NO. 1029926

SUPREME COURT OF THE STATE OF WASHINGTON

EIGHT IS ENOUGH LLC,

Petitioner,

v.

CYNTHIA OHLIG,

Respondent.

RESPONDENT CYNTHIA OHLIG'S ANSWER TO PETITIONER EIGHT IS ENOUGH LLC'S PETITION FOR REVIEW

Carrie Graf, WSBA #51999
Jason Kinn, WSBA #8810
NORTHWEST JUSTICE PROJECT
711 Capitol Way S., Suite 704
Olympia, Washington 98501
Tel. (360) 753-3610
Attorneys for CYNTHIA OHLIG

TABLE OF CONTENTS

Page

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

I. INTRODUCTION

Cynthia Ohlig asks this Court to deny Eight is Enough's *Petition for Review* ("*Petition*") because there is no conflict justifying review and because there is a substantial public interest in continuing to permit tenants to raise discrimination as a defense to evictions.

Tenants in Washington are entitled to raise discrimination as a defense to evictions and when they do, courts are obligated to consider it. *Josephinium v. Kahli*, 111 Wn. App. 617, 626, 45 P.3d 627 (2002); RCW 59.18.380; RCW 59.18.400. This is exactly what Ms. Ohlig did when facing eviction by her landlord, Eight is Enough. She told the trial court her landlord was targeting her out of all the other tenants living on the parcel because Ms. Ohlig had asserted her rights as a disabled individual and requested a support animal. Eight is Enough responded to her request by serving Ms. Ohlig with an eviction notice. The trial court refused to consider this defense and signed a writ on the basis that the eviction notice

complied with the technical requirements of the unlawful detainer statute.

On review, the Court of Appeals concluded the trial court erred by failing to consider Ms. Ohlig's discrimination defense. This was the correct application of Washington law, which has been settled since 2002, when the *Josephinium* court held that discrimination is a defense to an eviction when "discrimination is the reason for the eviction." *Id.* at 625. Eight is Enough attempts to manufacture a conflict justifying review by relying on the 1990 case, *Housing Authority of City of Everett v. Terry*. But *Terry* refused to consider the issue of whether tenants can raise discrimination defenses in evictions and dismissed the issue is moot. *Housing Authority of City of Everett v. Terry*, 114 Wn.2d 558, 570, 789 P.2d 745 (1990). As the Court of Appeals said in reviewing this case, Eight is Enough wants to "excuse…courts from ever addressing superficially valid evictions which are motivated by blatant discrimination, making a mockery of the WLAD's aim of 'elimination and

prevention of discrimination' in housing." *Opinion* at 13. The *Petition* should be denied.

II. STATEMENT OF THE CASE

Cynthia Ohlig rented a home from Petitioner Eight is Enough for approximately seven years. CP 7. Her home shared a parcel with three other homes, all also owned by her landlord. CP 57. She lived with her adult grandson, who helped care for her, and an emotional support animal, a dog named Hunni. CP 130. In early 2022, her landlord told her to get rid of her dog and that her grandson could no longer live with her. *Id.* Ms. Ohlig complied with her landlord's demand. CP 131. But, a few months later Ms. Ohlig gave her landlord a written reasonable accommodation request informing her landlord that she lived with disabilities and required a caretaker and emotional support animal. CP 51. She requested her landlord permit her grandson to move back in as a caretaker and permit Ms. Ohlig to get a new emotional support animal. *Id.*

Her landlord's response was to immediately verbally tell Ms. Ohlig that her reasonable accommodation request was "nonsense" and that she would raise Ms. Ohlig's rent and charge a pet deposit if Ms. Ohlig pursued having an animal. CP 131. Then, just five days after Ms. Ohlig made her request, her landlord served Ms. Ohlig with a notice terminating her tenancy. The notice alleged that Petitioner planned to sell the home. CP 15-16. But, of the four rental homes owned by Petitioner on the parcel, Ms. Ohlig was the only tenant to receive a lease termination notice. CP 51. The landlord never denied singling out Ms. Ohlig for eviction, and never offered the trial court any explanation whatsoever for why they were choosing to evict Ms. Ohlig but none of the other tenants.[1]

---

[1] The landlord for the first time in their *Petition*, tells a story, entirely unsupported by the record, explaining they singled out Ms. Ohlig because she alone of all the other tenants had a history of falling behind on rent and therefore prospective buyers would not want to purchase a home with her as a tenant. *Petition* at 4.7-4.8. However, none of this is in the record or was given as a reason for the eviction below. They gave no reason or justification at all to the trial court for why they had

The landlord filed an unlawful detainer action and a show cause hearing was held on November 18, 2022. Ms. Ohlig asserted as one affirmative defense that her landlord pursued the eviction because they did not want to accommodate her disability, in violation of the Washington Law Against Discrimination (WLAD) and Fair Housing Act (FHA). CP 39-40. In support of this defense, she pointed to the undisputed fact that her landlord gave the termination notice within mere days of receiving Ms. Ohlig's reasonable accommodation request, as well as the undisputed fact that her landlord was evicting only Ms. Ohlig out of all the other tenants renting homes on the parcel. CP 40, 51-52.

Contrary to Petitioner's blatant misrepresentation of the record, Ms. Ohlig raised discrimination as an affirmative defense, arguing that Eight is Enough's motivation for

---

singled out Ms. Ohlig for eviction. This entirely unsupported claim, clearly a *post hoc* attempt to justify what otherwise appears to be a discriminatory eviction, should be disregarded.

terminating her right to possession was illegal, and therefore they could not evict her. CP 39-40. She did not raise discrimination as a counterclaim, she did not seek any damages against Petitioner for discriminating against her. She only defended against the eviction and sought to remain in her home.

However, the trial court did not consider Ms. Ohlig's discrimination defense at all. The court granted the writ and judgment based solely on the facial validity of the notice and evidence of the landlord's intent to sell:

> THE COURT: I am going to grant the request for a writ of restitution and for judgment in this matter. It was clear that a 90-day notice of intent to sell was provided. It met all the requirements of the statute…Also, it's pretty clear from the evidence here and the declarations that have been provided that they have taken reasonable steps to sell the property … I think there's plenty of evidence to show an intent to sell there, so I'm going to grant the request.

RP 14-15.

Ms. Ohlig appealed and argued the trial court erred by refusing to consider her discrimination defense. The Court of

Appeals issued an unpublished ruling (the "*Ruling*" or the "*Opinion*") on March 4, 2024, holding that it was error for the trial court to refuse to consider Ms. Ohlig's discrimination defense and remanding the case for a hearing to consider the defense and, if Ms. Ohlig presents genuine issues of fact, set a trial. *Ruling* at 17. Eight is Enough filed a *Petition* seeking review of this holding on April 22, 2024.

In its *Petition*, Eight is Enough makes numerous allegations that are not found in the trial court record. Petitioner made many of the same unsupported allegations in their briefing to the Court of Appeals, to which Ms. Ohlig objected. *See Reply Brief* of Cynthia Ohlig, pg. 5. Most are repeated here, including the false assertion that Ms. Ohlig had already obtained a dog before requesting an accommodation. She had not.

Petitioner now makes new factual assertions, nowhere to be found in the record and not raised even to the appellate court, suggesting Petitioner was justified in targeting Ms. Ohlig

alone of all tenants on the parcel for eviction because she had fallen behind on rent whereas the other tenants had a "strong history of paying rent on timely" and therefore buyers would be willing to purchase their homes with the tenants remaining in them. *Petition*, pg. 5. None of this is in the record and the allegations should be disregarded.

III. ARGUMENT

A. The portion of the Court of Appeals' *Ruling* challenged by Petitioner aligns with well-established law permitting tenants to raise discrimination as an affirmative defense to an eviction

In 2002, the Court of Appeals undertook Washington's first direct judicial examination of the issue of whether discrimination is a defense to an eviction. *Josephinium*, 111 Wn. App. at 626. The court held that discrimination is a defense to evictions, one which courts *must* consider, so long as discrimination arises out of the tenant's right to possess the home. *Id.* That is, a court must consider a tenant's discrimination defense if either, as Ms. Ohlig alleges, discrimination is "the reason for the eviction" or if

discrimination excuses the breach upon which the eviction is based. *Id.* at 625. If the discrimination claim has nothing to do with the eviction, then it cannot be heard in the summary eviction proceeding. *Id. Josephinium* remains good law. *See e.g.*, *Kiemle and Hagood Company v. Daniels*, 26 Wn. App. 2d. 199, 221, 528 P.3d 834, 846 (2023) (*citing Josephinium* for the proposition that the failure to accommodate may be a defense to an eviction).

The *Ruling* challenged by Petitioner is simply a straightforward application of the holding in *Josephinium*. The trial court failed to even consider Ms. Ohlig's defense that discrimination motivated the eviction, and the Court of Appeals held this was error because a trial court is required to consider the defense. *Ruling* at 17. There is no conflict between the challenged ruling and *Josephinium*, and Petitioner does not allege *Josephinium* was decided wrongly. In the absence of a conflict justifying review, Petitioner creates the illusion of one by pointing instead to *Terry*, a case that predates *Josephinium*

and that explicitly declined to consider the issue of whether discrimination is a defense to evictions. *Terry,* 114 Wn.2d at 570.

It is deeply misleading of Petitioner to, under the guise of *Terry*, suggest that Washington law currently prohibits tenants from asserting discrimination as a defense to evictions. Our anti-discrimination laws have evolved since *Terry*. At the time *Terry* was decided, the Washington Law Against Discrimination (WLAD) did not require landlords to make reasonable accommodations, and the legislature only added this requirement in 1993. *See* Laws of 1993, ch. 69 § 5.

Three years after *Terry*, in 1993, the legislature amended the WLAD to create a landlord duty to provide reasonable accommodations for tenants when necessary to afford a tenant equal use and enjoyment of a home. *Id.*; RCW 49.60.222(2)(b). It was within this context that the Court of Appeals in 2002 directly engaged in a careful and thorough analysis of the issue of whether a tenant can raise discrimination as an affirmative

defense to an eviction. The court in *Josephinium* was unequivocal in its holding:

> The right to be free from discriminatory eviction is a substantive legal right, and ordinary civil remedies are unavailing in the face of a summary eviction proceeding. A landlord cannot simply decide to evict all tenants of color. If unlawful discrimination is the reason for an eviction, the defense certainly affects the tenant's right of possession.

Josephinium, 111 Wn. App. at 625. The appellate court's holding in Ms. Ohlig's case is perfectly in line with the holding in *Josephinium*. What Petitioner is actually urging this Court to do, under the guise of a fabricated conflict, is overturn *Josephinium*.

1. Petitioner bases the purported "conflict" on the false premise that Ms. Ohlig raised discrimination as a counterclaim. But she raised discrimination as an affirmative defense

Ms. Ohlig raised discrimination as an affirmative defense to the eviction, not a counterclaim.[2] CP 37. But Petitioner

[2] A party raises a counterclaim in order to seek affirmative relief and a demand for judgment. CR 8(a). A counterclaim requires a responsive pleading by the plaintiff. CR 12(a)(4). Ms. Ohlig did not raise discrimination as a counterclaim in

continues to insist, as they have throughout the appeal, on mischaracterizing her defense as a counterclaim. The Court of Appeals, in ruling for Ms. Ohlig, specifically rejected Petitioner's repeated distortion of the record:

> The landlord's primary argument in response, repeated in different ways throughout its briefs, is that Ohlig's discrimination defense is a mere counterclaim which is separate from the right to possession, and thus the court did not need to consider it. However, this argument is simply a misstatement of the well-reasoned holding in *Josephinium,* and a mischaracterization of how Ohlig presents her claims. Ohlig is not seeking damages in this action, merely the right of continued possession, which a retaliatory eviction does not extinguish. In turn, we hold that it was error for the trial court to fail to consider the discrimination defense at the show cause hearing.

Ruling at 12. Petitioner makes no effort now to address the fact that Ms. Ohlig plead discrimination as an affirmative defense and that the Court of Appeals explicitly ruled on Ms. Ohlig's appeal as a defense, not a counterclaim. It is obvious why

---

order to seek damages against her landlord. She raised it to defend against an eviction motivated by discrimination.

Petitioner continues with this misleading argument: it has been established law since 2002 that discrimination is an affirmative defense to an eviction, one which a trial court must consider. *Josephinium,* 111 Wn. App. at 626.

2. *Terry* is not in conflict with the Court of Appeals' *Ruling* because the *Terry* Court declined to consider the issue of whether discrimination may be raised as a defense

Petitioner relies on *Housing Authority of City of Everett v. Terry* for the proposition that a tenant may not raise failure to accommodate as a defense to an eviction, and that therefore the challenged decision is in conflict with *Terry*, a Supreme Court case. *Petition* at 13. But *Terry*, which predates *Josephinium*, explicitly declined to consider the issue of the tenant's discrimination defense because the issue was "moot" and the Court had already ruled the trial court lacked jurisdiction over the eviction, remanding the case for dismissal. *Terry*, 114 Wn.2d at 570. The court in *Josephinium* explained in detail why *Terry* does not prohibit tenants from raising discrimination defenses in unlawful detainer actions:

> The court did not consider Terry's discrimination claim, both because it was moot, and because "counterclaims may not be asserted in an unlawful detainer action." As authority for the latter statement, *Terry* relied on *Granat v. Keasler* and *Woodward v. Blanchett*, both of which involved counterclaims not germane to the right of possession. The *Terry* court undertook no further analysis, and there is no indication the court intended to overrule long-standing case law defining when defenses arise out of a tenant. Discrimination may be a defense that arises out of the tenancy. When it does, the statute permits a tenant to assert the defense and requires the court to consider it.

Josephinium, 111 Wn. App. at 626 (internal citations omitted).

Petitioner's only support for review is *Terry*, a case in which the court dismissed as moot the central question on appeal and that, to the extent it spent a few sentences discussing discrimination defenses, mischaracterized them as counterclaims and relied on inapposite cases. *Terry* is not applicable here, and does not sit in conflict with the Court of Appeal's holding in Ms. Ohlig's case.

3. The Court of Appeals' holding that the trial court was required to consider Ms. Ohlig's

discrimination defense was in line with *Josephinium*

Josephinium squarely addressed the issue in Ms. Ohlig's case:

> If unlawful discrimination is the reason for an eviction, the defense certainly affects the tenant's right of possession…presumably, a landlord may not escape an obligation to accommodate merely by serving a notice to vacate.

Id. at 625, 630. This is exactly what happened to Ms. Ohlig. She requested a reasonable accommodation to have a support animal and caregiver, something her landlord had already made clear they did not want her to have. CP 130-131. In response to her request, her landlord served her five days later with a notice terminating her tenancy. CP 50. Ms. Ohlig argued that her landlord sought to "escape an obligation to accommodate merely by serving a notice to vacate." *Id.* at 630.

When Ms. Ohlig presented evidence that "unlawful discrimination [was] the reason for the eviction," the court, as per *Josephinium*, was "require[d]…to consider it." *Id*. at 625. But, the court did not, and instead ordered issuance of a writ of

restitution based solely on the facial validity of the notice and the landlord's evident intent to sell the property.

Petitioner misrepresents *Josephinium* as limiting discrimination defenses to only those situations in which discrimination excuses the tenant's breach.[3] *Petition*, pgs. 18-19. But *Josephinium* explicitly held that discrimination is a defense in two situations. One situation is if discrimination excuses a tenant's breach. *Josephinium*, 111 Wn. App. at 625. But also, discrimination can be a defense if, as here, discrimination is the "reason for an eviction." *Id.* Again, it is clear why Petitioner engages in this misrepresentation. Petitioner needs to manufacture a conflict in order to obtain review by this Court. But the *Ruling* is directly in line with *Josephinium* and no conflict exists.

---

[3] For example, had Petitioner sought to evict Ms. Ohlig for having a dog in violation of the lease, Ms. Ohlig's defense that she was legally entitled to a dog as an accommodation would have excused her breach.

4. All other cases relied on by Petitioner are unpublished and therefore not a basis for review

Petitioner also grounds their argument in three unpublished opinions without citing to them as such. *SyHadley, LLC v. Smith,* 19 Wn. App. 2d 1017 (2021); *Housing Authority of Seattle, Wash. v. Johnson*, 92 Wn. App. 1042 (1998); *Eastside Mental Health v. Vervynck*, 93 Wn. App. 1061 (1999). Preliminarily, there are two problems with this. First, review may only be sought if there is a conflict with published Court of Appeals' decisions, not unpublished decisions. RAP 13.4(b)(2). Second, parties may cite to unpublished decisions as nonbinding authority only if the party indicates that the case is unpublished, and only if the court filed it on or after March 13, 2013. GR 14.1(a). Petitioner failed to cite to them as such, and two of the unpublished decisions Petitioner references, *Johnson* and *Vervynck* were issued prior to March 13, 2013.

Our courts have noted their strong disapproval of parties citing to unpublished cases without indicating they are

unpublished. *See Condon v. Condon*, 177 Wn.2d 150, 166, 298 P.3d 86 (2013). Courts have sometimes sanctioned parties for failing to indicate that even a single decision (let alone three) was unpublished. *See Dwyer v. J.I. Kislak Mortg. Corp.*, 103 Wn. App. 542, 548, 13 P.3d 240 (2002); *In re Marriage of Schnurman*, 178 Wn. App. 634, 645, 316 P.3d 514 (2013). Alternately, our courts have refused to consider unpublished cases when a party fails to cite them as such. *See Condon,* 177 Wn. 2d at 165-66; *Skamania County v. Woodall*, 104 Wn. App. 525, 536 n.11, 16 P.3d 701 (2011).

Further, GR 14.1 instructs courts not to cite or discuss unpublished decisions unless "necessary for a reasoned decision." GR 14.1(c). In this matter, published case law and statutes provide sufficient basis for this Court to reach a reasoned decision and the unpublished cases cited by Petitioner should be disregarded.

To the extent this Court does consider the unpublished cases relied on by Petitioner, they should be given little

persuasive value. *SyHadley LLC v. Smith* is central to Petitioner's argument, but the tenant there was *pro se* whereas the landlord was represented. *SyHadley*. It is likely the issues were not fully developed or adequately briefed.

Notably, *SyHadley* did not involve a discrimination defense. It has little bearing on how this Court should approach Petitioner's argument. The tenant in *SyHadley* raised a counterclaim for breach of quiet enjoyment, based on the landlord's failure to respond to other resident's racial harassment of the tenant. *Id.* at *4. The court considered whether the counterclaim of quiet enjoyment excused the tenant assaulting a different tenant, and determined it did not. *Id.* at *5.

SyHadley, like Petitioner, also ignores *Josephinium's* holding that tenants could not only raise discrimination defenses in situations when discrimination excuses the breach, but also in situations like Ms. Ohlig, where discrimination is the reason for the eviction.

As to the other two unpublished cases relied on by Petitioner, *Johnson* and *Vervynck*, both predate *Josephinium*. *Vervynck* refused to consider the tenant's appeal as moot. *Vervynck* at *2. *Johnson* perfunctorily recites *Terry* in order to conclude that the tenant was precluded from raising discrimination as a defense to an eviction. *Johnson* at *3. Neither case engaged in any meaningful analysis about the issue appealed here. These cases should not be considered.

B. There is a substantial public interest in ensuring tenants are not evicted for discriminatory reasons

Ms. Ohlig agrees with Petitioner that there is a public interest in maintaining the summary, expedited nature of eviction hearings. But that interest is not jeopardized by the challenged ruling. Even within their limited statutory scope of authority, courts are obligated to hear defenses affecting possession, which include a defense that the eviction was motivated by discriminatory reasons. RCW 59.18.380; RCW 59.18.400. Requiring a court to *consider* a discrimination defense at a show cause hearing (and setting the case for trial if

the tenant raises an issue of fact) no more violates the summary nature of the eviction process than requiring a court to consider any other "legal or equitable defense…arising out of the tenancy." *Id.*

The court in *Josephinium* has already engaged in a thorough analysis of this issue, one rooted in the unlawful detainer process and the WLAD, and concluded that even within the summary nature of eviction, tenants must be allowed to raise discrimination defenses when these are tied to possession. *Josephinium*, 111 Wn. App. at 625. It is worth noting that *Josephinium* framed this issue itself as one of continuing and substantial public interest. *Id.* at 622. This is in line from with the WLAD's mandate to prevent discrimination. RCW 49.60.010. Prohibiting a court from hearing such a defense undermines the substantial public interest in preventing housing discrimination. It must be emphasized that what Eight is Enough is asking, in the name of the public interest, is to give a green light to discriminatory evictions. So long as a landlord

can produce an eviction notice that on its face is statutorily compliant, then, according to Petitioner, it is irrelevant that the landlord's motive for evicting the tenant was illegal discrimination.

The obvious consequence of Petitioner's position is that landlords will be able to use the summary unlawful detainer process to do exactly what the law forbids: "escape an obligation to accommodate merely by serving a notice to vacate" or to "evict all tenants of color." *Id.* at 626, 630. Petitioner tries to mask this reality by claiming that a tenant who believes they are facing a discriminatory eviction can simply file an affirmative case and then seek an injunction to stop the eviction. But, *Josephinium* also already dispensed with the idea that a tenant can stop a discriminatory eviction by filing a regular civil lawsuit. "[O]rdinary civil remedies are unavailing in the face of summary eviction proceedings." *Id.* at 625.

The barriers, both practical and legal, facing a tenant trying to stop an eviction via an affirmative lawsuit are almost insurmountable. For one, even if they were to succeed in obtaining an injunction (which is extremely unlikely, as detailed below), both state and federal civil rules require that they pay a bond. CR 65(c); FCRP 65(c). This alone would prevent most if not all tenants from obtaining an injunction.

Furthermore, tenants facing eviction are likely low-income and without many, if any, alternative housing options. They may have as little as three days between receiving the eviction notice and the commencement of the eviction case, and then as little as seven days between service of the summons and the show cause hearing. It is almost impossible to imagine how in that timeline, under the threat of imminent homelessness, they are supposed to find an attorney willing to take their case, file an affirmative lawsuit and the extensive briefing and supporting evidence required to seek an injunction, and persuade a court to take the extraordinary action of potentially

enjoining a landlord from filing an eviction or halting an existing court action for the duration of a regular civil court process. They must meet the high standard for injunctive relief, demonstrating a likelihood of success on the merits, that they are likely suffer irreparable harm, and that the balance of equities tip in their favor. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008). They must do all this while also preparing for the unlawful detainer hearing itself and finding a new home.

Contrast this with the process for raising discrimination as a defense within the eviction case. Low-income tenants are entitled to an appointed attorney. RCW 59.18.640. They have the single task of defending against the eviction, without also needing to file an affirmative case and seeking an injunction. At the show cause hearing, the landlord must prove entitlement to possession by a preponderance of the evidence, and the tenant may obtain a trial by showing a genuine issue of material fact. RCW 59.18.380; *Webster v. Litz*, 18 Wn. App. 2d 248, 253-254, 49 P.3d 171 (2021). They do not need to pay a bond to

secure a trial. At the trial, if they prevail, the eviction is dismissed. The landlord is not prohibited from selling the home, as Petitioner contends, they can just sell it subject to the tenancy.[4]

There is a substantial public interest in preventing housing discrimination. Allowing a tenant to raise a discrimination defense to an eviction, upholds this interest. Requiring a tenant to instead file an affirmative case, seek injunctive relief and then pay a bond in order to prevent an eviction does not protect this interest. The public's interest here is best served by denying the *Petition*.

C. Washington courts have repeatedly affirmed that the unlawful detainer process is in derogation of the common law and must be strictly construed in favor of the tenant

Petitioner tries to shoehorn into their *Petition* a request for review of the well-established principle that the unlawful

---

[4] Petitioner now in fact claims that they could have done exactly this with the other homes on the parcel: sold them without first evicting the tenants. *Petition* at 5.

detainer laws are in derogation of the common law and therefore must be strictly construed in favor of the tenant. But it is unclear what public interest is at stake here justifying review, because Petitioner never explains this. Further, the *Ruling* does not rely on this principle to arrive at its holdings. The court merely mentioned it in passing, in the standard of review section. *Ruling* at 4.

Washington courts have repeatedly, and over the course of many decades, held that the unlawful detainer process is in derogation of the common law and must be strictly construed in favor of the tenant. *E.g. Wilson v. Daniels*, 31 Wn.2d 633, 643-644, 198 P.2d 496 (1948); *Terry*, 114 Wn.2d at 563–64; *Randy Reynolds & Associates, Inc. v. Harmon*, 193 Wn.2d 143, 156, 437 P.3d 677 (2019); *Hous. Auth. of City of Seattle v. Silva,* 94 Wn. App. 731, 734, 972 P.2d 952 (1999); *Daniels*, 26 Wn. App. 2d at 210. Petitioner suggests that the Washington Supreme Court invalidated the derogation of the common law doctrine in *Wichert v. Cardwell*, 117 Wn.2d 148, 812 P.2d 858 (1991).

Petitioner's Brief pg. 15. But the court in *Wichert* did no such thing. It instead simply cautioned that "thorough briefing and analysis" is required before a court "craft[s] a proper and meaningful principle of construction when a statute purports to change an identified common law rule." *Id.* at 155-156.

Terry provides the "thorough…analysis" required by *Wichert* of why the unlawful detainer process is in derogation of the common law and must be strictly construed. Unlawful detainer actions provide landlords with an expedited, summary process to regain possession of a tenant's home, one which does away with the "delays and expenses" provided by the normal civil process. *Terry,* 114 Wn.2d at 563-564. But when a landlord chooses to avail themselves of this expedited procedure, they must do so in a way that strictly complies with the unlawful detainer's statutory requirements, ensuring the tenant receives at least that bare minimum of due process before loss of their home. *Id.*

If Petitioner wants to overturn decades of precedent holding that the unlawful detainer statute must be strictly construed in favor of the tenant, Petitioner should have heeded the words of the *Wichert* court and provided thorough briefing and analysis of the issue. Reliance on cherry-picked quotes from a single case that analyzes an entirely different statute (RCW 4.28.080(14)) is far from enough to warrant changing a well-established rule of statutory construction.

IV. CONCLUSION

The Court of Appeals correctly ruled that the trial court erred by refusing to consider Ms. Ohlig's discrimination defense. This holding is in line with Washington law. There is no conflict justifying review of this issue. Additionally, the public interest is in, if anything, upholding the long-standing rule that tenants may assert discrimination defenses in evictions. Ms. Ohlig requests that this Court deny Petitioner's request for review.

CERTIFICATE OF WORD COUNT

Pursuant to RAP 18.17(b), I, Carrie Graf, counsel for Respondent Cynthia Ohlig, hereby certify that the word count for this brief is 4864 words, which does not include any appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images. This brief therefore complies with the rule, which limits a brief to 5000 words. I certify that I prepared this document in Microsoft Word, and that this is the word count Microsoft Word generated for this document.

Respectfully submitted,

Dated this 21st day of May, 2024

/s/ Carrie Graf
Carrie Graf, WSBA #51999
Attorney for Respondent Cynthia Ohlig

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this 21st day of May 2024, I caused to be delivered by E-service via the Washington State Appellate Courts' Portal, a true a correct copy of this ANSWER TO PETITION FOR REVIEW, addressed to the following:

Andrew P. Mazzeo
Attorney for Plaintiff/Respondent
Harbor Appeals and Law, PLLC
2401 Bristol Ct. SW, Suite C102
Olympia, WA 98502-6037
Phone: (360) 539-7156
Email: office@harborappeals.com,

SIGNED at Olympia WA, this 21st day of May, 2024.

/s/ Carrie Graf
Carrie Graf, WSBA #51999
Attorney for Respondent Cynthia Ohlig

NORTHWEST JUSTICE PROJECT

May 21, 2024 - 12:35 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,992-6
Appellate Court Case Title:	Eight Is Enough, LLC v. Cynthia Ohlig
Superior Court Case Number:	22-2-00853-7

The following documents have been uploaded:

- 1029926_Answer_Reply_20240521123434SC947583_2936.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer FINAL.pdf

A copy of the uploaded files will be sent to:

- J.C.KINN@GMAIL.COM
- drewteams@harborappeals.com
- jason.kinn@nwjustice.org
- office@harborappeals.com
- scottc@nwjustice.org

Comments:

Sender Name: Carrie Graf - Email: carrie.graf@nwjustice.org
Address:
711 CAPITOL WAY S STE 704
OLYMPIA, WA, 98501-1237
Phone: 206-707-0992

Note: The Filing Id is 20240521123434SC947583