NO. 100992-5

SUPREME COURT OF THE STATE OF WASHINGTON

GENE GONZALES; SUSAN GONZALES; HORWATH FAMILY, TWO, LLC; and WASHINGTON LANDLORD ASSOCIATION,

Petitioners,

v.

GOVERNOR JAY INSLEE and STATE OF WASHINGTON,

Respondents.

RESPONDENTS' ANSWER TO BRIEF OF AMICUS CURIAE RENTAL HOUSING ASSOCIATION OF WASHINGTON

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I. INTRODUCTION

Faced with the gravest pandemic in over a century and a looming wave of evictions, Governor Inslee issued an emergency proclamation that temporarily prohibited property owners from filing certain eviction actions and treating unpaid rent as enforceable debt without first offering their tenants a reasonable repayment plan. The Governor did so to prevent mass evictions of vulnerable Washingtonians, all in an effort to slow the spread of COVID-19 and mitigate the economic hardships created by the pandemic.

Proclamation 20-19 (the Moratorium) kept open multiple avenues for landlords to seek relief in courts. Landlords could pursue evictions when it was necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the tenant or when the landlord planned to personally occupy or sell the rental property. Landlords could treat unpaid rent as an enforceable obligation and could sue on that obligation if the tenant refused or failed to comply with a reasonable

repayment plan. Landlords could also (as the Petitioners did in this case) seek declaratory relief and injunctive relief to challenge the Moratorium. The Moratorium did not completely extinguish landlords' abilities to bring eviction proceedings altogether, and the ability to seek an eviction as a remedy for nonpayment of rent was merely delayed until the Moratorium expired. In all of these ways, Rental Housing Association of Washington (RHA) is plainly wrong that the Moratorium "prohibit[ed] the act of petitioning the court" and closed "every other venue" to landlords. RHA Br. at 1.

A temporary pause on certain eviction proceedings does not implicate the right of access to the courts. But even if the Moratorium did implicate that right, there is no fundamental right to evictions on a specific timetable. So the Court's review is rational basis, a standard the Moratorium easily clears. The Moratorium suppressed an eviction crisis and mitigated the transmission of COVID-19 by allowing people to stay home precisely when the pandemic required them to remain there.

II. ARGUMENT

The Moratorium, as a valid exercise of the Governor's emergency powers, did not infringe on the right of access to the courts. The Moratorium temporarily paused certain eviction actions and landlords could pursue other relief. But even if the right of access to the courts was implicated, the Moratorium did not infringe on an underlying fundamental right and easily satisfies rational basis review—the appropriate standard of scrutiny.

A. Proclamation 20-19 Did Not Violate Landlords' Right of Access to the Courts

The right of access to the courts "is not recognized, of itself, as a fundamental right." *Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 562, 800 P.2d 367 (1990). It is not a right to unfettered access, but rather, is "necessarily accompanied by those rights accorded litigants by statute, court rule or the inherent powers of the court." *Doe v. Puget Sound Blood Ctr.*,

117 Wn.2d 772, 782, 819 P.2d 370 (1991).[1] Thus courts generally apply rational basis review to right of access to the courts claims, particularly "when access to the courts is not essential to advance a fundamental right, such as the freedom of association or disassociation[.]" *In re Marriage of Giordano*, 57 Wn. App. 74, 77, 787 P.2d 51 (1990). As the U.S. Supreme Court has explained, "the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong" so that right "is ancillary to the underlying claim." *Christopher v. Harbury*, 536 U.S. 403, 414–15, 122 S. Ct. 2179, 153 L. Ed. 2d 413 (2002); *see also L.A. Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 705 (9th Cir. 1992) (right of access "allow[s] vindication of fundamental rights that cannot be otherwise protected[ ]").

[1] In *Doe*, this Court provided an illustrative—but non-exhaustive—list of rights that close the doors of the courthouse without offending the constitutional right of access to the courts, such as statutes of limitations and a parental immunity doctrine. *See* 117 Wn.2d at 782.

This Court's precedents have affirmed the authority of the Legislature to permissibly modify or eliminate causes of actions and remedies. For example, this Court has held the legislative abrogation of a remedy—even one available at common law—does not violate any right of access to the courts. *See Shea v. Olson*, 185 Wash. 143, 161, 53 P.2d 615 (1936) ("There is, therefore, no express, positive mandate of the Constitution which preserves such rights of action from abolition by the Legislature, even when acting under its police power."); *see also 1519–1525 Lakeview Blvd. Condo. Ass'n v. Apt. Sales Corp.*, 101 Wn. App. 923, 937, 6 P.3d 74 (2000), *aff'd*, 144 Wn.2d 570, 29 P.3d 1249 (2001) (applying *Shea* to conclude that right of access to courts was not violated by statute of repose's denial of a remedy); *Lakeview Blvd.*, 144 Wn.2d at 581 ("the state constitution does not contain any guaranty that there shall be a remedy through the courts for every legal injury suffered by a plaintiff[]").

The Moratorium did not implicate the right of access to the courts because it did not "materially alter[]" landlord litigants'

positions in a "constitutional sense." *United States v. Kras*, 409 U.S. 434, 445, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973). The underlying claim here—the speedy eviction of tenants who defaulted on rental payments—is not a fundamental or basic constitutional right. *See, e.g.*, *Yim v. City of Seattle*, 194 Wn.2d 682, 692–93, 451 P.3d 694 (2019), *as amended* (Jan. 9, 2020) (state substantive due process claim challenging use of property regulation implicated no fundamental right); *Rental Hous. Ass'n v. City of Seattle*, 22 Wn. App. 2d 426, 462–64, 512 P.3d 545 (2022) (eviction rights not fundamental under Washington Constitution's privileges and immunities clause); *Slidewaters LLC v. Wash. State Dep't of Lab. & Indus.*, 4 F.4th 747, 758 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 779 (2022) ("The right to use property as one wishes is . . . not a fundamental right."); *Rubinovitz v. Rogato*, 60 F.3d 906, 910–11 (1st Cir. 1995) ("[T]he [U.S.] Constitution establishes" no "fundamental right to evict[.]"). The Moratorium was a temporary suspension of the ability to initiate certain eviction proceedings; it did not alter

property owners' title to their property. *See Hillcrest Prop., LLP v. Pasco County*, 915 F.3d 1292, 1297–98 (11th Cir. 2019) ("[F]undamental rights in the constitutional sense do not include 'state-created rights.' " (quoting *McKinney v. Pate*, 20 F.3d 1550, 1560 (11th Cir. 1994)).

The narrow scope of right of access claims is clear from two contrasting U.S. Supreme Court cases. In *Boddie v. Connecticut*, the Court held that the right of access to the courts was infringed by a state-mandated filing fee for divorce because "marriage involves interests of basic importance in our society[ ]" and "the state courts is the only avenue to dissolution of their marriages[.]" 401 U.S. 371, 376, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971). A few years later, the Court rejected a right of access claim for an indigent debtor filing for bankruptcy. *Kras*, 409 U.S. at 444. In distinguishing *Boddie*, the *Kras* Court noted that a debtor's "interest in the elimination of his debt burden . . . although important . . . does not rise to the same constitutional level[ ]" as marriage. *Id.* at 445. Like the debtor's inability to file

for bankruptcy in *Kras*, no "fundamental interest . . . is gained or lost" by the property owners' delay in the ability to file an unlawful detainer action. *Id.*; *cf. Yim*, 194 Wn.2d at 692–93. Absent this fundamental interest, the right of access is not implicated.

RHA draws a false comparison between this case and *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 216 P.3d 374 (2009). *See* RHA Br. at 10–11. In *Putman*, this Court struck down a law that required plaintiffs to present a certificate of merit from a medical expert in support of their medical malpractice claims when filing an action. 166 Wn.2d at 979. As the *Putman* Court recognized, such a task may be inherently impossible, as plaintiffs may be unable to "uncover the evidence necessary to pursue their claims[]" before engaging in discovery. *Id*. Thus, the requirement for a certificate of merit placed a potentially insurmountable hurdle between medical malpractice plaintiffs and the courts.

By contrast, a landlord's failure to offer a reasonable repayment plan was not an obstacle to filing but provided a defense to tenants facing lawsuits or attempts to collect debt. *See* Procl. 20-19.6 at 6 ("[F]ailure to provide a reasonable repayment plan shall be a defense to any lawsuit or other attempts to collect."). In addition, unlike a medical patient who may need access to hospital personnel and records, "a trial court assessing whether a prepayment plan was reasonable undoubtedly would base its assessment on the information *available to the landlord*. For example, the landlord could make assumptions based on the financial information about the tenants obtained at the inception of the lease." *Gonzales v. Inslee*, 21 Wn. App. 2d 110, 140, 504 P.3d 890 (2022) (emphasis added); *see, e.g.*, CP 1285–88 (tenant's monthly income and pay stub accompanying one Petitioner-Landlord's rental application). Landlords are also aware of the amount of rent charged and owed. And in determining whether a landlord had offered a reasonable repayment plan, courts could consider a landlord's efforts to

offer a repayment plan or a tenant's failure to cooperate, with no need for discovery. *See Gonzales*, 21 Wn. App. at 140; RP 51.

RHA's reliance on *Apartment Association of Los Angeles County v. City of Los Angeles* is also misplaced. *See* RHA Br. at 12. That case addressed a vagueness challenge (a claim not raised here) to a city ordinance that provided an affirmative defense to tenants facing eviction and applied broadly "to nonpayment of rent 'so long as the reason for nonpayment was financial impacts related to COVID-19.'" Order Granting Pl.'s Mot. for Prelim. Inj., Dkt. 29 at 7, *Apt. Ass'n of L.A. Cnty. v. City of Los Angeles*, No. 2:22-cv-02085-DDP-JEM, (C.D. Cal. Oct. 10, 2022) (citation omitted). Given the breadth of the ordinance's definitions, the Court held that it would be impossible for landlords to determine whether an affirmative defense would apply. *Id.* at 8. No such impossibility exists here given the information already available to landlords. *Cf. Jevons v. Inslee*, 561 F. Supp. 3d 1082, 1111 (E.D. Wash. 2021) (rejecting landlords' vagueness challenge to the Moratorium).

B. The Moratorium Temporarily Delayed the Ability to Commence Certain Evictions but Landlords Had Other Avenues to Obtain Relief

The Moratorium did not violate the right of access to the courts because it, at most, delayed a landlord's ability to obtain one type of relief and left open multiple, other ways for landlords to obtain relief.

The U.S. Supreme Court illustrated the difference between a constitutionally permissible delay and impermissible deprivation a few years after deciding *Boddie v. Connecticut*. In *Sosna v. Iowa*, 419 U.S. 393, 95 S. Ct. 553, 42 L. Ed. 2d 532 (1975), the Court contrasted *Boddie* with an Iowa statute that required one year of residency in the state as a precondition to filing for divorce. While the filing fees in *Boddie* served to "exclude forever a certain segment of the population from obtaining a divorce," the right of access to the courts was not similarly violated where the "claim [wa]s not total deprivation, as in *Boddie*, but only delay." *Sosna*, 419 U.S. at 410. Instead, where the litigant "would eventually qualify for the same sort of

adjudication" sought, *id.* at 406, delayed access to the courts was constitutional, even where a fundamental right was involved, *id.* at 410.

Here, as in *Sosna*, the "'mere delay' to filing a lawsuit cannot form the basis of a [right-of-access] violation when the plaintiff will, at some point, regain access to legal process[.]" *Elmsford Apt. Assocs., LLC v. Cuomo*, *appeal dismissed sub nom. 36 Apt. Assocs., LLC v. Cuomo*, 860 F. App'x 215 (2d Cir. 2021) (quoting *Davis v. Goord*, 320 F.3d 346, 352 (2d Cir. 2003)); *see also Heights Apts., LLC v. Walz*, 510 F. Supp. 3d 789, 811 (D. Minn. 2020), *rev'd on other grounds*, 30 F.4th 720 (8th Cir. 2021) ("Because the [Executive Orders] foreclose the Landlords' ability to obtain only one kind of relief and only does so temporarily, the EOs do not violate the Petition Clause.").

RHA's attempts to distinguish *Sosna* fall flat. RHA characterizes the case as only an equal protection challenge, because the residency law distinguished between residents and non-residents. RHA Br. at 16. But the challengers also brought a

due process claim, which the U.S. Supreme Court rejected, explaining that the residency requirement delayed, but did not deny, access to state divorce courts. *Sosna*, 419 U.S. at 410.

RHA's reliance on *Chrysafis v. Marks*, 141 S. Ct. 2482, 210 L. Ed. 2d 1006 (2021), does not help its arguments either. *See* RHA Br. at 17. In *Chrysafis*, the U.S. Supreme Court temporarily enjoined part of New York's COVID-19 eviction moratorium. 141 S. Ct. at 2482. That law allowed tenants to certify as a defense to an eviction proceeding that they suffered a "financial hardship" due to COVID-19 and "generally preclude[d] a landlord from contesting that certification and denie[d] the landlord a hearing." *Id.* at 2482–83. The Supreme Court concluded that "[t]his scheme violates the Court's longstanding teaching that ordinarily, 'no man can be a judge in his own case' consistent with the Due Process Clause." *Id.* at 2482 (quoting *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1993)). But *Chrysafis* is not persuasive here, because the relief there did not turn on a right of access to the

courts claim and the Court did not address a temporary delay to the remedy of eviction.

Further distinguishing *Chrysafis*, the Landlords here do not raise a procedural due process challenge. Nor would such a claim make a difference. The Moratorium challenged here is different than New York's—it did not create a scheme where tenants self-certified and precluded landlords from disputing that claim of hardship in an eviction proceeding. Instead, the prohibition on treating unpaid rent as an enforceable debt did not apply where a court concluded a repayment plan was reasonable, after reviewing evidence and considering the tenant's individual financial, health, and other circumstances. Procl. 20-19.6 at 6.

RHA's right of access arguments are unpersuasive because the Moratorium did not permanently remove landlords' abilities to access the courts for all purposes. Landlords could initiate eviction proceedings under exceptions the Moratorium provided. The Moratorium included exceptions when "necessary to respond to a significant and immediate risk to the health,

safety, or property of others created by the resident" or when a landlord intended to personally occupy the premises as the primary residence or to sell the property. *See* Procl. 20-19.6 at 5. And indeed, landlords did use these exceptions to pursue unlawful detainers (though in many instances appear to have misused the exceptions). *See* King Cnty. Bar Ass'n Housing Justice Project Br. at 26–28.

The Moratorium also did not prohibit landlords from bringing breach of contract claims and obtaining money judgments in cases where tenants did not pay rent after refusing or failing to comply with a reasonable repayment plan based on the individual financial, health, and other circumstances of that resident. *See* Procl. 20-19.6 at 6.

The U.S. Supreme Court's cases in *Boddie* and *Kras* are again instructive. The divorce filing fee in *Boddie* infringed the right of access to the courts for divorce. *Kras*, 409 U.S. at 445. The debtor in *Kras*, however, stood "in [a] materially different posture[ ]." *Id.* at 444. Unlike divorce, "bankruptcy is not the only

method available to a debtor for the adjustment of his legal relationship with his creditors," *id.* at 445, so the Court rejected the debtor's right-of-access claim. Like the debtor facing bankruptcy, eviction is not the only way for tenants and landlords to adjust their relationship.

In sum, the Moratorium only temporarily delayed the remedy of eviction for nonpayment, and landlords had multiple avenues to pursue relief. The Moratorium did not violate the Landlords' right of access to the courts. *See Elmsford Apt. Assocs. v. Cuomo*, 469 F. Supp. 3d 148, 174 (S.D.N.Y. 2020) ("Although nonpayment proceedings have been suspended, Plaintiffs can still sue their tenants for arrearages through a breach of contract action in the New York Supreme Court—and the fact that is not their preferred remedy is of no moment. They will also have the opportunity to bring eviction proceedings for reason of nonpayment once the [executive] order expires[.]")[2];

[2] That time is, of course, now.

Farhoud v. Brown, No. 3:20-cv-2226-JR, 2022 WL 326092, at *13 (D. Or. Feb. 3, 2022) (eviction moratorium did not violate the plaintiffs' rights to access the courts because "[t]he moratorium . . . d[id] not permanently remove [the] [p]laintiffs' ability to access the courts for all purposes. [The] [p]laintiffs may initiate eviction proceedings for reasons other than nonpayment of rent and may file breach of contract actions against tenants"); *cf. Williams v. Alameda County*, No. 3:22-cv-01274-LB, 2022 WL 17169833, at *16 (N.D. Cal. Nov. 22, 2022) (moratoria did not facially violate due process because plaintiffs could pursue evictions under the moratoria's exceptions and could bring breach of contract actions).

C. Even if the Right of Access to the Courts Was Implicated, the Moratorium Was Constitutional

1. The Proclamation easily meets rational basis review

If a law burdens a constitutional right, courts must then determine if "a fundamental right is at stake" or involves "a member of a suspect class[.]" *Gossett v. Farmers Ins. Co. of*

Wash., 133 Wn. 2d 954, 979, 948 P.2d 1264 (1997); *see also Miranda v. Sims*, 98 Wn. App. 898, 908, 991 P.2d 681 (2000) (rejecting argument that claim should be evaluated under strict scrutiny "[b]ecause the right of access to the courts has not, by itself, been recognized as a fundamental right"). If not, courts apply rational basis review. *See id.*

The ability to file an unlawful detainer action to evict without delay is not a fundamental right. *See supra* pp. 6–7. Thus, to the extent the right of access to the courts is implicated, rational basis review applies. Under this test, the challenged statute must be rationally related to a legitimate state interest and the party challenging the statute bears the burden of showing that it is purely arbitrary. *See DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 144, 960 P.2d 919 (1998).

Stemming the spread of COVID-19, a disease that has killed over 1.1 million Americans and 15,300 Washingtonians,[3]

[3] Ctrs. for Disease Control & Prevention, *COVID Data Tracker*, https://covid.cdc.gov/covid-data-tracker/#datatracker-

is "unquestionably a compelling interest." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67, 208 L. Ed. 2d 206 (2020). The Moratorium avoided the transmission of COVID-19 by reducing housing instability and heightened risk of disease transmission. The Moratorium prevented up to 59,008 more eviction-attributable COVID-19 cases, 5,623 more hospitalizations, and 621 more deaths, CP 1356, by keeping renters in their homes—and out of homeless shelters, doubled up with family or friends, and other congregate settings. *See also* King Cnty. Bar Ass'n Housing Justice Project Br. at 18 ("'[S]tudies show 'that the absence or lifting of eviction moratoriums are associated with an increased rate of COVID-19 infection and death.'" (quoting Emily A. Benfer, et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and*

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home (last visited Feb. 1, 2023); Wash. Dep't of Health, *COVID-19 Data Dashboard*, https://doh.wa.gov/emergencies/covid-19/data-dashboard (last visited Feb. 1, 2023).

After COVID-19, 19 YALE J. HEALTH POLICY, LAW, & ETHICS 122, 155 (2020)). As encouraging social distancing was a key component of the Governor's early COVID-19 mitigation strategy, and evicting tenants would reduce their ability to socially distance, the Moratorium was rationally related to this interest.

RHA contends that the Moratorium's provision prohibiting landlords from treating unpaid rent as an enforceable debt or obligation that is owing or collectable was irrational because evictions were "prohibited by other means." RHA Br. at 22. But RHA fails to appreciate that landlords could take steps to recover unpaid rent if they offered a reasonable repayment plan that was refused or violated. Moreover, this provision was designed to prevent "soft" or "informal" evictions—that is, measures short of unlawful detainer actions that lead tenants to "self-evict" to avoid negative credit history, an adverse judgment, or other collateral consequences. CP 784; *see also* Debt Collection Practices in Connection with the Global

COVID-19 Pandemic, 86 Fed. Reg. 21163, 21166–67 (Apr. 22, 2021) (noting that informal evictions may have increased during the pandemic); Matthew Fowle, et al., *The Impact of the COVID-19 Pandemic on Low-Income Tenants' Housing Security in Washington State* at 11, Univ. of Wash. Evans School of Public Policy & Governance (updated July 19, 2021), https://evans.uw.edu/wp-content/uploads/2020/09/Tenants-Union_Research-Report-Formatted-Fowle-Fyall-v7.19.21.pdf (study showing informal evictions and forced moves increased during the pandemic).

The State's balance of the interests of tenants and landlords by requiring rejection or default of a reasonable repayment plan "before treating unpaid rent as collectible is an appropriate and reasonable measure, particularly where it is tied directly to nonpayment that is caused by the COVID-19 outbreak." *El Papel LLC v. Durkan*, No. 2:20-cv-01323-RAJ-JRC, 2021 WL 4272323, at *11 (W.D. Wash. Sept. 15, 2021),

report and recommendation adopted as modified, 2022 WL 2828685 (W.D. Wash. July 20, 2022).

2. RHA's strict scrutiny argument applies the wrong mode of analysis

RHA erroneously asserts that the Moratorium must be subject to strict scrutiny (a position not even the Landlords have argued) because Proclamation 20-19 "concerns multiple [] fundamental rights related to access to the courts to petition grievances and conduct discovery" *and* because the instant case raises a physical takings claim. RHA Br. at 20. But again, the right of access to the courts is not a freestanding right. Its application—and therefore the level of scrutiny to apply—depends on the "underlying claim." *Harbury*, 536 U.S. at 415; *see Miranda*, 98 Wn. App. at 908.

The relevant right for determining the correct level of scrutiny is the underlying right that a potential litigant seeks to pursue in court. Here, that is the ability to file an eviction action without delay, which is not a fundamental right. *See Yim*, 194 Wn.2d at 692–93; *Rental Hous. Ass'n*, 22 Wn. App. 2d

at 462–64; *see also DeKalb Stone, Inc. v. County of DeKalb*, 106 F.3d 956, 959 n.6 (11th Cir. 1997) (property rights, though derived from common law, "are not equivalent to fundamental rights").

The Court should reject RHA's argument to apply heightened scrutiny to the Landlord's right of access to the courts claim. *See* RHA Br. at 20. RHA cites no authority for the proposition that a right of access claim is subject to strict scrutiny just because the litigant alleges another constitutional violation. Instead, courts look to whether the underlying access to court claim involves a fundamental interest. *See Kras*, 409 U.S. at 445; *District of Columbia v. Towers*, 260 A.3d 690, 696 (D.C. 2021), *cert. denied sub nom. Gallo v. District of Columbia*, 142 S. Ct. 778, 211 L. Ed. 2d 486 (2022) (holding there is no "fundamental constitutional right to evictions on a particular timetable to support [the landlords'] claim their right of access to the courts is violated by the District's filing moratorium" (internal quotation marks and citation omitted)). And the Moratorium did

not preclude landlords from filing actions that alleged the Moratorium violated the takings clause (or from bringing other constitutional challenges) as evidenced by this case and others. *See, e.g.*, *Jevons*, 561 F. Supp. 3d 1082; *El Papel*, 2021 WL 4272323; *see also Baptiste v. Kennealy*, 490 F. Supp. 3d 353, 393 (D. Mass. 2020) (plaintiffs challenging Massachusetts' eviction moratorium were "not being deprived of the right of access to the courts concerning their Takings and Contracts Clause claims" because they were "litigating those claims in [the instant] case[ ]").

D. Rental Housing Association Mischaracterizes the Moratorium

RHA's characterizations of the Moratorium display a serious misunderstanding of its facets that warrants correction.

RHA makes absolutist arguments in comparing the Moratorium with others across the country, including assertions that "every state in the union which issued any type of landlord-tenant regulation more narrowly tailored their actions than Washington," RHA Br. at 21, and that "[m]any other

jurisdictions adopted limitations on displacing residential tenants, but none interfered in housing providers' ability to collect rent and access the courts." RHA Br. at 6. But other jurisdictions have issued similar moratoria which have been upheld against constitutional challenges similar to those raised in this case. For example, the District of Columbia enacted several restrictions on evictions, including a law that prohibited the filing of a complaint for an eviction and a law that prohibited a creditor or debt collector from filing or threating to file a lawsuit against tenants for the collection of debt during the public health emergency. *See Gallo v. District of Columbia*, No. 1:21-cv-03298 (TNM), 2022 WL 2208934, at *1–2 (D.D.C. June 21, 2022). Los Angeles prohibited landlords from terminating tenancies due to COVID-19 and further allowed tenants who missed rent payments a one-year period to pay delayed rent, starting from the end of the local emergency period. *See GHP Mgmt. Corp. v. City of Los Angeles*, No. CV21-06311 DDP (JEMx), 2022 WL 17069822, at *1 (C.D. Cal. Nov. 17, 2022).

Similarly, the City of Seattle adopted an ordinance regarding the failure to pay rent that was due during or within six months after the termination of the civil emergency proclaimed by the mayor. Under that ordinance, a tenant may elect to pay eligible, overdue rent in installments over three to six months, and failure of a landlord to accept payment under the installment schedule is a defense to eviction. *See El Papel*, 2021 WL 4272323, at *5.

RHA's comparisons to other eviction moratoria also ignore that the proper balance to strike—be it through reasonable repayment plans or otherwise—is a question for the political sphere, not this judicial arena. *Cf. In re Recall of Inslee*, __ P.3d __, No. 101117-2, 2023 WL 308217, at *8 (Wash. Jan. 19, 2023) ("[P]articularly in areas fraught with medical and scientific uncertainties, the governor's latitude must be especially broad, and we appropriately defer to such decisions." (Internal quotation marks omitted.)); *El Papel*, 2021 WL 4272323, at *10 (explaining there not need be "'precise' or perfect fit between the legislation and the objective but instead

that the relief be 'appropriately tailored to the emergency that it was designed to meet[ ]' " (citation omitted)).

RHA hyperbolically complains that Proclamation 20-19 "interfere[d] with housing providers' ability to enforce their contracts by removing the due date from every residential lease in Washingon," RHA Br. at 3, and "prohibit[ed] any filing [of] any legal action whatsoever based on non-payment," RHA Br. at 5. But again, the Moratorium did not eliminate landlords' ability to collect the full amount of past rent due, as long as they offered a reasonable repayment plan to their tenants that the tenants defaulted on or refused. Procl. 20-19.6 at 6. Nor did the Moratorium reduce or eliminate the rent obligation of any tenant or forgive any debt of unpaid rent. *See id.* Instead, the Moratorium stressed that tenants "who are not materially affected by COVID-19 should and must continue to pay rent." *Id.* at 2.

Finally, Proclamation 20-19 stated that violators of the order "may be subject to criminal penalties pursuant to

RCW 43.06.220(5).” Procl. 20-19.6 at 9. RCW 43.06.220(5), in turn, provides that *willful* violators of the Governor’s emergency orders may be guilty of a gross misdemeanor. RHA repeatedly raises the threat of criminal punishment, *see* RHA Br. at 1, 3, 6, 12, 23, but erases the culpability of the violator. And RHA cites no actual instances of *criminal* prosecutions under RCW 43.06.220(5) against landlords who willfully violated Proclamation 20-19. In reality, the State sought injunctive relief and *civil* penalties under the Consumer Protection Act against landlords who violated Proclamation 20-19 after notifying landlords of their violating conduct. *See, e.g.*, *State of Washington v. JRK Residential Group, Inc.*, No. 20-2-05933-7 (Pierce Cnty. Super. Ct.); *State of Washington v. Whitewater Creek, Inc.*, No. 20-2-02271-32 (Spokane Cnty. Super. Ct.).

III. CONCLUSION

Landlords were temporarily delayed from evicting some tenants, but the Moratorium did not entirely foreclose their access to the courts. The State respectfully requests the Court

affirm the Court of Appeals and hold that the Moratorium did not violate the right of access to the courts.

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RESPECTFULLY SUBMITTED this 2nd day of February 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed in the Washington State Supreme Court and electronically served according to the Court's protocols for electronic filing and service upon all parties.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 2nd day of February 2023, at Tacoma, Washington.

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