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, et al.,

Respondents.

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

BRIEF IN OPPOSITION FOR THE CITY OF LOS ANGELES

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QUESTIONS PRESENTED

1. When emergency measures are alleged to interfere substantially with private contracts, do those measures violate the Contracts Clause in Article I, Section 10 of the Constitution if they are drawn appropriately and reasonably to advance a concededly significant and legitimate public purpose?

2. Is it appropriate for a court to defer to legislative judgment in determining whether an emergency measure is reasonably drawn to advance a significant and legitimate public purpose?

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INTRODUCTION

To avoid turning people out of their homes exactly when the COVID-19 pandemic required them to remain there—and to suppress a follow-on pandemic of evictions arising from widespread COVID-19-related income loss—respondent the City of Los Angeles enacted a set of emergency measures that temporarily prevent residential landlords from evicting tenants who default on their rent for COVID-19-related reasons. Those emergency measures expressly do not forgive tenants' rental debt. They do not prevent landlords from evicting tenants for at-fault reasons, including a failure to pay rent that is unrelated to the COVID-19 pandemic. They do not prevent landlords from suing defaulting tenants for rent at any time. And they are coupled with rent relief measures meant to reimburse landlords for at least some of the burden of unpaid rents.

Petitioner the Apartment Association of Greater Los Angeles nevertheless sued the City mere weeks after it enacted the emergency measures. On behalf of its member landlords, the Association asserted in relevant part that the City's eviction protections facially violate the Contracts Clause; that they (1) substantially impair leases (2) in a way that does not reasonably advance a significant and legitimate public purpose—even after accounting for the deference owed to the Los Angeles City Council's assessment of reasonableness. It is well-settled that proving a Contracts Clause claim requires a party to demonstrate both of those two things.

A few months after it filed its lawsuit, the Association moved for a preliminary injunction and argued that it is unreasonable as a matter of law to suspend evictions without requiring tenants to compensate landlords during the period of the suspension. (Put differently: Per the Association, in an emergency, a government cannot suspend evictions of tenants whom the emergency renders unable to pay rent—unless the government requires the tenants to pay rent.) Because that is not actually the law, the district court found that the Association failed to carry its burden of showing that the City's emergency measures were unreasonable.

In denying the Association's preliminary injunction motion, the district court also found that the Association's evidence of irreparable harm really showed no such thing, and that the Association failed to show either that the equities tipped in its favor or that a preliminary injunction was in the public interest. Still, mindful that an unprecedented pandemic would take an unknowable course, the district court denied the Association's motion without prejudice.

Rather than continuing to litigate the merits of its claim in the district court, the Association appealed and pressed the same arguments in the Ninth Circuit. Presented with those arguments, a panel comprising Judges Bress, Bybee, and Cardone held unanimously that the district court did not abuse its discretion in denying the Association's motion.

Twice rebuffed in arguing that it is per se unreasonable to suspend evictions for non-payment of rent without requiring contemporaneous compensation for landlords, the Association takes a new tack in its petition. It argues for the first time that the Contracts Clause demands a more searching means-end analysis than asking, deferentially, whether the City's emergency measures are a reasonable means of achieving a (concededly) legitimate public purpose. That the Association never made this argument before is reason enough to deny its petition.

But it is not the only reason. The Association asserts that the courts of appeals are conflicted over the proper means-end analysis for a Contracts Clause claim, arguing that the Second Circuit's recent decision in *Melendez v. City of New York*, 16 F.4th 992 (2d Cir. 2021) opens a divide. The Association omits that the Second Circuit said expressly (and correctly) that its *Melendez* decision does not conflict with the Ninth Circuit's decision here. Indeed, the courts' treatment of emergency measures aimed at averting mass evictions in the face of the COVID-19 pandemic exemplifies uniformity: Two years in, it appears that no court in the country has concluded that such measures violate the Contracts Clause.

This case, in this Court, is a poor candidate to be first. Nothing prevents the Association from abandoning the meritless legal theory it pursued the last time around and continuing to litigate its Contracts Clause claim in the district court, which told the Association that it would be receptive to additional argument on

the reasonableness of the City's measures. Meanwhile, even if this Court alters the means-end analysis central to the merits of the Association's Contracts Clause claim, the Association would *still* have been properly denied an injunction on the existing record. On that record, the district court did not clearly err in finding that the Association failed to demonstrate irreparable harm. Answering the Association's questions presented will do nothing to change that.

The Court should deny the Association's petition.

STATEMENT

A. Facing "an unprecedented public health crisis" that would cause "substantial loss of income" and thereby "undermine housing security," the City of Los Angeles temporarily limits evictions.

In January 2020, the United States confirmed its first case of COVID-19, a contagious disease that would go on to kill hundreds of thousands of Americans. By early March, respondent the City of Los Angeles—along with other cities around the country—took emergency measures to slow the disease's spread by keeping people at home.

Anticipating that sequestering Angelenos would cause "unexpected expenditures or substantial loss of income" and so "threaten[] to undermine housing security," the Los Angeles City Council imposed emergency

limits on evictions. L.A. Mun. Code § 49.99 (Pet. App. 60–62). At issue are the temporary limits the City imposes on residential landlords. Those limits were imposed on March 4, 2020, and with a significant exception, *see* pp. 7–8, *infra*, they are tied to the local state of emergency that the COVID-19 pandemic has caused in the City.

First, during the local emergency, a landlord cannot attempt to evict a residential tenant for failing to pay rent if, and only if, the tenant's inability to pay rent is "due to circumstances related to the COVID-19 pandemic." (For example, "loss of income due to a COVID-19 related workplace closure.") The City's measures allow a tenant up to 12 months from the end of the local emergency to repay any rent deferred during the emergency before the tenant is subject to eviction for that unpaid rent. L.A. Mun. Code § 49.99.2(A) (Pet. App. 64).

Second, a landlord cannot attempt to evict a tenant for a no-fault reason—e.g., the expiration of a lease—during the local emergency. *Id.* § 49.99.2(B) (Pet. App. 64). Nor can a landlord attempt to evict a tenant "based on the presence of unauthorized occupants or pets, or for nuisance related to COVID-19." *Id.* § 49.99.2(C) (Pet. App. 64–65). And a landlord cannot charge a tenant interest or a late fee on rent that is unpaid due to COVID-19-related circumstances. *Id.* § 49.99.2(D) (Pet. App. 65).

Third, a landlord cannot remove occupied residential units from the rental market until 60 days after

the expiration of the local emergency. *Id.* § 49.99.4 (Pet. App. 66–67).

If a landlord seeks to evict a tenant notwithstanding the applicability of these restrictions, the restrictions function as an affirmative defense to the landlord's unlawful detainer claim. *Id.* § 49.99.6 (Pet. App. 67). Additionally, the City Council created a private right of action to prevent sub rosa evictions—that is, cases in which a landlord does something like post an unenforceable eviction notice to goad a tenant into abandoning a residence without any legal proceedings. A tenant may sue a landlord for doing that, but only after the tenant gives the landlord written notice of the alleged violation and 15 days to cure it. On the other hand, a landlord can recover attorney fees from a tenant if the tenant uses this right of action to mount a frivolous lawsuit against the landlord. *Id.* § 44.99.7 (Pet. App. 67–68).

There are two important things that the emergency measures do *not* do. First, the City Council emphasized that by restricting evictions, it had not forgiven any tenant's rental debt. *Id.* §§ 44.99.2(A), 49.99.5 (Pet. App. 64, 67). As far as the City Council legislated, that debt could be collected at any time in a breach of contract action against the tenant. Second, nothing in the City's emergency measures precludes a landlord from evicting a tenant for any at-fault

reason—including a failure to pay rent if the tenant's default is unrelated to COVID-19.[1]

B. The State of California and the County of Los Angeles adopt their own COVID-19 emergency measures to avoid mass evictions.

The State of California, too, acted to avert mass evictions. The Judicial Council of California, which sets policy for California's courts, enacted an emergency rule curtailing courts' ability to issue summonses in unlawful detainer actions from April 6, 2020 until September 1, 2020. Cal. Rules of Ct. Emergency R. 1.[2]

The California Legislature stepped in when the Judicial Council's emergency rule expired. On August 31, 2020, California Governor Gavin Newsom signed into law a series of bills to protect tenants *and* landlords (with various foreclosure-related protections). In relevant part, this legislation barred courts from issuing unlawful detainer summonses for non-payment of rent until October 5, 2020; forbade landlords from suing "to recover COVID-19 rental debt" until March 1, 2021; and required tenants to begin repaying unpaid rent by March 1, 2021, expressly preempting contrary

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[1] The petition asserts that a landlord must accept a tenant's representation of COVID-19-related financial distress as dispositive. Pet. 5. That is not true. A landlord may force a tenant to prove inability to pay as an affirmative defense to an unlawful detainer claim. Pet. App. 47–48.

[2] https://www.courts.ca.gov/documents/appendix_I.pdf [https://perma.cc/V84U-GUZ5]

local measures. COVID-19 Tenant Relief Act of 2020, ch. 37, § 20 (codified as amended at Cal. Civ. Proc. Code § 1179.01.5(b)(1)); COVID-19 Small Landlord and Homeowner Relief Act, ch. 37, § 14 (codified as amended at Cal. Civ. Proc. Code § 116.223(b)(3)); COVID-19 Tenant Relief Act of 2020, ch. 37, § 20 (codified as amended at Cal. Civ. Proc. Code § 1179.05(a)(2)(B)).[3]

The state-level legislation also created a system in which a tenant who signed a declaration attesting to COVID-19-related financial distress could never be evicted for failing to pay rent that came due between March 1, 2020 and August 31, 2020. COVID-19 Tenant Relief Act of 2020, ch. 37, § 20 (codified as amended at Cal. Civ. Proc. Code §§ 1179.03(b)(3), (g)(1)). Going forward, the legislation would protect a tenant from eviction over unpaid rent coming due between September 1, 2020 and January 31, 2021 if the tenant signed a declaration of COVID-19-related financial distress and, by January 31, paid 25 percent of the overdue rent from that period. *Id.* (codified as amended at Cal. Civ. Proc. Code § 1179.03(g)(2)(B)).

The County of Los Angeles likewise took emergency measures to avoid a deluge of evictions. Through a series of resolutions beginning on March 19, 2020, its board of supervisors set a "baseline for all incorporated cities within Los Angeles County" that did not have "the same or greater protections" as the County's. Res.

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[3] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3088 [https://perma.cc/2VKH-3CLN]

of Bd. of L.A. Cnty. Supervisors at 1, 2, 4 (Jan. 25, 2022), https://dcba.lacounty.gov/wp-content/uploads/2022/02/Resolution_1.25.2022.pdf [https://perma.cc/W544-FGUC]. The County's emergency measures, like the City's, prevented landlords from evicting tenants who accrued rent debt for COVID-19-related reasons. *E.g.*, *id.* § VI(A)(1). And the County's measures—again, like the City's—prevented landlords from evicting tenants "for nuisance or for unauthorized occupants or pets whose presence is necessitated by or related to the COVID-19 emergency," and from evicting tenants for no-fault reasons. *E.g.*, *id.* §§ VI(A)(2), (A)(4).

C. In the middle of this legislative activity, the Apartment Association of Greater Los Angeles alleges that the City's emergency measures violate the Contracts Clause, but it fails to persuade the district court to enjoin their application.

Meanwhile, in June 2020, petitioner the Apartment Association of Greater Los Angeles sued the City—and only the City—alleging that its emergency measures violated various constitutional provisions. (Although the Association sued only the City, evictions at the time were also restricted by both Judicial Council rule and Los Angeles County resolution, *see* pp. 7–9, *supra*.) Two other groups, respondent the Alliance of Californians for Community Empowerment Action and respondent Strategic Actions for a Just Economy, intervened in the litigation on their members' behalf and in defense of the City's emergency measures.

After four iterations of its complaint, the Association filed a motion for a preliminary injunction in late September 2020. (That is, after the expiration of the Judicial Council rule, but while both the California and Los Angeles County emergency measures remained in force, *see* pp. 7–9, *supra*.) The Association argued in relevant part that the City's emergency measures violated Article I, Section 10 of the United States Constitution, which restricts states from passing any "law impairing the obligation of contracts." As this Court has construed it, a government violates the Contracts Clause by substantially interfering with a contract between two private parties if the government's interference is not "an appropriate and reasonable way to advance a significant and legitimate public purpose." *Sveen v. Melin*, 138 S. Ct. 1815, 1822 (2018) (cleaned up).

Having conceded that the City's emergency measures had a legitimate public purpose, the Association did not argue that the restrictions needed to be anything other than appropriate and reasonable. It argued instead that interfering with a lease is per se unreasonable if a landlord does not receive "a reasonable amount of rent contemporaneous with occupancy as a condition to avoiding eviction." Pl.'s Mot. for Prelim. Inj. 24, ECF No. 46. And because the City's measures did not guarantee that, the Association contended it was likely to prevail on the merits of its Contracts Clause claim.

The Association then asserted that since it had shown a likelihood of succeeding on a constitutional

claim, it was entitled to a presumption that the City's measures would irreparably harm its members, *id.* at 18–19; that it was exempt from the "frequently reiterated standard requir[ing] plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Nevertheless, the Association offered a few declarations purporting to show the requisite harm. Pl.'s Mot. 16–17. Finally, the Association argued that the balance of harms tipped in its favor because California provided allegedly sufficient statewide protections against eviction. *Id.* at 31–32.

The district court found that the Association had not satisfied any of the four *Winter* requirements for a preliminary injunction. It began with the tentative conclusion that the Association "is likely to succeed in showing a substantial impairment of its"—really, its members'—"contractual rights." Pet. App. 41–42 & n.25. But the district court rejected the Association's argument that contemporaneous payment of rent was the sine qua non of Contracts Clause reasonableness. Pet. App. 43–46. And given that the Association made no other argument as to the emergency measures' reasonableness, the district court "defer[red] to the City Council's weighing of the interests at stake," thereby joining "at least four other courts that have found eviction moratoria reasonable in light of the COVID-19 pandemic at the preliminary injunction stage." Pet. App. 43, 46–48. Still, the district court noted expressly that nothing in its order should "be read to suggest

that further litigation of this matter could not affect" its conclusions, and that it found the City's measures "reasonable on the balance *at this stage of the proceedings*." Pet. App. 49 n.34 (italics added).

The district court went on to reject the Association's contention that it was entitled to a presumption of irreparable harm, and found that the declarations the Association submitted were insufficient to demonstrate a likelihood of it. None of the declarations showed more than compensable economic injury resulting from the City's measures, and some did not even show that. Pet. App. 50–54; *see* Adomian Decl. ¶¶ 4–6, ECF No. 46-5 (landlord disputes whether a tenant has financial difficulty related to COVID-19); Garcia Decl. ¶¶ 4–5, ECF No. 46-3 (delinquent tenants vacated voluntarily). The district court noted further that it had difficulty discerning irreparable harm that could both be attributed to the City's emergency measures and cured by a preliminary injunction, because California state law also restricted landlords' ability to evict tenants for rent debt arising from COVID-19-related financial distress. Pet. App. 54–57.

Finally, the district court found that the Association had not met its burden of showing that the balance of equities tipped in favor of an injunction, or that an injunction was in the public interest. Pet. App. 57–59. Still, writing in the fall of 2020, the district court realized presciently, and emphasized repeatedly, that the relevant facts could develop unpredictably. Pet. App. 41 n.25, 49 n.34. So it denied the Association's preliminary injunction motion without prejudice. Pet.

App. 59. Rather than move on to the merits of its case, the Association appealed.

D. The State of California adjusts its own emergency measures, the United States and California governments take steps to make landlords whole, and the Ninth Circuit affirms the district court's order.

The Association filed its notice of appeal in late 2020. By early 2021, governments at various levels had made efforts to ameliorate landlords' financial burdens. Pet. App. 26. Using money allocated by the United States government, the City expanded a program for reimbursing landlords for rental debt by hundreds of millions of dollars. Pet. App. 25–26. And California extended its statewide efforts to avert COVID-19-related evictions. Act of Jan. 29, 2021, ch. 2, §§ 10, 16–19, 21.[4]

It was against this backdrop that the Ninth Circuit took up the Association's appeal. The Association again claimed that there is a "standard for reasonableness for Contract[s] Clause claims like those here," and that the "standard asks whether a property owner is ensured *fair rental compensation* during the pendency of the moratorium delaying her right to regain possession of her property." Appellant's Opening Br. 20, ECF No. 7. The Association reprised its argument from the district court that any measure falling short of that

[4] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB91 [https://perma.cc/X8XW-GJ66]

standard violates the Contracts Clause as a matter of law; that the City's measures fall short of the standard; that the Association was thus likely to prevail on its Contracts Clause claim; and that the district court therefore abused its discretion in denying the Association a preliminary injunction. *Id.* at 20–22.

Judge Bress, Judge Bybee, and Judge Cardone (sitting by designation) rejected the Association's argument. As did the district court, the unanimous panel assumed for argument's sake that the City's measures substantially impaired residential leases. Pet. App. 19. It then observed that the Association "does not seriously argue that the City's chosen mechanisms are not reasonably related to the legitimate public purpose of ensuring health and security during the pandemic." Pet. App. 22. The argument the Association made instead—that "eviction moratoria require fair rental compensation in the interim"—was without support: "[T]here is no apparent ironclad constitutional rule that eviction moratoria pass Contracts Clause scrutiny only if rent is paid during the period of the moratoria." Pet. App. 22, 23.

Because the Association made no other argument about the scrutiny applicable to the City's emergency measures, the panel did as this Court has instructed and "'properly defer[red] to legislative judgment as to the necessity and reasonableness of a particular measure.'" Pet. App. 18 (quoting *Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 413 (1983)). After "undertaking a careful examination" of the City's measures, the panel noted that they are "fairly tie[d]"

to the City's "stated goal of preventing displacement from homes"—displacement that one might reasonably conclude would "exacerbate the public health-related problems stemming from the COVID-19 pandemic." Pet. App. 19, 20 (cleaned up). Accordingly, the Ninth Circuit held, "the City's enactments pass constitutional muster under the Contracts Clause." Pet. App. 21.

The Association did not seek en banc review of the panel's decision. When the case returned to the district court, the Association again did not seek to develop facts that could change the outcome on the merits of its Contracts Clause claim—a claim that remains live in the litigation (as does every other claim in the Association's third amended complaint). Instead, the Association petitioned for a writ of certiorari.

E. The City of Los Angeles, the County of Los Angeles, and the State of California continue their overlapping emergency limits on evictions, accounting for changing conditions.

As of the date of this filing, the City's emergency measures remain subject to the preemptive state-law provision that requires tenants seeking to avoid eviction to begin repaying overdue rent—now, starting on May 1, 2022—regardless of the end of the local emergency. Cal. Civ. Proc. Code § 1179.05(a)(1)(B). State measures continue to prevent a landlord from ever evicting a tenant over unpaid rent accumulated

between March 1, 2020 and August 31, 2020, or from evicting a tenant who pays 25 percent of any unpaid rent accumulated between September 1, 2020 and September 30, 2021. *Id.* §§ 1179.03(b)(3), (g)(1), (g)(2)(b). They also prevent landlords from assessing late fees on COVID-19-delayed rental debt, while providing simultaneously for accelerated legal proceedings for landlords to collect that debt. Cal. Civ. Code § 1942.9(a); Cal. Code Civ. Proc. § 116.223.

Updated County measures continue to limit landlords' ability to evict tenants for rent that goes unpaid due to COVID-19-related financial distress, and prohibit interest or late fees on unpaid rent. Res. of Bd. of L.A. Cnty. Supervisors §§ VI(A), VIII.

It remains true that no City measure prevents, or has ever prevented, a landlord from suing a tenant to collect rent debt. And given that conditions have changed since it enacted the City's emergency measures—for example, there are now vaccines and antiviral treatments for COVID-19—the City Council is currently in the process of reevaluating those measures. L.A. City Council Mot. (Feb. 22, 2022), https://clkrep.lacity.org/onlinedocs/2021/21-0042-S3_misc_2-22-22.pdf [https://perma.cc/T655-GTQR].

REASONS TO DENY THE PETITION

A. This Court reiterated the applicable Contracts Clause framework just four Terms ago, and the Ninth Circuit applied it faithfully here.

The Association's petition asks the Court to revisit its framework for evaluating Contracts Clause claims—a framework the Court last applied only four Terms ago. *Sveen v. Melin*, 138 S. Ct. 1815, 1821–22 (2018). The Court has applied that framework in analyzing Contracts Clause claims since 1934. *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 438 (1934).

On its face, Article I, Section 10 of the Constitution bars states from passing *any* "law impairing the obligation of contracts"—an absolute prohibition that would leave little for a court to decide. But if the Contracts Clause was ever intended to be a total proscription on governments' interference with contracts, it has not been one since the Marshall Court recognized a "distinction between the obligation of a contract," which a state could not alter, "and the remedy given by the legislature to enforce that obligation," which it could. *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 200 (1819). That distinction allows legislatures at least some room to maneuver, because the boundary between remedies and obligations is neither sharp nor impermeable. Prohibiting the enforcement of gambling debts, for example, effectively annuls the underlying obligations. Consequently, by altering a remedy for the sake of the public's welfare, a state could effectively

(and constitutionally) alter an underlying contractual obligation. *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 284–85, 287, 289, 291 (1827) (Johnson, J., dissenting); *see Texaco, Inc. v. Short*, 454 U.S. 516, 528 (1982) ("when the practical consequences of extinguishing a right are identical to the consequences of eliminating a remedy, the constitutional analysis is the same"); *see generally Manigault v. Springs*, 199 U.S. 473, 480 (1905) (even "though contracts previously entered into between individuals may thereby be affected," a government is not prevented "from exercising such powers as are vested in it for the promotion of the common weal").

Still, it took a century for the Court to abjure the dubious exercise of sorting remedies from obligations as a means of applying the Contracts Clause. Since its Depression-era *Blaisdell* decision, though, the Court has "not placed critical reliance on the distinction between obligation and remedy." *City of El Paso v. Simmons*, 379 U.S. 497, 506 n.9 (1965); *see U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 19 n.17 (1977) ("the remedy/obligation distinction" is "largely an outdated formalism"); *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 60 (1935) (the "dividing line" between "changes of the substance of the contract and changes of the remedy" is "at times obscure").

Instead, the Court's modern Contracts Clause analysis first considers the degree to which a government has impaired a contractual obligation—whether by cabining the available remedies or by altering the obligation itself—and then asks about the government's reasons for doing so. *Blaisdell*, 290 U.S. at

438–39. If the government's means of impairing a contractual obligation are not reasonably related to a legitimate end, then its action will not pass Contracts Clause muster. *Compare, e.g.*, *W.B. Worthen Co. v. Thomas*, 292 U.S. 426, 430–34 (1934) (a law barring the garnishment of insurance proceeds to satisfy a judgment "was not limited to the emergency" that the enacting government invoked "and set up no conditions apposite to emergency relief") *with Blaisdell*, 290 U.S. at 444–47 (temporary foreclosure relief was justified by the Great Depression).

Or, as *Sveen* recited the test, "[t]he threshold issue is whether the state law has operated as a substantial impairment of a contractual relationship." 138 S. Ct. at 1821–22 (cleaned up). "In answering that question, the Court has considered the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." *Id.* at 1822. Then, "[i]f such factors show substantial impairment, the inquiry turns to the means and ends of the legislation," and specifically "whether the state law is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose." *Id.* (cleaned up).

In performing this means-end analysis, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 413 (1983) (cleaned up); *see*, *e.g.*, *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470,

504–06 (1987) (deferring to a legislature's decision to impose liability on miners for the widespread risk of subsidence, notwithstanding contractual waivers); *E. N.Y. Sav. Bank v. Hahn*, 326 U.S. 230, 233–35 (1945) (deferring to a legislature's assessment of the reasonableness of continuing, in 1944, a foreclosure moratorium then in its eleventh year). Deference, however, means deference; it does not mean credulity. A government cannot, for instance, drastically alter the pension obligations of an extremely narrow class of employers, claim nevertheless to be addressing a public purpose, and then expect a court to defer to its claim that it is acting reasonably to advance a significant public purpose. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 247–49 (1978).

This "long applied" test, *Sveen*, 138 S. Ct. at 1821, is the framework that both the district court and the Ninth Circuit correctly applied to the Association's Contracts Clause claim here. Pet. App. 17–18, 37, 42.

B. No conflict has developed in the courts' application of that framework in the interim, and the Association never argued previously for a different framework.

1. The Association says that the Second Circuit's *Melendez* decision scrutinizes a Contracts Clause claim differently than the Ninth Circuit did here, but *Melendez* itself expressly disclaims any conflict.

Notwithstanding that this Court reiterated its "long applied" Contracts Clause test just four years ago, *Sveen*, 138 S. Ct. at 1821, the Court might have occasion to revisit the framework if the courts of appeals had become conflicted in applying it since then.

There is no conflict.

To be sure, the Association points to the Second Circuit's decision in *Melendez v. City of New York*, 16 F.4th 992 (2d Cir. 2021) and *says* that the Second Circuit scrutinized an analogous Contracts Clause claim differently than the Ninth Circuit did in this case, leaving the two courts "squarely split on the question of the standard of review that applies to Contracts Clause challenges." Pet. 16. Specifically, the Association's contention is that the courts differ in how they conduct the means-end analysis of a measure after they have decided that the measure substantially impairs a contractual obligation. The Association posits that, per *Melendez*, the Second Circuit would not have deferred to the City Council's judgment that suspending the evictions of tenants impoverished by COVID-19 is a

reasonable means "of preventing displacement from homes" and "exacerbat[ing] the public health-related problems stemming from the COVID-19 pandemic." Pet. App. 20.

But the Association's prognostication about how the Second Circuit would approach this case would come as news to the Second Circuit, which stated expressly in *Melendez* that its decision was not contrary to the Ninth Circuit's decision here. *Melendez*, 16 F.4th at 1040 n.70. The Association manufactured a conflict in its petition only by failing entirely to mention, never mind reckon with, the Second Circuit's own assessment of its decision.

The relevant portion of *Melendez* examined a New York ordinance that barred commercial landlords permanently from tapping their tenants' guaranties to collect "for rent arrears arising during [an] almost sixteen-month period" between March 7, 2020 and June 30, 2021. *Melendez*, 16 F.4th at 1004–05. Although it cited a need to prevent business owners—"the presumed guarantors" of commercial tenancies—from facing personal financial ruin when emergency measures shuttered their businesses, the New York City Council extinguished the guarantors' obligations without regard to either the tenants' or their guarantors' financial straits. *Id.* at 1005. When the guarantor of a tenant who was in default before the pandemic's onset was nevertheless able to avoid paying most of a guaranty, the landlord claimed a violation of the Contracts Clause. *Id.* at 1009. The district court concluded that the landlord had "plausibly alleged a substantial

impairment" of a contract, but that New York's abrogation of the guaranty "advanced a legitimate public purpose and was a reasonable and necessary response to a 'real emergency.'" *Id.* at 1010. It dismissed the landlord's claim pursuant to Federal Rule of Civil Procedure 12(b)(6). *Id.*

The Second Circuit reversed. The majority opinion offered a lengthy perspective on the history and constitutional role of the Contracts Clause, *id.* at 1016–32, but the upshot was this: Taking the facts in the landlord's favor at the pleading stage, there was nothing in the record to connect the New York City Council's "professed public purpose" of helping "shuttered small businesses survive the pandemic" with (1) a measure that abrogated guaranties entirely but (2) did not condition that debt-forgiveness on a guarantor's inability to pay, or even consider whether the guarantor was the business owner. *Id.* at 1040–41.

While the majority acknowledged that "we defer to legislative judgments about the means reasonable and appropriate to address a public emergency, such deference is not warranted in the absence of some record basis to link purpose and means that, otherwise, appears missing." *Id.* at 1041. The majority allowed that New York could offer evidence on remand that would link its means with its professed end, and so demonstrate the reasonableness of its measure—but the matter on appeal had been decided on the pleadings. *Id.* In other words, the majority did not refuse to defer to the New York City Council's legislative judgment in principle; it merely held that the record revealed no

legislative judgment on the relevant point to which it could defer.[5]

This holding, the Second Circuit explained, is not contrary to "the Ninth Circuit's recent rejection of a Contracts Clause claim in *Apartment Ass'n of Los Angeles County v. City of Los Angeles*, 10 F.4th 905 (9th Cir. 2021)." *Melendez*, 16 F.4th at 1040 n.70. For one thing, "[t]he challenged eviction moratorium there"—that is, in this case—"did not destroy the integrity of the parties' underlying rent agreement but, rather, deferred payment of rent arrears for 'up to 12 months' after the end of the mayor's declared pandemic emergency." *Id.* For another, and "[f]urther distinguishing that case from this one is the fact that the issue on appeal was plaintiff's entitlement to a preliminary injunction on which it bore the burden of demonstrating likely success on its Contracts Clause claim, not simply its plausibility, as necessary here to withstand dismissal." *Id.*

Or: In both cases, assuming that the challenged measure substantially impaired contracts, the question was whether the impairment was reasonable. At the pleadings stage, New York lacked a legislative record that "link[ed] its purpose"—keeping small businesses alive—"and means"—abrogating guaranties

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[5] Even the *Melendez* dissent, which worried that the majority skewed the Contracts Clause's history to suggest more skepticism of legislatures than the Clause actually demands, realized ultimately that the majority did not "overrule our established precedents regarding the deference owed to the legislative judgment." *Id.* at 1069–70 (Carney, J., dissenting).

widely—so it could not foreclose a claim that its emergency measure was unreasonable. *Id.* at 1041. The Association, on the other hand, failed to demonstrate that Los Angeles's measures—measures "fairly tie[d]" to the Los Angeles City Council's legitimate public-health purposes, Pet. App. 20—were unreasonable, and so did not meet its preliminary-injunction burden.

Those outcomes are consistent. This Court's attention is not required to square a square.

2. The Association has identified no other conflicting decisions.

If there is no circuit conflict over how to analyze measures that are alleged to interfere with contracts between private parties, what to make of the Association's list of cases that supposedly adopt an approach inconsistent with the Ninth Circuit's?

Start with the other courts of appeals. Two of the Association's cases, *American Express Travel Related Services, Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 369–70 (3d Cir. 2011) and *Wisconsin Central Ltd. v. Public Service Commission*, 95 F.3d 1359, 1371 (7th Cir. 1996), held that a challenged measure did not substantially impair a contractual obligation to begin with. Those decisions therefore never reached a means-end analysis at all.

Two others, *Elliott v. Board of School Trustees*, 876 F.3d 926, 936–37 (7th Cir. 2017) and *Lipscomb v. Columbus Municipal Separate School District*, 269 F.3d

494, 505, 511 (5th Cir. 2001), addressed government interference with public, not private, contracts. Courts undisputedly apply a different level of means-end scrutiny to measures that interfere with public contracts, *U.S. Trust*, 431 U.S. at 25–26, so *Elliott* and *Lipscomb* likewise take no side in the Association's imaginary conflict over the means-end analysis applicable to contracts between private parties.

Then there is *Honeywell, Inc. v. Minnesota Life & Health Insurance Guaranty Ass'n*, 110 F.3d 547, 551–53 (8th Cir. 1997) (en banc), in which the Eighth Circuit held that there was no contract to be interfered with in the first place. The court held nothing about how to apply a Contracts Clause means-end analysis in that case.

The last circuit court case to which the Association points is from the Ninth Circuit itself. It claims that *Campanelli v. Allstate Life Insurance Co.*, 322 F.3d 1086 (9th Cir. 2003) evinces "tension within the Ninth Circuit" over how to perform the relevant means-end analysis. Pet. 22. The Ninth Circuit in *Campanelli* "defer[red] to legislative judgment." *Campanelli*, 322 F.3d at 1098 (cleaned up). Doing so, the court held that it did not violate the Contracts Clause to revive claims against insurers, otherwise barred by limitations periods in their policies, when policyholders—victims of the Northridge earthquake—"had been misled about the extent of their losses" by the insurers. *Id.* at 1099. There is no tension between that analysis and this one.

The Association's district court cases likewise fall on neither side of a confected divide. Like *Elliott* and *Lipscomb*, *West Indian Co. v. Government of the Virgin Islands*, 643 F. Supp. 869, 882 (D.V.I. 1986) involved government interference with a public contract. There was no means-end analysis in *Vanguard Medical Management Billing, Inc. v. Baker*, No. EDCV 17-965-GW(DTBx), 2018 U.S. Dist. LEXIS 227922, at *49–50 (C.D. Cal. Apr. 26, 2018), because the plaintiffs could not point to any contract that had been impaired by the challenged law.

The court in *21st Century Oncology, Inc. v. Moody*, 402 F. Supp. 3d 1351, 1360–63 (N.D. Fla. 2019) denied the plaintiff a preliminary injunction after concluding that the Florida Legislature impaired noncompetition agreements in physicians' contracts. That legislature's "ostensible public purpose" was "to reduce healthcare costs and improve patients' access to physicians," and while the way that it did so was "perhaps not the most elegant solution," it was not "arbitrary, capricious, or fantastical." This reasoning reflects ordinary legislative deference, not a more searching means-end analysis.

Finally, there is *Ross v. City of Berkeley*, 655 F. Supp. 820 (N.D. Cal. 1987). On a summary judgment record, the district court found that Berkeley violated the Contracts Clause when it enacted commercial rent controls for a purpose that was, at best, achieving "the relatively subtle objective of preserving a particular shopping district's commercial ambiance." *Id.* at 833. That gave the district court reason to doubt that the

measure advanced a significant and legitimate public purpose. *Id.* at 833. Given that Berkeley's public purpose was so insignificant, the district court concluded that the City's measures were unreasonable. *Id.* at 835–36. That is not inconsistent with a court's deference to legislative judgment, and it is not inconsistent with what the district court and Ninth Circuit did here. It is simply indicative of the fact that if a plaintiff develops a record showing a legislature's judgment is unreasonable, a court is not bound to conclude otherwise just because the legislature says so. *See* p. 20, *supra*.

What if *Ross* applied a means-end test categorically different from the one that the district court and Ninth Circuit applied here, though? Deviating from a 35-year-old district-court decision—lacking any binding effect anywhere, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011)—is not the equivalent of a United States court of appeals "enter[ing] a decision in conflict with the decision of another United States court of appeals on the same important matter," S. Ct. R. 10(a). As to the Contracts Clause means-end analysis, there is no such conflict.

3. The petition is the first place the Association has argued that the City's reasons for enacting its emergency measures were subject to insufficient judicial scrutiny.

But assume for argument's sake that there is something to the Association's claim that an important controversy exists in the federal courts over what

scrutiny the Contracts Clause's means-end analysis *really* requires. Given this hypothetical controversy, one would assume the Association argued in the district court and in the Ninth Circuit that the correct means-end analysis requires a court to scrutinize the City's emergency measures less deferentially than those courts did. More rigorous scrutiny is, after all, the outcome for which the Association advocates in its petition. So, one might ask, how did those courts address the argument when the Association made it before?

The answer is that those courts nowhere addressed the argument, because contrary to the petition's representation, Pet. 11–12, the Association has never argued previously for a different means-end analysis than the courts applied. The Association made only the argument the Ninth Circuit addressed, Pet. App. 22, which is the same argument the Association made in the district court: That any measure impeding a landlord's ability to evict a tenant is per se unreasonable if it does not require the tenant to compensate the landlord contemporaneously.

If there were actually some controversy about the means-end analysis that applies to the City's emergency measures, the district court and the Ninth Circuit should weigh in on it in the first instance. That the Association never asked them to do so is reason enough to deny its petition. *Byrd v. United States*, 138 S. Ct. 1518, 1526–27 (2018); *City & Cnty. of S.F. v. Sheehan*, 575 U.S. 600, 609 (2015); *Springfield v. Kibbe*, 480 U.S. 257, 258–60 (1987) (per curiam).

4. At bottom, the Association is asking this Court to be the first in the country to hold that local governments likely violated the Contracts Clause by undertaking emergency efforts to stave off mass evictions in the face of COVID-19.

The Association is not asking this Court to opine for posterity's sake on the appropriate degree of means-end scrutiny for its Contracts Clause claim. The Association is asking for the Court to apply a degree of scrutiny that would change its Contracts Clause claim from one that is *not* reasonably likely to succeed into one that *is* reasonably likely to succeed. (By itself, this still would not be enough to show that the Association was entitled to a preliminary injunction, *see* pp. 31–34, *infra*.)

If the Court acceded to the Association's request, it appears that it would be the first court in the country to hold that a government likely violated the Contracts Clause by imposing emergency eviction restrictions in the face of the COVID-19 pandemic. *See S. Cal. Rental Hous. Ass'n v. City of San Diego*, No. 3:21cv912-L-DEB, 2021 U.S. Dist. LEXIS 139970, at *10–19 (S.D. Cal. July 26, 2021) (no reasonable likelihood of success on a Contracts Clause claim); *El Papel LLC v. Inslee*, No. 2:20-cv-01323-RAJ-JRC, 2020 U.S. Dist. LEXIS 246971, at *16–33 (W.D. Wash. Dec. 2, 2020) (same); *Baptiste v. Kennealy*, 490 F. Supp. 3d 353, 381–87, 410 (D. Mass. 2020) (same); *HAPCO v. City of Philadelphia*, 482 F. Supp. 3d 337, 349–56 (E.D. Pa. 2020) (same); *Auracle Homes, LLC v. Lamont*, 478 F. Supp. 3d 199, 223–26

(D. Conn. 2020) (same); *see also Farhoud v. Brown*, No. 3:20-cv-2226-JR, 2022 U.S. Dist. LEXIS 20033, at *19–27 (D. Or. Feb. 3, 2022) (Contracts Clause claim fails as a matter of law); *Jevons v. Inslee*, No. 1:20-cv-3182-SAB, 2021 U.S. Dist. LEXIS 183567, at *22–35 (E.D. Wash. Sept. 20, 2021) (same); *Heights Apartments, LLC v. Walz*, 510 F. Supp. 3d 789, 808–10 (D. Minn. 2020) (same); *Elmsford Apartment Assocs. v. Cuomo*, 469 F. Supp. 3d 148, 171–72 (S.D.N.Y. 2020) (same); *Gonzales v. Inslee*, No. 55915-3-II, 2022 Wash. App. LEXIS 365, at *29–36 (Wash. Ct. App. Feb. 23, 2022) (same); *S.F. Apartment Ass'n v. City & Cnty. of S.F.*, No. CPF-20-517136, 2020 Cal. Super. LEXIS 151, at *2 (Cal. Super. Ct. Aug. 3, 2020) (denying an extraordinary writ sought for a Contracts Clause violation); *cf. Melendez*, 16 F.4th at 1046–47 (refusing to hold that a law abrogating personal guaranties on commercial leases is reasonably likely to violate the Contracts Clause).

C. This case is a poor vehicle for the Court to address the questions presented.

1. Answering the questions presented in the Association's favor would not change the underlying judgment.

Suppose, however, that one were inclined to revisit this Court's Contracts Clause jurisprudence—even in the absence of a circuit conflict. *Sveen*, 138 S. Ct. at 1827–28 (Gorsuch, J., dissenting). This is still not the right case in which to do it.

For starters, if the Court answered the questions presented in the Association's favor—even if it

imposed an absolute bar on any state interference with contractual obligations—there would still be no abuse of discretion in the district court's denial of the Association's preliminary injunction. The most basic reason for that was baked into the Association's preliminary injunction motion. The Association insisted that the district court enjoin application of the City's emergency measures as to all residential leases, full stop. The problem with that request, as Judge Bybee realized during oral argument in the Ninth Circuit, is that the emergency measures apply to a large (and growing) class of leases that they cannot substantially impair as a matter of law: The emergency measures cannot impair any leases that were executed after the measures were enacted, though the measures would nonetheless protect those tenant–lessees from eviction for COVID-19-related defaults. Oral Arg. 39:55–40:19; *see Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 249 (1922) ("a lease made subsequent to the enactment of a statute can not be impaired by it"); *see also Sveen*, 138 S. Ct. at 1828 (Gorsuch, J., dissenting) (governments can "regulate contractual rights prospectively").

The Association's counsel responded to Judge Bybee's observation by claiming that the Association was seeking only to enjoin the emergency measures' application to leases that predated the measures' enactment. Oral Arg. 40:10–40:27. The Association's preliminary injunction papers speak for themselves, and they do not say the same thing that the Association's counsel did. Pl.'s Mot. for Prelim. Inj. 2–3, 8, 32, ECF No. 46. Given the necessarily overbroad scope of the injunction that the Association actually requested, it

could not have been an abuse of the district court's discretion to deny the Association's motion—especially since it did so without prejudice. *See Ayotte v. Planned Parenthood*, 546 U.S. 320, 329 (2006) (courts should not enjoin a law's constitutional applications).

Imposing a post hoc limitation on the scope of a hypothetical injunction might fix one problem, but there are others. A preliminary injunction is "an extraordinary remedy never awarded as a matter of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A party seeking one must satisfy four criteria—a reasonable likelihood of success on the merits, a likelihood of irreparable harm in the interim, a favorable balance of equities, public interest favoring the injunction—and the district court found that the Association satisfied none of them. Pet. App. 49, 57, 58. The petition brushes aside the Association's failures on three of the four factors, save to make the unsupported assertion that "it seems fairly obvious" that "a different result would obtain" if only the first factor were reevaluated. *Compare* Pet. 26 *with* Petition for a Writ of Certiorari at 29–32, *Winter*, 555 U.S. 7 (No. 07-1239) (discussing all the applicable factors and their support in a voluminous record).

"Fairly obvious?" No. Consider just the likelihood-of-irreparable-harm factor. Other than an unavailing argument that it did not have to demonstrate a likelihood of irreparable harm, the Association offered a handful of threadbare declarations as evidence of the harm its members were suffering—and this after it had months to survey "the owners and managers of some 55,000 properties located within the City of Los

Angeles." Pet. 8. The district court made the factual finding that those declarations were inadequate to demonstrate the likelihood—not the mere possibility—that the Association's members would be irreparably harmed by the City's emergency measures. Pet. App. 50 (citing *Winter*, 555 U.S. at 22). A district court's factual findings can be upset only by demonstrating that they were clearly erroneous. Fed. R. Civ. P. 52(a)(6); *Monasky v. Taglieri*, 140 S. Ct. 719, 730 (2020); *see generally United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948) (clear error is established only if a reviewing court forms a "definite and firm conviction that a mistake has been committed").

Without that showing, no matter what else the Association argues, this exercise will end where it began—with no preliminary injunction. *See Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994) (certiorari is granted improvidently when it is unclear that resolving a constitutional question would change the judgment); *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959) (the Court decides important questions "in the context of meaningful litigation").[6]

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[6] One might fairly ask how the Association will make the showing, considering another problem that the district court identified in denying the preliminary injunction motion: Given the overlapping eviction protections enacted by the State of California (and Los Angeles County), how would the preliminary injunction that the Association requested remedy its members' alleged irreparable harm? Pet. App. 54–57. Never mind the Association's failure to address this issue; reading the petition, one would never know that those other measures existed in the first place.

2. The Association is free to advance its Contracts Clause claim in the district court, where it could attempt to support the claim with evidence instead of amicus say-so.

Finally, there is this: The district court denied the Association's preliminary injunction motion without prejudice. The district court did not dismiss the Association's Contracts Clause claim, and it has not since. The Association could develop the record and move for another preliminary injunction; the district court already told it that developing facts could change the outcome. *E.g.*, Pet. App. 49 n.34; *see*, *e.g.*, *Medellin v. Dretke*, 544 U.S. 660, 666 (2005) (per curiam) (dismissing a petition as improvidently granted when ongoing proceedings elsewhere could afford the petitioner relief). Especially given the paucity of its evidence on the first go-round, the Association probably *must* make another, better supported, preliminary injunction motion before it can hope to prevail.

One assumes—because it petitioned for a writ of certiorari from this procedural posture—that the Association prefers the platform that this Court affords it over litigation in the district court. But there is something that the district court can do that this Court cannot (or at least should not, in the first instance): Make factual findings. *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2141 (2020) (Roberts, C.J., concurring).

The Association cannot end-around a proper fact-finding process in the district court with a raft of third-party briefs filed here—briefs filed by friends of the Association, not friends of the Court. Allison Orr Larsen, *The Trouble with Amicus Facts*, 100 Va. L. Rev. 1757, 1763–64 (2014). "Supreme Court briefs are an inappropriate place to develop the key facts in a case," *Sykes v. United States*, 564 U.S. 1, 31 (2011) (Scalia, J., dissenting), and "anecdotal evidence, facts, and numbers taken from amicus briefs are not judicial factfindings," *Trump v. Hawaii*, 138 S. Ct. 2392, 2433 (2018) (Breyer, J., dissenting). Those sorts of facts "are too unreliable and prone to bias." Caitlin E. Borgmann, *Appellate Review of Social Facts in Constitutional Rights Cases*, 101 Calif. L. Rev. 1185, 1190–91 (2013). Reliability is a problem even when briefs purport simply to be recounting history. Hon. Jeffrey S. Sutton, *The Role of History in Judging Disputes About the Meaning of the Constitution*, 41 Tex. Tech. L. Rev. 1173, 1184–85 (2009).

Nor can the Association-and-friends plaster gaps in the record by casting their fact claims as truisms that the Court can take for granted, because "even truisms are not always unexceptionably true," *Hudgens v. NLRB*, 424 U.S. 507, 513 (1976), and they are sometimes more -isms than they are truths. Judges, like anyone else, "may rest their decisions on assumptions—often unfounded assumptions—about the world around them and the way it operates." Brianne J. Gorod, *The Adversarial Myth: Appellate Court Extra-Record Fact-finding*, 61 Duke L.J. 1, 56 (2011). For example, one

might think it an obvious truth that emergency measures like the City's are bankrupting many landlords. But that is a factual assertion. To support the Association's position, it must be backed by evidence adduced in, and reconciled by, the district court. *See* Brief Amicus Curiae of Cal. Apartment Ass'n in Supp. of Pet'r at 8–9 (warning of the risk of bankrupting many landlords). *But see* Jerusalem Demsas, *The Pandemic Was Hard for Everyone—Except Maybe Landlords*, Vox (Nov. 4, 2021, 9:30 AM), https://www.vox.com/2021/11/4/22759224/landlords-rent-relief-eviction-moratorium-cash-balance-covid-19 [https://perma.cc/V35N-5KWF] (discussing a JPMorgan Chase analysis that "pushes back against the narrative created by landlords that the eviction moratoriums were unbearable"); *but see also* U.S. Courts, Statistics & Reports, U.S. Bankruptcy Courts—Bankruptcy Cases Commenced, Terminated and Pending During the 12-Month Periods Ending Dec. 31, 2019 and 2020, https://www.uscourts.gov/sites/default/files/data_tables/bf_f_1231.2020.pdf [https://perma.cc/H9KA-YY69] (bankruptcy filings in the Central District of California decreased by 27% from the end of 2019 to the end of 2020); U.S. Courts, Statistics & Reports, U.S. Bankruptcy Courts—Bankruptcy Cases Commenced, Terminated and Pending During the 12-Month Periods Ending Dec. 31, 2020 and 2021, https://www.uscourts.gov/sites/default/files/data_tables/bf_f_1231.2021.pdf [https://perma.cc/J7AE-ETSC] (filings decreased by 17% from the end of 2020 to the end of 2021).

This is not to say that the Association or its amici are exaggerating or prevaricating. Nor is it to deny that the City's emergency measures may impose financial hardships on landlords. The point is that the Association is petitioning for certiorari over the denial of a preliminary injunction motion; the denial turns in part on factual findings; those factual findings are not clearly erroneous; and to the extent the Association wants someone to make new or different findings, it is not this Court's job to do so based on third parties' untested assertions. It is the district court's job to consider evidence, and the district court invited the Association to provide it with more. Pet. App. 59. In the meantime, this case neither requires nor merits the Court's attention.

CONCLUSION

The Court should deny the Association's petition for a writ of certiorari.

Respectfully submitted,

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