NO. 1035969

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON BUSINESS PROPERTIES ASSOCIATION,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case concerns the constitutionality of an unusual, pandemic-era statute that expired in 2023. In an unpublished decision, the Court of Appeals aptly dismissed the appeal as moot and declined to reach the merits of Petitioner's claims. This case is still moot, and there is no need for this Court to revisit Washington Business Properties Association's (WBPA) claims now.

The statute at issue arose from an unprecedented confluence of events. Anticipating an influx of eviction proceedings following the end of then-Governor Inslee's statewide eviction moratorium, the Legislature enacted a temporary statute expanding the Eviction Resolution Pilot Program (ERPP). The ERPP statute was a time-limited measure designed to prevent unnecessary evictions by requiring landlords to participate in nonbinding mediation prior to filing an unlawful detainer action for nonpayment of rent.

The ERPP statute expired in 2023, and no legislator has introduced any bill to extend or replace it. Because appellate courts can no longer provide effective relief, the Court of Appeals appropriately dismissed the appeal as moot. As that court recognized, the substantial and continuing public interest exception to mootness does not apply; there is no indication that the Legislature will re-enact the challenged statute, and the fact-specific claims are not transferable to other contexts.

By the same token, this case does not meet the relevant criteria for review under RAP 13.4(b). The case presents neither significant constitutional issues nor issues of substantial public interest that should be determined by this Court. Accordingly, the State respectfully requests that the Court deny review.

II. COUNTERSTATEMENT OF THE ISSUES

1. Because the challenged statute expired in 2023, no court can provide effective relief. Is this appeal moot?

2. The Legislature may modify or eliminate causes of actions without infringing access to the courts. Having

established a framework for unlawful detainers, the Legislature imposed temporary preconditions for certain unlawful detainer actions. Did the ERPP statute violate litigants' right to access the courts?

3. The Legislature may delegate fact-finding authority to administrative agencies. The ERPP statute tasked Dispute Resolution Centers with determining whether landlords had satisfied the statute's mediation requirement. Did the statute impermissibly delegate legislative authority?

4. The Legislature does not encroach on the province of the judiciary when it imposes conditions on actions not yet before a court. The ERPP required landlords to attempt mediation before filing certain unlawful detainer actions. Did the ERPP invade the province of the judiciary?

5. This Court authorized superior courts to promulgate standing orders implementing the ERPP, and superior courts have statutory authority to enact rules for their own government.

Did the ERPP standing orders violate the separation of powers doctrine?

III. COUNTERSTATEMENT OF THE CASE

A. The Governor's Eviction Moratorium

In the early days of the COVID-19 pandemic, economic upheaval left many tenants unable to pay rent. To prevent mass evictions at a time when public health concerns required people to stay in their homes and avoid congregate settings, jurisdictions around the country enacted eviction moratoria.

In March 2020, then-Governor Inslee issued an emergency proclamation placing a moratorium on most residential evictions. Proclamation by Governor Jay Inslee, No. 20-19 (Wash. Mar. 18, 2020). The moratorium expired on June 20, 2021.[1] Proclamation by Governor Jay Inslee, No. 20-19.6 (Wash. Mar. 18, 2021).[2]

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[1] https://governor.wa.gov/sites/default/files/proclamations/20-19%20-%20COVID-19%20Moratorium%20on%20Evictions%20%28tmp%29.pdf

[2] https://governor.wa.gov/sites/default/files/proclamations/proc_20-19.6.pdf

B. The Eviction Resolution Pilot Program

1. The Supreme Court's general order

The expiration of the eviction moratorium necessitated additional measures to prevent a tsunami of evictions. In September 2020, prior to the expiration of the moratorium, this Court issued an order establishing an eviction resolution program. General Order No. 25700-B-639, *In re Statewide Response by Washington Courts to the COVID-19 Public Health Emergency* (Wash. Sept. 9, 2020).[3] In the order, the Court "recognize[d] the authority of superior courts in Washington to implement an eviction resolution program for litigants to participate in prior to the filing of an unlawful detainer action in court, and to take all necessary steps to support such a program, including . . . entering local orders and contracting with service providers." *Id*. The order explained that "effective implementation of an eviction resolution program requires that

[3] https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/EvictionsResolutionProgramAuthorizingOrder090920.pdf

superior courts have the authority to direct participation in the program prior to the filing of an unlawful detainer action to facilitate housing stability in their communities and to better manage dockets that are experiencing significant backlogs and resource shortages as a result of the COVID-19 pandemic." *Id*.

2. Engrossed Second Substitute Senate Bill 5160

Building on this foundation, the Legislature enacted Engrossed Second Substitute Senate Bill 5160, which further implemented the ERPP to stave off an eviction crisis following the termination of the eviction moratorium. *See* Engrossed Second Substitute S.B. 5160, 67th Leg., Reg. Sess. (Wash. 2021), *enacted as* Laws of 2021, ch. 115, § 7.

In its findings, the Legislature described the factual circumstances that precipitated the measure:

> [T]he COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington [S]tate with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce. Many of the state's workforce has been impacted by these layoffs and substantially reduced work hours and have suffered economic

> hardship, disproportionately affecting low and moderate-income workers resulting in lost wages and the inability to pay for basic household expenses, including rent. Hundreds of thousands of tenants in Washington are unable to consistently pay their rent, reflecting the continued financial precariousness of many renters in the state. . . . Because the COVID-19 pandemic has led to an inability for tenants to consistently pay rent, the likelihood of evictions has increased, as well as life, health, and safety risks to a significant percentage of the state's tenants.

Id., § 1.

The ERPP statute, former RCW 59.18.660 (2021),[4] directed the Administrative Office of the Courts (AOC) to contract with a Dispute Resolution Center (DRC) for each county to "facilitate the resolution of nonpayment of rent cases between a landlord and tenant before the tenant files an unlawful detainer action." Former RCW 59.18.660(1)-(2) (2021). It further required landlords to "secure a certification of participation with the eviction resolution program by the appropriate [DRC] before an unlawful detainer action for nonpayment of rent may be heard

[4] Attached as Appendix A.

by the court." *Id.* at .660(5). The statute did not impact other avenues for landlords to obtain relief, such as breach of contract actions and unlawful detainer actions for reasons other than nonpayment of rent.

Following the passage of Engrossed Second Substitute Senate Bill 5160, all 39 counties in Washington adopted ERPP standing orders. *See* CP 75-91. Some prescribed default deadlines or other timelines for DRCs to certify participation, and some expressly permitted courts to hear unlawful detainer actions without DRC certifications. *See id.*

The ERPP statute expired by its own terms on July 1, 2023. Former RCW 59.18.660(9). The Legislature did not consider legislation to extend the statute, nor has any legislator introduced legislation to replace or re-enact the statute.

C. Procedural History

Over a year after the ERPP statute took effect, WBPA filed suit. It took aim at subsections (2) and (5) of the ERPP statute—provisions requiring landlords to participate in pre-filing

mediation and obtain certification of participation—and asked the superior court to declare these provisions facially unconstitutional, enjoin enforcement of these provisions, and enjoin "enforcement of all 39 State ERPP 'Standing Orders' insofar as they preclude filing or consideration of an unlawful detainer case without DRC certification." CP 19.

The superior court granted the State's motion for judgment on the pleadings and denied WBPA's motion for partial summary judgment. CP 443-46. WBPA sought direct review by this Court, which denied WBPA's request.

While the appeal was pending, the statute expired. Accordingly, in an unpublished decision, the Court of Appeals dismissed the appeal as moot, reasoning that "the factors for reviewing moot controversies do not weigh in WBPA's favor." *Wash. Bus. Properties Ass'n v. State* (*WBPA*), No. 39988-5-III, 2024 WL 4380658, at *1-2 (Wash. Ct. App. Oct. 3, 2024) (unpublished).

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

The issues in the Petition are moot and satisfy neither RAP 13.4(b)(3) nor RAP 13.4(b)(4). The Court should deny review.

A. The Issues in the Petition Are Moot

This Court should deny review for the same reason the Court of Appeals dismissed WBPA's appeal: the expiration of the ERPP mooted the controversy.

Because the ERPP's statutory provisions are no longer in effect, this Court "can no longer provide effective relief," rendering this case paradigmatically moot. *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 602, 229 P.3d 774 (2010). With the expiration of the ERPP statute, both declaratory and injunctive relief are unavailable—there is no statute left to declare unconstitutional or enjoin. And WBPA does not seek

monetary relief, nor could it.[5] In short, the issues WBPA presents are purely hypothetical, and the Court of Appeals was right to dismiss the appeal. *See Silent Majority Found. v. Inslee*, 8 Wn.2d 1012 (2023) (unpublished) (dismissing appeal as moot where emergency proclamations at issue had been rescinded and state of emergency related to COVID-19 had ended); *Burke v. Barnes*, 479 U.S. 361, 363, 107 S. Ct. 734, 93 L. Ed. 2d 732 (1987) (expiration of legislation rendered case moot).

WBPA attempts to overcome this fatal deficiency by likening this case to *Gonzales v. Inslee*, in which this Court applied the exception to mootness for "'matters of continuing and substantial public interest.'" *Gonzales*, 2 Wn.3d 280, 289, 535 P.3d 864 (2023), *cert. denied*, 144 S. Ct. 2685 (2024) (citation omitted); *see* Pet. 20-21. But as the Court of Appeals correctly concluded, this case involves no such matters.

[5] There is no cause of action for damages based on constitutional violations. *See Reid v. Pierce County*, 136 Wn.2d 195, 213-14, 961 P.2d 333 (1998).

To determine whether a moot controversy falls within this exception, this Court considers "(1) whether the case is a matter of public concern or simply a private dispute, (2) the need for an authoritative determination to guide public officials in the future, (3) the likelihood of reoccurrence, and (4) the quality of the advocacy." *Gonzales*, 2 Wn.3d at 289. The Court of Appeals correctly applied these factors to dismiss the appeal as moot.

The public relevance of the issues and the likelihood of reoccurrence are minimal, because the Legislature is highly unlikely to re-enact the expired ERPP statute. As the Court of Appeals aptly noted, the ERPP arose within the context of a "once-in-a-century pandemic" and marked "the only time in our State's 135-year history that unlawful detainer actions have been conditioned upon a landlord's participation in mediation." *WBPA*, 2024 WL 4380658, at *2. Indeed, the ERPP was not only a creature of the pandemic but also a product of a highly unusual sequence of events: early in the pandemic, economic insecurity among renters coincided with the presence of a highly

transmissible disease that required people to stay in their homes and avoid congregate settings. These unprecedented conditions gave rise to then-Governor Inslee's eviction moratorium, the termination of which threatened to inundate courts facing pandemic-related "backlogs" with an "influx" of unlawful detainer proceedings. General Order No. 25700-B-639; *see also* Laws of 2021, ch. 115, § 1.

The remote possibility that this unprecedented, pandemic-era measure will take hold again in the future does not change the analysis. *Contra* Pet. 20. To determine whether the exception applies, courts consider whether an issue is likely to recur—not whether recurrence is conceivable. *See, e.g.*, *In re Marriage of Horner*, 151 Wn.2d 884, 892-93, 93 P.3d 124 (2004) (noting that "[i]ssues surrounding the interpretation of RCW 26.09.520 are *likely to recur* given the frequency of dissolution, joint custody, and relocation in today's society[ ]" (emphasis added)).

Not only is the ERPP unlikely to be reenacted, but the resolution of WBPA's claims would provide scant guidance in

other factual contexts. The issues in the Petition turn on the particulars of the expired ERPP statute and the roles and responsibilities it assigned to specific entities. *See* Pet. 2 ("RCW 59.16.660 [sic] blocks landlords from accessing courts until a third-party contractor has certified the landlord's participation in the eviction resolution pilot program."); *id*. at 3 (RCW 59.16.660 [sic] creates an eviction resolution program to be implemented by dispute resolution centers . . . and leaves it up to the Administration of Courts [sic] to establish rules and requirements."); *id*. at 4-5 (taking issue with certification by "non-judicial dispute resolution center"); *id*. at 5 (attacking superior court standing orders implementing ERPP).

In short, with the expiration of the ERPP, these issues are of little "public concern," and a resolution of WBPA's claims would do nothing to guide "public officials in the future." *Gonzales*, 2 Wn.3d at 289; *see WBPA*, 2024 WL 4380658, at *2 (suggesting that "judicial determination" would offer minimal

guidance to "policymakers" given the improbability of re-enactment).

This Court's decision in *Gonzales v. Inslee* is readily distinguishable. Whereas this case involves narrow questions specific to time-limited legislation, *Gonzales* concerned a much broader issue—the nature of the governor's emergency power—that is certain to arise again in other factual contexts. 2 Wn.3d at 289-90. As this Court explained in declining to dismiss that case on grounds of mootness,

> The power of the governor under the emergency statutes is a matter of public concern. Undoubtedly, our state will face crises again that will call for the use of emergency power. It is appropriate for this court to consider whether that power was used lawfully here to guide its use in the future.

Id. at 290. In stark contrast, "[g]iven the unlikelihood that the circumstances precipitating this measure will recur in our lifetimes," review of this case is unwarranted. *WBPA*, 2024 WL 4380658, at *2.

B. This Case Does Not Raise Significant Questions of Constitutional Law

WBPA argues that this case merits review under RAP 13.4(b)(3), which is reserved for cases involving "a significant question of law under the Constitution of the State of Washington or the United States." *See* Pet. 11-18. Not so.

1. Absent a published court of appeals decision or live controversy, the issues presented are insignificant

The absence of both a published court of appeals decision and a live controversy lessens the significance of the constitutional issues involved in this appeal.

Absent a binding appellate decision, there is no need for this Court to weigh in. *See* GR 14.1(a). In fact, since the Court of Appeals declined to reach WBPA's substantive claims, its decision did not yield even persuasive authority with respect to these claims, further diminishing the need for review. Nor should this Court accept review to address the Court of Appeals' non-binding ruling on mootness, as its ruling on that subject was consistent with settled law. *See supra*, section IV.A.

Moreover, review is unwarranted because this case does not present live constitutional questions. WBPA's constitutional claims are moot and have no continuing relevance in other contexts, because they turn on the specific features of the now defunct ERPP framework. Constitutional questions that are unlikely to have any future relevance cannot be said to be "significant." RAP 13.4(b)(3).

2. The ERPP did not infringe access to the courts, and this case is a poor vehicle for developing the law in this area

In asking the Court to accept review under RAP 13.4(b)(3), WBPA focuses heavily on its access to courts claim. This analysis is misguided, as this case is not an appropriate vehicle for developing the law on access to courts. *Contra* Pet. 11. In fact, because WBPA's access to courts claim finds no support in the law, it does not merit this Court's attention at all.

This case does not present a close question with respect to access to courts, obviating any need for guidance from this Court.

As detailed below, the Legislature acted well within its authority in enacting this measure. Because the ERPP fell squarely within constitutional bounds, this case would not require the Court to consider the outer contours of article I, section 10.

This Court employed similar reasoning in *Gonzales*, declining to "squarely examine the appropriate test for deprivations of the right to access the courts" where "even under the most stringent test, strict scrutiny, the governor's eviction moratorium survives." 2 Wn.3d at 298. That reasoning applies with even greater force here, because requiring landlords to participate in non-binding mediation prior to initiating an unlawful detainer action is *less* restrictive than temporarily prohibiting such actions altogether. In other words, if the eviction moratorium survived strict scrutiny, so too does the ERPP, and if *Gonzales* did not require this Court to identify the precise contours of the access to courts doctrine to resolve petitioners' access to courts claim, neither does this case.

Other considerations further suggest that this case is a poor vehicle for advancing the law on article 1, section 10. Without a live controversy, the parties lack a stake in the outcome of this litigation, inherently constraining the quality of advocacy. *See, e.g.*, *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984) (citing the "danger of allowing petitioners to litigate a claim in which they no longer have an existing interest[ ]"). In addition, should this Court accept review and reverse the decision below, the Court would lack the benefit of a Court of Appeals ruling on the merits of WBPA's claims. Finally, WBPA's *Gunwall* analysis first appeared in its reply brief in the Court of Appeals and thus was improperly preserved. *See Cowiche Canyon Conservancy v. Bosely*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3(c).

Not only is WBPA's access to courts claim a poor vehicle for advancing the law, but it is also plainly groundless, precluding the need for this Court's attention at all. This claim is at odds with settled law for at least three reasons.

First, a litigant's right to access to the courts does not exist in a vacuum, but rather, "access must be exercised within the broader framework of the law as expressed in statutes, cases, and court rules." *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 782, 819 P.2d 370 (1991). Here, the relevant legal framework is a statutory scheme allowing landlords to bring unlawful detainer actions. Having "created" unlawful detainer actions in the first instance, the Legislature "has the power (within constitutional limits) to limit, alter, or even completely eliminate" such actions. *Gonzales*, 2 Wn.3d at 300; *see* Pet. 4 (conceding the same). Accordingly, the Legislature acted well within its authority in temporarily modifying the unlawful detainer scheme to require landlords to attempt nonbinding mediation before pursuing unlawful detainers for nonpayment of rent. *See Gonzales*, 2 Wn.3d at 300-01 ("Since the legislature created all the rules concerning the content and timing of unlawful detainer actions, it can 'temporarily limit[] the filing of particular unlawful

detainer actions in the first instance.'" (quoting *In re Recall of Inslee*, 199 Wn.2d 416, 427, 508 P.3d 635 (2022))).

Indeed, this Court has held that the legislative abrogation of a remedy—even one available at common law—does not violate any right of access to the courts. *See Shea v. Olson*, 185 Wash. 143, 161, 53 P.2d 615 (1936) ("There is, therefore, no express, positive mandate of the Constitution which preserves such rights of action from abolition by the Legislature, even when acting under its police power.").

Second, the ERPP did not foreclose access to the courts because it merely delayed a landlord's ability to obtain one form of relief while leaving open multiple avenues to pursue relief. Such a delay is plainly constitutional. *See Sosna v. Iowa*, 419 U.S. 393, 410, 95 S. Ct. 553, 42 L. Ed. 2d 532 (1975) (statute requiring year of residency as precondition for divorce did not violate access to courts where the "claim [wa]s not total deprivation . . . but only delay[ ]").

During the pendency of the ERPP, landlords could participate in nonbinding mediation or simply await the expiration of the statute to pursue unlawful detainers for nonpayment of rent. They could pursue unlawful detainers for reasons other than nonpayment of rent. *See* RCW 59.12.030; former RCW 59.18.660(2) (applying ERPP to "facilitate the resolution of nonpayment of rent cases"). They could bring ejectment actions or treat unpaid rent as an enforceable action and sue on that obligation. In short, unlawful detainers for nonpayment of rent were not the only means for landlords and tenants to adjust their relationships. *See United States v. Kras*, 409 U.S. 434, 445, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973) (rejecting debtor's right-of-access claim because "bankruptcy is not the only method available to a debtor for the adjustment of his legal relationship with his creditors[ ]").

Third, the ERPP easily survives strict scrutiny. As noted, this Court upheld then-Governor Inslee's eviction moratorium against an article I, section 10 claim because it satisfied strict

scrutiny. *Gonzales*, 2 Wn.3d at 298. The same is true of the ERPP. Like the eviction moratorium, the ERPP "was narrow in scope, targeting evictions based on the failure to stay current on rent due to the enormous economic hardship caused by COVID-19." *Id*. at 299. Likewise, under the ERPP, "[t]enants were never relieved of the obligation to pay rent and landlords were not denied the right to enforce that obligation in court . . . ." *Id*. The ERPP statute also served a compelling purpose, encouraging landlords and tenants to address nonpayment of rent without resorting to eviction proceedings. *See* Laws of 2021, ch. 115, § 1.

This Court need not review WBPA's access to courts claim, much less use this case to advance the law in this area.

3. The ERPP did not delegate legislative powers

WBPA's non-delegation claim does not raise a significant question. Under the non-delegation doctrine, "[t]he Legislature is prohibited from delegating its purely legislative functions." *Diversified Inv. P'ship v. Dep't of Soc. & Health Servs*., 113 Wn.2d 19, 24, 775 P.2d 947 (1989). These "include the power to

enact, suspend, and repeal laws, and the power to declare general public policy." *Id*. at 24. The ERPP statute conferred none of these powers to DRCs or the AOC. *See* former RCW 59.18.660 (2021).

In contrast, the Legislature "'may delegate the authority to make decisions involving administrative or professional expertise'" and may grant "discretion . . . to an administrative agency when carrying out legislative duties[.]" *Associated Gen. Contractors of Wash. v. State*, 200 Wn.2d 396, 404-05, 518 P.3d 639 (2022) (citation omitted). As WBPA concedes, Pet. 16, the Legislature may "'delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.'" *Carstens v. De Sellem*, 82 Wash. 643, 650, 144 P. 934 (1914) (citation omitted).

The ERPP statute falls well within this rubric. Certification is not a quasi-judicial function, but rather, a paradigmatic "administrative power," the delegation of which

does not offend the constitution. *Keeting v. Pub. Util. Dist. No. 1 of Clallam Cnty*., 49 Wn.2d 761, 767, 306 P.2d 762 (1957).

The ERPP also satisfies the settled two-part test for the delegation of power to administrative agencies, which "requires only (1) that the Legislature must generally define what is to be done and who is to do it, and (2) that procedural safeguards must exist to control administrative abuse." *City of Auburn v. King County*, 114 Wn.2d 447, 452, 788 P.2d 534 (1990).

The ERPP statute specified "what [wa]s to be done and who [wa]s to do it"—the DRC was required to issue a certificate of participation. *Id.*; former RCW 59.18.660 (2021). It also satisfied the second prong because there were ample "procedural safeguards . . . to control administrative abuse." *Id.* at 452. Such safeguards need not be found within the text of the challenged statute. *Auto United Trades Org. v. State*, 183 Wn.2d 842, 861, 357 P.3d 615 (2015). Although DRCs were not themselves governmental entities, DRCs operated at the pleasure of the AOC, which held their contracts and safeguarded against abuse.

Former RCW 59.18.660(1) (2021). None of the ERPP standing orders prevented a landlord from going to court to challenge a DRC's failure to issue a certificate of participation, and some of the ERPP standing orders expressly permitted courts to hear such challenges. *Infra* at p. 31.

4. The ERPP did not encroach upon the authority of the judiciary

WBPA's claim that the ERPP invaded the power of the judiciary rests on a misunderstanding of settled authority.

WBPA relies on article IV, section 6, which defines the "jurisdiction of superior courts" to include "all cases at law which involve the title or possession of real property," among others. *See* Pet. 4-5. But "in no way" does this constitutional provision "purport to regulate or control the manner in which the courts shall exercise jurisdiction." *Daniel v. Daniel*, 116 Wash. 82, 84, 198 P. 728 (1921). To the contrary, regulating or controlling the "manner in which the courts shall exercise jurisdiction" is a "prerogative of the courts themselves, and of the lawmaking power"—a prerogative that the Legislature may

"lawfully exercise[] in any manner which the Constitution does not directly prohibit." *Id*. Here, the Legislature exercised that "prerogative" when it temporarily modified procedural requirements for certain unlawful detainer actions.

Nothing about that measure offended the Constitution. When the Legislature provides legal remedies that "'lessen[] occasions'" for courts to exercise their constitutional power, there is "'no encroachment upon the constitutional power of the courts[.]'" *Roon v. King County*, 24 Wn.2d 519, 525, 166 P.2d 165 (1946) (cleaned up).

WBPA cites *Blanchard v. Golden Age Brewing Co*., 188 Wash. 396, 63 P.2d 397 (1936) for the proposition that "the legislature cannot make the court's power depend upon the function of another official." Pet. 15. But in *Blanchard*, the Court recognized a "vital distinction between legislative abolition of causes of action and a legislative interference with the judicial processes respecting an *existing* cause of action." *Blanchard*, 188 Wash. at 419; *see also Shea*, 185 Wash. at 157 (explaining that

"[t]he power of a court is not invoked until a cause comes before it," and therefore, "[t]he judicial power is not affected merely because . . . a certain type of litigation is abolished[ ]").

This Court confirmed this distinction when it held that then-Governor Inslee's eviction moratorium did not invade the province of the judiciary because it "d[id] not limit what courts may do when an unlawful detainer action is filed, but rather, temporarily limit[ed] the filing of particular unlawful detainer actions in the first instance." *In re Recall of Inslee*, 199 Wn.2d at 427; *accord Gonzales*, 2 Wn.3d at 300-01. The same is true of the ERPP statute, which imposed pre-filing requirements on actions before they reached a court.

5. The ERPP standing orders did not violate the separation of powers doctrine

WBPA's separation of powers claim is likewise unavailing, as it was well within the authority of superior courts to adopt standing orders implementing the ERPP.

Courts have inherent power to issue rules regarding court procedures. *City of Fircrest v. Jensen*, 158 Wn.2d 384, 394,

143 P.3d 776 (2006); *accord Putman v. Wenatchee Valley Med. Ctr.*, 166 Wn.2d 974, 980, 216 P.3d 374 (2009). Additionally, under RCW 2.04.190:

> The supreme court shall have the power to prescribe, from time to time . . . the mode and manner of framing and filing proceedings and pleadings . . . and generally to regulate and prescribe by rule . . . the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior courts, and district courts of the state.

Thus, the Supreme Court had ample authority to promulgate General Order No. 25700-B-639, which "recognize[d] the authority of superior courts in Washington to implement an eviction resolution program for litigants to participate in prior to the filing of an unlawful detainer action in court, and to take all necessary steps to support such a program . . . ."

That order, in turn, authorized superior courts to promulgate ERPP standing orders. In addition, RCW 2.04.210 recognizes superior courts' "power to establish rules for their government supplementary to and not in conflict with the rules

prescribed by the supreme court." The orders established rules—not laws—concerning the eviction resolution program, and as such, easily fit within the courts' powers.

Review pursuant to RAP 13.4(b)(3) is not warranted.

C. This Case Does Not Involve Issues of Substantial Public Interest

WBPA's arguments under RAP 13.4(b)(4) fare no better. The public has no abiding interest in the legality of legislation that has long expired. *See* RAP 13.4(b)(4). Nor does the public have any interest in an abstract ruling that would have limited, if any, relevance in other factual settings. *See supra* section IV.A.

Ignoring the reality that the ERPP has expired, WBPA surveys "the history of humanity" to suggest that this case implicates "the most substantial public interest the Supreme Court could address." Pet. 18-19. But WBPA's fears are overblown, because this case is not about "clos[ing] access to courts" or "empower[ing] a private contractor to determine who gets that access[.]" *Id*. at 20. Rather, it is about something more mundane—a statute that required mere participation in

nonbinding mediation, after which the landlord was free to initiate an unlawful detainer action for nonpayment of rent. Former RCW 59.18.660 (2021). Under this statutory scheme, if a DRC failed to certify a landlord's participation, the landlord could challenge that failure in superior court. Indeed, many of the standing orders that superior courts adopted to implement the ERPP explicitly provided for such challenges.[6] In contrast, WBPA's portrayal of DRCs as rogue gatekeepers, with the authority to arbitrarily deny access to the courts, rests on isolated anecdotes and hypotheticals that have no place in a facial challenge. *See Portugal v. Franklin County*, 1 Wn.3d 629, 647, 530 P.3d 994 (2023).

Nor must this Court address "when the legislature can declare judicial outcomes a 'crisis.'" Pet. 19-20 (faulting the Legislature for characterizing the anticipated influx of evictions

[6] *See, e.g.*, Standing Order, No. 21-2-00002-04, at ¶ 2.C.(7), (Chelan Cnty. Super. Ct. Sept. 30, 2021), https://www.co.chelan.wa.us/files/superior-court/documents/SO%20-%20ERPP%20093021.pdf.

as a "crisis"). This policy determination fell squarely within the Legislature's authority.

V. CONCLUSION

This Court should deny review.

This document contains 4,989 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 16th day of January, 2025.

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CERTIFICATE OF SERVICE

I certify that I caused the foregoing to be electronically filed in the Washington Supreme Court and electronically served according to the Court's protocols for electronic filing and service upon all parties.

I further certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of January 2025, at Olympia, Washington.

s/ Cristina Sepe
CRISTINA SEPE, WSBA 53609
Deputy Solicitor General

West's Revised Code of Washington Annotated
Title 59. Landlord and Tenant (Refs & Annos)
Chapter 59.18. Residential Landlord-Tenant Act (Refs & Annos)

This section has been updated. Click here for the updated version.

West's RCWA 59.18.660

59.18.660. Eviction resolution pilot program *(Expires July 1, 2023)*

Effective: April 22, 2021 to June 30, 2023

(1) Subject to the availability of amounts appropriated for this specific purpose, the administrative office of the courts shall contract with dispute resolution centers as described under chapter 7.75 RCW within or serving each county to establish a court-based eviction resolution pilot program operated in accordance with Washington supreme court order no. 25700-B-639 and any standing judicial order of the individual superior court.

(2) The eviction resolution pilot program must be used to facilitate the resolution of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful detainer action.

(3) Prior to filing an unlawful detainer action for nonpayment of rent, the landlord must provide a notice as required under RCW 59.12.030(3) and an additional notice to the tenant informing them of the eviction resolution pilot program. The landlord must retain proof of service or mailing of the additional notice. The additional notice to the tenant must provide at least the following information regarding the eviction resolution pilot program:

(a) Contact information for the local dispute resolution center;

(b) Contact information for the county's housing justice project or, if none, a statewide organization providing housing advocacy services for low-income residents;

(c) The following statement: “The Washington state office of the attorney general has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at http://www.washingtonlawhelp.org”;

(d) The name and contact information of the landlord, the landlord's attorney, if any, and the tenant; and

(e) The following statement: “Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court.”

(4) At the time of service or mailing of the pay or vacate notice and additional notice to the tenant, a landlord must also send copies of these notices to the local dispute resolution center serving the area where the property is located.

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(5) A landlord must secure a certification of participation with the eviction resolution program by the appropriate dispute resolution center before an unlawful detainer action for nonpayment of rent may be heard by the court.

(6) The administrative office of the courts may also establish and produce any other notice forms and requirements as necessary to implement the eviction resolution pilot program.

(7) Any superior court, in collaboration with the dispute resolution center that is located within or serving the same county, participating in the eviction resolution pilot program must report annually to the administrative office of the courts beginning January 1, 2022, until January 1, 2023, on the following:

(a) The number of unlawful detainer actions for nonpayment of rent that were subject to program requirements;

(b) The number of referrals made to dispute resolution centers;

(c) The number of nonpayment of rent cases resolved by the program;

(d) How many instances the tenant had legal representation either at the conciliation stage or formal mediation stage;

(e) The number of certifications issued by dispute resolution centers and filed by landlords with the court; and

(f) Any other information that relates to the efficacy of the pilot program.

(8) By July 1, 2022, until July 1, 2023, the administrative office of the courts must provide a report to the legislature summarizing the report data shared by the superior courts and dispute resolution centers under subsection (7) of this section.

(9) This section expires July 1, 2023.

Credits
[2021 c 115 § 7, eff. April 22, 2021.]

OFFICIAL NOTES

Finding--Intent--Application--Effective date--2021 c 115: See notes following RCW 59.18.620.

West's RCWA 59.18.660, WA ST 59.18.660
Current with all legislation from the 2023 Regular and First Special Sessions of the Washington Legislature. Some statute sections may be more current, see credits for details

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SOLICITOR GENERAL OFFICE

January 16, 2025 - 4:44 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,596-9
Appellate Court Case Title:	WA Business Properties Association v. State of Washington
Superior Court Case Number:	22-2-02393-1

The following documents have been uploaded:

- 1035969_Answer_Reply_20250116164210SC493787_4773.pdf
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