

IN THE SUPREME COURT OF IOWA

---

No. 23-0670

Linn County No. SCSC261751

---

MIMG CLXXII RETREAT ON 6TH LLC,  
Plaintiff-Appellant,

v.

MACKENZIE MILLER and PARTIES-IN-POSSESSION,  
Defendants-Appellees.

---

APPEAL FROM THE DISTRICT COURT FOR LINN COUNTY,  
HONS. JONATHAN HAMMOND, MAGISTRATE JUDGE, AND LARS  
ANDERSON, DISTRICT JUDGE

---

APPELLANT'S FINAL BRIEF  
AND  
REQUEST FOR ORAL ARGUMENT

---

THE WEINHARDT LAW FIRM

Mark E. Weinhardt AT0008280  
2600 Grand Avenue, Suite 450  
Des Moines, IA 50312  
Phone: (515) 244-3100  
E-mail: [mweinhardt@weinhardtllaw.com](mailto:mweinhardt@weinhardtllaw.com)  
ATTORNEYS FOR PLAINTIFF-  
APPELLANT

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	5
STATEMENT OF THE ISSUES.....	10
I.    THE DISTRICT COURT ERRED IN FINDING THE CARES ACT’S 30-DAY NOTICE PROVISION PREEMPTS IOWA’S THREE-DAY FED NOTICE PERIOD FOR AN ACTION ARISING AFTER THE 120-DAY MORATORIUM. ....	10
II.   THE DISTRICT COURT ERRED IN INTERPRETING 15 U.S.C. § 9058 TO FIND THE CARES ACT NOTICE PROVISION SURVIVED THE EXPIRATION OF THE EVICTION.....	11
III.  THE DISTRICT COURT EXCEEDED THE LIMITS OF ITS RESTRAINED POWER TO ACT ON ITS OWN MOTION IN SUMMARILY DISMISSING THIS ACTION.....	12
ROUTING STATEMENT.....	14
STATEMENT OF THE CASE.....	15
STATEMENT OF FACTS .....	18
ARGUMENT .....	25
I.    THE DISTRICT COURT ERRED IN FINDING THE CARES ACT’S 30-DAY NOTICE PROVISION PREEMPTS IOWA’S THREE-DAY FED NOTICE PERIOD FOR AN ACTION ARISING AFTER THE 120-DAY MORATORIUM. ....	26
A.   The Federal Statute Contains No Language Creating Express Preemption.....	29
B.   There Is No Field Preemption Because There Is No Pervasive Federal Regulatory Scheme Governing	

the Rights and Obligations of Residential Landlords and Tenants. ....	30
C.    The District Court Erroneously Found Conflict Preemption on Its Own Motion. ....	31
II.    THE DISTRICT COURT ERRED IN INTERPRETING 15 U.S.C. § 9058 TO FIND THE CARES ACT NOTICE PROVISION SURVIVED THE EXPIRATION OF THE EVICTION MORATORIUM. ....	35
A.    The Language and Context of the CARES Act Shows That the 30-Day Notice Period Only Applies to Evictions Based on Facts Arising During the Temporary Moratorium. ....	36
B.    Rules of Statutory Construction Compel a Finding That the Lower Courts Erred in Their Interpretation of Section 9058. ....	41
1.    Interpreting the federal 30-day notice period to last beyond the eviction moratorium produces an absurd result. ....	42
2.    Reconciliation of the two notice statutes avoids constitutional problems raised by the district court’s construction. ....	43
3.    An interpretation that avoids federal preemption of Iowa’s three-day FED notice statute is required. ....	45
III.    THE DISTRICT COURT EXCEEDED THE LIMITS OF ITS RESTRAINED POWER TO ACT ON ITS OWN MOTION IN SUMMARILY DISMISSING THIS ACTION. ....	46
CONCLUSION. ....	49
REQUEST FOR ORAL ARGUMENT. ....	49
CERTIFICATE OF FILING AND SERVICE. ....	50

CERTIFICATE OF COMPLIANCE.....51

## TABLE OF AUTHORITIES

### Cases

<i>Abdullah v. Am. Airlines, Inc.</i> , 181 F.3d 363 (3d Cir. 1999).....	27
<i>Acterra Grp., Inc. v. Kick Grp. Tech. (USA) Inc.</i> , No. 19-1042, 2020 WL 2988540 (Iowa Ct. App. June 3, 2020) .....	48
<i>Alabama Ass’n of Realtors v. U.S. Dept. of Health and Human Servs.</i> , 594 U.S. ___, 141 S. Ct. 2485 (2021) (per curiam).....	22, 30, 33, 43
<i>Altria Grp., Inc. v. Good</i> , 555 U.S. 70 (2008) .....	27
<i>Aurora Dairy Corp. Organic Milk Mktg. and Sales Practices Litig.</i> , 621 F.3d 781 (8th Cir. 2010) .....	28, 29, 31
<i>Bates v. Dow Agrosciences LLC</i> , 544 U.S. 431 (2005).....	28
<i>Beneficial Nat’l Bank v. Anderson</i> , 539 U.S. 1 (2003).....	31
<i>Bernet v. Rogers</i> , 519 N.W.2d 808, 811 (Iowa 1994) .....	19, 26, 47
<i>Betancourt v. Total Prop. Mgmt.</i> , No. 22-0033, 2022 WL 2359286 (E.D. Cal. June 30, 2022).....	22
<i>Beverage v. Alcoa, Inc.</i> , 975 N.W.2d 670, 680 (Iowa 2022).....	37, 41
<i>Borst Brothers Constr., Inc. v. Fin. of America Com., LLC</i> , 975 N.W.2d 690 (Iowa 2022).....	38
<i>Capital Fund 85 Ltd. Partnership v. Priority Sys., LLC</i> , 670 N.W.2d 154 (Iowa 2003).....	19
<i>Carroll Airport Comm’n v. Danner</i> , 927 N.W.2d 639 (Iowa 2019) 27, 28, 29, 32, 34, 36, 47	
<i>Chipman’s Subdivision Homeowner’s Ass’n, Inc. v. Carney</i> , No. 11-0545, 2012 WL 642869 (Iowa Ct. App. Feb. 29, 2012).....	17
<i>Cipollone v. Liggett Grp., Inc.</i> , 505 U.S. 504 (1992) .....	27
<i>Com. Bank v. McGowen</i> , 956 N.W.2d 128 (Iowa 2021).....	37
<i>Cooksey v. Cargill Meat Solutions Corp.</i> , 831 N.W.2d 94 (Iowa 2013).....	26, 46
<i>Crosby v. Nat’l Foreign Trade Council</i> , 530 U.S. 363 (2000).....	34
<i>Cummings v. Premier Rehab Keller, P.L.L.C.</i> , 142 S. Ct. 1562 (2022).....	44
<i>Fla. Lime &amp; Avocado Growers, Inc. v. Paul</i> , 373 U.S. 132 (1963) .....	32
<i>Freeman v. Grain Processing Corp.</i> , 848 N.W.2d 58 (Iowa 2014) .....	27
<i>Gade v. Nat’l Solid Wastes Mgmt. Ass’n</i> , 505 U.S. 88, 98 (1992) (plurality opinion) .....	29
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991).....	34
<i>Griffioen v. Cedar Rapids &amp; Ia City Ry. Co.</i> , 914 N.W.2d 273 (Iowa 2018) .....	30
<i>Gundy v. United States</i> , 588 U.S. ___, 139 S. Ct. 2116 (2019).....	36
<i>Hoffert v. Luze</i> , 578 N.W.2d 681 (Iowa 1998) .....	47

<i>Huck v. Wyeth, Inc.</i> , 850 N.W.2d 353 (Iowa 2014).....	28
<i>In re Arvada Village Gardens LP v. Garate</i> , 529 P.3d 105 (Colo. 2023) 14, 17, 35, 45	
<i>Iowa Individual Health Benefit Reins. Ass’n v. State Univ. of Iowa</i> , 876 N.W.2d 800 (Iowa 2016).....	46
<i>Iowa Ins. Inst. v. Core Grp. of Iowa Ass’n for Just.</i> , 867 N.W.2d 58 (Iowa 2015).....	37, 42
<i>Jenkins as Trustee of 2216 Lay Street Trust v. Clark</i> , 988 N.W.2d 469 (Iowa Ct. App.) .....	42
<i>Johnson v. MFA Petroleum Co.</i> , 701 F.3d 243 (8th Cir. 2012) .....	31
<i>Lamasters v. State</i> , 821 N.W.2d 856 (Iowa 2012).....	26
<i>Lindsey v. Normet</i> , 405 U.S. 56 (1972) .....	19, 33
<i>Livingood v. City of Des Moines</i> , 991 N.W.2d 773 (Iowa 2023) .....	47
<i>Loretto v. Teleprompter Manhattan CATV Corp.</i> , 458 U.S. 419, (1982) .....	33
<i>McSpadden v. Big Ben Coal Co.</i> , 288 N.W.2d 181 (Iowa 1980).....	38
<i>Midwest Foster Care and Adoption Ass’n v. Kincade</i> , 712 F.3d 1190 (8th Cir. 2013) .....	39
<i>Olentangy Commons Owner LLC v. Fawley</i> , ___ N.E.3d ___, 2023 WL 7327716 (Ohio Ct. App. November 7, 2023).....	17, 35, 45
<i>Petty v. Faith Bible Christian Outreach Ctr., Inc.</i> , 584 N.W.2d 303 (Iowa 1998) 19, 26, 36, 42, 47	
<i>Rhoades v. State</i> , 880 N.W.2d 431 (Iowa 2016) .....	36
<i>Rice v. Santa Fe Elevator Corp.</i> , 331 U.S. 218 (1947) .....	27, 29
<i>Rush v. Sioux City</i> , 240 N.W.2d 431 (Iowa 1976).....	47, 48
<i>Shaw v. Delta Air Lines</i> , 463 U.S. 85 (1983).....	29
<i>Shelby Cnty., Ala. v. Holder</i> , 570 U.S. 529 (2013).....	44
<i>Sherwood Auburn, L.L.C. v. Pinzon</i> , 24 Wash.App.2d 664, 521 P.3d 212 (Wash. App. 2022) .....	17, 35, 44, 45
<i>Shumate v. Drake Univ.</i> , 846 N.W.2d 503 (Iowa 2014).....	47
<i>Silkwood v. Kerr-McGee Corp.</i> , 464 U.S. 238 (1984) .....	47
<i>State v. Carter</i> , 733 N.W.2d 333 (Iowa 2007).....	36, 44
<i>State v. Doe</i> , 903 N.W.2d 347 (Iowa 2017).....	37
<i>State v. Hall</i> , 969 N.W.2d 299 (Iowa 2022) .....	38
<i>State v. Martinez</i> , 896 N.W.2d 737 (Iowa 2017).....	29, 32, 34
<i>State v. Mitchell</i> , 757 N.W.2d 431 (Iowa 2008).....	36, 44
<i>State v. Paredes</i> , 775 N.W.2d 554 (Iowa 2009) .....	26
<i>State v. Richardson</i> , 890 N.W.2d 609 (Iowa 2017).....	36
<i>Steele v. Northrup</i> , 168 N.W.2d 785 (Iowa 1969).....	47
<i>Teleconnect Co. v. Iowa State Com. Comm’n</i> , 366 N.W.2d 515 (Iowa 1985).....	48

<i>United States Forest Serv. v. Cowpasture River Pres. Ass’n</i> , 590 U. S. ___, ___, 140 S. Ct. 1837 (2020).....	33
<i>United States v. Morrison</i> , 529 U.S. 598 (2000) .....	44
<i>Walnut Creek Townhome Ass’n v. Depositors Ins.</i> , 913 N.W.2d 80 (Iowa 2018) ..	27

**Statutes**

15 U.S.C. § 9057 .....	38
15 U.S.C. § 9057(a)(5).....	39
15 U.S.C. § 9057(d) .....	40
15 U.S.C. § 9057(f)(2) .....	40
15 U.S.C. § 9058 .....	21, 30
15 U.S.C. § 9058(a) .....	21
15 U.S.C. § 9058(a)(5).....	40
15 U.S.C. § 9058(a)–(c) .....	21
15 U.S.C. § 9058(b) .....	39
15 U.S.C. § 9058(b)-(c) .....	23
15 U.S.C. § 9058(c) .....	15, 16, 25, 29, 39
15 U.S.C. § 9058(c)(1).....	39
15 U.S.C. § 9058(c)(2).....	38
49 U.S.C. § 10501(b) .....	30
Iowa Code § 4.4(3).....	43
Iowa Code § 4.6(5).....	43
Iowa Code § 562.27(2).....	15, 25, 47, 49
Iowa Code § 562 .....	31
Iowa Code § 562A.37 .....	25
Iowa Code § 631.16 .....	16
Iowa Code § 648 .....	31
Iowa Code § 648.1 .....	25
Iowa Code § 648.1(1)-(3) .....	19
Iowa Code § 648.1(5).....	15, 47, 49
Iowa Code § 648.3 .....	15, 25, 47, 49
Iowa Code § 648.3(1).....	42
Iowa Code § 648.5 .....	15, 19, 25, 49
Iowa Code chapters 562 and 648 .....	31
Public Health Service Act § 319 (42 U.S.C. § 247(d)).....	19
Pub. L. 116-136.....	30
Pub. L. 116-136, 134 Stat. 281, codified at 15 U.S.C. §§ 9001, <i>et seq.</i> .....	20
U.S. Const. amend. V.....	43
U.S. Const. amend. XIV § I.....	43

U.S. Const. art. I, § 10.....	43
U.S. Const. art. VI, cl. 2.....	27

**Other Authorities**

36A C.J.S. <i>Forcible Entry and Detainer</i> § 3, at 962 (1961).....	19
David Bitton, 2023 <i>Eviction Process in Iowa: Laws for Landlords &amp; Property Managers</i> , DoorLoop Blog (Aug. 16, 2023), <a href="https://www.doorloop.com/laws/iowa-eviction-process">https://www.doorloop.com/laws/iowa-eviction-process</a> .....	24
<a href="https://www.doorloop.com/laws/iowa-eviction-process">https://www.doorloop.com/laws/iowa-eviction-process</a> .....	24
eforms.com/eviction/ia/3-day-notice/non-payment-of-rent.....	24
Elizabeth Souza, <i>Iowa Eviction Process</i> , iProperty Management (May 2, 2023), <a href="https://ipropertymanagement.com/laws/iowa-eviction-process">https://ipropertymanagement.com/laws/iowa-eviction-process</a> .....	24
Fredrikson & Byron, <i>The CARES Act and Evictions: Continued Inconsistency and Confusion for Iowa Landlords</i> (Aug. 8, 2023), <a href="https://www.fredlaw.com/alert-the-cares-act-and-evictions-inconsistency-and-confusion-for-landlords#:~:text=At%20this%20point%2C%20Iowa%20landlords,3%2Dday%20notice%20of%20nonpayment">https://www.fredlaw.com/alert-the-cares-act-and-evictions-inconsistency-and-confusion-for-landlords#:~:text=At%20this%20point%2C%20Iowa%20landlords,3%2Dday%20notice%20of%20nonpayment</a> .....	24
<a href="https://americanlandlord.com/product/iowa-3-day-notice-to-pay-or-quit/">https://americanlandlord.com/product/iowa-3-day-notice-to-pay-or-quit/</a> .....	24
<a href="https://evictionnotice.com/ia/iowa-3-day-notice-to-pay-or-quit/">https://evictionnotice.com/ia/iowa-3-day-notice-to-pay-or-quit/</a> .....	24
<a href="https://www.landlordguidance.com/eviction-notice-forms/iowa-eviction/">https://www.landlordguidance.com/eviction-notice-forms/iowa-eviction/</a> .....	24
<a href="https://www.oflaherty-law.com/learn-about-law/evictions-in-iowa-3-day-notice">https://www.oflaherty-law.com/learn-about-law/evictions-in-iowa-3-day-notice</a> .....	24
<a href="https://rentallease.com/iowa/iowa-3-day-eviction-notice-late-rent-notice-to-quit/">https://rentallease.com/iowa/iowa-3-day-eviction-notice-late-rent-notice-to-quit/</a> .....	24
Iowa Legal Aid, <i>Evictions/Rent Assistance Information</i> , <a href="https://www.iowalegalaid.org/resource/eviction-during-covid-pandemic">https://www.iowalegalaid.org/resource/eviction-during-covid-pandemic</a> .....	24
<i>Legislative Guide</i> , Legal Services Division (Dec. 2014), <a href="https://legis.iowa.gov/docs/publications/LF/15814.pdf">legis.iowa.gov/docs/publications/LF/15814.pdf</a> .....	19
Linn County Notice to Quit Form, <a href="https://www.linncountyiowa.gov/DocumentCenter/View/14531/3-Day-Notice-to-Quit-PDF">https://www.linncountyiowa.gov/DocumentCenter/View/14531/3-Day-Notice-to-Quit-PDF</a> .....	18
Norman J. Singer & J.D. Shambie Singer, 2A Sutherland, <i>Statutory Construction</i> 46:5 (7th ed. Rev. 2014).....	37

**Rules**

Iowa R. App. P. 6.105.....	17
Iowa R. App. P. 6.106.....	16, 17
Iowa R. App. P. 6.107.....	17
Iowa R. App. P. 6.108.....	17



Iowa R. App. P. 6.907 .....26  
Iowa R. App. P. 6.1002(5) .....17  
Iowa R. App. P. 6.1101(2)(a), (c), (d), and (f).....14

**Regulations**

85 Fed. Reg. 15337 .....20  
85 Fed. Reg. 15337 (2020) .....20  
85 Fed. Reg. at 20811-12 .....35  
85 Fed. Reg. 55292-01 (2020) .....21

## STATEMENT OF THE ISSUES

### **I. THE DISTRICT COURT ERRED IN FINDING THE CARES ACT'S 30-DAY NOTICE PROVISION PREEMPTS IOWA'S THREE-DAY FED NOTICE PERIOD FOR AN ACTION ARISING AFTER THE 120-DAY MORATORIUM.**

#### **Cases**

*Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363 (3d Cir. 1999)  
*Alabama Ass'n of Realtors v. U.S. Dept. of Health and Human Servs.*, 594 U.S. \_\_\_,  
141 S. Ct. 2485 (2021) (per curiam)  
*Altria Grp., Inc. v. Good*, 555 U.S. 70 (2008)  
*Aurora Dairy Corp. Organic Milk Mktg. and Sales Practices Litig.*, 621 F.3d 781  
(8th Cir. 2010)  
*Bates v. Dow Agrosciences LLC*, 544 U.S. 431 (2005)  
*Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1 (2003)  
*Bernet v. Rogers*, 519 N.W.2d 808 (Iowa 1994)  
*Carroll Airport Comm'n v. Danner*, 927 N.W.2d 639 (Iowa 2019)  
*Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504 (1992)  
*Cooksey v. Cargill Meat Solutions Corp.*, 831 N.W.2d 94 (Iowa 2013)  
*Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963)  
*Freeman v. Grain Processing Corp.*, 848 N.W.2d 58 (Iowa 2014)  
*Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992)  
*Gregory v. Ashcroft*, 501 U.S. 452 (1991)  
*Griffioen v. Cedar Rapids & Ia City Ry. Co.*, 914 N.W.2d 273 (Iowa 2018)  
*Huck v. Wyeth, Inc.*, 850 N.W.2d 353 (Iowa 2014)  
*Johnson v. MFA Petroleum Co.*, 701 F.3d 243 (8th Cir. 2012)  
*Lamasters v. State*, 821 N.W.2d 856 (Iowa 2012)  
*Lindsey v. Normet*, 405 U.S. 56 (1972)  
*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)  
*Petty v. Faith Bible Christian Outreach Ctr., Inc.*, 584 N.W.2d 303 (Iowa 1998)  
*Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947)  
*Shaw v. Delta Air Lines*, 463 U.S. 85 (1983)  
*Sherwood Auburn, L.L.C. v. Pinzon*, 24 Wash.App.2d 664, 521 P.3d 212 (Wash.  
App. 2022)  
*State v. Martinez*, 896 N.W.2d 737 (Iowa 2017)  
*State v. Paredes*, 775 N.W.2d 554 (Iowa 2009)  
*United States Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U. S. \_\_\_, 140 S.  
Ct. 1837 (2020)

*Walnut Creek Townhome Ass'n v. Depositors Ins.*, 913 N.W.2d 80 (Iowa 2018)

### **Statutes**

15 U.S.C. § 9058(c)

49 U.S.C. § 10501(b)

Iowa Code chapters 562 and 648

U.S. Const. art. VI, cl. 2

Pub. L. 116-136

### **Rules**

Iowa R. App. P. 6.907

### **Regulations**

85 Fed. Reg. at 20811-12

## **II. THE DISTRICT COURT ERRED IN INTERPRETING 15 U.S.C. § 9058 TO FIND THE CARES ACT NOTICE PROVISION SURVIVED THE EXPIRATION OF THE EVICTION.**

### **Cases**

*Alabama Ass'n of Realtors v. U.S. Dept. of Health and Human Servs.*, 594 U.S. \_\_\_, 141 S. Ct. 2485 (2021) (per curiam)

*Beverage v. Alcoa, Inc.*, 975 N.W.2d 670 (Iowa 2022)

*Borst Brothers Constr., Inc. v. Fin. of America Com., LLC*, 975 N.W.2d 690 (Iowa 2022)

*Carroll Airport Comm'n v. Danner*, 927 N.W.2d 639 (Iowa 2019)

*Com. Bank v. McGowen*, 956 N.W.2d 128 (Iowa 2021)

*Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000)

*Gundy v. United States*, 588 U.S. \_\_\_, 139 S. Ct. 2116 (2019)

*In re: Arvada Village Gardens LP v. Garate*, 529 P.3d 105 (Colo. 2023)

*Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Just.*, 867 N.W.2d 58 (Iowa 2015)

*Jenkins as Trustee of 2216 Lay Street Trust v. Clark*, 988 N.W.2d 469 (Iowa Ct. App. 2022)

*McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181 (Iowa 1980)

*Midwest Foster Care and Adoption Ass'n v. Kincade*, 712 F.3d 1190 (8th Cir. 2013)

*Olentangy Commons Owner LLC v. Fawley*, \_\_\_ N.E.3d \_\_\_, 2023 WL 7327716 (Ohio Ct. App. November 7, 2023)  
*Petty v. Faith Bible Christian Outreach Ctr., Inc.*, 584 N.W.2d 303 (Iowa 1998)  
*Rhoades v. State*, 880 N.W.2d 431 (Iowa 2016)  
*Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013)  
*Sherwood Auburn, L.L.C. v. Pinzon*, 24 Wash.App.2d 664, 521 P.3d 212 (Wash. App. 2022)  
*State v. Carter*, 733 N.W.2d 333 (Iowa 2007)  
*State v. Doe*, 903 N.W.2d 347 (Iowa 2017)  
*State v. Hall*, 969 N.W.2d 299 (Iowa 2022)  
*State v. Mitchell*, 757 N.W.2d 431 (Iowa 2008)  
*State v. Richardson*, 890 N.W.2d 609 (Iowa 2017)  
*United States v. Morrison*, 529 U.S. 598 (2000)

### **Statutes**

15 U.S.C. § 9058(c)  
Iowa Code § 562.27(2)  
Iowa Code § 648.1(5)  
Iowa Code § 648.3

### **III. THE DISTRICT COURT EXCEEDED THE LIMITS OF ITS RESTRAINED POWER TO ACT ON ITS OWN MOTION IN SUMMARILY DISMISSING THIS ACTION.**

### **Cases**

*Acterra Grp., Inc. v. Kick Grp. Tech. (USA) Inc.*, No. 19-1042, 2020 WL 2988540 (Iowa Ct. App. June 3, 2020)  
*Bernet v. Rogers*, 519 N.W.2d 808 (Iowa 1994)  
*Carroll Airport Comm'n v. Danner*, 927 N.W.2d 639 (Iowa 2019)  
*Cooksey v. Cargill Meat Solutions Corp.*, 831 N.W.2d 94 (Iowa 2013)  
*Hoffert v. Luze*, 578 N.W.2d 681 (Iowa 1998)  
*In re Arvada Village Gardens LP v. Garate*, 529 P.3d 105 (Colo. 2023)  
*Iowa Individual Health Benefit Reins. Ass'n v. State Univ. of Iowa*, 876 N.W.2d 800 (Iowa 2016)  
*Livingood v. City of Des Moines*, 991 N.W.2d 773 (Iowa 2023)  
*Olentangy Commons Owner LLC v. Fawley*, \_\_\_ N.E.3d \_\_\_, 2023 WL 7327716 (Ohio Ct. App. November 7, 2023)

*Petty v. Faith Bible Christian Outreach Ctr., Inc.*, 584 N.W.2d 303 (Iowa 1998)

*Rush v. Sioux City*, 240 N.W.2d 431 (Iowa 1976)

*Sherwood Auburn, L.L.C. v. Pinzon*, 24 Wash.App.2d 664, 521 P.3d 212 (Wash. App. 2022)

*Shumate v. Drake Univ.*, 846 N.W.2d 503 (Iowa 2014)

*Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984)

*Steele v. Northrup*, 168 N.W.2d 785 (Iowa 1969)

*Teleconnect Co. v. Iowa State Com. Comm'n*, 366 N.W.2d 515 (Iowa 1985)

## ROUTING STATEMENT

This case will answer the question of whether the notice period for a forcible entry and detainer action for federally-connected residential properties is controlled by Iowa (three days) or federal (30 days) law. The Supreme Court should retain this appeal to address this unsettled and recurring issue of broad importance to residential property owners and renters throughout the state, serve the interests of justice, and facilitate the correct harmonization and application of federal and Iowa law to avoid improper and unnecessary infringement on constitutional, property, and procedural rights. *See* Iowa R. App. P. 6.1101(2)(a), (c), (d), and (f); *see also In re: Arvada Village Gardens LP v. Garate*, 529 P.3d 105 (Colo. 2023) (granting discretionary review by the state’s highest court because whether the CARES Act’s extended eviction notice requirement remains in effect after the eviction moratorium expired is of significant and broad importance, FED actions are common, and municipal and county courts are reaching inconsistent conclusions).

## STATEMENT OF THE CASE

This case presents the question of whether the notice period in Iowa actions for forcible entry and detainer (“FED”) against residential tenants in certain federally-connected properties is three days, as directed by Iowa statute, or 30 days, pursuant what Congress entitled a “temporary” provision of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”). *Compare* Iowa Code § 562.27(2) of the Iowa Uniform Residential and Landlord and Tenant Act (“IURLTA”); Iowa Code §§ 648.1(5), 648.3, 648.5 *with* 15 U.S.C. § 9058(c).

This appeal arises from a residential lease agreement between Appellees-Defendants Mackenzie Miller and Parties-in-Possession (collectively, “Miller”) and Appellant-Plaintiff MIMG CLXXII Retreat on 6th, L.L.C (“The Retreat”). App. 08-14. After Miller failed to pay rent, The Retreat served her with a three-day notice, instructing her either to cure the default or vacate (quit) the premises in accordance with the parties’ contract and Iowa law. App. 15-16. *See* Iowa Code §§ 562.27(2), 648.1(5), 648.3 (three-day notice in Iowa FED actions for nonpayment of rent). When Miller failed to cure the default, The Retreat filed this FED action pursuant to Iowa Code § 648.1(5) to recover possession of the premises on December 16, 2022. App. 6-7.

On January 5, 2023, a hearing was held before the district court sitting in small claims. App. 18. Miller did not appear or submit anything in defense of the FED

petition. *Id.* On January 9, the magistrate entered an “Order for Forcible Entry and Detainer,” that begins with:

Judgment is entered based on the following: Defendant(s) failed to appear for trial.

App. 20. However, instead of entering a default judgment in favor of The Retreat, the magistrate summarily dismissed the action, finding:

The [CARES Act] requires Plaintiff to provide a 30-day notice to vacate. *See* 15 U.S.C. § 9058(c). Plaintiff argues that the requirement Plaintiff provide a 30-day notice to vacate expired at the same time as the 120-day eviction moratorium. The Court finds that 15 U.S.C. § 9058(c) has not expired and Plaintiff was required to provide the Defendant a 30-day notice to vacate.

*Id.*

On January 9, 2023, The Retreat appealed the magistrate’s dismissal to the district court. App. 22-46. Again, Miller did not appear or respond to that appeal. On March 26, 2023, the district court affirmed the dismissal, finding that the CARES Act’s 30-day notice provision remained in effect indefinitely and that it preempts Iowa law. App. 47-54.

On April 25, 2023, The Retreat filed an application for discretionary review, which was ultimately granted on September 11, 2023.<sup>1</sup> Iowa Code § 631.16; Iowa R. App. P. 6.106.

---

<sup>1</sup> On April 25, 2023, The Retreat filed an application with the Iowa Supreme Court, requesting either discretionary or certiorari review of the dismissal. *See* Iowa



This appeal is one of several cases brought throughout Iowa<sup>2</sup> and the United States<sup>3</sup> to clarify that Congress did not intend an isolated, expired excerpt from emergency COVID-19 legislation to completely preempt long-established state statutory and common law.

---

R. App. P. 6.106 (discretionary), 6.107 (certiorari), 6.108 (forms of review). To the extent the challenged orders affect interests in real estate, which might be found to trigger an automatic right to appeal, The Retreat concurrently filed a notice of appeal in the district court. App. 55-56. *See* Iowa R. App. P. 6.105; *Chipman's Subdivision Homeowner's Ass'n, Inc. v. Carney*, No. 11-0545, 2012 WL 642869, \*3, n.2 (Iowa Ct. App. Feb. 29, 2012).

On August 18, 2023, The Retreat's initial request for appellate review was denied by a single justice. On August 28, 2023, The Retreat moved for review of that denial. *See* Iowa R. App. P. 6.1002(5). On September 11, 2023, The Retreat was granted discretionary review by a reviewing panel of three justices.

<sup>2</sup> A companion appeal styled as *MIMG CLXXII Retreat on 6th LLC v. Parties in Possession Nathan Cortez Williams*, SCSC261758 (Iowa District Court for Linn County), is also currently pending before this Court. The Retreat's motion to consolidate the two appeals was denied. Additional Linn County FED actions cited in the district court's ruling as being dismissed based on the application of the CARES moratorium notice requirement include: *MIMG CLXXII Retreat on 6th, LLC v. Akyla Buckner*, Linn Cty No. SCSC260044; *MIMG CLXXII Retreat on 6th, LLC v. Susana Chavez*; Linn Cty No. SCSC260291; *MIMG CLXXII Retreat on 6th, LLC v. Sergio Sanchez*, Linn Cty. No. SCSC260676; (App. (Ex. B, p. 1)). All of these rulings were appealed. *Buckner* was dismissed prior to an appellate ruling. *Sanchez* and *Chavez* remain on appeal without ruling.

<sup>3</sup> We are aware of three appellate courts that have ruled on challenges to the applicability of subsection 9058(c)(1)'s 30-day notice period to state court FED actions. *See In re Arvada Village Gardens LP v. Garate*, 529 P.3d 105, 107 (Colo. 2023); *Olentangy Commons Owner LLC v. Fawley*, \_\_\_ N.E.3d \_\_\_, 2023 WL 7327716, at \*9 (Ohio Ct. App. November 7, 2023); *Sherwood Auburn, L.L.C. v. Pinzon*, 24 Wash.App.2d 664, 521 P.3d 212, 219 (Wash. App. 2022).

## **STATEMENT OF FACTS**

### **The Undisputed Facts of This FED Action**

Both the small claims magistrate and the reviewing district court judge decided the appealed issues as a matter of law. As the foundation for that legal ruling, the only relevant facts, which are not disputed, are:

- The Retreat served Miller with a three-day notice to quit for nonpayment of rent.
- Miller never cured the default.

App. 15-17.

While the factual record in this case is simple and brief, the legal backdrop against which this case played out below is important, and The Retreat will describe it here.<sup>4</sup>

---

<sup>4</sup> For the convenience of the Court, The Retreat has included the most relevant Iowa statutes and portions of the CARES Act in the appendix. App. 60-66.

## **Iowa's Three-Day Termination Notice for Failure to Pay Rent**

Iowa's FED laws are codified in Iowa Code Chapter 648, which has been in effect in some form since 1851. *See, e.g., Legislative Guide*, Legal Services Division (Dec. 2014), [legis.iowa.gov/docs/publications/LF/15814.pdf](https://legis.iowa.gov/docs/publications/LF/15814.pdf). FEDs are intended to provide a speedy determination regarding the right to possess property and to obviate the need for self-help and violence. *See Capital Fund 85 Ltd. Partnership v. Priority Systems, LLC*, 670 N.W.2d 154 (Iowa 2003) (citing *Lindsey v. Normet*, 405 U.S. 56, 71 (1972); 36A C.J.S. *Forcible Entry and Detainer* § 3, at 962 (1961)). FEDs provide property owners with an easy and inexpensive remedy to recover lawful possession in statutorily prescribed situations, including where tenants have failed to pay rent. *See Iowa Code* § 648.1(1)-(3), (5); *Petty v. Faith Bible Christian Outreach Ctr., Inc.*, 584 N.W.2d 303, 307 (Iowa 1998). "The only question in a forcible entry and detainer action is whether the defendant is wrongfully detaining possession of the real property at the time of the trial." *Id.* (quoting *Bernet v. Rogers*, 519 N.W.2d 808, 811 (Iowa 1994)).

## **Federal CARES Act of 2020**

On January 31, 2020, the U.S. Secretary of Health and Human Services ("HHS") declared a public health emergency based on the rapid spread of the highly contagious COVID-19 virus. *See* § 319 of the Public Health Service Act (42 U.S.C.

§ 247(d)) (declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 Fed. Reg. 15337 (2020)).

On March 25, 2020, to mitigate the medical, healthcare, social, and economic crises caused by the COVID-19 pandemic, Congress passed the CARES Act. The CARES Act's purpose was to provide temporary relief in the wake of the COVID-19 emergency. *See, e.g.*, 85 Fed. Reg. 15337. The 335 pages of federal emergency legislation were organized as follows:

*Division A Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization*

Title I Keeping American Workers Paid and Employed

Title II Assistance for American Workers, Families, and Businesses

Title III Supporting American's Health Care System in the Fight Against the Coronavirus

*Title IV Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy*

.....

*Subtitle A Temporary Moratorium on Eviction Filings*

.....

Division B Emergency Appropriation for Coronavirus Health Response and Agency Operations

.....

Pub. L. 116-136, 134 Stat. 281, codified at 15 U.S.C. §§ 9001, *et seq.* (italics added).

Eviction moratoria were part of the governmental response to the unprecedented threats posed by the pandemic. *See, e.g.*, 85 Fed. Reg. 55292-01 (2020) (“Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19”). The 30-day notice provision invoked by the magistrate judge and the district court here, and in various other FED cases in Iowa and elsewhere, was contained in the CARES Act, Division A, Title IV, Subtitle A, entitled *Temporary Moratorium on Eviction Filings*. 15 U.S.C. § 9058 (a)–(c). Subtitle A was further divided into the following three interrelated and interdependent subparts:

- a) defining *covered properties*<sup>5</sup>;
- b) issuing a 120-day national moratorium on rent-default based actions; and
- c) imposing a 30-day notice requirement for delinquencies arising during the 120-day moratorium, and providing that such notices could not be given before July 25, 2020.

15 U.S.C. § 9058 (“Temporary Moratorium on Eviction Filings”). App. 60. Because this emergency legislation was intended to be a *temporary* measure to *stabilize and assist* those in *severe economic distress*, Congress provided at the time of its passing

---

<sup>5</sup> The CARES Act only applies to tenancies in *covered properties*, including those participating in federal programs, receiving federal funds, or secured by federal loans. 15 U.S.C. § 9058(a).

that the moratorium on evictions would expire automatically on July 25, 2020. 15 U.S.C. § 9058.<sup>6</sup>

On July 25, 2020, the moratorium on evictions automatically expired pursuant to its own terms. *See Alabama Ass'n. of Realtors v. U.S. Dept. of Health and Human Servs.*, 594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2485, 2486 (2021) (per curiam). Congress did not renew it. *See Betancourt v. Total Prop. Mgmt.*, No. 22-0033, 2022 WL 2359286, at \*3 (E.D. Cal. June 30, 2022).

### **Conflict in the Lower Courts**

As discussed at length below, the state and federal notice statutes at issue can and should be reconciled based on text, context, and the application of traditional principles of statutory interpretation. The reasonable and practical construction here is that the CARES Act extended 30-day notice period was in effect for causes of actions arising from defaults in rent that occurred during the federal eviction moratorium from March 27, 2020, through July 25, 2020.<sup>7</sup> Thirty days after the

---

<sup>6</sup> In May 2020, the Iowa Supreme Court ordered landlords to file a form to determine whether the property is a *covered property* as defined by the CARES Act in any eviction proceedings filed in Iowa from March 27, 2020, until further order of the Court. *See Iowa Cares Act Landlord Verification Form*. App. 67-69. Based on the undersigned's research, there has been no further order to date.

<sup>7</sup> If a rental default occurred on or during the 120 days before July 25, 2020, a landlord would have had to wait until August 24, 2020 (30 days after the expiration of the eviction moratorium) to serve the notice of default to allow the tenant the prolonged 30-day period to cure the default before having to defend against lease

expiration of the eviction moratorium, state laws governing eviction proceedings, including state law notice provisions, became effective once more.

Nonetheless, federal housing agencies and tenant advocates in some areas have argued that the 30-day CARES Act notice requirement is still in effect. In some eviction cases in Iowa and elsewhere, magistrate and county judges have adopted that construction of 15 U.S.C. § 9058, applying the 30-day notice provision in perpetuity, long after the eviction moratorium and the federal COVID-19 public health emergency have ended.

Inconsistent opinions by lower courts have led to conflicting information, creating uncertainty in what has been a well-established area of state law since the 1800s. For example, the Iowa Judicial Branch website advises the Iowa public of a three-day notice to quit for failure to pay rent pursuant to Iowa Code § 562A.27(2) with no mention of the CARES ACT. *See* App. 70-71 (downloaded and printed Jan. 10, 2024).<sup>8</sup> However, the same page directs the public to find information “on housing and landlord-tenant issues” on the Iowa Legal Aid website. *Id.* That website

---

termination procedures. *See* 15 U.S.C. § 9058(b)–(c). After August 24, 2020, the state notice period would again apply.

<sup>8</sup> *See also* App. 72 (Linn County’s three-day notice to quit form for failure to pay rent pursuant to Iowa Code Chapter 562A) (downloaded and printed Jan. 10, 2024).

states that “the CARES Act still requires landlords to provide 30-day notices to tenants before ending a lease in federally connected properties.” *See* App. 73-76 (Iowa Legal Aid, *Evictions/Rent Assistance Information*, <https://www.iowalegalaid.org/resource/eviction-during-covid-pandemic> (downloaded and printed Jan. 10, 2024)). Websites providing advice to landlords generally maintain that the applicable notice period is three days under state law, while recognizing the uncertainty that has been generated by the outlier opinions.<sup>9</sup>

---

<sup>9</sup> *See* Fredrikson & Byron, *The CARES Act and Evictions: Continued Inconsistency and Confusion for Iowa Landlords* (Aug. 8, 2023), <https://www.fredlaw.com/alert-the-cares-act-and-evictions-inconsistency-and-confusion-for-landlords#:~:text=At%20this%20point%2C%20Iowa%20landlords,3%2Dday%20notice%20of%20nonpayment>; Elizabeth Souza, *Iowa Eviction Process*, iProperty Management (May 2, 2023), <https://ipropertymanagement.com/laws/iowa-eviction-process>; David Bitton, *2023 Eviction Process in Iowa: Laws for Landlords & Property Managers*, DoorLoop Blog (Aug. 16, 2023), <https://www.doorloop.com/laws/iowa-eviction-process> (law firm surveying this area noted that “landlords in Iowa ... continue to struggle with the inconsistency and confusion among state courts” regarding the applicability of the CARES Act 30-day notice requirement); [eforms.com/eviction/ia/3-day-notice/non-payment-of-rent](https://www.eforms.com/eviction/ia/3-day-notice/non-payment-of-rent) (“If the tenant fails to pay rent within three days after written notice, the landlord may terminate the rental agreement.”); <https://www.oflaherty-law.com/learn-about-law/evictions-in-iowa-3-day-notice> (“If your landlord is trying to evict you for failure to pay rent, they must provide you with a three-day notice.”); <https://rentallease.com/iowa/iowa-3-day-notice-late-rent-notice-to-quit/> (“(I.C.A. § 562A.27(2)) – If the tenant does not pay rent, the landlord may evict them with three (3) days’ notice unless the full amount is paid in that time.”) [https://www.landlordguidance.com/eviction-notice-forms/iowa-eviction/\(same\)](https://www.landlordguidance.com/eviction-notice-forms/iowa-eviction/(same)); [https://americanlandlord.com/product/iowa-3-day-notice-to-pay-or-quit/\(same\)](https://americanlandlord.com/product/iowa-3-day-notice-to-pay-or-quit/(same)); [https://evictionnotice.com/ia/iowa-3-day-notice-to-pay-or-quit/\(same\)](https://evictionnotice.com/ia/iowa-3-day-notice-to-pay-or-quit/(same)).



## ARGUMENT

In Iowa, landlords have long been able to avail themselves of the summary remedy of FED for the nonpayment of rent after providing tenants with a three-day notice to quit. *See* Iowa Code §§ 562.27(2), 648.1, 648.3, 648.5. For rental payment defaults that occurred during a 120-day period between March 27 and July 25, 2020, however, Iowa's usual three-day notice to quit period was extended to 30 days during the CARES Act national moratorium on evictions. *See* 15 U.S.C. § 9058(c).

When the temporary CARES Act moratorium expired pursuant to its own terms on July 25, 2020, Iowa's own comprehensive statutory scheme governing the respective rights of landlords and the tenants temporarily in possession of their property returned, and it remains the law of the land. *See, e.g.*, Iowa Code § 562A.37 (IURLTA shall apply to all rental agreements executed, extended, or renewed in Iowa after January 1, 1979).

The rent arrearage giving rise to the FED action that is the subject of this appeal arose more than two years after the expiration of the CARES Act moratorium pursuant to its own terms. Thus the 30-day notice period prescribed in subsection 9058(c)(1) had long since expired. The magistrate, affirmed by the district court, nonetheless dismissed this action on the strength of the CARES Act notice provision and did so *sua sponte*. That was error because it violates federal-state supremacy principles, because it misinterprets the CARES Act eviction moratorium, and

because it was an improper assertion of a court's power to act on its own motion. The error should be reversed, and the law of landlord-tenant relationships in Iowa should be clarified.

**I. THE DISTRICT COURT ERRED IN FINDING THE CARES ACT'S 30-DAY NOTICE PROVISION PREEMPTS IOWA'S THREE-DAY FED NOTICE PERIOD FOR AN ACTION ARISING AFTER THE 120-DAY MORATORIUM.**

**Error Preservation.** The Retreat preserved error on this issue by appealing the magistrate judge's dismissal of this FED action to the district court and by arguing, in that appeal, that the 30-day notice period does not preempt Iowa's FED law. App. 41-45. Error is also preserved because the district court expressly relied upon preemption in its ruling on The Retreat's appeal. App. 52. *See, e.g., Cooksey v. Cargill Meat Solutions Corp.*, 831 N.W.2d 94, 98 (Iowa 2013) (quoting *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) (holding "if the court's ruling indicates the court considered the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved"); *State v. Paredes*, 775 N.W.2d 554, 561 (Iowa 2009) (noting that "where a question is obvious and ruled upon by the district court, the issue is adequately preserved").

**Standard of Review.** Because forcible entry and detainer actions are tried in equity, review is *de novo*. Iowa R. App. P. 6.907; *Petty*, 584 N.W.2d at 306 (quoting *Bernet*, 519 N.W.2d at 810). Review of the district court's legal conclusions and

statutory construction is for errors at law. *See Carroll Airport Comm'n v. Danner*, 927 N.W.2d 639, 644 (Iowa 2019) (citing *Walnut Creek Townhome Ass'n v. Depositors Ins.*, 913 N.W.2d 80, 87 (Iowa 2018)) (legal conclusion reviewed for errors at law); *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 75 (Iowa 2014) (preemption is a question of federal law).

**Analysis.** As the district court recognized, Miller's judgment can only be affirmed if state law regarding actions and remedies based on nonpayment of rent was, in late 2022, preempted by the CARES Act temporary eviction moratorium. App. 52. Under the Supremacy Clause, state laws that conflict with federal law are without effect. U.S. Const. art. VI, cl. 2.

The Supremacy Clause is implemented through the preemption doctrine. *Carroll Airport Comm'n*, 927 N.W.2d at 648 (quoting *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 366 (3d Cir. 1999) and *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992)). In addressing preemption challenges to state statutes, both federal and state courts begin "with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 79 (2008) (citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). "That assumption applies with particular force when Congress has legislated in a field traditionally occupied by the States." *Id.* (citations omitted). Principles of federalism and sovereignty

dictate that in the absence of such clarity of intent, Congress cannot be deemed to have significantly changed the federal-state balance. *Id. at 77*. Thus, when a federal statute that arguably preempts state law is susceptible of more than one plausible reading, courts have a “duty to accept the reading that disfavors pre-emption.” *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005); *Carroll Airport Comm’n*, 927 N.W.2d at 648 (quoting *Huck v. Wyeth, Inc.*, 850 N.W.2d 353, 363 (Iowa 2014)) (“[T]here is a presumption against preemption which counsels a narrow construction of preemption provisions.”).

The existence of Congress’s intent to preempt state law is determined through a statute’s express language or through its structure and purpose. *See Aurora Dairy Corp. Organic Milk Mktg. and Sales Practices Litig.*, 621 F.3d 781, 791-92 (8th Cir. 2010). Congress may preempt state law in three ways:

- A. The legislation may expressly provide that state law has been preempted (express preemption).
- B. The pervasiveness of the federal regulatory scheme may imply Congressional intent to preempt state law in a particular area (implied field preemption).
- C. If a state law is alleged to interfere with the achievement of a Congressional objective, the specific provision which creates the conflict will be preempted (implied conflict preemption).

*See Shaw v. Delta Air Lines*, 463 U.S. 85, 95 (1983) (express preemption); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (implied field and conflict preemption); *see also Carroll Airport Comm’n*, 927 N.W.2d at 639.

Although recognizing the existence of these three means by which a federal statute could preempt conflicting state law, the district court did not explain by which path it reached the conclusion that preemption occurred here. *See* App. 52. In fact, upon the expiration of the 120-day eviction moratorium and FED claims that accrued while it was in effect, subsection 9058(c) does not preempt Iowa’s three-day FED notice statute under any of the three variants of preemption.

**A. The Federal Statute Contains No Language Creating Express Preemption.**

“Express preemption occurs when the federal statutory text clearly provides that congressional authority is exclusive.” *Carroll Airport Comm’n*, 927 N.W.2d at 649 (citing *State v. Martinez*, 896 N.W.2d 737, 746 (Iowa 2017)). “Express preemption exists where Congress uses ‘explicit pre-emptive language’ to express its purpose.” *Aurora Dairy Corp. Organic Milk Mktg. and Sales Practices Litig.*, 621 F.3d at 792 (quoting *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992) (plurality opinion)).

This is plainly not an express preemption case. No language exists in subsection 9058 or in the CARES Act as a whole saying that the statute overrides

conflicting state eviction notice periods into perpetuity. *See* 15 U.S.C. § 9058; *see generally* Pub. L. 116-136.<sup>10</sup> This Court knows what express preemption looks like. In *Griffioen v. Cedar Rapids and Iowa City Ry. Co.*, this Court addressed, and affirmed, the preemptive effect of a federal statute that contained the following language:

The jurisdiction of the [Surface Transportation] Board over [certain transportation activities] is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

914 N.W.2d 273, 280 (Iowa 2018) (quoting 49 U.S.C. § 10501(b)). There is no language remotely like that in the relevant portion of the CARES Act. To the degree the district court believed express preemption applies to this case, that was error.

**B. There Is No Field Preemption Because There Is No Pervasive Federal Regulatory Scheme Governing the Rights and Obligations of Residential Landlords and Tenants.**

Landlord-tenant governance is a field in which states have traditionally occupied. *Alabama Ass'n of Realtors*, 141 S. Ct. at 2489. As with express preemption, this is not a close call. To the extent the district court believed Congress

---

<sup>10</sup> The only provision of the CARES Act that mentions preemption is section 3215, entitled, “Limitation on Liability for Volunteer Health Care Professionals During Covid-19 Emergency Response,” which pertains to enhanced malpractice protection for state-licensed health care professionals. Pub. L. 116-136 at § 3215(c), codified at 42 U.S.C. § 234.

intended to occupy the field of residential landlord-tenant relations, that was wrong. There is no pervasive federal regulatory scheme governing the law pertaining to the rental of dwelling units and the rights and obligations of landlord and tenant or eviction proceedings that would signal a Congressional intent to occupy the field. *Aurora Dairy Corp. Organic Milk Mktg. and Sales Practices Litig.*, 621 F.3d at 795 (declining to find federal certification and regulation of compliance of organic food preempted the field where state causes of action arising from deceptive trade practices laws existed that were unrelated to federal certification compliance). Rather, Iowa state law contains a pervasive statutory scheme pertaining to landlords and tenant. *See* Iowa Code chapters 562 and 648. Where, as here, Congress has provided no alternative federal scheme to replace state FED claims and their expedited remedies, there is “an exceptionally strong” presumption against preemption which the district court failed to acknowledge or address. *See, e.g., Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 8 (2003); *Johnson v. MFA Petroleum Co.*, 701 F.3d 243, 252 (8th Cir. 2012).

**C. The District Court Erroneously Found Conflict Preemption on Its Own Motion.**

In this case and other FED actions, the district court appears to have been applying a narrow “plain text” analysis to find that there is no “sunset date” for the CARES Act’s 30-day notice provision. *See generally* App. 47-54. “Conflict

preemption occurs when a state law conflicts with a federal provision.” *Carroll Airport Comm’n*, 927 N.W.2d at 649 (citing *State v. Martinez*, 896 N.W.2d 737, 747 (Iowa 2017)). “Conflict preemption occurs when ‘compliance with both federal and state regulation is a physical impossibility.’” *Id.* (quoting *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963)). The threshold issue in determining whether conflict preemption applies is whether the enactments of the two governments can be reconciled and given legal effect. Conflict preemption does not apply where compliance with both statutes is not impossible. *Carroll Airport Comm’n*, 927 N.W.2d at 649. If the legislation can be harmonized through principles of statutory construction, no preemption issue arises.

The Retreat will address the statutory construction question in detail in the next division of this brief. The point of that argument is that the district court has simply misread section 9058. For several reasons, the correct interpretation of that statute is that the 30-day notice provision lacks the permanent effect that the district court wrongly believed required the dismissal of the FED action here.

We discuss this issue first in the context of preemption, however, for an important reason: In the interaction between state and federal statutes, strong presumptions counsel against finding that a federal statute preempts arguably inconsistent state law, especially state law of such long standing as the plenary system of regulating residential landlord-tenant relationships. Because of those



presumptions, *the federal 30-day notice provision does not preempt the conflicting Iowa FED statute even if, viewed wholly apart from state law, one might conclude that the 30-day notice provision applies by its terms to a current landlord-tenant relationship in Iowa.* Put another way, preemption law puts a heavy pro-State thumb on the scale when this Court examines the statutory interpretation of section 9058.

The Supreme Court addressed these issues in a very closely related context in *Alabama Association of Realtors*. The matter before the Court was a moratorium imposed as a regulatory matter by the CDC on evictions of indigent tenants living in counties experiencing high rates of COVID-19 transmission. In finding that the applicants challenging the moratorium were “virtually certain to succeed on the merits” of their claim, the Supreme Court wrote that the “landlord-tenant relationship” is “the particular domain of state law.” *Alabama Ass’n of Realtors*, 141 S. Ct. at 2486 (citing *Lindsey*, 405 U.S. at 68-69). The Court went on, stating that “preventing [landlords] from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude.” *Id.*, 141 S. Ct. at 2489 (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435, (1982)). The Court concluded that “[o]ur precedents require Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power and the power of the Government over private property.” *Id.*, 141 S. Ct. at 2489 (quoting *United States Forest*

*Serv. v. Cowpasture River Pres. Ass'n*, 590 U. S. \_\_\_, \_\_\_, 140 S. Ct. 1837, 1850, (2020)). See also *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (if “Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute”) (cleaned up).

Under these principles, if an Iowa court can find *any* plausible construction of section 9058 that can be read consistently with giving current effect to Iowa’s long-standing three-day FED notice regime, that Court must construe section 9058 accordingly. As the next section will demonstrate, finding a plausible construction of section 9058 that does not do violence to Iowa’s current landlord-tenant regime is not hard. Amazingly, though, the district court did the opposite without any appearance, much less a reasoned request, from the tenant. That was reversible error.

Moreover, even where a state statute is irreconcilable with federal legislation, it will not be preempted absent a finding that it presents a significant obstacle to the Congressional objective. *Carroll Airport Comm’n*, 927 N.W.2d at 649 (quoting *Martinez*, 896 N.W.2d at 747; *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 373 (2000)). “What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.” *Id.* Here, Iowa’s three-day FED notice period does not present a significant

obstacle to the accomplishment of the Congressional objective. Allowing tenants to remain in possession for 30 days (or indefinitely) after defaulting on rent no longer serves the exigent need it was intended to address. Subtitle A's two primary objectives were to slow the spread of a highly contagious virus and to provide immediate assistance to those affected by the COVID-19 emergency. 85 Fed. Reg. at 20811-12. Those emergency goals were effectuated long before The Retreat filed its FED action, as evidenced by Congress's decision not to extend the eviction moratorium when it came to its legislatively mandated end on July 25, 2020.<sup>11</sup>

## **II. THE DISTRICT COURT ERRED IN INTERPRETING 15 U.S.C. § 9058 TO FIND THE CARES ACT NOTICE PROVISION SURVIVED THE EXPIRATION OF THE EVICTION MORATORIUM.**

**Error preservation.** The Retreat preserved error on this issue by appealing the magistrate judge's dismissal of this FED action to the district court

---

<sup>11</sup> None of the appellate cases from other states sheds helpful light on the preemption issue The Retreat raises here. In *Arvada Village Gardens*, the court assumed that conflict preemption overrode Colorado's tenant notice statute but had no analysis of why that was so. *See Arvada Village Gardens*, 529 P.3d at 107. In *Olentangy Commons Owner*, the landlord waived its preemption argument by failing to preserve error. *See Olentangy Commons Owner*, 2023 WL 7327716, at \*9. And in *Sherwood Auburn*, the Washington landlord-tenant statute expressly provided that its notice requirement would yield to any conflicting federal, state, or local law. *See Sherwood Auburn*, 521 P.3d at 219.

and by arguing, in that appeal, that the CARES Act 30-day notice period did not apply to this case. App. 31-40.

**Standard of review.** Review of the district court’s legal conclusions and statutory construction is for errors at law. *See Carroll Airport Comm’n*, 927 N.W.2d at 644. Iowa FED statutes are liberally construed by Iowa courts “with a view toward promoting their object of enabling a person entitled to the possession of real estate to obtain such possession from anyone illegally in possession thereof.” *Petty*, 584 N.W.2d at 307. Constitutional challenges are reviewed *de novo*. *State v. Mitchell*, 757 N.W.2d 431, 434 (Iowa 2008) (quoting *State v. Carter*, 733 N.W.2d 333, 335 (Iowa 2007)).

**A. The Language and Context of the CARES Act Shows That the 30-Day Notice Period Only Applies to Evictions Based on Facts Arising During the Temporary Moratorium.**

Statutory interpretation is a “holistic endeavor” which determines meaning by looking not to isolated words, but to text in context, along with purpose and history. *See Gundy v. United States*, 588 U.S. \_\_\_, \_\_\_, 139 S. Ct. 2116, 2126 (2019). This Court recently restated the familiar procedure by which statutes should be construed. That procedure provides the road map for the Court here. The Court “start[s] with the language of the statute to determine what the statute means. Our first step is determining whether the meaning of the provision is ambiguous; if it is not, we go no further and apply the unambiguous meaning of the language used in

the provision.” *Beverage v. Alcoa, Inc.*, 975 N.W.2d 670, 680 (Iowa 2022) (quoting *Com. Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021)). “If [the statute] is ambiguous, we apply canons of statutory construction to determine what the ambiguous language of the statute means.” *Id.* (citing *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017)).

There is more than one kind of ambiguity:

Ambiguity may arise in two ways: (1) from the specific language used in the statute or (2) when the provision is considered in the context of the entire statute or other related statutes. *Iowa Ins. Inst. v. Core Grp. of Iowa Ass’n for Just.*, 867 N.W.2d 58, 72 (Iowa 2015). “In other words, even if the meaning of words might seem clear on their face, their context can create ambiguity.” *Id.* “[T]he determination of whether a statute is ambiguous does not necessarily rest on close analysis of a handful of words or a phrase utilized by the legislature, but involves consideration of the language in context.” *State v. Richardson*, 890 N.W.2d 609, 616 (Iowa 2017) (alteration in original) (quoting *Rhoades v. State*, 880 N.W.2d 431, 446 (Iowa 2016), and considering whether a “sentence” under Iowa Code section 901.5(14) (2014) includes a restitution order by considering how “sentence” is used in related statutes and by examining section 901.5 as a whole).

*Id.*, 975 N.W.2d at 680-81. *See also* Norman J. Singer & J.D. Shambie Singer, 2A Sutherland, *Statutory Construction* 46:5 (7th ed. Rev. 2014) (“A statutory subsection may not be considered in a vacuum but must be considered in reference to the statute as a whole ....”).

In finding that section 9058 imposed a forever 30-day notice requirement, the district court at best paid lip service to the first form of ambiguity but wholly ignored

the second. Essentially, the district court read the exact words of the provision containing the 30-day notice provision, subsection 9058(c)(1), found no expiration date in those words, and concluded that the provision lives in perpetuity regardless of context. App. 49. There are several reasons the district court’s analysis was insufficient and its conclusion was mistaken.

**First**, the obvious context of the CARES Act was that it was emergency legislation designed to ameliorate the immediate effects of the worst of the COVID-19 crisis. That fact by itself at least raises a question about the permanent effect of the 30-day notice provision. The purpose of a legislative enactment is essential to determining its meaning. *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 188 (Iowa 1980). It is plain here that the Congressional purpose was to address something that, by its definition but also by its history, was temporary—a public health crisis.

**Second**, Congress’s intended duration of the 30-day notice is shown by the title of the statute in which it appears. Section 9058 is entitled “**Temporary moratorium on eviction filings**” (emphasis added). The 30-day notice period in subsection 9058(c)(1) falls under that title. The title of a statute “can be considered in interpreting the text” of the statute. *State v. Hall*, 969 N.W.2d 299, 307 (Iowa 2022). See *Borst Brothers Constr., Inc. v. Fin. of America Com., LLC*, 975 N.W.2d

690, 702 (Iowa 2022) (citing *Hall* and finding that meaning of “effective” in parts of a statute varied depending on the title of those parts).

**Third**, the specific language the district court relied upon, in context, further supports the limited effect of the 30-day notice provision. Subsection 9058(c)(1) does not refer to “*any* tenant” or “*all* tenants” or “all tenants regardless of whether Subsection (b) applies or not.” Instead, the language chosen specifically refers to only “*the tenant.*” 15 U.S.C. § 9058(c)(1) (emphasis added). Then, subsection 9058(c)(2) specifically refers back to subsection (b). *See* 15 U.S.C. § 9058(c)(2). Had Congress intended to make subsection 9058(c) apply to any possible future tenant in perpetuity, without condition, it would have used such general language (e.g., “all tenants” or “any tenants”). Instead, it is clear that “the tenant” can only refer to a tenant whose eviction was first governed by subsection (b). In other words, application of subsection (b) is a condition precedent for the application of subsection (c). *See, e.g., Midwest Foster Care and Adoption Ass’n v. Kincade*, 712 F.3d 1190, 1198 (8th Cir. 2013) (conditions precedent in one subsection triggered the statutory obligation set forth in a separate subsection). And subsection (b)’s reach was expressly limited to 120 days. 15 U.S.C. § 9058(b).

**Fourth**, the time-limited relief provided by subsection 9058(c)(1) is also shown by the plain limitation on an eviction notice provision in a section of the CARES Act adjacent to section 9058. In section 9057 of the Act, Congress allowed

owners of multi-family rental properties subject to certain federally backed mortgages experiencing financial hardship “during the COVID-19 emergency” a “temporary” forbearance on mortgage payments for up to 90 days. *Compare* 15 U.S.C. § 9057(f)(2)) *with* 15 U.S.C. § 9058(a)(5). Section 9057 expired pursuant to its own terms on December 31, 2020, 15 U.S.C. § 9057(5), and was not extended by Congress. Property holders who took advantage of a forbearance under § 9057 were subject to the same eviction action prohibition followed by the 30-day notice requirement as federally-connected landlords were during the 120-day period under § 9058. However, the eviction prohibition under § 9057 was plainly for the duration of the forbearance and a 30-day notice could not be given until the forbearance ended. 15 U.S.C. § 9057(d). It makes no sense for Congress to have applied a sunset to one eviction notice requirement yet make a virtually identical one in the same enactment have permanent effect.

The district court failed to properly account these factors by focusing solely on the language of subsection 9058(c)(1) itself without seeing the larger picture. That is exactly what this Court found to be error in *Beverage*:

The district court and court of appeals looked at each word or phrase with laser focus, starting with the meaning of [a particular word] and working through each word of the statute in a similar fashion. But legislators do not legislate one word at a time, and statutes cannot be read with blinders, dissecting a provision one word at a time, setting that word aside, and then moving to the next to address its meaning



outside the context of the other words used in the provision or how the provision fits into the greater statutory scheme.

*Beverage*, 975 N.W.2d at 681 (applying a holistic interpretation of a statutory defense to reverse summary judgment, and cautioning against focusing on an isolated but express language “without considering its context”; collecting cases).

This Court should correct the same error here that it did in *Beverage*.

**B. Rules of Statutory Construction Compel a Finding That the Lower Courts Erred in Their Interpretation of Section 9058.**

Collectively, these factors about section 9058 strongly suggest that Congress’s intent was to limit the 30-day notice provision in the way it limited the eviction moratorium itself. At best, though, reasonable minds could differ or be uncertain whether the extended 30-day notice provision set forth in subsection 9058(c)(1) expired 30 days after the moratorium, or, as the district court found, is still required. Based on these two plausible constructions, section 9058 is at least ambiguous. *See Beverage*, 975 N.W.2d at 680-681. Statutory ambiguities are resolved through the application of traditional rules of statutory construction. *Id.* A thoughtful application of these rules demonstrates that the 30-day notice provision of subsection 9058(c)(1) applies only to legal actions covered by § 9058(b).

**1. Interpreting the federal 30-day notice period to last beyond the eviction moratorium produces an absurd result.**

Perhaps the most damning aspect of the district court's construction is that it would indefinitely bar Iowa landlords from regaining lawful possession through an FED action. In Iowa, an FED must be commenced *within* 30 days of default. Iowa Code § 648.3(1). It would be impossible for a landlord to both provide a tenant with a 30-day notice before commencing an FED *and* to file an FED within 30 days of the tenant's default. *See Petty*, 584 N.W.2d at 307-08 (finding that the right to bring an FED action is lost if not commenced within 30 days of the default); *cf. Jenkins as Trustee of 2216 Lay Street Trust v. Clark*, 988 N.W.2d 469, 472-73 (Iowa Ct. App. 2022) (rejecting proposed statutory construction that would limit forfeiture remedy to a 30-day window in which the buyers could cure because it would effectively foreclose owners' ability to use the remedy at all).

A 30-day notice requirement engrafted onto existing Iowa law would produce an absurd result: Landlords could never successfully evict nonpaying tenants, because as soon as they had satisfied the federal 30-day notice requirement, their entitlement to eviction under state law would have expired. It is a basic principle of statutory interpretation that courts should avoid interpretations that produce absurd results. *Iowa Ins. Institute*, 867 N.W.2d at 75-76 (stating that "statutes should not be interpreted in a manner that leads to absurd results" and rejecting proposed

construction “that is an absurd result that could not have been intended by the legislature”). *See also* Iowa Code § 4.4(3) (presuming that in a statutory enactment “[a] just and reasonable result is intended”); *id.* § 4.6(5) (providing that when a statute is ambiguous, a court should consider the “consequences of a particular construction”). That principle applies with force here.

**2. Reconciliation of the two notice statutes avoids constitutional problems raised by the district court’s construction.**

The statutory construction adopted by the district court effectively deprives Iowa landlords receiving certain federal funds of their right to repossess their property through FED actions. This construction gives rise to myriad constitutional concerns, including:

- Impermissible infringement on the states’ ability to govern landlord-tenant relationships within its borders
- Impermissible infringement on landlord’s right to contract
- Impermissible exercise of Congressional authority
- Due process concerns regarding notice and vagueness

*See, e.g.*, U.S. Const. amend. V; *id.* amend. XIV, § 1; *id.* art. I, § 10; *Alabama Ass’n of Realtors*, 141 S. Ct. at 2489 (insufficient notice regarding covered properties and duration of legislation supplant state eviction notice requirements in state FED actions).

Setting aside the substantive constitutional problems that the federal 30-day notice period poses, that provision lacks a Constitutional basis as an exercise of federal authority. *See United States v. Morrison*, 529 U.S. 598, 607 (2000) (“[E]very law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.”); *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 535 (2013) (holding “exceptional conditions” do not render the legislation permanently immune from scrutiny). Local landlord-tenant relationships are not interstate commerce. The only Constitutional basis for the notice provision that has been suggested is the Spending Clause. *See Sherwood Auburn*, 521 P.3d at 218 (finding congressional authority to impose the CARES Act notice requirement contained in § 9058 is pursuant to its power under the Spending Clause). That justification is deeply suspect, however—it was imposed on the landlords during their leases; they did not agree to it. *See Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1570 (2022) (finding legitimacy of spending power legislation rests on whether the recipient “voluntarily and knowingly” accepts the terms of that contract; “Recipients cannot ‘knowingly accept’ the deal with the Federal Government unless they ‘would clearly understand ... the obligations’ that would come along with doing so.”).

If a statute is ambiguous, a court should interpret it to avoid a constitutional problem. *Mitchell*, 757 N.W.2d at 434 (quoting *Carter*, 733 N.W.2d at 335) (“[I]f if the statute may be construed in more than one way, we adopt the construction that

does not violate the constitution.”) To avoid the continued operation in Iowa (at least) of a statute without a legitimate constitutional basis, and to avoid the likelihood of other constitutional issues as well, the Court should choose, among ambiguous alternatives, the construction of section 9058 that does not continue the 30-day notice provision in effect.

**3. An interpretation that avoids federal preemption of Iowa’s three-day FED notice statute is required.**

In determining how to interpret section 9058, the Court circles back to preemption. As indicated above, preemption occurs when it is impossible to comply with both the federal and state statutes. *See supra* at 30. Here, there is a way to avoid that impossibility—by adopting the interpretation of section 9058 that limits the effectiveness of the 30-day notice provision to the effective period of the eviction moratorium statute of which is a part.<sup>12</sup>

---

<sup>12</sup> As with preemption, the appellate decisions from other jurisdictions are not particularly helpful to this Court’s evaluation of the interpretation issue here. In *Arvada Village Gardens*, the Court’s analysis was terse and similar to that of the district court below—the court focused on the words of subsection 9058(c)(1) without examining the broader context of the statute or considering the effect of an ambiguous construction. *See Arvada Village Gardens*, 529 P.3d at 107-08. In *Olentangy Commons Owner*, the court’s treatment of the issue was similar. *See Olentangy Commons Owner*, 2023 WL 7327716, at \*8. In *Sherwood Auburn*, the landlord did not argue the interpretation question presented here at all. Its argument instead was that the 30-day notice provision in subsection 9058(c)(1) was a limitation on the *enforcement* of an FED order, not the *initiation* of an FED action. The court rejected that argument. *Sherwood Auburn*, 521 P.3d at 217.

### III. THE DISTRICT COURT EXCEEDED THE LIMITS OF ITS RESTRAINED POWER TO ACT ON ITS OWN MOTION IN SUMMARILY DISMISSING THIS ACTION.

**Error Preservation.** The dismissal of this FED action was, in effect, a grant of a motion to dismiss by a defaulting party, made upon the district court's own motion, at an eviction hearing, with no notice to The Retreat. The very point of The Retreat's argument here is that it was ambushed by the magistrate judge, and then the district court, in a way that should not have occurred *sua sponte*. The doctrine of error preservation does not penalize The Retreat for failing to anticipate that ambush before the magistrate judge. *See Cooksey*, 831 N.W.2d at 99 (explaining that where an issue has been decided by the district court, error is preserved even where the nonmovant did not resist the motion or file a post-judgment motion pursuant to Iowa R. Civ. P. 1.904(2)). The Retreat timely appealed the magistrate's ruling to the district court on the grounds alleged therein. The district court issued an opinion addressing the federal preemption and statutory construction issues to be determined for appeal. Error has been preserved for this Court.

**Standard of Review.** The magistrate's ruling, affirmed by the district court, was effectively the grant of a motion to dismiss. A ruling on a motion to dismiss is reviewed for correction of errors at law. *Iowa Individual Health Benefit Reins. Ass'n*

---

*v. State Univ. of Iowa*, 876 N.W.2d 800, 804 (Iowa 2016) (quoting *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014)).

**Analysis.** As the defendant, Miller had the burden of pleading and proving by a preponderance of the evidence any affirmative defense, including federal preemption. See *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 255 (1984); *Livingood v. City of Des Moines*, 991 N.W.2d 773, 742-743 (Iowa 2023); *Bernet*, 519 N.W.2d at 810. Landlords have expedited judicial remedies to terminate unlawful possessions, while the law provides defenses to those tenants who can demonstrate a legitimate reason for withholding rent. Iowa Code §§ 562.27(2), 648.1(5), 648.3; see, e.g., *Petty*, 584 N.W.2d at 307 (a landlord who pursues the summary remedy of FED is subject to the affirmative defense provided in Iowa Code § 648.1(8) (citing *Steele v. Northrup*, 168 N.W.2d 785, 788 (Iowa 1969)). “Because preemption is not a cause of action but an affirmative defense, [it] must be raised in the appropriate proceeding and at the appropriate time...” *Livingood*, 991 N.W.2d at 747 (citing *Carroll Airport Comm’n*, 927 N.W.2d at 639).

Although district courts in Iowa have the power to dismiss lawsuits *sua sponte*, that power should be exercised with restraint. *Rush v. Sioux City*, 240 N.W.2d 431, 438 (Iowa 1976), *overruled on other grounds by Hoffert v. Luze*, 578 N.W.2d 681 (Iowa 1998). A significant factor for reviewing courts is whether the grounds for the lower court’s *sua sponte* dismissal has previously been raised, or

whether the judgment came as a surprise. *Compare Rush*, 240 N.W.2d at 338-39 (affirming dismissal where judgment would have “no practical legal effect upon the existing controversy”); *Teleconnect Co. v. Iowa State Com. Comm’n*, 366 N.W.2d 515, 519-20 (Iowa 1985) (affirming dismissal where parties were “at least aware that a dispositive ruling might be made on the basis of the arguments at the time of the scheduled hearing”); *with Acterra Grp., Inc. v. Kick Grp. Tech. (USA) Inc.*, No. 19-1042, 2020 WL 2988540 (Iowa Ct. App. June 3, 2020) (reversing dismissal and finding the district court had failed to exercise its power in a restrained manner where, although the parties were aware of the possibility of dismissal, there “was no record either party contemplated dismissal based on [the grounds raised *sua sponte*]”).

Here, The Retreat was not aware of the possibility of dismissal until the magistrate unilaterally applied an isolated piece of expired federal legislation. And Miller was not there. If a sea change in Iowa landlord tenant law is to occur through judicial decree, it should occur when both parties are in court and based on an argument one of them, with notice, advances on their own. The lower courts’ *sua sponte* resolution of this matter was error.



## CONCLUSION

The district court erred in:

- finding 15 U.S.C. § 9058(c)(1)—a subsection of an expired subtitle designated as *Temporary Moratorium on Evictions*—today preempts Iowa Code §§ 562.27(2) (IURLTA), 648.1(5), 648.3, 648.5;
- misinterpreting and misapplying 15 U.S.C. § 9058(c)(1) based on its finding that Congress intended to assert permanent federal authority over state eviction proceedings; and
- affirming the dismissal of this FED on the magistrate’s own motion notwithstanding Miller’s failure to cure her default or to appear, answer, or assert or prove any defense to her unlawful occupancy.

MIMG CLXXII Retreat on 6th LLC respectfully requests that this Court vacate the district court’s ruling, reverse the magistrate’s ruling, and remand this case with instructions that judgment be entered on The Retreat’s behalf.

## REQUEST FOR ORAL ARGUMENT

MIMG CLXXII Retreat on 6th, LLC, respectfully requests oral argument.

Respectfully submitted,

THE WEINHARDT LAW FIRM

By: /s/ Mark E. Weinhardt  
Mark E. Weinhardt AT0008280  
2600 Grand Avenue, Suite 450  
Des Moines, IA 50312  
Phone: (515) 244-3100  
E-mail: mweinhardt@weinhardtlaw.com

ATTORNEYS FOR PLAINTIFF-  
APPELLANT

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on April 12, 2024, I electronically filed the foregoing Proof Brief and Request for Oral Argument with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System to send notice of electronic filing to the following. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules. In addition, copies were served on the pro se Defendants-Appellees Mackenzie Miller and Parties-in- Possession by mailing copies via U.S. Mail to their last known address of 2911 6th Street SW, #09, Cedar Rapids, Iowa 52404.

By Maura McNally-Cavanagh

## CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), and contains 8422 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2010 in Times New Roman 14 pt.
3. There is no cost associated with printing or duplicating this brief.

Dated: April 12, 2024.

By Maura McNally Cavanagh