No. 20-56251

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., DBA "APARTMENT ASSOCIATION OF GREATER LOS ANGELES,"
Plaintiff-Appellant,

v.

CITY OF LOS ANGELES; ERIC GARCETTI, IN HIS OFFICIAL CAPACITY AS MAYOR OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES, IN ITS OFFICIAL CAPACITY; AND DOES 1 THROUGH 25, INCLUSIVE,
Defendants-Appellees,

ALLIANCE OF CALIFORNIANS FOR COMMUNITY EMPOWERMENT ACTION AND STRATEGIC ACTIONS FOR A JUST ECONOMY,
Intervenors.

On Appeal from the United States District Court
for the Central District of California
No. 2:20-cv-05193-DDP-JEM
Hon. Dean D. Pregerson

BRIEF OF CONSTITUTIONAL LAW SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES AND INTERVENORS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

IDENTITY AND INTERESTS OF AMICI CURIAE 1

INTRODUCTION 2

ARGUMENT 3

I. The Contract Clause Permits State And Local Laws That Impair Contracts, So Long As Those Laws Are Reasonably Tailored To Further A Legitimate Public Purpose 3

A. Early Contract Clause Jurisprudence 4

B. Contract Clause Jurisprudence In The Modern Era 7

II. The Contract Clause Does Not Prohibit State And Local Governments From Reasonably Exercising Their Broad Police And Emergency Powers In Times Of Crisis 14

CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

Cases

Allied Structural Steel Co. v. Spannaus,
438 U.S. 234 (1978) 7, 10, 12

Baptiste v. Kennealy,
2020 WL 5751572 (D. Mass. Sept. 25, 2020)..... 18, 19

Bd. of Trs. of State Univ. of N.Y. v. Fox,
492 U.S. 469 (1989) 12

Berman v. Parker,
348 U.S. 26 (1954) 15

Buffalo Teachers Fed'n v. Tobe,
464 F.3d 362 (2d Cir. 2006) 16

El Papel, LLC v. Inslee,
2020 WL 8024348 (W.D. Wash. Dec. 2, 2020)..... 18, 19

Elmsford Apartment Assocs., LLC v. Cuomo,
469 F. Supp. 3d 148 (S.D.N.Y. 2020)..... 17, 18

Energy Rsrvs. Grp. v. Kan. Power & Light,
459 U.S. 400 (1963) ..... *passim*

HAPCO v. City of Philadelphia,
2020 WL 5095496 (E.D. Pa. Aug. 28, 2020)..... 17, 18, 19

Heights Apartments, LLC v. Walz,
2020 WL 7828818 (D. Minn. Dec. 31, 2020)..... 17, 18, 19

Home Building & Loan Ass'n v. Blaisdell,
290 U.S. 398 (1934) ..... *passim*

Melendez v. City of New York,
2020 WL 7705633 (S.D.N.Y. Nov. 25, 2020) 17, 18, 19

Peterson v. Kunkel,
2020 WL 5878407 (D.N.M. Oct. 2, 2020) 17, 18

Prince v. Massachusetts,
321 U.S. 158 (1944) 15

RUI One Corp. v. City of Berkeley,
371 F.3d 1137 (9th Cir. 2004) 13

State v. All Prop. & Cas. Ins. Carriers Authorized & Licensed to Do Bus. in the State,
937 So. 2d 313 (La. 2006) 16, 17

Sveen v. Melin,
138 S. Ct. 1815 (2018) ..... *passim*

U.S. Trust Co. of N.Y. v. New Jersey,
431 U.S. 1 (1977) 13

Wasmuth v. Allen,
85 S. Ct. 5 (1964) 15

Whalen v. Roe,
429 U.S. 589 (1977) 15

Xponential Fitness v. Arizona,
2020 WL 3971908 (D. Ariz. July 14, 2020) 17, 18

Rules and Statutes

Fed. R. App. P. 29(a)(4)(E) 1

L.A., Cal., Mun. Code § 49.99.2 (2020) 2

Other Authorities

Felice Batlan, *Law in the Time of Cholera: Disease, State Power, and Quarantines Past and Future*, 80 Temple L. Rev. 53 (2007) 19

Constitutionality of Mortgage Relief Legislation: Home Building & Loan Ass'n v. Blaisdell, 47 Harv. L. Rev. 660 (1934) 8, 9

Erwin Chemerinsky, *Constitutional Law: Principles & Policies* (3d ed. 2006) ..... *passim*

Bernadette Meyler, *Economic Emergency and the Rule of Law*, 56 DePaul L. Rev. 539 (2007).....21

Samuel R. Olken, *Charles Evans Hughes and the* Blaisdell *Decision: A Historical Study of Contract Clause Jurisprudence*, 72 Or. L. Rev. 513 (1993).....4

Jeff Shesol, *Supreme Power: Franklin Roosevelt vs. The Supreme Court* (2010) 8, 9

Laurence Tribe, *American Constitutional Law* (2d ed. 1988) ..... *passim*

Benjamin Wright, *The Growth of American Constitutional Law* (1967).....4

IDENTITY AND INTERESTS OF AMICI CURIAE[1]

Amici curiae are distinguished scholars of constitutional law with substantial academic, pedagogical, and professional experience bearing on the legal questions presented in this appeal. *Amici* submit this brief to offer an accurate understanding of the history, scope, and application of Article I, Section 10, Clause 1 of the United States Constitution (the "Contract Clause"). Based on their expertise and their considered assessment of the relevant facts and governing law, they support affirmance of the district court's decision.

A full list of *amici* is attached as Appendix A.

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* affirm that no counsel for any party authored this brief in whole or in part, that no party's counsel contributed money to fund preparation and submission of this brief, and that no person other than *amici curiae*, its members, or counsel contributed money to fund preparation and submission of this brief. All parties have consented to the filing of this brief.

INTRODUCTION

In March 2020, Los Angeles City officials—fearing that the economic and public health crisis wrought by the COVID-19 pandemic would devolve into a housing crisis—instituted a temporary eviction moratorium. The moratorium prohibits landlords from evicting or "endeavor[ing] to evict" residential tenants "for non-payment of rent . . . due to circumstances related to the COVID-19 pandemic," during the emergency and for one year thereafter. L.A., Cal., Mun. Code § 49.99.2 (2020).

The eviction moratorium is well within constitutional bounds. Even assuming the City's eviction moratorium substantially impairs a contractual relationship, it does not run afoul of the Contract Clause because it is appropriately tailored to respond to the ongoing health and financial emergency precipitated by the COVID-19 pandemic. *See Sveen v. Melin*, 138 S. Ct. 1815, 1821-22 (2018). In asserting otherwise, Appellant and *amici* El Papel LLC, Berman 2, LLC, Karvell Li, and Pacific Legal Foundation (together, "PLF") gesture toward long-abandoned legal principles that find no support in the Supreme Court's Contract Clause jurisprudence. This Court should reject that mistaken view of the Contract Clause and affirm the decision below.

ARGUMENT

I. The Contract Clause Permits State And Local Laws That Impair Contracts, So Long As Those Laws Are Reasonably Tailored To Further A Legitimate Public Purpose

The Contract Clause provides that "[n]o state shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const., art. I, § 10, cl. 1. In the nascent years of the Republic, the Supreme Court struggled to delineate the bounds of that constitutional provision. But over time, the Court established a flexible, workable rule that courts have employed for nearly a century. Under that rule, "not all laws affecting pre-existing contracts violate the Clause." *Sveen*, 138 S. Ct. at 1821; *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 502 (1987) ("[I]t is well settled that the prohibition against impairing the obligation of contracts is not to be read literally."). Rather, the Contract Clause only prohibits laws that "operate[] as a substantial impairment of a contractual relationship" and are not reasonably tailored to advance "a significant and legitimate public purpose . . . such as the remedying of a broad and general social or economic problem." *Energy Rsrvs. Grp. v. Kan. Power & Light Co.*, 459 U.S. 400, 411-12 (1983) (citation omitted). The historical development of Contract Clause jurisprudence confirms that state and local laws aimed at responding to public health emergencies—like the eviction moratorium at issue here—pass constitutional muster.

A. Early Contract Clause Jurisprudence

"The origins of the [Contract] Clause lie in legislation enacted after the Revolutionary War to relieve debtors of their obligations to creditors." *Sveen*, 138 S. Ct. at 1821; *see also* Erwin Chemerinsky, *Constitutional Law: Principles & Policies* 629 (3d ed. 2006); Laurence Tribe, *American Constitutional Law* 613 (2d ed. 1988) (citing Benjamin Wright, *The Growth of American Constitutional Law* 41 (1967)). At its inception, the Contract Clause did not bar all local and state regulation of public and private contracts, but rather sought to "protect creditors . . . [and] encourage credit by assuring lenders that they would be repaid." Chemerinsky, *supra*, at 630. But over the course of the nineteenth century, various (sometimes conflicting) interpretations of the Contract Clause emerged. *See* Samuel R. Olken, *Charles Evans Hughes and the* Blaisdell *Decision: A Historical Study of Contract Clause Jurisprudence*, 72 Or. L. Rev. 513, 520 (1993) (explaining that the Contract Clause was "susceptible to various interpretations, all of which reflect, to some degree, divergent perspectives of federalism").

1. In the early nineteenth century, the Supreme Court, led by Chief Justice Marshall, adopted a fairly strict approach to the Clause, applying it to statutes that retrospectively impaired many different types of obligations. *See* Chemerinsky, *supra*, at 631-32 (discussing *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810); *New Jersey v. Wilson*, 11 U.S. (7 Cranch) 164 (1812); *Trustees of Dartmouth College v.*

Woodward, 17 U.S. (4 Wheat.) 518 (1819); *Sturges v. Crowinshield*, 17 U.S. (4 Wheat.) 122 (1819)).

Notably, however, the Marshall Court (and its successors) recognized that the Contract Clause has important limits and is not an absolute ban on the retrospective impairment of contracts. In *Dartmouth College*, for example, Chief Justice Marshall admitted that "[t]aken in its broad, unlimited sense, the clause would be an unprofitable and vexatious interference with the internal concerns of a state," and thus could not be read to limit the ability of states to govern their own civil institutions, like marriage or divorce. 17 U.S. (4 Wheat.) at 627-29; *see also Jackson v. Lamphire*, 28 U.S. (3 Pet.) 280, 289-90 (1830) (stating that it is fully within states' power to pass recording acts, even if the act has the effect of rendering a prior deed void against a subsequent purchaser); *cf. Fletcher*, 10 U.S. (6 Cranch) at 145 (Johnson, J., concurring in the judgment) (noting that the Contract Clause should not restrict "state powers in favour of private rights" because such an interpretation "would operate to restrict the states in the exercise of that right which every community must exercise").

And in *Sturges*, the Court held that while government may not impair contractual *obligations*, it may interfere with the *remedies* available under a contract. 17 U.S. (4 Wheat.) at 200 ("Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct."); *see*

also Bronson v. Kinzie, 42 U.S. (1 How.) 311, 315 (1843) ("If the laws of the state passed afterwards had done nothing more than change the remedy upon contracts of this description, they would be liable to no constitutional objection."); *Curtis v. Whitney*, 80 U.S. (13 Wall.) 68 (1871); *see also* Chemerinsky, *supra*, at 633; Tribe, *supra*, at 615. Although the line between a remedy and obligation was "at times obscure," *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 60 (1935) (Cardozo, J.), the distinction was "used to allow more latitude for state regulation," Chemerinsky, *supra*, at 633.

Later Courts, far from abandoning these limitations on the Contract Clause, reinforced them. In *Stone v. Mississippi*, for example, the Court held that the state did not run afoul of the Contract Clause when it enacted a law that prohibited lotteries after it had already chartered a lottery company. 101 U.S. (11 Otto) 814, 817-18, 821 (1880). In so holding, the Court emphasized that "[a]ll agree that the legislature cannot bargain away the police power of a State" and that "no legislature can curtail the power of its successors to make such laws as they deem proper in matters of police." *Id.* at 817-18 (internal quotation marks omitted); *see also Manigault v. Springs*, 199 U.S. 473, 480 (1905) (declaring that "parties, by entering into contracts, may not estop the legislature from enacting laws intended for the public good"). The Court's explicit recognition "that the government may interfere with contracts to achieve a valid police purpose . . . opened the door to allowing a

vast array of government regulations even when they have the effect of interfering with contract rights." Chemerinsky, *supra*, at 634.

2. Between the late nineteenth century and the early twentieth century, the Contract Clause fell into relative disuse with the adoption of the Fourteenth Amendment. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241 (1978) ("[T]he Contract Clause receded into comparative desuetude with the adoption of the Fourteenth Amendment . . . ."). During this period (often dubbed the "*Lochner* Era"), the Court instead used the due process clause of the Fourteenth Amendment to strike down hundreds of state and local laws under the guise of protecting freedom of contract. *See* Chemerinsky, *supra*, at 616 (identifying as many as 200 state laws that were declared unconstitutional during this era); *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting) ("[A] constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez-faire*."). The Court's "aggressive protection of freedom of contract under the due process clauses made the [Contract Clause] superfluous during the first third of the twentieth century." Chemerinsky, *supra*, at 634.

B. Contract Clause Jurisprudence In The Modern Era

The Supreme Court's seminal decision in *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398 (1934), provided much needed clarification to the Contract

Clause jurisprudence that came before it. *Blaisdell* and its progeny illuminated and cemented two key principles: *first*, that the Contract Clause is not an absolute prohibition on laws that impair economic rights, and *second*, that courts must afford considerable deference to state and municipal actions that advance legitimate government interests, even if those actions substantially impair contractual obligations.

1. *Blaisdell* was decided in the midst of the Great Depression. By 1932, the Depression had left twelve million Americans unemployed, and those who did have jobs were facing fewer hours and lower wages. *See* Jeff Shesol, *Supreme Power: Franklin Roosevelt vs. The Supreme Court* 12 (2010). The Depression's widespread effects—coupled with the sense that "employees had no realistic chance of bargaining in the workplace"—put "enormous pressure[]" on "the Court to abandon the laissez-fair philosophy of the *Lochner* era." Chemerinsky, *supra*, at 621.

Against that historical backdrop, the Supreme Court in *Blaisdell* struck "a rational compromise between individual rights and public welfare." Shesol, *supra*, at 65; *see also Constitutionality of Mortgage Relief Legislation:* Home Building & Loan Ass'n v. Blaisdell, 47 Harv. L. Rev. 660, 662 (1934) (stating that the "fundamental proposition" propounded in *Blaisdell* "has been confirmed and elaborated in two lines of decisions" that came before it, "which, shown by the

present decision to be logically interrelated, furnished the principal precedents for the majority opinion"). Specifically, in *Blaisdell*, the Court upheld a Minnesota law designed to protect homeowners from foreclosure during the Depression's unprecedented economic crisis. The Court reasoned that the "reasonable conditions" on contracts imposed by the emergency measure were constitutionally permissible because they were "not for the mere advantage of particular individuals but for the protection of a basic interest of society." 290 U.S. at 445. In reaching that conclusion, the Supreme Court clarified that the Contract Clause was merely "a broad outline" that requires judicial "construction" and flexibility. *Id.* at 426; *see* Shesol, *supra*, at 66 (noting that *Blaisdell* recognized that the Contract Clause "might be read one way (restrictively) in normal times, but another way (more loosely) in a moment of great urgency"); *Constitutionality of Mortgage Relief Legislation*, *supra*, at 663 (noting that "emergency does not justify the suspension of constitutional restrictions, but it is a factor to be considered in determining whether or not they have been violated").

2. The principles enunciated in *Blaisdell* have been reaffirmed in every subsequent Supreme Court case addressing claims brought under the Contract Clause. Most notably, in *Energy Reserves Group v. Kansas Power & Light*, 459 U.S. 400 (1963), the Supreme Court fashioned a multi-part test echoing the rational basis review articulated in *Blaisdell*. Under this test, courts must first inquire

"whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Id.* at 411 (quoting *Allied Structural Steel*, 438 U.S. at 244). Second, "[i]f the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate purpose behind the regulation." *Id.* at 411-12. And third, "[o]nce a legitimate public purpose has been identified," the court must inquire whether the law is reasonable and is "of a character appropriate to the public purpose justifying" the adoption of the law. *Id.* at 412 (internal quotation marks omitted). Finally, the Court emphasized that "[u]nless the State itself is a contracting party, as is customary in reviewing economic and social regulation, . . . courts properly defer to legislative judgments as to the necessity and reasonableness of a particular measure." *Id.* at 412-13 (internal quotation marks and citations omitted).

3. Despite the repeated affirmance and application of this well-established test, Appellant and PLF urge this Court to apply a more searching level of scrutiny to the City's eviction moratorium. Appellant insists that the eviction moratorium should be subject to heightened scrutiny and contends that the district court's deference "to the City Council's weighing of the interests at stake" was legal error. Appellant Br. 19-20, 32. PLF, for its part, insists that the eviction moratorium must fall because it "restricts" contractual obligations "beyond what is necessary to achieve" the government's interests. PLF Br. 7; *see also id.* at 14 ("A law

substantially impairing contracts that extends beyond what is necessary to fulfil its objectives is invalid . . . ."). PLF then doubles down on that principle and asserts that the availability of "less-restrictive alternatives" should have factored into the district court's constitutional analysis. *Id.* at 18-20. But the legal tests manufactured by Appellant and PLF cannot be squared with the Supreme Court's Contract Clause precedent.

First, as just explained above, the Supreme Court has instructed courts to "defer to legislative judgment as to the necessity and reasonableness of a particular measure," even when such measures interfere with contractual obligations. *Energy Rsrvs. Grp.*, 459 U.S. at 412-13 (internal quotation marks omitted). Appellant is therefore wrong to assert that "[t]he district court erred in deferring to the City's determination of reasonableness." Appellant Br. 42.

Second, contrary to PLF's suggestion (at 7, 14), neither the district court nor this Court must assess whether the eviction moratorium "restricts" contractual obligations "beyond what is necessary" to further the City's goal of protecting the health and safety of its residents. The only relevant inquiry is whether the "law is drawn in an 'appropriate' and 'reasonable' way to advance 'a significant and legitimate public purpose.'" *Sveen*, 138 S. Ct. at 1822 (quoting *Energy Rsrvs. Grp.*, 459 U.S. at 411-12). Thus, PLF's invocation of the "less-restrictive means" standard (which it mistakenly imports from the commercial speech context) is misplaced. *See*

PLF Br. 18 (citing *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989)). Indeed, as the Supreme Court's precedents make abundantly clear, "state and local laws are upheld, even if they interfere with contractual rights, so long as they meet a *rational basis test*." Chemerinsky, *supra*, at 637 (emphasis added).

Third, *Allied Structural Steel* does not support application of more exacting scrutiny in this case. There, the Court struck down a Minnesota law that required employers to pay a "pension fund charge" when a pension plan was terminated, finding that it was not reasonably tailored to emergency legislation. 438 U.S. at 248-49 ("[T]his law can hardly be characterized, like the law at issue in the *Blaisdell* case, as one enacted to protect a broad society interest rather than a narrow class."). But *Allied Structural Steel* is inapposite. For one, that case did not present the same exigencies at issue here: unlike the City of Los Angeles, Minnesota was not confronting a deadly pandemic and a devastating financial and housing crisis. For another, the state law at issue in *Allied Structural Steel* was not in a well-regulated industry,[2] *see* Tribe, *supra*, at 621, and "may have been directed at one particular

[2] Appellant acknowledges that laws targeting well-regulated industries enjoy greater judicial deference, Appellant Br. 25-26, but tellingly elides that principle when performing its constitutional analysis. *See Energy Rsrvs. Grp.*, 459 U.S. at 411 (noting that courts should "consider whether the industry the complaining party has entered has been regulated in the past"). The district court declined to follow Appellant down that mistaken path and rightly understood that "the landlord-tenant relationship has long been subject to extensive regulation," which has led many courts to find that "eviction moratoria are relatively minor alterations to existing regulatory frameworks." ER0012 (collecting cases).

employer" as opposed to the general public in an effort to address a broad social problem, *Energy Rsrvs. Grp.*, 459 U.S. at 412 n.13. And in any event, the Supreme Court has never purported to apply "exacting scrutiny" in any subsequent case. *See* Chemerinsky, *supra*, at 638.

Fourth, to the extent heightened scrutiny applies at all in any Contract Clause analysis, it is only in the context of *public* contracts. In *U.S. Trust Co. of New York v. New Jersey*, the Court explained that interference with public contracts, as opposed to private ones, may mandate less deference to state and local action.[3] 431 U.S. 1, 26 (1977) ("[C]omplete deference to a legislative assessment of reasonableness and necessity is not appropriate [when] the State's self-interest is at stake."); *see* Chemerinsky, *supra*, at 639 ("[I]t is clear that laws impairing the government's obligations under its own contracts will be subjected to much more careful review than will laws interfering with private contracts."); *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137 (9th Cir. 2004) ("Courts defer to a lesser degree when the State is a party to the contract because 'the State's self-interest is at stake.'") (quoting *U.S. Trust Co.*, 431 U.S. at 25-26). PLF's attempt to apply this

[3] While PLF includes a footnote recognizing that *U.S. Trust Co.* "implicat[ed] the government's self-interest regarding a public contract," its brief goes on to opine that "the Supreme Court has repeatedly recognized the tailoring requirement in the private contract cases cited above," PLF Br. 14 n.6. But the other post-*Blaisdell* cases in the private contract context to which PLF cite do not reference a "necessary" tailoring requirement. PLF Br. 14.

public-contract rule to a city regulation affecting private contracts is therefore unavailing.

Finally, it bears emphasis that, in its most recent Contract Clause case, the Supreme Court stood by the rational basis standard established in *Blaisdell.* In *Sveen*, the Court considered whether a statute that altered Minnesota trust and estates law to automatically revoke the designation of a former spouse as beneficiary upon divorce, and was retroactively applied to an insurance policy signed before the new law's enaction, violated the Contract Clause. 138 S. Ct. at 1820-21. In rejecting that Contract Clause challenge, the Court reaffirmed that if a state or local law substantially impairs a contract, it need only be an "'appropriate' and 'reasonable' way to advance 'a significant and legitimate public purpose.'" *Id.* at 1822 (quoting *Energy Rsrvs. Grp.*, 459 U.S. at 411-12). Tellingly, the Court declined Respondents' invitation in that case to retreat from *Blaisdell*'s deferential approach to state and local laws that impaired contractual rights. *See* Brief for Respondent, *Sveen v. Melin*, 138 S. Ct. 1815 (No. 16-1432), 2018 WL 1010183, at *18-33. This Court should reject Appellant's and PLF's misguided invitation to do the same in this case.

II. The Contract Clause Does Not Prohibit State And Local Governments From Reasonably Exercising Their Broad Police And Emergency Powers In Times Of Crisis

State and local governments enjoy broad authority to regulate public health and welfare, particularly during economic, environmental, and medical

emergencies. *See, e.g.*, *Berman v. Parker*, 348 U.S. 26, 32 (1954) ("Public safety, public health, morality, peace and quiet, law and order—these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs."); *Wasmuth v. Allen*, 85 S. Ct. 5, 6 (1964) (denying an application to delay enforcement of a state regulation where "the scope of state police power is as broad as in the field of public health"); Felice Batlan, *Law in the Time of Cholera: Disease, State Power, and Quarantines Past and Future*, 80 Temple L. Rev. 53, 73 & n.105 (2007) (stating that the "extraordinary power" of state and local officials to pass regulations to guarantee public health, including to impose quarantine, "remains in effect today"). In light of those broad powers, the Supreme Court has long acknowledged the clear constitutional authority of states and municipalities to legislate for the public good when faced with a threat to the public welfare. *See, e.g.*, *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944) ("The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death."); *Whalen v. Roe*, 429 U.S. 589, 597 (1977) ("State legislation which has some effect on individual liberty or privacy may not be held unconstitutional simply because a court finds it unnecessary . . . . For we have frequently recognized that individual States have broad latitude in experimenting with possible solutions to problems of vital local concern.").

Adhering to these well-established precepts, the Supreme Court has established a flexible test in determining whether state and local laws run afoul of the Contract Clause. *See supra* pp. 9-10; *see also* Bernadette Meyler, *Economic Emergency and the Rule of Law*, 56 DePaul L. Rev. 539, 567 (2007) ("[R]ather than envisioning the rule of law as abrogated at [times of emergency], the Court has suggested that a flexible view of economic rights can coexist harmoniously with the rule of law."). In applying that test, courts have rightly afforded states and municipalities substantial leeway in responding swiftly and creatively to unprecedented crises. *See Blaisdell*, 290 U.S. at 426 (acknowledging that "emergency may furnish the occasion for the exercise of power"); *see also Buffalo Teachers Fed'n v. Tobe*, 464 F.3d 362, 368 (2d Cir. 2006) (deferring to New York's legislature in determining it "had a legitimate public purpose in passing the Act and its wage freeze power" because "Buffalo was suffering at the time, and continues to suffer, a fiscal crisis").

Take, for instance, laws passed in the aftermath of Hurricane Katrina. After that unforeseen natural disaster, the Louisiana state legislature passed laws extending the time during which insurance policyholders could file claims against their insurers for property damage sustained during the storm. *See State v. All Prop. & Cas. Ins. Carriers Authorized & Licensed to Do Bus. in the State*, 937 So. 2d 313, 326 (La. 2006). Louisiana's highest court upheld the law against a Contract Clause

challenge. *Id.* Along the way, the court emphasized that Hurricanes Rita and Katrina were "the worst natural disaster[s] to ever have occurred in the United States" and deferred to the state's explanation of the legislation's purpose. *Id.* ("The Louisiana Legislature finds that Hurricanes Katrina and Rita created a statewide emergency and inflicted immediate undue and unimaginable hardships on hundreds of thousands of Louisiana citizens . . . ."). The court further held that the state's emergency measures were "appropriate and reasonable in order to protect the rights of the citizens of Louisiana and their general welfare" from an unprecedented financial, environmental, and public health emergency. *Id.* at 327.

The same holds true for many COVID-19 measures implemented by various states, counties, and cities across the country. Unsurprisingly, this case is not the first involving a Contract Clause challenge to restrictions aimed at addressing the COVID-19 pandemic. Indeed, many courts have heard such Contract Clause challenges in a variety of contexts—ranging from school and gym closures, *see Peterson v. Kunkel*, 2020 WL 5878407 (D.N.M. Oct. 2, 2020) (school closures); *Xponential Fitness v. Arizona*, 2020 WL 3971908 (D. Ariz. July 14, 2020) (gym closures), to eviction moratoria like the one at issue here, *see, e.g.*, *Elmsford Apartment Assocs., LLC v. Cuomo*, 469 F. Supp. 3d 148 (S.D.N.Y. 2020); *HAPCO v. City of Philadelphia*, 2020 WL 5095496 (E.D. Pa. Aug. 28, 2020); *Melendez v. City of New York*, 2020 WL 7705633 (S.D.N.Y. Nov. 25, 2020); *Heights*

Apartments, LLC v. Walz, 2020 WL 7828818 (D. Minn. Dec. 31, 2020); *El Papel, LLC v. Inslee*, 2020 WL 8024348 (W.D. Wash. Dec. 2, 2020); *Baptiste v. Kennealy*, 2020 WL 5751572 (D. Mass. Sept. 25, 2020). To date, none of these challenges has been successful. In fact, nearly every court that has addressed a Contract Clause challenge arising from a COVID-19 measure has held that the measure does not substantially impair contractual rights.[4] Moreover, to our knowledge, the courts that have reached the question have uniformly (and predictably) held that the COVID-19

[4] *See, e.g.*, *Elmsford Apartment Assocs.*, 469 F. Supp. 3d at 171 ("The fact that landlords would prefer not to avail themselves of their legal remedies . . . does not mean that the state has impaired their contractual rights."); *Peterson*, 2020 WL 5878407, at *7 (holding no substantial impairment because the act at issue did not require the plaintiff's child's school to cease in-person education); *Xponential Fitness*, 2020 WL 3971908, at *9 ("As the closure of gyms pursuant to the June 29, 2020 Executive Order is temporary, the Court is skeptical that it meets the threshold requirement of substantial impairment."); *HAPCO*, 2020 WL 5095496, at *10 ("Against this heavily-regulated backdrop, it is doubtful that any impairment of a contractual relationship has occurred as a result of the [eviction moratorium]."") (internal quotation marks omitted); *Heights Apartments*, 2020 WL 7828818, at *12 ("The landlord's end of the contractual bargain is receiving rent payments. Nothing in the [executive orders] interfere[] with that right, and each of the eviction moratoria clearly states that it does not affect a tenant's obligation to pay rent."). *But see Baptiste*, 2020 WL 5751572, at *16 (rejecting Contract Clause challenge while finding that even though landlord-tenant relationships are heavily regulated, "a reasonable landlord would not have anticipated . . . a ban on even initiating eviction actions against tenants who do not pay rent"); *Melendez*, 2020 WL 7705633, at *13 (holding that contractual provision affected by New York's Guaranty Law "was an essential provision of [plaintiff's] commercial lease" and thus was a "primary inducement" to enter the contract, but that the law was reasonably tailored to a legitimate public purpose); *El Papel*, 2020 WL 8024348, at *6 (rejecting Contract Clause challenge even though the court assumed, without deciding, "that there is a 'substantial' impairment of the leases").

pandemic represents a significant and legitimate public purpose, and that the nationwide eviction moratoria are reasonable and appropriate responses to this unprecedented crisis.[5]

* * *

The City of Los Angeles's eviction moratorium is fully consistent with the Contract Clause because it is reasonably tailored to address the deadliest public health and financial emergency in recent history. Appellant and PLF seek to avoid that straightforward result by asking this Court to ignore a century of Supreme Court precedent granting states and localities the breathing room to act swiftly and decisively in times of emergency. No court has accepted that sweeping proposition. This Court should not be the first.

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[5] *See, e.g.*, *HAPCO*, 2020 WL 5095496, at *10 ("The City has determined that there is a 'housing emergency in the City of Philadelphia' and . . . the Court cannot conclude that the City's methods of alleviating the emergency were inappropriate or unreasonable."); *Heights Apartments*, 2020 WL 7828818, at *12 ("[The eviction moratorium] reasonably balances protection of public health (by keeping people in their homes and preventing the spread of COVID-19) with a landlord's legitimate need, in some circumstances, to evict a tenant."); *Baptiste*, 2020 WL 5751572, at *16 (holding Massachusetts "had a rational basis for deciding that the Moratorium was a reasonable way to address legitimate and significant economic and public health issues created by the COVID-19 pandemic"); *Melendez*, 2020 WL 7705633, at *13 (stating New York City's aim in passing law was to "ensur[e] the financial survival" of small business owners, and "it is not the role of this Court . . . to opine on the wisdom of the policy decision at issue here"); *El Papel*, 2020 WL 8024348, at *8 ("The Contracts Clause allows the temporary delay in payments during a public emergency at least so long as the right to the defaulted rent remains.").

CONCLUSION

For the foregoing reasons, this Court should affirm the decision below.

Dated: January 21, 2021

Respectfully Submitted,

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APPENDIX A

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,751 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. 32(a)(6) because this brief has been prepared in a proportionally spaced type face using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: January 21, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2021, I electronically filed the foregoing *amicus* brief with the Clerk for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

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