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**IN THE SUPREME COURT FOR THE STATE OF
WASHINGTON**

**STATE OF WASHINGTON,
Appellant**

v.

**CITY OF SUNNYSIDE; AL ESCALERA, in his official and
individual capacities; MELISSA RIVAS, in her official and
individual capacities; CHRISTOPHER SPARKS, in his
official and individual capacities; JOEY GLOSSEN, in his
official and individual capacities; and JAMES RIVARD, in
his official and individual capacities,
Respondents**

**BRIEF OF *AMICUS CURIAE* ACLU OF WASHINGTON
IN SUPPORT OF APPELLANT STATE OF
WASHINGTON**

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Washington (ACLU-WA) is a statewide, nonpartisan, nonprofit organization with more than 421,000 members and supporters, dedicated to the principles of liberty and equality embodied in the Constitution and federal and state civil rights laws and has a particular interest and expertise in discriminatory housing policies and has long opposed unfair or discriminatory housing practices. ACLU-WA has participated in previous cases involving these issues, including *Yim v. City of Seattle*, 2:18-cv-736-JCC (W.D. Wash. 2018).

II. INTRODUCTION/SUMMARY OF ARGUMENT

“[I]t was not that the United States had a crime problem in the 1960s that somehow became racialized, but rather, the nation had a racial problem that deliberately became criminalized.”¹

¹ George Lipsitz, “*In an Avalanche Every Snowflake Pleads Not Guilty*”: *The Collateral Consequences of Mass Incarceration and Impediments to Women’s Fair Housing Rights*, 59 UCLA L. REV. 1746, 1781 (2012) (citing Naomi Murakawa, THE ORIGINS OF THE CARCERAL CRISIS: RACIAL ORDER AS “LAW AND ORDER” IN POSTWAR AMERICAN POLITICS

The civil rights movement resulted in monumental legislation that recognized the rights of people who were previously excluded from the founding promise of equality.² However, this legislation did not end race discrimination or civil rights violations.

In the following decades, tough-on-crime politics became popular, and at the same time, race was deliberately criminalized. After associating race with crime and then spreading fear about “increased crime,” officials passed legislation presented as race-neutral but having a disproportionate effect on people of color.³

IN RACE AND AMERICAN POLITICAL DEVELOPMENT 234, 236 (Joseph Lowndes et al. eds., 2008)).

² Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; Fair Housing Act 1968 42 U.S.C. §3604; *See id.* at 1780 (“Anticrime discourses serve crucial political purposes unrelated to actually fighting crime.... Instead, these measures emerged as part of a counterrevolution against the democratic and egalitarian reforms of the mid-twentieth century that made more rights available to more people.”).

³ German Lopez, *Nixon Official: Real Reason for the War on Drugs was to Criminalize Black People and Hippies* (Mar. 23, 2016). <https://www.vox.com/2016/3/22/11278760/war-on-drugs-racism-nixon> (“We knew we couldn't make it illegal to be either against the war or [B]lack, but by getting the public to associate the hippies with marijuana and [B]lacks with heroin,

It is important to keep this historical context in mind when evaluating tough-on-crime policies—including “crime-free” housing ordinances.

When Washington passed the Crime-Free Rental Housing statute,⁴ the stated intention was to create a program beneficial to the public health, safety, and welfare, by allowing local governments to create and run “Crime-Free” Rental Housing Programs (CFRHP).⁵ CFRHPs are city ordinances that permit or require property owners to evict tenants “engaged in criminal activity” at or near the premises.⁶ Often, these ordinances are written and applied broadly, appearing to give the police significant power and discretion over what actions can be the basis for an eviction. For example, these programs ostensibly

and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.” – John Ehrlichman, White House Counsel to President Richard Nixon).

⁴ Chapter 35.106 RCW.

⁵ RCW 35.106.005.

⁶ RCW 35.106.020(3).

permit police to evict tenants where there are no criminal charges pursued against the tenant and no criminal conviction results. This apparent conferral of broad authority comes with a corresponding danger of abuse.

CFRHPs often fail to differentiate between perpetrators of crime, victims, and individuals requiring emergency assistance. If police get involved, any of three of these groups may be evicted, resulting in harm to individuals whom the program was designed to protect.⁷

CFRHPs without oversight and due process protections are a threat to civil liberties and rights because they routinely produce racially disproportionate outcomes.⁸ For example, in

⁷ Emily Werth, *The Cost of Being “Crime Free”: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances*, 8 (2013).

<https://www.povertylaw.org/wp-content/uploads/2019/09/cost-of-being-crime-free.pdf>.

⁸ See e.g., Natasha Mundkur, *Tampa Police Target Families of Color with Eviction Through Housing Program* (Sept. 17, 2021) <https://www.lawyerscommittee.org/tampa-police-target-families-of-color-with-eviction-through-housing-program/>; Deborah Archer, “Crime-Free” Housing Ordinances, *Explained*, THE APPEAL (Feb. 17, 2021)

2021, the Department of Justice (DOJ) sued the City of Hesperia, California, alleging Hesperia enacted its “crime-free” ordinance with discriminatory intent and the purpose of evicting and deterring Black and Latinx renters from living in Hesperia.⁹

Hesperia police routinely evicted tenants absent any criminal conviction.¹⁰ The police pressured landlords to evict entire families for the conduct of one tenant, or estranged family members, even in the absence of evidence of criminal activity.¹¹ The program disproportionately impacted Black and Latinx renters.¹² As a result of the litigation, the DOJ executed a first-of-its-kind consent decree with Hesperia.¹³ The consent decree

<https://theappeal.org/the-lab/explainers/crime-free-housing-ordinances-explained/>.

⁹ Supplemental Complaint, U.S. v. City of Hesperia, et al, Case No. 5:19-cv-02298 AB (SPx) <https://www.justice.gov/crt/case-document/file/1449361/download>.

¹⁰ *Id.* at ¶ 41.

¹¹ *Id.* at ¶ 5.

¹² *Id.* at ¶¶ 53–57.

¹³ Dep’t of Justice, press release, Justice Department Secures Landmark Agreement with City and Police Department Ending “Crime-Free” Rental Housing Program in Hesperia, California (Dec. 14, 2022) <https://www.justice.gov/opa/pr/justice->

repealed Hesperia's CFRHP and provided funds to redress harm caused by the program.

The State's lawsuit against Sunnyside raises the issue of whether the Washington AG can hold municipalities accountable for civil-rights violations occurring under these "Crime-free" programs. This case was dismissed on summary judgment at the trial court, but the record showed genuine fact issues that were like those from the *Hesperia* case. The trial court erred in several ways, as highlighted in the State's brief.¹⁴ This Court should accept review and reverse the trial court's decisions for the reasons stated herein.

III. ISSUES TO BE ADDRESSED BY *AMICUS CURIAE*

1. Whether the implementation of CFRHPs is a matter of public concern that permits enforcement by the Attorney General where municipalities fail to adequately train,

department-secures-landmark-agreement-city-and-police-department-ending-crime-free.

¹⁴ See Appellant Br. at 21–72.

oversee, and administer the program resulting in civil rights violations.

2. Whether poorly administered CFRHPs are a threat to civil liberties and civil rights particularly when the administration of the program is overly broad and disproportionately impacts people of color, women, and children.

IV. STATEMENT OF THE CASE

Amicus adopts the State's statement of the case.¹⁵

V. ARGUMENT

A. Widespread Implementation of CFRHPs with No Due Process Protections in Place, Coupled with Abdicating Unfettered Discretion to the Police, Is a Matter of Public Concern that Justifies Enforcement by the AG.

In the words of the Justices of this Court: “Our institutions remain affected by the vestiges of slavery,” and it is our collective responsibility to have the courage and will to address ongoing injustices resulting from racist policies, both

¹⁵ See Appellant Br., at 5–19.

explicit and implicit.¹⁶ The AG should be permitted to hold state actors accountable for civil rights violations occurring under “crime free” housing ordinances because addressing harmful policies that perpetuate the vestiges of slavery is a fundamental and urgent issue of public concern.¹⁷ This is because RCW 43.10.030(1) grants the AG discretionary authority to act in any court, state or federal, trial or appellate, on “a matter of public concern.”¹⁸ And there is no argument that use of law enforcement that results in racial disparities in enforcement of CFRHPs—and CFRHP evictions without due process—is a matter of public concern.

¹⁶ *Id.*

¹⁷ Letter from the Wash. State Supreme Court to Members of the Judiciary & Legal Cmty. (June 4, 2020), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf> [Hereinafter Wash. Supreme Ct. June 4th Letter].

¹⁸ *City of Seattle v. McKenna*, 172 Wn.2d 551, 562, 259 P.3d 1087 (2011).

1. Law enforcement policies and practices are affected by their history which can be traced back to slave patrols acting in aid of white supremacy

The injustices resulting from CFRHPs cannot be addressed without first understanding the historical context which affects them. Modern policing can be traced back to slave patrols, an institution designed to stifle slave uprisings through terror, violence, and control.¹⁹ Slave patrols were created to protect and uphold white supremacy. Slave patrols continued through the Civil War and the ratification of the civil-rights amendments to the Constitution.²⁰

Although the passage of the civil rights amendments outlawed the institution of slave patrols that existed during

¹⁹ Nat'l Assn. for the Adv'mnt of Colored People, *The Origins of Modern Day Policing*, (last visited Jan. 3, 2023) <https://naacp.org/find-resources/history-explained/origins-modern-day-policing> [hereinafter *Origins of Policing*]; Connie Hassett-Walker, *How You Start is How You Finish? The Slave Patrol and Jim Crow Origins of Policing* (Jan. 11, 2021) https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/how-you-start-is-how-you-finish/.

²⁰ *Origins of Policing*, *supra* note 19.

slavery, slave patrols were replaced by militia-style groups who shifted their focus to enforcing local laws that segregated and denied access to freedoms to formerly enslaved people.²¹ These groups also aided in protecting white supremacy.

By the 1900s, cities started establishing police departments to enforce laws, including Jim Crow laws. Jim Crow policing represented state-sanctioned violence against Black people who sought integration and equality, and this practice continued through the 1960s.

After Jim Crow policing was outlawed by the Civil Rights Act, that system was quickly replaced by modern-day “tough on crime” policing.²² The system of using state-sanctioned violence to protect white supremacy never ended; it was simply transitioned to new systems and tools of racialized oppression that continued to defend white supremacy. By

²¹ *Id.*

²² *Lipsitz, supra* note 1, at 1781–82 (showing the same year Congress passed the Fair Housing Act, it also passed the Crime Control and Safe Streets Act, creating new criminal offenses and harsher sentencing policies).

abdicating eviction authority to the police, without any due process protections or review, the racist history of American policing influences the way CFRHP evictions are carried out.

2. The private housing market is affected by its history of using the state to aid white supremacy and maintain housing segregation

The housing market is also affected by its racially biased historical context. Racial disparities in property ownership and racially segregated neighborhoods are not accidental.²³ Rather, these disparities are influenced by historical housing practices in which government and private parties intentionally collaborated to enforce segregated neighborhoods and racially biased housing markets. These practices include Jim Crow segregation, sundown towns, race-based zoning ordinances, racially restricted covenants, and redlining—all of which were

²³ Bryanne Hamill et al., N.Y. Adv. Comm., RACIAL DISCRIMINATION AND EVICTION POLICIES AND ENFORCEMENT IN NEW YORK: A REPORT OF THE NEW YORK ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, 18–19 (2022).

practices utilized in Eastern Washington.

CFRHPs are descendants of such programs that used slave patrols or police in aid of white supremacy and housing segregation.²⁴ CFRHPs are a type of nuisance law that has historically been policed in a racially discriminatory manner.²⁵ When there is inadequate oversight over CFRHPs, there is potential for perpetuating the historically racially discriminatory origins of these systems that upholds white supremacy. The Sunnyside CFRHP abdicates eviction authority from the judiciary to police, thereby combining systemic racial bias in policing and in housing practices to create a magnified harmful effect.

Racial disproportionalities in CFRHPs are not unique to Sunnyside. In Washington municipalities where people of color make up at least thirty percent of the population, **one in every**

²⁴ *Id.* at 87.

²⁵ *Id.* (explaining the history of nuisance laws created to dissuade slave owners from emancipating their slaves).

four cities have CFRHPs.²⁶ In the twenty-seven Washington municipalities with the highest Latinx populations, **twenty-four percent** of municipalities have CFRHPs.²⁷ By contrast in the twenty-seven municipalities with the highest white population, there are **no** CFRHPs.²⁸ In the twenty-seven municipalities with

²⁶ This number was determined reviewing by racial demographic data from the Office of Financial Management. Available at: <https://ofm.wa.gov/washington-data-research/population-demographics/decennial-census/census-2010/2010-census-detailed-demographic-profiles>. The cities sampled are: Moxee, **Auburn**, Seattle, Pacific, DuPont, **Mesa**, Forks, **Yakima**, Algona, Newcastle, Redmond, **Tacoma**, Lynnwood, Zillah, Rock Island, **Des Moines**, **Burien**, Union Gap, Bellevue, Tieton, Lakewood, Federal Way, Bridgeport, **Pasco**, **Kent**, Grandview, Fife, Coulee Dam, Quincy, Renton, **Othello**, Hatton, Brewster, Granger, Warden, Elmer City, Mabton, SeaTac, Royal City, Mattawa, **Tukwila**, **Sunnyside**, George, **Toppenish**, Harrah, Wapato, and Nespelem. (Emphases added on municipalities with CFRHPs).

²⁷ *Id.* The cities sampled are: Mattawa, Mabton, Royal City, Granger, Wapato, **Toppenish**, **Sunnyside**, Grandview, Warden, Bridgeport, **Mesa**, George, **Othello**, Quincy, Brewster, Tieton, **Pasco**, Harrah, Rock Island, Hatton, Union Gap, Zillah, **Yakima**, Connell, Moxee, **Pateros**, and Prosser. (Emphases added on municipalities with CFRHPs).

²⁸ *Id.* The cities sampled are: Krupp, Ione, Mansfield, Spangle, Winthrop, Garfield, Farmington, Waverly, Oakesdale, Rosalia, Wilkeson, Endicott, Fairfield, Metaline, LaCrosse, Yacolt,

the highest white population and at least 10,000 people, only **eleven percent** of municipalities have CFRHPs.²⁹

Several Washington municipalities have CFRHPs in place, and these programs are affected by their racially biased historical contexts. This Court aptly stated that addressing racial biases in our institutions is a collective endeavor.³⁰ The AG has authority to address matters of public concern and must be permitted to apply the power and resources of the state to protecting civil liberties and civil rights and holding government actors accountable for civil-rights violations occurring under CFRHPs.³¹

Colfax, Uniontown, Index, Odessa, Colton, Skykomish, Lyman, Davenport, Beaux Arts Village, Washtucna, and Roslyn.

²⁹ *Id.* The Cities sampled are: Port Townsend, Enumclaw, Anacortes, Bainbridge Island, Spokane Valley, Battle Ground, West Richland, Washougal, Lynden, Port Angeles, Bonney Lake, Camas, **Richland**, **Spokane**, Sedro-Woolley, Longview, Maple Valley, Ellensburg, Arlington, Kelso, Centralia, Lake Stevens Tumwater, **Bellingham**, Puyallup, Olympia, and Edmonds. (Emphases added on municipalities with CFRHPs)

³⁰ Wash. Supreme Ct. June 4th Letter, *supra* note 17.

³¹ *See McKenna*, 172 Wn.2d at 562; *see also* RCW 43.10.030(1).

B. CFRHPs, When Administered Unlawfully, Are a Threat to Civil Liberties.

Individuals have the right to their life, liberty, and property, which the government cannot take without due process.³² Individuals have a fundamental right to housing, which includes the right to not be unreasonably displaced from their homes or communities by police.³³ Innocent children should not be uprooted from their schools and communities for alleged criminal activity by family members. Families have the right to live together without fear of being separated by police. Individuals have the right to be free from discrimination based on their protected characteristics when renting or leasing a home.³⁴ CFRHPs can undermine these civil liberties when they

³² U.S. CONST. AMENDS. V, XIV; WASH. CONST. art. I, sect. 3.

³³ *Id.*; *see also* WASH. CONST. art. I sect. 7 (establishing a right of privacy in one's home which cannot be abridged without authority of law).

³⁴ *See* RCW 49.60.222 ("It is an unfair practice for any person, ...because of sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, families with children status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by

are run without adequate training and oversight.

1. Sunnyside’s informal and overly broad administration of its CFRHP does not comport with Due Process and results in unjust evictions

Our federal and state constitutions prohibit the deprivation of life, liberty, or property without due process of law.³⁵ The due process clause of the U.S. Constitution confers both procedural and substantive protections. At a minimum, due process requires notice and an opportunity to be heard.³⁶ Sunnyside’s CFRHP threatens due process rights by abdicating eviction authority to the Sunnyside Police Department (SPD), who enforce the program arbitrarily, fail to operate the program under written standards, and fail to provide notice or opportunity to be heard to tenants prior to eviction. Some features of Sunnyside’s CFRHP that endanger due process are:

a person with a disability... [t]o discriminate against a person in the terms, conditions, or privileges of a real estate transaction.”).

³⁵ U.S. CONST. AMENDS. V, XIV; WASH. CONST. art I, sect. 3.

³⁶ *Olympic Forest Prod., Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 422, 511 P.2d 1002 (1973); see Appellant Br. at 11–17.

- No written policy detailing a formal appeal process for evictions, and until 2017, no written policy on enforcement of the CFRHP.³⁷
- The program requires property owners to participate in the CFRHP and evict tenants after two notices of criminal activity.³⁸
- Criminal activity is broadly defined, so tenants with no criminal history, no criminal charges, and no criminal convictions may be evicted.³⁹
- Police routinely evict tenants without any court order.⁴⁰
- The program punishes the entire household for the alleged conduct of one person.⁴¹

Sunnyside’s CFRHP also poses a threat to due process rights because the program removes people from their homes based on arbitrary reasons, while failing to provide tenants due process.⁴²

The municipal code of Sunnyside provides a model

³⁷ Appellant Br. at 58.

³⁸ SMC 5.02.040(C).

³⁹ See SMC 5.02.030 (“proof of criminal activity shall not require criminal conviction, but shall be by a preponderance of the evidence.”); *see e.g.*, Appellant Br. at 12, 15–16.

⁴⁰ See Appellant Br. at 11 (citing CP 769–71, 825–28); RCW 59.18.290 (prohibiting evictions of tenants without a judicial eviction order).

⁴¹ SMC 5.02.030.

⁴² See Appellant Br. at 11–17.

Crime-Free Lease/Rental Agreement Addendum for property owners.⁴³ The government-supplied agreement allows police to evict a resident if the tenant, a household member, guest, or any person under the resident's control "engages in criminal activity."⁴⁴ The Agreement warns tenants against committing crimes at or near the property. However, the enforcement of this program ensnares much more.

Sunnyside routinely evicts people who have not "engaged in criminal activity." For example, SPD evicted Hilda León from her residence with no real opportunity to appeal her eviction, but she did not commit any crimes.⁴⁵ León was evicted because her grandchild, who did not live with her and was not under her care, was playing outside unattended.⁴⁶

The police evict tenants for suspicion of criminal activity, regardless of whether there was evidence, an arrest, criminal

⁴³ SMC 5.02.030.

⁴⁴ *Id.*

⁴⁵ Appellant Br. at 11–12.

⁴⁶ *Id.*

charges, or conviction.⁴⁷ Relatedly, family members have been evicted due to association with someone who may have perpetrated crimes against them.⁴⁸ The program purports to fight against crime, but it allows police to evict tenants who did not commit crime.

Sunnyside has failed to implement any systemic solutions to counteract the harsh consequences of its program that results in due process violations. Since this is a systemic issue that requires a systemic solution, oversight from the AG is warranted.

2. Sunnyside's CFRHP interferes with school-aged children's education

Sunnyside's CFRHP also affects the civil liberties of children. In Washington, children have a paramount right to have the State make ample provision for their education.⁴⁹ Jurisdictions vary on how children are assigned to school

⁴⁷ *See e.g., Id.* at 15 (Nuño and her family were evicted after a theft accusation that did not result in any criminal charges, arrest, or conviction).

⁴⁸ Werth, *supra* note 7, at 9.

⁴⁹ *McCleary v. State*, 173 Wn.2d 477, 518, 269 P.3d 227 (2012); WASH. CONST. art. IX sect. 1.

districts or schools, but residence typically factors into school assignments.

CFRHPs disrupt stability in children's education because evicting families means they must relocate, often within a matter of days, to a new residence, and this can affect school assignments or access to the school if the family is forced to move farther away. These evictions can also separate families, as many families are forced to find new housing accommodations within a short amount of time. For example, in Sunnyside, after the León family was evicted, León was forced to move from Sunnyside to Wapato, and separated from her school-aged grandchildren who had to choose between stability in their education and their desire to live with their caretaker. Children should not be placed in the impossible situation.

C. Sunnyside's CFRHP invites discriminatory evictions by combining racially biased systems of policing and housing evictions without adequate supervision, oversight, or training.

Sunnyside's CFRHP is a descendant of policies that used police to enforce white supremacy in housing. By abdicating

eviction authority to police and granting them significant discretion over who can be evicted for “engaging in criminal activity,” Sunnyside makes people of color more vulnerable to losing their homes due to racial profiling.

Both the Washington Law Against Discrimination and the Fair Housing Act provide the right to be free from discrimination based on race, sex, or familial status in real estate transactions.⁵⁰ Sunnyside’s CFRHP disproportionately affects people of color and threatens this right.

1. Sunnyside’s CFRHP is run by the police, inviting race disproportionalities in policing to affect eviction decisions.

Administering CFRHPs through police without clear guidelines and training creates a ripe environment for racial profiling to prevail, resulting in police evicting people of color from their homes based on race.

Cities routinely enact crime-free ordinances despite no significant increase in crime rates preceding their enactment.

⁵⁰ RCW 49.60, .030, 222; 42 U.S.C. § 3604.

Some scholars believe that these ordinances are actually responding to increased racial diversity.⁵¹ As previously stated, housing practices are influenced by their history of using police to aid in white supremacy. After the passage of anti-discrimination laws, discrimination became more subtle. Language like “gangs,” “problem tenants,” “bad guys,” and “undesirables” are often coded expressions of racial animus.⁵² “Coded ‘dog whistle’ language impermissibly allows the speaker to appeal to racial bias and then excuse that behavior by arguing they did not intend to say anything racist.”⁵³

As an example, in Sunnyside, Latinx people accounted

⁵¹ Deborah Archer, *You Can’t Go Home Again: Racial Exclusion Through Crime-Free Housing Ordinances*, 2019 AM. CONST. SOC’Y 1, 5 (Nov. 2019).

⁵² *Id.* at 6; Deborah Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 MICH. L. REV. 173, 199 (2019); See Liam Dillon, Ben Poston, Julia Barajas, *Black and Latino Renters Face Eviction, Exclusion, Amid Police Crackdowns in California* (Nov. 19, 2020) <https://www.latimes.com/homeless-housing/story/2020-11-19/california-housing-policies-hurt-black-latino-renters>.

⁵³ *Henderson v. Thompson*, __ Wn.2d __, 518 P.3d 1011, 1022 (2022).

for **fifty-seven percent** of the population in 1990.⁵⁴ In the following decades, the population increased significantly, and in 2010, Latinx people accounted for **eighty-two percent** of the population.⁵⁵ During this time period, Sunnyside enacted its CFRHP in response to alleged increased gang activity that made Sunnyside a “nasty place to live.”⁵⁶ Three years after Sunnyside passed its CFRHP, Mabton city council considered enacting its own CFRHP because “gang bangers” from Sunnyside were moving to Mabton.⁵⁷

⁵⁴ WASH. OFF. FIN. MGMT, *1990 Census Demographic Profiles* (last visited Dec. 30, 2022) <https://ofm.wa.gov/washington-data-research/population-demographics/decennial-census/1990-census-demographic-profiles>.

⁵⁵ WASH. OFF. FIN. MGMT, *2010 Census Detailed Demographic Profiles*, (last visited Dec. 30, 2022) <https://ofm.wa.gov/washington-data-research/population-demographics/decennial-census/census-2010/2010-census-detailed-demographic-profiles>.

⁵⁶ John Fannin, *Mabton Urged to Adopt Crime-Free Rental Measure* (Mar. 12, 2014) https://www.sunnysidesun.com/news/mabton-urged-to-adopt-crime-free-rentalmeasure/article_fc78e8da-fea0-5660-8b8e-6d826ff5852c.html.

⁵⁷ *Id.*

Sunnyside is not alone⁵⁸ because race plays an outsized role in policing. Police disproportionately stop, search, and arrest people of color.⁵⁹ In the criminal punishment system, people of color tend to receive more severe charges, convictions, and punishment compared to their white counterparts.⁶⁰ Crime is heavily racialized in policing because of its historical context, and by loosely allowing “criminal activity” to be the basis for eviction, explicit and implicit biases from policing enter the private housing market.⁶¹

Sunnyside has not done enough to address this in their implementation of the program. The record shows there was an

⁵⁸ See *infra* notes 26, 27, 28, 29.

⁵⁹ The Task Force 2.0 Research Working Group, *Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court*, 97 WASH. L. REV. 1, 20 (2022).

⁶⁰ *Id.*

⁶¹ Research Working Group & Task Force on Race, the Criminal Justice System, *Preliminary Report on Race and Washington's Criminal Justice System*, 35 SEATTLE U. L. REV. 623, 665 (2012); Alexes Harris et al., *Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment*, 76 AM. SOC. REV. 234, 241 (2011); See generally Kelly Welch, *Black Criminal Stereotypes and Racial Profiling*, 23 J. CONTEMP. CRIM. JUST. 276 (2007).

eight-year gap between the first and second training on CFRHPs. The lack of training, particularly on avoiding unjust evictions resulting from biases in policing, fails to address concerns from combining two systematically racially biased systems and is wholly inadequate. Failing to train officers while allowing them significant discretion over who is “engaged in criminal activity” makes people of color more vulnerable to losing their homes due to racial profiling.

It is crucial CFRHPs train on these issues and have clear standards to eradicate racial profiling from their programs. This requires an awareness of how implicit biases operate both systemically and individually. As this Court recognized, “implicit racial bias can be particularly difficult to identify and address. Nevertheless, as our understanding and recognition of implicit bias evolves, our procedures for addressing it must evolve as well.”⁶² Reaffirming that the AG has the power to protect rights that are threatened by systemic biases is a step in

⁶² *State v. Berhe*, 193 Wn.2d 647, 663, 444 P.3d 1172 (2019).

the right direction.

2. Sunnyside's CFRHP invites race disproportionalities in evictions by giving police the power to evict tenants based on 9-1-1 calls

Sunnyside's CFRHP invites discrimination into the private housing market because frivolous calls to police are routinely used to evict tenants. This has a disparate impact on people of color because police are routinely called on people of color for reasons unrelated to any crime. Often, there is a misperception that people of color are engaging in criminal activity when they are simply existing.

The hashtag “#LivingWhileBlack” refers to the common practice of white people calling the police on people of color, who are engaging in normal daily activities⁶³: Taking a nap at

⁶³ #Livingwhileblack: Racially Motivated 911 Calls as a Form of Private Racial Profiling, 92 TEMP. L. REV. ONLINE 55 (2020).

school⁶⁴, sitting in Starbucks⁶⁵, checking-in to an Airbnb⁶⁶, watering a neighbor's flowers⁶⁷, and the list goes on. Even when the call does not result in criminal charges or convictions, significant harm occurs to people of color when they are consistently reminded that their presence is unwelcome or perceived as criminal.

Allowing police to evict tenants based on 9-1-1 calls increases the risk of people of color getting evicted from their homes when private citizens call police. For example, Thelma Jones, a Black woman, was evicted under a CFRHP because neighbors frequently called the police on her for non-crime-related reasons: Police were called when Jones hosted a child's

⁶⁴ P.R. Lockhart, *White People Keep Calling the Cops on Black People for no Reason. That's Dangerous* (May 11, 2018) <https://www.vox.com/identities/2018/5/11/17340908/racial-profiling-starbucks-yale-police-violence-911-bias>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Johnathan Franklin, *A Black Pastor Sues the Police who Arrested Him while Watering His Neighbors' Flowers* (Sept. 10, 2022) <https://www.npr.org/2022/09/10/1121857070/black-pastor-watering-flowers-alabama-lawsuit>.

birthday party and when her children were outside playing.⁶⁸

Jones and her family were evicted because she was a Black woman who was unwelcome by her white neighbors.

CFRHPs that give police the authority to evict tenants and fail to train on race discrimination make race-motivated 9-1-1 calls a burden for people of color to bear because repeated police responses to a residence is a basis for eviction.⁶⁹ People of color should not be subjected to police harassment for existing, and they should not be evicted because of being racially profiled.

D. Sunnyside's CFRHP Creates Consequences to Accessing Rmergency Services, Disproportionately Affecting Those who need Those Services the Most.

CFRHPs often have a disparate impact on survivors of domestic violence, people with disabilities, or elderly individuals because they tend to contact emergency services

⁶⁸ Archer, *supra* note 8.

⁶⁹ SMC 5.02.040.

more than the average person.⁷⁰ CFRHPs are routinely used to evict people who request assistance from emergency services, and Sunnyside's program is no exception.

CFRHPs are particularly harmful to survivors of domestic violence. In Washington, a property owner cannot terminate a rental agreement based on a person's status as a victim of domestic violence, sexual assault, or stalking, and the enforcement of Sunnyside's CFRHP conflicts with that policy.⁷¹ These ordinances treat domestic violence survivors and perpetrators the same: both can be evicted if there is any "criminal activity."

Survivors are routinely evicted for the actions of their abuser.⁷² These ordinances, including Sunnyside's,⁷³ require landlords to evict tenants if there are a repeated police calls to a property. Because domestic violence is a pattern of abusive

⁷⁰ Werth, *supra* note 7 at 2.

⁷¹ RCW 59.18.580(2) (prohibiting evictions of tenants because they are victims of domestic violence).

⁷² Werth, *supra* note 7, at 12; *See e.g.*, Appellant Br. at 13, 71.

⁷³ SMC 5.02.030, .040.

behaviors, this increases the risk that survivors will be punished for the actions of their abusers. These ordinances may force a survivor to remain in a dangerous situation rather than to involve the police and risk losing their home.⁷⁴

Furthermore, these programs deter domestic violence victims from seeking help or leaving an abusive relationship because the risk of losing one's home is a barrier to seeking help. The police should not be putting victims of relationship violence in this position by evicting them for the actions of an abuser.

This program also affects other vulnerable groups who frequently use emergency services. Because most CFRHPs require landlords to evict tenants after there has been a certain number of police calls to a property, groups who call emergency services more often are more likely to be perceived as engaging in criminal activity and wrongfully evicted simply because they have more interactions with emergency

⁷⁴ Werth, *supra* note 7, at 8.

responders.⁷⁵ Municipalities, including Sunnyside, rarely evaluate the reason for or outcome of the calls to police, and in Sunnyside, there is no formal procedure on appealing an eviction notice. Thus, there is a higher risk of disparately targeting groups who require emergency services.⁷⁶

Sunnyside's CFRHP deters people requiring emergency services from seeking help, out of fear they will be evicted. This is counterproductive to the goal of reducing crime.⁷⁷ If victims are afraid to call the police out of fear they will be evicted, then public safety is not served. Allowing several municipalities to routinely undermine public safety is a matter of public concern, and the AG should be permitted to intervene in such cases.

VI. CONCLUSION

For the foregoing reasons, amicus respectfully requests the

⁷⁵ SMC 5.02.030, .040.

⁷⁶ *Id.*

⁷⁷ Nicole Livanos, *Crime-Free Housing Ordinances: One Call Away from Eviction* 19 PUB. INT. L. REP. 106, 107 (2014).

Court reverse the superior court and remand for further proceedings.

**VII. CERTIFICATE OF COMPLIANCE WITH RAP
18.17**

I certify that the word count for this motion, as determined by the word count function of Microsoft Word, and pursuant to Rule of Appellate Procedure 18.17, excluding title page, tables, certificates, appendices, signature blocks and pictorial images is 4,979 words.

RESPECTFULLY SUBMITTED this 6th day of January, 2023.

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CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2023, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 6th day of January, 2023 at Seattle, WA.

/s/ Shannon K. McKeon
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