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OSÖÖ Judge Patrick Oishi
GEGFÄRCEÄIÄFKFÄJT Noted for Hearing: January 15, 2021
SÖÖÄUWÞVÿ No Oral Argument Requested
ÛWÚÖÜQÜÄÜUWÜVÄÖŠÖÜS
ÖEZSÖÖ
ÖCEJÖÄVÖGEËFHÏJËÄÜÖCE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

RENTAL HOUSING ASSOCIATION, *et al.*,

Plaintiffs,

vs.

CITY OF SEATTLE,

Defendant.

No. 20-2-13969-6 SEA

AMICUS BRIEF OF NORTHWEST
JUSTICE PROJECT; ACLU OF
WASHINGTON; BUILDING
CHANGES; COLUMBIA LEGAL
SERVICES; FRED T.
KOREMATSU CENTER FOR LAW
AND EQUALITY; KING COUNTY
BAR ASSOCIATION; PRO BONO
COUNCIL; TENANT LAW
CENTER; TENANTS UNION;
WASHINGTON LOW INCOME
HOUSING ALLIANCE

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1 **I. IDENTITY AND INTEREST OF AMICI CURIAE**

2 Northwest Justice Project; ACLU of Washington; Building Changes; Columbia Legal
3 Services; the Fred T. Korematsu Center for Law and Equality; King County Bar Association; Pro
4 Bono Council; Tenant Law Center; Tenants Union of Washington State; and the Washington
5 Low Income Housing Alliance (collectively, “Amici”) submit this brief for the Court’s
6 consideration in the pending motions for summary judgment. Amici incorporate their statement
7 of identity and interest from the motion accompanying this Brief. Counsel for amici have read
8 the briefs filed by the city and plaintiffs and have attempted not to duplicate argument or
9 information therein.

10 **II. INTRODUCTION**

11 The Court should deny Plaintiffs’ motion for summary judgment and grant the City’s
12 cross motion for summary judgment. All three ordinances—the “Winter Eviction Defense”
13 (Ordinance No. 126041), the “Six-Month Defense” (Ordinance No. 126075) and the “Repayment
14 Plan” (Ordinance No. 126081) (collectively “the Ordinances”)—are critical to protect low-
15 income Seattleites from, ultimately, facing eviction and from realizing the cascade of harms that
16 often follow an eviction.

17 **III. ARGUMENT**

18 **A. The Ordinances protect low-income Seattleites from facing eviction and the cascade**
19 **of harms that often follow an eviction**

20 **1. Evictions disproportionately harm people of color**

21 “Studies from cities throughout the country have shown that people of color, particularly
22 Black and Latinx people, constitute approximately 80% of people facing eviction.”¹ Even before

23 ¹ Emily Benfer, et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at Risk*
24 (Aug. 7, 2020) (“Aspen Inst. Report”) at 3, available at <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/> (last visited Oct. 14, 2020); *see also* Deena

1 the COVID-19 pandemic, the most populous counties in Western Washington experienced vast
2 racial disparities in evictions. From 2012-2017, one in eleven Black adults in King County faced
3 an eviction.² In King County, this rate was more than five times the eviction rate of white adults.
4 In Seattle in 2017, 51.7 percent of evictions were filed against persons of color. Of those
5 evictions, 31.2 percent were filed against Black tenants, an eviction rate 4.5 times what would be
6 expected based on the Black share of the population.³

7 Because of historic inequality and legally enshrined housing discrimination, households
8 of color face significantly higher risk of eviction due to an inability to pay rent. In Washington,
9 more than half of Black and Latino households are rent-burdened, meaning that they spend more
10 than 30 percent of their income on housing.⁴ Again, the picture is even more bleak within the
11 City of Seattle.⁵ And when income drops due to unemployment, or rent rises, households of
12 color have less wealth to fall back on: The typical white family has ten times as much wealth as
13 the typical Black family, and seven times as much wealth as the typical Latino family.⁶ In 2018,
14 4 in 10 American families reported that they would have trouble covering an unexpected \$400
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16

17 Greenberg, Carl Gershenson, and Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal
18 Challenges*, 116 Harv. C.R.-C.L. L. Rev. 115 (2016), available at
https://scholar.harvard.edu/files/mdesmond/files/greenberg_et_al._.pdf (last visited Oct. 14, 2020).

19 ² Timothy A. Thomas et al., *The State of Evictions: Results from the University of Washington Evictions Project*,
<https://evictions.study/washington/results.html#race-of-the-evicted> (last visited Oct. 15, 2020). (“UW Eviction
20 Study”)

21 ³ King County Bar Ass’n & Seattle Women’s Commission, *Losing Home: The Human Cost of Eviction in Seattle*
(2018) (“Losing Home”) at 2, available at <http://www.kcba.org/Portals/0/pbs/pdf/Losing%20Home%202018.pdf>
22 (last visited Oct. 14, 2020).

23 ⁴ Joint Center of Housing Studies of Harvard University, *Renter Cost Burdens by Race and Ethnicity*,
https://www.jchs.harvard.edu/ARH_2017_cost_burdens_by_race
(last visited Oct. 16, 2020); *see also* Joint Center for Housing Studies of Harvard University, *The State of the
24 Nation’s Housing 2019* 4-5, available at
https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf.

⁵ *Id.*

⁶ Kriston McIntosh, Emily Moss, Ryan Nunn & Jay Shambaugh, *Examining the Black-white wealth gap*, available
at <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> (Feb. 27, 2020).

1 expense, and 58 percent of Black families reported that in the event of such an expense, they
2 would be unable to cover their other bills.⁷

3 **2. Evicted low-income households do not have equal access to justice**

4 Plaintiff landlords argue that landlords should have their day in court to challenge a
5 tenants' hardship. Plas' Mot. at 8. But, the day in court is more often than not a one-sided affair,
6 with legal advocacy and advice for landlords but not for tenants.

7 In Washington, the 2015 Civil Legal Needs Study Update, commissioned by the Supreme
8 Court, reported that more than 71 percent of the state's low-income households experience at
9 least one civil legal problem each year and that approximately 76 percent of people do not get
10 the legal help they need to address these problems. Nearly 28 percent of Washington households
11 faced legal issues related to housing in 2014; for Black households, the percentage was nearly 45
12 percent.⁸

13 The Evictions Project reported that, during the period 2004-2017, King County unlawful
14 detainer defendants "had the most representation" at a rate averaging out to 21%. Despite the
15 fact that King County had the highest level of representation, that still means that nearly 80% of
16 defendants in unlawful detainer matters faced eviction unrepresented.⁹ And, despite this
17 representation, the rates of eviction in King County are still some of the highest in the state. Not
18 surprisingly, given the lack of representation, default judgments were entered in many of these
19 actions, with the rate of default judgments in King County hovering just under 50 percent.¹⁰

21 ⁷ U.S. Fed. Res., *Report on the Economic Well-Being of U.S. Households in 2018 – May 2019: Dealing with
Unexpected Expenses*, [https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-
2018-dealing-with-unexpected-expenses.htm](https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm) (last visited Oct. 15, 2020).

22 ⁸ Washington Supreme Court Civil Legal Needs Study Update Committee, 2015 Washington State Civil Legal
Needs Study Update (2015) at 5, 7, 15, 26, available at [https://ocla.wa.gov/wp-
23 content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf) (last visited Oct. 14, 2020).

⁹ UW Eviction Study § 4.3.

¹⁰ UW Eviction Study §§ 4.2, 4.3.

1 When eviction defendants did have the benefit of counsel, it made a difference. For
2 example, a 2017 study of Seattle unlawful detainer actions found that tenants with legal counsel
3 were about twice as likely to remain in their homes and more than three times as likely to receive
4 some form of settlement or stipulation as those without legal counsel. Those that remained in
5 their homes were able to dismiss the action entirely—a stark difference from those that were
6 kicked out of their homes and ordered to pay a judgment that would burden them with debt.¹¹
7 But most tenants were forced to defend against evictions by themselves. When the Mayor
8 declares the end of the emergency and the moratoria are suddenly lifted, with limited resources
9 and access to the courts unclear, amici believe that even more renters would not be able to count
10 on access to legal services and only landlords will truly have their day in court.

11 **B. The economic harms and threats to the housing security of thousands of Seattleites**
12 **caused directly—or indirectly—by COVID-19 will not cease to exist on the day**
13 **Mayor declares the end of the emergency**

14 **1. The pandemic has worsened an already troubling housing crisis and has left**
15 **thousands of Seattleites financially insecure**

16 The pandemic has multiplied the financial plight and risk of eviction for renters,
17 particularly for low-income renters, many of whom were already rent-burdened. As of August 7,
18 2020, the Aspen Institute estimated that 26-34 percent of Washingtonians are at risk of eviction
19 by the end of the year.¹² The U.S. Census Bureau, as of the two-week period ending September
20 28, reported that 38.9 percent of Washingtonians surveyed thought it either very or somewhat
21 likely they would face eviction within two months.¹³ Unsurprisingly, more and more households
22 have found it difficult to pay rent as time has gone on during the pandemic. For the two-week

23 ¹¹ Losing Home at 65.

24 ¹² *Id.* at 7.

¹³ U.S. Census Bureau, Week 15 Household Pulse Survey (“Household Pulse Survey”), Housing Table 2b, available at <https://www.census.gov/data/tables/2020/demo/hhp/hhp15.html#tables> (last visited Dec. 10, 2020).

1 period ending November 23, 44.9% of Washingtonians surveyed thought it either very or
2 somewhat likely they would face eviction within two months.¹⁴

3 The Centers for Disease Control, relying on the Aspen Institute’s projection, noted that a
4 “wave of evictions on this scale would be unprecedented in modern times.”¹⁵ A representative of
5 Seattle-based Solid Ground has stated: “We’re looking at it as a tsunami that is building and
6 when it crashes it will wipe out whole swaths of communities.”¹⁶ The Government Affairs
7 Director for Plaintiff Rental Housing Association has warned that “[t]here is going to be this
8 eviction cliff if these things end too dramatically.”¹⁷

9 The anticipated flood of evictions is an expected consequence of the loss of income
10 suffered by renters directly related to the pandemic. The Joint Center for Housing Studies at
11 Harvard University reported, as of July 7, that 52 percent of all renters had lost income from
12 employment in the previous two months.¹⁸ As a consequence, the number of Washington-based
13 renters using credit cards and loans to make rental payments has grown at an alarming rate in the
14 last several months.¹⁹ Furthermore, with a reduction to unemployment benefits, infection rates
15 rising, and a pending economic recovery that has disproportionately affected working class
16

17 ¹⁴ U.S. Census Bureau, Week 19 Household Pulse Survey (“Household Pulse Survey”), Housing Table 2b, available
18 at <https://www.census.gov/data/tables/2020/demo/hhp/hhp19.html#tables> (last visited Dec. 10, 2020).

19 ¹⁵ U.S. Dept. of Health & Human Services, Temporary Halt in Residential Evictions to Prevent the Further Spread
of COVID-19, 85 Fed. Reg. 55,292 at 55,295 (Sept. 4, 2020) (“CDC Moratorium”), available at
<https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19654.pdf> (last visited Oct. 14, 2020).

20 ¹⁶ Patrick Quinn, Looming “Tsunami” in Housing Crisis Already Altering Seattle Communities, KOMO News
21 (Sept. 3, 2020) (“KOMO Article”), available at <https://komonews.com/news/local/looming-tsunami-in-housing-crisis-already-altering-seattle-communities> (last visited Oct. 14, 2020).

22 ¹⁷ *Id.*

23 ¹⁸ Joint Center for Housing Studies at Harvard University, A Triple Pandemic?: The Economic Impacts of COVID-
19 Disproportionately Affect Black and Hispanic Households (July 7, 2020) (“Harvard Article”), available at
<https://www.jchs.harvard.edu/blog/a-triple-pandemic-the-economic-impacts-of-covid-19-disproportionately-affect-black-and-hispanic-households> (last visited Oct. 14, 2020).

24 ¹⁹ See Household Pulse Survey, Housing Table 2b; David Kroman, *A Debt Crisis Looms As Renters Turn To Credit Cards To Stay Afloat*, Crosscut (Sep. 14, 2020), available at <https://crosscut.com/focus/2020/09/debt-crisis-looms-renters-turn-credit-cards-stay-afloat>. (last visited Oct. 14, 2020).

1 Americans in certain industries,²⁰ it is likely that more Seattle-based renters will turn to credit
2 card payments and loans to delay or avoid escalation of housing insecurity. Needless to say, an
3 entire year of economic uncertainty can have a serious and lasting effect on an individual or a
4 family's ability to recover financially.

5 Unemployment figures in Washington also paint a dire picture.²¹ Even before Governor
6 Inslee issued the "Stay Home, Stay Healthy Order" which closed all nonessential businesses,
7 Seattle had experienced an 86.92% increase in the unemployment rate between March 2019 and
8 March 2020, the highest year-to-year increase in the country.²² More than 4,500 business in the
9 Puget Sound area have temporarily or permanently closed due to COVID-19.

10 In addition, the U.S. Census Bureau reported, as of November 23rd, that 30.4 percent of
11 Washingtonians expected someone in their household to suffer a further loss of income within
12 the next four weeks.²³ 33.1 percent of Washingtonians reported that it had been somewhat or
13 very difficult to pay for usual household expenses during the pandemic.²⁴ Many people have had
14 to choose between buying food and paying the rent, not being able to afford both.²⁵

16 ²⁰ Justin Baer, Theo Francis, and Eric Morath, *The Covid Economy Carves Deep Divide Between Haves and Have-*
17 *Nots*, The Wall Street Journal (Oct. 5, 2020), available at [https://www.wsj.com/articles/the-covid-economy-carves-](https://www.wsj.com/articles/the-covid-economy-carves-deep-divide-between-haves-and-have-nots-11601910595)
18 [deep-divide-between-haves-and-have-nots-11601910595](https://www.wsj.com/articles/the-covid-economy-carves-deep-divide-between-haves-and-have-nots-11601910595) (last visited Oct. 14, 2020); see also Andrew Tangel and
19 Kim Mackrael, *In Seattle, Coronavirus Fallout Opens Economic Divide*, The Wall Street Journal (May 24, 2020),
20 available at <https://www.wsj.com/articles/in-seattle-coronavirus-fallout-opens-economic-divide-11590328819> (last
21 visited Oct. 15, 2020).

22 ²¹ Washington State's Employment Securities Department records indicate that initial claims for unemployment
23 benefits averaged just over 7000 for the first nine weeks of 2020. After March 7, through May 16, they averaged
24 131,245 per week, with a peak of 181,975 initial claims during the week of March 22-28. Washington State
25 Employment Security Department, Weekly Initial Claims Report, available at
[https://public.tableau.com/profile/jeff.robinson#!/vizhome/InitialClaimsapplicationsforUnemploymentInsurance-](https://public.tableau.com/profile/jeff.robinson#!/vizhome/InitialClaimsapplicationsforUnemploymentInsurance-WA_ETAS39-/Story1)
[WA_ETAS39-/Story1](https://public.tableau.com/profile/jeff.robinson#!/vizhome/InitialClaimsapplicationsforUnemploymentInsurance-WA_ETAS39-/Story1) (last visited Oct. 15, 2020).

²² *Id.*

²³ Household Pulse Survey, Employment Table 1.

²⁴ *Id.*, Spending Table 1.

²⁵ *Id.*, Housing Table 1.1, Food Sufficiency & Food Security Tables 2b, 3b, 5. The number of food-insecure
Washingtonians nearly doubled from June 2019 to June 2020. The CEO of Food Lifeline has estimated that one-
fifth of the state's population could be facing hunger by year-end. Scott Hanson, 1 in 5 Washington Residents Could
Face Hunger This Year as COVID-19 Pandemic Wears On, Says Food Lifeline CEO, Seattle Times (Sept. 10,

1 **2. That certain sectors of the local economy have rebounded temporarily does**
2 **not mean that low-income Seattle renters have been able to financially**
3 **recover at the same rate**

4 Plaintiffs argue that because many Seattle renters received a onetime stimulus check or
5 unemployment benefits, the financial hardship caused by the pandemic has been ameliorated.
6 Pla.’s Mot. at 4. They also emphasize that in April and May of 2020, Governor Inslee allowed
7 counties to reopen portions of their economies thus lowering the unemployment rate. Pla.’s Mot.
8 at 5.

9 Under normal circumstances, unemployment benefits may assist some temporarily
10 unemployed persons and help prevent evictions. In the current state of the pandemic, however,
11 unemployment has persisted for many. Washington’s Employment Security Department has not
12 been able to pay claimants in a timely manner, and additional federal help (following an initial
13 stimulus package) has been mired in disputes in the other Washington. And, as of November 15,
14 2020, Governor Inslee again imposed restrictions—more in line with the “Stay Home, Stay
15 Healthy Order” he issued in March that led unemployment rates to skyrocket and required that
16 many businesses shutter. Governor Inslee has extended this Order, for now, until January 4,
17 2021 as hospitalizations continue to rise in Washington with only more anticipated after the
18 Thanksgiving and winter holidays. These restrictions will inevitably drive the unemployment
19 rate up again. It is easy to anticipate that businesses that were able to withstand the initial
20 closures in the spring, may not be able to handle yet another prolonged closure and may
21 ultimately need to permanently close their doors. It takes time for shuttered businesses to be
22 replaced by new ones. And, even if out-of-work Seattleites are able to make successful claims

23 2020), available at [https://www.seattletimes.com/seattle-news/food-insecurity-crisis-in-washington-likely-to-get-](https://www.seattletimes.com/seattle-news/food-insecurity-crisis-in-washington-likely-to-get-worse-as-covid-19-pandemic-drags-on-officials-say/)
24 [worse-as-covid-19-pandemic-drags-on-officials-say/](https://www.seattletimes.com/seattle-news/food-insecurity-crisis-in-washington-likely-to-get-worse-as-covid-19-pandemic-drags-on-officials-say/) (last visited Oct. 15, 2020).

1 for unemployment benefits, it is much harder for those on long-term unemployment to get
2 rehired eventually.

3 Moreover, that certain sectors of the economy have been able to rebound nationally and
4 locally, does not tell the full story. Economic recovery in Washington is a “tale of two states.”
5 Data published by the Department of Commerce shows that for workers in higher-paying or
6 remote-enabled industries, like legal or business services, employment is recovering strongly;
7 but lower-paying jobs, such as those in the restaurant and hospitality industries, still face
8 staggering losses in employment.²⁶ As of September 24, 2020, a Pew Research Center survey
9 found that of those Americans who have become unemployed during the pandemic, half are still
10 unemployed.²⁷ And, lower-income adults who were laid off due to COVID-19 are less likely to
11 be working now than middle and upper income adults who lost their jobs (43 percent versus 58
12 percent).

13 The COVID-19 recession is the most unequal recession in modern U.S. history. The
14 racial disparities that existed before the COVID-19 pandemic are only exacerbated by the
15 national economic downturn. Black, Asian, and Latino workers are overrepresented in the
16 industries most impacted by the COVID-19 crisis—industries where working from home is not
17 possible, and which are less likely to provide comprehensive benefits.²⁸ Lower-paid workers are
18 more likely either to be unemployed, or to have to choose between staying home to protect their
19 health and going to work. According to the Pew Research Center, 43 percent of Black adults and
20

21 ²⁶ Wash. Dep’t of Com., *Economic Recovery Dashboard*, <https://www.commerce.wa.gov/datadashboard/> (last
22 visited Oct. 14, 2020).

23 ²⁷ [Economic Fallout From COVID-19 Continues To Hit Lower-Income Americans the Hardest | Pew Research
Center \(pewsocialtrends.org\)](https://www.pewsocialtrends.org)

24 ²⁸ Danyelle Solomon & Darrick Hamilton, *The Coronavirus Pandemic and the Racial Wealth Gap*, Center for
American Progress, Mar. 99, 2020, available at
<https://www.americanprogress.org/issues/race/news/2020/03/19/481962/coronavirus-pandemic-racial-wealth-gap/>.

1 37 percent of Latino adults have had trouble paying their bills.²⁹ These households are much
2 more likely to have lost income from employment during the pandemic than other groups (58
3 percent of Latino households, 53 percent of Black households, 39 percent of white households).
4 The experience in Washington is similar. “The COVID-19 pandemic and resulting economic
5 calamity have caused disproportionate harm to low-income people in Washington State, with
6 special hardships experienced by low-wage workers (‘essential’ and displaced workers) and
7 communities of color.”³⁰

8 Within the City of Seattle itself, the pandemic has widened the economic divide.³¹
9 Approximately 11 percent of the region’s workers in this tech sector and approximately 3 percent
10 of government employees applied for unemployment benefits during the 11 weeks ending May
11 16.³² By contrast, nearly half of the Seattle region’s roughly 207,000 hospitality and leisure
12 workers, 43 percent of the construction industry, and 37 percent of the manufacturing industry
13 have filed for unemployment benefits since early March based on data from the Washington
14 Employment Security Department.³³

19 ²⁹ Kim Parker, Rachel Minkin, and Jesse Bennett, Economic Fallout from COVID-19 Continues to Hit Lower-
20 Income Americans the Hardest (Sept. 24, 2020), available at
[https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-](https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/)
[americans-the-hardest/](https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/) (last visited Oct. 15, 2020).

21 ³⁰ Office of Civil Legal Aid Interim Report on Emergency COVID-19 Legal Assistance, at 1, available at
[https://ocla.wa.gov/wp-content/uploads/2020/09/COVID-19-Emergency-Civil-Legal-Aid-Program-Interim-Report-](https://ocla.wa.gov/wp-content/uploads/2020/09/COVID-19-Emergency-Civil-Legal-Aid-Program-Interim-Report-9-2020.pdf)
[9-2020.pdf](https://ocla.wa.gov/wp-content/uploads/2020/09/COVID-19-Emergency-Civil-Legal-Aid-Program-Interim-Report-9-2020.pdf).

22 ³¹ Andrew Tangel and Kim Mackrael, *In Seattle, Coronavirus Fallout Opens Economic Divide*, The Wall Street
23 Journal (May 24, 2020), available at [https://www.wsj.com/articles/in-seattle-coronavirus-fallout-opens-economic-](https://www.wsj.com/articles/in-seattle-coronavirus-fallout-opens-economic-divide-11590328819)
24 [divide-11590328819](https://www.wsj.com/articles/in-seattle-coronavirus-fallout-opens-economic-divide-11590328819) (last visited Oct. 15, 2020).

³² *Id.*

³³ *Id.*

1 **3. If low-income Seattleites are not given time to stabilize financially as**
2 **contemplated by the Six-Month Defense and Repayment Plan ordinances,**
3 **after the moratoria lift, evictions will rise immediately and dramatically**

4 There is no question that the Washington and Seattle moratoria have been effective in
5 preventing evictions that otherwise would have occurred during the pandemic. Data obtained by
6 amici from the Washington State Administrative Office of the Courts demonstrates this
7 phenomenon. In January and February of 2020, 409 unlawful detainer actions were filed each
8 month in King County. That number declined to 245 in March and averaged 20 filings per month
9 for April through August.³⁴

10 The protections afforded tenants by the Six-Month Defense and the Repayment Plan
11 ordinances will be predominantly triggered after the Mayor declares the end of the emergency.
12 While the Mayor may declare the end of the emergency at a time when the rate of COVID-19
13 transmission declines within the community, common sense indicates that the economy will not
14 automatically rebound that same day. These two ordinances would allow low-income Seattleites
15 to regain their economic footing rather than being immediately at risk of losing their housing.
16 Without them and without the moratoria in place, there would be a flood of evictions within the
17 City of Seattle.

18 While it could take a long time for the economy to fully rebound, there is reason to
19 believe that many unemployed and low-income renters would benefit—and be able to stabilize
20 financially—if given six extra months of protection from eviction as contemplated by the Six-
21 Month Defense and Repayment Plan ordinances. Amicus Northwest Justice Project serves low-
22 income clients in other legal areas other than housing. For this reason, amicus has been able to

23
24 ³⁴ Data provided by Washington State Administrative Office of the Courts (Sept. 14, 2020) (on file with amici).

1 witness how COVID-19 has had some, potentially temporary, financial impacts on the finances
2 of low-income Seattleites.

3 One such example is the economic toll the closure of in-person public school has taken
4 on families. Some parents who would otherwise be able to retain their jobs (whether remotely or
5 in-person) have been forced to resign to provide round-the-clock care to their children at home
6 and make sure that they are able to access their education remotely. This struggle is particularly
7 difficult for parents of students with disabilities who typically receive intensive supports in-
8 person at school. While school districts in Washington have not been mandated to close for in-
9 person services, districts are simply not providing these services, leaving these parents to fend
10 for themselves and requiring them to make difficult decisions such as choosing between
11 economically providing for their families or physically caring for them. If and when the public
12 health emergency subsides and districts decide it is safe to reopen, many parents (whose jobs
13 have not necessarily been eliminated due to COVID-19) will be able to return to their places of
14 employment. However, these parents will need a few months to recover financially after being
15 out of work for several months.

16 The Six-Month Defense and Repayment Plan ordinances could also make mediation—as
17 is contemplated by the Eviction Resolution Pilot Program in King County—more productive.
18 Six counties, including King County, have been chosen to participate in this pilot program which
19 is going to operate in accordance with an enabling order from the Washington State Supreme
20 Court and a standing order of the King County Superior Court.³⁵ The orders require landlords to
21 undertake efforts to engage tenants in pre-filing resolution efforts including direct negotiation,
22

23 ³⁵ Washington State Courts, Eviction Resolution Program, *at*
24 <http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.EvictionResolutionProgram>.

1 facilitated conciliation services, and upon agreement of both parties, formal mediation. This
2 program is going to require a great deal of government funding and resources to run. Dispute
3 resolution between landlords and tenants in nonpayment-of-rent unlawful detainer cases would
4 be much more productive and efficient after Seattleites are afforded additional time to recover
5 financially after the end of the emergency and after the moratoria lift.

6 **4. The date the moratoria lift and the date the Mayor declares the end of the**
7 **emergency will likely not coincide with the date community spread of**
8 **COVID-19 ceases within the City of Seattle**

9 Although a vaccine is on the way and although community spread may ultimately
10 decrease as more Seattleites are vaccinated, it will still be months before the vaccine will be
11 widely available. For this reason, even if the Mayor declares the end of the emergency, and even
12 if the eviction moratoria are lifted, it will still be critical that Seattleites are given extra months to
13 stabilize financially both to avoid the personal tolls of eviction and also so that the City can
14 avoid the general, negative public health outcomes of mass evictions. (It has now been shown
15 nationwide—in jurisdictions where there have been expirations of eviction moratoria—that
16 evictions have led to hundreds of thousands of additional COVID-19 cases.³⁶) The Six-Month
17 Defense and the Repayment Plan ordinances will, ultimately, be critical to prevent mass
18 evictions and can provide the same public health safeguards as the moratoria themselves.

19 The Centers for Disease Control, in announcing its eviction moratorium, emphasized that
20 “[i]n the context of a pandemic, eviction moratoria . . . can be an effective public health measure
21 utilized to prevent the spread of communicable disease.”³⁷ The CDC identified several ways in
22 which evictions would spread the disease.

23 ³⁶ Annie Nova, Evictions have led to hundreds of thousands of extra Covid cases, (Nov. 27, 2020), at
<https://www.cbc.com/2020/11/27/evictions-have-led-to-hundreds-of-thousands-of-extra-covid-cases-.html>.

24 ³⁷ 85 Fed. Reg. at 55,294.

1 First, eviction prevents people who become ill or who are at risk for severe illness from
2 COVID-19 from self-isolating or social distancing.³⁸ Second, “many evicted renters move into
3 close quarters in shared housing or other congregate settings. According to the Census Bureau
4 American Housing Survey, 32% of renters reported that they would move in with friends or
5 family members upon eviction.... Studies show that COVID-19 transmission occurs readily
6 within households; household contacts are estimated to be 6 times more likely to become
7 infected by an index case of COVID-19 than other close contacts.”³⁹

8 Third, a wave of evictions would lead many evicted households to move to another state.
9 As a result, “mass evictions would likely increase the interstate spread of COVID-19.”⁴⁰

10 Finally, evictions would increase the number of people experiencing homelessness. The
11 CDC noted that in Seattle-King County, 5 to 15 percent of people experiencing homelessness
12 between 2018 and 2020 cited eviction as the primary reason for becoming homeless. Some of
13 these people would move to homeless shelters. It is extremely difficult, if not impossible, to take
14 the precautions necessary to prevent the spread of the disease while living in a shelter. The CDC
15 noted that “[e]xtensive outbreaks of COVID-19 have been identified in homeless shelters,”
16 specifically citing an outbreak in Seattle at a network of three related homeless shelters. Indeed,
17 the CDC pointed out that “research suggests that the population of persons who would be evicted
18 and become homeless would include many who are predisposed to developing severe disease
19 from COVID-19.”⁴¹

20
21 ³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 55,295.

22 ⁴¹ *Id.*; see also Public Health-Seattle & King County, Homelessness and COVID-19, available at
23 <https://www.kingcounty.gov/depts/health/covid-19/data/homeless.aspx> (last visited Oct. 15, 2020) (homeless
24 individuals account for 17.7% of King County hospitalizations for COVID-19); Aspen Inst. Report at 8 (“In
addition, eviction is linked with respiratory disease, which would increase the risk of complications if COVID-19 is
contracted, as well as mortality risk during COVID-19.”)

1 The CDC summarized as follows: “In short, evictions threaten to increase the spread of
2 COVID-19 as they force people to move, often into close quarters in new shared housing settings
3 with friends or family, or congregate settings such as homeless shelters. The ability of these
4 settings to adhere to best practices, such as social distancing and other infection control
5 measures, decreases as populations increase. Unsheltered homelessness also increases the risk
6 that individuals will experience severe illness from COVID-19.”⁴²

7 In addition, the public health impact of evictions would be experienced
8 disproportionately by people of color, as the CDC has recognized. The CDC recognizes the fact
9 that COVID-19 disproportionately impacts communities of color.⁴³ As already noted, people of
10 color are much more likely to experience eviction and have worse outcomes. The combination of
11 existing disparities and emerging disparities from the pandemic therefore creates an even worse
12 harm for these communities.

13 It is also worth noting that courts are, like most industries, trying to determine how their
14 in-person operations will and will not resume as the pandemic subsides. Assuming the unlawful
15 detainer calendar resumes in-person at full volume, lifting the moratoria without the Six-Month
16 Defense and Repayment Plan ordinances in place would flood King County Superior Court with
17 eviction cases. We know that continuing to operate courts at pre-COVID volumes has been
18 deadly.⁴⁴ In-person hearings in a high volume would not only mean crowded courtrooms but
19

20 ⁴² 85 Fed. Reg. at 55,296.

21 ⁴³ Center for Disease Control and Prevention, Health Equity Considerations and Racial and Ethnic Minority Groups,
22 July 24, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>. See also
23 William Wan, Coronavirus Kills Far More Hispanic and Black Children than White White Youths, CDC Study
24 Finds, Wash. Post (Sept. 15, 2020), [https://www.washingtonpost.com/health/2020/09/15/covid-deaths-hispanic-
black-children/](https://www.washingtonpost.com/health/2020/09/15/covid-deaths-hispanic-black-children/) (“Wan Article”) (75% of COVID-19 children deaths are minorities).

⁴⁴ Noah Goldberg, Wes Parnell & Molly Crane-Newman, *Coronavirus Leaves Trail of Illness and Death in NYC Courthouses As Slow-to-Change System Struggles to Cope With Pandemic*, N.Y. Daily News (May 25, 2020),
available at [https://www.nydailynews.com/coronavirus/ny-coronavirus-pandemic-unprepared-nyc-courts-20200526-
fe2zknj7cbgutpjd3vtfruiiq-story.html](https://www.nydailynews.com/coronavirus/ny-coronavirus-pandemic-unprepared-nyc-courts-20200526-fe2zknj7cbgutpjd3vtfruiiq-story.html) (last visited Oct. 15, 2020).

1 would also risk further exposure and transmission because of the litigants and court staff that
2 would inevitably travel on public transportation.⁴⁵ If the Six-Month Defense and the Repayment
3 Plan ordinance are in effect when the moratoria lift, landlords would be disincentivized from
4 filing the eviction lawsuit with the court in the first place because tenants would have more
5 viable defenses at their disposal.

6 **C. The state statutory protections Plaintiffs cite as adequate and substitute relief for**
7 **the Repayment Plan ordinance is not equivalent and will not prevent significant**
8 **harm to a tenant’s housing stability**

9 Plaintiffs argue that RCW 59.18.410 provides a suitable alternative for Seattle renters
10 who need to enter into repayment plans to pay back rent. Plaintiffs’ Motion at 13. They argue
11 that these repayment plans should only be ordered by judicial officers. Plaintiffs’ Mot. at 13-14.

12 However, as mentioned above, the Repayment Plan ordinance is designed to avoid court
13 filings in the first place. For the reasons stated above, preventing such a flood of unlawful
14 detainer filings in the courts is critical. It is also critical for low-income Seattle renters because it
15 is not only actual, physical eviction from a rental property that can cause a tenant irreparable
16 harm. Once an unlawful detainer action is filed with the court, the record of the eviction filing—
17 no matter the ultimate outcome—remains on their record and can lead to future housing
18 instability. *See Hundtofte v. Encarnacion*, 181 Wn.2d 1, 10 (2014) (holding that the public’s
19 interest in the open administration of justice prohibits the redaction of eviction court records).

20 In reaction to *Hundtofte*, the legislature enacted RCW 59.18.367—a statute that
21 authorizes tenants to petition the court to obtain an order for limited dissemination. This order, if
22 entered at the discretion of the court, prevents tenant screening companies and other credit

23 ⁴⁵ Mike Lindblom, *Second Metro bus driver, ‘godfather of the North Base,’ dies of coronavirus*, Seattle Times (July
24 3, 2020), available at <https://www.seattletimes.com/seattle-news/obituaries/second-metro-bus-driver-godfather-of-the-north-base-dies-of-coronavirus/> (last visited Oct. 15, 2020).

1 reporting agencies from reporting the filed unlawful detainer action to prospective landlords. In
2 the experience of amici, the existence of one filed eviction—no matter the circumstances
3 surrounding that filing—can result in a “failing” score for a tenant, resulting in a denial for new
4 housing.

5 Orders of limited dissemination do not fully cure the harm caused by eviction filings. In
6 addition to being relief that an evicted tenant must affirmatively pursue when perhaps already
7 dealing with the stresses of being homeless, if granted, it does not remove the eviction from the
8 court records or make it impossible to find. It simply prevents certain entities from reporting its
9 existence to landlords. Therefore, it is critical for the housing stability of tenants that the
10 unlawful detainer actions not be filed in the first place.

11 The long-term harm that can result from a filed unlawful detainer action often creates a
12 huge power imbalance between landlords and tenants (with the landlord in control due to
13 resources and superior access to legal assistance) when attempting to negotiate prior to the filing
14 of an unlawful detainer action. Without the Repayment Plan ordinance—that sets a schedule for
15 repayment or invites the *tenant* to propose an alternative payment schedule—this power
16 imbalance would impair the negotiations for tenants who have fallen behind due to COVID-19.
17 Ultimately, this power imbalance typically hurts both parties as, often, desperate tenants—when
18 faced with a looming eviction filing—agree to payment plans that are unrealistic and that they
19 cannot fulfill. Here, the set payment schedule set by the Repayment Plan ordinance both
20 provides a starting point for negotiations and, for the benefit of the landlord, creates a deadline
21 by when a tenant needs to catch up to avoid eviction.

22 In addition to resulting in saved tenancies, the Repayment Plan ordinance would also
23 save judicial resources. If there is an influx of unlawful detainer filings after the moratoria lift,

1 without this ordinance, thousands of tenants would need to petition the court for a payment plan
2 under RCW 59.18.410 leaving judges to sort through such things as each tenant’s individual
3 financial circumstances, each individual tenant’s payment history, and each individual’s
4 hardships. *See* RCW 59.18.410(3)(a). This would demand a very large amount of judicial
5 resources and is something the Repayment Plan ordinance enables parties to do themselves. The
6 Repayment Plan ordinance would also obviate the need for these tenants to file motions for
7 orders for limited dissemination with the court, which also often require judicial officers to sort
8 through the highly individualized circumstances of each tenant. *See* RCW 59.18.367(1)(c)
9 (stating that the court may order an unlawful detainer action to be of limited dissemination if
10 other good cause exists to do so).

11 **D. Landlords have other options to address their alleged harms and tenants should not**
12 **have to bear the entire loss due to the COVID-19 economic downturn**

13 The Six-Month Defense ordinance and the Repayment Plan ordinance do not create
14 irreparable harm for landlords. They do not cancel any tenant’s rent. A landlord is still owed
15 every dollar in rent that a tenant has not been able to pay due to COVID-19—they merely
16 postpone the recovery of that rent. The ordinances have not cut off landlords’ ability to
17 communicate with tenants in seeking a reasonable solution to the issue of unpaid rent that can be
18 mutually beneficial, nor has it allowed for tenants to participate in any “rent strike” when they
19 are capable of paying.

20 Moreover, the Coronavirus Aid, Relief, and Economic Security (CARES) Act included
21 \$150 billion in direct assistance for state governments,⁴⁶ from which the Washington Department
22 of Commerce allocated more than \$100 million in Eviction Rent Assistance Program (ERAP)

23 _____
24 ⁴⁶ Pub. L. No. 116–136, 134 Stat. 281.

1 grants.⁴⁷ ERAP funds provide up to three months of rent assistance to landlords on an eligible
2 tenant’s behalf.⁴⁸ In King County alone, \$9,701,806 in rental assistance has already been
3 provided to landlords.⁴⁹ And, 14,795 households either have received rental assistance or are in
4 the process of being served for rental assistance.⁵⁰ Mayor Durkan allocated \$19 million for
5 renter and homeowner support, including \$8 million grant to Home Base to assist Seattle renters
6 who fall behind on their rent next year.⁵¹

7 Further, even if landlords are experiencing a temporary loss of income due to the
8 pandemic, so are thousands of their tenants who have become unemployed or have been
9 otherwise affected by this pandemic that is entirely out of their control. Plaintiffs insinuate that
10 tenants are essentially, willfully electing to not pay their rent and that the Ordinances may
11 continue to perpetuate this practice. Complaint at ¶ 4; Plas’ Motion at 6. To date, a total of
12 39,600 households have applied for rental assistance in King County.⁵² In other words,
13 thousands of families understand that they do owe the back rent—that it has not been forgiven—
14 and are trying in good faith to satisfy their financial obligations. Other than providing limited
15 anecdotal information about a limited number of renters and speculation—and criticism that a
16 tenant may be purchasing groceries rather than paying rent—Plaintiffs provide no information to
17 support their assertion that tenants are willfully refusing to pay their rent. Complaint at ¶ 4. In
18 fact, Plaintiffs CJD and Zella allege that they have “dozens” of units and can only provide

19 _____
20 ⁴⁷ Washington State Department of Commerce, Aug. 3, 2020, <https://www.commerce.wa.gov/news-releases/community-grants/100-million-rental-assistance-headed-to-washington-communities/>

21 ⁴⁸ *Id.*

22 ⁴⁹ King County, Human Services Program Data, at <https://kingcounty.gov/depts/community-human-services/COVID/eviction-prevention-rent-assistance/program-data.aspx>.

23 ⁵⁰ *Id.*

24 ⁵¹ “City Allocates Over \$19 Million in COVID-Related Funding to Rental Assistance and Homeowner Support,” available at <https://durkan.seattle.gov/2020/09/city-allocates-over-19-million-in-covid-related-funding-to-rental-assistance-and-homeowner-support/>.

⁵² King County, Human Services Program Data, at <https://kingcounty.gov/depts/community-human-services/COVID/eviction-prevention-rent-assistance/program-data.aspx>.

1 evidence about one renter not paying his rent. Decl. CJD Investments at para. 3. Plaintiffs lack
2 evidence to support the multiple harms, other than temporary loss of income, they allege.

3 The Six-Month Defense ordinance and the Repayment Plan ordinance would enable low-
4 income Seattle tenants to satisfy their financial obligations and make arrangements with their
5 landlords who are only one creditor among many to which low-income Seattleites undoubtedly
6 owe money. Several other companies and creditors have also been forced to weather the storm
7 and are also dealing with financial losses as consumers are unable to pay on all of their financial
8 obligations. Unfortunately, our country is reeling from this national crisis and everyone—not
9 just landlords—have had to be flexible and temporarily bear the costs.

10 **E. The Winter Eviction Defense protects vulnerable Seattleites from eviction during**
11 **the dangerous winter months**

12 **1. The City of Seattle Enacted Ordinance 126041 in response to public health**
13 **emergency**

14 On November 2, 2015, the mayor of the City of Seattle signed a Proclamation of Civil
15 Emergency (“Proclamation”) in response to the crisis of homelessness in the community.
16 Mayoral Procl. Of Civil Emer., City of Seattle (Nov. 2, 2015). The next day, the City Council
17 adopted Resolution 31630, ratifying and confirming the civil emergency proclamation. The
18 Proclamation cites homelessness as a public safety and health emergency because then-current
19 local resources were unable to combat the arduous and expensive toll chronic homelessness
20 exacts on the community. Procl. at 2. The Proclamation further declares that the homelessness
21 crisis in Seattle “has risen to such a level, and impacts, on a daily basis, the health and safety of
22 its citizens.” *Id.* The number of homeless individuals in King County has increased by more
23 than 10 percent since the Proclamation. All Home King County, ONE NIGHT COUNT 2015 and
24

1 2019 data.⁵³ The homelessness public health emergency in Seattle persists today. In Seattle
2 Public schools alone, 4,368 students experienced homelessness during the 2017-18 school year,
3 88% of whom were students of color.⁵⁴

4 In response to the public health emergency, the City of Seattle passed Ordinance 126041
5 in February 2020. *See* Decl. of Tondini, Ex. 1. The Ordinance creates tenant defenses to eviction
6 between December 1 and March 1. The preamble to the Ordinance cites the Civil Emergency
7 Proclamation on homelessness in the first paragraph. Ord. 126041, Wynne decl. Ex. 9. Thus,
8 similar to the COVID-related moratoria, Ordinance 126041 responds to a public health
9 emergency by balancing the public interest in decreasing the homeless population with
10 landlords' reliance on rental revenue.

11 The All Homes "One Night Count" Report from 2019 finds that 38 percent of the
12 homeless responders were renters of some kind prior to the present experience of homelessness,
13 by far the largest entry point to homelessness.⁵⁵ Ordinance 126041 thus focuses on the largest
14 source of new homeless people by creating a defense for people unable to pay rent during winter
15 months. The purpose is to lessen the public health and safety impacts of the homeless
16 emergency in Seattle.

17 **2. Ordinance 126041 eases the capacity and economic strain on service**
18 **providers related to the Homelessness Emergency**

19 The Proclamation, and the parallel emergency proclamation signed by the King County
20 Executive, cites the present inability of infrastructure to shelter the entire homeless population.

21 ⁵³ 2015 Point in Time Count at [https://regionalhomelessnessystem.org/wp-content/uploads/2020/06/2015-KC-ONC-](https://regionalhomelessnessystem.org/wp-content/uploads/2020/06/2015-KC-ONC-numbers.pdf)
22 [numbers.pdf](https://regionalhomelessnessystem.org/wp-content/uploads/2020/06/2015-KC-ONC-numbers.pdf) (last accessed December 15, 2020); 2019 Point in Time Count at
<https://regionalhomelessnessystem.org/wp-content/uploads/2020/06/KING-9.5-v2.pdf>. (last accessed December 15,
2020).

23 ⁵⁴ Building Changes, Data and Outcomes, at <https://schoolhousewa.org/data/dashboards/local-data-and-outcomes/>.
24 ⁵⁵ 2019 Point in Time Count at <https://regionalhomelessnessystem.org/wp-content/uploads/2020/06/KING-9.5-v2.pdf>,
page 30, (last accessed December 15, 2020).

1 That deficiency remains unchanged. The “Count Us In” Report found 11,199 homeless
2 individuals in December 2019. Of those that total, 5,228 people experiencing homelessness in
3 King County lived unsheltered: on the street, in a vehicle, or in a tent/encampment of some
4 kind.⁵⁶ Sixty-eight percent of those unsheltered people, or 3,555 people, reside in Seattle.⁵⁷

5 The City of Seattle presently does not have sufficient capacity to shelter all those living
6 unsheltered. There are around 2,500 shelter spaces available through the City of Seattle.⁵⁸ In the
7 summer of 2018, the shelter spaces in Seattle were 93 percent occupied. The need for emergency
8 shelters increases dramatically in winter months, and efforts to increase shelter capacity in the
9 winter months take time and money. For instance, in November 2020, the Human Services
10 Department released a request for qualification seeking to identify locations for up to 425 new
11 temporary shelter units. The RFQ cites the more than 3,700 people currently living unsheltered
12 in Seattle.

13 The Ordinance was enacted specifically to curb a winter increase in unsheltered people in
14 Seattle in light of the insufficiency in available shelter. It is estimated that close to 3,000 people
15 become homeless each month in King County, including 500 children.⁵⁹ The negative effects of
16 homelessness are only exacerbated by the winter weather. As noted in the City’s brief, living
17 unsheltered in Seattle’s winter climate alone leads to serious harm, and even death. Def.

18 Response and Cross-Motion, at 2.

21 ⁵⁶ *Id.* at 7-8.

22 ⁵⁷ *Id.* at 9.

23 ⁵⁸ Jenny Durkan, May 30, 2018 Press Release, at <https://durkan.seattle.gov/2018/05/mayor-durkan-announces-plan-to-increase-seattles-bridge-housing-and-shelter-capacity-by-25-to-bring-more-people-inside-and-into-safer-places/>
(last visited December 15, 2020).

24 ⁵⁹ King County, Local Proclamation of Emergency (Nov. 2015), at https://www.kingcounty.gov/~media/elected/executive/constantine/news/documents/Homeless_Emergency_King_County.ashx?la=en. (last accessed December 15, 2020).

1 In addition to the exposure-related concerns, there are other public safety risks with
2 increased homeless population. Despite being less than one half of one percent of the total King
3 County population, homeless people accounted for 9 percent of accidental deaths in 2018.⁶⁰
4 There are many unsheltered people living near and under major highways and thoroughfares in
5 Seattle, and during the dark winter months the likelihood of injury from a vehicle accident
6 increases, threatening both the unsheltered and the motorists. Eight percent of people killed in
7 traffic accidents were homeless.⁶¹

8 Ordinance 126041 diffuses the financial burden to society stemming from homelessness
9 in other realms. Several studies show that reducing homelessness will dramatically reduce
10 healthcare costs. For instance, the National Alliance to End Homelessness found that the
11 average annual cost to taxpayers for treating a chronically homeless person is more than
12 \$38,000.⁶² Those costs are reduced on average 49.5 percent when in supportive housing.
13 The winter months protected in the ordinance fall in the middle of the school year. There is
14 already a disproportionate number of students experiencing homelessness in Seattle Public
15 Schools compared to the rest of Washington, with the majority (60 percent) being students of
16 color. Proclamation, *supra*. Analysis from amici, Building Changes, show that in Washington
17 State, academic outcomes for students experiencing homelessness remain well below those of
18 students who are housed.⁶³ Outcomes related to social-emotional learning, such as regular
19 attendance and suspension rates, have also gotten worse for students experiencing homelessness.

21 ⁶⁰ Wynne Decl., Ex. 5, at 33.

22 ⁶¹ *Id.*

23 ⁶² National Alliance to End Homelessness, *Ending Chronic Homelessness Saves Taxpayers Money*, (June 2017), at
<http://endhomelessness.org/wp-content/uploads/2017/06/Cost-Savings-from-PSH.pdf> (last accessed December 15,
2020).

24 ⁶³ Building Changes, Data and Outcomes, at <https://schoolhousewa.org/data/analysis/academic-outcomes-for-students-experiencing-homelessness-are-low-across-the-state-of-washington/>.

1 Building Changes’ work with schools and homeless liaisons also show that families experiencing
2 homelessness are struggling even more during COVID-19, financially and educationally, but
3 also with their physical and behavioral health. It is crucial that students and their families are
4 housed and this has advantages across all of society.

5 **3. The Winter Eviction Defense is tailored to protect the most vulnerable**
6 **tenants likely to suffer adverse consequences if evicted due to nonpayment of**
7 **rent**

8 The Winter Eviction Defense applies only to low-income individuals who are likely to
9 become homeless if evicted. In order to claim protection under the Ordinance, tenants must
10 demonstrate that they are below the Area Median Income. Ordinance 126041. Rather than
11 provide a blanket prohibition on evictions regardless of the income of the tenant, the Ordinance
12 narrowly seeks to help those who have limited resources and are likely to become homeless as a
13 result of eviction. This is critical because most evictions for nonpayment of rent in Seattle occur
14 for one month or less, often due to a temporary setback.⁶⁴ In 2017, the average amount sought in
15 an eviction action in Seattle was \$1,236.64, which is significantly less than the average rent in
16 the City.⁶⁵

17 Additionally, the Winter Eviction Defense is mostly limited to protecting tenants from
18 losing their homes due to economic reasons, which constitute the most common reason for
19 eviction in Seattle.⁶⁶ A large share of tenants lose housing due to temporary issues such as
20 temporary unemployment, medical issues, or loss in the family.⁶⁷ Given the likelihood that many
21 will become homeless with one survey finding that more than three-quarters of evicted tenants

22 ⁶⁴ “Losing Home” at 39.

23 ⁶⁵ *Id.*

24 ⁶⁶ *Id.* at 38.

⁶⁷ *Id.* at 46.

1 could not find housing.⁶⁸ Rather than creating a general ban on *all* evictions, the Ordinance
2 focuses almost entirely on limiting evictions against low-income households in Seattle for
3 economic-related reasons. Under the Ordinance, tenants may still be evicted for criminal
4 behavior or nuisance activity that has nothing to do with an inability to pay rent.

5 **4. To offset any losses incurred to landlords during the winter, Seattle set aside**
6 **funds to reimburse landlords for missed rent payments during the winter**

7 Since the crux of the Winter Eviction Defense is to prevent low-income tenants from
8 eviction due to nonpayment of rent, the Winter Eviction Defense included provisions that would
9 enable landlords to seek reimbursement for any missed rent payments incurred during the winter.
10 Specifically, Part 8.e of the Ordinance established a mitigation program, where landlords could
11 seek help for unpaid rent during the winter period covered by the Ordinance. Historically, the
12 United Way of King County has managed the “Home Base” program at the King County Superior
13 Court, which provides rental assistance to tenants facing eviction and received \$12 million from
14 Mayor Durkan to provide rental assistance through 2021.⁶⁹ In addition, the Winter Eviction
15 Defense only applies to landlords who own more than four rental units and exempts smaller
16 landlords who may have more difficulty navigating a government program or eviction prevention
17 program.

18 **F. Seattle’s adoption of the Ordinances constitutes a valid exercise of its police power**
19 **to protect the health and safety of its residents**

20 At its most basic level, government exists to protect its people. In pursuit of this
21 overarching objective, a municipality must protect the health and safety of its residents. It achieves
22 these goals by exercising its police power. “That the preservation of the public health is a proper

23 ⁶⁸ *Id.* at 60.

24 ⁶⁹ “City Allocates Over \$19 Million in COVID-Related Funding to Rental Assistance and Homeowner Support,”
available at <https://durkan.seattle.gov/2020/09/city-allocates-over-19-million-in-covid-related-funding-to-rental-assistance-and-homeowner-support/>

1 subject for the exercise of the police power goes without saying; indeed, it is the first concern of
2 the state.” *State ex. rel. McBride v. Superior Court for King County*, 103 Wash. 409, 419, 174 P.
3 973 (1918). *See also* 62 C.J.S. Municipal Corporations § 171 (September 2020 Update) (“The
4 safeguarding of public health is a most important municipal function, and the municipality has
5 both the right and the duty to use its police power for the preservation of public health”). Police
6 power is a bedrock principle of Western law and government, existing long before the founding of
7 our country, recognized in the texts of the federal and Washington State constitutions and in our
8 country’s earliest jurisprudence. *See* Justice Philip A. Talmadge, *The Myth of Property Absolutism*
9 *and Modern Government: The Interaction of Police Power and Property Rights*, 75 Wash. L. Rev.
10 857, 861-68 (2000) (outlining the history of police power from the ancient Greeks, to enshrinement
11 in the Preamble of the U.S. Constitution, and recognition of state police powers with corresponding
12 limits on property rights dating from the early constitutional opinions of Chief Justice John
13 Marshall); Hugh D. Spitzer, *Municipal Police Power in Washington State*, 75 Wash. L. Rev. 495,
14 497-98 (2000) (tracing Western concepts of police power dating from Roman statutes in 451 BC
15 through the drafting of the Washington State Constitution).

16 The framers of our state’s constitution, no doubt aware of the police power’s vital function
17 in society, devoted Article XI, Section 11 of our state’s constitution to police power:

18 **POLICE AND SANITARY REGULATIONS.** Any county, city, town or
19 township may make and enforce within its limits all such local police, sanitary and
other regulations as are not in conflict with general laws.

20 Those who challenge the constitutionality of a municipal ordinance must overcome a “heavy
21 burden” because our courts will make “ ‘[e]very presumption ... in favor of constitutionality.’ ”
22 *Cannabis Action Coalition v. City of Kent*, 183 Wn.2d 219, 226, 351 P.3d 151 (2015) (quoting
23 *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003) and *Lenci v. City of*

1 *Seattle*, 63 Wn.2d 664, 668, 388 P.2d 926 (1964)).

2 The police power is “a flexible and evolving” concept that adapts as courts apply it to new
3 situations and public emergencies. *See* Talmadge, *supra* at 882-83 (discussing the expansion of
4 police power in Washington jurisprudence during the early Twentieth Century in response to social
5 and economic conditions). Thus, courts have applied police powers to affirm local ordinances in
6 a wide variety of subjects affecting the public health, safety and general welfare. For example,
7 in *McBride*, *supra*, the Seattle city health commissioner forcibly quarantined someone suspected
8 of having a communicable disease. The court rejected arguments that state law and the
9 corresponding state board of health preempted the city’s ability to adopt its own health ordinances
10 and create its own office of health commissioner. Despite the state legislation, the court found no
11 conflict between the state law and the city ordinances, reasoning that “they seem to have been
12 drawn with careful regard to the harmonious working out of the problems of public health,” 103
13 Wash. at 415-16, much as the Residential Landlord-Tenant Act of RCW 59.18 works in harmony
14 with local ordinances enhancing tenant rights today.⁷⁰

15 In *Shepard v. City of Seattle*, 59 Wash. 363, 109 P. 1067 (1910), plaintiffs who
16 maintained psychiatric hospitals constructed in a residential section of the city sought to
17 invalidate a city ordinance that required such institutions to be connected to the city sewer
18 system and to have the consent of residents located within 200 feet of the respective facilities.
19 They argued that the ordinance would deprive them of their property without due process, *id.* at

21 ⁷⁰ Additional examples that illustrate both the flexible application of the police power to new situations and
22 deference to municipal policy despite state legislation governing the same subject include, *e.g.*, *Cannabis Action*,
23 *supra*, 183 Wn.2d 219 (upholding a city ordinance prohibiting collective marijuana gardens despite state law
24 legalizing same); and *Kaul v. City of Chehalis*, 45 Wn.2d 616, 277 P.2d 352 (1954) (finding no conflict between a
city water fluoridation program and state law governing the same subject; program constituted a valid exercise of the
city’s police power to ‘prevent the introduction and spread of [this] disease’ among its citizens (quoting *Dowell v.*
City of Tulsa, Okl., 273 P.2d 859 (1954)).

1 370, or alternatively that the city council unconstitutionally enacted the ordinances to benefit a
2 special interest group – the residents living near the facilities. *Id.* at 375. These arguments
3 resemble the arguments now asserted by plaintiffs in present case some 110 years later. *See*
4 Pla’s. Mot. at 15-18, 20-22. The court rejected these arguments, finding the city properly
5 asserted its police power given the sanitary needs of such facilities and their effect on
6 neighboring properties. *Id.* at 371, 373. Given the rational connection between the ordinance
7 and the public health policy objective, the court deferred to the city’s legislative process and did
8 not question what motivated the legislation’s adoption. *Id.* at 375. This court should similarly
9 reject such arguments and defer to the City Council’s legislative process.

10 IV. CONCLUSION

11 For the forgoing reasons, the Court should deny the plaintiffs’ motion for summary
12 judgment and dismiss this action.

13 In compliance with the King County Superior Court local rules, I certify this
14 memorandum contains 8290 words.⁷¹

15 DATED this 6th day of January, 2021

16
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23 ⁷¹ Amici’s initial filing neglected to include the word count for footnotes. Amici apologize for the
24 confusion.

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