ELECTRONICALLY FILED MAR 15, 2024 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-0672

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

v.

NATHAN CORTEZ WILLIAMS and PARTIES-IN-POSSESSION,
Defendant-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT FOR LINN COUNTY,
DISTRICT COURT NO. SCSC261758,
HONS. JONATHAN HAMMOND, MAGISTRATE JUDGE, AND LARS ANDERSON, DISTRICT JUDGE

BRIEF OF AMICUS CURIAE, IOWA LEGAL AID

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STATEMENT OF INTEREST

Iowa Legal Aid is a not-for-profit law firm providing free civil legal services to low-income Iowans, seniors, veterans, and other vulnerable groups since January 1977. Because of the desperate need for access to civil justice, our services focus on the basics of life – safety from violence, adequate shelter, basic income, and fundamental rights. Eviction defense has been a mainstay of our practice throughout our existence. In our 47-year history, we have assisted countless families facing homelessness and the life-destroying upheaval caused by evictions. Between 2018 and 2023 alone, we handled 30,080 landlord-tenant cases in all 99 Iowa counties, and represented 6,503 Iowans in eviction hearings throughout the state. In addition to direct services, Iowa Legal Aid systemically advocates against root causes of housing instability, including data collection and analysis, affirmative litigation, and appellate advocacy. We maintain resources to educate the public, including our website at http://iowalegalaid.org. Finally, in addition to our 47 years of institutional expertise in landlord-tenant law, on February 14, 2024, Iowa Legal Aid was directly invited by the Court to file an amicus brief, pursuant to Iowa R. App. P. 6.906(5). Iowa Legal Aid also participated in the three companion cases that Appellant MIMG CLXXII Retreat on 6th LLC ("MIMG") tactically chose not to appeal.

STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)

Neither party nor their counsel participated in the drafting of this brief, in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this brief. The drafting of this brief was performed *pro bono publico* by amicus curiae.

FACTS & LEGAL FRAMEWORK

I. Facts

What constitutes the record in this case is frankly unclear. Small claims proceedings need not be reported by a certified court reporter, but small claims courts must record proceedings electronically if a court reporter was not used. Iowa Code 631.11. In its combined certificate, however, MIMG says "[t]here is no transcript or evidentiary record available from the proceedings below in the Iowa District Court for Linn County." Combined Certificate.[1] On September 25, 2023, MIMG filed a "statement of proceedings." Statement of Proceedings. This statement modified the statement in the combined

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[1] This statement does not appear to be accurate. The undersigned contacted the Linn County Clerk and both verified the existence of and obtained a recording of the small claims hearing in this case. As amicus, rather than a party, we believe that we are limited to simply pointing this fact out to the Court.

certificate to say that "MIMG has determined there is no transcript or evidentiary record available *or necessary* from the proceedings below in the Iowa District Court for Linn County." *Id*. (emphasis added). The statement then went on to argue that "the only relevant fact, which is not disputed, is the date upon which notice was given by MIMG." *Id*. In part because this statement of proceedings provided no actual facts, and did not clearly state that the underlying transcript had been destroyed or lost, the Court struck it from the record. Order denying consolidation and striking statement of proceedings.

Without any record of what transpired at the hearings, we only have original documents filed in the case and the certified docket and court calendar entries. Iowa R. App. P. 6.801. Here is what we can piece together from that limited record. First, this case was one of five separate challenges to the 30-Day Notice requirement of the CARES ACT. Order dismissing; Notice of Appeal. This includes the procedurally similar companion appeal at 23-0670, i.e. a defaulting tenant, and at least three other cases where the tenant was both participating and represented by counsel. *Id*.

This case was filed on December 16, 2022, and was predicated on nonpayment of rent. Small Claims Original Notice. MIMG never filed a CARES Act verification. Certified Docket. A hearing was set for January 5,

2023. *Id*. MIMG was represented at trial by attorney Gregory Usher. Appearance of Greg Usher. Defendant Nathan Williams did not appear. Order dismissing. The small claims court dismissed this case on January 9, 2023, for failure to serve a 30-day notice pursuant to the CARES Act. *Id*. The small claims dismissal order references three companion cases, Linn County Nos. SCSC260676, SCSC260291, SCSC260044. *Id*. MIMG filed an appeal to district court later the same day, arguing as it does in the current proceedings that the CARES Act notice requirement has expired. Notice of Appeal. The notice of appeal references three of the companion cases. *Id*.

MIMG initially declined to file a brief in this appeal, preferring to stand on the brief it had already filed in the companion cases. *Id*. The district court indicated it would take no action until a brief was filed. Order on Appeal. MIMG filed a brief one week later. MIMG District Court Appeal Brief. On March 26, 2023, the district court affirmed the small claims court in a thorough and well-reasoned order. Order Affirming Small Claims.

II. The CARES Act 30-day Notice Requirement

Initially, 15 U.S.C. 9058 provided for an eviction moratorium that prevented nonpayment of rent evictions from certain "covered dwellings," i.e. properties where the owner receives benefits from one of any number of

federal programs related to expanding access to housing. 15 U.S.C. 9058:

> (1) Covered dwelling. The term “covered dwelling” means a dwelling that
>
> > (A) is occupied by a tenant – (i) pursuant to the residential lease; or (ii) without a lease or with a lease terminable under State law; and (B) is on or in a covered property.
>
> (2) Covered property.--The term “covered property" means any property that--
>
> > (A) participates in--
> >
> > > (i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or (ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or
> >
> > (B) has a--
> >
> > > (i) Federally backed mortgage loan; or
> > >
> > > (ii) Federally backed multifamily mortgage

“Covered housing programs” include a long list of federally assisted housing programs, including multifamily mortgages federally backed by Fannie Mae or Freddie Mac. *Id*. The final section provides that tenants living in “covered dwellings” receive a minimum of 30-days notice before termination:

> (c) Notice. 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).

The statute itself provides a start date, but no end date for this notice requirement.

III. The Fannie Mae Multifamily Mortgage Program

The record below does not clearly indicate the specific "federal connection" invoking the CARES Act, other than a "stipulation of facts" in the district court trial brief. MIMG District Court Appeal Brief, pg. 3. MIMG did not file the CARES Act verification form, promulgated by the Iowa Judicial Branch to ensure that courts had a sufficient record to determine whether the 15 U.S.C. 9058 notice period was at issue in a given FED. Thus, all MIMG can rely on is an unsupported allegation that the federal connection in this case is that MIMG enjoys the benefits of financing backed by Fannie Mae.

The Federal National Mortgage Association, more commonly known as "Fannie Mae," is a government-sponsored enterprise (GSE) that purchases and maintains a portfolio of single- and multifamily-housing mortgage loans. Brent W. Ambrose *et al.*, *Eviction Risk of Rental Housing: Does it Matter How Your Landlord Finances the Property*? (Fed. Rsrv. Bank of Philadelphia,

Working Paper No. 21-05, February 2021).[2] Fannie describes its multifamily housing involvement goal as "to provide financing for workforce housing – safe, sanitary, quality housing affordable to families with annual incomes at or below the median income of the areas where they live." An Overview of Fannie Mae's Multifamily Mortgage Business (May 1, 2021).[3]

Fannie Mae offers several specialty financing options and incentives for multifamily mortgage loans targeted at underserved populations and other equitable goals. For example, Fannie Mae offers mortgage loans for Low-Income Housing Tax Credit properties to preserve that affordable housing, as well as specialized loans related to manufactured housing projects, and senior- and student-specific housing. *Specialty Financing*, FANNIE MAE (last visited March 15, 2024).[4]

In pursuit of its mission to provide quality, affordable housing to lower-income families, Fannie Mae multifamily loans provide many benefits to borrowers seeking to purchase a multifamily housing complex. As a GSE,

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[2] https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2021/wp21-05.pdf.
[3] https://multifamily.fanniemae.com/sites/g/files/koqyhd161/files/migrated-files/content/fact_sheet/multifamilyoverview.pdf
[4] https://multifamily.fanniemae.com/financing-options/specialty-financing (last visited March 15, 2024).

Fannie Mae is backed by the federal government, which allows Fannie Mae to provide more beneficial terms to borrowers. This includes a predictable and streamlined underwriting process, so borrowers know what requirements to expect, and they can complete their loan process from engagement to execution in 30 to 90 days. *Benefits of Fannie Mae and Freddie Mac Multifamily Financing for Apartment Owners and Investors*, LSG LENDING.[5]

Fannie Mae loans tend to be cheaper overall, as the stability and government backing of the loans result in lower interest rates. Down payments are also lower, as Fannie Mae lenders can offer favorable Loan-to-Value allowances resulting in down payments as low as 20% and amortization periods over 25 to 30 years – all resulting in lower monthly payments. *Eviction Risk of Rental Housing* at 2-3; LSG LENDING. Additional default protections due to the government-backed nature of Fannie Mae also attract borrowers, as Fannie Mae can bear more of the cost of a default by the borrower, and lower payments results in a lower risk of default. *Eviction Risk of Housing* at 2. Further, Fannie Mae has been shown to offer additional default protection in

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[5] https://www.lsglending.com/blog/benefits-of-fannie-mae-and-freddie-mac-multifamily-financing/ (last visited March 15, 2024).

times of rental market crisis, as Fannie Mae provided forbearance to lenders during the COVID-19 pandemic. *Id.*; *see also* 15 U.S.C. 9057.

ARGUMENT

MIMG's argument is threefold. First, they argue that federal law cannot preempt landlord tenant law, while ignoring applicable Iowa precedent. Second, they argue that this Court should read a sunset date into 15 U.S.C. 9058(c), while ignoring the plain language of that statute. Third, they argue that this Court should deprive magistrates and trial courts of their ability to independently assess the requirements of the law, while ignoring their own failure to preserve error and the greater context of their own tactical decisions throughout the life of this case. This Court should reject all three arguments.

I. MIMG Fails to Cite the Iowa Supreme Court Precedent on Conflict Preemption of State Landlord-Tenant Notice Requirements for Federally Connected Housing

MIMG's brief fails to mention let alone explain the most important Iowa precedent on conflict preemption of state law governing residential landlord-tenant notices. Twenty years ago, in *Horizon Homes of Davenport v. Nunn*, 684 N.W.2d 221 (Iowa 2004), the Iowa Supreme Court resolved a question similar to this one. *Nunn* involved the interplay of state and federal law in connection with termination of a lease for a so-called Section 236

project, a low-income housing program administered by the department of Housing and Urban Development (HUD). *Id*. at 222 – 223. Then as now, Iowa law does not require that a landlord assert good cause to renew a lease after expiration of its term. Iowa Code 562A.34. However, leases subject to federal programs like Section 236 require a notice of nonrenewal to assert some specific good cause. 24 C.F.R. 247.3(a).

In general, the supremacy clause of the United States Constitution provides that federal law preempts conflicting state law. *Bennett v. Arkansas*, 485 U.S. 395 (1987). However, "federal law will not preempt state law absent a clear statement of congressional intent to occupy an entire field or unless applying state law would conflict with or otherwise frustrate a federal regulatory scheme[.]" *Nunn*, 684 N.W.2d at 228 (internal quotations omitted). The *Nunn* court held that applying less protective Iowa law allowing no-cause evictions would frustrate HUD's regulatory scheme to provide extra protection to vulnerable people facing extra barriers to maintaining housing. *Id.*; *see also Seldin Co. v. Calabro*, 702 N.W.2d 504 (Iowa Ct. App. 2005) (inclusion of late fee that violated federal HUD regulations invalidated notice to cure nonpayment of rent required by state law).

Similar to *Nunn*, rejecting the CARES Act 30 Day notice would frustrate the regulatory scheme Congress intended when enacting this

requirement. If anything, the case for preemption is even stronger here than in *Nunn*, as *Nunn* involved preemption of a state statute by federal agency action, unlike the direct Congressional will expressed by federal statute that MIMG seeks to avoid here. Additionally, the good cause requirement at issue in *Nunn* indefinitely affects a Section 236 landlord's rights by guaranteeing that a tenant can remain as long as there is not good cause to remove them. This is a much greater substantive right than the additional 27 days' notice required here, which delays but does not prevent an eviction.

Further, MIMG's argument is not even internally consistent. Nowhere does it argue that either the moratorium imposed by 15 U.S.C. 9058(b) or the 30-day notice requirement imposed by 15 U.S.C. 9058(c) were preempted during the period the CARES Act moratorium was active March through July of 2020. If 15 U.S.C. 9058 failed on preemption grounds, it would have been just as invalid then as MIMG suggests it is now.

While ignoring *Nunn* and many other federal laws that have regulated aspects of rental housing for decades, MIMG asserts that 15 U.S.C. 9058(c) fails to preempt state law because landlord-tenant law is historically a province of state law. In support of this argument, MIMG cites to *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S.Ct. 2485 (2021). This decision by the United State Supreme Court struck down the much wider-

in-scope CDC eviction moratorium for lack of delegated Congressional authority, saying that "if a federally imposed eviction moratorium is to continue, Congress must specifically authorize it." *Id.* at 2490.

Alabama Ass'n of Realtors is entirely inapposite to the present case for multiple reasons. First, it was not a preemption case, but rather a case about constraining federal agency powers. The analysis turned on whether Congress had clearly delegated to the CDC, a federal administrative agency, the power to restrict evictions across the country based on a general statutory grant of emergency powers in a public health emergency. *Id.* The Court ultimately held that the CDC could not assume new powers over a historically-state-governed field like landlord-tenant law based on an authorizing statute that did not clearly provide such authority. "We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 2489 (internal quotations omitted). Nowhere in *Alabama Ass'n of Realtors* did the Supreme Court suggest that Congress itself had no authority to preempt state laws by "speak[ing] clearly[,]" as they have done by imposing an ongoing 30-day notice requirement in 15 U.S.C. 9058(c).

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. While the Court noted the CDC moratorium was "unprecedented," the concept that landlords who receive benefits for participating in a federally connected housing program also shoulder concomitant duties like enhanced termination notices has been a mainstay of federal housing law for decades. See, e.g., *Nunn*.

To that point, MIMG articulates no limiting principle that would not also involve overruling *Nunn* and consequently rendering any additional tenant protections based in federal law – some of which have been in place for decades – null and void. Federal law regulates residential properties in many ways that are far more intrusive than requiring a few weeks of extra notice prior to termination, e.g. the federal Fair Housing Act.

II. As Appellate Courts in Several Other States Have Already Held, the Unambiguous Language of 15 U.S.C. 9058(c) Provides That the CARES Act 30 Day Notice Provision Continues Until Repealed

MIMG 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. However, the breadth of exposition in its brief underscores that its interpretation of a short and to-the-point statute requires this Court to add words to the law that Congress did not. Neither MIMG nor this Court has that power.

The unambiguous language of 15 U.S.C. 9058(c) does not provide an

expiration date for the CARES Act 30-Day notice requirement. It is therefore in force until repealed. Every court that has addressed this question in other parts of the United States has come to this inescapable conclusion. Congress itself believes it is still in force, given two attempts to repeal 15 U.S.C. 9058(c) in the last two years. MIMG's strawman absurdity arguments concerning a claimed conflict with Iowa's peaceable possession statutes have been resolved by Iowa appellate courts before in functionally identical situations arising from other 30-day notice requirements. Finally, MIMG's constitutional arguments are unpreserved, underdeveloped, and simply wrong.

A. **The language of the CARES Act is unambiguous, and MIMG's arguments would require this Court to say what Congress did not**

"When a 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). Appellate courts across the nation have explicitly rejected exactly the argument MIMG is making here, based on the unambiguous language of 15 U.S.C. 9058(c). *See, e.g., Arvada Vill 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."); *Olentangy Commons Owner LLC v Fawley*, --- NE3d ---, 2023 WL 7327716 (Ohio Ct. App. 2023) ("We cannot insert an expiration date in 15 U.S.C.

9058(c) when Congress omitted one from that subsection"); *Sherman Chapel Properties, LLC v. Butler,* 2023 WL 2661530 (Conn. Sup. Ct. 2023) (finding the CARES Act 30-day notice period "did not expire"); *Sherwood Auburn LLC v. Pinzon*, 521 P. 3d 212, 218 (Wash. 2022).

Subsequent legislation also clearly indicates that Congress both understands that the 30-day notice requirement has not expired, and yet has not repealed or clarified it. For example, in 2023, Georgia Representative Barry Loudermilk introduced H.R. 802, which would strike 15 U.S.C. 9058(c)'s 30-day notice requirement entirely. H.R. 802, 118th Congress. No action has been taken on that bill in well over a year. [6] An almost identical bill was introduced just last month by Florida Senator Marco Rubio. S.R. 3755, 118th Congress, 2nd Session.

Nevertheless, MIMG uses this Court's statutory construction procedure as restated in *Beverage v. Alcoa, Inc.* to argue that the language of 9058(c)'s notice requirement is ambiguous – not in its plain meaning, but only once the context is viewed in MIMG's highly selective framing. 975 N.W.2d 670 (Iowa 2022). However, "[i]f the 'text of a statute is plain and its meaning is clear, we will not search for a meaning beyond the express terms of the statute or

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[6] https://www.congress.gov/bill/118th-congress/house-bill/802/actions

resort to rules of construction." *Commerce Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021). 15 U.S.C. 9058's notice provision is not ambiguous, in language or context, and this Court need not search beyond the plain text.

Congress addressed the eviction moratorium and the notice requirement into *separate* subsections: 9058(b) and 9058(c), respectively. If Congress intended the notice requirement to apply only to those evictions paused by the moratorium, it could have easily included the notice requirement within the moratorium's subsection. Instead, Congress chose to create a discrete subsection for the notice requirement, showing that the moratorium and notice requirement were intended to be read separately.

MIMG does not argue that the language of the notice requirement itself is ambiguous, but rather the district court failed to read the subsection within the context that MIMG believes is relevant. This is because the language is not ambiguous –nothing in the notice requirement or moratorium subsections limits application of the notice requirement to those defaults that arose prior to or during the moratorium. Rather, the plain language of the notice subsection shows that it applies more broadly than the moratorium, and references the end of the moratorium simply for the purpose of creating a start date for the requirement, while being silent on an end date.

Further, Congress specifically provided a start and termination date for

the 9058(b) moratorium. With respect to the notice, Congress specifically provided a start date for this requirement following the moratorium. However, it refrained from providing an express, or implied, date on which this requirement ended. Congress clearly understood that it could provide a termination date to its relief, as it did in the preceding subsection, and chose not to. *See Nat'l Fed'n of Indep. Bus. v. Sebulius*, 567 U.S. 519, 544 (2012) ("Where Congress uses certain language in one part of a statute and different languages in another, it is generally presumed that Congress acts intentionally.")

Even the context surrounding the CARES Act supports reading that 9058(c)'s notice requirement continues to apply. MIMG seems to limit its context analysis to the date the CARES Act was passed and the months immediately following, and claims that renters required no further protection after that time. This limited view ignores the actual length and impact of the pandemic, as well as the vast uncertainty in the country at the time. Congress was dealing with a novel crisis, of which it could predict neither the consequences nor the duration. The reasonable result of that unknown was a protective statute not limited in time to account that uncertainty.

MIMG argues the word "temporary" necessarily means Congress intended to limit the application period of the notice requirement. While 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. For example, after the CARES Act moratorium expired in July 2020, a new Congressional moratorium was no longer necessary due to the institution of the CDC moratorium from August 2020 to August 2021, which covered a much wider swath of residential property as it was not limited to federally connected housing. The 30-day notice provision, like much of the CARES Act, was written to allow room to maneuver through uncharted waters.

There is also the question of whether the pandemic is "over" – not in an epidemiological sense, of course, but an economic one. While restrictions on daily life to prevent transmission of COVID-19 are fading into memory, the economic disturbances left in their wake are proving stubbornly persistent. The title and thrust of the CARES Act indicate that Congress foresaw this element to the crisis at the inception, with the last two letters of the acronym standing for "Economic Security." For many vulnerable people, the pandemic's trailing edge of economic insecurity continues in full force.

MIMG also contends that Congress' use of the limiting word "the" to describe lessors and tenants covered by the statute means that these sections are interlocking and referring to the same class of people – those covered

tenants who failed to pay their rent during the time prescribed, and lessors of those particular properties. However, given that the subsections were separated in the text, it is far more likely that the class of people implicated is the same described throughout the whole of the section at issue – those federally connected properties and their tenants, which the federal government has the power to touch and place requirements on.

Further, using the limiting article "the" for tenants also encompasses those tenants *who are themselves the source* of the covered property by way of an individual, federally connected subsidy, and thereby, also those lessors who lease to these individual tenants. Such subsidies include the Housing Choice Voucher (HCV) program, which is part of Section 8. The HCV program involves money distributed through nonprofit or governmental housing authorities, paid on a tenant's behalf to landlords who choose to participate in the program. 42 U.S.C. 1437f. Even if a property did not receive its own federal housing benefits, it would still fit within the definition of "covered property" if it was rented to a tenant with HCV. 15 U.S.C. 9058(a)(2)(A)(i). This is likely why Congress chose to use the term "covered dwelling" within 9058(b) and 9058(c) rather than "covered property", as Congress wanted to ensure that those individual tenants were also included. 15 U.S.C. 9058(c).

In its search for words that are simply not there, MIMG also points to the preceding section of the CARES Act, 15 U.S.C. 9057, for guidance on how 9058(c) should be read. Section 9057 provided a forbearance on mortgage loan payments for federally-backed multifamily properties, and required those multifamily borrowers to provide a similar notice to their tenants during the period prescribed. 15 U.S.C. 9057(e). It also provided a moratorium for the period of the forbearance, beyond July 2020, during which a multifamily borrower under forbearance could not initiate eviction against tenants for nonpayment of rent. 15 U.S.C. 9057(d). As MIMG points out, this section specifically included not just a start date, but also an end date for the period the notice was required – by its terms, this requirement ended on December 31, 2020. 15 U.S.C. 9057(f)(5).

MIMG contends that it would be nonsensical to read Section 9057 to provide for a new, permanent federal notice requirement. This is correct, because Section 9057 has a *specific end date*. No inference is necessary to find the termination date in Section 9057 because it is explicitly written. This contrast demonstrates that Congress did *not* intend a termination date for the notice requirement in Section 9058, and no inference to the contrary should be made. *See Sebulius*, 567 U.S. at 544; *Wisconsin Cert. Ltd. v. United States*, 138 S. Ct. 2067 (2018).

B. The lower courts correctly interpreted the clear language of 15 U.S.C. 9058

1. Iowa's peaceable possession statute is compatible with 30-day notice requirements, including but not limited to 15 U.S.C. 9058(c)

MIMG contends that "the most damning aspect" of 15 U.S.C. 9058(c)'s 30-Day Notice requirement is that it would produce an absurd result by eliminating a covered landlord's ability to evict tenants for nonpayment of rent due to Iowa's peaceable possession statute. That statute says, in its entirety, that "[t]hirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding." Iowa Code 648.18.

It is first worth noting that this hypothetical harm did not take place in this case, nor is there any indication that it has ever happened in any case in Iowa in the roughly four years that the CARES Act 30 Day notice requirement has been in effect. This is not surprising, because Iowa courts have repeatedly harmonized other 30-Day notice requirements present in state and federal law with Iowa Code 648.18 rather than take the drastic remedy of invalidating federal law.

For example, *AHEPA 192-1 Apartments v. Smith*, 2011 WL 6669744 (Iowa Ct. App. 2011) involved an eviction from a Section 202 Property, a federal program regulated by HUD that provides housing to low-income

seniors. The landlord in *AHEPA* believed that they were required by federal law to provide a 30-day notice of a lease violation to the tenant, and the tenant then raised a peaceable possession defense. *Id.* at *5. However, the court found that the cause of action accrued from the end of the termination of the lease, not the day that the tenant was served the 30-day notice, and thus Iowa Code 648.18 did not apply. *Id*.

The Iowa Court of Appeals applied an even more straightforward approach in *Des Moines RHF Housing v. Spencer*, 2018 WL 3057604 (Iowa Ct. App. 2018). In *Spencer*, a tenant lived in federally subsidized supportive housing for people with disabilities. *Id*. The landlord provided a 30-day notice to cure, as required by 42 U.S.C. 8013(i)(2)(B)(ii). *Id.* Even though the case was brought more than 30 days after the rent was initially due, because the case was pled as holdover and not nonpayment of rent, the accrual was initiated by the end of that notice period and less than 30 days had passed since then. *Id*. Just like *Spencer*, a landlord could easily avoid peaceable possession problems notwithstanding the CARES Act 30-day notice requirement if they simply plead the case as a holdover under Iowa Code 648.1(2).

In addition to more protective federal notice requirements, Iowa law also provides several instances where a 30-day notice is a condition precedent

to eviction, e.g. land contract forfeiture under Iowa Code Chapter 656. MIMG confusingly cites and completely misunderstands the holding in *Jenkins as Trustee of 2216 Lay Street Trust v. Clark*, 988 N.W.2d 469, 472-73 (Iowa Ct. App. 2022), which has nothing to do with peaceable possession. MIMG states that *Clark* "reject[ed a] proposed statutory construction that would limit forfeiture remedy to a 30-day window in which the buyers could cure because it would effectively foreclose owners' ability to use the remedy at all." Appellant's Brief Pg. 40. It is unclear how MIMG draws this conclusion from the actual reasoning of the case. *Clark* addressed a situation where a land contract vendor argued that a notice of forfeiture was conclusive and could not be challenged in an FED. *Clark*, 988 N.W.2d at 472. Instead, the vendor contended the only remedy for a buyer challenging a forfeiture was to file a separate equitable action. *Id*. For various reasons not germane to this case, none of which included any discussion of peaceable possession, the court disagreed and remanded the case. *Id*.

If peaceable possession had been addressed in *Clark*, it would simply underscore the point made in *Spencer*, i.e. that a statutory requirement of a 30 day notice – here the notice required by Iowa Code 656.2 to forfeit a real estate contract – does not create an "impossible situation," because the 30 days does not begin to accrue in a properly pled cause of action until after the 30 day

notice period expires. MIMG'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).

2. MIMG fails to develop any of its various constitutional theories, all of which raised for the first time on appeal, and again relies on irrelevant reasoning in *Alabama Ass'n of Realtors*

MIMG ends its statutory analysis by briefly providing a bulleted list of "substantive constitutional problems that the federal 30-day notice period poses," citing no cases to support these theories' application to this case. Then MIMG argues that the federal Spending Clause does not provide Congress the authority to require landlords who receive extensive federal benefits from various housing programs to follow their side of the deal. Appellant's Brief at 42-43. As an initial point, MIMG did not preserve error on any of these arguments, none of which were raised below. *See* MIMG District Court Appeal Brief. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). These arguments were not presented to the district court, and so should not be considered here.

Regardless, the power to legislate the 30-day notice requirement under

15 U.S.C. 9058 is constitutionally authorized by at least Spending *and* Commerce Clauses. *See Sherwood Auburn LLC v. Pinzon*, 521 P. 3d 212, 218 (Wash. 2022). We will address each briefly in turn.

MIMG's objects to the Spending Clause as a basis for Congressional power to impose 15 U.S.C. 9058(c)'s notice requirement because "it was imposed on the landlords during their leases; they did not agree to it." Appellant's Brief Pg. 42. The CARES Act 30-day notice requirement as discussed here (i.e. post-moratorium) came into effect in August 2020. 15 U.S.C. 9058(c). The extremely bare record in this case frankly does not indicate when MIMG acquired the property at issue, or what it knew, or really even the nature of the federal connection, so it is impossible to tell from the information before the court whether MIMG acquired the property before or after the CARES Act was enacted. There is also nothing in the record about MIMG's general level of knowledge about the requirements of the CARES Act, although the very nature of this strategic appeal suggests that they are well aware.

It is true, however, the subsection of landlords who participate in the federal programs covered by 15 U.S.C. 9058 receive considerable individual benefits at considerable taxpayer expense. That commitment of taxpayer funds is not largesse to landlords, but rather to further federal policy – here,

to increase access to affordable housing. Landlord compliance with the corresponding obligations imposed by these programs are a quid pro quo that ensures that taxpayer money is effectively spent to achieve the goals of the program. Accepting MIMG's position in this case means that taxpayer money is spent less effectively because it falls short of meeting the aims of the program it was invested in.

It is also true that these requirements change over time, whether by Congress, federal agencies like HUD, or local application of federal housing policy by local Public Housing Authorities. To only apply Spending Clause authority retroactively based on when a landlord entered into a particular federal program would create an unimaginably complex and unworkable patchwork of conflicting rules. Receiving the benefits inherent in participation in federal housing programs implies agreement to subsequent changes in those rules, including but not limited to the 30-Day notice requirement of 15 U.S.C. 9058(c).

In addition, MIMG barely contemplates whether the CARES Act's constitutionality could be found outside of the Spending Clause, saying simply that "[l]ocal landlord-tenant relationships are not interstate commerce." This is a perplexing statement coming from a company whose website claimed as of March 15, 2024 that it operated 312 communities across

21 states, providing a total 72,676 apartments, and employing 2,296 team members.[7] Although MIMG cites no authority for its dismissal of this idea, the U.S. Supreme Court has held that the regulation of rental property is "unquestionably" within the scope of interstate commerce. *United States v. Russell*, 471 U.S. 858, 862 (1985); see also *Oxford House v. City of St. Louis*, 77 F.3d 249, 251 (8th Cir. 1996); *Groome Resources Ltd. v. Parish of Jefferson*, 234 F.3d 192 (5th Cir. 2000). Accepting MIMG's argument would not only refute decades of jurisprudence, it would create chaos for tenants and landlords alike as decades of federal housing law derived from statute, courts, and agency law would evaporate in an instant.

III. MIMG failed to preserve error on its claims of judicial "ambush," and tactically mischaracterizes context to feign surprise in a strategically filed appeal

A. MIMG cannot raise claims of ambush for the first time on appeal

MIMG failed to preserve error on its third argument, which boils down to the contention that courts must rubberstamp any rationale, no matter how convoluted or flawed, if the other party defaults. "It is a fundamental doctrine

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[7] https://www.mimginvestment.com/ ("Monarch Portfolio, last accessed March 15, 2024).

of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier*, 641 N.W.2d at 537.

MIMG asks this Court to ignore the rules of error preservation because it contends it had no notice that these arguments were going to be raised. In general, FEDs are unfortunately statutorily designed to foster "quick draw" hearing practice. Hearings must be set within 8 to 15 days from the date that an FED is filed, long before the 20-day period to answer has elapsed. Iowa Code 648.5 Motions in small claims must be heard and argued at the time of hearing, effectively depriving litigants of any advance warning not included in bare bones small claims pleading forms. Iowa Code 631.7. This format almost always benefits more frequent participants, who are far more likely to be landlords or property managers than tenants. If one party does not show up to a small claims hearing, then the "judgment *may* be rendered against the defendant by the court[,]" meaning that the Court is not bound to do so. Iowa Code 631.10.

There is more to this case than the general rough and tumble unpredictability of small claims practice. MIMG cites *Cooksey v. Cargill Meat Solutions Corp.*, 831 N.W.2d 94 (Iowa 2013) to suggest that error was preserved on the issue of magistrate "ambush." *Cooksey* is inapposite, as it

involves a case where the argument at issue was thoroughly briefed below. In the present case, nothing in MIMG's comprehensive district court appeal brief addresses this "ambush" argument in any way.

Also, we have no idea what was or wasn't said below because MIMG has declined to submit a transcript of the hearing. Combined Certificate; Statement of Proceedings; Appellant's Designation of Parts. If the "ambush" MIMG complains of was as bad as they describe, the lack of a transcript showing the gory details is certainly puzzling.

To buy MIMG's argument about error preservation, this Court would also have to ignore MIMG's own explanation of the greater context of this case earlier in its brief and agree that either lower court ruling somehow came as a surprise. As explained in the next section, MIMG's own conduct and narrative make that argument difficult to believe.

B. Out of several identical cases, MIMG tactically sought discretionary review only in cases where there was no one to present a defense, to establish a legal principle that will affect many thousands of landlords and tenants alike

Even if error was preserved, the circumstances of this case make it a poor example for the point MIMG is trying to make. Using rather charged language, MIMG claims that it was "ambushed by the magistrate judge, and then the district court[,]" and that a court exercising its own independent

judgment to deny relief was somehow "[a]mazing[.]" Appellant's Brief at 44, 32.

Context makes these strong critiques even more puzzling. For example, as MIMG's brief points out, this case was one of at least five separate FEDs strategically filed with the intent of challenging the continuing requirement for a 30-day CARES Act notice. Appellant's Brief at 15, fn 2. The magistrate's order details the arguments that MIMG presented, and references the small claims case numbers of the companion cases. Small Claims Order of Dismissal. The notice of appeal to district court references all three cases not appealed. Notice of Appeal. At the district court appeal stage, MIMG initially moved to simply direct that court on appeal to the briefs filed in these other cases, because the arguments were identical, but was instead directed to file an individual brief in this case. Order on Appeal, 2/20/2023. In that district court brief, MIMG acknowledged that the magistrate's ruling in this case was based on the rulings in these other cases. MIMG District Court Appeal Brief Pg. 3. Now, however, MIMG has changed its narrative to claim surprise.

Since MIMG has itself raised these companion cases, we will complete the picture. In three of those other cases, the tenants participated and were represented by Iowa Legal Aid. One of these cases (Buckner) was dismissed voluntarily by MIMG prior to resolution on appeal. MIMG's brief says that

the Sanchez & Chavez matters remain on appeal without ruling. Appellant's Brief Pg. 15, Pg. 2. However, both cases were dismissed as moot and subject to discretionary review over eight months before MIMG submitted its proof brief.

MIMG could have sought discretionary review in any of those three other cases, where they made identical arguments but with the other side of the argument fully developed by tenants who participated and were represented by counsel. Mootness could be overcome by the Public Interest Doctrine. *See Homan v. Branstad*, 864 N.W.2d 321, 330 (Iowa 2015) (an exception to the mootness doctrine exists where matters of public importance are presented and the problem is likely to recur.) Instead, it chose to seek review in the two cases where they hoped to prevail simply because there was no one to defend. The risk of a such a tactical choice, of course, is to draw attention to the fact that MIMG did have both notice and the opportunity to fully litigate all issues in a very detailed albeit unsuccessful brief in this case.

MIMG's statement in its brief that it "was not aware of the possibility of dismissal until the magistrate unilaterally applied an isolated piece of expired federal legislation" simply defies belief, based MIMG's own actions and statements. Appellant's Brief Pg. 46. MIMG's subsequent statement that "[i]f a sea change in Iowa landlord tenant law is to occur through judicial

decree, it should occur when both parties are in court and based on an argument one of them, with notice, advances on their own[,]" is highly ironic. *Id*. MIMG has methodically made tactical choices throughout this case 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. MIMG is not entitled to benefit from its own manipulation of context, especially on an issue raised for the first time on appeal.

ORAL ARGUMENT REQUEST

The undersigned requests the opportunity to participate in oral argument, if scheduled.

CONCLUSION

For the reasons raised herein, the dismissal of this case must be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Melanie Huettman, hereby certify that the Amicus Brief was electronically filed on the 15th day of March, 2024, and was electronically served upon the Appellant's counsel via electronic mail / EDMS.

/s/ Melanie Huettman

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