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SUPREME COURT  
OF THE STATE OF WASHINGTON

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

Appellants,

v.

GOVERNOR JAY INSLEE and STATE OF WASHINGTON  
Respondents.

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BRIEF OF AMICUS CURIAE  
KING COUNTY BAR ASSOCIATION HOUSING JUSTICE  
PROJECT

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## I. INTRODUCTION

Even before the COVID-19 pandemic, Washington faced a housing crisis that disproportionately impacted low-income populations and communities of color, leaving tens of thousands homeless or on the brink of eviction. When the pandemic hit, 50 million renter households across the country reported job or wage loss. This is particularly troubling given that the overwhelming majority—upwards of 80-90%—of evictions are based on nonpayment of rent; in many of these cases, the amount the tenant owes is *less than \$100*.

The immediate consequences of eviction—residential overcrowding, transiency, and homelessness—can contribute to a public health emergency by increasing social contact and inhibiting compliance with key strategies to prevent the transmission of infectious diseases (including COVID-19), such as social distancing, quarantining, and hygiene. The alarming racial disparity in evictions compounded the public health crisis

during the pandemic: communities of color, who were more likely to be evicted than white populations, were also at higher risk for infection, hospitalization, and death from COVID-19.

Recognizing that renters faced more dire financial circumstances than before, and that an increase in evictions and homelessness would in turn increase the spread of COVID-19, Washington, along with 43 other states and the District of Columbia, enacted a temporary moratorium on most but not all residential evictions. Similarly, Congress passed its own eviction moratorium as part of the CARES Act<sup>1</sup> and the Center for Disease Control (CDC) issued its own moratorium in September 2020.<sup>2</sup>

The Court of Appeals correctly held that the temporary

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<sup>1</sup> 15 U.S.C. § 9058(b).

<sup>2</sup> Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020) <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>.

eviction moratorium was a proper exercise of Governor Inslee’s emergency authority to preserve and maintain life, health, and public peace, and that the temporary moratorium itself was a legitimate and reasonable means of achieving that goal. While exceptions to the moratorium ensured that landlords still could—and in fact did—evict tenants for certain reasons, studies have confirmed that preventing or reducing evictions successfully slows the spreads of COVID-19. This Court should affirm the Court of Appeals’ decision or dismiss this case as moot, given that the moratorium expired over a year ago.

## **II. IDENTITY AND INTEREST OF AMICUS CURIAE**

The King County Bar Association’s Housing Justice Project (“HJP”) is a legal clinic that provides free legal assistance and interpreters to low-income tenants facing eviction in King County. HJP’s research and expertise in this area has confirmed that housing was critical to protecting public health during the COVID-19 pandemic. HJP provided input to the State during the development of the eviction moratorium and sought the

Governor's intervention to protect tenants who would have otherwise had to appear in person in court while the transmissibility and potential harm of COVID-19 remained unclear.

The identity and interest of HJP, as required by RAP 10.3(e), are explained in greater detail in HJP's motion for leave to submit this amicus brief.

### **III. STATEMENT OF THE CASE**

KCBA adopts the statements of the case set forth in the State's responsive brief and supplemental brief.

### **IV. ARGUMENT**

#### **A. Studies Overwhelmingly Establish That Eviction Moratoriums Have Been Crucial to Preserving and Maintaining Life, Health, and Public Peace During the COVID-19 Pandemic.**

The Court of Appeals correctly held that the temporary eviction moratorium was a proper exercise of the Governor's authority to issue proclamations during a state of emergency prohibiting activities the Governor reasonably believes should be prohibited "to help preserve and maintain life, health, property

or the public peace.” *Gonzales v. Inslee*, 21 Wn. App. 2d 110, 128, 504 P.3d 890 (2022) (quoting RCW 43.06.220(1)(h)). National, state, and local data overwhelmingly demonstrate that eviction moratoriums promoted public health and safety during the pandemic by slowing the spread of COVID-19, preventing homelessness, and protecting marginalized communities disproportionately harmed by evictions, homelessness, and COVID-19.

**1. Washington Was Already Experiencing a Housing Crisis Prior to the Pandemic.**

“[L]ow-income households are most likely to be evicted where stagnant wages and inadequate welfare are unable to compete with increases in rent.”<sup>3</sup> Like many states, Washington was experiencing a housing crisis even before the COVID-19 pandemic struck in March 2020. According to the University of Washington Evictions Project (the “Evictions Project”), 46% of

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<sup>3</sup> Timothy A. Thomas et al., *The State of Evictions: Results from the University of Washington Evictions Project*, § 1 (University of Washington Evictions Project ed. Jan. 6, 2020), <https://evictionresearch.net/washington/index.html#>.

Washington households in 2017 were “rent burdened,” meaning that the tenant(s) contributed more than 30% of their income to rent.<sup>4</sup> About half of those Washington households contributed more than 50% of their income to rent, which “means that thousands of households are constantly on the verge of losing their home to an increase in rent or eviction due to rent burden.”<sup>5</sup>

Unfortunately, that is exactly what happened to hundreds of thousands of Washingtonians. Between 2004 and 2017, 397,697 adults in Washington received a formal eviction.<sup>6</sup> From 2013 to 2017 alone, 130,203 adults in Washington were evicted—in other words, one in 55 adults or 1.8% of the adult population.<sup>7</sup> By 2018, the number of Washington citizens who were homeless reached levels experienced during the Great Recession.<sup>8</sup> Of the more than 3.6 million eviction cases filed

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

across the country in 2018; 16,200 cases were filed in Washington alone.<sup>9</sup> The following year, there were 4,471 evictions filed in just King County.<sup>10</sup>

Research consistently shows that the overwhelming majority of evictions, both in Washington and across the country, are due to nonpayment of rent. The Evictions Project concluded that “at least 80% to 90% of households across the country were evicted for falling behind on rent with about 1/3rd of households allocating at least 80% of their income to rent.”<sup>11</sup> Only 10% to 20% of evictions were for “breaking rules” in the lease.<sup>12</sup>

HJP, which tracks eviction data in King County, determined that 86.5% of eviction filings in Seattle in 2017 were for nonpayment of rent; of those, 52.3% were for one month or

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<sup>9</sup> *National Eviction Map*, Eviction Lab, <https://evictionlab.org/new-eviction-data-2022/> (last visited Jan. 2, 2023).

<sup>10</sup> King County Bar Association, *2019 – A Year of Evictions*, <https://www.kcba.org/For-the-Public/Free-LegalAssistance/Housing-Justice-Project/Explore-Data/2019-A-Year-of-Evictions> (last visited Jan. 8, 2023).

<sup>11</sup> Thomas, *supra* note 3, § 2.

<sup>12</sup> *Id.*



less in rent and “many households were evicted for owing less than \$100 in rent.”<sup>13</sup> That same study revealed that “[w]omen were more likely to be evicted over small amounts of money: of single-tenant household cases where a tenant owed \$100.00 or less, 81.0% were women.”<sup>14</sup> In 2019, 87.5% of evictions in King County were due to nonpayment of rent.<sup>15</sup> Within the remaining 12.5% of evictions, 35% were based on no-cause terminations or expired leases and 31.6% were due to lease violations.<sup>16</sup>

Studies show that “[t]he mark of an eviction has long lasting consequences for individuals.”<sup>17</sup> Eviction “almost always” results in “a downward move, into poorer quality housing, residential instability, homelessness, and negative

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<sup>13</sup> Tara Cookson et al, *Losing Home The human Cost of Eviction in Seattle*, <https://www.kcba.org/Portals/0/pbs/pdf/Losing%20Home%202018.pdf> (last visited Jan. 8, 2023); Thomas, *supra* note 3, § 2.

<sup>14</sup> *Id.*

<sup>15</sup> *2019 – A Year of Evictions*, *supra* note 10.

<sup>16</sup> *Id.*

<sup>17</sup> Thomas, *supra* note 3, § 2 n. 18.

health consequences for adults and children.”<sup>18</sup> In 2019, 21,577 people experienced homelessness in Washington alone.<sup>19</sup> In 2020, that number increased to 22,923 individuals.<sup>20</sup>

## **2. The Pandemic Exacerbated Housing Insecurity Across the County.**

As the data above illustrates, millions of Americans lived perilously close to eviction when the COVID-19 pandemic hit the United States in March 2020. In July 2020, 50 million renters reported living in households that had suffered a COVID-19-related job or wage loss.<sup>21</sup> Those renters were “also more likely

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<sup>18</sup> Emily A Benfer et al, *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, [https://openyls.law.yale.edu/bitstream/handle/20.500.13051/5966/Benfer\\_v19n3\\_122\\_171.pdf?sequence=2](https://openyls.law.yale.edu/bitstream/handle/20.500.13051/5966/Benfer_v19n3_122_171.pdf?sequence=2) (last visited Jan. 8, 2023).

<sup>19</sup> *Id.*; U.S. Department of Housing and Urban Development, *2021 AHAR: Part 1 - PIT Estimates of Homelessness in the U.S.*, <https://www.hudexchange.info/resource/6573/2021-ahar-part-1-pit-estimates-of-homelessness-in-the-us/> (last visited Jan. 8, 2023).

<sup>20</sup> *2021 AHAR: Part 1 - PIT Estimates of Homelessness in the U.S.*, *supra* note 20.

<sup>21</sup> Elizabeth Kneebone et al, *Estimating COVID-19’s Near-Term Impact on Renters* (April 24, 2020), <https://ternercenter.org>.

to be people of color: while Latinx and Black residents make up 18% and 12% of the U.S. population, they account for 28% and 18% of the impacted renter population, respectively.”<sup>22</sup>

Across the country, the total unemployment rate in September 2019 was 3.5%; it rose to 10.2% in July 2020 before lowering to 7.9% in September 2020.<sup>23</sup> By comparison, the unemployment rate peaked at 10% in October 2009 during the Great Recession.<sup>24</sup> BIPOC populations continued to see higher unemployment rates than white individuals. In July 2020, unemployment reached 14.6% for Black or African Americans, 12.9% for Hispanics or Latinx, and 12.0% for Asians, compared to 9.2% for white people.<sup>25</sup> By September 2020, the

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berkeley.edu/research-and-policy/estimating-covid-19s-near-term-impact-on-renters/.

<sup>22</sup> *Id.*

<sup>23</sup> U.S. Bureau of Labor Statistics, *Employment Situation News Release*, <https://www.bls.gov/news.release/archives/empisit10022020.htm> (last visited Jan. 8, 2023).

<sup>24</sup> U.S. Bureau of Labor Statistics, *The Recession of 2007–2009*, at 2, [https://www.bls.gov/spotlight/2012/recession/pdf/recession\\_bls\\_spotlight.pdf](https://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf) (last visited Jan. 8, 2023).

<sup>25</sup> *Employment Situation News Release*, *supra* note 24.

unemployment rate was 7% for white individuals but remained much higher at 12.1% for Black or African Americans, 10.3% for Hispanics or Latinx, and 8.9% for Asians.<sup>26</sup>

Even prior to the pandemic, the overwhelming majority of evictions (80-90%) were due to tenants falling behind on rent—even where only nominal amounts (less than \$100) were overdue. These evictions occurred despite the fact that an overwhelming majority of the households were contributing 50-80% of their income to rent. Due to the extreme socioeconomic divide, “over 70% of Black or Latino adults entered the pandemic lacking the emergency funds to cover three months of expenses, compared to under half of White adults.”<sup>27</sup>

The COVID-19 pandemic and widespread unemployment in 2020 left millions of Americans who were already in a perilous

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<sup>26</sup> *Id.*

<sup>27</sup> Emily A. Benfer et al, *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, *J Urban Health*. 2021 Feb; 98(1) (Jan 7, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7790520/>.

financial situation even more vulnerable to evictions for late or nonpayment of rent. The Governor’s proclamations expressly recognized the “continued financial precariousness of many in the state.” *See* Proclamation 20-19.4. As of November 2020, information then-available “suggest[ed] that at least 165,000 tenants in Washington will be unable to pay their rent in the near future”; by March 2021, an estimated 76,000 tenants in Washington would be unable to pay their rent in the near future. Proclamation 20-19.5, 20-19.6. While the whole country faced an unprecedented crisis with the onset of the COVID-19 pandemic, the eviction recognized that Washington renters—in particular, minorities and vulnerable communities—faced an even graver state of emergency.

### **3. Marginalized Communities Are Disproportionately Harmed by Evictions and COVID-19.**

Research and studies consistently demonstrate that evictions harm marginalized communities at disproportionate rates to the white population. In 2017, in Seattle alone, “51.7%

of tenants in eviction filings were people of color; 31.2% were Black tenants, experiencing eviction at a rate 4.5 times what would be expected based on their demographics in Seattle.”<sup>28</sup> HJP’s studies estimate that 40% of the tenants in King County eviction cases in 2019 were white, 34% were Black or African American, 12.5% were Latinx, and 6.4% were Asian.<sup>29</sup> Only 6.3% of King County’s population identified as Black or African American, and yet over a third of all evictions filed in King County were against Black or African American tenants.<sup>30</sup> From 2013 to 2017, Black or African American adults were more than five times more likely to be evicted than white adults in King County, and nearly seven times more likely to be evicted than white adults in Pierce County.<sup>31</sup>

The data demonstrates an alarming racial disparity in King County evictions, particularly amongst Black renters. This racial

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<sup>28</sup> Cookson, *supra* note 13.

<sup>29</sup> 2019 – *A Year of Evictions*, *supra* note 10.

<sup>30</sup> *Id.*

<sup>31</sup> Thomas, *supra* note 3, § 4.

disparity is not limited to King County; it is prevalent across the state and country. Black or African American renters consistently face eviction at the highest rates compared to other communities.<sup>32</sup> Some studies have concluded that Black households are more than twice as likely as white households to be evicted, while another study of multiple cities showed that approximately 80% of people facing eviction were non-white.<sup>33</sup>

Not only do evictions disproportionately harm marginalized communities, but COVID-19 has also infected, hospitalized, and killed minority populations at a higher rate than white communities. For instance, Indigenous Americans are 1.5 times more likely to be infected with COVID-19, 2.5 times more likely to be hospitalized with COVID-19, and 2.1 times more

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<sup>32</sup> Tim Thomas, *The State of Evictions Racial and Gender Disparities in Washington Evictions*, at 16, [https://www.wliha.org/sites/default/files/DrThomasStateofEvictions\\_slides\\_2-26LALwebinar.pdf](https://www.wliha.org/sites/default/files/DrThomasStateofEvictions_slides_2-26LALwebinar.pdf) (last visited Jan. 9, 2023)

<sup>33</sup> *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, *supra* note 18 at 1 at 29.

likely to die from COVID-19 than non-Hispanic whites.<sup>34</sup> Black or African Americans are 1.1 times more likely to be infected, 2.1 times more likely to be hospitalized, and 1.6 times more likely to die from COVID-19 than non-Hispanic whites.<sup>35</sup> Hispanic/Latinx individuals are 1.5 times more likely to be infected, 1.9 times more likely to be hospitalized, and 1.7 times more likely to be killed from COVID-19.<sup>36</sup>

As the CDC recognizes, “[r]ace and ethnicity are risk markers for other underlying conditions that affect health, including socioeconomic status, access to health care, and exposure to the virus related to occupation, e.g., frontline, essential, and critical infrastructure workers.”<sup>37</sup> Housing instability contributes to these other underlying conditions that

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<sup>34</sup> Centers for Disease Control and Prevention, *Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity*, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-raceethnicity.html> (last visited on Jan. 8, 2023).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*



have put BIPOC communities at higher risk for infection, hospitalization, and death during the COVID-19 pandemic.

**4. Eviction Moratoriums Preserved Public Health and Safety by Reducing the Transmission of COVID-19.**

By temporarily halting most—but not all—residential evictions during an unprecedented global health crisis, the eviction moratorium slowed COVID-19 transmissions, prevented increased homelessness, alleviated already overburdened healthcare system, protected vulnerable communities already disproportionately harmed by the pandemic *and* evictions, and maintained public safety. To say that the Governor’s proclamations “help[ed] preserve and maintain life, health, property or the public peace” is to put it mildly.

Data from numerous studies amongst housing and public health officials proves that eviction moratoriums reduce and/or slow transmissible viruses, including COVID-19. This is because “[t]here is strong evidence that housing is a social determinant of health”: “[h]ousing stability, quality, safety, and

affordability all affect health outcomes, as do environmental and social characteristics of neighborhoods” while “foreclosure, housing instability, and homelessness are all pathways to poor health.”<sup>38</sup> Eviction forces individuals and families into transiency, homelessness, and crowded residential environments through homeless shelters, “doubling up and couch surfing,” or otherwise cohabitating with friends and family.<sup>39</sup>

Residential crowding is associated with respiratory disease—a risk factor for COVID-19 complications and mortality.<sup>40</sup> Overcrowding, homelessness, and transiency “increase contact with others and make compliance with pandemic health guidelines difficult or impossible and increase the transmission rate of infectious disease.”<sup>41</sup> As a result, “eviction and housing displacement may also lead to less

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<sup>38</sup> *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, *supra* note 18 at 27.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 27-28.

<sup>41</sup> *Id.* at 33.

frequent COVID-19 testing and medical attention,” as well as “decreased access to primary and specialty medical care.”<sup>42</sup> Unsurprisingly, “those facing eviction have difficulty prioritizing their health needs while struggling to maintain housing.”<sup>43</sup>

Given this, it is unsurprising that studies show “that the absence or lifting of eviction moratoriums are associated with an increased rate of COVID-19 infection and death.”<sup>44</sup> In states that lifted their moratoriums, the COVID-19 incidence rate ratios “increased steadily” two weeks after the moratoriums ended;

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<sup>42</sup> *Id.* at 34.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*; See Kathryn M. Leifheit, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 190(12) *Am. J. Epidemiology* 2563, 2563(2021), available at <https://academic.oup.com/aje/article/190/12/2503/6328194>; Nande A, Sheen J, Walters EL, et al. *The effect of eviction moratoria on the transmission of SARS-CoV-2*, 12(1) *Nat Commun.* 2274 (2020); See Kay Jowers et al., *Housing precarity & the Covid-19 pandemic: impacts of utility disconnection and eviction moratoria on infections and deaths across US counties*, NBER Working Papers, <https://www.nber.org/papers/w28394> (last visited Jan. 8, 2023).

mortality rates also “increas[ed] rapidly beginning 5 weeks after moratoriums expired.”<sup>45</sup> Sixteen or more weeks after lifting their moratoriums, states had an average of 2.1 times higher COVID-19 incidence rates and 5.4 times higher mortality rates than states that maintained their moratoriums.<sup>46</sup> This data translates to a total of 433,700 excess cases of COVID-19 and 10,7000 excess deaths associated with eviction moratoriums lifting.<sup>47</sup>

As one study succinctly put it: “The expiration of eviction moratoriums was associated with increased COVID-19 incidence and mortality in US states, supporting the public-health rationale for use of eviction moratoriums to prevent the spread of COVID-19.”<sup>48</sup>

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<sup>45</sup> Leifheit, *supra* note 45 at 2,566.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 2,566-67.

<sup>48</sup> *Id.* at 2,568.

**B. The Temporary Eviction Moratoriums Were a Legitimate and Rational Means of Reducing the Spread of COVID-19 and Preserving Public Safety.**

Given the data above, there can be no reasonable dispute that the temporary eviction moratorium reduced the spread of COVID-19 and protected thousands of vulnerable Washingtonians from eviction. Notably, Appellants do not dispute that the moratorium served a legitimate end or public purpose.<sup>49</sup> Instead, Appellants contend that the temporary moratorium did not advance its purpose in an appropriate, reasonable, or rational manner. This Court should reject Appellants' argument, which is directly contradicted by the plain language of the Governor's proclamations.

As an initial matter, the eviction moratorium was *temporary*. As the Court is aware, the moratorium expired on

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<sup>49</sup> KCBA agrees with the State that the Court of Appeals properly applied the rational basis test when evaluating whether the moratorium regulated access to the courts. Under the rational basis test, access to the courts may be regulated if the government action served a legitimate end and were a rational means to achieve that end.

October 31, 2021, more than a year ago. Moreover, Washington was in the overwhelming majority of states in implementing the moratorium: during the first year of the pandemic, 43 states and Washington D.C. instituted some form of eviction moratorium.<sup>50</sup> Additionally, the CDC instituted its own moratorium that protected low-income tenants across the country.<sup>51</sup> Among the jurisdictions that established an eviction moratorium, 70% of the moratoria halted law enforcement's execution of the eviction judgment, 68% suspended court hearings, and 54% stopped eviction filings.<sup>52</sup> Four states (Hawaii, North Carolina, Nevada, and Massachusetts) froze *all* stages of the eviction process at

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<sup>50</sup> Emily A. Benfer et al., *Assessing State Eviction Prevention Policies in Response to COVID-19*, <https://evictionlab.org/assessing-state-eviction-prevention-covid-19/> (last visited Jan. 8, 2023).

<sup>51</sup> *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 85 FR 55,292. (Sept. 4, 2020).

<sup>52</sup> *Assessing State Eviction Prevention Policies in Response to COVID-19*, *supra* note 51.

some point throughout the pandemic.<sup>53</sup>

Washington’s eviction moratorium was not as extreme as those four states. As the Court of Appeals astutely noted, “none of the proclamations stated that the governor was suspending any statutes,” but rather “prohibited certain specific activities.” *Gonzales*, 21 Wn. App. 2d at 129. While the moratorium was in effect, tenants “were subject to the statutory obligation to pay rent set forth in RCW 59.18.110; they simply could not be evicted for failing to pay rent.” *Id.* While the temporary moratorium “may have delayed the ability of landlords to exercise the statutory remedy of eviction stated in RCW 59.12.030 in many cases,” the operation of that statute was not suspended. *Id.* To the contrary, the wrongful detainer statute

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<sup>53</sup> The eviction process can generally be broken down into five stages: (1) the landlord provides the tenant with notice of the intent evict; (2) the landlord initiates eviction proceedings in the court; (3) the hearing on the case; (4) the judge issues an eviction judgment; and (5) law enforcement removes the tenant. <https://evictionlab.org/assessing-state-eviction-prevention-covid-19/>

still could be invoked if ‘necessary to respond to a significant and immediate risk to the health and safety of others created by the resident,’ Proclamation 20-19.1 at 3, or if the property owner planned to personally occupy or sell the rental property.” *Id.*

These exceptions to the eviction moratorium were not mere lip service. Evictions continued to occur throughout the state even while the temporary moratorium was in place. HJP compiled data regarding evictions during the first year of the moratorium (April 2020 – March 2021). The data demonstrates that the moratorium was far from absolute and that landlords used the lawful avenues available under the Proclamations to evict tenants—even for reasons that the moratorium prohibited.

For instance, during the first year of moratorium, landlords filed approximately 29 evictions per month in King County courts.<sup>54</sup> There was also likely a significant number of additional

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<sup>54</sup> King County Bar Association, *Evictions During COVID-19*, <https://www.kcba.org/For-the-Public/Free-Legal-Assistance/Housing-Justice-Project/Explore-Data/Evictions-During-COVID-19> (last visited Jan. 8, 2023).



“informal evictions” that occurred during the moratorium, such as illegal lockouts and tenants choosing to self-evict. Of the 351 filed evictions, 73.8% resulted in the household ultimately being evicted from their home. In other words, an average of 22 new households each month found themselves without stable housing in the middle of a pandemic and during a time when Washingtonians were mandated to stay home to reduce the spread of COVID-19. Certain areas of King County saw an even higher percentage of unlawful detainers ending in eviction: 81.3% of filings in Bellevue resulted in eviction, while 91.7% of filings in Shoreline ended in eviction.

Additionally, 53.6% of the eviction filings resulted in a default judgment—meaning that in over half of the filed eviction cases in King County, the judge or commissioner approved the eviction without ever hearing from the tenant. Unfortunately, this is unsurprising; in 2018, less than 8% of all Washington tenants had an attorney to help them navigate the complexities of

an eviction case.<sup>55</sup>

It is also important to note that, while the moratorium temporarily prohibited evictions for nonpayment of rent and for no-cause terminations, a landlord still filed unlawful detainer action for those reasons even though barred by the Governor's Proclamations. Some landlords used this loophole to evict tenants for nonpayment, despite the moratorium. For instance, in one eviction case during the first year of the moratorium, the landlord filed an unlawful detainer for nonpayment of rent. The landlord then changed course and served the tenants with a 60-day notice of intent to sell the property. The tenants were ultimately evicted, despite the initial filing being based on nonpayment of rent—which was prohibited under the moratorium. To add further injury to the tenants, unlawful detainers remain on their records, meaning those tenants will likely face additional hurdles in finding alternate or future

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<sup>55</sup> Thomas, *supra* note 3, § 4.3.

housing.<sup>56</sup>

Proclamation 20-19.2, issued on June 2, 2020, first introduced the exception for landlords to evict tenants based on the landlord's notice of intent to sell the property or to occupy the property as their primary residence. Proclamation 20-19.2 initially required only that the landlord give the tenant 60 days' written notice; Proclamation 20-19.4 added an additional requirement that the landlord include a signed affidavit regarding their intent to sell or occupy the property. Aside from the affidavit and 60 days' notice to the tenant, neither of which was an onerous requirement, landlords were not required to provide any additional proof of selling or occupying the property after evicting their tenants.

By August 2020, eviction filings for seeking to sell or occupy the unit became frequent—indeed, they became the second-most frequent basis of eviction during the moratorium.

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<sup>56</sup> *Evictions During COVID-19*, *supra* note 55.

During the first year of the moratorium, 121 eviction filings were based on the owners' intent to sell or occupy. Of those, 93 were specifically based on the owner's intent to sell. As of July 2021, just under half of the properties in "intent to sell" eviction cases had been sold or listed for sale. HJP found no other data indicating the remaining 49.5% of the properties had been listed for sale. In fact, HJP found six properties being re-listed for rent. This data suggests that an alarming number of landlords used this exception as a loophole to evict their tenants during the moratorium.

The moratorium also temporarily halted evictions for lease violations, except where the tenant created a "significant and immediate risk to the health or safety of others." Despite this protection, eviction filings based on lease violations continued at almost the same pre-pandemic levels: in 2019, there were 176 evictions filed for lease violations and behavior; during the first year of the moratorium, there were 158 cases filed for those same reasons. Many of the purported lease violations during the

moratorium did not even constitute a “significant and immediate risk” to health and safety. Despite the moratorium being in place, numerous tenants still faced eviction for violations such as noise complaints, failing to maintain their yard, hoarding, and unauthorized vehicles. Tenants were evicted 75.9% of the time when the landlord filed an unlawful detainer based on a lease violation—higher than the overall rate of unlawful detainer filings resulting in eviction.

Troublingly, HJP’s data indicates that the areas with the most eviction filings during the first year of the moratorium were also the areas hit hardest by COVID—predominantly in South King County, which has a greater percentage of BIPOC residents than King County overall.

HJP’s extensive research and data of the first year of the moratorium, when stay-at-home orders were in place and the novel virus was spreading at alarming rates, reveals that landlords had, used, and, in some cases, abused exceptions within the temporary moratorium to file eviction cases. Most

concerning of all, the landlords were overwhelmingly successful in their efforts to evict the tenants even the moratorium's protections.

As clearly demonstrated from this data, the temporary moratorium was far from an absolute ban on all evictions. The moratorium was a reasonable and rational means of protecting the public—and marginalized and vulnerable communities in particular—from becoming homeless during a pandemic of a highly infectious virus. The moratorium was indisputably a proper exercise of the Governor's authority and a legitimate and reasonable means to attempt to preserve the public health and safety of Washingtonians during a global crisis.

**C. The Eviction Moratorium was Balanced with Extensive Rental Assistance Programs to Offset Losses that Landlords May Face.**

While the Governor's Proclamations limited the ability of a landlord to evict a tenant for nonpayment of rent, several rental assistance programs were established to benefit both landlords and tenants.

At the beginning of the 2021 Washington legislative session, the Governor signed HB 1368, which provided more than \$300 million in rental assistance to landlords and tenants, including a program for landlords owning four or fewer units to apply directly for assistance from the Washington Department of Commerce.<sup>57</sup> In the same session, the Legislature created a landlord mitigation fund subsequently called the “COVID Relief Program,” which permitted landlords to directly apply for reimbursement of up to \$15,000.00 per tenant who fell behind on rent or defaulted on a payment plan.<sup>58</sup> Under the latter program, a landlord could seek reimbursement for rent accrued from March 1, 2020 through six months after the eviction moratorium ended or the end of the public health emergency.<sup>59</sup>

That was not the assistance provided to landlords. As part of both the Consolidated Appropriations Act of 2021 passed in

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<sup>57</sup> H.B. 1368 §3, 67th Leg., Reg. Sess. (2021).

<sup>58</sup> RCW 43.31.605(1)(c).

<sup>59</sup> *Id.*

December 2020, and the American Rescue Plan passed in March 2021, Congress appropriated more than \$46 *billion* for rental assistance programs across the country.<sup>60</sup> Some of those funds were awarded directly to larger counties in Washington State such as King, Pierce, and Spokane counties, with the remainder going directly to the State of Washington. As part of the operating budget passed at the end of the legislative session in 2021, the Legislature appropriated more than \$600 million in rental assistance for landlords and tenants.<sup>61</sup> The programs were overseen by the Washington State Department of Commerce through grants to the counties in Washington, who administered the assistance directly. As part of the program, counties could establish programs providing direct relief to landlords. For example, King County created a program where landlords could seek assistance directly from King County to have their

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<sup>60</sup> Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, §501, 1134 Stat. 1182 (2020); American Rescue Plan Act of 2021, Pub. L. No. 117-2, §3201, 135 Stat. 4 (2021).

<sup>61</sup> S.B. 5092 §129(45), 67th Leg., Reg. Sess. (2021).



delinquencies reimbursed.<sup>62</sup>

Rather than requiring landlords to sustain long-term losses, the Governor issued the eviction moratorium in the context of other programs that provided relief to landlords in order to cover losses the landlord may sustain as a result of having to delay any eviction.

## V. CONCLUSION

The temporary eviction moratorium was a proper exercise of the Governor's authority during an unprecedented public health and safety crisis. The temporary moratorium was a critical method of reducing the spread of COVID-19, particularly amongst vulnerable and marginalized communities. This Court should affirm the Court of Appeals' decision correctly upholding the moratorium or, in the alternative, dismiss review because the

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<sup>62</sup> King County Bar Association. *Large Landlord Program King County Eviction Prevention and Rental Assistance Program*, <https://kingcounty.gov/depts/community-human-services/COVID/eviction-prevention-rent-assistance/landlords.aspx> (last visited Jan. 8, 2022).

issues presented in the petition for review are now moot.

This document contains 4,894 words, excluding the parts of the document exempted from the word count by RAP 18.17.

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# HOUSING JUSTICE PROJECT (KCBA)

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