

# **EXHIBIT A**

Honorable Richard A. Jones  
Honorable J. Richard Creatura

1  
2  
3 **IN THE UNITED STATES DISTRICT COURT**  
4 **FOR THE WESTERN DISTRICT OF WASHINGTON**  
5 **AT SEATTLE**

6 EL PAPEL, LLC; BERMAN 2, LLC;  
and KARVELL LI, an individual,

7 Plaintiffs,

8 v.

9 JAY R. INSLEE, in his official capacity as  
Governor of the State of Washington;  
10 JENNY A. DURKAN, in her official  
capacity as the Mayor of the City of Seattle; and  
THE CITY OF SEATTLE, a municipal  
Corporation,

11 Defendants.

No. 2:20-cv-01323-RAJ-JRC

**[PROPOSED] BRIEF OF AMICI CURIAE**  
**CITIES AND COUNTIES**

**NOTED ON MOTION CALENDAR:**  
October 21, 2020

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... i

SUMMARY OF ARGUMENT ..... 1

ARGUMENT ..... 2

    A. The Eviction Moratorium Promotes Public Health and Safety by Ensuring Residents Have  
        Stable Housing in Which to Social Distance and Shelter-in-Place..... 3

        1. Stay-at-Home and Social Distancing Guidance..... 4

        2. Homelessness..... 5

        3. Overcrowding ..... 6

    B. The Eviction Moratorium Promotes Public Health and Safety by Maintaining Economic  
        Welfare..... 8

CONCLUSION..... 12

**TABLE OF AUTHORITIES**

**CASES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

*Auracle Homes, LLC v. Lamont*,  
 No. 3:20-cv-0829 (VAB), 2020 U.S. Dist. LEXIS 141500  
 (D. Conn. Aug. 7, 2020) .....3

*Baptiste v. Kennealy*,  
 No. 1:20-cv-11335-MLW, 2020 U.S. Dist. LEXIS 176264  
 (D. Mass. Sept. 25, 2020) .....3

*Chong Yim v. City of Seattle*,  
 451 P.3d 694, 702 (Wash. 2019).....3, 8

*Elmsford Apt. Assocs., LLC et al. v. Cuomo*,  
 No. 20-cv-04062, 2020 WL 3498456 (S.D.N.Y. June 29, 2020).....3

*Exxon Corp. v. Governor of Md.*,  
 437 U.S. 117 (1978) .....8

*Friends of Danny Devito v. Wolf*,  
 227 A.3d 872 (Pa. 2020) .....3

*Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*,  
 546 F.3d 639, 648 (9th Cir. 2008).....2

*HAPCO v. City of Philadelphia*,  
 No. 20-3300, 2020 U.S. Dist. LEXIS 156327  
 (E.D. Pa. Aug. 27, 2020) .....3

*Jacobson v. Massachusetts*,  
 197 U.S. 11 (1905) .....2

*Kelley v. Johnson*,  
 425 U.S. 238 (1976) .....3

*Massachusetts Bd. of Ret. v. Murgia*,  
 427 U.S. 307 (1976) .....7

*Matorin v. Massachusetts*,

1 No. 20-CV-01334 (Mass. Sup. Ct. Aug. 26, 2020) .....3

2 *Pennell v. San Jose*,

3 485 U.S. 1 (1988) .....3

4 *San Francisco Apartment Ass’n v. City & Cty. of San Francisco*,

5 881 F.3d 1169, 1179 (9th Cir. 2018).....2, 3

6 *S. Bay United Pentecostal Church v. Newsom*,

7 590 U.S. \_\_\_, 140 S. Ct. 1613 (2020).....3

8 *Schnuck v. City of Santa Monica*,

9 935 F.2d 171 (9th Cir. 1991) .....3

10 *State v. Dexter*,

11 202 P.2d 906, 907 (Wash. 1949).....3

12 *Sylvia Landfield Trust v. City of Los Angeles*,.....4

13 729 F.3d 1189 (9th Cir. 2013)

**STATUTES, RULES AND OTHER AUTHORITIES**

14 Seattle, Wash., Resolution 31938 (Mar. 16, 2020).....1

15 Seattle, Wash., Ordinance 126075 (May 6, 2020).....1

16 Seattle, Wash., Ordinance 126081 (May 15, 2020).....1

21

1 SUMMARY OF ARGUMENT

2 At a moment of unprecedented crisis, state and local governments have been indispensable to  
3 the public health and economic response to the COVID-19 pandemic. Standing at a crucial  
4 cornerstone of health and welfare, and integral to that overall response, is housing security. Across  
5 America, state and local governments—through a variety of means, including legislative actions,  
6 executive orders, and judicial rules—have restricted or barred eviction proceedings during some or  
7 all of the current pandemic. Because of the critical role that eviction restrictions and other housing  
8 security measures will continue to play in our collective and long-term response to COVID-19, the  
9 City of Chicago, along with the Cities of Boston, Cambridge, Dayton, Gary, Los Angeles, Oakland,  
10 Olympia, Portland, Santa Cruz, Santa Monica, Seattle, St. Paul, Somerville, Tucson, and West  
11 Hollywood as well as Cook County, and Santa Clara County (collectively, “*Amici* Cities and  
12 Counties”), submit this brief as *amicus curiae* in opposition to the motion for preliminary injunction  
13 and in support of Defendants the City of Seattle, Governor Jay R. Inslee and Mayor Jenny A.  
14 Durkan.

15 *Amici* Cities and Counties address arguments in this case that have broad ranging  
16 implications for state and local governments across the country. In summation, all of Plaintiffs’  
17 arguments challenging Seattle, Wash., Resolution 31938 (Mar. 16, 2020), Seattle., Wash., Ordinance  
18 126075 (May 6, 2020), and Seattle, Wash., Ordinance 126081 (May 15, 2020) (together, the  
19 “eviction moratorium”) should be rejected by this Court. First, the eviction moratorium falls  
20 squarely within the City’s police power to promote public health, safety, and welfare during a  
21 pandemic and implicates no fundamental rights. The moratorium has done so by enabling residents  
to shelter in place and socially distance. Additionally, by maintaining the economic welfare of  
tenants, the moratorium protects individuals and neighborhoods against the dangers and risks

1 associated with evictions, including health and safety harms. These housing stability safeguards are  
2 crucial as a matter of both the public health and economic response to the current crisis.

### 3 ARGUMENT

4 The City of Seattle’s eviction moratorium falls well within the expansive police power  
5 authority granted to Washington cities to uphold public health and safety. Plaintiffs improperly  
6 import a least restrictive means test into the police power context and mischaracterize the  
7 governments’ interests as limited to preventing homelessness. Pls.’s Mot. for Prelim. Inj. 13-17,  
8 ECF No. 16 (Sept. 21, 2020). This framing completely fails to address the evidence that the  
9 moratorium rationally protects the health of all Seattle residents, including but not limited to  
10 individuals at high risk of becoming homeless. The public health evidence overwhelmingly  
11 demonstrates that access to stable housing is a crucial component of containing the novel  
12 coronavirus (“COVID-19”). Eviction moratoriums have a substantial relation to public health when  
13 they ensure that all tenants maintain this access.

14 In the seminal case of *Jacobson v. Massachusetts*, the U.S. Supreme Court upheld  
15 Massachusetts’s authority to enforce its compulsory vaccination law. 197 U.S. 11 (1905). The Court  
16 concluded that public health measures are constitutional so long as they demonstrate a “real or  
17 substantial relation” to the protection of public health. *Id.* at 30-31; *accord Golden Gate Rest. Ass’n*  
18 *v. City & Cty. of San Francisco*, 546 F.3d 639, 648 (9th Cir. 2008) (recognizing tradition of local  
19 and state responsibility for public health and upholding local healthcare services ordinance). Here,  
20 the eviction moratorium undoubtedly maintains a real and substantial relation to protecting the  
21 public health in the face of the COVID-19 pandemic by increasing housing stability and allowing  
Seattle to implement social distancing and quarantining measures.

1 The eviction moratorium, moreover, does not discriminate against members of a protected  
2 class nor implicate a fundamental right.<sup>1</sup> Because a limitation on the use of property does not  
3 implicate a fundamental right, it need only be rational. *See, e.g., Schnuck v. City of Santa Monica*,  
4 935 F.2d 171, 174 (9th Cir. 1991) (“Rent controls violate due process only if ‘arbitrary,  
5 discriminatory, or demonstrably irrelevant’ to a legitimate governmental purpose”) (quoting *Pennell*  
6 *v. San Jose*, 485 U.S. 1, 11 (1988)). As described in more detail below, Seattle’s eviction  
7 moratorium is rationally related to the City’s intertwined interests in protecting the health of its  
8 residents and promoting their economic security.

8 **A. The Eviction Moratorium Promotes Public Health and Safety by Ensuring**  
9 **Residents Have Stable Housing in Which to Social Distance and Shelter-in-Place**

9 Federal and Washington law require public health regulations to have a rational connection  
10 with the promotion of public health and safety. *See Kelley v. Johnson*, 425 U.S. 238, 247 (1976);  
11 *State v. Dexter*, 202 P.2d 906, 907 (Wash. 1949) (“The police power of a state is declared . . . to  
12 include all those regulations designed to promote the public convenience, the general welfare, the  
13 general prosperity, and extends to all great public needs, as well as regulations designed to promote  
14 the public health, the public morals, or the public safety”) (citations omitted).<sup>2</sup> The eviction

---

15 <sup>1</sup> Unless public health legislation impermissibly interferes with the “exercise of a fundamental right” or disadvantages a  
16 “suspect class,” courts under the Equal Protection and Due Process Clauses use rational basis review. *See, e.g.,*  
17 *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976). Both federal and Washington courts have found that  
landlords are not a protected class. *Sylvia Landfield Trust v. City of Los Angeles*, 729 F.3d 1189, 1191 (9th Cir. 2013)  
18 (“We apply rational basis review because landlords are not a protected class...”); *San Francisco Apartment Ass’n v. City*  
*& Cty. of San Francisco*, 881 F.3d 1169, 1179 (9th Cir. 2018) (same); *accord Chong Yim v. City of Seattle*, 451 P.3d  
19 694, 702 (Wash. 2019) (“Laws regulating the use of property are therefore not subject to heightened scrutiny”).

20 <sup>2</sup> Federal and state courts have upheld public health measures on this basis in the context of COVID-19, including  
eviction moratoriums. *S. Bay United Pentecostal Church v. Newsom*, 590 U.S. \_\_\_, 140 S. Ct. 1613, 1613-14 (2020)  
(Roberts, C.J., concurring); *Friends of Danny Devito v. Wolf*, 227 A.3d 872 (Pa. 2020) (holding that the Pennsylvania  
21 Governor could close all “non-life-sustaining” businesses by executive order); *Baptiste v. Kennealy*, No. 1:20-cv-11335-  
MLW, 2020 U.S. Dist. LEXIS 176264 (D. Mass. Sept. 25, 2020) (upholding eviction moratorium); *HAPCO v. City of*  
*Philadelphia*, No. 20-3300, 2020 U.S. Dist. LEXIS 156327 (E.D. Pa. Aug. 27, 2020 (same)); *Matorin v. Massachusetts*,  
Civil Action No. 20-CV-01334 (Mass. Sup. Ct. Aug. 26, 2020) (same); *Auracle Homes, LLC v. Lamont*, No. 3:20-cv-  
0829 (VAB), 2020 U.S. Dist. LEXIS 141500 (D. Conn. Aug. 7, 2020) (same); *San Francisco Apt. Ass’n v. City & Cty. of*  
*San Francisco*, No. CPF-20-517136 (Cal. Super. Ct., Cty. of San Francisco Aug. 3, 2020), appeal abandoned, No.  
A160924 (Cal. Ct. App. Oct. 1, 2020) (same); *JL Props. Grp. B, LLC v. Pritzker*, No. 20-CH-601 (12th Cir. Ct., Will  
Cty., Ill. July 31, 2020) (same); *Gregory Real Estate & Mgmt. v. Keegan*, No. CV2020-007629 (Super. Ct. of Ariz.



1 moratorium meets this standard by promoting public health in three distinct and critical ways: (1)  
2 ensuring efficacy of stay-at-home and social distancing guidance; (2) preventing homelessness; and  
3 (3) limiting housing overcrowding.

### 4 **1. Stay-at-Home and Social Distancing Guidance**

5 Eviction moratoriums promote public health and safety by ensuring that stay-at-home orders  
6 can reduce the spread of COVID-19. Stay-at-home orders work to stop the spread of COVID-19 by  
7 limiting contagious contact outside of homes and thus lowering the number of new people infected  
8 by each case.<sup>3</sup> States that implemented stay-at-home orders saw a 48.6% reduction in new cases after  
9 three weeks and a 59.8% reduction in weekly fatalities.<sup>4</sup> States that imposed stay-at-home orders  
10 also saw a reduction in the average number of new people infected by a person sick with COVID-19  
11 to less than one, a vital benchmark for successful suppression of the virus.<sup>5</sup> The reduction in spread  
12 happened because residents were able to stay at home, away from public transit and other public  
13 spaces.<sup>6</sup>

14 Eviction moratoriums play a crucial role in ensuring that stay-at-home orders are effective by  
15 preventing tenants from becoming homeless or relocating to overcrowded homes.<sup>7</sup> The economic  
16 downturn associated with the COVID-19 pandemic has increased the number of households at risk

---

17 Maricopa Cty. July 22, 2020) (same); *Elmsford Apt. Assocs., LLC et al. v. Cuomo*, No. 20-cv-04062, 2020 WL 3498456  
(S.D.N.Y. June 29, 2020) (same).

18 <sup>3</sup> James H. Fowler et al., *The Effect of Stay-at-Home Orders on COVID-19 Cases and Fatalities in the United States*,  
19 medRxiv, 1, 10-11 (May 12, 2020), <https://www.medrxiv.org/content/10.1101/2020.04.13.20063628v3.full.pdf>.

<sup>4</sup> *Id.* at 8.

20 <sup>5</sup> Juliette T. Unwin et al., *Report 23: State-level Tracking of COVID-19 in the United States*, Imperial College London, 9  
(May 28, 2020), <https://www.imperial.ac.uk/media/imperial-college/medicine/mrc-gida/2020-05-28-COVID19-Report-23-version2.pdf>.

21 <sup>6</sup> *Id.* at 4.

<sup>7</sup> See Declaration of Kathy Lofy, MD ¶ 19, ECF No. 31 (October 4, 2020), (State Health Officer and Chief Science  
Officer at the Washington State Department of Health stating that evicted tenants would move in with family or into  
other congregate settings, increasing in-person contacts and making COVID-19 transmission likelier.)

1 of eviction.<sup>8</sup> Even under normal circumstances, evictions cause substantial increases in both  
2 homelessness and overcrowding, as people lose their homes and either have no place to go or find  
3 shelter wherever they can.<sup>9</sup> With public and nonprofit housing assistance and other social services  
4 strained due to tight budgets and rising need, experts predict that if the eviction moratorium is lifted,  
5 increases in homelessness and overcrowding will be more severe than normal.<sup>10</sup> Homelessness and  
6 overcrowding will in turn increase the risk of both individual infection and uncontrolled outbreaks  
7 because individuals cannot effectively socially distance.

## 7 **2. Homelessness**

8 Homelessness increases the risk of infection and death caused by COVID-19. The Centers  
9 for Disease Control and Prevention (“CDC”) noted that observing their recommended precautions to  
10 avoid contracting COVID-19, such as avoiding public spaces and frequent handwashing, may be  
11 impossible for people experiencing homelessness.<sup>11</sup> Homelessness can create additional health  
12 problems and accelerate aging for those who experience it chronically, which places this generally  
13 older population at particularly high risk for severe illness and death from COVID-19.<sup>12</sup> In other  
14 states, as individuals experiencing homelessness crowd into shelters without resources to fully  
15 implement safe practices, these shelters have become hotspots for community spread, threatening the

---

16 <sup>8</sup> Declaration of Jim Baumgart ¶¶ 7, 12, 18, ECF No. 29 (Senior Policy Advisor for the Governor describing the impact  
the economic downturn has had on tenants’ ability to pay rent).

17 <sup>9</sup> Kimberly Skobba & Edward G. Goetz, *Mobility Decisions of Very Low-Income Households*, 15.2 *Cityscape: J. Pol’y  
Dev. & Res.* 155, 158 (2013).

18 <sup>10</sup> Jen Kirby, *America’s Looming Housing Catastrophe, Explained*, *Vox* (July 8, 2020),  
<https://www.vox.com/21301823/rent-coronavirus-covid-19-housing-eviction-crisis>.

19 <sup>11</sup> *People Experiencing Homelessness*, Ctrs. for Disease Control & Prevention (June 12, 2020),  
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html>.

20 <sup>12</sup> Dennis P. Culhane et al., *Estimated Emergency and Observational/Quarantine Capacity Need for the US Homeless  
Population Related to COVID-19 Exposure by County; Projected Hospitalizations, Intensive Care Units and Mortality*,  
Nat’l All. to End Homelessness, 2-5 (Mar. 27, 2020), [https://endhomelessness.org/wp-content/uploads/2020/03/COVID-  
paper\\_clean-636pm.pdf](https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf).

1 broader public health.<sup>13</sup> While shelters in Washington have implemented a range of COVID-19  
2 safety protocols to reduce spread, infection control remains very difficult and several Seattle  
3 homeless shelters have experienced spikes in COVID-19 outbreaks since August.<sup>14</sup>

### 4 **3. Overcrowding**

5 Overcrowding or “doubling up” of households in non-shelter housing presents similar risks.  
6 Multiple studies have found that neighborhoods with a higher proportion of overcrowded homes had  
7 higher rates of infection, with greater risks especially for the elderly living in close quarters with  
8 younger people.<sup>15</sup> These studies reinforce the data and other evidence submitted by the Defendants,  
9 which demonstrates that communities with higher percentages of overcrowding generally have had  
10 higher case infection rates.<sup>16</sup> Household members cannot effectively socially distance when they  
11 share common areas such as restrooms and may even share sleeping quarters. Essential workers in  
12 sectors with exposure to the general public, like food service and healthcare, also face  
13 disproportionate overcrowding, heightening the risk of overcrowding-related COVID-19 exposure to  
14 themselves, their households, and the community.<sup>17</sup>

---

14 <sup>13</sup> See, e.g., Vianna Davila, *Coronavirus Hot Spots in Texas Homeless Shelters Highlight Challenges Unsheltered  
Residents Face Social Distancing, Staying Clean*, Tex. Trib. (May 24, 2020),  
<https://www.texastribune.org/2020/05/24/texas-homeless-shelters-coronavirus-houston-austin-dallas/>.

15 <sup>14</sup> Scott Greenstone & Sydney Brownstone, *COVID-19 Spike in Seattle Shelter Amplifies the Many Uncertainties Facing  
King County’s Homeless in the Fall*, Seattle Times (Aug. 25, 2020), [https://www.seattletimes.com/seattle-  
news/homeless/covid-19-spike-in-seattle-shelter-amplifies-the-many-uncertainties-facing-king-countys-homeless-in-the-  
fall/](https://www.seattletimes.com/seattle-<br/>news/homeless/covid-19-spike-in-seattle-shelter-amplifies-the-many-uncertainties-facing-king-countys-homeless-in-the-<br/>fall/); see also Emily Mosites et al., *Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters — Four U.S.  
Cities, March 27–April 15, 2020*, 69 Mortality & Morbidity Wkly. Rep. 521 (May 1, 2020),  
17 <https://www.cdc.gov/mmwr/volumes/69/wr/mm6917e1.htm> (documenting outbreaks in three shelters in Seattle that  
infected 17% of residents and staff members).

18 <sup>15</sup> *COVID-19 Cases in New York City, a Neighborhood-Level Analysis*, NYU Furman Ctr. (Apr. 10, 2020),  
<https://furmancenter.org/thestoop/entry/covid-19-cases-in-new-york-city-a-neighborhood-level-analysis>; see also Lofy  
Dec., ¶¶ 18-19); Jackie Botts & Lo Bénichou, *The Neighborhoods Where COVID Collides with Overcrowded Homes*,  
19 CalMatters (June 12, 2020), <https://calmatters.org/projects/california-coronavirus-overcrowded-neighborhoods-homes/>.

20 <sup>16</sup> See Lofy Dec. ¶ 19.

21 <sup>17</sup> Marisol Cuellar Mejia & Paulette Cha, *Overcrowded Housing and COVID-19 Risk Among Essential Workers*, Pub.  
Pol’y Inst. of Cal. (May 12, 2020), [https://www.ppic.org/blog/overcrowded-housing-and-covid-19-risk-among-essential-  
workers/](https://www.ppic.org/blog/overcrowded-housing-and-covid-19-risk-among-essential-<br/>workers/).

1 As cases continue to rise nationally, experts also anticipate a “third wave” of community  
2 spread, even in states and localities that have significantly reduced the number of active COVID-19  
3 cases.<sup>18</sup> Since the beginning of October, case rates in King County have begun to spike for the third  
4 time, and the rate of hospitalizations in Washington has begun to rise again.<sup>19</sup> Low existing  
5 immunity in the general population and the contagiousness of the virus both make a resurgence more  
6 likely.<sup>20</sup> Even after rigorous shelter-in-place orders, New York City and the State of Wisconsin have  
7 re-imposed public health orders in response to community spread.<sup>21</sup> Local governments as service  
8 providers also have shifted resources to treat and prevent COVID-19 and influenza cases in the fall  
9 and winter.<sup>22</sup> Absent the maintenance of the eviction moratorium, a worsening public health crisis  
10 could accelerate as households are evicted just as COVID-19 cases begin rising again.<sup>23</sup> At increased  
11 risk of contracting and spreading COVID-19 due to homelessness or overcrowded housing, those

---

11 <sup>18</sup> David Wallace-Wells, *The Third Wave of the Pandemic Is Here*, N.Y. Intelligencer (Oct. 12, 2020),  
12 <https://nymag.com/intelligencer/2020/10/the-third-wave-of-covid-19-is-here.html>.

13 <sup>19</sup> *Daily COVID-19 Outbreak Summary*, King Cnty. Dep’t of Pub. Health (Oct. 15, 2020),  
<https://www.kingcounty.gov/depts/health/covid-19/data/daily-summary.aspx>; Ryan Blethen, *COVID-19 Cases Could be*  
*Creeping Up Across Washington*, Seattle Times (Sept. 30, 2020), [https://www.seattletimes.com/seattle-](https://www.seattletimes.com/seattle-news/health/covid-19-cases-could-be-creeping-up-across-washington/)  
[news/health/covid-19-cases-could-be-creeping-up-across-washington/](https://www.seattletimes.com/seattle-news/health/covid-19-cases-could-be-creeping-up-across-washington/).

14 <sup>20</sup> Tyler S. Brown & Rochelle P. Walensky, *Serosurveillance and the COVID-19 Epidemic in the US: Undetected,*  
*Uncertain, and Out of Control*, JAMA Network (July 21, 2020),  
15 <https://jamanetwork.com/journals/jama/fullarticle/2768835>.

16 <sup>21</sup> Gregory Barber, *New York Is Trying Targeted Lockdowns. Will It Stop a Second Wave?*, WIRED (Oct. 12, 2020),  
<https://www.wired.com/story/new-york-is-trying-targeted-lockdowns-will-it-stop-a-second-wave/>; Alison Durkee,  
*Wisconsin Judge Upholds Mask Mandate As Coronavirus Cases Surge*, Forbes (Oct. 12, 2020)  
17 [https://www.forbes.com/sites/alisondurkee/2020/10/12/wisconsin-judge-upholds-mask-mandate-as-coronavirus-cases-](https://www.forbes.com/sites/alisondurkee/2020/10/12/wisconsin-judge-upholds-mask-mandate-as-coronavirus-cases-surge/)  
[surge/ - 251433fb3821](https://www.forbes.com/sites/alisondurkee/2020/10/12/wisconsin-judge-upholds-mask-mandate-as-coronavirus-cases-surge/).

18 <sup>22</sup> *See, e.g., With COVID-19 Increasing Risk, Santa Clara County Offers Free Flu Shots*, CBS SF Bay Area (Sept. 17,  
2020) (expanding vaccination efforts), [https://sanfrancisco.cbslocal.com/2020/09/17/santa-clara-county-offering-free-](https://sanfrancisco.cbslocal.com/2020/09/17/santa-clara-county-offering-free-flu-shots-as-covid-19-increases-risk/)  
[flu-shots-as-covid-19-increases-risk/](https://sanfrancisco.cbslocal.com/2020/09/17/santa-clara-county-offering-free-flu-shots-as-covid-19-increases-risk/); Cyrus Moulton, *Worcester Health Officials Work to Ward Off COVID, Flu Season*  
*‘Twindemic’*, Telegram (Oct. 10, 2020), [https://www.telegram.com/news/20201010/worcester-health-officials-work-to-](https://www.telegram.com/news/20201010/worcester-health-officials-work-to-ward-off-covid-flu-season-twindemic)  
[ward-off-covid-flu-season-twindemic](https://www.telegram.com/news/20201010/worcester-health-officials-work-to-ward-off-covid-flu-season-twindemic).

19 <sup>23</sup> *See* Emily A. Benfer et al., *Public Health Amici Curiae Brief in Support of the Centers for Disease Control and*  
*Prevention Eviction Moratorium*, at 27-28 (Oct. 12, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3708504](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3708504)  
20 (lifting state eviction moratoriums associated with 2.1 times higher mortality and 1.5 times higher incidence of COVID-  
19).

1 evicted from their residences could spark new outbreaks and undermine Washington’s continuing  
2 efforts to address the pandemic.<sup>24</sup>

3 **B. The Eviction Moratorium Promotes Public Health and Safety by Maintaining**  
4 **Economic Welfare**

5 The eviction moratorium is also essential to maintaining the economic security of Seattle  
6 residents. The severe harms caused by the nearly unparalleled national economic crisis instigated by  
7 the pandemic imperil the public welfare of our communities. Even if the eviction moratorium is  
8 considered solely through the lens of economic regulation (rather than as a public health measure,  
9 which it is as well), state and local governments are still granted broad deference in review. *See, e.g.,*  
10 *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 125-26 (1978); *Yim v. City of Seattle*, 451 P.3d 694,  
11 702 (Wash. 2019) (“We have returned to the original constitutional proposition that courts do not  
12 substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to  
13 pass laws.”) (quotations omitted). Under the Washington Constitution, when cities exercise their  
14 police power to promote public welfare, “ordinances are presumed valid, and this presumption is  
15 overcome only by a clear showing of arbitrariness and irrationality.” *See Yim*, 451 P.3d at 702, 704.  
16 Given the scale of the economic crisis faced by Seattle and the rest of the country, and the  
17 devastating consequences of eviction on economic stability and public health and safety, a temporary  
18 eviction moratorium against cases that do not involve an imminent threat to health and safety during  
19 the emergency and a limited moratorium on nonpayment cases after the emergency lifts is an  
20 appropriate exercise of the City’s authority.  
21

---

24 *See* Lofy Dec., ¶34 (“While mitigation efforts in Washington State helped reduce the spread of COVID-19...cases have recently begun to rebound, likely due at least in part to the cooler fall weather leading people to spend more time indoors.”)

1 Our residents are struggling economically. Between February and April of this year, the  
2 national unemployment rate increased from a low of 3.5% to a peak of 14.7%.<sup>25</sup> Accounting for  
3 misclassified workers and workers who have left the workforce, the effective unemployment rate  
4 was likely still 11% in September, despite extraordinary measures taken by the federal, state, and  
5 local governments.<sup>26</sup> In March, Seattle experienced the largest year-to-year jump in unemployment  
6 rate of any city in the US,<sup>27</sup> and ultimately peaked in April with an unemployment rate of 16.1%.<sup>28</sup>  
7 Although the Seattle area's unemployment rate has decreased to 7.2% in September, it remains  
8 nearly double the unemployment rate in September 2019.<sup>29</sup>

9 Other indicators, such as rising food insecurity, further illustrate the economic peril that so  
10 many families across the country are facing right now. Nationally, enrollment in the Supplemental  
11 Nutrition Assistance Program (“SNAP” or “food stamps”) has increased by more than six million  
12 Americans since the beginning of the crisis,<sup>30</sup> while King County saw an 18% increase in enrollment  
13 the State's Basic Food program between January and June.<sup>31</sup> Food insecurity was the second most

---

13 <sup>25</sup> *Civilian Unemployment Rate*, U.S. Bureau of Lab. Stat., <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm> (last visited Oct. 13, 2020).

14 <sup>26</sup> Scott Horsley, *Fed's Jerome Powell Calls for More Economic Aid, Warning 'Weakness Feeds on Weakness'*, NPR (Oct. 6, 2020), <https://www.npr.org/2020/10/06/920770414/feds-jerome-powell-calls-for-more-economic-aid-warning-weakness-feeds-on-weakness>; Rakesh Kochhar, *Unemployment Rose Higher in Three Months of COVID-19 Than It Did in Two Years of the Great Recession*, Pew Res. Ctr. (June 11, 2020) (documenting peak of unemployment during Great Recession at 10.6%).

16 <sup>27</sup> Callie Craighead, *Report: Seattle has Biggest Year-to-Year Increase in Unemployment Rate of Any US City*, Seattle P-I (Apr. 30, 2020), <https://www.seattlepi.com/coronavirus/article/seattle-biggest-increase-unemployment-rate-in-us-15234851.php>.

17 <sup>28</sup> *Economy at a Glance: Seattle-Bellevue-Everett, WA*, U.S. Bureau of Lab. Stat. (Oct. 15, 2020), [https://www.bls.gov/eag/eag.wa\\_seattle\\_md.htm](https://www.bls.gov/eag/eag.wa_seattle_md.htm).

18 <sup>29</sup> *Monthly Employment Report*, Emp. Sec. Dep't (Sept. 2020), <https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/labor-market-info/Libraries/Economic-reports/MER/MER%202020/MER-2020-09.pdf>.

19 <sup>30</sup> Dottie Rosenbaum, *Boost SNAP to Capitalize on Program's Effectiveness and Ability to Respond to Need*, Ctr. on Budget & Pol'y Priorities (July 18, 2020), <https://cbpp.org/research/food-assistance/boost-snap-to-capitalize-on-programs-effectiveness-and-ability-to-respond>.

21 <sup>31</sup> *Increases in Food Needs in King County, WA Spring-Summer 2020*, King Cnty. Dep't of Pub. Health (Aug. 2020), [https://www.kingcounty.gov/depts/health/covid-19/data/impacts/~/\\_media/depts/health/communicable-diseases/documents/C19/food-insecurity-brief-report-august-2020.ashx](https://www.kingcounty.gov/depts/health/covid-19/data/impacts/~/_media/depts/health/communicable-diseases/documents/C19/food-insecurity-brief-report-august-2020.ashx).

1 common reason King County residents sought social services during the spring, and it persists as a  
2 problem.<sup>32</sup> Residents in our communities have lost their healthcare coverage, which places them at  
3 greater risk of further economic devastation should they fall ill.<sup>33</sup> Uninsured people may also face  
4 barriers in seeking medical care, hampering the broader public health response to the COVID-19  
5 pandemic.<sup>34</sup>

6 Finally, due to surging unemployment and other economic factors, 1 in 6 renters nationally  
7 reported that they were unable to pay their full September rent on time.<sup>35</sup> In September, less than  
8 60% of Seattle renters were highly confident that they would be able to pay rent in October.<sup>36</sup> One  
9 study estimates that up to 40 million renters nationwide could be at risk of eviction in the coming  
10 months<sup>37</sup>—up from estimates of around 20 million at risk in June.<sup>38</sup> These issues compound in a  
11 vicious cycle: for instance, while unemployment can cause difficulty in paying rent, housing  
12 insecurity also leads to job loss among low-income workers.<sup>39</sup> If left unaddressed, these intersecting  
13 crises will only accelerate the economic downturn.

---

13 <sup>32</sup> *Id.*

14 <sup>33</sup> Stan Dorn, *The COVID-19 Pandemic and Resulting Economic Crash Have Caused the Greatest Health Insurance  
15 Losses in American History*, Families USA (July 17, 2020), <https://www.familiesusa.org/resources/the-covid-19-pandemic-and-resulting-economic-crash-have-caused-the-greatest-health-insurance-losses-in-american-history/>.

16 <sup>34</sup> Jennifer Tolbert, *What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?*, Kaiser Fam.  
17 Fdn. (Mar. 16, 2020), <https://www.kff.org/coronavirus-covid-19/fact-sheet/what-issues-will-uninsured-people-face-with-testing-and-treatment-for-covid-19/>.

18 <sup>35</sup> Annie Nova, *Millions of Americans May Not be Able to Pay Their Rent in October*, CNBC (October 2, 2020),  
19 <https://www.cnbc.com/2020/10/02/millions-of-americans-may-not-be-able-to-pay-rent-in-october.html>.

20 <sup>36</sup> *Week 15 Household Pulse Survey*, U.S. Census (Oct. 7, 2020) (examine Table 2b and the “Seattle Metro Area” tab)  
21 <https://www.census.gov/data/tables/2020/demo/hhp/hhp15.html>; see also Baumgart, Decl. ¶8 (“By one estimate, up to  
789,000 Washingtonians are at risk of eviction by the end of 2020.”)

<sup>37</sup> Emily Benfer et al., *The Covid-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*, Nat’l  
Low Income Hous. Coal. (Aug. 7, 2020), [https://nlihc.org/sites/default/files/The\\_Eviction\\_Crisis\\_080720.pdf](https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf).

<sup>38</sup> Katherine Lucas McKay et. al., *20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate  
Widespread Hardship*, Aspen Inst. (June 19, 2020), <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/>.

<sup>39</sup> Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc.  
Problems 54, 59 (2016) (finding that forced moves, including evictions, increase the likelihood of job loss among low-  
income workers by 15 to 22 percentage points.)

1 *Amici* have particularly strong economic interests in keeping people housed during this crisis.  
2 Stable housing is associated with maintaining stable employment, which is especially important  
3 during a time when so many people are already at risk of losing their jobs.<sup>40</sup> Job loss and evictions  
4 compromise family savings, which in turn “put[s] pressure on city budgets” by increasing the  
5 likelihood that people turn to public benefits.<sup>41</sup> Cities will simultaneously lose revenue from unpaid  
6 utility bills and other revenue streams.<sup>42</sup> Temporary eviction moratoriums ensure local governments  
7 can direct limited resources toward the most vulnerable populations.

8 Confronted with this potential economic devastation, the City Council’s decision to impose  
9 an eviction moratorium is a reasonable and appropriately tailored regulation to ensure the economic  
10 stability and health and safety of the public. Numerous studies have found that evictions cause  
11 severe and negative health and safety impacts on affected households and their communities, with  
12 particularly pernicious effects on low-income communities and communities of color.<sup>43</sup> Evictions  
13 increase the likelihood of contact with the criminal justice system,<sup>44</sup> employment instability,<sup>45</sup>

---

13 <sup>40</sup> See Baumgart Dec., ¶ 7, 18 (“[M]ore than six times as many people [are] claiming unemployment benefits in Washington than there were a year ago,” reflecting job loss or curtailed employment hours).

14 <sup>41</sup> See, e.g., Signe-Mary McKernan, et al, *Thriving Residents, Thriving Cities: Family Financial Security Matters for Cities*, Urban Inst. (Apr. 21, 2016), <https://www.urban.org/research/publication/thriving-residents-thriving-cities-family-financial-security-matters-cities>; see also Rachel Garg et al., *Rent Requests Higher in States with Few Protections for Renters*, Wash. U. in St. Louis (documenting that requests for rental assistance have increased 92% in states with lower tenant protections and 68% in states with stronger protections since the pandemic began).

16 <sup>42</sup> Signe-Mary McKernan, *supra* note 41; For example, in 2019, the City of Chicago lost between \$68 million and \$157 million on evictions, unpaid property taxes, and unpaid utility bills. Diana Elliot and Cassandra Martincheck, *Chicago: The Cost of Eviction and Unpaid Bills of Financially Insecure Families for City Budgets*, Urban Inst. (Nov. 2019), <https://www.urban.org/sites/default/files/publication/101301/cost-eviction-chicago.pdf>.

18 <sup>43</sup> See Timothy A. Thomas et al., *The State of Evictions: Results from the University of Washington Evictions Project* (Feb. 17, 2019) (documenting racial disparities in evictions in King, Pierce, and Whatcom counties), <https://evictions.study/washington/results.html>.

19 <sup>44</sup> Aaron Gottlieb & Jessica W. Moose, *The Effect of Eviction on Maternal Criminal Justice Involvement*, 4 Socius: Socio. Res. Dynamic World 6-10 (2018).

20 <sup>45</sup> Matthew Desmond & Carl Gershenson, *supra* note 39, at 54–61.



1 maternal hardship and depression,<sup>46</sup> relocation to higher-poverty and higher-crime neighborhoods,<sup>47</sup>  
2 drug use,<sup>48</sup> and poor health, particularly for children exposed to toxins, stress, and other dangerous  
3 conditions resulting from homelessness or substandard, overcrowded housing.<sup>49</sup>

\* \* \* \*

4 Given the extensive public health and economic welfare impacts of a potential wave of mass  
5 evictions, and given the centrality of housing stability to the City’s public health response to  
6 COVID-19, the City of Seattle’s decision to temporarily halt nonpayment evictions was not only  
7 reasonable, but it was also the correct choice. An eviction moratorium is an effective means to  
8 promote public health and economic welfare during the ongoing global pandemic both because  
9 keeping people inside and housed curbs the spread of the virus, and because ensuring housing  
10 stability contributes to job retention and strengthens local economies. Accordingly, the eviction  
11 moratorium is reasonably tailored in duration and reach to support this crucial public purpose.

### 12 CONCLUSION

13 For all the foregoing reasons, and for the reasons provided in opposition by Defendants the  
14 City of Seattle, Governor Jay R. Inslee and Mayor Jenny A. Durkan, *Amici* Cities and Counties  
15 respectfully request that the motion for preliminary injunction be denied.  
16

---

17 <sup>46</sup> Matthew Desmond & Rachel T. Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 Soc. Forces 310-19 (2015).

18 <sup>47</sup> Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 Demography 1760–69 (2015).

19 <sup>48</sup> See, e.g., William Damon et. al., *Residential Eviction Predicts Initiation of or Relapse into Crystal Methamphetamine Use Among People Who Inject Drugs*, 41 J. Pub. Health 38-43 (2018); see also Ashley C. Bradford & W. David Bradford, *The Effect of Evictions on Accidental Drug and Alcohol Mortality*, 55 Health Serv. Res. 15-16 (2020).

20 <sup>49</sup> Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 Geo. J. Poverty L. & Pol’y 70-73 (2016).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

Respectfully submitted,

/s/ Darin Sands  
Darin Sands (WSBA # 35865)

Erin Bernstein, *pro hac vice pending*  
BRADLEY BERNSTEIN SANDS, LLP  
113 Cherry Street  
PMB 62056  
Seattle, WA 98104  
dsands@bradleybernsteinllp.com  
Tel: 503-734-2480

Jonathan B. Miller  
LiJia Gong  
Sophia TonNu  
PUBLIC RIGHTS PROJECT  
4096 Piedmont Avenue #149  
Oakland, CA 94611

*Counsel for Amici Cities and Counties*

Stephen J. Kane  
Rebecca Hirsch  
Affirmative Litigation Division  
CITY OF CHICAGO DEPARTMENT OF LAW  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602

*Counsel for the City of Chicago*

Dated: October 21, 2020

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

LIST OF ADDITIONAL COUNSEL

EUGENE L. O'FLAHERTY  
Corporation Counsel  
City Hall, Room 615  
Boston MA, 02201  
*Attorney for the City of  
Boston, Massachusetts*

NANCY E. GLOWA  
City Solicitor  
City of Cambridge  
795 Massachusetts Avenue  
Cambridge, MA 02139  
*Attorney for the City of  
Cambridge, Massachusetts*

JESSICA M. SCHELLER  
Chief; Advice, Business &  
Complex Litigation Division  
Cook County State's Attorney's Office  
500 Richard J. Daley Center  
Chicago, IL 60602  
*Attorney for Cook County, Illinois*

BARBARA J. DOSECK  
City Attorney  
101 W. Third Street  
P.O. Box 22  
Dayton, OH 45401  
*Attorney for the City of  
Dayton, Ohio*

RODNEY POL, JR.  
City Attorney  
401 Broadway, Suite 101  
Gary, IN 46402  
*Attorney for the City of  
Gary, Indiana*

MICHAEL N. FEUER  
City Attorney  
200 North Main Street,  
8th Floor  
Los Angeles, CA 90012  
*Attorney for the City of  
Los Angeles, California*

BARBARA J. PARKER  
City Attorney  
One Frank Ogawa Plaza,  
Sixth Floor  
Oakland, CA 94612  
*Attorney for the City of  
Oakland, California*

MARK BARBER  
City Attorney  
City of Olympia  
P.O. Box 1967  
Olympia, WA 98507-1967  
*Attorney for the City of  
Olympia, Washington*

TRACY REEVE  
City Attorney  
1221 SW Fourth Avenue  
Room 430  
Portland, OR 97204  
*Attorney for the City of  
Portland, Oregon*

LYNDSEY M. OLSON  
City Attorney  
400 City Hall and Courthouse  
15 West Kellogg Boulevard  
Saint Paul, MN 55102  
*Attorney for the City of  
Saint Paul, Minnesota*

1 JAMES R. WILLIAMS  
County Counsel  
2 70 W. Hedding Street,  
East Wing, 9th Floor  
3 San Jose, CA 95110  
*Attorney for the County of  
Santa Clara, California*

4 ANTHONY P. CONDOTTI  
City Attorney  
5 Atchinson, Barisone & Condotti  
P.O. Box 481  
6 Santa Cruz, CA 95061  
*Attorney for the City of  
Santa Cruz, California*

8 GEORGE S. CARDONA  
Interim City Attorney  
1685 Main Street, Third Floor  
9 Santa Monica, CA 90401  
*Counsel for the City of  
Santa Monica, California*

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

FRANCIS X. WRIGHT, JR.  
City Solicitor  
93 Highland Avenue  
Somerville, MA 02143  
*Attorney for the City of  
Somerville, Massachusetts*

MICHAEL RANKIN  
City Attorney  
P.O. Box 27210  
Tucson, AZ 85726  
*Attorney for the City of  
Tucson, Arizona*

MICHAEL JENKINS  
City Attorney  
Best Best & Krieger, LLP  
1230 Rosecrans Avenue, Ste 110  
Manhattan Beach, CA 90266  
*Attorney for the City of  
West Hollywood, California*