No. 23-

IN THE

# Supreme Court of the United States

ENRIQUE JEVONS, AS A MANAGING MEMBER OF JEVON PROPERTIES, LLC, *et al.*,

*Petitioners,*

*v.*

JAY INSLEE, IN HIS OFFICIAL CAPACITY OF THE GOVERNOR OF THE STATE OF WASHINGTON, *et al.*,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

1. Because the Takings Clause of the Fifth Amendment demands just compensation for governmental takings, including temporary ones, did the Ninth Circuit err in dismissing as moot a challenge to Washington State's COVID-19 eviction moratoria by landowners who suffered great losses by bearing the social burden of providing public housing during the pandemic against their will because those moratoria had ended by the time the case reached the Ninth Circuit on appeal?

2. When a Governor prohibits landowners from evicting non-paying or rule-breaking tenants for many months forcing those landowners to bear the social burden of providing housing during a health pandemic, has the State effected a regulatory taking that demands just compensation under the Takings Clause of the Fifth Amendment?

3. Did the Ninth Circuit depart from the settled precedent of this Court and other Circuits of the Court of Appeals by concluding that the landlords could not enforce the Takings Clause through a declaratory judgment action?

## PARTIES TO THE PROCEEDING

Petitioners Enrique Jevons, as a managing member of Jevon Properties, LLC, Freya K. Burgstaller, as trustee of the Freya K. Burgstaller Revocable Trust, Jay Glenn, and Kendra Glenn were plaintiffs in the district court and appellants below.

Jay Inslee, in his official capacity of the Governor of the State of Washington, and Robert Ferguson, in his official capacity of the Attorney General of the State of Washington, were defendants in the district court and appellees below.

## CORPORATE DISCLOSURE STATEMENT

Petitioner Jevon Properties, LLC has no parent corporation or any publicly held corporation that owns 10% or more of their stock.

## STATEMENT OF RELATED CASES

- *Jevons v. Inslee*, No. 1:20-CV-3182-SAB, U. S. District Court for the Eastern District of Washington. Judgment entered Sept. 21, 2020.

- *Jevons v. Inslee*, No. 22-35050, U. S. Court of Appeals for the Ninth Circuit. Judgment entered Aug. 8, 2023.

- *Jevons v. Inslee*, No. 23-2-01478-39, Yakima County Superior Court for the State of Washington. Complaint filed June 23, 2023.

There are no other proceedings in state or federal courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14(b)(1).

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## PETITION FOR WRIT OF CERTIORARI

Petitioners Enrique Jevons, as managing member of Jevons Properties LLC; Jevons Properties LLC; Freya K. Burgstaller, as trustee of the Freya K. Burgstaller Revocable Trust; Jay Glenn; and Kendra Glenn, respectfully petition this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

## OPINIONS BELOW

The panel opinion of the Ninth Circuit Court of Appeals is unpublished and included as Petitioners' Appendix ("app.") 1a-5a. The published decision of the district court is available at *Jevons v. Inslee*, 561 F. Supp. 3d 1082, 1107 (E.D. Wash. 2021 and is included at app. 6a-60a.

## JURISDICTION

The district court had jurisdiction under federal question jurisdiction authorized under 28 U.S.C. § 1331 for petitioners claims under the Takings Clause of the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment as it incorporates the Takings Clause. The Ninth Circuit had jurisdiction under 28 U.S.C. § 1291.

This Court has jurisdiction under 28 U.S.C. § 1254(1), given this timely filed petition filed from the Ninth Circuit's final decision entered August 8, 2023.

## CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

This case involves the Takings Clause of the Fifth Amendment which states "nor shall private property be taken for public use, without just compensation."

## INTRODUCTION

"[E]ven in a pandemic, the Constitution cannot be put away and forgotten." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020) (*per curiam*).

Time and again, this Court has reiterated that government interference with private property rights must conform to the protections afforded by our Constitution. This is just as true during times of peace as it is during times of war, pandemic, or other emergency. If anything, this Court has rightfully moved the needle further toward protecting the private rights afforded by our Constitution in each decision it has issued since the pandemic began. It struck down prohibitions on gathering for worship[1] and a broad, federal eviction moratorium issued by the Center for Disease Control ("CDC").[2] In that latter instance, it noted that it is inequitable to force private landowners to bear the burden of providing

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[1] *Roman Catholic Diocese of Brooklyn, supra.*

[2] *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485 (2021).

public housing through the pandemic and denying them an essential property right, the right to exclude others.

In an outlier opinion, that conflicts with precedent from this Court, the other Circuits of the Court of Appeals, the Ninth Circuit wrongfully found that the petitioner residential landowners' request to find a compensable taking based on Washington State's eviction moratoria was moot because those moratoria were temporary and had ended. But temporary takings are compensable under the Takings Clause. By dodging review, the Ninth Circuit denied the petitioners the protections guaranteed by the Constitution, forcing them to bear the social burden of providing public housing without just compensation alone. The Ninth Circuit's decision conflicts with precedent from this and other courts warranting *certiorari*.

## STATEMENT OF THE CASE

### (1) Washington State's Eviction Moratoria Prevented Landlords from Evicting Tenants for Lease Violations and Non Payment of Rent During the COVID-19 Pandemic, Forcing them to Bear the Burden Alone of Providing Public Housing During a Time of National Crisis

The relevant facts are undisputed and subject to significant publicity as states issued eviction

moratoria around the country in response to the COVID-19 pandemic in early 2020.

In response to the pandemic's outbreak in the State of Washington, on March 18, 2020, Governor Jay Inslee issued a series of proclamations, that prevented residential landlords from evicting tenants for nonpayment of rent.[3] Under these proclamations, the owners of residential rental properties such as the petitioners in this matter ("Owners") were the only people who were required by any of the Governor's emergency proclamations to continue to provide a good or service without payment in return.

The Proclamations precluded eviction for nonpayment of rent or violations of leasehold terms. They provided lessors could only evict tenants if they (a) provide an affidavit that the eviction is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provide at least 60 days' written notice of intent to (i) personally occupy the premises as a primary residence, or (ii) sell the property. 2-ER-110. Washington's moratoria were the only in the country that did not even require self-certification by a tenant of impact by COVID-19, which this Court ruled was

[3] Governor Inslee signed Proclamation 20-19 on March 18, 2020, establishing a temporary moratorium on evictions in Washington. The Governor issued subsequent proclamations on April 16, 2020 (Proclamation 20-19.1), June 2, 2020 (Proclamation 20-19.2), July 24, 2020 (Proclamation 20-19.3), October 14, 2020 (Proclamation 20.19-4), December 31, 2020 (Proclamation 20-19.5), and March 18, 2021 (Proclamation 20-19.6). Governor Inslee issued another "bridge" proclamation on June 29, 2021 (Proclamation 21-09.23). 61a-197a.

unconstitutional in. *Chrysafis v. Marks*, 141 S. Ct. 2482 (2021).

For months landlords in Washington were also precluded from imposing fees for late payment, regardless of the tenant's ability to pay rent, treating unpaid rent as an enforceable debt or financial obligation, with a narrow exception, and using deposits to cover unpaid rent even when a tenant chooses to leave. *Id.*

These events have not only significantly impacted Owners but have also negatively impacted the availability of affordable rental housing in Washington State. Owners facing untenable financial choices have elected to cease renting properties—either choosing to sell or leave homes empty—due to the tremendous economic burden they were required to shoulder in the furtherance of the public good. 2-ER-239, 262.

The plaintiff/petitioners in this action are landlords and property managers in Yakima, Washington.[4] Petitioner Enrique Jevons is the managing member of Jevons Properties, LLC, an entity that owns and rents several hundred residential properties and also manages rental units for other real property owners. At the time the lawsuit was filed, Jevons Properties, LLC had 171 tenants who were not current with their rent. The

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[4] The following uncontested facts are derived largely from the amended complaint, 2-ER 235, and the opinion of the district court 561 F. Supp. 3d at 1092; 14a-15a.

total amount of rent owed and unpaid, as of April 2021, was $266,509.98.

Petitioner Freya K. Burgstaller's Freya K. Burgstaller Revocable Trust owns twelve residential properties in Yakima. In March 2020, Burgstaller attempted to evict a tenant who had stopped paying rent and created enough noise in her unit that a neighboring tenant complained. During the eviction process, the eviction moratorium came into effect and the proceedings were halted. Burgstaller was unable to pursue eviction and the tenant remained on the property, despite noise complaints.[5]

Petitioner Jay and Kendra Glenn are owners of 46 residential rental properties in Yakima. Most of their rental units are lower-cost units, which cost approximately $650 and $750 per month. The average market rate for a one-bedroom unit in Yakima in 2020 was $769. The total amount due to the Glenns from nonpaying tenants, at the time of filing, was $99,728.

### (2) Procedural History

Owners filed their case on October 29, 2020, amending it once on May 3, 2021. 2-ER-194-235. They claimed the moratoria offend the Takings Clause of the Fifth Amendment to the U.S. Constitution, Takings Clause of the Washington State Constitution,

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[5] Freya K. Burgstaller passed away during the pendency of this appeal. A motion is forthcoming to substitute the party in interest in this case.

and Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. *Id.* The parties cross moved for summary judgment in April and May 2021. 1-ER-1-44. They asked declaratory relief under 28 U.S.C. § 2202, seeking a ruling from the district court that a compensable taking occurred. *Id.*[6]

On September 21, 2021, the District Court for the Eastern District of Washington ruled that, even though the moratoria had ended, the Owners' claims were not moot. *Jevons*, 561 F. Supp. 3d at 1093-95. But it held that no compensable "*per se* physical taking" occurred, and that declaratory relief was not available. *Id.* at 1103-09.

On appeal, the Ninth Circuit ruled that the Owners' case was moot because Washington's eviction moratoria had ended. 4a. It did not reach the substantive question of whether a compensable taking occurred.

This timely petition follows.

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[6] Owners also sought to show that the State violated the Contracts Clause by unconstitutionally interfering with private leases, but they do not raise that issue for purposes of this petition.

## REASONS FOR GRANTING THE PETITION

### I. The Ninth Circuit Incorrectly Dismissed this Case as Moot Even Though This Court has Ruled that Temporary Regulatory Takings Require Just Compensation Under the Fifth Amendment

#### A. The Ninith Circuit's Mootness Analysis Conflicts with this Court's Precedent and Precedent from Other Circuits

The Ninth Circuit wrongfully dismissed the Owners' appeal on mootness grounds. Essentially, it held that because the moratoria ended, there was no relief it could grant and no "live controversy" existed. 4a. The Ninth Circuit erred, and its opinion conflicts with precedent from this Court and other Circuits of the Court of Appeals.

Our Fifth Amendment requires that "nor shall private property be taken for public use, without just compensation."[7] The operative question in any takings case is simply "whether the government has physically taken property for itself or someone else—by whatever means—or has instead restricted a property owner's ability to use his own property." *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021). This Court recognizes that a taking can be

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[7] The Takings Clause applies to the States through the Fourteenth Amendment. *Chicago, B. & Q.R. Co. v. Chicago,* 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897).

physical or regulatory because "Government action that physically appropriates property is no less a physical taking because it arises from a regulation." *Id.*

Because the Fifth Amendment requires just compensation for any taking, it makes no difference whether the taking has ceased by the time a citizen is able to come to court. Put another way, temporary takings are compensable. This Court has "confirm[ed] that takings temporary in duration can be compensable." *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 32 (2012) (citing cases); *see also*, *e.g.*, *R. J. Widen Co. v. U.S.*, 357 F.2d 988, 996 (Ct. Cl. 1966) ("Temporary takings are recognized in the law of federal eminent domain" and require payment of just compensation during time the government effected a taking temporarily) (past taking occurred for which compensation must be paid when federal engineers temporarily entered plaintiffs land to construct flood control measures) (citing, *e.g.*, *United States v. General Motors Corp.*, 323 U.S. 373, 382 (1945) (temporary taking of a portion of a building to assist with the war effort was a taking necessitating just compensation)); *see also, Brown v. Legal Found. of Washington*, 538 U.S. 216, 233 (2003) ("compensation is mandated when a leasehold is taken and the government occupies the property for its own purposes, even though that use is temporary.").

The truth that temporary takings present a justiciable controversy should not have been difficult for the Ninth Circuit. As the Federal Circuit has put it, this Court "has recognized that property owners should be compensated for temporary regulatory takings as well as permanent ones." *Seiber v. United States*, 364 F.3d 1356, 1364 (Fed. Cir. 2004) (citing *First English Evangelical Lutheran Church of Glendale v. Los Angeles Cnty., Cal.*, 482 U.S. 304 (1987) (interim ordinance preventing building on a flood zone for a period of years, could constitute compensable taking)). Such takings "are not different in kind from permanent takings, for which the Constitution clearly requires compensation," because the loss imposed on a property owner by a temporary taking "may be great indeed," *First English*, 482 U.S. at 319.

"Temporary takings…may result…when the government elects to discontinue regulations after a taking has occurred." *Seiber*, 364 F.3d at 1364. The essential element of this type of temporary taking "is a finite start and end to the taking." *Id.*

This is precisely what Owners alleged in this case. Washington State issued and then discontinued regulations that deprived the Owners of their property rights, the right to exclude tenants for nonpayment of rent. *See Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2489–90 (2021) (preventing landlords "from evicting tenants who breach their leases intrudes on one of the

most fundamental elements of property ownership—the right to exclude"). This put a finite start and end on the taking, an "*essential element*" to stating a claim for relief for a temporary taking, not a reason to dodge review on mootness grounds. *Id.*

As this Court stated in First English, "[i]nvalidation of the ordinance or its successor ordinance after this period of time, though converting the taking into a 'temporary' one, is not a sufficient remedy to meet the demands of the Just Compensation Clause." 482 U.S. at 319. By dismissing their case on mootness grounds, the Ninth Circuit impermissibly denied Owners a sufficient remedy as required by our Constitution. *Certiorari* review and reversal is necessary to correct the Ninth Circuit's faulty analysis, and ensure local government does not have a *carte blanche* invitation to invade private property interests temporarily with no recourse.

A split of authority could not be clearer where the Federal Circuit holds that finite end is an "essential element" of a temporary takings claim while the Ninth Circuit says its grounds to dismiss if the regulation is rescinded on appeal. Sup. Ct. Rule 10(a). The Ninth Circuit got it wrong, because invalidation of a taking does not provide "just compensation" as required by the Fifth Amendment and this Court's precedent. *First English*, *supra*. Sup. Ct. Rule 10(c).

*Certiorari* review is necessary to resolve this obvious circuit split and departure from this Court's precedent. Supreme Court Rule 10(a), (c). It is a live, justiciable controversy to determine whether a temporary regulatory taking occurred when the Owners were denied the right to exclude others from their property without just compensation. *Certiorari* review and reversal is warranted in this case.

### B. Mootness in the Takings Context Is an Important Federal Question that This Court Should Decide

The application of mootness to Takings Clause cases is an important federal question that this Court should decide. Sup. Ct. Rule 10 (c). Particularly, this case calls on the Court to interpret and enforce the Takings Clause and the right to just compensation even in times of national crisis.

Throughout the past century, this Court has stepped in at times of national crisis to confirm that the protections of the Constitution still apply. Whether in wartime as was the case with *General Motors Corp.*, where this Court held that a temporary taking to assist with war effort constituted a compensable taking. Or in pandemic as was the case recently in *Roman Catholic Diocese of Brooklyn*, where this Court struck down sweeping restrictions on citizens right to gather for worship. "[E]ven in a pandemic, the Constitution cannot be put away and forgotten." 141 S. Ct. at 68.

This is an issue of broad public import, that strikes at the very heart of how the Constitution outlines how our Republic functions. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005) ("Government [cannot force] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole" without just compensation). Given this law, the Ninth Circuit's decision further conflicts with relevant decisions of the Supreme Court.

Moreover, the Ninth Circuit's analysis is simply flawed. It cannot be left as the final word in a case dealing with such an important topic.

The Ninth Circuit relied on *Bayer v. Neiman Marcus Group, Inc.*, 861 F.3d 853 (9th Cir. 2017) for its mootness decision, but that is not a constitutional takings case; it involved a Title VII discrimination claim. True, the Court said, "adjudicating past violations of federal law…is not an appropriate exercise of federal jurisdiction." *Id.* at 868. But that case had nothing to do with past violations of the Federal *Constitution*, especially temporary regulatory takings which by their definition come with a finite start *and end*. *Seiber*, 364 F.3d at 1364.

*City & County of San Francisco v. Garland*, 42 F.4th 1078, 1081 (9th Cir. 2022), cited by the Ninth Circuit, is also completely off point. There, the appellants challenged a law as violative of the Tenth Amendment, but the Ninth Circuit had already resolved the issue in controversy on the merits in a

previous case. Therefore, the injury about which the plaintiff complained could not come to fruition.

This is a far cry from *City & County of San Franciso*. The merits of this case have not been resolved. The District Corut decision ostensibly upheld by the Ninth Circuit conflicts with the Eighth Circuit, which held in *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022), that an eviction moratorium promoted by the pandemic constitutes a taking of property owners' property, requiring compensation.

In short, the Supreme Court could step in as the doctrine of mootness in Takings Clause cases is being inconsistently applied across the country on an issue of national, constitutional importance. The Court should grant review to settle this issue and ensure uniform application of federal law.

## II. Whether a Taking Occurred During the COVID-19 Pandemic Presents an Important Federal Question That This Court Should Consider

Aside from the mootness doctrine that the Ninth Circuit bungled, the underlying issue in this case presents one of substantial federal importance that this Court should decide. Sup. Ct. Rule 10(c). This Court should grant review and hold that a taking occurred.

The Eighth Circuit has already concluded that temporary eviction moratoria during the COVID-19 pandemic can constitute a compensable taking. *Heights Apartments*, 30 F.4th 720. The *Heights Apartments* court reasoned, "The well-pleaded allegations" that moratoriums "forbade the nonrenewal and termination of ongoing leases, even after they had been materially violated" was "sufficient to give rise to a plausible *per se* physical takings claim under *Cedar Point Nursery*." *Id.* at 733.

The Eighth Circuit followed this Court's recent precedent *Cedar Point Nursery*. *Id.* There, this Court held that "access regulation" that grants persons the right to enter another's property "appropriates a right to invade the growers' property and therefore constitutes a *per se* physical taking." *Id.* The Court noted, as the Owners have argued here, that the right to exclude others, is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Id.* (citing *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 179–180 (1979)). Thus, regulation that forces a property owner to suffer physical occupation of property by other persons is a compensable taking under the Fifth Amendment.

This is exactly what occurred here where Owners and other landlords were forced to suffer tenants occupying their land despite material breaches of their leases. While this may be a legitimate social policy during a time of crisis, the Constitution demands that just compensation be paid

for this taking, or Washington has exceeded its authority.

This issue is worthy of this Court's attention. In striking down the CDC's federal eviction moratorium as an unconstitutional exercise of federal power, the Court explained the inequitable burden such moratoria place on one subset of citizens – residential lessors:

> The moratorium has put the applicants, along with millions of landlords across the country, at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery. Despite the CDC's determination that landlords should bear a significant financial cost of the pandemic, many landlords have modest means. And preventing them from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude…It is indisputable that the public has a strong interest in combating the spread of the COVID-19 Delta variant. But our system does not permit agencies to act unlawfully even in pursuit of desirable ends.

*Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2489–90 (2021). Here, it may be desirable to prevent homelessness due to the COVID-19 pandemic, appropriating private property for that public purpose, without providing just compensation as required by the Fifth Amendment, is "unlawful[]." *Id.* at 2490.

It is no wonder that other courts have started to catch up to the clear direction from this Court that uncompensated takings are actionable. *E.g.*, *Bols v. Newsom*, 515 F. Supp. 3d 1120, 1131 (S.D. Cal. 2021) (landlord's challenge to local eviction moratoria based on Contracts Clause and Fifth Amendment takings claims stated plausible claims for relief); *City Bar, Inc. v. Edwards*, 349 So.3d 22 (La. Ct. App. 2022) (local bar owners stated a claim for an uncompensated taking under the state constitution) (citing federal authorities) ("certain individuals or businesses may be called upon to suffer a greater loss for the public good and should, in some cases, be compensated for their greater loss in protecting the health and welfare of the citizens of this State").

Here, too, the Owners were ordered to suffer a great loss for the purpose of "protecting the health and welfare of the citizens of the state." *City Bar, Inc.*, 349 So.3d at 33. Lacking sufficient public housing, funds, or possibly the political desire to provide the same, Washington's leaders commandeered its residential landlords, by executive action, forcing them to provide that housing to its citizens. It denied the Owners a

basic property right, the right to exclude tenants who materially breached their lease for nonpayment of rent, thereby becoming trespassers. The Owners must be provided just compensation as the Constitution requires.

Unfortunately, due to the Ninth Circuit's outlier jurisprudence, the Owners were denied the basic protections of the Fifth Amendment. They were denied the protections required by the Constitution simply because their land is located in the jurisdiction of the wrong circuit court. Review by this Court is necessary to ensure uniform application of important questions of federal law.

## III. The Ninth Circuit Wrongfully Ruled that Relief Was Unavailable In this Declaratory Judgment Action

Finally, the Ninth Circuit also incorrectly ruled that no remedy could be fixed in the Owners' declaratory relief action because it would be improper to declare a taking occurred and then allow the Owners to pursue compensation in State court. The Ninth Circuit got it wrong.

The declaratory relief statute under which the Owners brought their case, 28 U.S.C. § 2221 says, "[A]ny court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, *whether or not further relief is* ***or***

***could be*** *sought*." (emphasis added).[8] Thus, the statute plainly permits this Court to rule on the live controversy of whether a historical taking occurred, the live controversy at issue here. *See also*, 28 U.S.C. § 2221 ("Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.").

This Court has allowed declaratory relief claims as to whether a taking would or did occur. *See, e.g.*, *Duke Power Co. v. Carolina Env. Study Group*,

[8] The statute says verbatim:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2221(a).

438 U.S. 59, 71 & n.15 (1978) ("the Declaratory Judgment Act…allows individuals threatened with a taking to seek a declaration of the constitutionality of the disputed governmental action"); *Ruckleshaus v. Monsanto*, 467 U.S. 986, 989-99, 1013 (1984); *E. Enterprises v. Apfel*, 524 U.S. 498, 521-22 (1998); *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2168 (2019).

This Court has also allowed declaratory relief claims where the complaint alleges a *per se* physical taking, as here. *See*, *e.g.*, *Cedar Point Nursery*, 141 S. Ct. at 2070, 2080 (declaring that the challenged regulation effected a *per se* taking); *Pakdel v. City & Cnty. of San Francisco, California*, 141 S. Ct. 2226, 2228 (2021) (ruling that takings claim without seeking compensation[9] was justiciable; remanded for resolution on the merits).

The Second Circuit addressed this issue in *Edward B. Marks Music Corp. v. Charles K. Harris Music Pub. Co.*, 255 F.2d 518, 522 (2d Cir. 1958), a case with which the Ninth Circuit now conflicts. There, the Second Circuit held, "We take [28 USC § 2202] to mean that the further relief sought—here monetary recompense—need not have been demanded, or even proved, in the original action for declaratory relief. The section authorizes further or new relief based on the declaratory judgment."

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[9] *See Pakdel v. City & Cnty. of San Francisco*, 2017 WL 6403074 at *3 (N.D. Cal. Nov. 20, 2017) (noting that the complaint sought only declaratory relief).

(emphasis added). Nothing in *Edward* forbids a plaintiff from seeking a "new" action for relief in state court. *See also*, *Restatement (Second) of Judgments* § 33 (1982) ("A plaintiff who wins a declaratory judgment may go on to seek further relief, even in an action on the same claim which prompted the action for a declaratory judgment. This further relief may include damages which had accrued at the time the declaratory relief was sought; it is irrelevant that the further relief could have been requested initially.") (citing state and federal authorities); *Winborne v. Doyle*, 59 S.E.2d 90, 94 (Va. 1950) ("Consequential or incidental relief may be obtained in an action in which a declaratory judgment is sought…whether such other proceeding is by petition filed in that cause or in a separate and independent action.") (interpreting functionally equivalent state statute that allows "further relief" from declaratory judgment).

This also shows a nationwide conflict that this Court could resolve. Sup. Ct. Rule 10(a), (c). After all, the just compensation portion of the Takings Clause must have teeth. States cannot dodge constitutionally required compensation over convoluted declaratory judgment jurisprudence where the just compensation clause holds both the federal and local governments accountable to the citizens of this Country.

## CONCLUSION

For these reasons the Court should grant *certiorari* review and reverse.

Respectfully submitted,

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# APPENDIX

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**APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 8, 2023**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-35050

ENRIQUE JEVONS, AS A MANAGING MEMBER OF JEVONS PROPERTIES LLC; *et al.*,

*Plaintiffs-Appellants,*

v.

JAY INSLEE, IN HIS OFFICIAL CAPACITY OF THE GOVERNOR OF THE STATE OF WASHINGTON; ROBERT FERGUSON, IN HIS OFFICIAL CAPACITY OF THE ATTORNEY GENERAL OF THE STATE OF WASHINGTON,

*Defendants-Appellees.*

April 10, 2023, Argued and Submitted,
Seattle, Washington
August 8, 2023, Filed

Appeal from the United States District Court
for the Eastern District of Washington.
D.C. No. 1:20-cv-03182-SAB Stanley A. Bastian,
Chief District Judge, Presiding.

*Appendix A*

**MEMORANDUM**[*]

Before: BYBEE and FORREST, Circuit Judges, and GORDON,[**] District Judge.

Plaintiffs are rental property owners who challenged the constitutionality of Washington State Governor Jay Inslee's state-wide moratorium on residential evictions related to the COVID-19 pandemic. The district court granted summary judgment in favor of Governor Inslee and Washington Attorney General Robert Ferguson, rejecting Plaintiffs' claims. On appeal, Plaintiffs challenge only the district court's rejection of their claim for a declaratory judgment that the eviction moratorium violated the Takings and Contracts Clauses of the U.S Constitution.[1] We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand with instructions for the district court to dismiss this case as moot.

The eviction moratorium that Plaintiffs challenge—Proclamation 21-19—expired in June 2021,[2] and Governor

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Andrew P. Gordon, United States District Judge for the District of Nevada, sitting by designation.

1. Plaintiffs did not appeal the district court's rejection of their Fourteenth Amendment Due Process Clause, Washington Takings Clause, or injunctive relief claims. Any challenge related to these claims is therefore forfeited. *See Jones v. Allison*, 9 F.4th 1136, 1139 n.6 (9th Cir. 2021).

2. Wash. Office of the Governor, *Proclamation 20-19.6* (March 18, 2021), https://governor.wa.gov/sites/default/files/proclamations/proc_20-19.6.pdf .

Inslee's "Bridge Proclamation" expired in October 2021.[3] Governor Inslee terminated Washington's COVID-19 state of emergency, and all other related emergency proclamations, in October 2022.[4] In Plaintiffs' own words, they seek purely retrospective declaratory relief, *i.e.*, a declaration that Defendants "effected a temporary taking and unconstitutionally interfered with their contractual rights *in the past*."

The mootness doctrine, "which is embedded in Article III's case or controversy requirement, requires that an actual, ongoing controversy exist at all stages of federal court proceedings." *Bayer v. Neiman Marcus Grp.*, 861 F.3d 853, 862 (9th Cir. 2017) (citation omitted). The test for determining whether a claim for declaratory relief is moot is whether "there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Ctr. for Biological Diversity v. Lohn*, 511 F.3d 960, 963 (9th Cir. 2007) (citation omitted).

"[A] declaratory judgment merely adjudicating past violations of federal law—as opposed to continuing or future violations of federal law—is not an appropriate exercise of federal jurisdiction." *Bayer*, 861 F.3d at 868.

3. Wash. Office of the Governor, *Proclamation 21-09.2* (Sept. 30, 2021), https://governor.wa.gov/sites/default/files/2023-01/21-09.2%20%20-%20COVID-19%20Eviction%20bridge%20transition%20Ext%20%28tmp%29.pdf .

4. *See* Wash. Office of the Governor, *Proclamation 20-05.1* (Oct. 28, 2022), https://www.governor.wa.gov/sites/default/files/proclamations/20-05.1_%20Coronavirus%20RESCISSION_%28tmp%29.pdf .

Thus, this case is moot because the challenged activity—the eviction moratorium—has expired and no longer has a "continuing and brooding presence" that would have "a substantial adverse effect" on Plaintiffs. *See id.* at 867 (quoting *Seven Words LLC v. Network Sols.*, 260 F.3d 1089, 1098-99 (9th Cir. 2001)); *see also Brach v. Newsom*, 38 F.4th 6, 11 (9th Cir. 2022) (en banc) (holding that claims for declaratory and injunctive relief against the California Governor's COVID-19 school-closure orders were moot after rescission of those orders). Without a live controversy for us to resolve, a bare declaratory judgment that Defendants violated the Constitution *in the past* would amount to an impermissible advisory opinion. *See City & Cnty. of S.F. v. Garland*, 42 F.4th 1078, 1087 (9th Cir. 2022) ("What makes a declaratory judgment a proper judicial resolution of a 'case or controversy' rather than an advisory opinion is the settling of some dispute which affects the behavior of the defendant towards the plaintiff." (cleaned up)).

We are unpersuaded by Plaintiffs' arguments that we may issue a declaratory judgment to "determine whether a constitutional violation occurred," with "the remedy [to] be fixed later."[5] The Supreme Court cases that Plaintiffs rely on for this proposition, such as *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021), are inapposite because they involved challenges to *operative* laws. And although Plaintiffs are correct that the Declaratory Judgment Act allows a

5. Plaintiffs do not meaningfully address whether either of the recognized exceptions to the mootness doctrine—"voluntary cessation" and "capable of repetition yet evading review"—apply. We find these exceptions inapplicable for the same reasons articulated in *Brach*. 38 F.4th at 11-12.

party to seek "[f]urther necessary or proper relief based on a declaratory judgment," 28 U.S.C. § 2202, the statute merely provides an additional remedy in federal court; it cannot override the mootness doctrine. *See City of Colton v. Am. Promotional Events, Inc.-West*, 614 F.3d 998, 1006 (9th Cir. 2010).

Plaintiffs indicated they seek to use a declaratory judgment that a constitutional violation occurred to later secure just compensation or damages in state court. The issuance of a declaratory judgment for such a purpose is barred by the Eleventh Amendment. *See Green v. Mansour*, 474 U.S. 64, 72-73, 106 S. Ct. 423, 88 L. Ed. 2d 371 (1985); *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 552 (9th Cir. 1991) ("[D]eclaratory relief is not available if its sole efficacy would be as res judicata in a subsequent state court action for retroactive damages or restitution."); *see also Lund v. Cowan*, 5 F.4th 964, 969 (9th Cir. 2021) ("The Eleventh Amendment does not permit retrospective declaratory relief.").

**VACATED** and **REMANDED**.

**APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON, FILED SEPTEMBER 21, 2021**

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

No. 1:20-CV-3182-SAB

ENRIQUE JEVONS, AS MANAGING MEMBER OF JEVONS PROPERTIES LLC; JEVONS PROPERTIES LLC; FREYA K. BURGSTALLER, AS TRUSTEE OF THE FREYA K. BURGSTALLER REVOCABLE TRUST; JAY GLENN; AND KENDRA GLENN,

*Plaintiffs,*

v.

JAY INSLEE, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF THE STATE OF WASHINGTON; AND ROBERT FERGUSON, IN HIS OFFICIAL CAPACITY OF THE ATTORNEY GENERAL OF THE STATE OF WASHINGTON,

*Defendants.*

September 20, 2021, Decided
September 21, 2021, Filed

*Appendix B*

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Before the Court are the parties' cross-Motions for Summary Judgment. ECF Nos. 22, 30. The Court heard oral argument on the motions on August 24, 2021 by videoconference. Richard Stephens appeared by video on behalf of Plaintiffs Enrique Jevons; Jevons Properties, LLC; Freya K. Burgstaller; Jay Glenn; and Kendra Glenn. Cristina Sepe and Brian Rowe appeared by video on behalf of Defendants Washington State Governor Jay Inslee and Washington State Attorney General Robert Ferguson.

This action concerns several constitutional challenges to Washington's eviction moratorium enacted in response to the COVID-19 pandemic. To mitigate the spread of COVID-19 and prevent exacerbation of homelessness in the state, Washington State Governor Jay Inslee issued Proclamation 20-19 on March 18, 2020. The Proclamation and subsequent revisions established a moratorium on evictions, among other protective health and safety measures. That eviction moratorium persists—although under new conditions for when landlords and property managers may pursue evictions and enforcement of rental debt—through the Governor's "Bridge Proclamation."

After reviewing the parties' briefing, oral argument, and the applicable caselaw, the Court denied Plaintiffs' Motion for Summary Judgment and granted Defendants' Cross-Motion for Summary Judgment at the hearing.

Upon reaching the merits of Plaintiffs' arguments, the Court held that Washington's eviction moratorium does not violate the Takings Clause, Contracts Clause, or Due Process Clause of the United States Constitution. This Order memorializes the Court's ruling.

## I. Facts[1]

### A. The COVID-19 Outbreak and Washington's Eviction Moratorium

On February 29, 2020, Washington State Governor Jay Inslee issued Proclamation 20-05, declaring a state of emergency in Washington from the outbreak of novel coronavirus SARS-CoV-2. The SARS-CoV-2 virus causes coronavirus disease 2019 ("COVID-19"), a highly contagious and potentially fatal respiratory tract infection. The virus spreads primarily through close interactions via respiratory droplets, and there is a lag of several days before the onset of symptoms. Seniors and persons with preexisting medical conditions are most vulnerable to complications and death from COVID-19, and statistics indicate that people of color disproportionately contract and experience severe COVID-19 health outcomes. Without a vaccine or highly effective treatment for COVID-19 at the time of the outbreak, reducing person-to-person contact through community mitigation measures was the most effective way of combatting transmission and ensuring Washington's healthcare system was not

1. The following facts are taken from the parties' respective statements of material facts and responses thereto. *See* ECF Nos. 23, 31, 38, 41.

overwhelmed. Accordingly, Governor Inslee ordered Washingtonians to stay home except for participation in essential activities and businesses.

The Governor's Office also recognized that the COVID-19 pandemic would significantly reduce economic output and income, making many tenants unable to afford rent from the outset of the pandemic. Prior to the outbreak, the state was facing a homelessness and housing instability crisis. Between 2013 and 2017, over 130,000 adults in Washington faced an eviction, and by 2018, homelessness in the state reached Great Recession levels. Without countermeasures, the Governor's Office anticipated that the COVID-19 pandemic's economic dislocations would result in mass evictions, exacerbating housing instability and homelessness in the state. A rise in evictions, and the lifting of the eviction moratoria generally, are associated with an increase in COVID-19 infections and deaths. Projections performed by the University of Washington Institute for Health Metrics and Evaluation indicated that mass evictions could have resulted in between 18,235 to 59,008 more eviction-attributable COVID-19 cases, 1,172 to 5,623 more hospitalizations, and 191 to 621 more deaths in the state. Even under lockdown scenarios, containment of COVID-19 was slower and less effective at reducing the size of the pandemic when evictions were allowed to continue.

The Washington State Department of Health ("DOH") was particularly concerned with outbreaks of COVID-19 among persons experiencing housing insecurity and homelessness. As of April 25, 2021, the DOH identified

202 COVID-19 outbreaks in homeless services or shelters. People experiencing homelessness are typically at increased risk of acquiring COVID-19 due to crowded living situations. Housing insecure families may find themselves in shared living conditions, which have been found to increase contact with people and make compliance with public health guidance difficult. People experiencing homelessness are also at an increased risk for severe COVID-19, due to a higher rate of underlying medical conditions and co-morbidities.

For the foregoing reasons, Governor Inslee signed Proclamation 20-19 on March 18, 2020, establishing a temporary moratorium on evictions in Washington. The Governor issued subsequent proclamations on April 16, 2020 (Proclamation 20-19.1), June 2, 2020 (Proclamation 20-19.2), July 24, 2020 (Proclamation 20-19.3), October 14, 2020 (Proclamation 20.19-4), December 31, 2020 (Proclamation 20-19.5), and March 18, 2021 (Proclamation 20-19.6), refining the moratorium and other health and safety measures with each revision. While broadly prohibiting the commencement of eviction proceedings, the proclamations did not forgive any debt of unpaid rent and stressed that tenants "who are not materially affected by COVID-19 should and must continue to pay rent." Proc. 20-19.6, ¶ 7. The Governor's public messaging has also expressly stated that tenants should pay rent if able and should communicate with landlords. Beginning with Proclamation 20-19.1, the moratoria also prohibited attempts to collect any such unpaid rent through withholding of the tenant's security deposit. *E.g.*, Proc. 20-19.1, ¶ 26. Plaintiffs in this action primarily challenged

the last rendition of the moratorium, Proclamation 20-19.6. Proclamation 20-19.6 ended by its own terms on June 30, 2021, and by operation of subsequent legislation, which is discussed in the following section. *Id.* at ¶ 26. The eviction moratorium and attendant provisions are still in effect through a Bridge Proclamation, however, which is effective until September 30, 2021.

Following input from property owners, beginning with Proclamation 29-19.1, the Governor's Office permitted landlords to treat unpaid rent as an enforceable debt during the state of emergency, provided that the tenant was offered, but refused, a reasonable payment plan based on the financial, health, or other circumstances of the tenant. The exception expressly placed the burden of proof to enforce rental debt on landlords and property managers. This decision was made because, in many cases, tenants in genuine economic distress due to the pandemic were unable to provide adequate proof of their distress. The Governor's Office reasoned that many tenants have informal employment or non-traditional sources of income and that, for these tenants, proving distress is not as simple as submitting a copy of a termination letter from an employer. A tenant who does not lose their job could be facing pandemic-related economic or health distress anyway, such as the burden of caring for family members who lost their jobs or being unable to provide for themselves. The revised moratorium thus placed the burden of proof on landlords and property managers based on the state's belief that not all tenants in need of protection were able to submit a declaration of hardship.

Overall, during the COVID-19 public health crisis, over 1.6 million Washingtonians have filed unemployment claims, and the state's unemployment rate has exceeded its Great Recession peak. Through the first four months of 2021, over 265,000 new unemployment claims were filed, demonstrating that the job crisis persisted over a year after COVID-19 emerged. Recent census survey data reported that 10.7% of renters in Washington (160,342 people) were behind on their rent, and 17.8% of renters (265,342 people) in Washington reported having little or no confidence in their ability to pay rent. An analysis by the Aspen Institute found that 649,000 to 789,000 people in Washington—up to 10.3% of the state's entire population—would be at risk of eviction without the state's eviction moratorium. During the pandemic, at least 18,000 more Washingtonians have relied on cash assistance and 160,000 more on food assistance. The Court also notes that the Eastern District of Washington, which encompasses most of the state's landmass, faces unique and ongoing challenges from the COVID-19 pandemic. Vaccinations in eastern Washington have lagged behind the rest of the state for numerous reasons, including misinformation and lack of accessibility.[2]

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2. Annette Cary, *Tri-Citians Slower Than Others to Get the COVID Vaccine. What's the Holdup*?, Tri-City Herald (Apr. 14, 2021 07:43 P.M.), https://www.tri-cityherald.com/news/coronavirus/article250299784.html (last accessed Sept. 20, 2021); Danny Westneat, *The Political Vaccine Divide in Washington State Is Widening—And COVID Rushes In*, The Seattle Times (May 2, 2021, 1:17 P.M.), https://www.seattletimes.com/seattle-news/politics/the-political-vaccine-divide-in-washington-state-is-widening-and-covid-rushes-in/ (last accessed Sept. 20, 2021).

**B. Senate Bill 5160 and the Housing Stability "Bridge" Proclamation**

In April 2021, Senate Bill 5160 ("SB 5160") was adopted by the Washington Legislature and signed into law by Governor Inslee. Engrossed Second Substitute S.B. 5160, 67th Leg., Reg. Sess. (Wash. 2021), *enacted as* 2021 Wash. Sess. Laws, ch. 115. The legislation provides tenants certain protections during and after the public health emergency. Sections 7 and 8 of SB 5160 established an eviction resolution pilot program for nonpayment of rent and a right to legal representation in eviction cases, respectively. Section 7 also authorized landlord access to certain rental assistance programs. While SB 5160 became effective on April 22, 2021, localities are still working to implement the rental assistance and eviction resolution pilot programs in their jurisdictions. In Yakima County, where Plaintiffs are located, both programs are fully operational.

Due to the delay in implementation, Governor Inslee issued a housing stability "bridge" proclamation on June 29, 2021, which was intended to "bridge the operational gap between the eviction moratorium enacted by prior proclamations and the protections and programs subsequently enacted by the Legislature." Proc. 21-09, ¶ 23. With respect to COVID-19-related rent that accrued from February 29, 2020, the Bridge Proclamation continues to prohibit eviction proceedings based in part on unpaid rent if the landlord has "no attempt" to establish a "reasonable repayment plan" with a tenant, as defined by SB 5160, or the landlord and tenant cannot agree on a

plan and no local eviction resolution pilot program exists per SB 5160. *Id.* at ¶ 31. Further, before a landlord may pursue eviction proceedings, a tenant must be provided with, and must reject or fail to respond within 14 days of receipt of, a notice of an opportunity to participate in the rental assistance program and eviction resolution pilot programs established by SB 5160. The programs must be operational at the time the notice is sent. *Id.*; ¶ 25.

### C. Plaintiffs in This Action

Plaintiffs in this action are landlords and property managers in Yakima, Washington. Plaintiff Enrique Jevons is the managing member of Jevons Properties, LLC, an entity that owns and rents several hundred residential properties and also manages rental units for other real property owners. At the time of Plaintiffs' filing, Jevons Properties, LLC had 171 tenants who were not current with their rent. The total amount of rent owed and unpaid to the entity, as of April 2021, was $266,509.98.

Plaintiff Freya K. Burgstaller is the trustee of the Freya K. Burgstaller Revocable Trust. The Trust owns twelve residential properties in Yakima. In March 2020, Ms. Burgstaller attempted to evict a tenant who had stopped paying rent and created enough noise in her unit that a neighboring tenant complained. During the eviction process, the eviction moratorium came into effect and the proceedings were halted. Since then, Ms. Burgstaller has been unable to pursue eviction and the tenant has remained on the property, despite noise complaints.

Plaintiffs Jay and Kendra Glenn are owners of forty-six residential rental properties in Yakima. Most of the Glenns's rental units are lower-cost units, which cost approximately $650 and $750 per month. The average market rate for a one-bedroom unit in Yakima for fiscal year 2020 was $769. The total amount due to the Glenns from nonpaying tenants, at the time of filing, was $99,728.

The demand for rental housing in Yakima is high, in part from a shortage of rental properties. Throughout the moratorium, Plaintiffs have remained subject to state and local property taxes, in addition to paying utilities, mortgages, and maintaining and repairing their rental properties. In the personal experience of several Plaintiffs, tenants are hesitant to provide financial information or details regarding their health to their landlords, making it difficult to establish reasonable payment plans for individual tenants. Plaintiffs have not availed themselves of the SB 5160 programs now operational in Yakima County.

## II. Procedural History

Plaintiffs filed the above-captioned lawsuit against Defendants on October 29, 2020, ECF No. 1, and a subsequent Amended Complaint on May 3, 2021, alleging that Washington's eviction moratorium violated provisions of the Washington State Constitution and United States Constitution, ECF No 27. They claimed the moratorium offends the Contracts Clause of the U.S. Constitution; Takings Clause of the Fifth Amendment to the U.S. Constitution; Takings Clause of the Washington State

Constitution; and Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. *Id.* Defendants filed an Answer to the Amended Complaint denying all claims on May 11, 2021. ECF No. 29.

Plaintiffs filed their Motion for Summary Judgment on April 30, 2021. ECF No. 22. Defendants filed their Cross-Motion for Summary Judgment on May 21, 2021. ECF No. 30. The parties also submitted supplemental briefing on the impact of *Cedar Park Nursery v. Hassid*, U.S. , 141 S.Ct. 2063, 210 L. Ed. 2d 369 (2021). ECF Nos. 48, 52, 55, 60. The Court heard oral argument on the motions by videoconference on August 24, 2021.

## III. Legal Standard

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The moving party has the initial burden of showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). If the moving party meets its initial burden, the non-moving party must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248.

In addition to showing there are no questions of material fact, the moving party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled to judgment as a matter of law when the non-moving party fails to make a sufficient showing on an essential element of a claim on which the non-moving party has the burden of proof. *Celotex Corp.*, 477 U.S. at 323. The non-moving party cannot rely on conclusory allegations alone to create an issue of material fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

When considering a motion for summary judgment, a court may neither weigh the evidence nor assess credibility; instead, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255. Where, as here, parties submit cross-motions for summary judgment, '[e]ach motion must be considered on its own merits.'" *Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001). Accordingly, it is the district court's duty to "review each cross-motion separately . . . and review the evidence submitted in support of each cross-motion." *Id.*

**IV. Discussion**

The Court finds, and the parties appear to agree, that no material disputes of fact preclude summary judgment in this matter. The Court thus turns to the merits of the parties' arguments.

**A. Jurisdiction**

**1. Whether Plaintiffs' Claims are Moot**

Defendants argue that the Court lacks jurisdiction to consider Plaintiffs' claims in this action because they are mooted by cessation of Proclamation 20-19.6, which formally ended on June 30, 2021. Defendants also formerly contended that Plaintiffs lacked Article III standing because their purported injuries were not traceable to the Washington eviction moratorium, as opposed to the federal eviction moratorium.

In contrast, Plaintiffs contend that their claims are not moot because the state eviction moratorium continues—albeit under different conditions—through the Governor's Bridge Proclamation. The heart of their argument is that, because "the inability to treat rent as an enforceable debt for the time period of the [moratorium] continues," so does their injury and the controversy in this action. ECF No. 37 at 11. With respect to Defendants' standing claim, Plaintiffs previously argued that their injury was directly traceable to Washington's eviction moratorium because the state moratorium was more restrictive than its federal counterpart.

**a. Legal Standard**

A case becomes moot "'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.'" *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 184 L. Ed. 2d 553 (2013) (quoting

*Murphy v. Hunt*, 455 U.S. 478, 481, 102 S. Ct. 1181, 71 L. Ed. 2d 353 (1982)). A party asserting mootness "bears the heavy burden of establishing that there remains no effective relief a court can provide." *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 862 (9th Cir. 2017). "'The question is not whether the precise relief sought at the time the case was filed is still available,' but 'whether there can be any effective relief.'" *Id.* (quoting *McCormack v. Herzog*, 788 F.3d 1017, 1024 (9th Cir. 2015)). Standing and mootness are similar doctrines in some respects: "Both require some sort of interest in the case, and both go to whether there is a case or controversy under Article III." *Jackson v. Calif. Dep't of Mental Health*, 399 F.3d 1069, 1072 (9th Cir. 2005); *United States v. Sanchez-Gomez*, U.S. , 138 S.Ct. 1532, 1537, 200 L. Ed. 2d 792 (2018) ("A case that becomes moot at any point during the proceedings is 'no longer a "Case" or "Controversy" for purposes of Article III,' and is outside the jurisdiction of the federal courts.").

**b. Discussion**

In this case, Plaintiffs' claims are not moot. The Bridge Proclamation, which is operational until September 30, 2021, represents a continuation of several provisions that Plaintiffs allege are unconstitutional. Under the Bridge Proclamation, eviction proceedings based in part on rent that accrued from February 29, 2020 are prohibited until the SB 5160 rental assistance and eviction resolution pilot programs are operational and a landlord has attempted to establish a reasonable repayment plan with a tenant. Proc. 21-09, ¶¶ 25, 42-45 The tenant must also be given notice of the opportunity to participate in the programs

prior to eviction. *Id.* at ¶ 25. Further, for rent accruing on August 1, 2021 through September 30, 2021, the Bridge Proclamation prohibits Plaintiffs from seeking eviction unless they have presented a reasonable repayment plan to a tenant and none of the following are applicable: a tenant (1) has made full payment of rent; (2) has made partial payment of rent based on their individual economic circumstances, as negotiated with the landlord; (3) has a pending application for rental assistance; or (4) resides in a jurisdiction in which the rental assistance program is anticipating receipt of additional resources but has not yet started their program or the program is not yet accepting new applications for assistance. *Id.* at ¶ 35. The Bridge Proclamation also continues to limit permissible uses of security deposits until landlords and tenants have the opportunity to resolve nonpayment through the SB 5160 programs, and it continues to prohibit the leveraging of fees for late rent payment during the period of the emergency (from February 29, 2020 to September 30, 2021). *Id.* at ¶¶ 34, 39.

These limitations speak to the heart of Plaintiffs' claims that the moratorium violates their property rights, contractual rights, and due process rights. Although the Bridge Proclamation extends the state eviction moratorium under different conditions, the transition did not moot Plaintiffs' claims. The precise relief sought by Plaintiffs is different at this juncture, but the Court could still fashion effective relief with respect to the Bridge Proclamation. *See Bayer*, 861 F.3d at 862. Because the Bridge Proclamation extends several actions challenged by Plaintiffs as unconstitutional, the Court is unable

to find that Plaintiffs' claims are moot by cessation of Proclamation 20-19.6. Plaintiffs have demonstrated that their claims are not moot, and the Court has jurisdiction to consider them.

In addition, since the parties filed briefs in this matter, the federal eviction moratorium ended pursuant to the U.S. Supreme Court's decision to vacate a stay of enforcement in *Ala. Ass'n of Realtors v. Dep't of Health and Human Servs.*, 594 U.S. , 141 S.Ct. 2320, 210 L. Ed. 2d 984 (2021). Because the federal eviction moratorium is inoperative, it cannot be the source of Plaintiffs' injuries in this case and Defendants' argument that Plaintiffs lack standing is unpersuasive. For this reason, Plaintiffs' purported injury is traceable to the state eviction moratorium and Plaintiffs have standing.

**2. Whether Plaintiffs' Claims Against the Governor are Barred by the Eleventh Amendment**

Defendants maintain that the doctrine of sovereign immunity acts as a jurisdictional bar to Plaintiffs' claims against Washington State Governor Jay Inslee. They contend that Governor Inslee does not have a "fairly direct" connection to enforcement of the eviction moratorium. In contrast, Plaintiffs argue that Governor Inslee's enforcement connection is sufficiently direct to overcome sovereign immunity, in part because the Washington State Constitution expressly provides that the governor "shall see that the laws are faithfully executed." Wash. Const. art. III, § 5.

**a. Legal Standard**

The Eleventh Amendment to the U.S. Constitution acts as a jurisdictional bar to lawsuits brought by private citizens against state governments absent the state's consent. U.S. Const. amend. XI; *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 73, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996); *Sofamor Danek Grp., Inc. v. Brown*, 124 F.3d 1179, 1183 (9th Cir. 1997). In the seminal case *Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908), the U.S. Supreme Court permitted an action for prospective injunctive relief against state officials who had a proven connection to enforcing the challenged under the legal "fiction" that a suit against the individual was not a suit against the state. *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 269-270, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997) (citing *Pennhurst State Sch. and Hosp. v. Halderman*, 465 U.S. 89, 114, n.25, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984)). To overcome the protections of sovereign immunity to sue a state official, a plaintiff must demonstrate that the official "[has] some connection with the enforcement of the act[.]" *Ex Parte Young*, 209 U.S. at 157. Under the *Young* doctrine, the enforcement connection "must be fairly direct," and a "generalized duty to enforce state law or general supervisory powers over the person responsible for enforcing the challenged provision" does not suffice. *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992).

**b. Discussion**

In this case, sovereign immunity bars the present suit against Governor Inslee. Ninth Circuit precedent

makes clear that—although a state governor may be ultimately responsible for executing and enforcing the laws of a state—the duty of general enforcement does not establish the "requisite enforcement connection" to overcome sovereign immunity. *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013) (finding that the California Governor was immune from suit with respect to claims for injunctive relief because "his only connection to [the relevant statute] [was] his general duty to enforce California law"), *cert. denied*, 574 U.S. 932, 135 S. Ct. 398, 190 L. Ed. 2d 249 (2014); *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 847 (9th Cir. 2002) (finding that the "suit is barred against the Governor . . . as there is no showing that they have the requisite enforcement connection"), *opinion amended on denial of reh'g*, 312 F.3d 416 (9th Cir. 2002); *Los Angeles Cnty. Bar Ass'n*, 979 F.2d at 704 (citing *Long v. Van de Kamp*, 961 F.2d 151, 152 (9th Cir. 1992) (holding that the "connection must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit"); *see also Nat'l Conf. of Pers. Managers, Inc. v. Brown*, 690 F. App'x 461, 463 (9th Cir. 2017). "Were the law otherwise, the exception would always apply[ ]" and "[g]overnors who influence state executive branch policies (which virtually all governors do) would always be subject to suit under *Ex Parte Young*." *Tohono O'Odham Nation v. Ducey*, 130 F. Supp. 3d 1301, 1311 (D. Ariz. 2015). In short, a more direct connection to enforcement of the law is required, and the Eleventh Amendment bars suit against Governor Inslee. Accordingly, Governor Inslee is dismissed from this action.

Defendants do not appear to challenge whether Attorney General Ferguson is properly named in this suit, and the Court agrees sovereign immunity is not a jurisdictional bar as to the Attorney General. *Cf. Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 920 (9th Cir. 2004) (holding that the Idaho Attorney General was properly named under *Ex Parte Young* because, unless the county prosecutor objected, the Attorney General had power to perform every act the county attorney could perform); *Bolbol v. Brown*, 120 F. Supp. 3d 1010, 1018-19 (N.D. Cal. 2015) (holding that the California Attorney General was not entitled to Eleventh Amendment immunity because under the state constitution the Attorney General not only has "direct supervision over every district attorney" but also has the duty to "prosecute any violations of the law ... [and] shall have all the powers of a district attorney").

### 3. Whether the Court Has Jurisdiction to Enjoin Purported Violations of the Washington Constitution

The parties now agree that the Court lacks jurisdiction to enjoin purported violations of the Washington Constitution. *See* ECF No. 37 at 14. As a result, the Court dismisses Plaintiffs' Third Claim for Relief on the grounds of state sovereign immunity and federalism, as embodied in the Eleventh Amendment.

**B. First Cause of Action: Contracts Clause of Article I, § 10 of the U.S. Constitution**

**1. Whether the Eviction Moratorium Violates the Contracts Clause**

Of their substantive claims, Plaintiffs first argue that Washington's eviction moratorium violates the Contracts Clause of Article I, § 10 of the U.S. Constitution. Plaintiffs argue that the eviction moratorium violates the Contracts Clause because it substantially impairs their landlord-tenant contracts. They contend that the ability to evict is the "cornerstone" of their contractual bargain and the moratorium eliminates all practical remedies for contractual violations. ECF No. 22 at 23. Plaintiffs cite mostly pre-*Blaisdell* decisions, including *Bronson v. Kinzie*, 42 U.S. 311, 11 L. Ed. 143 (1843), for the principle that a contractual impairment may be substantial even when remedies for contractual breaches are merely delayed. ECF No. 22 at 24; *see generally Home Building & Loan Association v. Blaisdell*, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413 (1934). Plaintiffs further assert that the moratorium is not a reasonable and necessary means to address Washington's stated interest. ECF No. 22 at 27. Their primary contention is that, because the moratorium protects *all* renters and there is no requirement that a renter attest to loss of income or health impacts from the COVID-19 pandemic, the moratorium is not sufficiently tailored to Defendants' purpose. *Id.* at 24-25.

In contrast, Defendants argue that the moratorium does not impose a substantial, unforeseeable impairment

on Plaintiffs' rental agreements. ECF No. 30 at 43-48. Specifically, Defendants claim that the eviction moratorium does not undermine Plaintiffs' contractual bargain or impair Plaintiffs' reasonable expectations, and also that Plaintiffs may safeguard or reinstate their contractual rights. *Id.* Defendants respond that the means of the moratorium is appropriate because it was intended to have broad public benefits, including protection of the state's economy and public health. ECF No. 30 at 50-51, 53. Defendants chiefly cite *Blaisdell* in support of the contention that the moratorium fits the Supreme Court's standard for a reasonable and appropriate law, especially during a period of emergency. *See id.* at 53.

**a. Legal Standard**

The Contracts Clause provides that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. Yet, the Contracts Clause is not "the Draconian provision that its words might seem to imply." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 240, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978). Modern Contracts Clause jurisprudence is based on the "watershed decision" of *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413 (1934). *Apartment Ass'n of Los Angeles Cty., Inc. v. City of Los Angeles*, 10 F.4th 905, No. 20-56251, 2021 U.S. App. LEXIS 25539, 2021 WL 3745777, at *5 (9th Cir. Aug. 25, 2021). In the case of *Blaisdell* , the U.S. Supreme Court "upheld Minnesota's statutory moratorium against home foreclosures, in part, because the legislation was addressed to the 'legitimate end' of protecting 'a basic

interest of society.'" *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 503, 107 S. Ct. 1232, 94 L. Ed. 2d 472 (1987). Pertinent Contract Clauses cases consist of *Blaisdell* and its progeny, which conceptualize a radically different idea of the Clause than in pre-*Blaisdell* jurisprudence. Post-*Blaisdell*, "the Supreme Court has construed [the Contracts Clause] prohibition narrowly in order to ensure that local governments retain the flexibility to exercise their police powers effectively." *Matsuda v. Cty. & Cnty. of Honolulu*, 512 F.3d 1148, 1152 (9th Cir. 2008); *Allied Structural Steel Co.*, 438 U.S. at 240 ("[T]he [state's] police power[ ] is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.") (quoting *Manigault v. Springs*, 199 U.S. 473, 480, 26 S. Ct. 127, 50 L. Ed. 274 (1905)).

To determine whether legislation violates the Contracts Clause, federal courts deploy a "two-step test." *Sveen v. Melin*, U.S. , 138 S. Ct. 1815, 1821-22, 201 L. Ed. 2d 180 (2018). First, "[t]he threshold issue is whether the state law has 'operated as a substantial impairment of a contractual relationship.'" *Id.* (quoting *Allied Structural Steel Co.*, 438 U.S. at 244). Under this inquiry, relevant factors include "the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." *Id.* at 1822. Second, if the law constitutes a substantial impairment of a contractual relationship, the court must turn to the "means and ends of the legislation." *Id.* The

court should determine whether the legislation is drawn in an "'appropriate' and 'reasonable' way to advance 'a significant and legitimate public purpose.'" *Id.* (quoting *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-412, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983)). Under this second step, courts apply a heightened level of scrutiny when the government is a contracting party. *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 25-26, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977). When the government is not party to the contract being impaired, as is here, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves*, 459 U.S. at 413 (quotations omitted); *see also Keystone Bituminous*, 480 U.S. at 505; *Apartment Ass'n of Los Angeles Cnty.*, 2021 U.S. App. LEXIS 25539, 2021 WL 3745777 at *5; *Lazar v. Kroncke*, 862 F.3d 1186, 1199 (9th Cir. 2017).

**b. Discussion**

In this case, there is no dispute that Plaintiffs have valid landlord-tenant agreements that are subject to the Contracts Clause. Accordingly, the Court turns to the two-step test re-articulated in *Sveen*.

**i. Substantial Impairment**

The Court finds that Washington's eviction moratorium does not substantially impair Plaintiffs' lease agreements for three reasons. First, the moratorium does not undermine Plaintiffs' contractual bargain with their tenants. The moratorium delays the ability of Plaintiffs

to exercise certain statutory remedies. Mere delay is insufficient to materially alter the lease agreements in a manner that violates the Contracts Clause. *Blaisdell* is a strikingly similar case that is directly applicable. 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413 (1934). In *Blaisdell*, the U.S. Supreme Court upheld a Depression-era mortgage moratorium law extending mortgagors' redemption period for up to two years. *Id.* at 439. It reasoned that while contractual obligations may be "impaired by a law which renders them *invalid, or releases or extinguishes* them[,]" such as a "state insolvent law" that wholly "discharge[s] the debtor from liability" for preexisting debts, the mortgage moratorium did not impose an impairment on the plaintiffs' contractual rights. *Id.* at 439 (emphasis added). In that case, the U.S. Supreme Court also distinguished the case cited by Plaintiffs, reasoning that the Court in *Bronson* did not consider states' interests in exercising police powers to "safeguard the vital interests of its people." *Id.* at 434. Indeed, the *Blaisdell* Court made clear that changing socioeconomic circumstances may alter the boundaries of the state's police power. *Id.* at 442.

In this case, the eviction moratorium does not extinguish the contractual obligations of tenants to landlords, but temporarily restrains enforcement through eviction and debt collection during a period of "great public calamity." *Id.* The moratorium is only a "temporary restraint of enforcement . . . to protect the vital interests of the community"—that is, protecting the public from a homelessness epidemic unseen since the Great Recession and preventing further transmission of COVID-19. *See id.* at 439. The moratorium's plain language does not

extinguish or release tenants' obligations to pay past-due rent. The moratorium delays the remedy of eviction for failure of a tenant to pay *timely* rent during the period of the health-emergency-based restriction. It is also significant to note that Proclamation 20-19.6 expressly provided that landlords and property managers had the right to treat unpaid rent as enforceable debt immediately if they "demonstrate[d] . . . to a court that the resident was offered, and refused or failed to comply with" a reasonable payment plan. Proc. 20-19.6, ¶ 35. Under the active Bridge Proclamation, past-due rent may be treated as an enforceable debt once a repayment plan has been offered, the SB 5160 programs are implemented, and a tenant has been offered, and rejected or failed to respond to, an opportunity to participate in the programs. In Yakima, the SB 5160 programs are fully operational and Plaintiffs may treat unpaid rent or other charges as an enforceable debt that is owing and collectible after following these procedures. In either scenario, as a matter of law, Plaintiffs are incorrect in their assertion that the moratorium prohibits them "from treating unpaid rent as an enforceable debt and bringing a breach-of-contract action." ECF No. 22 at 28.

Second, the eviction moratorium does not impair reasonable expectations of Plaintiffs in their contracts. Under this factor, courts consider "whether the industry the complaining party has entered has been regulated in the past." *Energy Rsrvs. Grp., Inc.*, 459 U.S. at 411-12. The landlord-tenant relationship, and housing industry generally, is heavily regulated in Washington. The Residential Landlord-Tenant Act, Chapter 59.18 RCW,

regulates the relationship by, *inter alia*, establishing a duty to keep the premises fit for human habitation, Wash. Rev. Code § 59.18.060; requiring notice of rent increases, *id.* § 59.18.140, and termination, *id.* § 59.18.200; and regulating late fees, *id.* § 59.18.170, tenant screenings, *id.* § 59.18.257, and security deposits, *id.* § 59.18.260-.280. Significantly, Chapter 59.12 RCW (Forcible Entry and Forcible and Unlawful Detainer), and the Residential Landlord-Tenant Act, both regulate when eviction of tenants is permissible. Wash. Rev. Code §§ 59.12, 59.18.365-.410. In this case, the State's pervasive regulation in this field has placed Plaintiffs on notice that they may face further government intervention. That is particularly true where, as here, the eviction moratorium regulates the same industry topics (permissible use of unlawful detainer proceedings, late fees, and security deposits) and shares the same legislative intent to protect the rights of tenants in the rental relationship. Consequently, this factor also indicates that the eviction moratorium does not violate the Contracts Clause.

Third, Plaintiffs may safeguard and reinstate their contractual rights during and subsequent to the eviction moratorium. A law altering contractual remedies without nullifying them does not "prevent[] the party from safeguarding or reinstating [their] rights." *Sveen*, 138 S. Ct. at 1822. As delineated previously, the eviction moratorium did not extinguish Plaintiffs' contractual rights. Put bluntly, the moratorium delays the use of particular tools to enforce certain contractual obligations for the time of the state of emergency. The eviction moratorium does not eliminate tenants' obligations to

pay rent or Plaintiffs' rights to collect past-due rent. And contrary to Plaintiffs' representations, Plaintiffs may treat unpaid rent as an enforceable debt during the moratorium after following the above-noted procedures. Because the moratorium does not nullify contractual remedies, the eviction moratorium does not impair Plaintiffs' ability to safeguard their contractual rights in their rental agreements.

Due to the foregoing, the Court finds that the eviction moratorium does not substantially impair Plaintiffs' lease agreements. Even if the Court were to find that the moratorium operated to substantially impair Plaintiffs' contractual rights, Plaintiffs' Contracts Clause claim fails because the eviction moratorium advances a significant and legitimate public purpose in an appropriate and reasonable way. Each element is discussed in turn.

**ii. Significant and Legitimate Purpose Public**

Each of Washington's proffered reasons for the eviction moratorium are significant and legitimate public objectives. On its face, Proclamation 20-19.6 states that its purpose is to "reduce economic hardship" of those "unable to pay rent as a result of the COVID-19 pandemic" and "promote public health and safety by reducing the progression of COVID-19 in Washington State." Proc. 20-19.6, ¶¶ 13, 15. The Bridge Proclamation extends this purpose with the goal of "reduc[ing] uncertainty" as the state implements a long-term post-COVID-19 housing recovery strategy. Proc. 21-09, ¶ 23.

Here, the state's purpose of preventing transmission of COVID-19 is not only significant and legitimate, but compelling. *See, e.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, U.S. , 141 S. Ct. 63, 67, 208 L. Ed. 2d 206 (2020) (per curiam) ("Stemming the spread of COVID-19 is unquestionably a compelling interest . . . ."); *Workman v. Mingo Cnty. Bd. of Educ.*, 419 F. App'x 348, 353 (4th Cir. 2011) ("[T]he state's wish to prevent the spread of communicable diseases clearly constitutes a compelling interest."). The eviction moratorium also seeks to address the economic and social fallout from the gravest public health crisis in a century. The Governor's Office was particularly concerned with the impact of COVID-19, and all its economic consequences, on housing and the homelessness crisis. It cannot seriously be argued that these objectives do not serve the public and that they do not constitute significant and legitimate purposes of the state. Consequently, the Court finds that Defendants have articulated a significant and legitimate public purpose for the eviction moratorium.

**iii. Appropriate and Reasonable Means**

The eviction moratorium is also an appropriate and reasonable measure to address the state's objectives. Since Washington is not a party to the contracts under review, the Court must "defer" to the government's "judgment as to the necessity and reasonableness of a particular measure." *Energy Rsrvs. Grp.*, 459 U.S. at 412-13. Such "latitude 'must be especially broad" where "officials 'undertake to act in areas fraught with medical and scientific uncertainties," such as responding to the

COVID-19 pandemic. *S. Bay United Pentecostal Church v. Newsom*, U.S. , 140 S. Ct. 1613, 1613-14, 207 L. Ed. 2d 154 (2020) (Roberts, C.J., concurring) (quoting *Marshall v. United States*, 414 U.S. 417, 427, 94 S. Ct. 700, 38 L. Ed. 2d 618 (1974)). Provided that the limits of the Contracts Clause are not exceeded, the Court should decline to engage in second-guessing, as the "unelected federal judiciary" lacks the "background, competence, and expertise to assess public health." *Id.* (quoting *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 545, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985)).

On this point, Plaintiffs argue that the moratorium is not reasonable and appropriate because it applies "regardless of a tenant's employment or ability to pay." ECF No. 22 at 18. This argument misses the forest for the trees. Regardless of the pandemic's impact on any specific individual's financial or health circumstances, one of the moratorium's express intentions is to reduce person-to-person contact to mitigate transmission of COVID-19. At least one study's projections indicated that mass evictions could have resulted in up to 59,008 more eviction-attributable COVID-19 cases, 5,623 more hospitalizations, and 621 more deaths in Washington. ECF No. 35-1 at 64-65. Further, the reasonableness of the state's public purpose of preventing homelessness during the pandemic is directly supported by *Blaisdell*, where the Supreme Court upheld a similar law enacted during an "emergency" that "threaten[ed] the loss of homes." 290 U.S. at 444-45.

Plaintiffs also maintain that the eviction moratorium places an unreasonable burden of its public benefit on landlords and property managers. But virtually every law "regulating commercial and other human affairs . . . creates burdens for some that directly benefit others." *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 223, 106 S. Ct. 1018, 89 L. Ed. 2d 166 (1986). Simply because the moratorium "requires one person to use his or her assets for the benefit of another" does not raise the eviction moratorium to a level of unconstitutionality under the Contracts Clause. *Id.* It does not serve special interests but seeks to protect the basic interest of society in preventing mass evictions and housing instability, *id.*, and preventing the further spread of COVID-19.

For all these reasons, and in accordance with the numerous other district courts that have considered constitutional challenges to state eviction moratoria, the Court finds that Washington's moratorium is an appropriate and reasonable response to the state's significant and legitimate public purpose of preventing spread of COVID-19 and exacerbation of the homelessness crisis. *See, e.g.*, *HAPCO v. City of Philadephia*, 482 F. Supp. 3d 337, 355 (E.D. Pa. 2020) (finding that "as in *Blaisdell*, where temporary measures enacted in response to emergency conditions to allow people to remain in their homes under certain conditions was upheld in response to a Contracts Clause challenge, [plaintiff's] Contracts Clause challenge to the City's temporary legislation, enacted in response the COVID-19 pandemic and designed to allow residents to remain in their homes, is unlikely to succeed on the merits"); *El Papel LLC v. Inslee*, No.

2:20-CV-01323-RAJ-JRC, 2020 U.S. Dist. LEXIS 246971, 2020 WL 8024348, at *7 (W.D. Wash. Dec. 2, 2020), *report and recommendation adopted*, No. 2:20-CV-01323-RAJ-JRC, 2021 U.S. Dist. LEXIS 4092, 2021 WL 71678 (W.D. Wash. Jan. 8, 2021) ("*Blaisdell* supports the reasonableness of [Washington's Moratorium]."). The Court declines to second-guess the expertise of the state in formulating an appropriate response to the present public health emergency, which is fraught with medical and scientific uncertainties. Accordingly, Defendants are entitled to judgment as a matter of law and the Court grants summary judgment in favor of Defendants on the Contracts Clause claim.

**C. Second Cause of Action: Takings Clause of the Fifth Amendment to the U.S. Constitution**

Plaintiffs' next cause of action contends that the eviction moratorium constitutes a *per se* physical taking of their property rights under the Fifth Amendment to the U.S. Constitution. Plaintiffs do not request monetary damages in this action. Instead, they request the Court grant declaratory relief that a "taking" has occurred, so that they may begin the process to acquire "just compensation." Their core Takings Clause claim is that the eviction moratorium leads to a physical invasion of private property and thereby "takes" Plaintiffs' right to exclude. ECF No. 22 at 6-11. They cite *Cedar Point Nursery v. Hassid*, U.S. , 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021) to support their assertion that the moratorium constitutes a physical taking. ECF No. 48 at 2-9. Plaintiffs also argue that the eviction moratorium amounts to a *per*

*se* taking because it appropriates their property rights in their rental contracts and security deposits. *Id.* at 11-12.

Defendants argue that the eviction moratorium is not a *per se* taking because the state has not physically invaded Plaintiffs' properties or otherwise appropriated their property rights. They contend that *Cedar Point Nursery* is factually and legally distinguishable and the case actually reaffirms the U.S. Supreme Court's prior holdings that regulations restricting the use of property without a physical invasion of land, particularly when the use is premised on the owner's voluntary invitation to an occupant, are not *per se* takings. ECF No. 56 at 2-5. Defendants also claim that the U.S. Supreme Court's *per se* takings jurisprudence does not apply to property interests in contracts, and nonetheless, the eviction moratorium appropriated neither Plaintiffs' contractual rights nor security deposits. ECF No. 30 at 36-38.

**1. Whether Declaratory Relief is Available to Plaintiffs**

**a. Legal Standard**

The Takings Clause prohibits a state from taking private property for public use "without just compensation." U.S. Const. amend. V. Accordingly, "[e]quitable relief is not available to enjoin an alleged taking of private property for public use . . . when a suit for compensation can be brought against the sovereign subsequent to the taking." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1016, 104 S. Ct. 2862, 81 L. Ed. 2d 815 (1984) (citing *Larson v.*

*Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 69 S. Ct. 1457, 93 L. Ed. 1628 (1949)); *accord Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 740, 130 S. Ct. 2592, 177 L. Ed. 2d 184 (2010) (Kennedy, J., concurring). The U.S. Supreme Court reasoned in *Knick v. Township of Scott, Pa.*, 588 U.S. , 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019) that, "[t]oday, because the federal and nearly all state governments provide just compensation remedies to property owners who have suffered a taking, equitable relief is generally unavailable. As long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting taking." *Id.* at 2176-77. The Court concluded that "a government violates the Takings Clause when it takes property without compensation, and that a property owner may bring a Fifth Amendment claim under [42 U.S.C.] § 1983 at that time." *Id.* at 2177.

**b. Discussion**

The Court first considers whether the declaratory relief sought is available to Plaintiffs. In this case, Plaintiffs do not seek proper relief for a Fifth Amendment taking. Plaintiffs seek declaratory relief that a taking has occurred, not monetary damages. As other federal district courts have found, such relief is inappropriate because it would be the functional equivalent of an injunction against enforcement of the moratorium. *See, e.g.*, *Baptiste v. Kennealy*, 490 F. Supp. 3d 353, 391 (D. Mass. 2020); *Cty. of Butler v. Wolf*, No. 2:20-cv-677, 2020 U.S. Dist. LEXIS 93484, 2020 WL 2769105, *4 (W.D. Pa. May 28, 2020); *HAPCO*, 482 F. Supp. 3d at 358, 358 n.112. The declaratory

judgment sought by Plaintiffs is indisputably a type of equitable remedy. *Apache Survival Coalition v. United States*, 21 F.3d 895, 905 n.12 (9th Cir. 1994). Accordingly, the relief sought by Plaintiffs is foreclosed by the Supreme Court's decision in *Knick*, 139 S. Ct. at 2177. The remedy for a taking under the Fifth Amendment is damages, not equitable relief.[3] For this reason, the Court is unable to grant the relief sought by Plaintiffs.

**2. Whether the Eviction Moratorium Constitutes a *Per Se* Physical Taking**

**a. Legal Standard**

The Fifth Amendment's Takings Clause applies to the states through the Fourteenth Amendment. *Murr v. Wisconsin*, U.S. , 137 S. Ct. 1933, 1942, 198 L. Ed. 2d 497 (2017); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005). As previously stated, the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V. Under the Takings Clause, there are traditionally two categories of takings, (1) *per se* physical takings, and (2) regulatory takings. To summarize:

3. It is worth noting that the Washington State Constitution provides an avenue for obtaining compensation via damages for the alleged taking of property. Wash. Const. art. I, § 16. Plaintiffs have not attempted to acquire just compensation for the purported taking through available state procedures.

> Our jurisprudence involving condemnations and physical takings is as old as the Republic and, for the most part, involves the straightforward application of *per se* rules. Our regulatory takings jurisprudence, in contrast, is of more recent vintage and is characterized by 'essentially ad hoc, factual inquiries,' designed to allow 'careful examination and weighing of all the relevant circumstances.'"

*Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 321, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002) (internal citations omitted). "The first category of cases requires courts to apply a clear rule; the second necessarily entails complex factual assessments of the purposes and economic effects of government actions." *Yee v. Escondido*, 503 U.S. 519, 523, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992). "This longstanding distinction between acquisitions of property for public use, on the one hand, and regulations prohibiting private uses, on the other, makes it inappropriate to treat cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a 'regulatory taking,' and vice versa." *Tahoe-Sierra Pres. Council, Inc.*, 535 U.S. at 322.

Under the first category of *per se* physical takings, "[w]hen the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner, regardless of whether the interest that is taken constitutes an entire parcel or merely a part thereof. Thus, compensation is mandated when a leasehold is taken

and the government occupies the property for its own purposes, even though that use is temporary." *Id.* The U.S. Supreme Court acknowledged that the same was true when the government physically appropriated part of a rooftop to provide cable TV access for apartment tenants in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982), and where the government used its planes in private airspace to approach a government airport in *United States v. Causby*, 328 U.S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206, 106 Ct. Cl. 854 (1946). *Tahoe-Sierra Pres. Council, Inc.*, 535 U.S. at 322.

Under the second category of regulatory takings, which contrasts with the categorical *per se* takings rule, courts consider complex factual assessments of the purposes and economic effects of governmental actions. *Id.* at 323 (quoting *Yee*, 503 U.S. at 523). The seminal regulatory takings case is *Penn Central Transp. Co. v. City of New York*, 439 U.S. 883, 99 S. Ct. 226, 58 L. Ed. 2d 198 (1978). Plaintiffs do not challenge the moratorium as a regulatory taking and, for this reason, the Court does not extrapolate the *Penn Central* standard here. *Accord Yee*, 503 U.S. at 536-37.

In *Loretto*, a *per se* takings case, the U.S. Supreme Court considered a challenge to a New York statute requiring that landlords permit a cable television company to install television facilities on their properties, and which prohibited demands for payment from the company in excess of an amount determined reasonable by the state commission. *Loretto*, 458 U.S. at 423. The petitioner

brought a class action for damages, alleging that the statute constituted a taking. *Id.* The question for the U.S. Supreme Court was "whether an otherwise valid regulation so frustrates property rights that compensation must be paid." *Id.* at 425-26 (citing *Penn. Central Transp. Co.*, 439 U.S. at 127-28). The U.S. Supreme Court's decision hinged firmly on its interpretation of the third *Penn Central* factor, which considers the "character" of the governmental action. *Id.* at 429-430. The Court concluded that "a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve," *id.* at 426, and that there was invariably a taking because the statute mandated the permanent physical occupation of real property, *id.* at 427. The Court's reasoning relied heavily on the distinction between a permanent occupation and temporary physical invasion. *Id.* at 434 (citing *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980)). While a temporary physical invasion is subject to a balancing process under the three *Penn Central* factors, "when the 'character of the governmental action[ ]' is a permanent physical occupation of property, our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner." *Id.* at 434-35 (internal citation omitted). Thus, the Court held in *Loretto* that "permanent physical invasions" are *not* subject to balancing under the remaining *Penn Central* factors and are instead *per se* takings.

Subsequent to *Loretto*, the U.S. Supreme Court decided *Yee v. City of Escondido, California*, 503 U.S. 519, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992). The petitioners in *Yee* were mobile home park owners in Escondido, California, who rented pads of land to mobile homeowners. *Id.* at 523. California's Mobilehome Residency Law limited the reasons that a park owner could terminate a mobile homeowner's tenancy to (1) nonpayment of rent; and (2) the park owner's desire to change the use of his or her land. *Id.* at 524. The City also had a rental control ordinance that prohibited rent increases absent the City Council's approval. *Id.* at 524-25. Petitioners argued that the local rent ordinance, in conjunction with the Mobilehome Residency Law, amounted to a *per se* physical taking. *Id.* at 523-24. The U.S. Supreme Court held that the rent control ordinance did not authorize an unwanted physical occupation of petitioners' property and therefore did not amount to a *per se* taking. *Id.* at 532. The Court rejected petitioners' argument that the rental control ordinance authorized a physical taking because the law, in conjunction with the state law's restrictions, granted a homeowner a right to occupy the pad indefinitely at a submarket rent. In rejecting this argument, the Court reasoned that a physical taking occurs "only when [the government] *requires* the landowner to submit to physical occupation of his land." *Id.* at 527 (emphasis in original). The petitioners were not compelled by the city or state to continue renting their properties. *Id.* The Court determined that, because the laws merely regulated petitioners' *use* of their land by regulating the relationship between landlord and tenant, they could not be squared with the Court's physical takings cases. *Id.* at 527-28. The U.S. Supreme Court

concluded: "This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." *Id.* at 528-29 (quoting *Loretto*, 458 U.S. at 440); *Florida Power Corp.*, 480 U.S. at 252 ("[S]tatutes regulating the economic relations of landlords and tenants are not *per se* takings.").

The U.S. Supreme Court issued a more recent decision concerning the Takings Clause in *Cedar Point Nursery v. Hassid*, U.S. , 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021). In *Cedar Point Nursery*, the Court held that a California access regulation that gave outside labor organizers a right to "take access" to agricultural employers' property was a *per se* physical taking because it appropriated property owners' "right to exclude," both for the government itself and for third parties. *Id.* at 2072 (quoting Cal. Code. Regs., tit. 8, § 20900(e)(1)(C) (2020)). The regulation required agricultural employers to permit union organizers on their property for three hours a day, 120 days per year, for the purpose of soliciting employees to join or form a union. *Id.* at 2069. The Court reasoned that the occupation was a physical taking because it impacted the right to exclude, which is the "sine qua non" of property. *Id.* at 2072-73. The Court rejected the notion that the failure of the regulation to invade the property right "around the clock" made the taking any less a taking under the Fifth Amendment. *Id.* at 2075. Through *Cedar Point Nursery*, it appears the Court implicitly overruled its previous rationale under *per se* jurisprudence that distinguished between "permanent physical occupations" and "temporary physical invasions."

*See Loretto*, 458 U.S. at 434 (citing *PruneYard Shopping Center*, 447 U.S. at 74).

#### b. Discussion

Even if the Court were to find that declaratory relief was available to Plaintiffs, the Court finds that Washington's eviction moratorium does not constitute a *per se* physical taking under the Takings Clause. With respect to Plaintiffs' assertion regarding physical occupation, the moratorium does not constitute a *per se* taking because the moratorium did not require Plaintiffs to submit to physical occupation or invasion of their land and did not appropriate Plaintiffs' right to exclude. The U.S. Supreme Court has made clear that "statutes regulating the economic relations of landlords and tenants are not *per se* takings." *Florida Power Corp.*, 480 U.S. at 252. No physical invasion has occurred beyond that agreed to by Plaintiffs in renting their properties as residential homes, which is naturally subject to regulation by the state. Like traditional regulatory takings cases, the moratorium "transfers wealth from the landlord to the tenants by reducing the landlords' income and the tenants' monthly payments." *Yee*, 503 U.S. at 529. But, as the Supreme Court stated in *Yee*, the existence of the wealth transfer "in itself does not convert regulation into physical invasion." *Id.* at 530. To find that the eviction moratorium is a *per se* physical taking would require the Court to disregard the U.S. Supreme Court's holdings and rationale in both *Loretto* and *Yee*; it would essentially require the Court to eliminate the line between the U.S. Supreme Court's *per se* takings and regulatory takings

jurisprudence. Such activism is not the occupation of this Court.

Plaintiffs' attempt to distinguish *Yee* from this case fails, as the plaintiffs in *Yee* similarly argued that the ordinance required them to lease to tenants beyond their original lease terms. 503 U.S. at 526-27 ("Because under the California Mobilehome Residency Law the park owner cannot evict a mobile home owner or easily convert the property to other uses, the argument goes, the mobile home owner is effectively a perpetual tenant of the park. . . ."). In this case, just as in *Yee*, Plaintiffs voluntarily invited tenants to occupy their properties as residential homes. The state has not required any physical invasion and their tenants were "not forced upon them by the government." *Id.* at 528. Plaintiffs' right to exclude has not been taken because the moratorium compelled no physical invasion or occupation that Plaintiffs would have forfeited in the first place. *See id.* at 532-33. Instead, the eviction moratorium regulates the landlord-tenant relationship once it is already established.

*Cedar Point Nursery* also does not disturb the Court's analysis. The California access regulation challenged in *Cedar Point Nursery* is distinguishable from the eviction moratorium in this case. Unlike the physical appropriation of the right to exclude in *Cedar Point Nursery*, the moratorium regulates the landlords "use of their land by regulating the relationship between landlord and tenant." *Yee*, 503 U.S. at 528. Based on the undisturbed precedent of *Yee*, limitations on how a landlord may treat tenants—which they have voluntarily invited onto their properties

by renting to them—and enforce their contractual rights (for a temporary period) are readily distinguishable from regulations granting a *separate right* to invade property closed to the public or most individuals. *Id.* at 527-28, 531. Second, central to the U.S. Supreme Court's decision in *Yee* and as already noted, Plaintiffs voluntarily invited tenants onto their properties. *Id.* at 531 ("Because they voluntarily open their property to occupation by others, petitioners cannot assert a *per se* right to compensation based on their inability to exclude particular individuals.), 527 ("Petitioners voluntarily rented their land to mobile home owners."), 528 ("Petitioners' tenants were invited by petitioners, not forced upon them by the government."). Plaintiffs' tenants were invited by themselves, not forced upon them by the government. *Id.* at 528. *Cedar Point Nursery* does not overrule *Yee* or undermine the legal underpinnings of *Yee*. Indeed, in *Cedar Point Nursery*, the Court cited *Yee* for general takings principles, and *Yee*'s holding is still binding law on this Court.

While *Cedar Point Nursery* announced that a non-continuous, intermittent easement created by California's access regulation affected a *per se* physical taking, it did not undermine or disturb the long-standing principle that "[t]he government effects a physical taking only where it requires the landowner to submit to the physical occupation of his land." *Yee*, 503 U.S. at 527. Because the moratorium does not commit a physical appropriation of Plaintiffs' land beyond that consented by Plaintiffs in renting their units as residential properties—an industry heavily regulated by the State of Washington—the eviction moratorium does not constitute a *per se* taking

under the Fifth Amendment. See *S. Cal. Rental Housing Ass'n v. Cty. of San Diego*, No. 3:21-CV-912-L-DEB, 2021 U.S. Dist. LEXIS 139970, 2021 WL 3171919, at *8 (S.D. Cal. July 26, 2021) (distinguishing *Cedar Point Nursery* and holding that plaintiff failed to show a likelihood of success on the merits on its Takings Clause claim challenging California's eviction moratorium).

Plaintiffs' argument that the eviction moratorium effects a taking in their rental contracts also fails. Plaintiffs cite regulatory takings case *Cienega Gardens v. United States*, (Fed. Cir. 2003) for their contention that the moratorium's impact on their contracts constitutes a *per se* taking. Such is an inapplicable framework for Plaintiffs' physical takings claim, as it is inappropriate for this Court to "treat cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a 'regulatory taking,' and vice versa." *Tahoe-Sierra Pres. Council, Inc.*, 535 U.S. at 322. Plaintiffs also cite eminent domain case *United States v. Petty Motor Company*, 327 U.S. 372, 66 S. Ct. 596, 90 L. Ed. 729 (1946). *Petty Motor Company* is unpersuasive because it is not factually analogous and involves physical occupation. In that case, the United States physically appropriated a property owner and tenant's leaseholds, requiring that the defendants submit their real property to the government's immediate possession. *Id.* at 374-75. Here, the eviction moratorium does not eliminate or relinquish a contractual right of Plaintiffs; indeed, the moratorium did not diminish a single tenant's debt obligation to Plaintiffs by even a penny. Plaintiffs' arguments on this point are not supported by law and are of no avail.

For a similar reason, the eviction moratorium does not take Plaintiffs' property interests in security deposits. Plaintiffs claim that by limiting available uses of the security deposit during the period of emergency to prevent deductions for past-due rent, Washington has committed a *per se* taking of its property interest in their tenants' security deposits. *See* ECF No. 22 at 12 (also arguing that the purpose of a security deposit is to reimburse landlords for unpaid rent at end of tenancy). The cases cited by Plaintiffs on this point concern actual confiscation of property by the government and are inapposite. *See, e.g., Brown v. Legal Found. of Wash.*, 538 U.S. 216, 240, 123 S. Ct. 1406, 155 L. Ed. 2d 376 (2003) (holding that interest on interpleaded funds exacted by the government could be a *per se* taking); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164-65, 101 S. Ct. 446, 66 L. Ed. 2d 358 (1980) (holding that confiscation of interest on client funds deposited into lawyers' trust accounts was a *per se* taking). As previously stated, the eviction moratorium does not extinguish Plaintiffs' property interest in collecting unpaid rent whatsoever. Plaintiffs also remain able to deduct charges from security deposits for other tenant violations of the Residential Landlord-Tenant Act, subject to state's accounting requirements. Wash. Rev. Code § 59.18.280. This contention is particularly unpersuasive because Plaintiffs can recover any amount they would otherwise deduct from a tenant's security deposit for unpaid rent by pursuing debt enforcement in accordance with the terms of the Bridge Proclamation and SB 5160. Washington is permitted to modify permissible uses of security deposits under its regulatory scheme, as it has done here, and it does not amount to a *per se* taking under the Fifth Amendment.

For the foregoing reasons, Plaintiffs' Fifth Amendment claim fails as a matter of law. The Court grants summary judgment in favor of Defendants.

### D. Fourth Cause of Action: Due Process Clause of the Fourteenth Amendment to the U.S. Constitution

Plaintiffs' final claim asserts two distinct arguments under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Plaintiffs contend that the eviction moratorium violates the Due Process Clause because it is (1) unconstitutionally vague; and (2) "unduly oppressive" and thereby violative of substantive due process. ECF No. 22 at 32.

First, Plaintiffs argue that the eviction moratorium is impermissibly vague because it does not provide guidance as to how a landlord or property manager may construct a "reasonable payment plan" that is based on a tenant's individual financial, health, or other circumstances. Plaintiffs Jay Glenn and Enrique Jevons submitted declarations indicating that they have managed to create repayment plans with several tenants. ECF No. 37-1 at 3-4; ECF No. 37-2 at 2-3. Plaintiff Jevons stated that, previously, he had not attempted to even inquire about individual tenants' circumstances because it seemed "devious" on his part. ECF No. 37-2 at 2. The core of Plaintiffs' vagueness grievance is that they experience difficulty ascertaining individual tenants' financial or health circumstances, in part because tenants are not required to communicate with them. *Id.* at 2-3.

Defendants assert that the void for vagueness doctrine does not apply because due process only prohibits impermissibly vague laws with civil and criminal penalties. *See* ECF No. 30 at 59. Nonetheless, they further argue that the eviction moratorium's repayment plan provision provides constitutionally permissible "flexibility and reasonable breadth" to courts, and that its terms provide "fair notice" of what is expected of Plaintiffs. *Id.* at 60 (citations omitted).

Second, Plaintiffs assert that that the eviction moratorium is unduly oppressive of "Plaintiffs' right to determine the conditions upon which a person may continue to occupy the owner's property." ECF No. 22 at 34-35. They contend that they are "unjustifiably prevented from being able to rightfully use their properties and mitigate damages where tenants fail to pay rent." *Id.* at 37.

Defendants respond that Plaintiffs are barred from repackaging their Takings Clause and Contracts Clause claims into a substantive Due Process Clause claim because the former provide explicit textual sources of constitutional protection of the asserted rights. ECF No. 30 at 60-61. In addition, Defendants claim that Plaintiffs' substantive due process claim should not be analyzed under a heightened standard of scrutiny, as the challenge is based on Plaintiffs' economic interests. *See* ECF No. 30 at 57. Under the appropriate standard, they argue, the moratorium is not arbitrary or irrational for the same reasons it furthers a significant and legitimate public purpose. *Id.* at 58.

### 1. Whether the Eviction Moratorium is Unconstitutionally Vague

#### a. Legal Standard

The Due Process Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend XIV. "'It is a basic principle of due process that an enactment is void for vagueness if its *prohibitions* are not clearly defined.'" *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289-90, 102 S. Ct. 1070, 71 L. Ed. 2d 152 (1982) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (emphasis added)). For example, a conviction fails to comport with due process when the statute under which it is obtained "fails to provide a person of ordinary intelligence fair notice of what is *prohibited*, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008) (citing *Hill v. Colorado*, 530 U.S. 703, 732, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000)) (emphasis added). Where the law "implicates First Amendment rights, . . . a 'more demanding' standard of scrutiny applies." *Hunt v. City of Los Angeles*, 638 F.3d 703, 712 (9th Cir. 2011) (quoting *Grayned*, 408 U.S. at 108). But "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity." *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 794, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989)).

A statute may be challenged as unconstitutionally vague on its face or as applied to a particular party. *See United States v. Kilbride*, 584 F.3d 1240, 1256-59 (9th Cir. 2009). "Outside the First Amendment context, a plaintiff alleging facial vagueness must show that the enactment is impermissibly vague in all its applications." *Humanitarian Law Project v. U.S. Treasury Dep't*, 578 F.3d 1133, 1146 (9th Cir. 2009); *see also United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987) (holding that a plaintiff mounting a facial challenge must establish that "no set of circumstances exists under [ ] the Act [that] would be valid"). Since a plaintiff mounting a facial attack to a statute must show that the law is impermissible in all its applications, a plaintiff must first show that the law is unconstitutionally vague as applied to them. *Castro v. Terhune*, 712 F.3d 1304, 1311 (9th Cir. 2013).

**b. Discussion**

Under the Bridge Proclamation, for rent owed that accrued on or after February 29, 2020 through September 30, 2021, a landlord is prohibited from treating unpaid rent as an enforceable debt if the landlord "has made no attempt to establish a reasonable repayment plan with the tenant per E2SSB 5160, or if they cannot agree on a plan and no local eviction resolution pilot program per E2SSB 5160 exists." Proc. 21-09, ¶ 42. Further, a landlord is required to offer a tenant a "reasonable repayment plan" for rent accrued between August 1, 2021 and September 30, 2021 prior to enforcing any eviction notice pursuant to the order and Section 4 of SB 5160. *Id.* at ¶ 37. The

Bridge Proclamation states that a "reasonable repayment plan" has the same meaning as "reasonable schedule for repayment" as defined under Section 4 of SB 5160. *Id.* at 43. More specifically, it refers to a "repayment plan or schedule for unpaid rent that does not exceed monthly payments equal to one-third of the monthly rental charges during the period of accrued debt." *Id.*

Under the previously effective Proclamation 20-19.6, the eviction moratorium applied for all unpaid rent accruing on or after February 29, 2020. Proc. 20-19.6, ¶ 35. A landlord or property manager could not treat any unpaid rent as an enforceable debt if it accrued after this point as a result of the COVID-19 pandemic. *Id.* That prohibition was caveated with the following provision:

> This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, *a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident*; failure to provide a reasonable repayment plan shall be a defense to any lawsuit or other attempts to collect.

*Id.* (emphasis added). At the time, the Washington State Attorney General's Office prepared assistive materials, including an unpaid rent repayment plan worksheet, to assist landlords and property managers in communicating with tenants to establish such repayment plans.

In this case, the Court finds the eviction moratorium is not impermissibly vague and does not violate the void for vagueness doctrine. Plaintiffs' due process claim fails outright because the contested provision is not a prohibition and does not require them to do anything. *See Grayned*, 408 U.S. at 108 ("It is a basic principle of due process that an enactment is void for vagueness if its *prohibitions* are not clearly defined.") (emphasis added). The moratorium's actual prohibition is indisputably clear: landlords and property managers may not treat unpaid rent stemming from the COVID-19 pandemic as an enforceable debt during the state of emergency. Plaintiffs' complaint concerns the exception to the prohibition, which the state constructed to *permit* enforcement proceedings in narrow circumstances: that is, where a landlord and tenant have established a repayment plan that was "reasonable based on the individual financial, health, and other circumstances of that resident." Proc. 20-19.6, ¶ 35; *see also* Proc. 21-09, ¶¶ 42-45. This provision, which permits rather than prohibits a particular remedy, is not properly challenged under the vagueness doctrine.

Further, even if this exception constituted a "prohibition" and fell within the scope of the vagueness doctrine, the moratorium is not vague as applied to Plaintiffs. Plaintiffs have failed to demonstrate that the eviction moratorium in either its previous or current form is impermissibly vague as applied to them.[4] Plaintiffs' vagueness claim is directly undermined by the fact that

4. Plaintiffs do not contend that their First Amendment rights are implicated, and therefore heightened scrutiny does not apply.

at least two Plaintiffs have managed to create repayment plans with tenants. During implementation of the former moratoria, which provides slightly less substantive guidance on establishing repayment plans, Plaintiff Jay Glenn attested that, for example, one tenant owed $3,000 in past-due rent and offered to pay $120 per month after moveout, which he accepted as reasonable. And under the operative Bridge Proclamation, such a plan is *plainly* reasonable if the schedule does not "exceed monthly payments equal to one-third of the monthly rental charges during the period of accrued debt." Proc. 21-09, ¶ 43. Provided that a devised schedule does not exceed this threshold, landlord and property managers may seek reimbursement if a tenant defaults under the repayment plan. Because of this, the Court cannot find that the repayment plan provision does not provide a person of ordinary intelligence fair notice of what is permitted (or prohibited) or that it encourages seriously discriminatory enforcement. *See Williams*, 553 U.S. at 304. Plaintiffs have failed to demonstrate that there is no set of circumstances where the law as applied would be valid, and their facial attack is unsuccessful. *See Salerno*, 481 U.S. at 745; *Castro*, 712 F.3d at 1311. Accordingly, Plaintiffs' claim that the eviction moratorium is unconstitutionally vague fails as a matter of law, and summary judgment on this claim is granted to Defendants.

### 2. Whether the Eviction Moratorium Violates Plaintiffs' Substantive Due Process Rights

#### a. Legal Standard

The right to use property as one wishes is not a fundamental right under substantive due process, as it is economic in nature. *Slidewaters LLC v. Washington State Dep't of Lab. & Indus.*, 4 F.4th 747, 758 (9th Cir. 2021); *Bowers v. Whitman*, 671 F.3d 905, 915-17 (9th Cir. 2012). "The proper test for judging the constitutionality of statutes regulating economic activity . . . is whether the legislation bears a rational relationship to a legitimate state interest." *Jackson Water Works, Inc. v. Pub. Util. Comm'n of Cal.*, 793 F.2d 1090, 1093-94 (9th Cir. 1986). "Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a 'clear showing of arbitrariness and irrationality.'" *Slidewaters LLC*, F.4th at 758 (quoting *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994)). The U.S. Supreme Court has "long eschewed" a heightened standard of scrutiny when addressing substantive due process challenges by government regulation. *Lingle*, 544 U.S. at 542; *see also Ferguson v. Skrupa*, 372 U.S. 726, 730, 83 S. Ct. 1028, 10 L. Ed. 2d 93 (1963) ("We have returned to the original constitutional proposition [pre-*Lochner*] that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws."). Instead, federal courts must defer "to legislative judgments about the need for, and likely effectiveness of, regulatory actions." *Lingle*, 544 U.S. at 545.

Accordingly, to determine whether the eviction moratorium violates Plaintiffs' substantive due process rights, the Court must first determine whether the law could advance any legitimate government purpose. *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994). Second, the Court must determine whether the law is arbitrary and irrational. *See Lingle*, 544 U.S. at 542; *Slidewaters LLC*, 4 F.4th at 758. This is akin to a rational basis standard of review, *see Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 124-25, 98 S. Ct. 2207, 57 L. Ed. 2d 91 (1978), and is a "less searching" standard than that utilized in a constitutional challenge under the Contracts Clause, *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 733, 104 S. Ct. 2709, 81 L. Ed. 2d 601 (1984).

Furthermore, the U.S. Supreme Court has made clear that a substantive due process claim must give way to a claim based on identical facts that is derived from "an explicit textual source of constitutional protection." *Graham v. Connor*, 490 U.S. 386, 395, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989); *Albright v. Oliver*, 510 U.S. 266, 266, 273, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994) (four-Justice plurality), *id.* at 281 (Kennedy, J., concurring); *Stop the Beach Renourishment, Inc.*, 560 U.S. at 721 (Kennedy, J., concurring).

**b. Discussion**

In this case, the Court finds that Plaintiffs' Contracts Clause claim supersedes their substantive Due Process Clause claim. Plaintiffs' substantive due process claim is identical to their cause of action under the Contracts

Clause, which the Court has already adjudicated. The Contracts Clause provides "an explicit textual source of constitutional protection" and Plaintiffs may not repackage their identical argument into an independent due process claim. *See Graham*, 490 U.S. at 395.

Further, Plaintiffs' property-based substantive due process claim employs a lower standard of scrutiny than that employed under their Contracts Clause claim. The Court already determined that, under Contracts Clause analysis, the eviction moratorium is an appropriate and reasonable fit to a significant and legitimate purpose of the state. The moratorium is not unduly oppressive to Plaintiffs' due process rights or arbitrary and irrational for the same reasons it is an "appropriate" and "reasonable" regulation under the Contracts Clause. *Accord Blaisdell*, 290 U.S. at 448. As a result, the Court grants summary judgment to Defendants on Plaintiffs' substantive due process claim.

## V. Conclusion

For the foregoing reasons, this Court holds that the Washington's eviction moratorium does not violate the Takings Clause, Contracts Clause, or Due Process Clause of the U.S. Constitution. The state government can, should, and must protect the public's health and safety during a pandemic to mitigate transmission of a novel and potentially fatal pathogen, as the State of Washington has done in the past nineteen months to combat the COVID-19 pandemic. The people of Washington, all of us collectively, can, should, and must protect ourselves, but also one another, during the pandemic. This worthy objective

includes protecting the most vulnerable individuals in our state. The eviction moratorium is part of the emergency efforts implemented by the duly elected governor of the State of Washington, whose role is to exercise his powers and responsibilities to protect the people from the COVID-19 pandemic and protect the economy of the state. These aims were appropriately realized through implementation of Washington's eviction moratorium.

Accordingly, **IT IS HEREBY ORDERED**:

1. Defendants' Cross-Motion for Summary Judgment, ECF No. 30, is **GRANTED**.

2. Plaintiffs' Motion for Summary Judgment, ECF No. 22, is **DENIED**.

3. The District Court Executive is directed to enter judgment in favor of Defendants and against Plaintiffs.

**IT IS SO ORDERED**. The District Court Clerk is hereby directed to enter this Order, provide copies to counsel, and **CLOSE** the file.

**DATED** this 20th day of September 2021.

/s/ Stanley A. Bastian
Stanley A. Bastian
Chief United States District Judge

## APPENDIX C — PROCLAMATIONS OF THE GOVERNOR OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

JAY INSLEE
Governor

### PROCLAMATION BY THE GOVERNOR

### 20-05

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

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

**WHEREAS**, The CDC identifies the potential public health threat posed by COVID-19 both globally and in the United States as "high", and has advised that person-to-person spread of COVID-19 will continue to occur globally, including within the United States; and

*Appendix C*

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

**WHEREAS**, The CDC currently indicates there are 85,688 confirmed cases of COVID-19 worldwide with 66 of those cases in the United States, and the Washington State Department of Health has now confirmed localized person-to-person spread of COVID-19 in Washington State, significantly increasing the risk of exposure and infection to Washington State's general public and creating an extreme public health risk that may spread quickly; and

**WHEREAS**, The Washington State Department of Health has instituted a Public Health Incident Management Team to manage the public health aspects of the incident; and

**WHEREAS**, The Washington State Military Department, State Emergency Operations Center, is coordinating resources across state government to support the Department of Health and local officials in alleviating the impacts to people, property, and infrastructure, and is assessing the magnitude and long-term effects of the incident with the Washington State Department of Health; and

**WHEREAS,** The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington State significantly impacts the life and health

of our people, as well as the economy of Washington State, and is a public disaster that affects life, health, property or the public peace.

**NOW, THEREFORE**, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency exists in all counties in the state of Washington, and direct the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak.

As a result of this event, I also hereby order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

Signed and sealed with the official seal of the state of Washington this 29th day of February, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/________________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/________________________
Secretary of State

*Appendix C*

**PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATION 20-05**

**20-19**
**Evictions**

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06, 20-07, 20-08, 20-09, 20-10, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, and 20-18, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

**WHEREAS,** the COVID-19 pandemic is expected to cause a sustained global economic slowdown, which is anticipated

to cause an economic downturn throughout Washington State with layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our state's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

**WHEREAS,** many in our workforce expect to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

**WHEREAS,** the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health, and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

**WHEREAS,** under RCW 59.12 (Unlawful Detainer) and RCW 59.18 (Residential Landlord Tenant Act) tenants seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

**WHEREAS,** the Washington State Legislature has established a housing assistance program in Chapter 43.185 RCW pursuant to its findings in RCW 43.185.010

"that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs"; and

**WHEREAS,** a temporary moratorium on evictions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health (DOH) continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the DOH and local health officials in alleviating the impacts to people, property, and infrastructure, and continues

coordinating with the DOH in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE,** I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a state of emergency continues to exist in all counties of Washington State, that Proclamations 20-05 and all amendments thereto remain in effect, and that Proclamation 20-05 is amended to temporarily prohibit residential evictions statewide until April 17, 2020, as provide herein.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the DOH,

the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

**ACCORDINGLY,** based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, effective immediately and until April 17, 2020, I hereby prohibit the following activities related to residential evictions by all residential landlords operating residential rental property in Washington State:

1. Residential landlords are prohibited from serving a notice of unlawful detainer for default payment of rent related to such property under RCW 59.12.030(3).

2. Residential landlords are prohibited from issuing a 20-day notice for unlawful detainer related to such property under RCW 59.12.030(2), unless the landlord attaches an affidavit attesting that the action is believed necessary to ensure the health and safety of the tenant or other individuals.

3. Residential landlords are prohibited from initiating judicial action seeking a writ of restitution involving a dwelling unit if the alleged basis for the writ is the failure of the tenant or tenants to timely pay rent. This prohibition includes, but is not limited to, an action under Chapters 59.12 or RCW 59.18 RCW.

4. Local law enforcement is prohibited from serving or otherwise acting on eviction orders that are issued solely for default payment of rent related to such property. Nothing in this Proclamation is intended to prohibit local law enforcement from acting on orders of eviction issued for other reasons, including but not limited to waste, nuisance or commission of a crime on the premises.

Terminology used in these prohibitions shall have the meaning attributed in Chapter 59.18 RCW. Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 18th day of March, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/________________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/________________________
Secretary of State

*Appendix C*

## PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATIONS 20-05 AND 20-19

### 20-19.1
### Evictions

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-50 exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

**WHEREAS,** the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington State with

unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our state's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

**WHEREAS,** many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

**WHEREAS,** the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

**WHEREAS**, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

**WHEREAS,** under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act)

residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

**WHEREAS,** on March 20, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-607, and ordered that all non-emergency civil matters shall be continued until after April 24, 2020, except such motions, actions on agreed orders, conferences or other proceedings as can appropriately be conducted without requiring in- person attendance; and

**WHEREAS,** the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 "that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;" and

**WHEREAS**, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who lawfully occupy or reside in less traditional dwelling situations that may or may not be documented in a lease, including, but not limited to, roommates who share a home; transient housing in hotels and motels; "Airbnbs"; motor homes; RVs; and camping areas; and

**WHEREAS,** a temporary moratorium on evictions and related actions throughout Washington State at this

time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

**WHEREAS,** a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities or employment in essential business services, and promote public health and safety by reducing the progression of COVID-19 in Washington State; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property,

and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE,** I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-19 are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until June 4, 2020, as provided herein.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform

such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

**ACCORDINGLY,** based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, effective immediately and until June 4, 2020, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of this Proclamation. This prohibition applies unless the landlord, property owner, or property manager attaches an affidavit attesting that the action is necessary to respond to a significant and immediate

risk to the health or safety of others created by the resident.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders or agreements to vacate involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager attaches an affidavit attesting that the action is necessary to respond to a significant and immediate risk to the health or safety of others created by the resident.

- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that the individual(s) named in the eviction order is creating a significant and immediate risk to the health or safety of others.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.**

- Landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent or the amount of any deposit for any dwelling or parcel of land occupied as a dwelling. This prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was not deemed essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health or safety of others created by the resident" (a) is one that is described with particularity, and cannot be established on the basis of the resident's own health condition or disability; and (b) excludes residents who may have been exposed to, or may have contracted, the COVID-19, or who are following Department of Health guidelines regarding isolation or quarantine.

**FURTHERMORE**, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects gratitude for the immeasurable contribution to the health and well-being of our communities and families made by

the landlords, property owners, and property managers subject to this order.

**ADDITIONALLY**, I strongly encourage every tenant to pay what they can, as soon as they can, to help support the landlords, property owners, and property managers who are supporting them through this crisis.

Violators of this of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 16th day of April, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/________________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/________________________
Secretary of State

*Appendix C*

## PROCLAMATION BY THE GOVERNOR EXTENDING AND AMENDING 20-05, 20-19, AND 20-19.1

## 20-19.2

### Evictions and Related Housing Practices

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-53 and 20-55 through 20-57, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

**WHEREAS,** the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our state's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

**WHEREAS,** many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

**WHEREAS,** the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

**WHEREAS**, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

**WHEREAS,** under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

**WHEREAS,** on May 28, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-625 and ordered that courts should begin to hear non- emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

**WHEREAS,** the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 "that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;" and

**WHEREAS**, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities;

transient housing in hotels and motels; “Airbnbs”; motor homes; RVs; and camping areas; and

**WHEREAS,** a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

**WHEREAS,** a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities or employment in essential business services, and promote public health and safety by reducing the progression of COVID-19 in Washington State; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE,** I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05, 20-19, and 20-19.1 are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until 11:59 p.m. on August 1, 2020, as provided herein.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

**ACCORDINGLY,** based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, effective immediately and until 11:59 p.m. on August 1, 2020, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective

period of this Proclamation. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of intent to (i) personally occupy the premises as a primary residence, or (ii) sell the property.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of intent to (i) personally occupy the premises as a primary residence, or (ii) sell the property.

- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that (a) the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of intent

to (i) personally occupy the premises as a primary residence, or (ii) sell the property.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful

detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.**

- Landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling, parcel of land occupied as a dwelling. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

- Landlords, property owners, and property managers are prohibited from retaliating against individuals

for invoking their rights or protections under Proclamations 20-19, 20-19.1, 20-19.2, or any other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity, and cannot be established on the basis of the resident's own health condition or disability; (b) excludes the situation in which a resident who may have been exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (c) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

**FURTHERMORE**, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our State. To that end, this order further acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

**ADDITIONALLY**, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, and all amendments and extensions thereto, is to provide relief to those individuals who have been impacted by the COVID-19 crisis. I strongly encourage landlords and tenants to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 2nd day of June, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

*Appendix C*

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

**20-19.3**

**Evictions and Related Housing Practices**

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-53 and 20-55 through 20-63, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

**WHEREAS,** the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our state's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

**WHEREAS,** many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

**WHEREAS,** the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

**WHEREAS**, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

**WHEREAS,** under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

**WHEREAS,** on May 29, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-626, and ordered that courts should begin to hear non-emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

**WHEREAS,** the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 "that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;" and

**WHEREAS**, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities;

transient housing in hotels and motels; “Airbnbs”; motor homes; RVs; and camping areas; and

**WHEREAS,** a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

**WHEREAS,** a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities, employment in essential business services, or otherwise engaged in permissible activities, and will promote public health and safety by reducing the progression of COVID-19 in Washington State; and

**WHEREAS,** when I issued Proclamation 20-19.2 on June 2, 2020, the Department of Health indicated there were approximately 22,157 cases of COVID-19 in Washington State with 1,129 deaths; and now, as of July 23, 2020, there are 50,009 cases and 1,482 deaths, demonstrating the ongoing, present threat of this lethal disease; and

**WHEREAS,** I issued Proclamations 20-25, 20-25.1, 20-25.2,and 20 25.3 (Stay Home – Stay Healthy), and I subsequently issued Proclamation 20-25.4 (“Safe Start – Stay Healthy” County- By-County Phased Reopening), wherein I amended and transitioned the previous proclamations’ “Stay Home – Stay Healthy” requirements

to “Safe Start – Stay Healthy” requirements, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4, et seq., and according to the phase each county was subsequently assigned by the Secretary of Health; and

**WHEREAS,** when I issued Proclamation 20-25.4 on May 31, 2020, I ordered that, beginning on June 1, 2020, counties would be allowed to apply to the Department of Health to move forward to the next phase of reopening more business and other activities; and by July 2, 2020, a total of five counties were approved to move to a modified version of Phase 1, 17 counties were in Phase 2, and 17 counties were in Phase 3; and

**WHEREAS**, on July 2, 2020, due to increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remains in place while I work with the Department of Health and other epidemiological experts to determine appropriate strategies to mitigate the recent increased spread of the virus, and those strategies may include dialing back business and other activities; and

**WHEREAS**, on July 23, 2020, in response to the statewide increased rates of infection, hospitalizations, and deaths, I announced an expansion of the Department of Health’s face covering requirements and several restrictions on activities where people tend to congregate; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health (DOH) continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE,** I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-19, et seq., are amended to temporarily prohibit residential evictions and temporarily

impose other related prohibitions statewide until 11:59 p.m. on October 15, 2020, as provided herein.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

**ACCORDINGLY,** based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise,

effective immediately and until 11:59 p.m. on October 15, 2020, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of this Proclamation. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of intent to (i) personally occupy the premises as a primary residence, or (ii) sell the property.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit attesting that the action is necessary to

respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of intent to (i) personally occupy the premises as a primary residence, or (ii) sell the property.

- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that (a) the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of intent to (i) personally occupy the premises as a primary residence, or (ii) sell the property. Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution, that contain the findings required by this paragraph.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.**

- Landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling or parcel of land occupied as a dwelling. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

- Landlords, property owners, and property managers are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.

- The preceding prohibitions do not apply to operators of facilities licensed or certified by the Department of Social and Health Services to prevent them from taking action to transfer or discharge a resident for health or safety reasons in accordance with the laws and rules that apply to those facilities.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity, and cannot be established on the basis of the resident's own health condition or disability; (b) excludes the situation in which a resident who may have been exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (c) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

**FURTHERMORE**, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

**ADDITIONALLY**, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, et seq., is to provide

relief to those individuals who have been impacted by the COVID-19 crisis. Landlords and tenants are expected to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike. I strongly encourage landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

**ADDITIONALLY**, to inform any future changes to this order in the short-term and the long- term, if an additional extension is necessary, I direct my executive senior policy advisors who have expertise in housing issues to convene an informal workgroup with stakeholders and legislators no later than September 15, 2020. The workgroup will discuss a broad range of issues, including, but not limited to, potentially authorizing rent rate increases.

**MOREOVER,** as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional direction concerning the specific parameters for reasonable re- payment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5). Signed and sealed with the official seal of the state of Washington on this 24th day of July, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

*Appendix C*

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

## 20-19.4

## Evictions and Related Housing Practices

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

**WHEREAS,** the COVID-19 pandemic is causing a sustained global economic slowdown, and an

economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

**WHEREAS,** many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

**WHEREAS,** the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

**WHEREAS**, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

**WHEREAS,** under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW

59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

**WHEREAS,** on May 29, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-626, and ordered that courts should begin to hear non-emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

**WHEREAS,** the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 "that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;" and

**WHEREAS**, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities; transient housing in hotels and motels; "Airbnbs"; motor homes; RVs; and camping areas; and

**WHEREAS**, due to the impacts of the pandemic, individuals and families have had to move in with friends or family, and college students have had to return to their parents' home, for example, and such residents should be protected from eviction even though they are not documented in a lease. However, this order is not intended to permit occupants introduced into a dwelling who are not listed on the lease to remain or hold over after the tenant(s) of record permanently vacate the dwelling ("holdover occupant"), unless the landlord, property owner, or property manager (collectively, "landlord") has accepted partial or full payment of rent, including payment in the form of labor, from the holdover occupant, or has formally or informally acknowledged the existence of a landlord-tenant relationship with the holdover occupant; and

**WHEREAS,** a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

**WHEREAS**, hundreds of thousands of tenants in Washington are unable to pay their rent, reflecting the continued financial precariousness of many in the state. According to the unemployment information from the Washington State Employment Security Department website as of October 7, 2020, current data show there are more than six times as many people claiming unemployment benefits in Washington than there were

a year ago, and almost 100,000 more people claiming unemployment benefits than at the peak of the Great Recession; and

**WHEREAS,** a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities, employment in essential business services, or otherwise engaged in permissible activities, and will promote public health and safety by reducing the progression of COVID-19 in Washington State; and

**WHEREAS,** I issued Proclamations 20-25, 20-25.1, 20-25.2, and 20 25.3 (Stay Home – Stay Healthy), and I subsequently issued Proclamation 20-25.4 ("Safe Start – Stay Healthy" County- By-County Phased Reopening), wherein I amended and transitioned the previous proclamations' "Stay Home – Stay Healthy" requirements to "Safe Start – Stay Healthy" requirements, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4, et seq., and according to the phase each county was subsequently assigned by the Secretary of Health; and

**WHEREAS,** when I issued Proclamation 20-25.4 on May 31, 2020, I ordered that, beginning on June 1, 2020, counties would be allowed to apply to the Department of Health to move forward to the next phase of reopening more business and other activities; and by July 2, 2020, a total of

five counties were approved to move to a modified version of Phase 1, 17 counties were in Phase 2, and 17 counties were in Phase 3; and

**WHEREAS**, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remains in place while I work with the Department of Health and other epidemiological experts to determine appropriate strategies to mitigate the recent increased spread of the virus, and those strategies may include dialing back business and other activities; and

**WHEREAS**, on July 23, 2020, in response to the statewide increased rates of infection, hospitalizations, and deaths, I announced an expansion of the Department of Health's face covering requirements and several restrictions on activities where people tend to congregate; and

**WHEREAS**, when I issued Proclamation 20-19.3 on July 24, 2020, the Washington State Department of Health reported at least 51,849 confirmed cases of COVID-19 with 1,494 associated deaths; and today, as of October 11, 2020, there are at least 93,862 confirmed cases with 2,190 associated deaths; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health (DOH) continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE,** I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-19, et seq., are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until 11:59 p.m. on December 31, 2020, as provided herein.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout State

government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

**ACCORDINGLY,** based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, effective immediately and until 11:59 p.m. on December 31, 2020, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of this Proclamation. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury, and does not dispense landlords, property owners, or property managers from their notice obligations prior to entering the property, or from wearing face coverings, social distancing, and complying with all other COVID-19 safety measures upon entry, together with their guests and agents. Any eviction or termination of tenancy notice served under one of the above exceptions must independently comply with all applicable

requirements under Washington law, and nothing in this paragraph waives those requirements.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury.

- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that (a) the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's

primary residence, or (ii) sell the property. Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution, that contain the findings required by this paragraph.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency

proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.**

- Nothing in this order precludes a landlord, property owner, or property manager from engaging in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. "Customary and routine" means communication practices that were in place prior to the issuance of Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a resident of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation without threatening eviction; or are otherwise consistent with this order. Within these communications and parameters, it is permissible for landlords, property owners and property managers to provide information to residents

regarding financial resources, and to provide residents with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling or parcel of land occupied as a dwelling. This prohibition does not apply to a landlord, property owner, or property manager who provides (a) advance notice of a rent increase required by RCW 59.20.090(2) (Manufactured/Mobile Home Landlord-Tenant Act), or (b) notice of a rent increase specified by the terms of the existing lease, provided that (i) the noticed rent increase does not take effect until after the expiration of Proclamation 20-19.4, and any modification or extension thereof, and (ii) the notice is restricted to its limited purpose and does not contain any threatening or coercive language, including any language threatening eviction or describing unpaid rent or other charges. Unless expressly permitted in this or a subsequent order, under no circumstances may a rent increase go into effect while this Proclamation, or any extension thereof, is in effect. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25

or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

- Landlords, property owners, and property managers are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.

- The preceding prohibitions do not apply to operators of long-term care facilities licensed or certified by the Department of Social and Health Services to prevent them from taking action to appropriately, safely, and lawfully transfer or discharge a resident for health or safety reasons, or a change in payer source that the facility is unable to accept, in accordance with the laws and rules that apply to those facilities. Additionally, the above prohibition against increasing, or threatening to increase, the rate of rent for any dwelling does not apply to customary changes in the charges or fees for cost of care (such as charges for personal care, utilities, and other reasonable and customary operating expenses), or reasonable charges or fees related to COVID-19 (such as the costs of PPE and testing),

as long as these charges or fees are outlined in the long-term care facility's notice of services and are applied in accordance with the laws and rules that apply to those facilities, including any advance notice requirement.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity; (b) as it relates to "significant and immediate" risk to the health and safety of others, includes any behavior by a resident which is imminently hazardous to the physical safety of other persons on the premises (RCW 59.18.130 (8)(a)); (c) cannot be established on the basis of the resident's own health condition or disability; (d) excludes the situation in which a resident who may have been exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (e) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

**FURTHERMORE**, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects

gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

**ADDITIONALLY**, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, et seq., is to provide relief to those individuals who have been impacted by the COVID-19 crisis. Landlords and tenants are expected to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike. I strongly encourage landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

**ADDITIONALLY**, I want to thank the stakeholders and legislators who participated in the eviction moratorium workgroup with my executive senior policy advisors. The workgroup discussed a broad range of issues, and that discussion informed the modifications reflected in this order. I am directing my policy advisors to continue to work with stakeholders over the next 30 days to consider additional amendments to the moratorium to ensure that the moratorium's protections for non-payment of rent apply narrowly to those persons whose ability to pay has been directly or indirectly materially impacted by the COVID-19 virus.

**MOREOVER,** as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional direction concerning the specific parameters for reasonable re- payment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 14th day of October, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/________________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/________________________
Secretary of State

*Appendix C*

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

## 20-19.5

## Evictions and Related Housing Practices

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

**WHEREAS,** the COVID-19 pandemic is causing a sustained global economic slowdown, and an

economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

**WHEREAS,** many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

**WHEREAS,** the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

**WHEREAS**, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

**WHEREAS,** under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW

59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

**WHEREAS,** on May 29, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-626, and ordered that courts should begin to hear non- emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

**WHEREAS,** the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 "that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;" and

**WHEREAS**, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities; transient housing in hotels and motels; "Airbnb's"; motor homes; RVs; and camping areas; and

**WHEREAS**, due to the impacts of the pandemic, individuals and families have had to move in with friends or family, and college students have had to return to their parents' home, for example, and such residents should be protected from eviction even though they are not documented in a lease. However, this order is not intended to permit occupants introduced into a dwelling who are not listed on the lease to remain or hold over after the tenant(s) of record permanently vacate the dwelling ("holdover occupant"), unless the landlord, property owner, or property manager (collectively, "landlord") has accepted partial or full payment of rent, including payment in the form of labor, from the holdover occupant, or has formally or informally acknowledged the existence of a landlord-tenant relationship with the holdover occupant; and

**WHEREAS,** a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

**WHEREAS**, as of November 2020, current information suggests that at least 165,000 tenants in Washington will be unable to pay their rent in the near future, reflecting the continued financial precariousness of many in the state. According to the state's unemployment information, as of December 2020, current data show there are nearly twice as many people claiming unemployment benefits in Washington than there were a year ago. This does

not account for the many thousands of others who are filing claims with separate programs such as Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation: in December 2020, nearly 500,000 new and ongoing claims for unemployment-related assistance have been filed; and

**WHEREAS,** a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities, employment in essential business services, or otherwise engaged in permissible activities, and will promote public health and safety by reducing the progression of COVID-19 in Washington State; and

**WHEREAS,** I issued Proclamations 20-25, 20-25.1, 20-25.2,and 20 25.3 (Stay Home – Stay Healthy), and I subsequently issued Proclamation 20-25.4 ("Safe Start – Stay Healthy" County-By-County Phased Reopening), wherein I amended and transitioned the previous proclamations' "Stay Home – Stay Healthy" requirements to "Safe Start – Stay Healthy" requirements, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4, et seq., and according to the phase each county was subsequently assigned by the Secretary of Health; and

**WHEREAS,** when I issued Proclamation 20-25.4 on May 31, 2020, I ordered that, beginning on June 1, 2020, counties would be allowed to apply to the Department of

Health to move forward to the next phase of reopening more business and other activities; and by July 2, 2020, a total of five counties were approved to move to a modified version of Phase 1, 17 counties were in Phase 2, and 17 counties were in Phase 3; and

**WHEREAS**, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remains in place while I work with the Department of Health and other epidemiological experts to determine appropriate strategies to mitigate the recent increased spread of the virus, and those strategies may include dialing back business and other activities; and

**WHEREAS**, on July 23, 2020, in response to the statewide increased rates of infection, hospitalizations, and deaths, I announced an expansion of the Department of Health's face covering requirements and several restrictions on activities where people tend to congregate; and

**WHEREAS**, on October 6, 2020, due to the increased COVID-19 infection rates across the state, I announced that all counties will remain in their current reopening phases as a result of the continuing surge in COVID-19 cases across the state; and

**WHEREAS**, positive COVID-19-related cases and hospitalizations have been on a steady rise since early September; and, most alarmingly, since the latter part of October through December, 2020, the number of

COVID-19 cases continue to dramatically increase in Washington, and COVID-19-related hospitalizations have risen sharply, putting our people, our health system, and our economy in as dangerous a position as we faced in March 2020, and have not significantly improved since; and

**WHEREAS**, when I issued Proclamation 20-19.3 on July 24, 2020, the Washington State Department of Health reported at least 51,849 confirmed cases of COVID-19 with 1,494 associated deaths; and as of December 30, 2020, there are at least 232,993 confirmed cases with 3,420 associated deaths; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property,

and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE,** I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-19, et seq., are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until 11:59 p.m. on March 31, 2021, as provided herein.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform

such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

**ACCORDINGLY,** based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, effective immediately and until 11:59 p.m. on March 31, 2021, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of this Proclamation. This prohibition does not apply to emergency shelters where length of stay is conditioned upon a resident's participation in, and compliance with, a

supportive services program. Emergency shelters should make every effort to work with shelter clients to find alternate housing solutions. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury, and does not dispense landlords, property owners, or property managers from their notice obligations prior to entering the property, or from wearing face coverings, social distancing, and complying with all other COVID-19 safety measures upon entry, together with their guests and agents. Any eviction or termination of tenancy notice served under one of the above exceptions must independently comply with all applicable requirements under Washington law, and nothing in this paragraph waives those requirements.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord,

property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury.

- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that (a) the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution that contain the findings required by this paragraph.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment

or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who**

**demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.**

- Nothing in this order precludes a landlord, property owner, or property manager from engaging in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. "Customary and routine" means communication practices that were in place prior to the issuance of Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a resident of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation without threatening eviction; or are otherwise consistent with this order. Within these communications and parameters, it is permissible for landlords, property owners and property managers to provide information to residents regarding financial resources, including coordinating with residents in applying for rent assistance through the state's Emergency Rent Assistance Program (ERAP) or an alternative state rent assistance program, and to provide residents with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling or parcel of land occupied as a dwelling. This prohibition does not apply to a landlord, property owner, or property manager who provides (a) advance notice of a rent increase required by RCW 59.20.090(2) (Manufactured/Mobile Home Landlord-Tenant Act), or (b) notice of a rent increase specified by the terms of the existing lease, provided that (i) the noticed rent increase does not take effect until after the expiration of Proclamation 20-19, et seq., and any modification or extension thereof, and (ii) the notice is restricted to its limited purpose and does not contain any threatening or coercive language, including any language threatening eviction or describing unpaid rent or other charges. Unless expressly permitted in this or a subsequent order, under no circumstances may a rent increase go into effect while this Proclamation, or any extension thereof, is in effect. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

- Landlords, property owners, and property managers are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.

- The preceding prohibitions do not apply to operators of long-term care facilities licensed or certified by the Department of Social and Health Services to prevent them from taking action to appropriately, safely, and lawfully transfer or discharge a resident for health or safety reasons, or a change in payer source that the facility is unable to accept, in accordance with the laws and rules that apply to those facilities. Additionally, the above prohibition against increasing, or threatening to increase, the rate of rent for any dwelling does not apply to customary changes in the charges or fees for cost of care (such as charges for personal care, utilities, and other reasonable and customary operating expenses), or reasonable charges or fees related to COVID-19 (such as the costs of PPE and testing), as long as these charges or fees are outlined in the long-term care facility's notice of services and are applied in accordance with the laws and rules that apply to those facilities, including any advance notice requirement.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity; (b) as it relates to "significant and immediate" risk to the health and safety of others, includes any behavior by a resident which is imminently hazardous to the physical safety of other persons on the premises (RCW 59.18.130 (8)(a)); (c) cannot be established on the basis of the resident's own health condition or disability; (d) excludes the situation in which a resident who may have been exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (e) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

**FURTHERMORE**, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

**ADDITIONALLY**, it is also the intent of this order to extend state emergency rent assistance programs and to incorporate the newly approved federal rental assistance funding. The goal is to continue to provide a path for eligible tenants to seek rental assistance, but to now also allow landlords, property owners, and property managers to initiate an application for rental assistance. This process should be collaborative, and I encourage the nonprofit and philanthropic communities to continue their support of programs that help educate and inform both parties of the benefits of these rental assistance programs. Although a new program may need to be created for the newly approved federal rental assistance, all counties should consider the existing program in King County as a model for creating this path for landlords and property owners and property managers.

**ADDITIONALLY**, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, et seq., is to provide relief to those individuals who have been impacted by the COVID-19 crisis. Landlords and tenants are expected to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike. I strongly encourage landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

**MOREOVER,** as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional direction concerning the specific parameters for reasonable re-payment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 31st day of December, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/________________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/________________________
Secretary of State

*Appendix C*

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

## 20-19.6

## Evictions and Related Housing Practices

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

**WHEREAS,** the COVID-19 pandemic is causing a sustained global economic slowdown, and an

economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

**WHEREAS,** many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

**WHEREAS,** the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

**WHEREAS**, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

**WHEREAS,** under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW

59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

**WHEREAS,** on May 29, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-626, and ordered that courts should begin to hear non-emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

**WHEREAS,** the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 "that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;" and

**WHEREAS**, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities; transient housing in hotels and motels; "Airbnb's"; motor homes; RVs; and camping areas; and

**WHEREAS**, due to the impacts of the pandemic, individuals and families have had to move in with friends or family, and college students have had to return to their parents' home, for example, and such residents should be protected from eviction even though they are not documented in a lease. However, this order is not intended to permit occupants introduced into a dwelling who are not listed on the lease to remain or hold over after the tenant(s) of record permanently vacate the dwelling ("holdover occupant"), unless the landlord, property owner, or property manager (collectively, "landlord") has accepted partial or full payment of rent, including payment in the form of labor, from the holdover occupant, or has formally or informally acknowledged the existence of a landlord-tenant relationship with the holdover occupant; and

**WHEREAS,** a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

**WHEREAS**, as of March 2021, current information suggests that at least 76,000 tenants in Washington will be unable to pay their rent in the near future, reflecting the continued financial precariousness of many in the state. According to the state's unemployment information, significantly more people are claiming unemployment benefits in Washington now versus a year ago. This does not account for the many thousands of others who are

filing claims with separate programs such as Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation: in December 2020, nearly 275,000 new and ongoing claims for unemployment-related assistance were filed; and

**WHEREAS,** a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities, employment in essential business services, or otherwise engaged in permissible activities, and will promote public health and safety by reducing the progression of COVID-19 in Washington State; and

**WHEREAS,** I issued Proclamations 20-25, 20-25.1, 20-25.2,and 20 25.3 (Stay Home – Stay Healthy), and I subsequently issued Proclamation 20-25.4 ("Safe Start – Stay Healthy" County- By-County Phased Reopening), wherein I amended and transitioned the previous proclamations' "Stay Home – Stay Healthy" requirements to "Safe Start – Stay Healthy" requirements, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4, et seq., and according to the phase each county was subsequently assigned by the Secretary of Health; and

**WHEREAS,** when I issued Proclamation 20-25.4 on May 31, 2020, I ordered that, beginning on June 1, 2020, counties would be allowed to apply to the Department of Health to move forward to the next phase of reopening

more business and other activities; and by July 2, 2020, a total of five counties were approved to move to a modified version of Phase 1, 17 counties were in Phase 2, and 17 counties were in Phase 3; and

**WHEREAS**, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remained in place while I worked with the Department of Health and other epidemiological experts to determine appropriate strategies to mitigate the increased spread of the virus, and those strategies included dialing back business and other activities; and

**WHEREAS**, on July 23, 2020, in response to the statewide increased rates of infection, hospitalizations, and deaths, I announced an expansion of the Department of Health's face covering requirements and several restrictions on activities where people tend to congregate; and

**WHEREAS**, on October 6, 2020, due to the increased COVID-19 infection rates across the state, I announced that all counties would remain in their current reopening phases as a result of the continuing surge in COVID-19 cases across the state; and

**WHEREAS**, positive COVID-19-related cases and hospitalizations steadily rose from early September 2020, through early January, 2021, and the number of COVID-19 cases and COVID-19-related hospitalizations continue to put our people, our health system, and our economy in a precarious position; and

**WHEREAS**, when I issued Proclamation 20-19.3 on July 24, 2020, the Washington State Department of Health reported at least 51,849 confirmed cases of COVID-19 with 1,494 associated deaths; and as of March 15, 2020, there are at least 330,367 confirmed cases with 5,149 associated deaths; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE,** I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-19, et seq., are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until 11:59 p.m. on June 30, 2021, as provided herein.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division,

and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

**ACCORDINGLY,** based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, effective immediately and until 11:59 p.m. on June 30, 2021, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of this Proclamation. This prohibition does not apply to emergency shelters where length of stay is conditioned upon a resident's participation in, and compliance with, a supportive services program. Emergency shelters should make every effort to work with shelter clients to find alternate housing solutions. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit

to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury, and does not dispense landlords, property owners, or property managers from their notice obligations prior to entering the property, or from wearing face coverings, social distancing, and complying with all other COVID-19 safety measures upon entry, together with their guests and agents. Any eviction or termination of tenancy notice served under one of the above exceptions must independently comply with all applicable requirements under Washington law, and nothing in this paragraph waives those requirements.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the

resident; or (b) shows that at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury.

- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that (a) the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution that contain the findings required by this paragraph.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.

- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.**

- Nothing in this order precludes a landlord, property owner, or property manager from engaging in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. "Customary and routine" means communication practices that were in place prior to the issuance of Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a resident of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation without threatening eviction; or are otherwise consistent with this order. Within these communications and parameters, it is permissible for landlords, property owners and property managers to provide information to residents regarding financial resources, including coordinating with residents in applying for rent assistance through the state's Emergency Rent Assistance Program (ERAP) or an alternative state rent assistance program, and to provide residents with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling or parcel of land occupied as a dwelling. This prohibition does not apply to a landlord, property owner, or property manager who provides (a) advance notice

of a rent increase required by RCW 59.20.090(2) (Manufactured/Mobile Home Landlord-Tenant Act), or (b) notice of a rent increase specified by the terms of the existing lease, provided that (i) the noticed rent increase does not take effect until after the expiration of Proclamation 20-19, et seq., and any modification or extension thereof, and (ii) the notice is restricted to its limited purpose and does not contain any threatening or coercive language, including any language threatening eviction or describing unpaid rent or other charges. Unless expressly permitted in this or a subsequent order, under no circumstances may a rent increase go into effect while this Proclamation, or any extension thereof, is in effect. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

- Landlords, property owners, and property managers are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., or any other

state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.

- The preceding prohibitions do not apply to operators of long-term care facilities licensed or certified by the Department of Social and Health Services to prevent them from taking action to appropriately, safely, and lawfully transfer or discharge a resident for health or safety reasons, or a change in payer source that the facility is unable to accept, in accordance with the laws and rules that apply to those facilities. Additionally, the above prohibition against increasing, or threatening to increase, the rate of rent for any dwelling does not apply to customary changes in the charges or fees for cost of care (such as charges for personal care, utilities, and other reasonable and customary operating expenses), or reasonable charges or fees related to COVID-19 (such as the costs of PPE and testing), as long as these charges or fees are outlined in the long-term care facility's notice of services and are applied in accordance with the laws and rules that apply to those facilities, including any advance notice requirement.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and

immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity; (b) as it relates to "significant and immediate" risk to the health and safety of others, includes any behavior by a resident which is imminently hazardous to the physical safety of other persons on the premises (RCW 59.18.130 (8)(a)); (c) cannot be established on the basis of the resident's own health condition or disability; (d) excludes the situation in which a resident who may have been exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (e) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

**FURTHERMORE**, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

**ADDITIONALLY**, it is also the intent of this order to extend state emergency rent assistance programs and to incorporate the newly approved federal rental assistance funding. The goal is to continue to provide a path for eligible tenants to seek rental assistance, but to now also

allow landlords, property owners, and property managers to initiate an application for rental assistance. This process should be collaborative, and I encourage the nonprofit and philanthropic communities to continue their support of programs that help educate and inform both parties of the benefits of these rental assistance programs. Although a new program may need to be created for the newly approved federal rental assistance, all counties should consider the existing program in King County as a model for creating this path for landlords and property owners and property managers.

**ADDITIONALLY**, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, et seq., is to provide relief to those individuals who have been impacted by the COVID-19 crisis. Landlords and tenants are expected to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike. I strongly encourage landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

**MOREOVER,** as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional

direction concerning the specific parameters for reasonable re- payment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 18th day of March, A.D., Two Thousand and Twenty-One at Olympia, Washington.

By:

/s/____________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/____________________
Secretary of State

*Appendix C*

**PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATION 20-05**

**20-25**

**STAY HOME – STAY HEALTHY**

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06, 20-07, 20-08, 20-09, 20-10, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-21, 20-22, 20-23, and 20-24, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State, significantly increasing the threat of serious associated health risks statewide; and

**WHEREAS,** there are currently at least 2,221 cases of COVID-19 in Washington State and, tragically, 110 deaths of Washingtonians associated with COVID-19; and

**WHEREAS,** models predict that many hospitals in Washington State will reach capacity or become overwhelmed with COVID-19 patients within the next several weeks unless we substantially slow down the spread of COVID-19 throughout the state; and

**WHEREAS,** hospitalizations for COVID-19 like illnesses are significantly elevated in all adults, and a sharply increasing trend in COVID-19 like illness hospitalizations has been observed for the past three (3) weeks; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the

Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE**, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim: that a State of Emergency continues to exist in all counties of Washington State; that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended; and that Proclamations 20-05, 20-07, 20-11, 20-13, and 20-14 are amended and superseded by this Proclamation to impose a Stay Home – Stay Healthy Order throughout Washington State by prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations provided herein.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

**FURTHERMORE,** based on the above situation and under the provisions of RCW 43.06.220(1)(h), to help preserve and maintain life, health, property or the public peace, and to implement the Stay Home—Stay Healthy Order described above, I hereby impose the following necessary restrictions on participation by all people in Washington State by prohibiting each of the following activities by all people and businesses throughout Washington State, which prohibitions shall remain in effect until midnight on April 6, 2020, unless extended beyond that date:

1. **All people in Washington State shall immediately cease leaving their home or place of residence except: (1) to conduct or participate in essential activities, and/or (2) for employment in essential business services.** This prohibition shall remain in effect until midnight on April 6, 2020, unless extended beyond that date.

**To implement this mandate, I hereby order** that all people in Washington State are immediately prohibited from leaving their home or place of residence except to conduct or participate in (1) essential activities, and/or (2) employment in providing essential business services:

a. **Essential activities** permitted under this Proclamation are limited to the following:

1) **Obtaining necessary supplies and services** for family or household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, and products necessary to maintain safety, sanitation and essential maintenance of the home or residence.

2) **Engaging in activities essential for the health and safety** of family, household members and pets, including things such as seeking medical or behavioral health or emergency services and obtaining medical supplies or medication.

3) **Caring for** a family member, friend, or pet in another household or residence, and to transport a family member, friend or their pet for essential health and safety activities, and to obtain necessary supplies and services.

4) **Engaging in outdoor exercise activities**, such as walking, hiking, running or biking, but only if appropriate social distancing practices are used.

b. **Employment in essential business services** means an essential employee performing work for an essential business as identified in the "*Essential Critical Infrastructure Workers*" list, or carrying out minimum basic operations (as defined in Section 3(d) of this Order) for a non-essential business.

c. **This prohibition shall not apply to** individuals whose homes or residences are unsafe or become unsafe, such as victims of domestic violence. These individuals are permitted and urged to leave their homes or residences and stay at a safe alternate location.

d. **This prohibition also shall not apply to** individuals experiencing homelessness, but they are urged to obtain shelter, and governmental and other entities are strongly encouraged to make such shelter available as soon as possible and to the maximum extent practicable.

e. For purposes of this Proclamation, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

2. **All people in Washington State shall immediately cease participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved, except as specifically identified herein.** Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events; parades; concerts; festivals; conventions; fundraisers; and similar activities. This prohibition also applies to planned wedding and funeral events. This prohibition shall remain in effect until midnight on April 6, 2020, unless extended beyond that date.

   **To implement this mandate, I hereby order** that all people in Washington State are immediately prohibited from participating in public and private gatherings of any number of people for social, spiritual and recreational purposes. **This prohibition shall not apply to** activities and gatherings solely including those people who are part of a single household or residential living unit.

3. **Effective midnight on March 25, 2020, all non-essential businesses in Washington State shall cease operations except for performing basic minimum operations. All essential businesses are encouraged to remain open and maintain operations, but must establish and implement social distancing and sanitation measures**

**established by the United States Department of Labor or the Washington State Department of Health Guidelines.** This prohibition shall remain in effect until midnight on April 8, 2020, unless extended beyond that date.

**To implement this mandate, I hereby order** that, effective midnight on March 25, 2020, all non-essential businesses in Washington State are prohibited from conducting all activities and operations except minimum basic operations.

a. **Non-essential businesses** are strongly encouraged to immediately cease operations other than performance of basic minimum operations, but must do so no later than midnight on March 25, 2020.

b. **Essential businesses** are prohibited from operating under this Proclamation unless they establish and implement social distancing and sanitation measures established by the United States Department of Labor's Guidance on Preparing Workplaces for COVID-19 at *https://www.osha.gov/Publications/OSHA3990.pdf* and the Washington State Department of Health Workplace and Employer Resources & Recommendations at *https://www.doh.wa.gov/Coronavirus/workplace.*

c. **This prohibition does not apply to** businesses consisting exclusively of employees or

contractors performing business activities at their home or residence, and who do not engage in in-person contact with clients.

d. For purposes of this Proclamation, minimum basic operations are the minimum activities necessary to maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions.

This Proclamation shall not be construed to prohibit working from home, operating a single owner business with no in-person, on-site public interaction, or restaurants and food services providing delivery or take-away services, so long as proper social distancing and sanitation measures are established and implemented.

No business pass or credentialing program applies to any activities or operations under this Proclamation.

Violators of this of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 23rd day of March, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/______________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/______________________
Secretary of State

*Appendix C*

## PROCLAMATION BY THE GOVERNOR

## AMENDING PROCLAMATIONS 20-05, 20-25, 20-25.1, 20-25.2 and 20-25.3

## 20-25.4

## TRANSITION FROM "STAY HOME – STAY HEALTHY" TO "SAFE START - STAY HEALTHY" COUNTY-BY-COUNTY PHASED REOPENING

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-53 and 20-55 through 20-57, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations, including issuance of Proclamations 20-25, 20-25.1, 20-25.2 and 20-25.3 *(Stay Home - Stay Healthy)*, prohibiting all people in Washington State from leaving their homes except to participate in essential services or essential work and preventing all non-essential businesses in Washington State from conducting business, within the limitations therein; and

**WHEREAS,** the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State and remains a significant health risk to all of our people, especially members of our most vulnerable populations; and

**WHEREAS**, when I last amended the *Stay Home - Stay Healthy* order (Proclamation 20-25.3) on May 4, 2020, there were approximately 15,462 cases of COVID-19 in Washington State with 841 deaths; and, now, as of May 31 2020, the Department of Health indicated that there have been 21,349 cases and 1,118 deaths, demonstrating the ongoing, present threat of this lethal disease; and

**WHEREAS**, the health professionals and epidemiological modeling experts predict that although we have passed the peak of the first wave of COVID-19 in the State and we have made adequate progress as a state to modify some of the initial community mitigation efforts, the nature of COVID-19 viral transmission, including both asymptomatic and symptomatic spread as well as the relatively high infectious nature, suggests it is appropriate to slowly re-open Washington State only through a careful, phased, and science-based approach. Modelers continue to agree that fully relaxing social distancing measures will result in a sharp increase in the number of cases; and

**WHEREAS,** although the judicial system, an essential service, has undergone significant disruption and modification to operate safely during this crisis, and by

order of the Supreme Court has delayed most jury trials in criminal and civil matters, in-person proceedings are necessary in many circumstances, and the judicial system is currently working with health officials to innovate and plan for the safe resumption of jury trials and other court services including at offsite facilities; and the efforts undertaken to innovateand plan are equally essential to the resumption of our judicial system, and should be conducted remotely if possible but otherwise may be conducted in person if appropriate physical distancing and protective measures are in place; and

**WHEREAS**, this unprecedented health crisis has caused extraordinary anxiety and a significant disruption of routine and important activities for every Washingtonian; and I recognize the extraordinary resiliency, strength, adaptability, and courage of every Washingtonian during this difficult time; and

**WHEREAS,** many people in Washington State attend religious services on a regular basis, making such services a vital part of the spiritual and mental health of our community, and previous guidance issued related to remote services, drive-in services, counseling, outdoor services, and Phase 2 indoor services, all subject to restrictions outlined in those guidance documents, remain in place and may be further expanded or modified as the science and data support; and

**WHEREAS,** the science also suggests that by ensuring safe social distancing and hygiene practices, many business activities can be conducted with limited

exposure to customers, which is important to revitalizing Washington State's economy, restoring jobs, and providing necessary goods and services; and

**WHEREAS,** in Proclamation 20-25.3 I established an initial four-phased approach to reopening Washington State; and, while all counties started in Phase I on May 4, 2020, a total of 28 counties are now either in or eligible to apply for Phase 2; and

**WHEREAS,** the Washington State Department of Health's data and modeling demonstrate that many counties have significantly reduced or eliminated the number of new COVID-19 cases sufficiently to enable those counties to control and respond to virus outbreaks within the capacity of existing local and regional health care systems without significant increased risk of being overwhelmed, and this data supports providing all counties with an opportunity to lift some restrictions, subject to certain conditions and requirements; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people; and

**NOW, THEREFORE**, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamations 20-25, 20-25.1, 20-25.2, and 20-25.3 (*Stay Home – Stay Healthy*) are amended to extend all of the prohibitions and each expiration date therein to 11:59 p.m. on July 1, 2020, and are renamed (*Safe Start – Stay Healthy*), and that except as otherwise provided in this order or the *Safe Start Washington* Phased Reopening County-by-County Plan found *here*, all other provisions of Proclamations 20-25, 20-25.1, 20-25.2, and 20-25.3 shall remain in full force and effect.

**FURTHERMORE,** in collaboration with the Washington State Department of Health, and based on analysis of the data and epidemiological modeling, I hereby order that,

beginning on June 1, 2020, the *Safe Start Washington* Phased Reopening Plan will be applied on a county-by-county basis, and will allow any county that has been in Phase 1 or 2 for three weeks to apply to the Secretary of Health to move in whole or in part to the next phase; and further, the application process will include target metrics (intended to be applied as "targets" and not hard-line measures) set by the Secretary of Health, and the application must be submitted by the County Executive, or, in the absence of a County Executive, with the approval of the County Council or Commission, in accordance with the instructions provided by the Secretary of Health; and

**FURTHERMORE**, in evaluating any application to move forward, the Secretary of Health may approve a county moving in whole to the next phase, or may only approve certain activities moving to the next phase; and

**FURTHERMORE**, until there is an effective vaccine, effective treatment or herd immunity, it is crucial to maintain some level of community interventions to suppress the spread of COVID-19 throughout all phases of recovery; and, therefore, throughout all phases, individuals should continue to engage in personal protective behaviors including: practice physical distancing, staying at least six feet away from other people; wear cloth face coverings in public places when not eating or drinking; stay home if sick; avoid others who are sick; wash hands frequently; cover coughs and sneezes; avoid touching eyes, nose and mouth with unwashed hands; and disinfect surfaces and objects regularly; and

**FURTHERMORE**, I hereby order, in addition to other requirements detailed in the *Safe Start Washington* Phased Reopening Plan, that, beginning on June 8, 2020, when on the job, all employees must wear a facial covering except when working alone or when the job has no in-person interaction as detailed in the *Safe Start Washington* Phased Reopening Plan; and, further, that employers must provide cloth facial coverings to employees, unless their exposure dictates a higher level of protection; and

**FURTHERMORE,** I continue to permit the low-risk activities previously permitted as reflected or clarified in formal guidance documents *here*, and which may be updated or modified as the science and data supports; and

**FURTHERMORE,** in collaboration with the Washington State Department of Health, in furtherance of the physical, mental, and economic well-being of all Washingtonians, I will continue to analyze the data and epidemiological modeling and adjust the *Safe Start Washington* Phased Reopening Plan accordingly.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

All persons are again reminded that no credentialing program or requirement applies to any activities or operations under this Proclamation.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5). Further, if people fail to comply with the required social distancing and other protective measures while engaging in this phased reopening, I may be forced to reinstate the prohibitions established in earlier proclamations.

This order goes into effect on June 1, 2020, and expires at 11:59 pm on July 1, 2020.

Signed and sealed with the official seal of the state of Washington on this 31st day of May,A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/ ____________________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/ ____________________________
Secretary of State

*Appendix C*

**PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATIONS 20-05 and 20-25, et seq.**

**20-25.11**

**"STAY SAFE – STAY HEALTHY" ROLLBACK OF COUNTY-BY-COUNTY PHASED REOPENING RESPONDING TO A COVID-19 OUTBREAK SURGE**

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS**, I issued Proclamations 20-25, et seq., first entitled "*Stay Home – Stay Healthy*," and later changed to "*Safe Start – Stay Healthy" County-By-County Phased Reopening*, found *here*, in which I initially prohibited all people in Washington State from leaving their homes

except under certain circumstances and then gradually relaxed those limitations based on county-by-county phasing established according to metrics provided by the Secretary of Health; and

**WHEREAS**, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remains in place today; and

**WHEREAS,** on July 24, 2020, the Secretary of Health issued *Order of the Secretary of Health 20-03.1*, found *here*, which, among other things, requires (with exceptions) the use of face coverings throughout the state; and

**WHEREAS**, despite this guidance, positive COVID-19-related cases and hospitalizations have been on a steady rise since early September; and, most alarmingly, since the latter part of October through December, 2020, the number of COVID-19 cases continue to dramatically increase in Washington, and COVID-19-related hospitalizations have risen sharply, putting our people, our health system, and our economy in as dangerous a position as we faced in March 2020, and have not significantly improved since; and

**WHEREAS,** there is evidence that the virus is spread through very small droplets called aerosols that are expelled from our mouths when we breathe, talk, sing, vocalize, cough, or sneeze, that these aerosols linger in air, and that a significant risk factor for spreading the virus is prolonged, close contact with an infected person indoors, especially in poorly ventilated spaces; and

**WHEREAS,** we know that several factors increase the risk for person-to-person COVID-19 transmission; such factors include (1) the more that people and groups interact, (2) the longer those interactions last, (3) the closer the contact between individuals, and (4) the denser the occupancy for indoor facilities; and

**WHEREAS,** the Washington State Department of Health and the Centers for Disease Control and Prevention have provided health and safety guidance to reduce the risk of transmission of COVID-19 generally and in specific sectors, environments, and settings, yet many individuals continue to disregard this guidance, and person-to-person interactions, including gatherings, have led to many infections and are a primary factor in the dangerous increase in COVID-19 cases and hospitalizations currently being experienced in Washington; and

**WHEREAS,** to reduce the severe increases in COVID-19 cases and hospitalizations we are currently facing, and to reduce the increase in deaths from COVID-19 that likely will follow, it is necessary to immediately modify prior prohibitions and guidance, and to issue further guidance as it is developed; and

**WHEREAS,** COVID-19, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State and remains a significant health risk to all of our people, especially among our most vulnerable populations; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people; and

**NOW, THEREFORE**, I, Jay Inslee, Governor of the state of Washington, as a result of the above noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamations 20-25, et seq., renamed

"Stay Safe – Stay Healthy" are amended to extend all of the prohibitions described herein until this order is amended or rescinded. Except as otherwise provided in this order, the *Safe Start Washington Phased Reopening County-by-County Plan* found *here*, the *Order of the Secretary of Health 20-03.1*, issued on July 24, 2020, found *here*, and all other provisions of Proclamations 20-25, et seq., shall remain in full force and effect.

**FURTHERMORE,** pursuant to RCW 43.06.220(3), the prohibitions set forth in Proclamations 20-25, et seq., continue to be modified, with amendments, as set forth below. Unless otherwise specifically noted, the modifications herein take effect immediately. All modifications to existing phased prohibitions set forth herein shall expire at 11:59 p.m., Monday, January 11, 2021, unless otherwise extended.

If an activity is not listed below, currently existing guidance shall continue to apply. If current guidance is more restrictive than the below listed restrictions, the most restrictive guidance shall apply. These below modifications do not apply to education (including but not limited to K-12, higher education, trade and vocational schools), childcare, recovery support groups, health care, and courts and judicial branch-related proceedings, all of which are exempt from the modifications and shall continue to follow current guidance. Terms used in this proclamation have the same definitions used in the *Safe Start Washington Phased Reopening County-by-County Plan.*

*Appendix C*

**Modifications to existing phased prohibitions:**

1. **Indoor Social Gatherings** with people from outside your household are prohibited unless they (a) quarantine for fourteen days (14) prior to the social gathering; or (b) quarantine for seven (7) days prior to the social gathering and receive a negative COVID-19 test result no more than 48-hours prior to the gathering. A household is defined as individuals residing in the same domicile.

2. **Outdoor Social Gatherings** shall be limited to five (5) people from outside your household.

3. **Restaurants and Bars** are closed for indoor dine-in service. Outdoor dining and to-go service are permitted, provided that all outdoor dining must comply with the requirements of the Outdoor Dining Guidance *here*. Table size for outdoor dining is limited to a maximum of five (5) people. These modified restaurant and bar restrictions go into effect at 12:01 a.m. Wednesday, November 18, 2020.

4. **Fitness Facilities and Gyms** are closed for indoor operations. Outdoor fitness classes are permitted but are subject to and limited by the outdoor social gathering restriction listed above.

5. **Bowling Centers** are closed for indoor service.

6. **Miscellaneous Venues:** All retail activities and business meetings are prohibited. Only professional training and testing that cannot be performed remotely, as well as all court and judicial branch-related proceedings, are allowed. Occupancy in each meeting room is limited to 25 percent of indoor occupancy limits or 100 people, whichever is fewer.

   - Miscellaneous venues include: convention/conference centers, designated meeting spaces in a hotel, events centers, fairgrounds, sporting arenas, nonprofit establishment, or a substantially similar venue.

7. **Movie Theaters** are closed for indoor service. Drive-in movie theaters are permitted and must continue to follow current drive-in movie theater guidance.

8. **Museums/Zoos/Aquariums** are closed for indoor service.

9. **Real Estate:** Open houses are prohibited.

10. **Wedding and Funerals:** Ceremonies are limited to a total of no more than 30 people. Indoor singing during the ceremony is prohibited. Indoor receptions, wakes, or similar gatherings in conjunction with such ceremonies are prohibited. Singing during an outdoor ceremony is permitted, so long as participants wear face coverings

and otherwise comply with the Weddings and Funerals *Guidance*.

11. **In-Store Retail** shall be limited to 25 percent of indoor occupancy limits, and common/congregate seating areas and indoor dining facilities such as food courts are closed.

12. **Religious Services** are limited to 25 percent of indoor occupancy limits, with a recommended maximum of 200 people. Congregation members/attendees must wear facial coverings at all times, and indoor congregation singing is prohibited. No choir, band, or ensemble shall perform during the service, and congregation singing indoors is prohibited. Vocal or instrumental soloist performances are permitted with an accompanist so long as the performer wears a face covering. In the event the soloist is performing on a woodwind or brass instrument, the soloist may remove their face covering only during the performance. Both a soloist and the congregation are permitted to sing during outdoor services, so long as all singers wear face coverings while singing. Religious and Faith-Based Organization Guidance can be found *here*.

13. **Professional Services** are required to mandate that employees work from home when possible and close offices to the public if possible. Any office that must remain open must limit occupancy to 25 percent of indoor occupancy limits.

14. **Personal Services** are limited to 25 percent of indoor occupancy limits.

    - Personal service providers include: cosmetologists, cosmetology testing, hairstylists, barbers, estheticians, master estheticians, manicurists, nail salon workers, electrologists, permanent makeup artists, tanning salons, and tattoo artists.

15. **Long-term Care Facilities:** Outdoor visits are permitted. Indoor visits are prohibited, but individual exceptions for an essential support person or end-of-life care are permitted. These restrictions are also extended to the facilities in Proclamation 20-74, et seq. All other provisions of Proclamations 20-66, et seq., and 20-74, et seq., including all preliminary criteria to allow any visitors, remain in effect.

16. **Youth and Adult Sporting Activities**: Indoor activities and all contests and games are prohibited. Outdoor activities shall be limited to intra-team practices only, with facial coverings required for all coaches, volunteers and athletes at all times.

17. **Singing in Enclosed Spaces**: In all other circumstances not specifically addressed in this order, group singing, with or without face coverings, with members who are outside of a person's household is prohibited in enclosed,

indoor spaces. Outdoor singing, while participants wear face coverings, is permitted, so long as the activity otherwise complies with guidance specific to that activity.

**FURTHERMORE,** in collaboration with the Washington State Department of Health, in furtherance of the physical, mental, and economic well-being of all Washingtonians, I will continue to analyze the data and epidemiological modeling and adjust guidance accordingly.

**ADDITIONALLY**, as a reminder, a travel advisory for all non-essential travel, issued on November 13, 2020, remains in effect. That advisory provides the following guidance: (1) Persons arriving in Washington from other states or countries, including returning Washington residents, should self-quarantine for 14 days after arrival. These persons should limit their interactions to their immediate household; and (2) Washingtonians are encouraged to stay home or in their region and avoid non-essential travel to other states or countries.

**ADDITIONALLY**, in furtherance of these prohibitions and for general awareness:

1. *Order of the Secretary of Health 20-03.1*, issued on July 24, 2020, is incorporated by reference, and may be amended as is necessary; and, all such amendments are also incorporated by reference.

2. Employers must comply with all conditions for operation required by the state Department

of Labor & Industries, including interpretive guidance, regulations and rules such as *WAC 296-800-14035*, and Department of Labor & Industries-administered statutes.

3. Everyone is required to cooperate with public health authorities in the investigation of cases, suspected cases, outbreaks, and suspected outbreaks of COVID-19 and with the implementation of infection control measures pursuant to State Board of Health rule in WAC 246-101-425.

4. All mandatory guidelines for businesses and activities, which remain in effect except as modified by this Proclamation and the *Order of the Secretary of Health 20-03.1*, may be found at the Governor's Office *website*, *COVID-19 Resources and Information*, and at *COVID-19 Reopening Guidance for Businesses and Workers*.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5). Further, if people fail to comply with the required social distancing and other protective measures while engaging in this phased reopening, I may be forced to reinstate the prohibitions established in earlier proclamations.

Unless extended or amended, upon expiration or termination of this amendatory proclamation the provisions of Proclamation 20-25, et seq., will continue to be in effect until the state of emergency, issued on February 29, 2020, pursuant to Proclamation 20-05, is rescinded.

Signed and sealed with the official seal of the state of Washington on this 30th day of December, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/______________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/______________________
Secretary of State

*Appendix C*

## PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATIONS 20-05 and 20-25, et seq.

## 20-25.12

## "HEALTHY WASHINGTON – ROADMAP TO RECOVERY"

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

**WHEREAS,** as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

**WHEREAS,** I issued Proclamations 20-25, et seq., first entitled "Stay Home – Stay Healthy," in which I initially prohibited all people in Washington State from leaving their homes except under certain circumstances, which I later amended to "Safe Start – Stay Healthy – County-By-County Phased Reopening," gradually relaxing those limitations based on county-by-county phasing,

and on November 16, 2020 again amended 20-25, et seq., to "Stay Safe – Stay Healthy – Rollback of County-By-County Phased Reopening Responding to a COVID-19 Outbreak Surge," in response to a large surge of new cases of COVID-19, increased hospitalizations and ongoing COVID-19 related deaths in Washington State; and

**WHEREAS**, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase and on July 24, 2020, the Secretary of Health issued *Order of the Secretary of Health 20-03.1*, found *here*, which, among other things, requires (with exceptions) the use of face coverings throughout the state; and

**WHEREAS,** there is evidence that the virus is spread through very small droplets called aerosols that are expelled from our mouths when we breathe, talk, sing, vocalize, cough, or sneeze, that these aerosols linger in air, and that a significant risk factor for spreading the virus is prolonged, close contact with an infected person indoors, especially in poorly ventilated spaces; and

**WHEREAS,** we know that several factors increase the risk for person-to-person COVID-19 transmission; such factors include (1) the more that people and groups interact, (2) the longer those interactions last, (3) the closer the contact between individuals, and (4) the denser the occupancy for indoor facilities; and

**WHEREAS**, despite an increase in infections, hospitalizations, and deaths this fall and winter,

Washington State has avoided overwhelming the state's health care systems throughout this pandemic through rigorous safety and prevention measures, such as physical distancing and masking, as well as social and economic prohibitions; and

**WHEREAS**, a new and more contagious coronavirus variant, first identified in the United Kingdom and confirmed to now be in at least seven U.S. states and 33 countries, and a second new and more contagious coronavirus, first identified in South Africa, threaten to further strain our health care systems and therefore demand even more vigilance in our prevention measures; and

**WHEREAS**, now that two vaccines have been approved for use in the United States and efforts to vaccinate the most vulnerable populations are underway, it is appropriate to create a new roadmap to recovery that establishes the goal of safely easing some restrictions while also maintaining crucial hospital capacity, ensuring care for Washingtonians who need it, paving the way for economic recovery, and maintaining flexibility to quickly pivot to increase restrictions if needed; and

**WHEREAS,** achieving the goal that our health care systems are not overwhelmed during this pandemic is better and more appropriately served by shifting from a county-by-county approach to a regional approach that is substantially similar to existing emergency medical services regions; and

**WHEREAS,** the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

**WHEREAS**, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people; and

**NOW, THEREFORE**, I, Jay Inslee, Governor of the state of Washington, as a result of the above noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05, as amended, remains in effect, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamation 20-25, et seq., remains in full force and

effect, but is hereby amended to be renamed "Healthy Washington – Roadmap ToRecovery." This *Healthy Washington – Roadmap To Recovery,* found *here,* extends all of the prohibitions described in Proclamations 20-25, et seq., except as amended herein.

**FURTHERMORE,** for purposes of the prohibitions contained in the *Healthy Washington – Roadmap To Recovery*, every county is part of a region, and all regions begin in Phase 1 as of the effective date of this order. Any activities not specifically addressed in the *Healthy Washington – Roadmap To Recovery* plan are subject to previously issued guidance related to that activity as it applies to the region's current or subsequent phase.

**ADDITIONALLY**, in furtherance of these prohibitions and for general awareness:

1. *Order of the Secretary of Health 20-03.1*, issued on July 24, 2020, is incorporated by reference, and may be amended as is necessary; and, all such amendments are also incorporated by reference.

2. Employers must comply with all conditions for operation required by the state Department of Labor & Industries, including interpretive guidance, regulations and rules such as *WAC 296-800-14035*, and Department of Labor & Industries-administered statutes.

3. Everyone is required to cooperate with public health authorities in the investigation of cases, suspected

cases, outbreaks, and suspected outbreaks of COVID-19 and with the implementation of infection control measures pursuant to State Board of Health rule in WAC 246-101-425.

4. All mandatory guidelines for businesses and activities, which remain in effect except as modified by this Proclamation and the *Order of the Secretary of Health 20-03.1*, may be found at the Governor's Office *website*, *COVID-19 Resources and Information*, and at *COVID-19 Reopening Guidance for Businesses and Workers.*

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible tosupport implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department

of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5). Further, if people fail to comply with the required social distancing and other protective measures whileengaging in this phased reopening, I may be forced to reinstate the prohibitions established in earlier proclamations.

This order is effective immediately. Unless extended or amended, upon expiration or termination of this amendatory proclamation the provisions of Proclamation 20-25, et seq., will continue to be in effect until the state of emergency, issued on February 29, 2020, pursuant to Proclamation 20-05, is rescinded.

Signed and sealed with the official seal of the state of Washington on this 11th day of January, A.D., Two Thousand and Twenty-One at Olympia, Washington.

By:

/s/____________________
Jay Inslee, Governor

BY THE GOVERNOR:

/s/____________________
Secretary of State