No. 21-788

In The Supreme Court of the United States

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., DBA APARTMENT ASSOCIATION OF GREATER LOS ANGELES,

Petitioner,

v.

CITY OF LOS ANGELES,
&
ALLIANCE OF CALIFORNIANS FOR COMMUNITY EMPOWERMENT ACTIONS FOR A JUST ECONOMY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICUS CURIAE* CALIFORNIA ASSOCIATION OF REALTORS® IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

BRIEF OF *AMICUS CURIAE* CALIFORNIA ASSOCIATION OF REALTORS® IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 37.2 of the Rules of this Court, *Amicus curiae*, the California Association of REALTORS® (hereafter, "C.A.R."), submits this brief in support of petitioner Apartment Association of Los Angeles County, Inc., dba Apartment Association of Greater Los Angeles (hereafter, "Petitioner").[1]

IDENTITY AND INTEREST OF *AMICUS CURIAE*

C.A.R. is a nonprofit, voluntary, real estate trade association incorporated in California and representing the interests of approximately 210,000 persons licensed by the State of California as real estate brokers and salespersons, and the local associations of REALTORS®[2] to which those members belong. Members of C.A.R. assist the public in buying, selling,

[1] C.A.R. has informed the parties of the intent to file this *amicus* brief at least 10 days before filing and received their consent. This brief was not authored in whole or in part by counsel for either party. No person or entity, other than the *Amicus curiae*, its members, or their counsel made a monetary contribution to the preparation and submission of this brief.

[2] The term REALTOR® is a federally registered collective membership mark which identifies a real estate professional who is a member of a local association of REALTORS®, C.A.R. and the National Association of REALTORS® ("NAR") and subscribes to NAR's Code of Ethics.

leasing, financing, and managing residential and commercial real estate.

As part of their licensed activities, many C.A.R. members represent landlords or tenants and many C.A.R. members invest in and manage their own rental properties which often form a significant part of their retirement plans. C.A.R. receives many inquiries relating to landlord-tenant issues, including landlord-tenant matters that affect real estate sales transactions. As this case examines the legal validity of the City of Los Angeles' COVID-19 ordinance, and its impact upon lease agreements, it has consequences for property owners and tenants and the real estate licensees who represent them. Accordingly, C.A.R. has an interest in the outcome of this case.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Constitution prohibits impairment of contracts.[3] And when the contract involves fundamental real property rights, such as the agreement between a property owner and a residential tenant, then any government intrusion into their private contractual relationship deserves a closer look.

The City of Los Angeles enacted an ordinance[4] ("Ordinance") that effectively allows existing tenants

[3] U.S. Const, art. I, § 10, cl.1.

[4] Los Angeles Municipal Code ("LAMC") §§ 49.99 *et seq*.

to remain on someone else's property, rent-free, for years, even if the tenant has broken the terms of the lease, creates an inconvenience or danger to others, potentially overburdens the premises with additional persons or animals, or creates a financial or emotional hardship for the property owner. While the Ordinance excuses tenants from their contractual obligations, it provides no similar relief to property owners who continue to be bound by their contractual obligation to maintain the property, deliver services, and provide for the welfare of the non-paying tenants, others in a multi-unit building, and even strangers and pets introduced into the property by the breaching tenant without the permission of the property owner. The Ordinance forgives the tenant's financial obligation during the extended "temporary" term, while the property owner must continue to pay for any mortgage, property taxes, utilities, upkeep, security, and management fees, to name but a few costs of ownership, and is expected to respond to problems, complaints and requests made by the non-paying tenants and their uninvited guests.

The Ordinance deprives a property owner of the most seminal rights of ownership, the right to evict a breaching tenant ("One of the most fundamental elements of property ownership—[is] the right to exclude"[5]), but leaves the property owner with nothing more than a hope and a prayer that a breaching tenant who has been unable or unwilling to pay rent for up to

[5] *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S.Ct. 2485, 2489 (2021).

3 years will somehow miraculously be able or willing to reimburse the property owner for the lost time and income; or that, like manna from heaven, a government subsidy will magically appear.[6]

Although this case is about Los Angeles' Ordinance, many California counties, the State of California, and other jurisdictions throughout the United States continue to disrupt and rewrite real property rental and lease contracts with an equal imbalance. These rental and lease contracts continue to be eviscerated by virtue of a never-ending emergency which, in the case of Los Angeles, is yet to be lifted. The City of Los Angeles' eviction ban leaves property owners with all of the contract burdens but helpless to enforce lease end dates, violation of lease terms, payment of rent, payment of late fees, and the ability to mitigate their damages by eviction and finding replacement tenants.

It is of vital importance that this Court address these issues to end the unconstitutional practice of rampant contract impairment by many levels of government.

[6] See *Exodus* 16:14-15.

ARGUMENT

I. NO STATE OR GOVERNMENT BODY CAN ELIMINATE RIGHTS GRANTED UNDER THE UNITED STATES CONSTITUTION, AND THE MORE INTRUSIVE THE IMPAIRMENT OF CONSTITUTIONAL RIGHTS, THE GREATER SCRUTINY SUCH LAW SHOULD RECEIVE

The United States Constitution, Article I, Section 10, Clause 1, provides, in pertinent part, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ." No one is arguing that the language is to be construed so literally that any law that in any way restricts contractual rights and obligations is inherently unconstitutional and void. But when constitutional rights are at stake, courts owe it to the citizenry to consider those rights seriously. While deferring to the enacting governmental body may at times be justified, deferral to the point of abdication is a dereliction of judicial duty.

When the Ninth Circuit stated, " . . . we must 'refuse to second-guess' the City's determination. . . ." (*Apartment Association of Los Angeles County, Inc. v. City of Los Angeles*, 10 F.4th 905, at 914 (2021)) in reliance upon *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 at 506 (1987), the court failed to take into account its own responsibility which the *Keystone* court recognized in the paragraph immediately above the relied upon phrase: "A court must also satisfy itself that the legislature's "adjustment of 'the rights and responsibilities of contracting parties [is

based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.' " Such an independent analysis would be consistent with the direction in the seminal case of *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 at 430 (1934) citing from the case of *Von Hoffman v. City of Quincy*, 71 U.S. 535 (1866), that "[e]very case must be determined on its own circumstances." *Blaisdell*, *supra*, also at 430, goes on to say that "[i]n all such cases the question becomes, therefore, one of reasonableness, and of that the legislature is primarily the judge."

The legislature is primarily—but not exclusively—the judge. Even though courts properly defer to legislative judgment when the government is not a contracting party (*Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400 at 413 (1983)) notwithstanding any deferral to government justification, it is the court's responsibility to "determine whether the law is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose." *Apartment Association*, *supra*, at 913.

"The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected." *Energy Reserves*, *supra*, at 411. This flexibility in analysis is nothing new to the courts. To give just one example, in California, from where this case stems, a floating level of scrutiny applies to determine whether an arbitration clause is unconscionable and thus unenforceable. "Both procedural and substantive unconscionability must be present before an arbitration

provision is rendered unenforceable on unconscionability grounds, but they need not be present in the same degree." *Baltazar v. Forever 21, Inc.*, 62 Cal.4th 1237, 1243 (2016). "Courts invoke a sliding scale in which the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to reach the conclusion that the term is unenforceable, and vice versa." *Anthony De Leon v. Pinnacle Property Management Services, LLC*, ___ Cal.Rptr.3d ___ (2021)[7] The same approach to judicial scrutiny should apply here, even where the government is not a party to the contract. The more intrusive the impairment of the contract, the lower the burden should be for the plaintiff to establish that the government impairment was unreasonable.

This case is about housing, and housing laws and cases often elicit an almost visceral reaction. This is understandable as shelter, food, water, and clothing are basic human needs. But if the Ordinance's impositions on property owners are reasonable, would it not then follow that similar impositions impacting providers of other necessities would also be enforceable? Could the City of Los Angeles decree that all providers of food, be they supermarkets, burger joints, taco trucks, steak houses, or online food services, must provide free food and drink to anyone who claims inability to pay due to the COVID-19 pandemic, so long as the recipient is obligated to pay the purveyor in three years without interest or late fees or penalties? Could the City of Los

[7] See Discussion section, paragraph 3.

Angeles decree that all providers of clothing, be they a sole proprietor with a small shop or a national clothing chain, whether selling low or moderately priced clothing or high-end expensive clothing, must provide free clothing to anyone who claims inability to pay due to the pandemic, as long as the recipient is obligated to pay the purveyor in three years, without interest or late fees or penalties? Food and adequate clothing are essential to the health and well-being of the citizens of Los Angeles. A malnourished or inadequately clothed person is more likely to suffer from a weakened physical state with more vulnerability to infection, and therefore is more likely to be negatively impacted by COVID-19.

Evaluation of the appropriateness and reasonableness of the Ordinance might require a closer look at questions such as: Would it make a difference if Los Angeles only applied the rule to large, multi-national corporations and not to small landlords? Would it make a difference if Los Angeles only applied the rule to tenants with proven hardships? What if a tenant was required to pay the landlord's out-of-pocket expenses, and the landlord was merely temporarily deprived of making a profit? These distinctions can be significant and deserve closer attention. Courts should not blindly defer to the reasoning and justification of the local government authority enacting the law. The more intrusive the impairment, the greater the scrutiny the law should receive.

II. THE LOS ANGELES "TEMPORARY" COVID EVICTION MORATORIUM REQUIRES HEIGHTENED SCRUTINY BECAUSE IT IS INEQUITABLE, OPPRESSIVE, AND UNREASONABLE

A. The Ordinance is inequitable because it ignores "mom and pop" landlords who comprise over 40% of property owners and may be experiencing the same, similar or even greater hardships compared to tenants protected by the Ordinance

Individual investors, or "mom and pop" landlords, own over 40% of residential rental units according to the U.S. Census Bureau's 2018 Rental Housing Finance Survey,[8] which is approximately 22.7 million rental units.[9] The Brookings Institute estimates that approximately one third of "mom and pop" landlords are from low to moderate income households where the rental income contributes up to 20% of their total household income, and unlike corporations and partnerships that can spread the risks of property ownership across other investments and partners, these

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[8] "*An Eviction Moratorium Without Rental Assistance Hurts Smaller Landlords, Too*" (K. Broady, W. Edelberg, E. Moss, Brookings.edu September 21, 2020) at https://www.brookings.edu/blog/up-front/2020/09/21/an-eviction-moratorium-without-rental-assistance-hurts-smaller-landlords-too/.

[9] 2015 American Housing Survey, cited in "*How Eviction Moratoriums Are Hurting Small Landlords—and Why That's Bad for the Future of Affordable Housing*" (Abby Vesoulis, Time Magazine, June 2020) at https://time.com/5846383/coronavirus-small-landlords/.

individual investors are more vulnerable when rent payments are unstable.[10]

Specifically, the Brookings Institute analysis showed that about 30% of these landlords earned annual household incomes of less than $90,000, and income from rents comprised a greater proportion of low to moderate-income households' total income than it did for higher income landlord households. For those landlord households earning less than $50,000, rental income provided nearly 20% of total household income (in comparison to households earning over $200,000 where rental income only represented 5% of total household income). *Id.* Moreover, the average annual operating expenses are $4,600–$5,400 per unit for "mom and pop" landlords who own four or fewer residential units, and their property-related expenses can consume more than half of rental income. *Id.*

Who are these "mom and pop" landlords in Los Angeles? One of them is Greta Arceneaux, an 81-year-old Black woman who purchased an old house during the 1960s, later using the land to build a five-unit rental complex.[11] Rental income provided financial stability for the divorced mother of two children for many years but due to the COVID-19 pandemic and Ordinance, in June 2020 Arceneaux was facing the problem of

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[10] "*An Eviction Moratorium Without Rental Assistance Hurts Smaller Landlords, Too*" K. Broady, W. Edelberg, E. Moss; webpage link cited above.

[11] "*How Eviction Moratoriums Are Hurting Small Landlords—and Why That's Bad for the Future of Affordable Housing*" A. Vesoulis; webpage link cited above.

$15,000 in unpaid rent and she was worried about paying at least $60,000 for earthquake reinforcement in one of the units, to comply with building codes. *Id.* Arceneaux has provided affordable rental units to her community but recently stated to a *Time Magazine* reporter, "My retirement is going down the tubes because of this" and was weighing options such as selling her property. *Id.* She belongs to a group called the Coalition of Small Rental Property Owners. The group's website shares comments from some of its member landlords describing their personal involvement in the neighborhood and interest in maintaining affordability and diversity, and concerns regarding how corporate ownership would change the neighborhood and hurt current tenants.[12]

When it upheld the moratorium at issue in *Blaisdell*, the court placed importance in the fact that the mortgagees were predominantly corporations such as insurance companies, banks, and investment and mortgage companies. (*Blaisdell, supra*, at p. 243) In comparison (and assuming the recent national data on rental property owners is similar within Los Angeles) approximately 40% of the landlords in Los Angeles likely are "mom and pop" landlords—not corporations, banks and insurance companies that can more easily "weather the storm."[13]

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[12] See https://smallrentalowners.com/.

[13] According to a 2017 report by the Joint Center for Housing Studies of Harvard University, individual investors own three-quarters of rental properties (74%) but under half of the nation's rental units (48%) because they primarily own single-family

In order to properly evaluate the "reasonableness" of the Ordinance, the Court should have considered the numerous negative impacts to "mom and pop" landlords who represent a large portion of rental property owners. Moreover, when analyzing the "irreparable harm" to landlords, the district court primarily focused on possible threat of foreclosures and mentioned a rent assistance program. In doing so, the Court overlooked other downstream effects on landlords from late rent or nonpayment of rent—such as possible increased mortgage and property maintenance debt, delinquent property taxes and utility bills, and other "slow bleeding" that can eventually destabilize communities.

B. The Ordinance is oppressive because it requires owners to continue to operate a business

The right of a property owner to leave the rental business has been codified in California law under the Ellis Act.[14] The 1985 Ellis Act was enacted in response to a ruling which found it unconstitutional for a city to require property owners to stay in the rental business

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rentals and small apartment properties. Business entities own 15% of rental properties but a third of all rental units, housing cooperatives and nonprofit organizations own 4% of rental units, and real estate corporations and investment trusts own 5% of rental units. The remaining 10% of units fall under other types of ownership such as trustees for estates, tenants in common, and general partnerships. See "America's Rental Housing 2017": https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_americas_rental_housing_2017.pdf, at p. 14.

[14] California Government Code §§ 7060 *et seq.*

against their will.[15] The Ordinance blatantly eliminated this constitutional protection, stating: "No Owner may remove occupied Residential Real Property from the rental market under the Ellis Act . . . during the pendency of the Local Emergency Period."[16] The Ordinance prohibits use of the Ellis Act until 60 days after the emergency period. *Id.*

Whether the owner desires to avoid the inconveniences of managing a rental property, minimize or eliminate the financial, legal, and emotional toll of providing housing for others, or simply wants to move into and use the property for the owner's own purposes, this fundamental right has not escaped the comprehension of the State's lawmakers. But the City, much like it has done with the Constitution, has paid no heed, and even more so, has put itself in direct conflict with a higher legal authority. The hardship thus allocated to the property owner outweighs that attributed to the tenant, regardless of circumstances, under the Ordinance.

One need look no further than the trial courts to find a recent example of the hardship to property owners. Plaintiffs in a pending lawsuit are a married couple who own a single-family home. They left their home to serve on a humanitarian mission overseas for three years. While away, they rented their home for a fixed term ending in April 2021, allowing them to move back into their home after returning from the mission.

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[15] *Nash v. City of Santa Monica*, 37 Cal.3d 98 (1984).

[16] LAMC § 49.99.4.

Although the tenants were reminded in January 2021 about the lease's end date, they refused to leave and cited a Los Angeles *County* eviction moratorium (which is not even as strict as the Ordinance). Similar to the Ordinance, the County's ordinance prohibits "no fault" eviction such as a non-renewal during the local emergency period. The senior homeowners, both over 62 years old, wanted to return to the place where they had raised children, held wedding receptions, and created many memories. Instead, they were forced to stay in a hotel and rent a place to live as months passed and their holdover tenant refused to leave. The matter is still in litigation, and the owners may not be allowed to move into their own home for the holidays.[17]

The Ordinance has removed important, constitutionally based protections for landlords, requiring a ruling from this Court. Property owners—particularly small ones facing financial ruin—may have an immediate personal need to exit the rental business for various reasons, including the effects of this Ordinance. But the Ordinance unconstitutionally forces them to continue to provide services and subsidize it. Rental housing providers, like other businesses, must have the right to "go out of business." The lower courts should have considered the conflict between State and local law, in addition to the relative impact of the hardship of forcing property owners to stay in business,

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[17] *RWJW Properties, LLC v. Arthur Crawford, Los Angeles Superior Court*, Case No. BS 175862.

when determining whether the Ordinance was a reasonable exercise of the local police power.

C. The Ordinance is unreasonable because the rent deferral is, in many cases, tantamount to rent relief, and the Ordinance makes no attempt to distinguish one from the other

The Ninth Circuit argues that the availability of Emergency Rental Assistance funds from the City and federal government are part "of a broader remedial framework applicable to landlords during the pandemic." (*Apartment Association*, *supra*, at p. 916) On the surface, the interests of property owners, as a group, appear to have been considered. But do the actions match the words?

While there was rental assistance available from Los Angeles, that money has been spent and applicants have been directed to the State of California program.[18] As of December 21, 2021, Los Angeles reported it received 113,000 applications for $531 million back rent claimed, and it had paid (or was in progress to pay)

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[18] The FAQs posted by the Los Angeles Housing Department for the 2021 COVID-19 Emergency Renters Assistance Program state: "Los Angeles' need for rental assistance far exceeds the City's available funding of $235.5 million, compared to more than $500 million in rental debt reported in just the first year of the pandemic. The new partnership with the State will give Angelenos access to a bigger pool of resources to ensure that all qualified applicants receive rental assistance." https://housing2.lacity.org/.

$216 million.[19] Furthermore, payments under the Los Angeles Rent Relief program were limited to extremely low and very low-income households[20] although the Ordinance wasn't limited in its applicability to other tenants.

As of December 22, 2021, the State's COVID-19 Rent Relief Program has received 598,152 rent relief applications representing more than 400,000 completed household applications seeking $6,587,527,601.[21] Only about 1/3 of the households (142,859) have been served.[22] Only about 25% of the total $6+ billion dollars requested has been paid out.[23] Nearly two years into the pandemic, 3 out of every 4 dollars requested for rent relief remains unpaid.

If you are one of the lucky property owners who was paid in full or in part, you are counting your blessings, for some money coming in is certainly better than no money. But most are just left to suffer the consequences of the Ordinance. Any experienced property owner will attest that a tenant who has not seen fit to pay rent or is unable to pay rent for an extended period of time will not realistically be willing or able to repay

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[19] "Report Dashboard for ERAP" at https://housing.lacity.org/erap.

[20] See "About the Program—Information and Eligibility" at https://housing2.lacity.org/.

[21] California COVID-19 Rent Relief Program Dashboard at https://housing.ca.gov/covid_rr/dashboard.html.

[22] *Ibid.*

[23] *Ibid.*

after the Ordinance is lifted (and the longer the lapse, the less likely it will be cured).

The implicit promise of making all impacted parties completely, nearly, or even partially whole appears to be more fiction than fact. The lower courts should have considered facts, rather than pie-in-the-sky promises and out-of-touch expectations in considering whether the Los Angeles Ordinance was reasonable.

D. The Ordinance is not "temporary" in any real sense of the word, nor is it limited to the state of emergency, thus making it inconsistent with *Blaisdell* and inherently unreasonable

The prohibition on evictions for non-payment of rent extends through the local emergency period, and for 12-months beyond.[24] Two of the tests for reasonableness specified in *Blaisdell*, *supra*, at 447, are that the legislation is temporary in operation, and can "not validly outlast the emergency or be so extended as virtually to destroy the contracts." When the Ninth Circuit addressed Petitioner's claim that reasonable rent must be paid to make the Ordinance constitutional, it conceded that reasonable conditions must be "limited to the duration of the emergency."[25] Yet the Ninth Circuit then completely ignored the Ordinance's violation of this sensible limitation. Had the Ordinance's

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[24] LAMC § 49.99.2.A.

[25] *Apartment Association*, *supra*, at p. 915, citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 at 242 (1978).

duration been given due consideration, the Ordinance would be deemed unreasonable and therefore unconstitutional. Additionally, while the Ninth Circuit recognized the City's reasons supporting the Ordinance included taking action to protect people's health and prevent transmission of COVID-19, it failed to explain how payment and eviction restrictions for a full year beyond the end of the state of emergency would effectuate those goals.[26]

The Ordinance's impact on evictions for non-payment of rent can last up to three years, from the City's enactment of the Ordinance in 2020 until the State-mandated termination of these rights in 2023. The Ordinance's other restrictions, such as the prohibition on evictions for no-fault reasons (LAMC § 49.99.2.B) and the restriction based on the presence of unauthorized occupants, pets, or nuisances (LAMC § 49.99.2.C) could last even longer if the City keeps the emergency period in effect for an extended time period.

Although three years may not be "permanent" in the technical sense of the word, three years is a substantial period of time that wouldn't commonly be construed as "temporary." Three years is much longer than a holiday shopping season or a baseball player's batting slump, and much longer than the duration of California's "Blueprint for a Safer Economy" with required COVID-19 safety measures from August 30, 2020 to June 15, 2021. Had the lower courts considered the meaning of the word "temporary," rather than just

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[26] *Apartment Association*, *supra*, at 914.

deferring to the justifications put forth by the City, the Ordinance would not have been able to withstand constitutional scrutiny and would be found invalid.

E. Not only does the Ordinance fail to balance the respective hardships of property owner and tenant, but it also fails to balance the interests of some tenants over others and can reward dishonesty

The Ordinance has no means test and does not require proof of inability to pay (distinguishing it from California's eviction moratorium, Assembly Bill 3088, which limits the eviction relief to those making less than $100,000 per year). Surely those making $100,000 or more during the pandemic can pay their rent timely and should not be forgiven late penalties and rent. Even many of those making less, or nothing at all, were nonetheless not any worse off financially due to unemployment benefits and other COVID-19 relief payments. Yet small "mom and pop" landlords who may have income after costs of less than $100,000 per year must still allow tenants who can afford rent to live with deferred rent, no late fees, and no interest.

The honest tenants who may be struggling but continue to meet their contractual obligations have the self-satisfaction of honoring their commitments. Meanwhile the dishonest ones who claim a COVID-related excuse are financially rewarded by "temporarily" escaping rent, late fees, interest, and penalties. While lack of a means test is not, in and of itself,

determinative of the reasonableness of the Ordinance, in this context it should be fatal because it reveals that the Ordinance is not narrowly tailored to address the COVID-19 situation and the needs of all affected parties.

The Ordinance allows tenants to bring unauthorized persons (even those infected with COVID-19) and pets into the premises, without consequence, and to commit nuisances without fear of being evicted. In multi-family rental units, this could lead to overcrowding and poor health conditions, which might increase the spread of the virus. Allowing nuisances to be maintained with abandon will in many instances inspire tension and conflict between tenant residents. Section 49.99.2.G of the Ordinance purports to balance property owners and tenant interests by allowing the owner "to evict a residential tenant for a lawful purpose and through lawful means." But that is just an illusion. Per the Ordinance, a property owner who attempts to evict a tenant who's created an overcrowded, potentially infectious, and tension-filled environment may be subject to extreme penalties of $10,000–$15,000 per violation. Due to the risk of these costly penalties, many property owners will likely allow negative conditions in the premises to fester because the Ordinance effectively incentivizes the owner to ignore the legitimate complaints and needs of some tenants over others.

The COVID-19 virus has required government leaders to craft extraordinary policies and remedies in response to the pandemic, but governmental

interference with private contracts must be surgical, temporary and above all, consistent with the Constitution. As described above, the Ordinance has failed to meet the requirements for legal validity.

CONCLUSION

Many businesses are suffering economically and otherwise during the COVID-19 pandemic, with losses of revenue, increased labor costs and other expenses, supply chain disruptions, and closures. Providing and managing rental housing is a business, but unlike other businesses, the Ordinance requires housing to be provided at no cost during the state of emergency, and for a year afterward, unless a non-paying tenant miraculously decides to pay back the deferred rent, or some government program might reimburse the property owner for the forced concession. Time is a precious commodity for a property owner. The opportunity to collect rental income, and the time to make use of the property for the owner's personal purposes, are forfeited by the Ordinance.

No other businesses, even those that provide other essential services, are required to incur costs, and provide goods and services, without compensation. Such an imposition on one segment of society to address a pandemic of global proportions is not "an appropriate

and reasonable way to advance a significant and legitimate public purpose."[27]

Courts are well-suited to examine state and local laws and should not abdicate that responsibility in the name of deference to local government decision-making, especially when a Constitutional issue is in play. This Court can establish an appropriate balance, and confirm that a higher level of scrutiny must be performed when evaluating the reasonableness of a statutory impairment of contract. Recent events such as the emergence of COVID variants indicate that the disease could have future outbreaks and iterations, perhaps spawning additional laws like the Ordinance. It is important to affirm Constitutional principles not only when times are good, but also when times are bad or uncertain.

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[27] *Sveen v. Melin*, 138 S.Ct. 1815, 1822 (2018).

For the reasons stated in the Petition, and all of the foregoing reasons, C.A.R. respectfully requests that this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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