No. 100,992-5

SUPREME COURT
FOR 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,

Respondent.

BRIEF OF AMICUS CURIAE

RENTAL HOUSING ASSOCIATION OF WASHINGTON

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II. INTRODUCTION

Proclamation 20-19 through 20-19.6 (hereinafter collectively "the Proclamation") restricted housing providers' fundamental rights. While it did not literally close the doors to the courthouse, it *made it a crime* to take the actions necessary for a housing provider to get into court. The Proclamation did this by prohibiting the act of petitioning the court, not merely limiting what remedies were available or creating temporary affirmative rights to a payment plan, defenses to non-payment, or defenses to eviction.

The broad scope of the Proclamation restricted housing providers' access not just to the unlawful detainer court, but to every other venue for protecting their fundamental rights unless they were willing to risk imprisonment or incur the massive cost and delay of an action such as this. These restrictions are unique in multiple, fundamental ways from the emergency actions taken by other executives and by the federal government.

III. INTEREST OF AMICUS

The Rental Housing Association of Washington (RHAWA) is a nonprofit trade organization representing over 5,000 small, independent housing provides throughout Washington State. The average member of RHAWA has approximately two rental units. RHAWA's mission is to act

as champions the rental housing industry through advocacy, a high standard of ethics, education, research, products, and services.

RHAWA and its members are interested in this case because the pandemic, and the government's response, had a profound impact on their businesses and the community in which they live. The majority of RHAWA's members have only one or two rental units. They are teachers, engineers, first responders, and parents first; they are housing providers second. RHAWA's members seek to keep their cost low so that they can provide naturally affordable housing.

RHAWA regularly surveys its members and recently departed members. During the pandemic, large numbers of members reported selling some or all of their units because regulations like the Proclamation made it too risky, too difficult, or too expensive to stay in business. Because RHAWA members have few units, a tenant who does not pay rent, regardless of the cause, is a significant burden to them. The pandemic and the regulatory response forced many of RHAWA's members out of the business and put many more at risk of losing their life's investment and savings.

IV. ARGUMENT

The monetary restrictions contained in the Proclamation, removing the due date in rental agreements by preventing the rent from being

considered an "enforceable debt" until certain, extra-contractual obligations were met. The Proclamation did not regulate evictions by creating additional defenses to eviction, granting rights to a payment plan, or suspending or repealing statutory remedies. Instead, the Proclamation made it a crime for housing providers to exercise certain statutory rights, made it a crime for housing providers to file cases in court, made it a crime for housing providers to make certain arguments in court, and made it a crime for housing providers to ask the court for certain types of relief.

A. The Proclamation interferes with every layer of housing providers' rent collection rights to advance only one objective that is not tied to resident-specific need

The Proclamation's objective is "to prevent a potential new devastating impact of the COVID-19 outbreak." CP at 322; *see also* State's Response Brief, at 77 (objective is "to prevent economic dislocation and slow the spread of disease"). It seeks to achieve this objective by allowing residential tenants to stay in the properties they pay to rent, if they choose to stay, regardless of their ability to pay, and even regardless of whether they merely *choose* not to pay.

The Proclamation first interferes with housing providers' ability to enforce their contracts by removing the due date from every residential lease in Washington. The Proclamation provides that rent cannot be

considered "an enforceable debt… [until] the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident." CP at 320. This provision effectively rewrote every residential rental agreement in the state, removing the provision that "rent is due on the first" and replacing it with "rent is due on a schedule that is reasonable based on the [resident's] individual financial, health, and other circumstances." The right to a repayment plan is unconditional. This restriction is not tied in any way to a resident's ability to pay.

Even if a housing provider could overcome the obstacles inherent in crafting a repayment plan based on the resident's "individual financial, health, and other circumstances," the housing provider is next prohibited from issuing any formal notice that the rent is past due. The Proclamation prohibits housing providers from "serving or enforcing, or threatening to serve or enforce any. . . notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate." CP at 319. To bring a claim for unlawful detainer based on non-payment of rent, housing providers must first serve a formal pre-eviction notice. RCW 59.12.030(3); RCW 59.18.057; *see Hous. Auth. of City of Seattle v. Bin*, 163 Wn. App. 367, 373-75 (2011) (service of a valid pre-eviction notice is a necessary condition precedent to an unlawful detainer action).

Besides triggering housing providers' formal rights, this notice contains information for residents about resources available to help them and triggers their eligibility for many types of rental assistance. *See* RCW 59.18.057(1). This restriction is not tied in any way to a resident's ability to pay.

Even though the Proclamation prohibited issuing the necessary pre-eviction notice, the Proclamation also prohibits housing providers from "seeking or enforcing, or threatening to seek or enforce, judicial eviction orders" concerning residential rental property. CP at 320. This restriction is not tied in any way to a resident's ability to pay.

The Proclamation also expressly prohibits "*filing* [either] an unlawful detainer or other judicial action" based on non-payment of rent. CP at 320 (emphasis added). This doubly-restricts non-payment of rent evictions because housing providers cannot seek, threaten to seek, or file unlawful detainers. The Proclamation did not even limit this restriction to cases where a resident could potentially be displaced by the court case; the Proclamation prohibits any filing any legal action whatsoever based on non-payment. This restriction is not tied in any way to a resident's ability to pay.

The Proclamation finally prohibits housing providers from asking the court for a "judicial eviction order." CP at 320. If housing providers

are somehow able to get into court, or if they had cases already in court for debts that that pre-dated the scope of restrictions, the Proclamation limits what they can say and do in court. This restriction is not tied in any way to a resident's ability to pay.

The Proclamation enforces all these restrictions with the force of criminal prosecution. The Proclamation concludes by threatening "violators of this order may be subject to criminal penalties." CP at 323.

Many other jurisdictions adopted limitations on displacing residential tenants, but none interfered in housing providers' ability to collect rent and access the courts. *E.g. Ala. Ass'n of Realtors v. HHS*, ___ U.S. ___, 141 S. Ct. 2485, 2491 (2021) (Center for Disease Control moratorium covered residents who met five specific criteria); *Chrysafis v. Marks*, 544 F. Supp. 3d 241, 248 (E.D.N.Y 2021) (New York moratorium created a defense to eviction for tenants who had suffered hardship); *Apt. Ass'n of L.A. County v. City of L.A.*, 500 F. Supp. 3d 1088, 1093 (C.D. Cal. 2020) (Los Angeles regulated eviction for non-payment for tenants who "qualify" for coverage); *Baptiste v. Kennealy*, 490 F. Supp. 3d 353, 376 (Mass. 2020) (Massachusetts did not regulate cases for only a money judgment); SMC 22.205.100 (Seattle created a defense to eviction for tenants who suffered hardship).

The Proclamation interfered with housing providers' relationship with their residents in a more intrusive, more restrictive manner than any other jurisdiction. The Center for Disease Control moratorium placed the burden on residential tenants to assert hardship by serving their housing provider with notice of their claim. *See Ass'n of Realtors*, ___ U.S. ___, 141 S. Ct. at 2491. The Los Angeles moratorium allowed housing providers to dispute whether the resident qualified for eviction prevention. *Apt. Ass'n of L.A. County*, 500 F. Supp. 3d at 1093. The New York moratorium created an affirmative defense to eviction. *Chrysafis*, 544 F. Supp. 3d at 248. The Proclamation is different from all these moratoria because it does not give residents a right to claim a defense, it prohibits housing providers from alleging a cause of action.

This far broader scope of asserted authority does not regulate what happens in court. Instead, it prohibits housing providers from going to court at all and prohibits what they can and ask for in court. This peculiar approach makes decisions affirming other jurisdictions' emergency responses less valuable to this court's analysis.

B. The Proclamation restricted housing providers' fundamental right of access to the courts

Access to the courts to bring petitions for redress of recognized causes of action, to conduct discovery, to be meaningfully heard, and to

receive resolution of disputes are "not an abstract theory of constitutional law, but rather [are] the bedrock foundation upon which rest all the people's rights and obligations." *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780 (1991). The rights arise out of both the Washington Constitution and the United States Constitution. *Id.* at 781-82. *Carter v. Univ. of Wash.*, 85 Wn.2d 391, 396-97 (1975) (Privileges and Immunities Clause); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510, 92 S. Ct. 609 (1972) (First Amendment).

Washington's "cases on the right of access are somewhat perplexing." *Puget Sound Blood Ctr.*, 117 Wn.2d at 781. While our Supreme Court has announced that the right of access to the courts is a fundamental right, it has not clarified the precise source of that right. *Puget Sound Blood Ctr.*, 117 Wn.2d at 780 (1991) (fundamental); *Carter v. Univ. of Wash.*, 85 Wn.2d at 396-99 (1975) (plurality opinion) ("we hold that the explicit provision in our constitution preserving the right to petition for grievances encompasses and, indeed, makes fundamental the right of access to the courts"); *see Hous. Auth. v. Saylors*, 87 Wn.2d 732, 741-43 (1976) (holding that the basis for the right to access was not found in Article 1, Section 4 of the Washington Constitution but not rejecting the notion that access to the courts is a fundamental right); *1519-1525 Lakeview Blvd. Condominium Ass'n v. Apartment Sales*, 101 Wn. App.

923, 933-34 (2000) (our Supreme Court is certain that access to the courts is a fundamental right, but not certain of its source). Washington cases limiting the fundamental nature of the right of access to the courts turn on aspects of appeal. *E.g. Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 562 (1990) (appeal to superior court is not "of itself" a fundamental right); *Saylors*, 87 Wn.2d 732, 741-43 (waiver of costs to indigent parties).

While the full scope of the fundamental right to access the courts, where it arises in the Washington Constitution, and what rights are excluded is debated, certain aspects of that right are not. The rights to be heard, to a timely redress a grievances, and to discovery are fundamental.

i. The Proclamation restricted housing providers' fundamental right to conduct discovery

This court has previously found that limitations on a party's ability to file a case that require the party to have specific information about their case-pre filing are an unconstitutional bar on the right to petition. *Putman v. Wenatchee Valley Medical Center*, 166 Wn.2d 974 (2009). The only types of cases the Proclamation allows housing providers to bring are cases for a money judgment that do not impact possession of the rental property. To bring these cases, housing providers must first act on information that is generally gained only through discovery, but the Proclamation requires housing providers to take those actions before filing

a case and conducting discovery. The Proclamation violates housing providers' fundamental right because of its scope, prohibiting housing providers from going into court to collect rent *on any legal theory* unless they met certain obligations found nowhere in pre-Proclamation Washington law.

In *Putman v. Wenatchee Valley Medical Center*, the court struck down RCW 7.70.150 requiring medical malpractice claimants obtain a certificate of merit before commencing suit. *Id.* The court found the law unconstitutional on two independent grounds: (1) it impermissibly interfered with access to the courts by requiring a claimant have access to sufficient evidence of what happened to obtain a certificate of merit *before* filing their case and gaining access to discovery tools and (2) it contained procedural requirements which interfered with the judicial branch's inherent authority to set its own procedures. *Id.* at 979, 984-85. The Proclamation repeats the first offense.

The Proclamation bars access to discovery in the same way that certificates of merit barred access. The Proclamation required housing providers to "demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident" before filing an action. *Id.* This

requires housing providers to have information exclusively in the control of their resident regarding the resident's individual health, financial, and other circumstances; craft a repayment plan based on that information; and wait for the resident to respond or default without access to discovery.

This requirement is a certificate of merit by another name. To craft a compliant plan, housing providers will frequently require discovery, a process that is only available after the action is filed. *See* Gonzales Opening Brief, at 7-8 for an example of where discovery is necessary to me the prerequisites to filing suit. To craft this plan, the housing providers will need

> the discovery process, [to] uncover the evidence necessary to pursue their claims. Obtaining the evidence necessary to obtain [an appropriate repayment plan] may not be possible prior to discovery, when [the tenant] can be interviewed and [his or her income, expense, and health records] reviewed. Requiring plaintiffs to submit evidence supporting their claims prior to the discovery process violates the plaintiffs' right of access to courts.

Putman, 166 Wn.2d at 979. This is not like the statutory pre-eviction pay or vacate notice. *See* RCW 59.12.030(3). A pay or vacate notice relies entirely upon information in the housing providers' control while a repayment plan relies entirely on information in the resident's control. This is the same issue presented by certificates of merit rejected in *Putman*.

The Court of Appeals reasons that this is not a constitutional violation because "undoubtedly would base its assessment on the information available to the landlord." *Gonzales v. Inslee*, 21 Wn. App. 2d 110, 140 (2022). But this interpretation misstated what was restricted by the Proclamation. The Proclamation does not just create a defense to a breach of contract claim for the unpaid debt, it prohibited bringing the action. CP at 320. If a housing provider had brought suit seeking a money judgment for unpaid rent during the Proclamation period and the court ruled that the repayment plan proposal was unreasonable, the housing provider would have violated the Proclamation by the mere act of bringing suit and would be exposed to criminal prosecution[1] for seeking to access the court at all.

The Court of Appeals' approach was also recently rejected by the United States District Court. In *Apartment Association of L.A. County v. City of L.A.* the court held that a prohibition on housing providers issuing notices to pay or vacate where they reasonably believed the tenant was adversely impacted by COVID-19 was unconstitutional for vagueness.[2] The LA moratorium expressly adopted this approach by required housing providers to predict how their tenants were impacted before bringing a

[1] The Proclamation threatens "criminal penalties" for violating it. CP at 323.
[2] *Apt. Ass'n of L.A. County v. City of L.A.,* No. CV 22-02085 DDP, at 8-10 (C.D. Cal. Nov. 19, 2022) (unpublished), available at https://caanet.org/u/2022/10/AAGLA-v.-County-of-LA-PI-order.pdf.

lawsuit, akin to our Court of Appeals' standard based on information available to the housing provider. The district court found this standard impermissibly vague because the standard was too open-ended, defining impacted as "a residential tenant who (1) has household income equal to or less than 80 percent of the Area Median Income, (2) is unable to pay rent (3) 'so long as the reason for nonpayment was Financial Impacts Related to COVID19.'" *Apt. Ass'n of L.A. County*, at 5. The Proclamation was even more vague, providing that the repayment plan must be "reasonable based on the individual financial, health, and other circumstances of that resident," but not defining any of those terms. CP at 320.

The Proclamation contains no clause limiting the evaluation of a reasonable plan to the evidence available to the housing provider before offering the plan. The Proclamation does just the opposite, establishing a preponderance of the evidence standard for evaluating the reasonableness and individual tailoring of the repayment plan. CP at 320. A preponderance standard presupposes both parties will offer evidence and that with the greater quantum will prevail. If only the housing provider is permitted to offer evidence, the housing provider will always have the preponderance.

The Proclamation makes obtaining access to discovery by filing a complaint only available after a precondition that itself may require discovery to satisfy is met. This circular prohibition denies a fundamental right to discovery.

ii. The Proclamation restricted housing providers' fundamental rights to petition the court for relief and for a meaningful opportunity to be heard

The rights to petition the court for relief, a meaningful right to be heard, and the timely resolution of that dispute are all fundamental. *Puget Sound Blood Ctr.*, 117 Wn.2d at 780-81; *Jacoby & Meyers, LLP v. Presiding Justices of the First, Second, Third & Fourth Dep'ts*, 852 F.3d 178, 184-89 (2nd Cir. 2017); *Silva v. Di Vittorio*, 658 F.3d 1090, 1101-02 (9th Cir. 2011) (meaningful access to the courts to file is a fundamental right).

This right does not guarantee access to present any particular legal theory or to seek any particular type of relief, either common law or statutory; it is a right to go into court to seek redress of a grievance, even when that request may inevitably fail. *Puget Sound Blood Ctr.*, 117 Wn.2d at 781. The Legislature and the courts may change the merits of a particular action without offending this right. *Id.* Where a claim exists, the courts must be open to all.

The Proclamation restricts housing providers' right to petition the court for relief and to a meaningful hearing in nonpayment cases in four distinct ways: (1) it prohibits housing providers' claims from even coming due, barring access to any type of judicial process; (2) it prohibits housing providers from filing any type of civil action for non-payment; (3) it prohibits housing providers from perfecting an unlawful detainer claim by prohibiting even issuing mandatory pre-litigation notices for non-payment; and (4) it prohibits housing providers from seeking certain types of relief. CP at 319-20.

The Proclamation prohibits serving and threatening to serve pre-eviction notices, baring housing providers' access to petition the unlawful detainer courts. CP at 319. The Proclamation prohibits seeking judicial eviction orders, barring housing providers' ability to a meaningful hearing on their disputes. CP at 320. The Proclamation prohibits rent debts from even coming due, thus barring housing providers' access to petition the court for non-payment at all. *Id.*

The legislature may eliminate a cause of action and all branches of government may put reasonable regulations on causes of action without impacting this fundamental right. *Sosna v. Iowa*, 419 U.S. 393, 410, 95 S. Ct. 553, 42 L. Ed. 2d 532 (1975) (temporary does not impact a

fundamental right); *Shea v. Olson*, 185 Wash. 143, 161 (1936) (Legislature may abolish a cause of action).

The Proclamation does far more than merely regulate a cause of action. *Sosna* dealt with an Iowa measure limiting jurisdiction over divorces to individuals who had resided in the state at least a year. 419 U.S. at 404. The statute was challenged on the basis that it created two classes of citizens, those who had resided in Iowa more than one year and those who had not, in violation of the Equal Protection clause. *Id.* at 405. The Supreme Court was not asked whether the residence requirement created an impermissible delay in access, but rather whether the classification violated Equal Protection by discriminating against non-residents. *Id.* at 408-09. This is not a case of conflict between the Full Faith and Credit clause and some other constitutional value. Rather, the question is whether the Proclamation preserves housing providers' right to be heard.

A better analogy of permissible and impermissible regulations on this right is Minnesota's foreclosure moratorium. *Home Bldg. & Loan Ass'n. v. Blaisdell*, 290 U.S. 398, 54 S. Ct. 231 (1934). Minnesota authorized mortgagees to petition the court for a delay in their foreclosure or an extension of their redemption period. *Id.* at 416. To receive this protection, the homeowner had to request relief and the court had to

conduct a hearing on the merits of that request. *Id.* at 416-20. This procedure afforded the lender both access to the court and an opportunity to be heard. *Id.* The Proclamation denies both these rights by prohibiting housing providers from perfecting claims for unlawful detainer outright, thus denying access to that cause of action, and by prohibiting them from requesting relief in cases that are before the court.

Similarly, the legislature may abolish a cause of action but where that cause of action remains valid, there must be a reasonable opportunity to be heard. *Chrysafis v. Marks*, ___ U.S. ___, 141 S. Ct. 2482 (2021) (must be afforded an opportunity to contest); *Shea*, 185 Wash. at 161 (may abolish); *In re Giordano*, 57 Wn. App. 74, 77 (1990) (opportunity to be heard). Again, this is not what the Proclamation does. As the state clarifies in its brief, the Proclamation did not suspend any cause of action. State Response Brief, at 31. The Proclamation outright prohibits housing providers from going to court on otherwise valid causes of action. This type of bar on going to court and on speaking in court violates housing providers' fundamental rights.

It is correct to say the courthouse doors were never shut, but the act of walking into the courthouse with any hope of success was illegal. This is a distinction without a difference.

C. The Proclamation should be reviewed under strict scrutiny because it restricts a fundamental right

Before determining whether a government action offends constitutional right, the court must determine what level of scrutiny applies. Strict scrutiny applies when a fundamental right is at stake. *Harris v. Dep't of Labor & Indus.*, 120 Wn.2d 461, 476-77 (1993); *In re Parentage of R.V.*, 22 Wn. App. 2d 300, 323-24 (2022). Strict scrutiny requires that the Proclamation be narrowly tailored to achieve a compelling government objective. *R.V.*, 22 Wn. App. 2d at 317.

i. Prior cases on emergency actions do not establish the level of scrutiny required

Washington courts review a governor's exercise of emergency powers under the ordinary rules for interpreting statutes. *Dzaman v. Gowman*, 18 Wn. App. 2d 469, 478 (2021). The court give effect to the plain meaning of the action and will only go to other provisions of interpretation if the term is ambiguous. *Jametsky v. Olsen*, 179 Wn.2d 756, 762 (2014).

No prior case establishes a standard of review for a governor's emergency powers when they impact fundamental rights. The petitioner in the recent *Recall of Inslee* case did not identify any fundamental right that was impacted by the governor's action and the court did not reach what

level of scrutiny was required. 199 Wn.2d 416 (2022). The presumptive validity and reasonableness standards concern the governor's decision to declare a state of emergency, not to evaluate whether the actions he took pursuant to that determination where lawful. *See Colvin v. Inslee*, 195 Wn.2d 879, 895-96 (2020) (emergency powers are not mandatory and therefore not subject to mandamus); *Cougar Business Owners Assn. v. State,* 97 Wn.2d 466, 477-78 (1982) (declaring an emergency is a discretionary act).

ii. Access to the courts, the right to contract, and the right not to have property taken for private use are all fundamental rights requiring strict scrutiny

The court applies strict scrutiny when fundamental rights are at stake. *Puget Sound Blood Ctr.*, 117 Wn.2d at 780-81; *Hunter v. N. Mason High Sch.*, 85 Wn.2d 810, 815 (1975) (strict scrutiny when advancing a fundamental right). The Court of Appeals suggested that rational basis review was appropriate regarding how access to the courts was regulated. *Giordano*, 57 Wn. App. at 77. This case presents not regulation of reasonable access, but rather the Proclamation's outright denial of access. Limits on access to the courts are constitutional when they still afford "a reasonable opportunity to be heard." *Id.*, at 77. Limits on access, such as

statutes of limitations and good faith requirements are different in kind from barring access outright.

For the reasons stated above, this case concerns multiple the fundamental rights related to access to the courts to petition grievances and conduct discovery regarding the merit of legislatively created causes of action. In addition, this case concerns the right against Fifth Amendment taking of private property, as more particularly address by the Petitioner[3] and by Amicus Curiae the Pacific Legal Foundation.[4] Because a fundamental right is involved, strict scrutiny applies.

iii. The Proclamation cannot pass strict scrutiny because it is not narrowly tailored to achieve its stated objective

To achieve the objective of reducing "economic dislocation," the Proclamation is intentionally broad in scope, and *by design* fails the narrowly tailored test. The Proclamation contains no test to ensure it protects only those who cannot pay rent or even only those who have a significantly reduced ability to pay rent. The Proclamation leaves open no avenue to access the courts. The Proclamation contains no means test. The Proclamation prohibits non-payment of rent evictions *without restriction*. Even when the loss of income by the housing provider is more likely to cause displacement, the Proclamation permits the residential tenant to

[3] Appellant's Opening Brief, 42-48; Appellant's Supplemental Brief, 27-34.
[4] Brief of Pacific Legal Foundation, 9-15.

choose not to pay rent. *See e.g.* Appellant's Opening Brief, at 16-18 (Tenant X has neither loss of income nor known increase in costs but Gonzales has both).

The court does not need to look very far to see examples of far more narrowly tailored emergency responses. *E.g. Chrysafis*, 544 F. Supp. 3d at 248 (New York moratorium created a defense to eviction for tenants who had suffered hardship); SMC 22.205.100 (creating a defense to eviction for tenants who suffered hardship). Indeed, every state in the union which issued any type of landlord-tenant regulation more narrowly tailored their actions than Washington.

The Proclamation could have avoided offending the fundamental right of access to the courts by creating additional defenses to the debt or to eviction based on offering a repayment plan that was based on the resident's "individual financial, health, and other circumstances." The Proclamation could have avoided offending the fundamental right of access to the courts by allowing hearings, judgments, and writs of restitution but delaying their issuance or enforcement when that was necessary based on the resident's "individual financial, health, and other circumstances."

The Proclamation may have prohibited some of these items as an effort to protect residential tenants who are not aware of their rights. This

objective too can be accomplished by far more narrowly tailored means. The Proclamation could have limited default judgments, could have proscribed additional notice requirements informing recipients of pay or vacate notices about the Proclamation, or could have increased the burden on the housing provider to state it did not believe a hardship was present.

The Proclamation contained no safeguards preventing its application to "bad actor" tenants described by the Petitioners. Even if the Proclamation's restrictions were necessary in some instances, they were not necessary for residential tenants who suffered no loss of income, increase in costs, or other hardship. Some form of needs testing is the bare minimum necessary for the Proclamation to pass strict scrutiny and it has none whatsoever.

iv. The Proclamation's restriction on "enforceable debt" does not even pass a rational basis review

There is no reasonable connection between barring the enforcement of debts unrelated to rental housing reducing economic evictions when those evictions are prohibited by other means. If this court struck the "enforceable debt" paragraph from the Proclamation, there would not be a single additional eviction for non-payment of rent; non-payment notices and evictions are prohibited by a separate section of the Proclamation.

Debt is debt, its source has little impact on how the debt impairs an individual's ability to pay another debt. Looking more specifically at only consumer debt, rules for collection, exemptions, liens, and garnishments are all the same for unpaid rent debts as they are for unpaid debts for food, toiletries, and other household needs. *See e.g.* RCW 6.15.010 (exemptions speak of "consumer debt"); RCW 6.27.150(4) (higher exempt amount for "consumer debt"). Yet, debt held by housing providers was singled out for different treatment despite that category's failure to be reasonably connected to the objective.

The "enforceable debt" provisions have no rational basis that is not already addressed by other aspects of the Proclamation.

V. CONCLUSION

The Proclamation restricts housing providers' fundamental rights by taking away every venue for them to be heard, to timely receive redress of their grievances, and to conduct discovery. The Proclamation restricts when housing providers can go to court and what they can say and ask for while there. The Proclamation does not regulate what happens in court, it bars going to court at all. The Proclamation does this when a less restrictive approach is available to achieve that same objective. The Proclamation does not literally close the doors to the courthouse, but it *makes it a crime* to exercise fundamental rights.

This Brief contacts 4,995 words in conformance with RAP 18.17.

Respectfully submitted this 9th day of January, 2023.

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