IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-0672

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

vs.

NATHAN CORTEZ WILLIAMS and PARTIES-IN-POSSESSION,
Defendants-Appellees,

Appeal from the Iowa District Court for Linn County (No. SCSC261758)
Hons. Magistrate Judge Jonathan Hammond & District Judge Lars Anderson

BRIEF OF AMICI CURIAE GREATER IOWA APARTMENT ASSOCIATION, IOWA MANUFACTURED HOUSING ASSOCIATION, LANDLORDS OF IOWA, INC., CENTRAL IOWA PROPERTY ASSOCIATION, DUBUQUE AREA LANDLORDS ASSOCIATION, INC., FORT DODGE AREA LANDLORD'S ASSOCIATION, IOWA CITY APARTMENT ASSOCIATION, INC., LANDLORDS OF LINN COUNTY, MARSHALLTOWN RENTAL PROPERTY ASSOCIATION, MUSCATINE LANDLORD ASSOCIATION, INC., NORTH IOWA LANDLORDS ASSOCIATION, POTTAWATTAMIE COUNTY LANDLORD ASSOCIATION, SIOUXLAND RENTAL ASSOCIATION, INC., SOUTHEAST IOWA PROPERTY OWNERS, WAPELLO COUNTY AREA CHAPTER LANDLORDS ASSOCIATION, & CONLIN PROPERTIES, INC. IN SUPPORT OF PLAINTIFF-APPELLANT

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IDENTITY & INTERESTS OF AMICI CURIAE

Amici Curiae collectively represent thousands of individual landlords providing tens of thousands of housing units to tenants in nearly every major community in Iowa and spanning several types of "covered property" under Title 15, United States Code, Section 9058 of the Coronavirus Aid Relief and Economic Security ("**CARES**") Act. Amici Curiae is comprised of the following entities:

- The Greater Iowa Apartment Association ("**GIAA**") is comprised of approximately 425 landlords and property managers who provide 51,590 housing units to tenants in both urban and rural Iowa. GIAA serves as a local network for these providers to grow their businesses and strengthen the apartment industry in Iowa.
- The Iowa Manufactured Housing Association ("**IMHA**"), formed in 1947, represents members from all sectors of the manufactured and modular home industry, including but not limited to owners and operators of manufactured home communities, home manufacturers, and service providers. Currently, IMHA has approximately 270 landlord and service provider members, covering roughly 171 manufactured home communities throughout Iowa, which range in size from anywhere from 20 homes to 150+ homes per community.

- Landlords of Iowa, Inc. ("**LOI**") represents the collective interests of landlords and property managers throughout Iowa and is comprised of 12 active chapters across the State—Central Iowa Property Association, Dubuque Area Landlord Association, Inc., Fort Dodge Area Landlord's Association, Iowa City Apartment Association, Inc., Landlords of Linn County, Marshalltown Rental Property Association, Muscatine Landlord Association, Inc., North Iowa Landlords Association, Pottawattamie County Landlord Association, Siouxland Rental Association, Inc., Southeast Iowa Property Owners, and Wapello County Area Chapter Landlords Association. In total, LOI has roughly 700 members providing approximately 7,000 units to Iowa tenants. In particular, many of LOI's members are smaller "mom and pop" landlords who own and self-manage only a small number of leased properties. As discussed later herein, one of the increased burdens placed upon landlords if Section 9058(c) is interpreted to remain active is that landlords must allow nonpaying tenants to remain rent-free in their leased premises for an additional 30 days; this is a particular hardship for smaller landlords who cannot easily absorb an additional 30 days of rent-free living by a tenant before commencing an eviction.

- Conlin Properties, Inc., established in 1986, is one of the largest individual owner-operators of rental housing in the Des Moines metropolitan area, operating approximately 2,400 units to tenants.

For the past four years, Amici Curiae have all grappled with the damaging impact of the CARES Act's 30-day notice to vacate provision on Iowa landlords. *See* 15 U.S.C. 9058(c). As it relates to housing, the CARES Act was intended to provide a temporary moratorium on evictions for non-payment and extended 30-day notices to vacate for such evictions following the moratorium in light of the emergency presented by the COVID-19 Pandemic. That emergency has long since faded, and the relief provided by the CARES Act has long since lapsed. Despite that, tenants who fail to pay rent now use these inert provisions of the CARES Act to unfairly and injuriously stave off eviction for far longer than provided under Iowa law. If the District Court's decision is allowed to stand, the CARES Act will continue to supersede Iowa law and drastically alter landlord-tenant relations in the State to the detriment of housing providers. Amici Curiae submit this brief to give a voice to these landlords and stop the erosion to Iowa's housing industry caused by application of these now inapplicable CARES Act provisions.

STATEMENT OF AUTHORSHIP

Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), Amici Curiae affirmatively state that (1) neither party nor their counsel authored this brief in whole or in part and (2) no person, other than Amici Curiae, contributed money to fund the preparation or submission of this brief.

ARGUMENT

Amici Curiae know firsthand the impact the CARES Act's 30-day notice to vacate provided under Section 9058(c) (the "**30-Day Notice to Vacate Provision**") has had on landlord-tenant relations in Iowa and throughout the country. Although rightfully intended as a critical responsive measure to the COVID-19 Pandemic, Section 9058(c) is now used to tie landlords' hands and prevent them from taking prompt action to address tenants who fail to pay their rent despite the absence of emergency circumstances. This provision hampers critical housing providers and prevents effective property management all while blatantly overriding Iowa law. None of this could have reasonably been intended by Congress.

Amici Curiae respectfully request that this Court act to bring order to landlord-tenant law in this State[1] and find that the 30-Day Notice to Vacate Provision has no application in present evictions. First, the 30-Day Notice to Vacate Provision only applies to evictions paused by the related moratorium period which expired roughly four years ago on July 24, 2020. Second, the CARES Act must be read to avoid federal conflict preemption absent clear congressional intent,

[1] At present, landlords must navigate a patchwork of inconsistent views among Iowa's small claims magistrate judges on this issue, with some magistrate judges holding the 30-Day Notice to Vacate Provision does not apply, others holding that it applies to nonpayment eviction actions, and a handful of magistrate judges holding that it applies to all eviction actions.

thus requiring that Section 9058(c) be understood as a temporary measure. Third, alternatively, the 30-Day Notice to Vacate Provision is unconstitutional because it violates the Spending Clause. Last, at a minimum, Section 9058(c) only applies to evictions arising from nonpayment.

A. Section 9058(c) of the CARES Act Only Applies to Evictions Paused by the Corresponding Moratorium Period Which Lapsed Years Ago.

In early 2020, the COVID-19 Pandemic presented an urgent and unparalleled threat to the physical health and economic stability of the United States and the world. In direct response to that threat, federal and state governments took unprecedented action to slow the spread of the disease and provide security to vulnerable individuals during the impending shutdown. The CARES Act was one such response, passed by the United States Congress on March 25, 2020. The explicit purpose of the CARES Act was to "provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic." S.3548, 116th Cong. (2020). Under Subtitle A of the CARES Act titled "Coronavirus Economic Stabilization Act of 2020," Congress provided numerous "temporary" measures. Pub. L. 116-136 § 4001-29. Therein, Congress included an explicit eviction moratorium on certain properties receiving federal money under Section 9058 "Temporary Moratorium on Eviction Filings."

Section 9058 contains three interrelated subsections all of which outline the temporary moratorium on evictions envisioned by Congress. Subsection (a) "Definitions" sets forth relevant definitions, including defining "covered property" to encompass properties participating in federal assistance programs or which were subject to federally backed loans. As a result, "covered property" includes a litany of different types of housing, including housing under Section 8 (project-based), Section 202 (elderly persons), Section 811 (disabled persons), Section 236 (multi-family rentals), Section 221 (Below Market Rate), the HOME Investment Partnership Program, the Housing Opportunities for Persons with AIDS Program, the McKinney-Vento Act, Sections 514, 515, 516, 533, and 538 (rural and farm labor), and the Low-Income Tax Credit Program as well as mortgages issued or guaranteed by the Federal Housing Administration, the Veterans Administration, the USDA, Fannie Mae, and Freddie Mac.[2] Thus, Amici Curiae—as providers of thousands of housing units under these programs—have been directly impacted by the CARES Act's restrictions since its passage in March 2020.

[2] *See* Iowa Judicial Branch, *CARES Act Landlord Verification Form* (May 2020) (available at: chrome extension://efaidnbmnnnibpcajpcgl clefindmkaj/ https://www.iowacourts.gov/static/media/cms/CARES_Act_ Landlord_Verification_5_D550A0B615603.pdf) ("**Iowa CARES Act Landlord Verification Form**")

Undoubtedly, the scope of housing the CARES Act applies to is sweeping. Based on public records filed by federally backed companies Fannie Mae and Freddie Mac and information from the Department of Housing and Urban Development ("**HUD**"), it appears over 10 million rental units fall under the definition of "covered property" in Subsection (a).[3]

Subsection (b) of the CARES Act, titled "Moratorium", provides:

> During the 120-day period beginning on March 27, 2020, the lessor of a covered dwelling may not (1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

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[3] *Annual Reports*, Freddie Mac (last visited Apr. 22, 2024), available at https://www.freddiemac.com/investors/financials/annual-reports (noting the following rental units were purchased with a Freddie Mac-backed loan in each year over the most recent five years: 809,000 units in 2019; 803,000 units in 2020; 655,000 units in 2021; 693,000 in 2022; and 447,000 units in 2023, all totaling 3,407,000 units); *Annual Filings*, Fannie Mae (last visited Apr. 22, 2024), available at https://fanniemae.gcs-web.com/annual-filings (noting the following rental units were purchased with a Fannie Mae-backed loan in each year over the most recent three years available: 792,000 in 2020; 694,000 units in 2021; and 598,000 units in 2022, all totaling 2,084,000 units); *LIHTC: Property Level Data*, Office of Policy Dev. & Research (May 4, 2023), available at https://www.huduser.gov/portal/datasets/lihtc/property.html (containing information on 52,006 projects and 3,550,000 million housing units placed in service between 1987 and 2021); *Fiscal Year 2020 Agency Financial Report*, HUD (noting HUD's Project-Based Rental Assistance program assists more than 1,200,000 very low-income families).

15 U.S.C. § 9058(b). Subsection (c) "Notice" goes on to state:

> The lessor of a covered dwelling unit
>
> (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
>
> (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

15 U.S.C. § 9058(c).

On its face, the 120-day emergency moratorium on nonpayment evictions provided under Section 9058(a) expired years ago on July 24, 2020. *See, e.g.*, *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2486 (2021). Since then, the United States ended the national emergency and public health emergency declarations on April 10, 2023 and May 11, 2023 respectively. *See Smith v. Shelby 500, LLC*, Case No. 23-xx-000089, Opinion & Order, at 6–7 (Nov. 15, 2023) (concluding Section 9058(c) was no longer effective due to the end of the pandemic itself). Even if some ripples of the pandemic exist, the emergency of COVID-19 is undisputably over.

However, despite the end of that emergency, the persisting issue is whether the related 30-Day Notice to Vacate Provision under Section 9058(c) that immediately follows was meant by Congress only to apply to nonpayment evictions paused by the moratorium or was instead meant as an indefinite and

dramatic extension of all eviction notice periods regardless of the pandemic. The rules governing statutory construction mandate the former. The CARES Act—particularly the provisions under Subtitle A—was intended by Congress to introduce immediate stop-gap measures in response to a crisis, and nothing therein suggests Congress intended to create an ongoing intrusion into state landlord-tenant law or the properties of Amici Curiae and other housing providers.

1. Section 9058(c) Unambiguously Applies Only to Nonpayment Evictions Paused by the Moratorium.

The plain language of Section 9058(c) shows it unambiguously applies only to nonpayment evictions paused by the moratorium in the preceding subsection. In other words, only evictions for nonpayment pending prior to or arising during the 120-day moratorium period trigger the 30-Day Notice to Vacate Provision. Section 9058(c) does not apply to evictions which arose *after* the moratorium period, i.e. evictions which arose after July 24, 2020. It also does not apply to evictions other than those for nonpayment of rent.

"The primary goal in interpreting a statute is to ascertain the enacting body's intent." *See State v. Casey's Gen. Stores, Inc.*, 587 N.W.2d 599, 601 (Iowa 1998). "The first step in ascertaining the true intent of the legislature is to look at the statute's language." *Estate of Ryan v. Heritage Trails Assocs., Inc.*, 745 N.W.2d 724, 729 (Iowa 2008). "When the statute's meaning is plain

and unambiguous, we look no further." *Zimmer v. Vander Waal*, 780 N.W.2d 730, 733 (Iowa 2010) (citation omitted). However, "[i]f reasonable persons can disagree on a statute's meaning, it is ambiguous." *Estate of Ryan*, 745 N.W.2d at 729.

Although examining the language is key, courts analyze statutes more comprehensively than just the particular language at issue. Indeed, statutory interpretation is a "holistic endeavor" that requires examining the statute in context. *Gundy v. United States*, 139 S. Ct. 2116, 2116 (2019) (holding statutory language should not be construed "in a vacuum" but rather "must be read in [its] context and with a view to [its] place in the overall statutory scheme."). Further, statutory interpretation should also account for and consider the statute's purpose and history. *Id.* ("[T]he Court often looks to history [and] purpose to divine the meaning of language.") (citation and internal quotation marks omitted); *see also Smith v. United States*, 508 U.S. 223, 233 (1993) ("Just as a single word cannot be read in isolation, nor can a single provision of a statute."). Iowa law echoes these same principles. *See, e.g.*, *Top of Iowa Co-op. v. Sime Farms, Inc.*, 608 N.W.2d 454, 460 (Iowa 2000) ("We look not only to the words used by Congress, but also to the

context within which they appear. The legislative history . . . is also helpful in determining Congress's purpose[.]")[4]

Here, Section 9058(c)'s meaning is clear. The context of the CARES Act communicates its provisions were meant as emergency measures to assist vulnerable individuals navigate the uncertainty of the COVID-19 Pandemic in 2020. S.3548, 116th Cong. (2020). Consistent with that purpose, again, the title of the section is "Temporary Moratorium on Eviction Filings," indicating the three subsections therein all work towards the purpose of affording that temporary relief. Construing all three subsections together, as must be done, it is clear they are interlocking pieces, not wholly separate provisions all of which just happen to be in the same legislation in the same section. Subsection (a) establishes the scope of Section 9058, encompassing tens of thousands of housing units provided by Amici Curiae and others. Subsection (b) contains the thrust of Section 9058, establishing both the

[4] Note that although Iowa courts consider federal law interpreting federal statutes and may even use federal interpretative doctrines in their analysis, they maintain the authority to interpret federal law under Iowa interpretative doctrines. *Top of Iowa Co-op.*, 608 N.W.2d at 460 ("Although we give respectful consideration to the decisions of federal district courts and federal courts of appeals on this issue, we have the authority to decide this case based on our own interpretation of federal law."); *see also Scovel v. Pierce*, 226 N.W. 133, 135 (Iowa 1929) ("In administering a federal statute, we prefer to apply the rules of construction given thereto by the federal courts.").

prohibited grounds for eviction (nonpayment of rent or other charges) and the applicable time period (120 days from enactment). As a natural extension of the moratorium outlined in Subsection (b), Subsection (c) then provides a longer notice to vacate than would otherwise have been required under state landlord-tenant law. All these pieces fit together, in the context of the CARES Act, to communicate a congressional intent to pause the existing stream of evictions in light of the pandemic and to afford those tenants both a time period of protection against eviction and a following period of increased notice given the emergency circumstances at the time. Thus, Section 9058 was meant to provide a cushion for delinquency that occurred before or during the moratorium, not every delinquency thereafter for years to come.

Understanding the subsections as relating to one another and supporting the same temporary relief is warranted given the plain language of Section 9058. Importantly, Subsection (c) explicitly references Subsection (b), providing **the lapse of the moratorium period as a condition precedent** to issuing any notice to vacate, after which the landlord must allow the tenant at least 30 days to vacate from the date of the notice. *See* 15 U.S.C. § 9058(c)(2). This indicates Congress's intent that the extended notice would apply only to evictions paused by the moratorium, not simply all forthcoming evictions for all time. If Subsection (c) were meant to apply to all future delinquencies

regardless of the pandemic, it makes little to no sense to provide the end of the moratorium period as its own separate condition precedent given that the requirement would become moot or vestigial after July 24, 2020. A "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (citation omitted). Either Congress intended that the 30-day notice to vacate period apply only to evictions paused by the moratorium, or it drafted a separate condition precedent that would almost immediately become an automatically checked box of no importance. Only the former reading gives Section 9058(c)(2) the effect and significance which must be accorded to it.

This comprehensive interpretation is further warranted because Section 9058(c) refers not just to "*any* tenant" or "*all* tenants" but, rather, "*the* tenant". 15 U.S.C. § 9058(c)(1) (emphasis added). Had Congress intended to make Subsection (c) apply to any and all future tenants in perpetuity without any linkage to Subsection (b), it could have employed this broad and more general language. Instead, it used the narrow and focused article "the" in reference to tenants whose evictions were paused during the 120-day moratorium period by Subsection (b).

The same is true of Congress's use of "the lessor" in both Subsections (b) and (c). Indeed, Subsection (b) begins with "during the 120-day period beginning on March 27, 2020, the lessor of a covered dwelling" in describing the category of lessors who may not initiate a nonpayment eviction action under this section. The mirrored language referencing "the lessor" which continues across these subsections shows Congress intended them to be linked; read and understood as comprising parts of the same temporary relief that must be afforded to the same class of delinquent tenants and given by the same category of lessors in response to the same emergency. In other words, the applicability of Subsection (b) is a condition precedent to the applicability of Subsection (c) as explicitly provided by Sub-subsection (c)(2).

Thus, the plain language of Section 9058(c) on its face confirms the 30-Day Notice to Vacate Provision is only applicable to tenants whose delinquencies relate to nonpayment that occurred before or during the 120-day moratorium. This reading does not "extend, enlarge, or otherwise change the meaning" of Section 9058(c), *see State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006), or otherwise read errors into the statute, *see Lamie v. U.S. Trustee*, 540 U.S. 526, 542 (2004). Rather, it takes Section 9058(c) on its face for what it is; a temporary form of relief tied to the moratorium immediately preceding it and explicitly referenced in its text. For such a tenant, i.e. "the

tenant", to be required to vacate, Subsection (c) provides that the lessor had to (1) wait out the moratorium period ending on July 24, 2020 and then (2) provide 30 days' notice before it could require the tenant to vacate. As discussed, the moratorium has long since expired.

In short, reading Section 9058(c) to provide an ongoing 30-day notice to vacate period requirement regardless of the end of the moratorium period rips Subsection (c) out of its intended context, ignores its explicit provisions, and divorces it from the very purpose of the CARES Act itself.

2. Alternatively, if Section 9058(c) is Considered Ambiguous, Context Makes its Purpose Clear.

To the extent the Court finds Section 9058(c) to be ambiguous, it should reference additional context through established interpretative doctrines to clarify its intent of affording temporary pandemic-related relief to tenants. Amici Curiae certainly understood the measures to be temporary upon passage of the CARES Act. It was not until months later that they were blindsided by the unintuitive, contextless reading that the 30-Day Notice to Vacate Provisions extends into perpetuity.

First, if the statute is considered ambiguous, reference to the title of Section 9058 is appropriate given that it "shed[s] light" on the meaning of Subsection (c). *Carter v. United States*, 530 U.S. 255, 267 (2000). Section 9058, again, is titled "Temporary Moratorium on Eviction Filings,"

demonstrating that all subsections therein are oriented around this temporary relief. It makes no sense that a permanent[5] provision regarding all future notices would be included under this title.

Second, a court's interpretation of a statute should consider "the entire act" and "each section" as "a whole" and "[t]he subject matter, reason, consequence, and spirit of an enactment must be considered, as well as the words used." *State v. Harrison*, 325 N.W.2d 770, 771–72 (Iowa Ct. App. 1982). Here, the purpose of the CARES Act itself was to provide temporary relief in response to a crisis. Thus, reading Section 9058(c) to provide a permanent extended notice requirement is inconsistent with the entire statutory scheme. Moreover, other provisions of the CARES Act indicate Congress intended that Section 9058(c) be tied to the temporary moratorium period. For example, in the preceding section, Title 15, United States Code, Section 9057, Congress temporarily protected property holders of a "federally backed multifamily mortgage loan". 15 U.S.C. § 9057(f)(2); *see also* 15 U.S.C. § 9058(a)(5) (using the same definition). Like the protections for renters in Section 9058, Section 9057 temporarily protected property holders

[5] Iowa Legal Aid suggests Section 9058(c) is still "temporary", just indefinite and continuing until repealed. (Iowa Legal Aid Amicus Br., at 18–19, 22–23). This is a distinction without a difference given that existing until repealed is as permanent as a law can be.

by providing a forbearance for up to 90 days on mortgage payments for property holders experiencing financial hardship due to and "during the COVID-19 emergency." 15 U.S.C. 9058(a)–(c). Property holders receiving a forbearance were subject to a similar eviction moratorium lasting for the duration of the forbearance, and the related 30-day notice could not be rendered until the forbearance ended. 15 U.S.C. § 9057(d). By their terms, these provisions expired on December 31, 2020. 15 U.S.C. § 9057(5). It would be nonsensical to read the notice under Section 9057(e) in isolation to provide for a new, permanent federal requirement mandating a 30-day notice to vacate period for such properties on the basis that these property holders obtained a forbearance in 2020. Both statutes contain clear time period provisions that are meant to apply to the other related relief afforded therein; December 31, 2020 for Section 9057 and July 24, 2020 for Section 9058. Ignoring the integral time periods in these statutes to read the notice provisions in total isolation is not what Congress intended and not what our canons of construction demand.

Last, statutes should be read to "avoid strained, impractical or absurd results." *Welp v. Iowa Dep't of Revenue*, 333 N.W.2d 481, 483 (Iowa 1983). Here, reading Section 9058(c)—which is part of a statutory scheme of emergency measures providing temporary relief in response to a crisis—to

mandate a permanent, fundamental reformation of landlord-tenant law in every state is absurd. If this interpretation is upheld, it will be even more absurd in ten, twenty, thirty, or more years when Amici Curiae's tenants who only know the COVID-19 Pandemic from history books are permitted to rely on these provisions that were intended to be limited and temporary. Contrary to this strained reading, Section 9058 plainly shows Congress saw a need to pause existing evictions and thereafter provide delinquent tenants affected by the height of the COVID-19 Pandemic a longer notice period. Any delinquency arising after the end of the moratorium period on July 24, 2020 is simply outside the scope of Section 9058's emergency relief.

Because Section 9058 is unambiguously tied to the preceding eviction moratorium period (or, at a minimum, such an intent can be deduced through relevant interpretative doctrines), this Court should reverse the lower court's dismissal.

3. The Court Should Not Afford Deference to Guidance from HUD.

Amici Curiae are aware of guidance from HUD, published in 2021, which asserts the 30-Day Notice to Vacate Provision is "still in effect". *See* Office of Multifamily Housing Programs, *Questions and Answers for Office of Multifamily Housing Stakeholders; Coronavirus Disease 2019 (COVID-19)* (last updated Aug. 9, 2021). However, under the *Skidmore* deference

doctrine, courts should only afford agency guidance "deference proportional to the 'thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.'" *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 159 (2012) (citations omitted). No such deference is owed here.

As an initial matter, HUD's guidance contradicts Section 9058's plain language. *See, e.g.*, *Texas Children's Hosp. v. Azar*, 315 F. Supp. 3d 322, 338–39 (D.D.C. 2018) (declining to apply *Skidmore* deference to answer to frequently asked questions posted on agency website because it was not supported by plain language of the Medicaid statute). More importantly, HUD has not offered any analysis or explanation for its conclusion. *See, e.g.*, *Perez v. Cuccinelli*, 949 F.3d 865, 878–79 (4th Cir. 2020) ("[T]he Agency has not demonstrated the carefulness, expertise, or consistency that would imbue its interpretation with the power to persuade.").

In short, HUD's terse opinion from three years ago is of no consequence, and the Court should afford it no deference.

B. The 30-Day Notice to Vacate Provision Must be Read to Avoid Federal Conflict Preemption.

Requiring Amici Curiae and other Iowa landlords to apply the CARES Act's 30-Day Notice to Vacate Provision, rather than Iowa's three-day notice requirement, would require the Court to find, without any textual support in

the CARES Act, that Congress intended the CARES Act to permanently preempt state law on the notice period for evictions. *Kurns v. R.R. Friction Prod. Corp*., 565 U.S. 625, 630 (2012) (identifying three kinds of federal preemption: express preemption; implied preemption to the extent state law conflicts with a federal statute; and field preemption, "when the scope of a federal statute indicates that Congress intended federal law to occupy a field exclusively").

The CARES Act raises conflict preemption because the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *see also Freightliner Corp. v. Myrick*, 514 U.S. 280, 287, 115 S. Ct. 1483, 131 L.Ed.2d 385 (1995). Under a conflict preemption analysis, the Court must bear in mind the presumption that "the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress." *Arizona v. U.S.*, 567 U.S. 387, 399-400 (2012) (cleaned up); *Maryland v. Louisiana*, 251 U.S. 725, 746 (1981). This presumption is particularly strong where the law involves a field traditionally occupied by the states. *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947); *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 663–64 (1993) ("[A] court interpreting a federal statute pertaining to a subject traditionally governed by

state law will be reluctant to find pre-emption."). Further, a court's "inquiry into the scope of a statute's pre-emptive effect [should also be] guided by the rule that '[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case.'" *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Finally, even if plausible alternative readings hypothetically exist, courts have a duty to "accept the reading that disfavors pre-emption." *Bates v. Dow Agrosciences, LLC*, 544 U.S. 431, 449 (2005).

Landlord-tenant law is a field traditionally (and extensively) occupied by the states, leading to a strong presumption that the CARES Act does not preempt and displace state law. *See Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 440 (1982) ("This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular."); *Lindsey v. Normet*, 405 U.S. 56, 68–69 (1972); *Newell v. Rolling Hills Apts.*, 134 F. Supp. 2d 1026, 1036 (N.D. Iowa 2001) ("[E]viction is a relatively complex procedure extensively regulated by state law, which dictates stringent notice requirements and the nature of the eviction proceedings themselves. . . . [T]he court is satisfied that [evictions under landlord-tenant law] implicate[] important state interests[.]"") (citations omitted); *Chateau Foghorn LP v. Hosford*, 168 A.3d

824, 841 (Md. 2017) ("[L]andlord-tenant law is in the traditional domain of state law and, consequently, . . . [courts] appl[y] a heightened presumption against federal preemption."); *c.f. U.S. Forest Serv. v. Cowpasture River Preservation Assn.*, 590 U. S. ___, 140 S. Ct. 1837, 1849-50 (2020) ("Our 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."); *Alabama Assn. of Realtors*, 141 S. Ct. at 2489 ("The [CARES Act] moratorium intrudes into an area that is the particular domain of state law: the landlord-tenant relationship."). Thus, absent a *clear* showing Congress intended to permanently supplant the state's regulation of landlord-tenant law, the Court should reject preemption.

Here, the conflict is unavoidable. Iowa law requires only a three-day notice of nonpayment of rent and termination, as the prerequisite notice for nonpayment of rent evictions. Iowa Code § 562A.27; Iowa Code § 562B.25(2). And yet, if Section 9058(c) is interpreted to remain active, landlords would have to provide a notice **ten times as long**. Amici Curiae and other housing providers in Iowa have languished under this apparent conflict for years, placing a substantially increased burden on landlords who must now allow nonpaying tenants to remain rent-free in their leased premises for an entire 30 days. Frankly, this conflict has also left many landlords and

tenants confused about their rights and responsibilities, leading to greater turmoil. All this can be devasting for even established landlords, not to mention the many smaller landlords with only a handful of rental units whose very ability to provide housing is threatened by when they cannot timely evict.

Thus, Section 9058(c) inherently supersedes Iowa law if it is understood to enact a permanent change in landlord-tenant law. Because Congress has not evinced a clear intent to permanently supplant state law, the Court should find that Iowa's three-day eviction notice is not preempted. As explained in *Alabama Assn. of Realtors*, "[Supreme Court] 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." 141 S. Ct. at 2489 (citation omitted). The CARES Act makes clear: its purpose was temporary. Critically, even though there are competing interpretations of Section 9058(c) in this case, the Court must follow the interpretation that disfavors pre-emption.

Thus, given that Congress failed to express any clear intent in the CARES Act to permanently preempt state landlord-tenant law (in fact, the opposite), the notice provision should be read as a temporary measure.

C. Alternatively, Section 9058(c) is Unconstitutional under the Spending Clause.

Only *valid* federal law may preempt state law. *Garcia v. Vanguard Car Rental USA, Inc*., 540 F.3d 1242, 1245 (11th Cir. 2008) (emphasis added) (holding "a valid federal statute preempts any state law with which it actually conflicts."). Even assuming Section 9058(c)(1) could preempt Iowa's three-day notice statute (it does not), reversal is warranted because Congress exceeded its power under the Spending Clause.

While the CARES Act does not self-identify the source of Congress's power, at least one court has held Congress enacted Section 9058(c) under the Spending Clause. *Sherwood Auburn LLC v. Pinzon*, 24 Wash. App. 2d 664, 675, 521 P.3d 212, 218 (2022), *review denied*, 526 P.3d 848 (Wash. 2023).[6]

[6] The Spending Clause appears to be the only plausible constitutional basis for the CARES Act. *See* U.S. Const., Art. I, § 8; *see also United States v. Morrison*, 529 U.S. 598, 609 (2000) (discussing the categories of activity Congress may regulate under its commerce power). For example, a federal district court in Texas found that the CDC's eviction moratorium following the CARES Act's moratorium was improper under the Commerce Clause and Necessary and Proper Clause. *Terkel v. CDC*, 521 F. Supp. 2d 662, 676 (E.D. Tex. 2021) ("[T]he federal government's Article I power to regulate interstate commerce and enact laws necessary and proper to that end does not include the power to impose the challenged eviction moratorium."). Specifically, the court noted that the mere potential for housing to have interstate implications was not enough to allow the federal government to intrude into an area of law traditionally reserved to the states. *Id.* at 676 ("The government's argument would thus allow a nationwide eviction moratorium long after the COVID-19 pandemic ends. The eviction remedy could be suspended at any time based on fairness as perceived by Congress or perhaps an agency official delegated

While Congress's authority to so act was likely justified during the COVID-19 Pandemic, *see Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 535 (2013) (noting exceptional conditions may "justify legislative measures not otherwise appropriate"), the exceptional conditions found in the early years of the pandemic no longer exist. *E.g.*, *Biden v. Nebraska*, 143 S. Ct. 2355, 2364 (2023) ("[T]he pandemic is over."). Thus, Congress may no longer justify its actions through an "exceptional conditions" analysis.

Instead, the traditional Spending Clause analysis applies, and Section 9058(c)(1) cannot stand. The "Spending Clause . . . operates on consent: 'in return for federal funds, the [recipients] agree to comply with federally imposed conditions.'" *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1570 (2022). In turn, the legitimacy of congressional acts under the Spending Clause turns on a recipient's "voluntary[y] and knowing[]" acceptance of the terms of a contract. *Id.* (citations omitted). "Recipients cannot 'knowingly accept' the deal with the Federal Government unless they

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that judgment. Such broad authority over state remedies begins to resemble, in operation, a prohibited federal police power."); *see also United States v. Lopez,* 514 U.S. 549, 568, 577–78 (1995) (J. Kennedy, concurring) ("Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory.").

'would clearly understand . . . the obligations' that would come along with doing so." *Id.* (compiling cases).

Notably, many of the affected Iowa landlords became providers of what now constitutes "covered property" *years ago*, some *decades ago*. By way of example, a landlord who, years ago, developed a Low-Income Housing Tax Credit property, purchased a property with a loan acquired by Freddie Mac or Fannie Mae on the secondary market, or accepted a tenant who utilizes a Section 8 voucher to pay their rent could not have fathomed the COVID-19 Pandemic, its impact on housing, and the corresponding CARES Act, all of which was unprecedent in modern society. While some gradual changes can be expected to federal housing regulations over time, the CARES Act was a singular, radical whiplash in response to a crisis that is now argued to impose permanent and drastically harsher requirements on landlords. In short, landlords did not accept and could not have anticipated the provisions of the CARES Act when receiving federal funds under a Section 8 voucher program, tax credits under the Low-Income Housing Tax Credit program, or beneficial loan terms with a Freddie or Fannie-backed loan. Nor does their retention of these properties suggest consent to these terms. It would be unreasonable to expect landlords to divest themselves of their properties and livelihoods out of protest to the CARES Act.

Thus, this Court should alternatively reverse on constitutional grounds because these provisions of the CARES Act violate the Spending Clause as they are now applied.

D. At a Minimum, Section 9058(c) Only Applies to Evictions Arising from Nonpayment.

Alternatively, if the Court determines the 30-Day Notice to Vacate Provision applies to evictions accruing after the moratorium period and is not ineffective and/or unconstitutional, it should nonetheless find the provision only applies to evictions arising from nonpayment of rent.[7]

[7] The Iowa Supreme Court's May 22, 2020 Supervisory Order directs landlords to only file a CARES Act Landlord Verification Form for forcible entry and detainer actions "for nonpayment of rent". Iowa Supreme Court, *Supervisory Order*, at ¶ 38 (May 22, 2020) (available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.iowacourts.gov/static/media/cms/file_stamped_Resumption_and_Priorit_038200E17241F.pdf). The related form similarly states the CARES Act imposes "additional temporary requirements" for "eviction actions for nonpayment of rent." *See* Iowa CARES Act Landlord Verification Form. Notwithstanding the foregoing, magistrate judges in at least two Iowa counties have previously held that the 30-Day Notice to Vacate Provision applies in all evictions, although one of those rulings was recently overturned on appeal to the district court. *See Parkside East Apts. v. Sellers*, Case No. 05771 SCSC713788 (Iowa Dist. Ct. Polk Cnty. Feb. 14, 2024) (holding the magistrate judge erred in dismissing an eviction under the CARES Act because it did not arise from nonpayment, going on to evaluate the merits of the eviction). To the extent this Court finds Section 9058 applies to evictions accruing after the moratorium period and is not ineffective and/or unconstitutional (which this Court should not), this Court should find the provision only applies to evictions arising from nonpayment of rent.

Under Section 9058(b), the moratorium on evictions only applied to delinquencies on covered property arising from "nonpayment of rent or other fees or charges." 15 U.S.C. § 9058(b). In other words, by its express terms, the moratorium did not apply to evictions arising from any other type of delinquency, be it expiration of the rental agreement, noncompliance with the rental agreement, presenting a clear and present danger to other tenants, and so on. Again, Section 9058(c)(2) explicitly references Subsection (b), providing that the lessor may not issue the tenant a notice to vacate "until after the expiration" of the moratorium period. 15 U.S.C. § 9058(c)(2). If Section 9058(c) did in fact apply to all delinquencies, that would mean that all tenants would effectively obtain the benefit of the moratorium period regardless of whether their delinquency related to nonpayment because the notice to vacate could not issue until expiration of the moratorium period anyway. In other words, reading Section 9058(c) to prohibit the service of all notices to vacate until after the expiration of the moratorium period effectively erases the express language of Section 9058(b) that the moratorium applies only to evictions arising from nonpayment. This is an absurd and impractical result that is inconsistent with the plain language of the statute.

Amici Curiae submit that finding otherwise would lead to any number of untenable results. For example, suppose a landlord intended to evict a

tenant for violating a lease by constantly smoking cigarettes in their unit in April 2020 during the 120-day moratorium. If Section 9058(c) applies to all evictions, the landlord would have been required to issue the tenant a 30-day notice to vacate under 9058(c)(1) prior to filing its eviction but, under 9058(c)(2), the landlord would have been prohibited from doing so until at least July 24, 2020. In effect, the prohibition on evictions during the 120-day period would have applied to all evictions even though 9058(b) specifically limits the moratorium to nonpayment evictions. Thus, during the moratorium period and following 30 days, the tenant could continue smoking in their unit without any immediate repercussions, causing property damage and jeopardizing other tenants' enjoyment of their residences.

Further, the most glaring absurdity of interpreting Section 9058(c) to apply to all evictions—an interpretation that some tenants have espoused—is that it would allow even the most egregious violations and conduct amounting to a clear and present danger of Iowa law to persist for 30 additional days *at a minimum* without immediate consequence: assault, harassment, drug use, and so on. Allowing such conduct to continue for ten times as long as the three-day notice to quit/terminate period otherwise provided under Iowa law for a clear and present danger eviction (*see* Iowa Code §§ 562A.27A and 562B.25A) is simply unsustainable for landlords and unfair to other tenants.

Similarly, a holdover tenant, still occupying his or her leased premises after termination of the lease, could effectively get the next month free by simply refusing to vacate and waiting out the 30-day notice. Obviously, it could not have been Congress's intent to allow such an appalling result or force Amici Curiae and other housing providers to endure such egregious behavior.

Thus, if the Court finds that the 30-Day Notice to Vacate Provision in Section 9058(c) is still effective, it should uphold the statute's text and find that such notices are only required in evictions related to nonpayment.

CONCLUSION

Given the potentially far-reaching impact of this case, Amici Curiae Greater Iowa Apartment Association, Iowa Manufactured Housing Association, Landlords of Iowa, Inc., Central Iowa Property Association, Dubuque Area Landlord Association, Inc., Fort Dodge Area Landlord's Association, Iowa City Apartment Association, Inc., Landlords of Linn County, Marshalltown Rental Property Association, Muscatine Landlord Association, Inc., North Iowa Landlords Association, Pottawattamie County Landlord Association, Siouxland Rental Association, Inc., Southeast Iowa Property Owners, Wapello County Area Chapter Landlords Association, and Conlin Properties, Inc. offer the Court these additional arguments relevant to its review in this matter. As shown and based on the foregoing reasons, this

Court should reverse the District Court's dismissal, find that 30-day notice to vacate provision in Title 15, United States Code, Section 9058(c) of the Coronavirus Aid Relief and Economic Security Act only applies to evictions paused during the moratorium period, and remand for entry of judgment in favor of Plaintiff-Appellant and against Defendants-Appellees.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains *6,972 words*, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). *See* Iowa R. App. P. 6.903(1)(g)(1) and 6.906(4) (providing for a maximum *amicus curiae* brief word count of not more than one-half of 14,000 words, *i.e.*, 7,000 words, excluding from such word count the Table of Contents, Table of Authorities, and all Certificates).

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I certify that on April 30, 2024, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

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