d 768 (2011),

The court harmonizes and give effect to all of the relevant statutory language and repeals by implication are not favored. When two acts upon the same subject, the rule is to give effect to both if possible. *United States v. Tynen*, 78 U.S. 88 (1870); *Amalg. Transit Union Legislative Council v. State*, 145 Wash.2d 544, 552 (2002) (***citing* ¶6 in** *Tollycraft Yachts Corp. v McCoy*, 22 Wash.2d 426, 439 (1993)); *State v. Hirschfelder*, 170 Wash.2d 536, 543 (2010).

This Court in *Morgan* emphasized that the policy could not make arbitration agreements *more* enforceable, and that courts could not "devise novel rules to favor arbitration over litigation." This Court defined the proper aim of arbitration is "a bar on using custom-made rules, *Morgan v. Sundance*, 596 U.S. ___, 4 (2022). Reality Homes devised a novel agreement to favor arbitration to limit the rights of the consumer to minimize

Reality Homes liability for construction defects and to avoid correcting faulty construction. This is exactly what the Pierce County and Division II Court of Appeals did to DENY the right to "Trial de Novo" to the unrepresented and unwary litigant to protect Reality Homes liability.

A decision of the U.S. Supreme Court, a federal court, is binding on state courts when it decides an issue of federal law. **A decision of the Washington State Supreme Court is binding on state courts when it decides an issue of state law and that court's interpretation of any state law is generally final and binding to both state and federal courts**.

> What the language does not do is prohibit the judicial review provided for in the governing arbitration act. As a result, the superior court erred in dismissing RP Bellevue's motion to vacate the arbitration award.
>
> ¶ 15 The lease between Optimer and RP Bellevue does not validly waive judicial review of an arbitration award.
>
> ¶ 11 Because the WAA prohibited waiver of the judicial review established by statute, we need not definitively interpret the contractual language providing that arbitration awards are "final and non-appealable and enforceable."

> [1] The RUAA makes this prohibition on waiver or variation of judicial review explicit. RCW 7.04A.040(3).

Henry Gossage "Request for Trial de Novo" was GRANTED by J. Swartz (Appendix A-18) and then DENIED by J. Quinlan (Appendix A-14). The Quinlan Superior Court and the Division II Court of Appeals opinion in Gossage is in error and in direct conflict with the State Supreme Court and Division I Court of Appeals in *Optimer*, held "The superior court dismissed the case based on its determination that the parties had validly waived any judicial review of the arbitration award. **We hold that the lease does not validly waive the judicial review of an arbitration award provided for by statute.**" *Optimer International, Inc. v. RP Bellevue, LLC*, 170 Wn. 2d 768, 769 (2011). RCW 7.06.050(1); RCW 7.06.070.

> "**The RUAA makes this prohibition on waiver or variation of judicial review explicit.** RCW 7.04A.040(3)."
>
> *Optimer International, Inc. v. RP Bellevue, LLC*, 170 Wn. 2d 768, 772 n.1 (2011).

The Division II Court of Appeal unpublished opinion in *Gossage v. Reality* relied on Chapter 7.04 RCW that was repealed in its entirety in 2005 and Division II opinion in *Dahl v. Parquet & Colonial Hardwood Floor Co.,* 108 Wn. App. 403, 407 (2001) is subject to question. *Dahl*

was superseded in 2009 Division I Court of Appeals opinion that "**prohibits waiver or variation of judicial review explicit**", *Optimer Intern., Inc. v. Rp Bellevue*, LLC, 151 Wn. App. 954 (2009) and the Washington State Supreme Court is controlling in *Optimer Intern., Inc. v. Rp Bellevue,* 170 Wash.2d 768, 772 (2011).

Optimer controls the right to judicial review, appeal, trial de novo, is this case. These controlling opinions came long before Reality Homes "Motion to Strike" was filed in superior court and before commercial actor designed its "Contract P" for its benefit.

Just as the Due Process Clause allows flexibility in ensuring that commercial actors are not effectively "judgment or appeal proof" *McGee* v. *International Life Insurance Co.,* 355 U. S. 220, 223 (1957), so too does it prevent rules that would unfairly enable them to obtain default judgments against unwitting customers. Cf. *United States* v. *Rumely,* 345 U.S. 41, 44 (1953) (courts must not be " `blind' " to what " `[a]ll others can see and understand' ").

The Court of Appeals Division II used the law repealed in 2005 and ignoring precedential State Supreme Court controlling opinions after 2005. This implicates Judicial bias towards the unwary and unrepresented litigant by the lower Court, therefore violating established Due Process and Equal Protection Clause precedence, this is a very important issue for this Court to consider. This is subtle and novel standard for Piece County

and Division II to violate the Due Process Clause in at least three independent ways. FIRST, Division II Opinion in *Gossage v. Reality Homes* relied on old laws that were repealed in 2005. SECOND, Division II Court of Appeals opinion in *Dahl* (2001) is in direct conflict and was superseded by Division I in *Optimer* in 2009 and then at the State Supreme Court in 2011. THIRD, it deprives the unrepresented litigant discretionary review where all legitimate arguments could have been decided by the State Supreme Court. FOURTH, it imposes a functionally nearly impossible burden on the unrepresented litigant, where an attempt by Reality Homes to deviate from the statutory arbitration scheme by limiting the right of judicial review prior to the advent (RCW 7.04A.040(2), "Before a controversy arises that is subject to an agreement to arbitrate") of a dispute subject to arbitration." *Optimer International, Inc. v. RP Bellevue, LLC*, 151 Wn. App. 954, 968 (Division I Wash. Ct. App. 2009).

CONCLUSION

The Court of Appeals Division II and Pierce County Superior Court devised novel custom made-rules to deny Henry Gossage the right to judicial review, Trial de Novo. Reality Homes devised novel custom made-rules in its Contact P to make arbitration agreements more enforceable that conflicts with this Courts recent opinion in *Morgan v. Sundance*, 596 U.S. ___, 4 (2022), "bar on using custom made-rules", which is in line with Washington arbitration statutes and *Optimer*.

For the foregoing reasons alternatively, the Court should either grant this petition for plenary review, or hold this petition and grant, vacate, and remand in light any cases pending before this Court addressing the constitutional ramification where parties are prohibited from altering these boundaries of review and any efforts to alter these fundamental provisions of the Act by agreement are inoperative, holding that "Litigants cannot . . . create their own boundaries of review."). *see Optimer Intern., Inc. v. Rp Bellevue*, LLC, 170 Wash.2d 768 (2011); *Optimer Intern., Inc. v. Rp Bellevue,* 151 Wn. App. 954 (Wash. Ct. App. 2009).

Respectfully submitted,

_____/s/_____

Henry Gossage, Pro se

September 20, 2023

Respectfully Resubmitted

Henry E. Gossage

January 29, 2024