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NCLA Calls on Supreme Court to Reinvigorate Contracts Clause and Stop State Interference with Leases

Apartment Association of Los Angeles County, Inc. v. City of Los Angeles, et al.

Washington, DC (December 29, 2021) – Today, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a Supreme Court [*amicus* brief](#) in *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles, et al.* NCLA finds disturbing the recent trend, epitomized by this case, of lower courts deferring to states and cities in their flimsy justifications for substantially impairing landlord-tenant contractual obligations. The Supreme Court’s immediate intervention is required to rescue the Contracts Clause of the U.S. Constitution from oblivion and ensure that it serves its original purpose during the COVID-19 pandemic response and hereafter.

Following the outbreak of COVID-19 in early 2020, the City of Los Angeles imposed an eviction moratorium and gave tenants up to a year after the emergency ends to repay their back rent interest-free. The national emergency caused by COVID-19 has led several states and cities to interfere with residential leases. But the Contracts Clause was specifically designed by the Framers of the Constitution to prohibit states from altering contractual obligations or preventing parties from enforcing their contractual rights—especially during emergencies. The Supreme Court has historically struck down contractual interference unless the state law has certain limiting characteristics—which were absent here—to protect the parties’ vested interests.

During the pandemic, very few courts have applied the Contracts Clause as if it imposes any restraint on state or local laws. In fact, many courts treat the Contracts Clause as a dead letter, leaving the enforceability of contracts to the vagaries of state law. Over the years, the Supreme Court has identified several factors that tend to show when an impairment would upset the contracting parties’ legitimate expectations. Although many lower courts have ignored these indicators, the trial court below rightly recognized that Los Angeles’s new rule substantially impaired residential leases in the city. The Ninth Circuit erred on appeal by skipping this analytical step altogether.

Courts like the Ninth Circuit have upheld state laws that substantially impair contractual obligations because they claim they are bound to defer to a state’s opinion as to what counts as substantial. Faced with legal challenges to states’ emergency responses, many courts have misapplied Supreme Court precedent and declared that courts “*must accord substantial* deference to the State’s conclusion that its approach reasonably promotes the public purposes for which it was enacted.” But deferring in this manner to a state’s self-interested decision to impair a contract renders the protections of the Contracts Clause meaningless.

L.A. unfairly rewrote residential leases and forced housing providers to shoulder their tenants’ costs, as well as the entire risk of default. The Ninth Circuit’s deference to that decision effectively wrote the Contracts Clause out of the Constitution. This Court should grant the petition and reverse the Ninth Circuit’s dangerous decision.

NCLA released the following statement:

“Throughout NCLA’s pandemic litigation, we’ve seen multiple courts be all too willing to defer to states’ decisions to rewrite private contracts, despite what the Contracts Clause says. These lower courts think they’re

taking their cues from the Supreme Court. Unless and until the Supreme Court steps in to clarify its precedent, the Contracts Clause won't provide any constitutional protection against state interference with residential leases and other contracts in most of the country.”

— **Jared McClain, Litigation Counsel, NCLA**

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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