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IN THE SUPREME COURT OF IOWA

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No. 23-0670
Linn County No. SCSC261751

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

v.

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

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

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# APPELLANT'S REPLY TO BRIEF OF AMICUS CURIAE, IOWA LEGAL AID

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### II. THE DISTRICT COURT ERRED IN INTERPRETING 15 U.S.C. § 9058(c).

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*Giles v. State*, 511 N.W.2d 622 (Iowa 1994)
*Hazelwood v. Common Wealth Apartments*, 2014 WL 1223521 (Ind. Ct. App. 2024)
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*State ex rel. Board of Pharmacy Examiners of State v. McEwen*, 96 N.W.2d 189 (Iowa 1959)
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## III. THE PROCEDURAL ISSUES RAISED BY LEGAL AID ARE LARGELY INACCURATE, OUTSIDE THE RECORD, AND IRRELEVANT TO RESOLVING THIS APPEAL.

## ARGUMENTS IN REPLY

The issue presented in this appeal is not, as the amicus curiae Iowa Legal Aid ("Legal Aid") frames it, whether Congress can, in appropriate circumstances, exercise its emergency powers to preempt state landlord-tenant laws. *See* Amicus Brief, 14-18. Of course it can; and it did. *See* 15 U.S.C. § 9058 (2020). The issues in this case are (1) whether Congress manifested a clear and unambiguous intent that the 30-day notice requirement in emergency legislation entitled "Temporary Moratorium on Eviction Filings" would survive expiration of the statute's eviction moratorium and instead continue in perpetuity, and (2) whether Congress did so with sufficient clarity to avoid the law's powerful presumption against conflict preemption. The answer to both these questions is "no."

Congress expressed a clear intent to preempt state law in actions based on nonpayment of rent for the 120 days of the temporary eviction moratorium. *See* 15 U.S.C. § 9058(b) (2020). But Congress expressed no intent whatsoever to preempt state law regarding the notice to be provided in such actions beyond the temporary eviction moratorium. *See* 15 U.S.C. § 9058(c) (2020). Applying the presumptions against the broad interpretation and construction of arguably preemptive statutes, no clear Congressional intent exists to preempt indefinitely state law governing the notice to be provided in state actions based on nonpayment of rent. The district court erred in so finding.

## I. THE DISTRICT COURT ERRED IN FINDING 15 U.S.C. § 9058(c) PREEMPTS IN PERPETUITY STATE NOTICE PROVISIONS IN STATE ACTIONS BASED ON NONPAYMENT OF RENT.

Iowa and federal courts use the same preemption analysis. It demands a narrow construction of potential preemption provisions—through the application of two presumptive principles—before finding a Congressional intent to invalidate state law. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (quoting *Gade v. National Solid Wastes Mgmt. Ass'n*., 505 U.S. 88, 111 (1992)).[1] First, a court must start from the strong presumption that the historic police powers of the States cannot be superseded by a federal act absent a clear and manifest Congressional purpose and its intended scope of applicability. *Medtronic*, 518 U.S. at 485; *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 75-86 (Iowa 2014). Second, "any understanding of the scope of a preemption statute must be based on 'a fair understanding of congressional purpose'" demonstrating a preemptive intent to nullify state law. *Medtronic*, 518 U.S. at 485 (quoting *Cipollone v. Liggett Grp.,*

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[1] *See also Wyeth v. Levine*, 555 U.S. 555, 566 (2009); *Cipollone v. Liggett Grp., Inc*., 505 U.S. 504, 516 (1992); *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947); *In re Aurora Dairy Corp. Organic Milk Mktg. and Sales Practices Litig*., 621 F.3d 781, 791-92 (8th Cir. 2010); *Carey v. Shiley, Inc*., 32 F. Supp.2d 1093, 1102 (S.D. Iowa 1998); *Carroll Airport Comm'n v. Danner*, 927 N.W.2d 635, 648 (Iowa 2019); *Huck v. Wyeth, Inc*., 850 N.W.2d 353, 363 (Iowa 2014); *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 75-85 (Iowa 2014).

*Inc*., 505 U.S. 504, 530, n.27 (1992)). Under these two principles, there can be no finding of preemption here.

### A. The Authorities Relied Upon by Legal Aid Do Not Support a Finding of Congressional Intent to Preempt in 15 U.S.C. § 9058(c).

Legal Aid relies on *Horizon Homes of Davenport v. Nunn*, 684 N.W.2d 221 (Iowa 2004), and *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs*., 141 S. Ct. 2485 (2021), to argue that Iowa's traditional 3-day notice rule has been permanently preempted because it conflicts with the 30-day notice provision set forth 15 U.S.C. § 9058(c). In fact, both cases support reversal.

Legal Aid first asserts that both cases are factually distinguishable because they involved the preemptive effect of federal agency regulations, rather than direct Congressional action. Amicus Brief, 16-17. However, the Unites States Supreme Court has recognized that an agency regulation with the force of law can preempt conflicting state requirements. *See*, *e.g.*, *Wyeth*, 555 U.S. at 576 (citing *Geier v. American Honda Motor Co.,* 529 U.S. 861 (2000); *Hillsborough County v. Automated Med. Laboratories, Inc.,* 471 U.S. 707, 713 (1985)). In such cases, courts are directed to perform the same, independent "conflict determination, relying on the substance of state and federal law. . . ." *Id*. Like federal statutes, agency regulations cannot preempt state law absent a clearly expressed Congressional intent. *Id*.

### *1. Horizon Homes of Davenport.*

Legal Aid contends that because the Iowa Supreme Court in *Horizon Homes* found that HUD's express prohibition against "no cause evictions" preempted Iowa law allowing "no cause" non-renewals of residential leases, preemption should also be found in this case. Amicus Brief, 15-16. Legal Aid goes so far as to charge that The Retreat can "articulate[] no limiting principle that would not also involve overruling [*Horizon Homes*] and consequently rendering any additional tenant protections based on federal law . . . null and void." Amicus Brief, 18. However, the same analysis is used to determine the preemptive scope of agency action as is used for a statute. *See Horizon Homes*, 684 N.W.2d at 225. This Court in *Horizon Homes* concluded that (1) HUD had been vested by Congress with authority to preempt state law, (2) the HUD regulation fell within the scope of that delegated, preemptive authority, and (3) HUD had expressed clear and manifest intent to have its "good cause" eviction rule override state law. *Id*. at 228. This Court properly found preemption, but the factors supporting it do not exist here.

Whether through direct Congressional legislation or properly delegated agency regulation, the federal government is required to use "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." *See Alabama Ass'n of Realtors*, 141 S. Ct. at 2486; *see also Geier*, 529 U.S. 861 (courts considering the

preemptive effect of agency rules apply the same, independent preemption analysis requiring a clear expression of federal preemptive intent). Here, the only federal intent that was clearly expressed was an intent to provide tenants with temporary eviction relief for a few months at the height of the pandemic in 2020.

#### ***2. Alabama Ass'n of Realtors.***

In *Alabama Ass'n of Realtors*, the United States Supreme Court struck down the CDC's COVID-related eviction moratorium because the agency action exceeded the scope of delegated Congressional authority, finding that "if a federally imposed eviction moratorium is to continue, Congress must specifically authorize it." *Id*., 141 S. Ct. at 2490. Again, Legal Aid argues *Alabama Ass'n of Realtors* is inapposite to these appeals because it involved the scope of federal agency powers. Amicus Brief, 16-17. However, the analysis and rationale applied in *Alabama Ass'n of Realtors* mirror those to be applied in cases involving direct Congressional preemption. *See Alabama Ass'n of Realtors* at 2489 ("We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance.").

### **B. Congress Did Not Express a Clear Intent to Extend the 30-Day Notice Requirement Beyond the Expiration of the CARES Act's Temporary Eviction Moratorium.**

The district court's first and primary error was its failure to engage in any meaningful preemption inquiry. Its entire preemption analysis is limited to a single

statement—"To the extent [The Retreat] may intend to challenge whether 15 USC § 9058 preempts Iowa law, the Court finds the Supremacy Clause dictates that 15 USC § 9058 preempts inconsistent Iowa law"—and hornbook citations identifying the types of preemption as express, implied field, and implied conflict. App. 52. This finding conflicts with several state and federal precedents requiring a narrow interpretation of preemptive intent. *See, e.g., Medtronic*, 518 U.S. at 485 (". . . [b]ecause the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action.").[2]

Any preemption analysis must start with an initial assumption that the historic police powers of the states are not superseded by a federal statute, particularly when Congress has legislated in a field traditionally occupied by the States. *Medtronic,* 518 U.S. at 485; *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947); *Freeman*, 848 N.W.2d at 75-76. This limiting presumption is applied even where the "plain language" of a federal statute expresses a Congressional intent to pre-empt at least some state law. *Medtronic,* 518 U.S. at 485. In such cases, the court must

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[2] *See also Roth v. I & M Rail Link, L.L.C.*, 179 F. Supp.2d 1054, 1059 (S.D. Iowa 2001) ("A court interpreting a federal statute relating to a subject traditionally governed by state law is reluctant to find preemption."); *Carroll Airport Comm'n*, 927 N.W.2d at 648 (quoting *Hucky v. Wyeth, Inc*., 850 N.W.2d 353, 363 (Iowa 2014) ("We have recognized '[t]here is a presumption against preemption which counsels a narrow construction of preemption provisions.'")).

"nonetheless 'identify the domain expressly pre-empted' by that language." *Id.* (quoting *Cipollone*, 505 U.S. at 517).

> If a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains. In the absence of such clarity as to the scope of the intended preemption, Congress cannot be deemed to have significantly altered the federal-state balance.

*Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008).

The district court's dismissal of this forcible entry and detainer action was based on its sparse statutory construction leading to its conclusion that the "plain language" of 15 U.S.C. § 9058(c) mandates that its 30-day notice requirement be read in isolation and applied separately in any state action based on a nonpayment of rent—even after the expiration of the temporary eviction moratorium and resolution of the acute health care crisis. App. 47-51. As discussed in the next section, 15 U.S.C. § 9058(c) contains no such language, plain or otherwise, and the district court's statutory analysis is erroneous.

Congressional purpose is the "ultimate interpretive touchstone" when interpreting a statute's pre-emptive scope. *See, e.g.*, *Medtronic*, 518 U.S. at 485; *Cipollone*, 505 U.S. at 516 (quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103, (1963)). Reviewing courts are instructed to reach "a reasoned understanding" of the way Congress intended the statute and its overarching regulatory scheme "to

affect business, consumers, and law" through a considered review of the statutory language, framework, structure, and purpose. *Id*. at 486.

Legal Aid argues that The Retreat's proposed construction "is not even internally consistent" because The Retreat does not dispute that the CARES Act's 30-day notice rule preempted Iowa's 3-day notice rule during the temporary eviction moratorium from March through July of 2020. Amicus Brief, 16. In fact, The Retreat's position is completely consistent with controlling authorities. Congress expressed a clear and manifest intent in 15 U.S.C. § 9058(b) to use its emergency powers to preempt state eviction laws *for 120 days* during an unprecedented national health crisis. Congress did not express an equally clear and manifest intent to indefinitely extend the 30-day notice period beyond the expiration of the moratorium in 15 U.S.C. § 9058(c).

There is nothing in 15 U.S.C. § 9058, expressly or otherwise, indicating that Congress intended to preempt state law notice periods forever. *See* 15 U.S.C. § 9058; *see generally* Pub. L. 116-136. The district court and Legal Aid flip the traditional textual analysis on its head, arguing that if Congress had *not* intended to preempt Iowa law, it should have provided a termination date in two of three subsections, rather than just one, of legislation entitled "*Temporary* Moratorium on Eviction Filings." Legal Aid cites *Nat'l Fed'n of Indep. Bus. v. Sebulius*, 567 U.S. 519, 544 (2012), for the proposition that where "certain language in one part of a

statute and different languages in another, it is generally presumed that Congress acts intentionally." Amicus Brief, 22. Here, Congress provided an express termination date in subsection (b), the section limiting both the scope of the temporary eviction moratorium and the intended federal preemption to 120 days. *See* 15 U.S.C. § 9058(b). Immediately following in the next subsection, Congress provided for an extended 30-day notice period during the temporary moratorium. *See* 15 U.S.C. § 9058(c). While 15 U.S.C. § 9058 may not be a model of textual clarity, Congress *arguably* limited the effective scope of the 30-day notice period to 120 days. And if it is reasonably arguable that the scope of the 30-day notice provision is so limited, it cannot be that Congressional intent to preempt conflicting state law has been so clearly shown as to mandate permanent preemption.

## II. THE DISTRICT COURT ERRED IN INTERPRETING 15 U.S.C. § 9058 (c).

Legal Aid charges, "[The Retreat] contends that its convoluted reading of the statute, limiting application of the 30-Day notice requirement to the initial period of the CARES Act moratorium, is the only logical interpretation." Amicus Brief, 18. That is a misstatement of The Retreat's position. In fact, The Retreat contends that, "[w]hen the text of a preemption clause is susceptible to more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" *Altria Grp.,* 555 U.S. at 77 (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449

(2005)); *Freeman*, 848 N.W. at 76. It is at least the case that, read in context, there is more than one plausible reading of the duration of the 30-day notice provision, thus defeating preemption. But even without the preemption presumptions, the better reading of that provision is that it is time-limited to coincide with the COVID emergency.

### A. The District Court Erroneously Found 15 U.S.C. § 9058(c) Unambiguously Declares That Its Extended Notice Period Is Independent from the Rest of 15 U.S.C. § 9058 and Survived Expiration of the Moratorium.

"A particular statutory provision is ambiguous when, *inter alia*, it is susceptible to more than one reasonable interpretation." *Owner-Operator Indep. Drivers Ass'n v. Supervalu, Inc.*, 651 F.3d 857, 863 (8th Cir. 2011) (citing *Chickasaw Nation v. United States*, 534 U.S. 84, 90 (2001) (defining "ambiguity," in the statutory-construction context, as "capable of being understood in two or more possible senses or ways" (quoting Webster's Ninth New Collegiate Dictionary 77 (1985))). "In determining whether statutory language is plain and unambiguous, the court must read all parts of the statute together and give full effect to each part." *Id*. (quoting *Estate of Farnam v. Comm'nr of Internal Revenue*, 583 F.3d 581, 584 (8th Cir. 2009)). If a court gives full effect to each of the three subsections of 15 U.S.C. § 9058, "Temporary Moratorium on Evictions Filings," "two alternately reasonable interpretations result." *See Owner-Operator Indep.*

*Drivers Ass'n.*, 651 F.3d at 863. Thus, the language of 15 U.S.C. § 9058 is ambiguous. *See id.* Given this ambiguity, the district court should have examined legislative history and other authorities to determine the legislative intent behind 15 U.S.C. § 9058. *See id.*; *Estate of Farnam*, 583 F.3d at 584.

The district court affirmed small claims magistrate's *sua sponte* dismissal of this FED action based on its abbreviated, and somewhat circular, "plain text" analysis.[3] App. 47, 50. Specifically, the district court found that because subsection

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[3] The district court's "plain language" statutory interpretation is set forth as follows:

> [T]he plain language of 15 U.S.C. §9058, when read as a whole, provides that 15 U.S.C. §9058(c)(1)'s notice provision did not expire after the moratorium period outlined in 15 U.S.C. §9058(b)(1). *See Andover Volunteer Fire Dep't*, 787 N.W2d at 81 (2010) ("The first task for courts in interpreting statutes is to identify the presence of an ambiguity. Of course, if no ambiguity exists, the statute is rationally applied as written.").
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> . . . . . . . . . .
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> [A]s the Court already outlined about, the Court, in reviewing 15 U.S.C. §9058 in its entirety, finds that the plain meaning of 15 U.S.C. §9058 is that the 30-day notice requirement has not expired at the conclusion of the moratorium. *See* 15 U.S.C. §9058; *see McIver*, 858 N.W.2d at 703 (2015) ("The statute is ambiguous if reasonable minds can disagree on the meaning of a particular words or the statute as a whole"). The Court holds that the explicit tethering of the moratorium to the lessor's ability to state actions to evict individuals and/or charging fees for failure to pay rent, in comparison to the clear exclusion of a mention of the moratorium in 15 U.S.C. §9058(c)(1)'s general notice provisions, leads reasonable minds to the conclusion that

15 U.S.C. § 9058(c)(1) does not include a different or duplicative termination date beyond the termination date expressly articulated in subsection 15 U.S.C. § 9058(b), the *only* reasonable conclusion is that the extended 30-day notice provision survived. *Id*. And, if the extended 30-day notice provision survived, it must continue to be independently applied, by all courts throughout the nation, long after the expiration of the temporary, federal moratorium and resolution of the acute crisis, unless and until Congress, at its discretion and leisure, decides to revisit emergency COVID-related legislation passed over four years ago in 2020. *Id*.

As discussed in the preceding section, the district court ignored state and federal authorities articulating the strong presumption against preemption, particularly in the absence of any text or context suggesting Congress intended 15 U.S.C. § 9058(c)(1) to survive the moratorium and indefinitely preempt state notice statutes. Moreover, the district court chose to characterize the text of 15 U.S.C. § 9058(c)(1) as "general" notice provisions, despite the fact it is contained in a cohesive piece of legislation entitled "*Temporary* Moratorium on Eviction Filings."

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was not intended to be limited to the moratorium period. *See* 15 U.S.C. §9058.

App. 57, 50 (Ruling on Notice of Appeal, 1, 4 (citations in original)).

App. 50. Most importantly, the district court failed to even entertain the possibility that Congress simply intended the termination date set forth in the preceding subsection to define the entire chronological scope of the "temporary" moratorium and its attendant preemption of the States' laws. *See* 15 U.S.C. § 9058(b).

Contrary to the district court's finding, ambiguity exists based on two reasonable readings of 15 U.S.C. § 9058. This ambiguity is evidenced by the inconsistent application of the 30-day rule throughout Iowa and the country in actions based on nonpayment for rent in covered properties and provides the basis for this Court's discretionary review of these two representative small claims judgments. *See* App. 55-56.

#### ***1. In Finding That the Extended Notice Provision of 15 U.S.C. § 9058(c) Survived Expiration of the Temporary Moratorium, the District Court Necessarily Added Words to the Subsection That Congress Did Not.***

Legal Aid argues that a finding that the notice provisions of 15 U.S.C. § 9058(c) expired along with the moratorium would require "the Court to add words to the law that Congress did not." Amicus Brief, 18. To the contrary, the district court had "to add words that Congress did not" to find an implied intent to indefinitely preempt state law. *See Medtronic,* 518 U.S. at 485. The only language in 15 U.S.C. § 9058 defining the scope of the intended preemption is set forth in subsections (a), limiting preemption to certain federally related properties, and (b),

limiting federal preemption to the 120-day period of the temporary moratorium. Subsection (c) contains no expression whatsoever of any Congressional intent to exceed the preemptive limitations set forth in the preceding two subparagraphs. *See* 15 U.S.C. § 9058.

As The Retreat acknowledged in its initial brief, courts from other states have accepted the position advanced by Legal Aid and other tenant advocates throughout

the country.[4] Some of these opinions are of limited relevance to these appeals.[5] Other decisions have used the same underdeveloped "plain text" analysis urged by Legal Aid: Subsection 9058(c) does not set forth an independent expiration date, so it must be a separate and independent provision, which Congress intended to preempt state

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[4] For example, in *Hazelwood v. Common Wealth Apartments*, ___ N.E.3d ____, 2014 WL 1223521 (Ind. Ct. App. 2024), the Indiana Court of Appeals recently parroted the truncated analysis used by the district court and the other courts that have adopted the "plain text" construction urged by Legal Aid and its colleagues, opining:

> In *In re Arvada Vill. Gardens LP v. Garate*, the Colorado Supreme Court held that the federal thirty-day notice provision is still in effect for covered properties. 529 P.3d 105, 106 (Colo. 2023). Thus, the Court dismissed a landlord's eviction action because the landlord failed to give the tenant a thirty-day notice before initiating eviction proceedings. *Id*. at 108. Likewise, the Washington Court of Appeals held the thirty-day notice provision is still in effect. *Sherwood Auburn LLC v. Pinzon*, 521 P.3d 212, 220 (Wash. Ct. App. 2022), *rev. denied*; *see also*, *Watson v. Vici Cmty. Dev. Corp*., No. CIV-20-1011-F, 2021 WL 1394477, at *11 (W.D. Okla. Apr. 12, 2021) (holding thirty-day notice provision extended beyond expiration of the moratorium provision in declining to dismiss declaratory judgment action). We follow the lead of our sister states and hold that the notice provision did not expire with the temporary eviction moratorium. Common Wealth failed to comply with 15 U.S.C. § 9058(c) when it did not give Hazelwood a thirty-day notice before initiating eviction proceedings. *See Sherwood Auburn, LLC,* 521 P.3d at 217-18 (holding notice must be given to tenant at least thirty days before filing eviction action). *Arvada Villa Gardens LP v. Garate*, 529 P.3d 105, 106 (Colo. 2023) ("we must presume that Congress meant what it said—although the Moratorium Provision expired, the Notice Provision did not.")

*Hazelwood*, 2014 WL 1223521, at *3.

law indefinitely, even though it never says so, anywhere.[6] None of these cases analyze the interplay of statutory construction and preemption as The Retreat does here. Instead, the reasoning in these cases is substantially similar to the district court's appellate ruling, and is not controlling for the same reasons. This is an example of a flawed legal analysis from a few lower courts being picked up and carried outward to other states, and, more slowly, upward toward the appellate courts.

#### ***2. Congress Could Have Reasonably Intended "Temporary" to Mean "For 120 days" Rather than "Indefinitely," Especially in the Preemption Context.***

Legal Aid asserts, "[w]hile the use of the word 'temporary' may have indicated Congressional intent that this protection would not last forever, it is reasonable that Congress planned for the uncertainty it was facing by not providing a specific end date." Amicus Brief, 23. In that statement, Legal Aid summarizes the

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[5] *See, e.g., Olentangy Commons Owner LLC v. Fawley*, ___ N.E.3d __, 2023 WL 7327716, at *9 (Ohio Ct. App. Nov. 7, 2023) (failure to preserve error); *Sherwood Auburn, L.L.C. v. Pinzon*, 521 P.3d 212, 219 (Wash. Ct. App. 2022) (state statute expressly provided that its notice requirement would yield to any conflicting federal, state, or local law, precluding a preemption or statutory analysis).

[6] *See, e.g., Arvada Villa Gardens LP v. Garate*, 529 P.3d 105, 106 (Colo. 2023) ("We must presume that Congress meant what it said—although the Moratorium Provision expired, the Notice Provision did not.").

central ambiguity this Court is being asked to resolve. Based on controlling preemption authorities, a failure to provide a specific end date when intending to preempt state law is patently unreasonable. *See, e.g., Medtronic,* 518 U.S. at 485.

Of course, it is also reasonable that Congress intended "temporary" to mean 120 days.

> In construing any particular clause or words of a statute, it is especially necessary to examine and consider the whole statute, *including the title*, and gather, if possible, from the whole the expressed intention of the legislature. It cannot be removed from isolated words taken out of context.

*State ex rel. Board of Pharmacy Examiners of State v. McEwen*, 96 N.W.2d 189, 191 (Iowa 1959) (emphasis supplied); *see also Giles v. State*, 511 N.W.2d 622 (Iowa 1994) (requiring an act's subject matter to be connected to its title to provide reasonable notice to lawmakers and the public to prevent fraud or surprise). Although a title might not by itself create ambiguity, it is an important piece of information in resolving existing ambiguity. *State v. Shorter*, 945 N.W.2d 1, 8 (Iowa 2020) (citing *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004)).

#### ***3. 15 U.S.C. § 9058(c)'s Language, Context, and Legislative History Belie the District Court's Interpretation.***

The language of 15 U.S.C. § 9058(c) itself supports The Retreat's position. The 30-day notice provision set forth in subsection (c)(1) applies to "the" tenant, referring back to "the" tenant whose eviction falls within the scope of the temporary

eviction moratorium as defined in the preceding subsections (a) (tenants with leases in covered properties) and (b) (during the 120-day eviction moratorium). The next subsection, (c)(2), immediately and specifically refers back to the eviction moratorium described in subsection (b). As described in The Retreat's initial brief, the application of subsection (b)'s 120-day limitation should be read as 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).

Legal Aid disputes The Retreat's interpretation, arguing, "given that the subsections were separated by text, if is far more likely that the class of people implicated is the same as described thou the whole of the section act issue—those federally connected properties and their tenants and their tenants, which the federal government has the power to touch and place requirements on." Amicus Brief, 24. But "the" does not refer to a class, it refers to an individual—the one protected in the previous subsections. Moreover, Legal Aid fails to address the fact that, given two plausible readings offered by the parties, the district court erred in not applying the one that not only makes more sense based on the text and context, but also disfavors preemption. *Id*.

Limiting of the scope of 15 U.S.C. § 9058(c)(1)'s application to the 120-day period prescribed in 15 U.S.C. § 9058(b) is also shown by the corresponding limitation on an eviction notice provision in 15 U.S.C. § 9057 of the CARES Act,

providing 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). Legal Aid argues that "because Section 9057 has a specific end date . . .[n]o inference is necessary to find a termination date in Section 9057 because it was explicitly written." Amicus Brief, 24. Like the district court, Legal Aid simply ignores the fact that 15 U.S.C. § 9058(b) also contains an explicit termination date. *Id.*

Legal Aid further asserts that there is a question as to whether the pandemic is "over," and that "the title and thrust of the CARES Act" indicate that Congress "foresaw continued economic insecurity." Amicus Brief, 22-23. Legal Aid goes on to reason, unsupported by citation to any law or facts, that Congress decided to leave the extended notice provisions in 15 U.S.C. § 9058(c)(1), but not the eviction moratorium itself, in place indefinitely. *Id*. However, the title and thrust of 15 U.S.C. § 9058 indicate that Congress intended its preemptive effect to be "Temporary" and subsection (b) sets forth the only clear expiration date, which necessarily defines the scope of the legislation's preemption and applicability. *See Medtronic*, 518 U.S. at 485.

Legal Aid also minimizes the significant economic damage the COVID crisis has had on residential landlords.[7] When residential tenants do not pay their rents, the financial burden then shifts to landlords who may then be unable to service their debts and/or may lose their properties.

#### ***4. Congressional Inaction Is Not a Clear Manifestation of Intent.***

Legal Aid makes much of the fact that there have been two bills seeking to repeal 15 U.S.C. § 9058(c) in the last two years—H.R. 802 and its companion S. 375—both of which are entitled "Respect State Housing Laws Act." Amicus Brief, 20. Contrary to Legal Aid's position, the introduction of these bills demonstrates the ambiguity inherent in 15 U.S.C. § 9058 rather than refuting it. Moreover, any suggestion that Congress' failure to go back and clean up a piece of legislation—one that many believe expired pursuant to its own terms nearly four years ago—is untenable, particularly given the number of critical issues facing Congress and the notorious gridlock in which it currently functions.

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[7] *See, e.g.,* Amicus Brief, 18 ("Federal law regulates residential properties in many ways that are far more intrusive than requiring a few weeks of extra notice prior to termination."); *see also id*. 17-18 ("*Alabama Ass'n of Realtors* is also distinguishable because it imposed a full moratorium, rather than the much less burdensome requirement that landlords provide a few extra weeks for a financially vulnerable tenant to vacate.").

## B. The Rules of Statutory Construction Compel a Finding That the District Court Erred in Interpreting 15 U.S.C. § 9058(c).

### *1. Because 15 U.S.C. § 9058 May Be Reasonably Understood in Two Different Ways, the District Court Erred in Failing to Apply the Construction That Does Not Involve Broad Preemption for an Indeterminate Amount of Time.*

There is a plausible reading of 15 U.S.C. § 9058 that provides Congress intended subsection (a) to define and limit the scope of the temporary moratorium's preemptive effect to federally related "covered properties," subsection (b) to define and limit the scope of the temporary moratorium's preemptive effect to an expressly articulated, time period of 120 days, and subsection (c) to extend the notice period during that temporary moratorium. *See* 15 U.S.C. § 9058. Based on this reading, the 30-day notice period set forth in subsection (c) would only apply to actions: a) involving "covered properties," and b) based on defaults in rent payment that occurred during the temporary moratorium. Because there is a reasonable and practical construction that the CARES Act's extended 30-day notice period was intended to apply only to actions arising from defaults in rent that occurred during the CARES Act's "[t]emporary [m]oratorium on [e]viction [f]ilings," the district court erred by failing to even acknowledge a plausible, alternative reading of 15 U.S.C. § 9058(c) that would disfavor preemption. *See Altria Grp.*, 555 U.S. at 77.

### 2. *The Rule of Construction Disfavoring Possibly Absurd Results and the Doctrine of Constitutional Avoidance Lend Further Support a Finding That the District Court Erred in Interpreting 15 U.S.C. § 9058(c).*

Not content with having persuaded certain magistrate and district courts to advocate on behalf of their clients, Legal Aid now wants to provide legal advice to opposing landlords as well. The Retreat posits that, in addition to a myriad of other problems, the district courts' rulings could produce an absurd result by effectively eliminating the right of a covered landlord to prosecute a forcible entry and detainer actions based on nonpayment of rent. *See* Appellant's Brief, 40 (discussing the conflict created by continued application of 15 U.S.C. § 9058 and Iowa Code § 648.18, which provides that a tenant's 30-day peaceable possession bars any action under Iowa's FED chapter). Legal Aid responds by counseling, ". . .[a] landlord could easily avoid peaceable possession problems notwithstanding the CARES Act 30-day notice requirement if they [sic] simply plead the case as a holdover under Iowa Code 648.1(2) [rather than for nonpayment of rent]." Amicus Brief, 27 (citing

*Des Moines RHF Hous. v. Spencer*, 2018 WL 3057604 (Iowa Ct. App. 2018)).[8] The alternative reading, of course, is that Congress simply intended for the right to bring an immediate action for possession to be preempted for 120 days and restored when the moratorium expired.

Legal Aid further counters that, "[The Retreat's] understanding of the relationship between the 30-day notice requirement and peaceable possession is absurd and is not in line with Iowa law, which does not conflict with 15 U.S.C. § 9058(c)." Amicus Brief, 29. In defense of this opinion, Legal Aid predicts any magistrate or district would simply find that the 30-day notice of 15 U.S.C. § 9058(c)" would not begin to accrue "in a properly pled cause of action" until after the 30-day period. *Id.*, 28 (citing *Jenkins as Trustee of 2216 Lay Street Trust v. Clark*, 988 N.W.2d 469, 472-73 (Iowa Ct. App. 2022); *AHEPA 192-1 Apartments v. Smith*, 2011 WL 6669744 (Iowa Ct. App. 2011)). Legal Aid's argument is ironic.

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[8] One wonders whether Legal Aid would agree that this is a legally correct position when defending one of its clients. One also wonders whether a court would nonetheless dismiss an FED action postured as a manufactured "holdover" action when instead rent is in arrears. *See Watson v. Vici Cmty. Dev. Corp.*, 2021 WL 1394477 (W.D. Okla. April 12, 2021). In *Watson*, the tenant brought a declaratory judgment action alleging that her landlord had failed to provide the 30-day written notice prescribed by 15 U.S.C. §9058(c)(1) prior to filing an eviction action. 2021 WL 1394477, at *11. The *Watson* court denied the landlord's motion to dismiss, finding that factual issues regarding whether the eviction action was based upon a non-payment of rent precluded dismissal. *Id.*

Throughout its brief, it argues that this Court must read statutes as they are literally written. Yet here Legal Aid argues that absurd results will be avoided by lower courts eliding the literal words of conflicting statutes in order to produce harmony between them. It is also of no comfort that the "hypothetical harm" did not happen in *these cases*. Amicus Brief, 26. A court's duty to avoid absurd constructions of statutes is intended to avoid the possibility of judicial mischief, not to tolerate it as long as it doesn't happen too much.

Similarly, the doctrine of constitutional avoidance, requiring a court to consider possible constitutional problems regardless of whether they have been raised by the parties, further supports the plausible reading offered by The Retreat. *See,* e.g., *Allison v. State*, 914 N.W.2d 866, 872 (Iowa 2018), *superseded by statute and abrogated other grounds in Sandoval v. State*, 975 N.W.2d 434, 436 (Iowa 2022).

The two rules of statutory interpretation apply further pressure on the proverbial thumb on the scale disfavoring preemption.

## III. THE PROCEDURAL ISSUES RAISED BY LEGAL AID ARE LARELY INACCURATE, OUTSIDE THE RECORD, AND IRRELEVANT TO RESOLVING THIS APPEAL.

Without ever having communicated with The Retreat's counsel, Legal Aid complains that The Retreat (1) did not file a verification form so it can only "rely on an unsupported allegation" of a "federal connection," (2) did not arrange for the

transcription of the audio recordings of the small claims hearings, if any, and (3) strategically chose to pursue these particular two appeals as part of a nefarious effort "to present the most one-sided argument it possibly could, in order to eliminate what has become a meager yet still important protection for vulnerable people facing evictions." Amicus Brief, 11, 32-37.

None of these complaints should have any substantive effect on this Court's legal decisions. The Retreat is entitled to pursue timely appellate review of any adverse lower court rulings in any case where it is a party in a manner consistent with the Iowa Rules of Appellate Procedure. This case and the companion case The Retreat has also appealed, *MIMG CLXXII Retreat on 6th LLC v. Miller et al.*, Case No. 23–0670, contain an ample and proper record before this Court to decide the legal question presented.

**A. The Federal Connection to The Retreat's Property Is Plain.**

Legal Aid first argues that because The Retreat did not file a CARES Act verification form, "all [The Retreat] can rely on is an unsupported allegation that the federal connection in this case is that [The Retreat] enjoys the benefits of financing backed by Fannie Mae." Amicus Brief, 11. The Retreat does not understand this argument. At all times it has conceded the "federal connection" to its rental unit in question, which in Legal Aid's view provides a *defense* to the tenant. In the absence of an acknowledged "federal connection," the tenant would have had no defense and

presumably the magistrate would have entered the default judgment for The Retreat as originally contemplated. App. 21 (stating at the top: "Judgment is entered based on the following: Defendant(s) failed to appear for trial.")).

### B. Transcriptions of Audiotapes of Small Claims Hearings (If Any) Are Not Needed to Decide These Two Appeals.

Both the magistrate and district court judge decided the appealed issues as a matter of law. App. 21, 49. After summarizing the pertinent facts and procedural history of the small claims action, hearing, and dismissal, the district court expressly stated: "The court finds that the record established in this matter is adequate for the purposes of rending [sic] a judgment on appeal." App. 49.

Because the issues presented in these appeals are purely legal, The Retreat and its counsel decided it was unnecessary to arrange for court reporters to transcribe any taped small claims hearings, especially given the unnecessary costs and delay that would result. If Legal Aid had believed that the recorded hearing, which it possesses, had information relevant to this appeal, the Court would know about it. *See* Amicus Brief, 7 n.1.[9]

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[9] That said, The Retreat would gladly obtain that recording, have it transcribed, and have it added to the record at its cost if this Court determines it is necessary to resolve the legal issues here.

### C. These Particular Cases Were Appealed Because Their Orders and Rulings Set Forth the Most Comprehensive District Court Analyses.

The Retreat and other property owners and managers of federally related properties, many of whom serve financially challenged tenants, have experienced sporadic, unanticipated dismissals at both contested and uncontested FED hearings in various lower courts throughout Iowa and various other states.

As explained in The Retreat's initial briefs, in affirming the dismissal in these two cases, the lower court rulings referenced other Linn County cases having been dismissed because of the CARES Act moratorium notice requirement. Legal Aid charges that those three cases, rather than the two currently pending before this Court, should have been appealed. Amicus Brief, 34-37. None of those cases presented what this case and its companion case has, however: a fairly in-depth treatment (albeit unsuccessful, we submit) analysis of the CARES Act legal issue by the Iowa District Court. Indeed, in two of the cases, The Retreat tried to appeal adverse rulings of a district associate judge to the district court, and in both cases the defendants moved to dismiss the cases as moot instead of defending the lower court's rulings.[10]

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[10] The cases that evaded appeal because of the defendant's mootness motion were *MIMG CLXXII Retreat on 6th, LLC v. Susana Chavez Mancillas*, Linn Cty. No. SCSC260291, and *MIMG CLXXII Retreat on 6th, LLC v. Jonathan Tevenal-Sanchez* Linn Cty. No. SCSC262624. The third case, *MIMG CLXXII Retreat on 6th,*

The Retreat shares the desire to have the issues in this appeal fully and fairly litigated. It has not resisted the motions filed by any of the amici curiae seeking to participate in the briefing of the issues presented in this appeal. In fact, prior to the Court's order inviting Legal Aid or a clinic at one of Iowa's law schools to file an amicus curiae brief, which The Retreat did not resist, The Retreat and its counsel were exploring procedural avenues that would allow Legal Aid to participate in this appeal.

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*LLC v. Akyla Eula Denise Buckner*, Linn Cty. No. SCSC258889, occurred several months before this case and its companion and the other two cases cited by Legal Aid, and The Retreat had not yet determined to appeal what was becoming a growing number of such rulings.

## CONCLUSION

For the reasons stated above, 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.

Respectfully submitted,

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on April 5, 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 6590 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 5, 2024.

By Maura McNally Cavanagh