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Original Filed

JUL 21 2022

TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

WASHINGTON BUSINESS PROPERTIES
ASSOCIATION, a Washington Nonprofit
Corporation,

Plaintiff,

v.

STATE OF WASHINGTON

Defendant.

No. **22202393-32**

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

The above-named Plaintiff alleges and claims relief against the Defendant as follows:

I. INTRODUCTION

“The people have a right of access to courts; indeed, it is ‘the bedrock foundation upon which rest all of the people’s rights and obligations.’” *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 979, 216 P.3d 374 (2009). As the Director of the Washington Office of Civil Legal Aid wrote in the Seattle Journal for Social Justice, “the right to access to the courts is fundamental to our system of justice. Indeed, it is the right ‘conservative to all other rights.’”¹

¹ James Bamberger, *Confirming the Right to Meaningful Access to the Courts in Non-Criminal Cases in Washington State*, 4, SEATTLE J. FOR SOCIAL JUSTICE, 383, 383 (2005) (quoting *Chambers v. Baltimore & O.R. Co.*, 207 U.S. 142, 148, 28 S. Ct. 34 (1907)).

COMPLAINT-1

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1 For landlords², this right has historically meant that they could access the courts in unlawful
2 detainer cases, the purpose of which are “to provide an expedited method of resolving the right to
3 possession of property.” *Rental Hous. Ass’n. v. City of Seattle*, No. 8469-4-I, 2022 WL 2206107,
4 at *12 (Wash. Ct. App. June 21, 2022). Both the United States Supreme Court and Washington
5 Courts regard that right as a “fundamental attribute of property ownership.” *Id.* at *11; *see also*
6 *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 673, 119 S. Ct.
7 2219 (1999). Division 1 of the Washington Court of Appeals recently observed that the expedited
8 nature of unlawful detainer cases is important because

9 a tenant who cannot pay rent may be judgment proof and [an expedited proceeding]
10 allows the landlord to recover possession of the property before incurring extensive
11 damages. Without the ability to exercise their rights under the RLTA and unlawful
12 detainer statutes, the Landlords face the risk of never being able to recover the
13 unpaid rent, even after they are eventually able to evict the defaulting tenant.

14 *Rental Hous. Ass’n.*, 2022 WL 2206107, at *12.

15 In 2021, the Washington Legislature enacted the Eviction Resolution Pilot Program
16 (“ERPP”). Laws 2021, Ch. 115, § 7; RCW 59.18.660. ERPP prevents landlords from filing
17 unlawful detainer actions based on non-payment of rent and precludes courts from hearing such
18 actions unless the landlord first secures a certification of ERPP participation from a privately
19 operated extrajudicial State contractor – i.e., a Dispute Resolution Center (“DRC”).³ Stated

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27 ² Most landlords are individuals who own just a few units. *See* U.S. Census Bureau, *Rental*
28 *Housing Finance Survey (RHFS) 2018 National Property Configuration* (updated Jan. 27, 2022),
29 <https://www.census.gov/data-tools/demo/rhfs/#/>.

30 ³ “The eviction resolution pilot program **must** be used to facilitate the resolution of nonpayment
31 of rent cases between a landlord and tenant **before the landlord files an unlawful detainer**
32 **action.**” RCW 59.18.660(2) (emphasis added). “A landlord **must** secure a certification of
33 participation with the eviction resolution program by the appropriate dispute resolution center...”
34 RCW 59.18.660(5) (emphasis added).

1 another way, by legislative enactment, the State deputized private contractors to decide if and when
2 landlords can access this State's courts. To make matters worse, the Legislature left undefined the
3 bases upon which the DRCs are to issue certifications of participation, leaving the DRCs with
4 nearly unfettered discretion to grant or withhold keys to the courthouse.
5

6
7 The constitutional deficiencies in the ERPP legislation, as further described herein, have
8 caused and continue to cause irreparable harm to Washington landlords who experience delays of
9 six months (or longer) before the DRCs issue certification. During these pre-suit delays, Landlords
10 are deprived of access to their real property without meaningful legal remedy. These delays hurt
11 tenants as well; rent balances, which may have otherwise been resolved or minimized through a
12 court-supervised process, are left to grow unchecked during ERPP, sometimes swelling into the
13 tens of thousands of dollars. Such large rent balances make agreed repayment resolutions
14 impracticable if not impossible. The combined fallout bears upon all Washingtonians' access to
15 affordable and stable rental housing.
16
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19

20 This lawsuit asks the Court to immediately suspend enforceability and declare
21 unconstitutional sections 2 and 5 of the Laws of 2021, Chapter 115, now codified at RCW
22 59.18.660(2) and (5).
23

24 II. JURISDICTION AND PARTIES

25
26 1. Plaintiff is a non-profit association whose members include landlords in
27 Washington State, and more specifically, Spokane County.
28

29 2. The purpose of the Plaintiff association is, in part, to protect property rights and the
30 creation of residential housing. The claims asserted herein implicate the association's purpose.
31

32 3. The members of Plaintiff association have standing to sue in their own right.
33

1 4. Plaintiff is within the zone of interest that the Washington State Constitution
2 protects.

3
4 5. Defendant is the State of Washington.

5
6 6. Actions and inactions of subdivisions of the State of Washington, including those
7 complained of herein, are imputed to the State.

8 7. RCW 7.24.010 gives this Court jurisdiction and power to issue the declaratory relief
9 requested herein.

10
11 8. Venue is correct in Spokane County under RCW 4.92.010.

12
13 **III. FACTS**

14
15 9. On April 21, 2021, Engrossed Second Substitute Senate Bill 5160 passed the Senate
16 and was sent to the governor for a signature.

17 10. On April 22, 2021, the Governor vetoed sections 12 and 13 of Engrossed Second
18 Substitute Senate Bill 5160. The un-vetoed sections became Laws of 2021, Chapter 115.

19
20 11. Laws of 2021, Chapter 115 sec. 7 proposed a new "Eviction Resolution Pilot
21 Program."

22
23 12. The Laws of 2021, Chapter 115 sec. 7(2) require a landlord to use the eviction
24 resolution program "to facilitate the resolution of nonpayment of rent cases between a landlord
25 and tenant before the landlord files an unlawful detainer action."

26
27 13. The Laws of 2021, Chapter 115 sec. 7(5) require a landlord to "secure a certification
28 of participation with the eviction resolution program by the appropriate dispute resolution center
29 before an unlawful detainer action for nonpayment may be heard by the court."

30
31 14. These laws have been placed in the Revised Code of Washington as RCW
32 59.18.660(2) and RCW 59.18.660(5). RCW 59.18.660 is referred to herein as "ERPP."

33 COMPLAINT-4

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2 15. ERPP does not limit its reach to cases where the tenant has been impacted by
3 COVID-19; rather, ERPP is mandatory and applied in all unlawful detainer cases based on non-
4 payment of rent.

5
6 16. On September 9, 2020, the Washington Supreme Court issued Order No. 25700-B-
7 639 "ORDER AUTHORIZING EVICTION RESOLUTION PROGRAM IN SUPERIOR
8 COURTS" which was expressly predicated on the then existing states of emergency at both the
9 State and Federal level as a result of the COVID-19 pandemic.

10
11 17. Washington Supreme Court Order No. 25700-B-639 "recognize[d] the authority of
12 Superior Courts in Washington to implement an eviction resolution program for litigants to
13 participate in prior to the filing of an unlawful detainer action in court, and to take all necessary
14 steps to support such a program, including but not limited to, entering local orders and contracting
15 with service providers."
16

17
18 18. The aforementioned Order issued by Washington's Supreme Court did not adopt
19 any rules abrogating the Court Rules, including CR 3, CR 8, or CR 11.

20
21 19. The aforementioned Order issued by Washington's Supreme Court does not
22 authorize the Legislature to require that landlords obtain DRC certification of participation in
23 ERPP prior to filing an unlawful detainer action for nonpayment of rent.

24
25 20. The aforementioned Order issued by Washington's Supreme Court does not
26 authorize the Legislature to require that landlords obtain DRC certification of participation in
27 ERPP prior to any Washington Court hearing an unlawful detainer action for nonpayment of rent.

28
29 21. All 39 Washington counties have adopted a "Standing Order" pursuant to ERPP.

30
31 22. As of this writing, and based on the Orders published by the Washington Court's
32 website, all 39 Standing Orders require a landlord to secure certification of ERPP participation as
33 a condition precedent to filing a suit for unlawful detainer based on a tenant's failure to pay rent.

34
COMPLAINT-5

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1
2 23. ERPP obligates the Administrative Office of the Courts to contract with DRCs. The
3 ERPP then empowers the DRCs to issue or withhold certifications of participation.

4 24. The DRC agents making decisions to issue or withhold certifications are not judges,
5 legislators, or administrative officers.
6

7 25. DRCs are generally enabled by RCW 7.75 et seq. Therein, State subdivisions are
8 prohibited from allowing a DRC to operate except where procedures are in place to “ensure that
9 participation by all parties is *voluntary*.” RCW 7.75.020(2)(emphasis added).
10

11 26. Landlord participation with DRCs as part of ERPP is *involuntary* in that landlords
12 may not access Washington courts in non-payment of rent cases without DRC certification.
13 Therefore, DRC action related to ERPP is *ultra vires*, and State subdivision action to approve and
14 permit DRC operations in connection with ERPP is unlawful.
15

16 27. ERPP does not define the facts or circumstances under which a landlord becomes
17 entitled to a certification of participation. Rather, ERPP and all 39 Standing Orders charge local
18 DRCs with the obligation to issue or withhold certifications of participation without defining
19 standards by which DRCs are to decide whether a landlord has adequately participated. In this
20 way, the Legislature has violated the non-delegation doctrine in that DRCs are performing the
21 legislative function of deciding who can go to court and who cannot, all without clearly demarcated
22 standards to guide their work.
23
24

25 28. Standing Orders from the following Counties are bereft of any timelines to define
26 when a certification of participation must issue: Benton, Franklin, Grays Harbor, King, Klickitat,
27 Mason, Pacific, Skamania, Thurston, Wahkiakum, and Whatcom.
28

29 29. Standing Orders from the following Counties merely command that DRCs act
30 “promptly” without defining what promptly means: Cowlitz, Grant, Jefferson, Lewis, and
31 Spokane.
32

33 COMPLAINT-6

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1
2 30. Standing Orders from the following Counties fail to specifically empower judges
3 to retain jurisdiction and afford appropriate remedies and judicial relief where the landlord can
4 prove that he or she participated in ERPP but that the DRC failed to issue certification: Clark,
5 Cowlitz, Grays, King, Klickitat, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston,
6 Wahkiakum, Whatcom, and Yakima.
7

8 31. 30 of the State's 39 Standing Orders empower judges to sanction landlords who fail
9 to secure a certification of participation from the local DRC before filing an unlawful detainer suit
10 based on non-payment of rent.
11

12 32. None of the Standing Orders adopted in any of Washington's 39 Counties were
13 issued in compliance with the necessary prerequisites for the Courts to promulgate Local Court
14 Rules.
15

16 33. All 39 Standing Orders violate the separation of powers doctrine in that Courts have
17 been left to legislate from the bench due to the ERPP's failure to define any ERPP standards or
18 rules.
19

20 34. Without legislative guidance, operative Court Rules issued by the Supreme Court,
21 or administrative regulations, private DRCs are left with discretion to decide if and when a landlord
22 can access Washington's courts in cases where a residential tenant fails to pay rent.
23

24 35. Despite full participation by landlords, DRCs have, without legal basis or authority,
25 withheld certifications of participation for periods of six months or more.
26

27 36. Confronted with these failures to take timely action, DRCs explain that they are
28 without resources that would otherwise allow them to do their work. DRCs' failure to take timely
29 action, *ultra vires* conduct (and State subdivision endorsement of the same), deprive landlords
30 from their right to an "expedited method of resolving the right to possession of property."
31
32

1
2 **IV. ENTITLEMENT TO DECLARATORY RELIEF**

3 37. A landlord may condition the tenant's right to possession on the payment of rent.
4 This right existed at the common law, and the Legislature has preserved this right in residential
5 rent agreements per RCW 59.18.283.
6

7 38. Short of a tenant's abandonment, a landlord's right to repossess residential real
8 property is dependent on a Superior Court order issuing a writ of restitution of the premises.
9

10 39. At common law, a landlord could pursue an action for possession of the property
11 under ejectment with its attendant delays and expenses.

12 40. The Legislature created unlawful detainer statutes in derogation of the common
13 law.
14

15 41. Unlawful detainer statutes were created as summary proceedings designed to hasten
16 the recovery of the landlord's possession of the property.

17 42. Under the law, if the tenant is given a 14-day notice to pay rent or surrender the
18 premises, and the tenant neither surrenders the property nor pays the rent, then the tenant becomes
19 liable for unlawful detainer.
20

21 43. A residential tenant may be evicted for cause if, after the service of a 14-day notice
22 to pay rent or surrender the property, the tenant remains in possession without curing the rent
23 default.
24

25 44. The landlord has existing rights to possess their real property if rent is not paid
26 within 14 days of the notice of deficiency.
27

28 45. The landlords' rights to possession of their real property are direct and substantial.
29

30 46. Any determination on the constitutionality of ERRP will be final relief that
31 extinguishes this dispute.
32

1 **A. Declaratory Relief—ERPP Violates Washington’s Constitutional Delegation of**
2 **Judicial Power to the Superior Courts.**

3 47. Washington’s Constitution vests all judicial power in the courts. The jurisdiction
4 of these courts is universal, covering the whole domain of judicial power.

5
6 48. Washington’s Constitution, Article IV sec. 6 provides that the Superior Court shall
7 have original jurisdiction in all cases at law which involve the title or possession of real property.
8

9 49. Under Washington’s Constitution, only the Legislature may create courts.

10 50. The Legislature only has the power to create courts inferior to Superior Courts.

11 51. The Legislature cannot delegate its power to create inferior courts to others.

12 52. When a landlord enters a lease, the landlord gives possessory rights to the tenant.
13
14 These possessory rights are governed by the contract and statutory law.
15

16 53. An unlawful detainer action is a proceeding which relates only to real estate. It
17 decides possession of the property between private parties, a landlord and a tenant.
18

19 54. ERPP requires a landlord who brings an unlawful detainer action for nonpayment
20 of rent to acquire a certification from “the appropriate dispute resolution center” before the
21 Superior Court can hear the case.
22

23 55. The certification constitutes a decision that the landlord has complied with ERPP.

24 56. The decision to issue certification is a judicial function and not merely an
25 administrative function.
26

27 57. The DRCs are created and operated by municipalities, counties, or corporations.

28 58. The DRCs are not courts created by the Legislature.

29 59. The legislation upon which DRCs exist does not authorize DRCs to serve in a
30 compulsory process, such as that required by ERPP. DRCs are authorized for the limited purpose
31
32

1 of “providing forums in which persons may **voluntarily participate** in the resolution of
2 disputes...” RCW 7.75.010(1)(b) (emphasis added); *see also* RCW 7.75.020(2)(d) (“A plan for a
3 dispute resolution center shall not be approved and the center shall not begin operation until the
4 legislative authority finds that the plan adequately prescribes: [...] Procedures which ensure that
5 **participation by all parties is voluntary**”) (emphasis added).
6

7
8 60. ERPP is not a voluntary process. The State and its subdivisions are, therefore
9 permitting, DRCs to operate beyond the DRCs’ enabling act.
10

11 61. The certification requirement of ERPP unconstitutionally gives non-court entities
12 judicial functions.
13

14 62. The certification requirement of ERPP unconstitutionally limits the power and
15 jurisdiction of Superior Courts to hear cases involving the possession of the landlord or tenant’s
16 property when the issue involves the nonpayment of rent.
17

18 **B. Declaratory Relief—ERPP Violates Washington’s Constitutional Separation of**
19 **Powers**

20
21 63. Washington’s Constitution has created a separation of powers doctrine by the very
22 division of our government into different branches.
23

24 64. Creating and promulgating rules for court practice is a fundamental function
25 inherent within the judicial branch.
26

27 65. CR 3 is the mechanism by which a cause may be commenced in Superior Court.
28

29 66. As set forth in RCW 4.28.020, the commencement of an action, by service of a
30 summons or by filing of a complaint, gives the court jurisdiction to control all subsequent
31 proceedings.
32

1 67. A plaintiff puts a case at issue in Superior Court pursuant to CR 8, which requires
2 only that the Complaint include a short and plain statement of the claim and a demand for relief.
3

4 68. The Superior Court rules are established and meant to be clearly written so the
5 public can know how to access courts and justice.
6

7 69. The Superior Court rules are written to further the courts' role of providing the
8 people of Washington with access to justice.
9

10 70. ERPP does not set specific rules for how to commence an unlawful detainer case,
11 but generally states "the eviction resolution pilot program must be used to facilitate the resolution
12 of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful
13 detainer action."
14

15 71. ERPP does not create a special pleading rule to abrogate CR 8's notice pleading
16 requirements.
17

18 72. ERPP does not abrogate CR 11, which states that pleadings do not need to be
19 verified.
20

21 73. In failing to create rules that modify how an unlawful detainer action is properly
22 commenced and put at issue by the pleadings, the Legislature did not completely abrogate the
23 applicability of the Civil Rules in unlawful detainer practice in Superior Courts. Therefore, courts
24 must attempt to harmonize ERPP with the Court Rules.
25
26

27 74. A statute that cannot be harmonized with the Court Rules violates separation of
28 powers.
29

1 75. By virtue of the separation of powers, the Legislature cannot promulgate procedural
2 rules which require dismissal of a complaint where the complaint is filed in full compliance with
3 the Civil Rules.
4

5 76. ERPP cannot be harmonized with the Court Rules, including CR 3, CR 8, and CR
6 11. Specifically, and without limitation, the pre-suit certification requirement conflicts with the
7 Court Rules that govern the procedures for filing and commencing unlawful detainer cases. As
8 such, ERPP violates the judicial branch power to set procedure in a clearly defined manner for
9 people to access the courts.
10
11

12 **C. Declaratory Relief—ERPP Violates Plaintiff’s Right to Access the Courts**

13 77. It is a settled and invariable principle, that every right, when withheld, must have a
14 remedy, and every injury its proper redress.
15
16

17 78. The very essence of civil liberty certainly consists in the right of every individual
18 to claim the protection of the laws, whenever he or she receives an injury. One of the first duties
19 of government is to afford that protection.
20

21 79. The people have a right to access courts of Washington.
22

23 80. The right to access courts is the bedrock foundation upon which rest all the people’s
24 rights and obligations.
25

26 81. Washington’s Constitution mandates that “[j]ustice in all cases shall be
27 administered openly, and without unnecessary delay.”
28

29 82. Washington’s Constitution places an affirmative duty on courts to keep the doors
30 open to all with what appears to be a meritorious claim for judicial relief.
31
32

1 83. The right to access courts is amply and expressly provided by Washington's
2 Constitution.

3
4 84. ERPP deprives landlords from accessing Washington's courts in non-payment
5 unlawful detainer cases unless a State contractor provides its blessing in a certification of ERPP
6 participation.

7
8 85. ERPP is an unconstitutional deprivation of landlords' rights to speedy justice and
9 to access the courts.

10
11 **D. Declaratory Relief—ERPP and Washington's Standing Orders Violate the**
12 **Plaintiff's Right to Due Process and Equal Protection**

13 86. States are prohibited from depriving persons of life, liberty, or property without due
14 process of law.

15
16 87. States are prohibited from denying persons equal protection of the laws.

17
18 88. ERPP deprives landlords of possession of real property without due process of law.
19 Specifically, ERPP denies landlords access to courts notwithstanding the fact that Washington law
20 prohibits a landlord from retaking possession of real property from a non-paying tenant without
21 first obtaining a writ of restitution issued by the courts. Indeed, the State of Washington, having
22 retained exclusive dominion over residential evictions, cannot, through ERPP, bar the use of the
23 courts—the State's exclusive mechanism established for a landlord to resolve its right of
24 possession.

25
26 89. In violation of procedural due process, Washington's Standing Orders were enacted
27 by County Superior Courts without satisfying the standards and notice requirements for
28 promulgation of Local Rules. Specifically, without any opportunity for hearing, State Superior
29
30
31

1 Courts, by court order, deprived and continue to deprive landlords of a constitutionally significant
2 interest in real property and access to courts.
3

4 90. Denying access to Washington's courts is not a legitimate public purpose and ERPP
5 is otherwise bereft of a legitimate public purpose to satisfy due process standards. Additionally,
6 even if ERPP was aimed at achieving a legitimate public purpose, the means used to achieve that
7 purpose, as described herein, are not reasonably necessary and are unduly oppressive upon
8 landlords.
9
10

11 91. ERPP is unconstitutionally vague in violation of landlords' substantive due process
12 rights. Specifically, what constitutes "participation" in the ERPP process is undefined, and DRCs
13 are left without any standards or guideposts to determine which landlords can access Washington's
14 courts and which cannot.
15

16 92. ERPP and the State Standing Orders deprive landlords of procedural and
17 substantive due process otherwise guaranteed to them under the United States Constitution and
18 Washington Constitution.
19

20 93. ERPP denies landlords equal protection of the laws. Specifically, ERPP treats
21 landlords as a disfavored class by, without limitation, restricting landlords' access to courts unless
22 and until a private State contractor finds that the landlord sufficiently participated in the pre-suit
23 process mandated by ERPP.
24
25
26

27 **E. Declaratory Relief—The Superior Courts' Implementation of the ERPP Violates**
28 **Washington's Separation of Powers Doctrine and is Improper Legislation outside**
29 **the Power given to the Courts by the Washington Constitution.**

30 94. The legislative authority of the State is vested in the Legislature, subject to the
31 initiative and referendum.
32

1 95. Legislation is the creation of a law of general applicability.

2 96. The judicial role is to decide the rights of the parties based on the facts and law
3 presented through pleadings and the litigation process.
4

5 97. Issuing laws of general applicability is not a judicial role.
6

7 98. The judicial role is based on the courts gaining jurisdiction over the parties, the
8 subject matter, or property in controversy.
9

10 99. Without jurisdiction over the subject matter, property, or parties in controversy, a
11 court acts outside its authority.
12

13 100. Supreme Court Order No. 25700-B-639 recognized that Superior Courts had, in
14 connection with COVID-19, authority to implement eviction resolution programs for a "litigant to
15 participate in" prior to filing of an unlawful detainer action.
16

17 101. This order did not authorize Superior Courts to pass laws of generally applicability
18 mandating participation in ERPP.
19

20 102. The ERPP Standing Orders of Washington's Superior Courts impose rules and laws
21 on landlords that apply before the Courts obtain jurisdiction.
22

23 103. The ERPP Standing Orders of Washington's Superior Courts impose rules and laws
24 in cases where COVID-19 had no impact.
25

26 104. Outside of obtaining and maintaining jurisdiction over a party, a court has no
27 legitimate authority to order the party to act in a particular way.
28

29 105. The Standing Orders create different laws from county-to-county depriving
30 Washington's citizens of a uniform, orderly, and predictable process to govern their affairs.
31

1 106. The Standing Orders create legislation in violation of the separation of powers
2 doctrine.
3

4 **F. Declaratory Relief—ERPP Violates Washington’s Non-Delegation Doctrine.**

5 107. Under Washington law, it is unconstitutional for the Legislature to abdicate or
6 transfer its legislative function to others.
7

8 108. The Legislature may delegate to administrative officers or boards the power to
9 determine some fact or state of things upon which the application of the law is made to depend,
10 provided the law enunciates standards by which those officers or boards will be guided.
11

12 109. Delegation by the Legislature to administrative officers or boards is proper if two
13 elements are met: first, the Legislature must provide standards or guidelines that indicate in general
14 terms what is to be done and the administrative body which is to do it; second, adequate procedural
15 safeguards must be provided.
16

17 110. DRCs are not administrative officers or boards. Rather, DRCs are private, unelected
18 State contractors without requirements of judicial training or experience. The Legislature
19 nonetheless delegated to DRCs the function of determining whether or not landlords may access
20 Washington’s Courts. In this way, ERPP violates the non-delegation doctrine and, therefore,
21 Washington’s Constitution.
22

23 111. In delegating legislative functions to DRCs, the Legislature further failed to
24 enunciate standards to guide the DRCs’ work. Specifically, there are no legislative or regulatory
25 standards for DRCs to measure whether or not a landlord has “participated” in the process required
26 by ERPP. Additionally, there are no legislative or regulatory standards that require DRCs to take
27 action within any specified period of time. Instead, DRCs are left with nearly unfettered discretion
28
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1 to decide whether and when the landlord's "participation" is sufficient. Even when the landlord's
2 participation is unambiguous, no legislative or regulatory safeguard exists for the landlord to take
3 action where a DRC nonetheless withholds certification. These failures violate the non-delegation
4 doctrine, and, therefore, Washington's constitution.
5

6
7 112. In delegating legislative functions to DRCs, the Legislature failed to provide
8 procedural safeguards to limit DRC discretion and to protect the citizens' right to access the courts.
9 In this way, ERPP violates the non-delegation doctrine, and therefore, Washington's Constitution.
10

11 V. RELIEF REQUESTED 12

13 Plaintiff requests the following relief:

14 113. That judgment be entered declaring RCW 59.18.660(2) unconstitutional.

15 114. That judgment be entered declaring RCW 59.18.660(5) unconstitutional.
16

17 115. That an injunction issue to immediately preclude enforcement of RCW
18 59.18.660(2) and RCW 59.18.660(5).
19

20 116. That an injunction issue to immediately preclude enforcement of all 39 State ERPP
21 "Standing Orders" insofar as they preclude filing or consideration of an unlawful detainer case
22 without DRC certification.
23


24 117. That judgment be issued awarding attorney fees and costs to Plaintiff as allowed by
25 law.
26


27 118. That judgment be issued for such further relief as the Court deems just and
28 appropriate.
29

30 //
31

1
2 DATED this 21 day of July 2022

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4
5 
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