

EXHIBIT A

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8 **IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

9
10 APARTMENT ASSOCIATION OF LOS
ANGELES COUNTY, INC.,

11 Plaintiff,

12 v.

13 CITY OF LOS ANGELES, et al.,

14 Defendants.

No. 2:20-cv-05193-DDP-JEM

**[PROPOSED] BRIEF OF AMICI
CURIAE CITIES AND COUNTY**

15 **Before the Honorable Dean D.
Pregerson**

16 **Hearing Date:** October 26, 2020

17 **Hearing Time:** 10:00AM

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

TABLE OF AUTHORITIES iii

SUMMARY OF ARGUMENT 1

ARGUMENT 2

 I. The Eviction Moratorium Promotes the Public Health and Economic Welfare of Los Angeles Residents 2

 A. The Eviction Moratorium Promotes Public Health and Safety by Ensuring Residents Have Stable Housing in Which to Social Distance and Shelter-in-Place 5

 1. Stay-at-Home and Social Distancing Guidance 6

 2. Homelessness 7

 3. Overcrowding 9

 B. The Eviction Moratorium Promotes Public Health and Safety by Maintaining Economic Welfare 12

 II. The Eviction Moratorium Does Not Violate the Contracts Clause 18

 A. The Eviction Moratorium Does Not Substantially Impair Private Contractual Rights. 19

 B. The Eviction Moratorium Fulfills a Significant and Legitimate Public Purpose 21

 C. The Eviction Moratorium is Reasonably Tailored to Protect the Public Health and Economic Welfare of Tenants During the COVID-19 Pandemic 22

CONCLUSION 24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

TABLE OF AUTHORITIES

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438 U.S. 234 (1978)19

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2020 U.S. Dist. LEXIS 141500 (D. Conn. Aug. 7, 2020)5

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2020 U.S. Dist. LEXIS 176264 (D. Mass. Sept. 25, 2020)5

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550 P.2d 1001 (Cal. 1976)12

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 138 S.Ct. 1815 (2018)18, 20

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11 L.A., Cal., Ordinance 186585, § 49.99.5 (Mar. 31, 2020)*passim*

12 L.A., Cal., Ordinance 186606 (May 12, 2020)*passim*

13 L.A., Cal., Admin. Code, ch. 3, art. 3, § 8.31 (2020) 23

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SUMMARY OF ARGUMENT

At a moment of unprecedented crisis, state and local governments have been indispensable to the public health and economic responses to the COVID-19 pandemic. Standing at a crucial cornerstone of health and welfare, and integral to that overall response, is housing security. Across America, state and local governments—through a variety of means, including legislative actions, executive orders, and judicial rules—have restricted or barred eviction proceedings during some or all of the current pandemic. Because of the critical role that eviction restrictions and other housing security measures will continue to play in our collective and long-term response to COVID-19, the City of Chicago, along with the Cities of Albuquerque, Austin, Baltimore, Boston, Cambridge, Chelsea, Cincinnati, Columbus, Dayton, Gary, Santa Cruz, Santa Monica, Seattle, St. Paul, Oakland, Portland, Tucson, Somerville and West Hollywood as well as Santa Clara County (collectively, “*Amici* Cities and County”), submit this brief as *amicus curiae* in opposition to the motion for preliminary injunction and in support of Defendants the City of Los Angeles, Eric Garcetti, and the City Council of the City of Los Angeles.

Amici Cities and County address arguments in this case that have broad ranging implications for state and local governments across the country. In short summation, all of Plaintiff’s arguments challenging L.A., Cal., Ordinance 186585 (Mar. 31, 2020) and L.A., Cal., Ordinance 186606 (May 12, 2020) (hereinafter, the “eviction

1 moratorium”) should be rejected by this Court. First, the eviction moratorium falls
2 squarely within the City’s police power to promote public health, safety, and welfare
3 during a pandemic and implicates no fundamental rights. The moratorium has done so
4 by enabling residents to shelter in place and socially distance. Additionally, by
5 maintaining the economic welfare of tenants, the moratorium protects individuals and
6 neighborhoods against the dangers and risks associated with evictions, including
7 health and safety harms. These housing stability safeguards are crucial as a matter of
8 both public health and economic response to the current crises.

9 Second, the moratorium does not substantially impair a landlord’s contractual
10 rights with tenants. The eviction moratorium follows established precedent which has
11 upheld similar responses to recessions and significant economic downturns, even
12 without the additional challenges imposed by a global pandemic in the current
13 moment. If adopted, Plaintiff’s expansive and incorrect reading of the Contracts
14 Clause of the U.S. Constitution could unduly limit state and local governmental
15 authority to enact regulatory measures to safeguard the welfare of their residents
16 during a crisis.

17 **ARGUMENT**

18 **I. THE EVICTION MORATORIUM PROMOTES THE PUBLIC HEALTH AND ECONOMIC WELFARE OF LOS ANGELES RESIDENTS**

19 The City of Los Angeles’s eviction moratorium falls well within the expansive
20 police power authority granted to California cities to uphold public health and safety.
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1 Plaintiff offers a conclusory assertion that the eviction moratorium implicates a
2 fundamental right and completely fails to address the evidence that the moratorium
3 rationally protects the health of Los Angeles residents. Pl.’s Mot. for Prelim. Inj. 27-
4 28, ECF No. 46 (Sept. 21, 2020). Even balancing the harms, the public health
5 evidence overwhelmingly demonstrates that access to stable housing is a crucial
6 component of containing the novel coronavirus. Eviction moratoriums have a
7 substantial relation to public health when they ensure that tenants maintain this access.

8 In the seminal case of *Jacobson v. Massachusetts*, the U.S. Supreme Court
9 upheld Massachusetts’s authority to enforce its compulsory vaccination law. 197 U.S.
10 11 (1905). The Court concluded that public health measures are constitutional so long
11 as they demonstrate a “real or substantial relation” to the protection of public health.
12 *Id.* at 30-31; accord *New York State Rest. Ass’n v. New York City Bd. of Health*, 556
13 F.3d 114, 134 (2d Cir. 2009) (recognizing tradition of local health & safety regulation
14 and upholding local public health ordinance as reasonable). Here, the eviction
15 moratorium undoubtedly maintains a real and substantial relation to protecting the
16 public health in the face of the COVID-19 pandemic by increasing housing stability
17 and allowing Los Angeles to implement social distancing and quarantining measures.

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1 The eviction moratorium, moreover, does not discriminate against members of
2 a protected class nor implicate a fundamental right.¹ Because a limitation on the use of
3 property does not implicate a fundamental right, it need only be rational. *See, e.g.,*
4 *Schnuck v. City of Santa Monica*, 935 F.2d 171, 174 (9th Cir. 1991) (“Rent controls
5 violate due process only if ‘arbitrary, discriminatory, or demonstrably irrelevant’ to a
6 legitimate governmental purpose”) (quoting *Pennell v. San Jose*, 485 U.S. 1, 11
7 (1988)). Contrary to Plaintiff’s assertions that they have a fundamental right to evict
8 tenants, the court in *Schnuck* specifically upheld restrictions on rent increases and
9 evictions as reasonable. *Id.* at 172, 175. As described in more detail below, Los
10 Angeles’s eviction moratorium is rationally related to the City’s intertwined interested
11 in protecting the health of its residents and promoting their economic security.

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15 ¹ Unless public health legislation impermissibly interferes with the “exercise of a
16 fundamental right” or disadvantages a “suspect class,” courts under the Equal
17 Protection and Due Process Clauses use rational basis review. *See, e.g., Massachusetts*
18 *Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976). Both federal and California courts
19 have found that landlords are not a protected class. *Sylvia Landfield Trust v. City of*
20 *Los Angeles*, 729 F.3d 1189, 1191 (9th Cir. 2013) (“We apply rational basis review
21 because landlords are not a protected class...”); *San Francisco Apartment Ass’n v.*
City & Cnty. of San Francisco, 881 F.3d 1169, 1179 (9th Cir. 2018) (same); *accord*
Interstate Marina Dev. Co. v. Cnty. of Los Angeles, 202 Cal. Rptr. 377 (Ct. App.
1984).

1 **A. The Eviction Moratorium Promotes Public Health and Safety by**
2 **Ensuring Residents Have Stable Housing in Which to Social Distance**
3 **and Shelter-in-Place**

4 Federal and California law require public health regulations to have a rational
5 connection with the promotion of public health and safety. *See Kelley v. Johnson*, 425
6 U.S. 238, 247 (1976); *Laurel Hill Cemetery v. City & County of San Francisco*, 93 P.
7 70, 72 (Cal. 1907) (“[S]upervisors have power to pass ordinances placing such
8 restrictions upon the use of any property or the conduct of any business as may be
9 necessary for the public health. Such ordinances must, of course, bear
10 a rational relation to the object sought to be attained.”) (internal citations omitted).²

11 The eviction moratorium meets this standard by promoting public health in three
12 distinct and critical ways: (1) ensuring efficacy of stay-at-home and social distancing
13 guidance; (2) preventing homelessness; and (3) limiting housing overcrowding.

14 ² Federal and state courts have upheld public health measures on this basis in the
15 context of COVID-19, including eviction moratoriums. *S. Bay United Pentecostal*
16 *Church v. Newsom*, 590 U.S. ___, 140 S. Ct. 1613, 1613-14 (2020) (Roberts, C.J.,
17 concurring); *Friends of Danny Devito v. Wolf*, 227 A.3d 872 (Pa. 2020) (holding that
18 the Pennsylvania Governor could close all “non-life-sustaining” businesses by
19 executive order); *Baptiste v. Kennealy*, No. 1:20-cv-11335-MLW, 2020 U.S. Dist.
20 LEXIS 176264 (D. Mass. Sept. 25, 2020) (upholding eviction moratorium); *HAPCO*
21 *v. City of Philadelphia*, No. 20-3300, 2020 U.S. Dist. LEXIS 156327 (E.D. Pa. Aug.
27, 2020 (same)); *Matorin v. Massachusetts*, Civil Action No. 20-CV-01334 (Mass.
Sup. Ct. Aug. 26, 2020) (same); *Auracle Homes, LLC v. Lamont*, No. 3:20-cv-0829
(VAB), 2020 U.S. Dist. LEXIS 141500 (D. Conn. Aug. 7, 2020) (same); *Elmsford*
Apt. Assocs., LLC et al. v. Cuomo, No. 20-cv-04062, 2020 WL 3498456 (S.D.N.Y.
June 29, 2020) (same).

1 **1. Stay-at-Home and Social Distancing Guidance**

2 Eviction moratoriums promote public health and safety by ensuring that stay-at-
3 home orders can reduce the spread of COVID-19. Stay-at-home orders work to stop
4 the spread of COVID-19 by limiting contagious contact outside of homes and thus
5 lowering the number of new people infected by each case.³ States that implemented
6 stay-at-home orders saw a 48.6% reduction in new cases after three weeks and a
7 59.8% reduction in weekly fatalities.⁴ States that imposed stay-at-home orders also
8 saw a reduction in the average number of new people infected by a person sick with
9 COVID-19 to less than one, a vital benchmark for successful suppression of the
10 virus.⁵ The reduction in spread happened because residents were able to stay at home,
11 away from public transit and other public spaces.⁶

12 Eviction moratoriums play a crucial role in ensuring that stay-at-home orders
13 are effective by preventing tenants from becoming homeless or relocating to
14 overcrowded homes.⁷ The economic downturn associated with the COVID-19

15 _____
16 ³ James H. Fowler et al., *The Effect of Stay-at-Home Orders on COVID-19 Cases and*
17 *Fatalities in the United States*, medRxiv, 1, 10-11 (May 12, 2020),
<https://www.medrxiv.org/content/10.1101/2020.04.13.20063628v3.full.pdf>.

18 ⁴ *Id.* at 8.

19 ⁵ Juliette T. Unwin et al., *Report 23: State-level Tracking of COVID-19 in the United*
20 *States*, Imperial College London, 9 (May 28, 2020),
[https://www.imperial.ac.uk/media/imperial-college/medicine/mrc-gida/2020-05-28-](https://www.imperial.ac.uk/media/imperial-college/medicine/mrc-gida/2020-05-28-COVID19-Report-23-version2.pdf)
[COVID19-Report-23-version2.pdf](https://www.imperial.ac.uk/media/imperial-college/medicine/mrc-gida/2020-05-28-COVID19-Report-23-version2.pdf).

21 ⁶ *Id.* at 4.

⁷ See Declaration of Emily A. Benfer ¶ 21, ECF No. 55-4 (October 4, 2020) (Visiting

1 pandemic has increased the number of households at risk of eviction.⁸ Even under
2 normal circumstances, evictions cause substantial increases in both homelessness and
3 overcrowding, as people lose their homes and either have no place to go or find shelter
4 wherever they can.⁹ With public and nonprofit housing assistance and other social
5 services strained due to tight budgets and rising need, experts predict that if the
6 moratorium is lifted, increases in homelessness and overcrowding will be more severe
7 than normal.¹⁰ Homelessness and overcrowding will in turn increase the risk of both
8 individual infection and uncontrolled outbreaks because individuals cannot effectively
9 socially distance.

10 **2. Homelessness**

11 Homelessness increases the risk of infection and death caused by COVID-19.
12 The Centers for Disease Control and Prevention (“CDC”) noted that observing their
13 recommended precautions to avoid contracting COVID-19, such as avoiding public

14 _____
15 Professor of Law at Wake Forest University School of Law stating that “Eviction
16 forces families into transiency and crowded residential environments that increase
17 new contact with others and make compliance with pandemic health guidelines
18 difficult or impossible.”)

17 ⁸ *Id.* ¶¶ 10-13 (describing the impact the economic downturn has had on tenants’
18 ability to pay rent).

19 ⁹ Kimberly Skobba & Edward G. Goetz, *Mobility Decisions of Very Low-Income*
20 *Households*, 15.2 *Cityscape: J. Pol’y Dev. & Res.* 155, 158 (2013).

20 ¹⁰ Jen Kirby, *America’s Looming Housing Catastrophe, Explained*, Vox (July 8,
21 2020), <https://www.vox.com/21301823/rent-coronavirus-covid-19-housing-eviction-crisis>.

1 spaces and frequent handwashing, may be impossible for people experiencing
2 homelessness.¹¹ Homelessness can create additional health problems and accelerate
3 aging for those who experience it chronically, which places this generally older
4 population at particularly high risk for severe illness and death from COVID-19.¹² In
5 other states, as individuals experiencing homelessness crowd into shelters without
6 resources to fully implement safe practices, these shelters have become hotspots for
7 community spread, threatening the broader public health.¹³ While shelters in
8 California have implemented a range of COVID-19 safety protocols to reduce spread,
9 infection control remains very difficult and several Los Angeles homeless shelters
10 have experienced COVID-19 outbreaks.¹⁴

11
12 ¹¹ *People Experiencing Homelessness*, Ctrs. for Disease Control & Prevention (June
13 12, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html)
14 [precautions/homelessness.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html).

15 ¹² Dennis P. Culhane et al., *Estimated Emergency and Observational/Quarantine*
16 *Capacity Need for the US Homeless Population Related to COVID-19 Exposure by*
17 *County; Projected Hospitalizations, Intensive Care Units and Mortality*, Nat'l All. to
18 End Homelessness, 2-5 (Mar. 27, 2020), [https://endhomelessness.org/wp-](https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf)
19 [content/uploads/2020/03/COVID-paper_clean-636pm.pdf](https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf).

20 ¹³ See, e.g., Vianna Davila, *Coronavirus Hot Spots in Texas Homeless Shelters*
21 *Highlight Challenges Unsheltered Residents Face Social Distancing, Staying Clean*,
Tex. Trib. (May 24, 2020), [https://www.texastribune.org/2020/05/24/texas-homeless-](https://www.texastribune.org/2020/05/24/texas-homeless-shelters-coronavirus-houston-austin-dallas/)
[shelters-coronavirus-houston-austin-dallas/](https://www.texastribune.org/2020/05/24/texas-homeless-shelters-coronavirus-houston-austin-dallas/).

¹⁴ Joel Grover & Josh Underwood-Davis, *Coronavirus Spreads to Most Skid Row*
Homeless Shelters, Despite Efforts to Stop It, NBC L.A. (May 11, 2020),
[https://www.nbclosangeles.com/investigations/coronavirus-spreads-to-most-skid-row-](https://www.nbclosangeles.com/investigations/coronavirus-spreads-to-most-skid-row-homeless-shelters-despite-efforts-to-stop-it/2360838/)
[homeless-shelters-despite-efforts-to-stop-it/2360838/](https://www.nbclosangeles.com/investigations/coronavirus-spreads-to-most-skid-row-homeless-shelters-despite-efforts-to-stop-it/2360838/); see also Emily Mosites et al.,
Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters — Four U.S.
Cities, March 27–April 15, 2020, 69 *Mortality & Morbidity Wkly. Rep.* 521 (May 1,

1 **3. Overcrowding**

2 Overcrowding or “doubling up” of households in non-shelter housing presents
3 similar risks. Multiple studies have found that neighborhoods with a higher proportion
4 of overcrowded homes had higher rates of infection, with greater risks especially for
5 the elderly living in close quarters with younger people.¹⁵ These studies reinforce the
6 data and other evidence submitted by the Intervenor Defendants, which demonstrates
7 that communities with higher percentages of overcrowding generally have had higher
8 case infection rates.¹⁶ Household members cannot effectively socially distance when
9 they share common areas such as restrooms and may even share sleeping quarters.
10 Essential workers in sectors with exposure to the general public, like food service and
11 healthcare, also face disproportionate overcrowding, heightening the risk of

12
13 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6917e1.htm> (documenting
outbreak that infected 66% of residents at a shelter in San Francisco).

14 ¹⁵ *COVID-19 Cases in New York City, a Neighborhood-Level Analysis*, NYU Furman
15 Ctr. (Apr. 10, 2020), [https://furmancenter.org/thestoop/entry/covid-19-cases-in-new-](https://furmancenter.org/thestoop/entry/covid-19-cases-in-new-york-city-a-neighborhood-level-analysis)
16 [york-city-a-neighborhood-level-analysis](https://furmancenter.org/thestoop/entry/covid-19-cases-in-new-york-city-a-neighborhood-level-analysis); see also Benfer Dec., ¶ 21 (“Residential
crowding and increased contact with others drive the spread of respiratory illnesses,
such as COVID-19.”); Jackie Botts & Lo Bénichou, *The Neighborhoods Where*
17 *COVID Collides with Overcrowded Homes*, CalMatters (June 12, 2020),
[https://calmatters.org/projects/california-coronavirus-overcrowded-neighborhoods-](https://calmatters.org/projects/california-coronavirus-overcrowded-neighborhoods-homes/)
18 [homes/](https://calmatters.org/projects/california-coronavirus-overcrowded-neighborhoods-homes/).

19 ¹⁶ See Benfer Dec. ¶ 21.

1 overcrowding-related COVID-19 exposure to themselves, their households, and the
2 community.¹⁷

3 As cases continue to rise nationally, experts also anticipate a “second wave” of
4 community spread, even in states and localities that have significantly reduced the
5 number of active COVID-19 cases.¹⁸ Since the beginning of October, case rates in Los
6 Angeles County have begun to spike again, and the county remains at high risk for
7 spread of COVID-19 in the community.¹⁹ Low existing immunity in the general
8 population and the contagiousness of the virus both make a resurgence more likely.²⁰
9 Even after rigorous shelter-in-place orders, New York City and the State of Wisconsin
10 have re-imposed public health orders in response to community spread.²¹ Local

11
12 ¹⁷ Marisol Cuellar Mejia & Paulette Cha, *Overcrowded Housing and COVID-19 Risk*
13 *among Essential Workers*, Pub. Pol’y Inst. of Cal. (May 12, 2020),
<https://www.ppic.org/blog/overcrowded-housing-and-covid-19-risk-among-essential-workers/>.

14 ¹⁸ Cory Stieg, *What a ‘Second Wave’ of Covid-19 Could Look Like and How to*
15 *Prevent It*, CNBC (June 28, 2020), <https://www.cnbc.com/2020/06/28/what-second-wave-of-covid-19-means-and-how-to-prevent-it.html>.

16 ¹⁹ Evan Webeck, *Coronavirus: Where Cases Are Rising and Where They Are Falling*
17 *in California*, Mercury News (Oct. 9, 2020), <https://www.mercurynews.com/2020/10/09/coronavirus-where-cases-are-rising-and-where-they-are-falling-in-california/>.

18 ²⁰ Tyler S. Brown & Rochelle P. Walensky, *Serosurveillance and the COVID-19*
19 *Epidemic in the US: Undetected, Uncertain, and Out of Control*, JAMA Network
(July 21, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2768835>.

20 ²¹ Gregory Barber, *New York Is Trying Targeted Lockdowns. Will It Stop a Second*
21 *Wave?*, WIRED (Oct. 12, 2020), <https://www.wired.com/story/new-york-is-trying-targeted-lockdowns-will-it-stop-a-second-wave/>; Alison Durkee, *Wisconsin Judge Upholds Mask Mandate As Coronavirus Cases Surge*, Forbes (Oct. 12, 2020)

1 governments as service providers also have shifted resources to treat and prevent
2 COVID-19 and influenza cases in the fall and winter.²² The City itself is coordinating
3 with the County of Los Angeles and the University of Southern California School of
4 Pharmacy to increase the provision of free flu vaccines in anticipation of dual spread
5 during the fall and winter.²³ Absent the maintenance of the eviction moratorium, a
6 worsening public health crisis could accelerate as households are evicted just as
7 COVID-19 cases begin rising again.²⁴ At increased risk of contracting and spreading
8 COVID-19 due to homelessness or overcrowded housing, those evicted from their
9 residences could spark new outbreaks and undermine California’s relative success
10 thus far in addressing the pandemic.²⁵

11 _____
12 <https://www.forbes.com/sites/alisondurkee/2020/10/12/wisconsin-judge-upholds-mask-mandate-as-coronavirus-cases-surge/-251433fb3821>.

13 ²² See, e.g., *With COVID-19 Increasing Risk, Santa Clara County Offers Free Flu*
14 *Shots*, CBS SF Bay Area (Sept. 17, 2020) (expanding vaccination efforts),
15 <https://sanfrancisco.cbslocal.com/2020/09/17/santa-clara-county-offering-free-flu-shots-as-covid-19-increases-risk/>; Cyrus Moulton, *Worcester Health Officials Work to*
16 *Ward Off COVID, Flu Season ‘Twindemic’*, Telegram (Oct. 10, 2020)
17 <https://www.telegram.com/news/20201010/worcester-health-officials-work-to-ward-off-covid-flu-season-twindemic>.

18 ²³ Cari Spencer, *USC School of Pharmacy Partners With City of Los Angeles for Free*
19 *Flu Shot Vaccines*, Daily Trojan (Oct. 9, 2020),
20 <https://dailytrojan.com/2020/10/09/usc-school-of-pharmacy-partners-with-city-of-los-angeles-for-free-flu-shot-vaccines/>.

21 ²⁴ See Benfer Dec., ¶¶ 25-26 (lifting state eviction moratoriums associated with 2.1 times higher mortality and 1.5 times higher incidence of COVID-19).

²⁵ See Benfer Dec., ¶¶ 21, 23 (homeless shelters and transient living creates a particularly high risk for virus spread and infection).

1 **B. The Eviction Moratorium Promotes Public Health and Safety by**
2 **Maintaining Economic Welfare**

3 The eviction moratorium is also essential to maintaining the economic security
4 of Los Angeles residents. The severe harms caused by the nearly unparalleled national
5 economic crisis instigated by the pandemic imperil the public welfare of our
6 communities. Even if the eviction moratorium is considered solely through the lens of
7 economic regulation (rather than as a public health measure, which it is as well), state
8 and local governments are still granted broad deference in review. *See, e.g., Exxon*
9 *Corp. v. Governor of Md.*, 437 U.S. 117, 125-26 (1978); *accord Birkenfeld v. City of*
10 *Berkeley*, 550 P.2d 1001, 1020 (Cal. 1976) (“[A] state is free to adopt
11 whatever economic policy may reasonably be deemed to promote public welfare, and
12 to enforce that policy by legislation adapted to its purpose. The courts are without
13 authority...when it is declared by the legislature, to override it.”). Under the
14 California Constitution, cities’ police power to promote public welfare “is as broad as
15 the police power exercisable by the Legislature itself.” *Id.* at 1009. Given the scale of
16 the economic crisis faced by the City of Los Angeles and the rest of the country, and
17 the devastating consequences of eviction on economic stability and public health and
18 safety, a temporary eviction moratorium against nonpayment cases is an appropriate
19 exercise of the City’s authority.

20 Our residents are struggling economically. Between February and April of this
21 year, the national unemployment rate increased from a low of 3.5% to a peak of

1 14.7%.²⁶ Accounting for misclassified workers and workers who have left the
2 workforce, the effective unemployment rate is likely still 11% in September, despite
3 extraordinary measures taken by the federal, state, and local governments.²⁷ The
4 California unemployment rate in April was the highest it has ever been at 16.4%.²⁸
5 Although the state unemployment rate has decreased down to 11.4% in August, Los
6 Angeles County’s unemployment rate remains high at 16.6%.²⁹

7 Other indicators, such as rising food insecurity, further illustrate the economic
8 peril that so many families across the country are facing right now. Nationally,
9 enrollment in the Supplemental Nutrition Assistance Program (“SNAP” or “food
10 stamps”) has increased by more than six million Americans since the beginning of the
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12 ²⁶ *Civilian Unemployment Rate*, U.S. Bureau of Lab. Stat.
13 <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm>
(last visited Oct. 13, 2020).

14 ²⁷ Scott Horsley, *Fed’s Jerome Powell Calls for More Economic Aid, Warning*
15 *‘Weakness Feeds on Weakness’*, NPR (Oct. 6, 2020),
16 <https://www.npr.org/2020/10/06/920770414/feds-jerome-powell-calls-for-more-economic-aid-warning-weakness-feeds-on-weaknes>; Rakesh Kochhar, *Unemployment*
17 *Rose Higher in Three Months of COVID-19 Than It Did in Two Years of the Great*
18 *Recession*, Pew Res. Ctr. (June 11, 2020) (documenting peak of unemployment during
19 Great Recession at 10.6%), <https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession/>.

20 ²⁸ *California Unemployment Rate Lowers Slightly to 16.3 Percent in May*, Emp.
21 Development Dep’t (June 9, 2020), <https://edd.ca.gov/newsroom/unemployment-june-2020.htm>.

²⁹ *Economy at a Glance*, U.S. Bureau of Lab. Stat. (Oct. 13, 2020),
https://www.bls.gov/eag/eag.ca_losangeles_md.htm.

1 crisis,³⁰ while California has witnessed a 350% increase in online applications for the
2 state's CalFresh program in the month of March.³¹ Residents in our communities have
3 lost their health care coverage, which places them at greater risk of further economic
4 devastation should they fall ill.³² Uninsured people may also face barriers in seeking
5 medical care, hampering the broader public health response to the COVID-19
6 pandemic.³³

7 Finally, due to surging unemployment and other economic factors, 1 in 6
8 renters nationally reported that they were unable to pay their full September rent on
9 time.³⁴ In Los Angeles County, 16% of renters reported failing to pay rent on time

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11 ³⁰ Dottie Rosenbaum, *Boost SNAP to Capitalize on Program's Effectiveness and Ability to Respond to Need*, Ctr. on Budget & Pol'y Priorities (July 18, 2020),
12 <https://cbpp.org/research/food-assistance/boost-snap-to-capitalize-on-programs-effectiveness-and-ability-to-respond>.

13 ³¹ Patrick McGreevy, *Demand for Food Stamps Surges in California as Virus Takes Economic Toll*, L.A. Times (March 31, 2020),
14 <https://www.latimes.com/california/story/2020-03-31/california-demand-food-stamps-calfresh-coronavirus>.

15 ³² Stan Dorn, *The COVID-19 Pandemic and Resulting Economic Crash Have Caused the Greatest Health Insurance Losses in American History*, Families USA (July 17, 2020),
16 <https://www.familiesusa.org/resources/the-covid-19-pandemic-and-resulting-economic-crash-have-caused-the-greatest-health-insurance-losses-in-american-history/>.

17 ³³ Jennifer Tolbert, *What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?*, Kaiser Fam. Fdn. (Mar. 16, 2020),
18 <https://www.kff.org/coronavirus-covid-19/fact-sheet/what-issues-will-uninsured-people-face-with-testing-and-treatment-for-covid-19/>.

19 ³⁴ Annie Nova, *Millions of Americans May Not be Able to Pay Their Rent in October*, CNBC (October 2, 2020), <https://www.cnbc.com/2020/10/02/millions-of-americans-may-not-be-able-to-pay-rent-in-october.html>.

1 between May and July, with 40,000 households at least three months behind on rent as
2 of late August.³⁵ One study estimates that up to 40 million renters nationwide could be
3 at risk of eviction in the coming months³⁶—up from estimates of around 20 million at
4 risk in June.³⁷ These issues compound in a vicious cycle: for instance, while
5 unemployment can cause difficulty in paying rent, housing insecurity also leads to job
6 loss among low-income workers.³⁸ If left unaddressed, these intersecting crises will
7 only accelerate the economic downturn.

8 *Amici* have particularly strong economic interests in keeping people housed
9 during this crisis. Stable housing is associated with maintaining stable employment,
10 which is especially important during a time when so many people are already at risk

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12 ³⁵ Michael Manville et al., COVID-19 and Renter Distress: Evidence in Los Angeles
13 County, UCLA Lewis Ctr. for Reg'l Pol'y Studies (2020) (documenting 22% of
14 renters missing full rent payments), <https://www.lewis.ucla.edu/research/covid19-and-renter-distress/>.

15 ³⁶ Emily Benfer et al., *The Covid-19 Eviction Crisis: An Estimated 30-40 Million
16 People in America Are at Risk*, Nat'l Low Income Hous. Coal. (Aug. 7, 2020),
17 https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf.

18 ³⁷ Katherine Lucas McKay et. al., *20 Million Renters Are at Risk of Eviction;
19 Policymakers Must Act Now to Mitigate Widespread Hardship*, Aspen Inst. (June 19,
20 2020), <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/>.

21 ³⁸ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity
Among the Working Poor*, 63 Soc. Problems 54, 59 (2016) (finding that forced moves,
including evictions, increase the likelihood of job loss among low-income workers by
15 to 22 percentage points.)

1 of losing their jobs.³⁹ Job loss and evictions compromise family savings, which in turn
2 “put[s] pressure on city budgets” by increasing the likelihood that people turn to
3 public benefits.⁴⁰ Cities will simultaneously lose revenue from unpaid utility bills and
4 other revenue streams.⁴¹ Temporary eviction moratoriums ensure local governments
5 can direct limited resources toward the most vulnerable populations.

6 Confronted with this potential economic devastation, the City Council’s
7 decision to impose an eviction moratorium is a reasonable—and even necessary—
8 regulation to ensure the economic stability and health and safety of the public.
9 Numerous studies have found that evictions cause severe and negative health and
10 safety impacts on affected households and their communities, with particularly
11 pernicious effects on low-income communities and communities of color.⁴² Evictions

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13 ³⁹ See Benfer Dec., ¶ 10 (“[E]xtreme job and wage loss has resulted in unprecedented levels of rent hardship”).

14 ⁴⁰ See, e.g., Signe-Mary McKernan, et al, *Thriving Residents, Thriving Cities: Family Financial Security Matters for Cities*, Urban Inst. (Apr. 21, 2016),
15 <https://www.urban.org/research/publication/thriving-residents-thriving-cities-family-financial-security-matters-cities>; see also Benfer Dec. ¶ 12 (stating that requests for rental assistance have increased 92% since the pandemic began).

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17 ⁴¹ Signe-Mary McKernan, *supra* note 40; For example, in 2019, the City of Chicago lost between \$68 million and \$157 million on evictions, unpaid property taxes, and unpaid utility bills. Diana Elliot and Kassandra Martincheck, *Chicago: The Cost of Eviction and Unpaid Bills of Financially Insecure Families for City Budgets*, Urban Inst. (Nov. 2019), <https://www.urban.org/sites/default/files/publication/101301/cost-eviction-chicago.pdf>.

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19
20 ⁴² See Declaration of Sam Tsemberis, ¶¶ 5-9, 17-19, ECF No. 55-2 (Oct. 5, 2020) (Clinical Associate Professor in the UCLA Department of Psychiatry and
21 Biobehavioral Sciences discussing impact of evictions on racial disparities in Los

1 increase the likelihood of contact with the criminal justice system,⁴³ employment
2 instability,⁴⁴ maternal hardship and depression,⁴⁵ relocation to higher-poverty and
3 higher-crime neighborhoods,⁴⁶ drug use,⁴⁷ and poor health, particularly for children
4 exposed to toxins, stress, and other dangerous conditions resulting from homelessness
5 or substandard, overcrowded housing.⁴⁸

6 * * * *

7 Given the extensive public health and economic welfare impacts of a potential
8 wave of mass evictions, and given the centrality of housing stability to the City’s
9 public health response to COVID-19, the City of Los Angeles’s decision to

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11 Angeles).

12 ⁴³ Aaron Gottlieb & Jessica W. Moose, *The Effect of Eviction on Maternal Criminal Justice Involvement*, 4 Socius: Socio. Res. Dynamic World 6-10 (2018).

13 ⁴⁴ Matthew Desmond & Carl Gershenson, *supra* note 38, at 54–61.

14 ⁴⁵ Matthew Desmond & Rachel T. Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 Soc. Forces 310-19 (2015).

15 ⁴⁶ Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 Demography 1760–69 (2015).

16 ⁴⁷ See, e.g., William Damon et. al., *Residential Eviction Predicts Initiation of or Relapse into Crystal Methamphetamine Use Among People Who Inject Drugs*, 41 J. Pub. Health 38-43 (2018); see also Ashley C. Bradford & W. David Bradford, *The Effect of Evictions on Accidental Drug and Alcohol Mortality*, 55 Health Serv. Res. 15-16 (2020).

17 ⁴⁸ Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity among Low-Income and Minority Tenants*, 24 Geo. J. Poverty L. & Pol’y 70-73 (2016).

1 temporarily halt nonpayment evictions was not only reasonable, but it was also the
2 correct choice.⁴⁹

3 **II. THE EVICTION MORATORIUM DOES NOT VIOLATE THE**
4 **CONTRACTS CLAUSE**

5 Contracts Clause jurisprudence allows states to use police powers to impair
6 private contractual obligations if the three-part test set forth in *Energy Reserves Group*
7 *v. Kansas Power & Light Company* is met. 459 U.S. 400, 411-12 (1983); *see also*
8 *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 434 (1934) (holding that states
9 could use their police powers to protect citizens from economic harms by modifying
10 private contracts). Under *Energy Reserves*, a court must (1) determine if a law
11 substantially impairs private contractual rights. If it does, such a restriction can be
12 upheld if (2) the state has a “significant and legitimate public purpose behind the
13 regulation;” and (3) the adjustments of contractual rights and responsibilities were
14 based on reasonable conditions and tailored to the public purpose supporting the
15 legislation. 459 U.S. at 411-13; *see also Sveen v. Melin*, 138 S. Ct. 1815, 1822 (2018)
16 (collapsing parts two and three above into an inquiry about “the means and ends of the

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18 ⁴⁹ In doing so, the Los Angeles City Council lawfully relied on the findings of the
19 Governor and the Mayor in their executive orders. Executive Order, Proclamation of a
20 State of Emergency (Mar. 4, 2020); Executive Order, Declaration of Local Emergency
21 (Mar. 4, 2020); *see also Renton v. Playtime Theatres*, 475 U.S. 41, 51-52 (1986)
(finding that when addressing an issue already addressed by other jurisdictions or
authorities, states and local governments are granted the deference to rely on evidence
generated by other jurisdictions or authorities, so long as it is reasonably relevant to
the instant problem).

1 legislation”). “The law affords States a wide berth to infringe upon private contractual
2 rights when they do so in the public interest.” *Elmsford Apartment Assocs.*, 2020 WL
3 3498456, at *12 (citing *U.S. Tr. Co. of New York. v. New Jersey*, 431 U.S. 1, 16
4 (1977)). The eviction moratorium does not meet the threshold requirements of a
5 substantial impairment, but even if it did, the regulation has several significant
6 purposes and is tailored to the purposes for the legislation.

7 **A. The Eviction Moratorium Does Not Substantially Impair Private**
8 **Contractual Rights.**

9 The eviction moratorium does not substantially impair landlords’ contractual
10 rights. Among other things, past regulation of the industry is relevant as to whether
11 the regulation in question constitutes a substantial impairment. *Allied Structural Steel*
12 *Co. v. Spannaus*, 438 U.S. 234, 242 n.13 (1978) (citing *Veix v. Sixth Ward Bldg. &*
13 *Loan Ass’n.*, 310 U.S. 32, 38 (1940)); *see also Elmsford Apartment Ass’ns.*, 2020 WL
14 3498456 at *12 (“[T]he extent to which such impairment qualifies as substantial, ‘is
15 affected by whether the relevant party operates in a heavily regulated industry.’”) (quoting *Sullivan v. Nassau Cnty. Interim Fin. Auth.*, 959 F.3d 54, 64 (2d Cir. 2020)).
16 Additionally, “the landlord-tenant relationship is, if nothing else, heavily regulated.”
17 *Chicago Bd. of Realtors, Inc. v. Chicago*, 819 F.2d 732, 736-37 (7th Cir. 1987)
18 (explaining that tenant-protective measures, such as limits on late fees and
19 maintenance requirements, were subject to lesser scrutiny under the substantial
20 impairment standard); *see also Troy, Ltd. v. Renna*, 727 F.2d 287, 297 (3d Cir. 1984)
21

1 (concluding that prolonging the length of time a landlord was barred from evicting a
2 tenant was not a substantial impairment because the tenancy was already regulated by
3 the state); *Elmsford Apartment Ass 'ns.*, 2020 WL 3498456, at *12-13; *HAPCO v. City*
4 *of Philadelphia*, No. 20-3300, 2020 U.S. Dist. LEXIS 156327, at *18 -*19 (E.D. Pa.
5 Aug. 27, 2020) (similarly reasoning that an eviction moratorium, rent repayment grace
6 period, and ban on late fees was not a substantial impairment because it “merely
7 postpone[] the date on which landlords may commence” eviction proceedings and
8 collect full rent from their tenant).

9 In determining substantial impairment, Supreme Court precedent has
10 “considered the extent to which the law undermines the contractual bargain, interferes
11 with a party’s reasonable expectations, and prevents the party from safeguarding or
12 reinstating his rights.” *Sveen*, 138 S. Ct. at 1822 (internal citations omitted). Even
13 laws that make a “significant change” do not necessarily constitute a “substantial
14 impairment.” *Id.* (concluding that Minnesota revocation-on-divorce statute did not
15 substantially impair pre-existing contractual arrangements). The City’s eviction
16 moratorium and the rent repayment grace period impose a temporary restraint on a
17 landlord’s ability to take action for nonpayment. They do not extinguish the right to
18 collect future rent from tenants or extinguish payments that are due. Accordingly,
19 neither policy is a substantial impairment and the analysis could stop here.

20
21

1 **B. The Eviction Moratorium Fulfills a Significant and Legitimate Public**
2 **Purpose**

3 Even if the eviction moratorium substantially impairs the private contractual
4 rights of landlords, it is permitted to do so because it serves a significant public
5 purpose. The “remedying of a broad and general social or economic problem”
6 constitutes a significant and legitimate public purpose that justifies impairing private
7 contracts. *Energy Reserves*, 459 U.S. at 411-12. This “authority retained by the state
8 over contracts to safeguard the vital interests of its people . . . extends to economic
9 needs” *Veix*, 310 U.S. at 38-39 (upholding state restriction on withdrawal of
10 funds).

11 In prior crises, the Supreme Court has held that protecting the stability of the
12 nation’s economy constituted a significant and legitimate public purpose that justified
13 the impairment of contractual rights. *See id.*; *see also U.S. Tr. Co. of New York*, 431
14 U.S. at 22 n.19 (citations omitted) (explaining that the existence of an emergency and
15 limited duration of a policy are factors to be assessed but are not dispositive when
16 determining the existence of a legitimate public purpose). In *Veix*, “the weakness in
17 the financial system” after the Great Depression justified substantial impairment of
18 building and loan associations’ contracts because it protected the public from
19 widespread harm resulting from further depression of real estate values. 310 U.S. at
20 38-39. In *Block v. Hirsh*, the Supreme Court upheld a temporary rent control law in
21 the District of Columbia that was implemented because of a national housing shortage

1 after World War I. 256 U.S. 135 (1921). Here, the City of Los Angeles has acted to
2 protect tenants from the similarly massive social and economic problems, on top of a
3 public health crisis.⁵⁰ As discussed above, the eviction moratorium serves to limit the
4 spread of COVID-19 and protect the public health of the state. Because losing access
5 to stable housing is associated with an increased likelihood of job loss,⁵¹ keeping
6 people housed is also critical during the current economic crisis where so many have
7 lost their jobs.

8 **C. The Eviction Moratorium is Reasonably Tailored to Protect the Public**
9 **Health and Economic Welfare of Tenants During the COVID-19**
10 **Pandemic**

11 Under the third prong of the Contracts Clause analysis, any substantial
12 impairment to contractual relationships must be reasonable and tailored to the public
13 purpose supporting the legislation. *Energy Reserves*, 459 U.S. at 412-13. Relevant
14 factors include whether the state has declared an emergency, if the law is temporary in
15 nature, and if the law is limited in its purpose, although no single factor is an
16 “absolute requirement[.]” *U.S. Tr. Co.*, 431 U.S. at 22 n.19; *see also Veix*, 310 U.S. at
17 39-40 (finding no Contracts Clause violation when an emergency had passed but its
18 effects remained even though the relief was not temporary); *Blaisdell*, 290 U.S. at

19 ⁵⁰ See L.A., Cal., Ordinance 186585 (Mar. 31, 2020) (“[A]s a result of the public
20 health emergency. . . many residents and businesses in the City of Los Angeles have
21 experienced or expect soon to experience sudden and unexpected income loss”).

⁵¹ See Matthew Desmond & Carl Gershenson, *supra* note 38, at 54–61; Tsemberis
Dec., ¶ 22 (discussing challenges of re-entering job market, when homeless).

1 447-48 (finding no Contracts Clause violation for a two-year moratorium on
2 foreclosures). Here, the eviction moratorium meets this test handily.

3 The impact of the moratorium on rental contracts is reasonable and
4 appropriately tailored in light of the state of emergency declared in response to the
5 COVID-19 pandemic. The Mayor of Los Angeles declared a state of emergency on
6 March 4, 2020 in response to COVID-19’s “imminent threat to the public health.”⁵²
7 The eviction moratorium is a temporary extension of the emergency declaration and
8 only lasts during the local emergency period. While tenants have an additional twelve
9 months after the local emergency ends to repay unpaid rent without the risk of
10 eviction, state law explicitly provides that period cannot extend past March 2022. Cal.
11 Civil Pro. Code § 1179.05(a)(2)(C). Furthermore, while the City Council can extend
12 the emergency declaration, the Council must terminate the declaration “at the earliest
13 possible date that conditions warrant.” L.A., Cal., Admin. Code, ch. 3, art. 3, § 8.31
14 (2020). After the eviction moratorium is lifted, landlords remain free to file eviction
15 suits in court or pursue back rent in small claims court. Indeed, the moratorium
16 explicitly preserves tenants’ obligations to pay rent to landlords. L.A., Cal., Ordinance
17 186585, § 49.99.5 (Mar. 31, 2020).

18 Finally, the purpose of the regulation is to protect renters during an
19 unprecedented public health and economic crisis. An eviction moratorium is an
20

21 ⁵² Executive Order, Declaration of Local Emergency (Mar. 4, 2020).

1 effective means to promote public health and economic welfare during the ongoing
2 global pandemic both because keeping people inside and housed curbs the spread of
3 the virus, and because ensuring housing stability contributes to job retention and
4 strengthens local economies. Given the substantial public interest state and local
5 governments have in maintaining both local public health and economic stability,
6 temporary and limited regulations are a justified measure to take to support the public
7 good. Accordingly, the eviction moratorium is reasonably tailored in duration and
8 reach to support this crucial public purpose.

9 **CONCLUSION**

10 For all the foregoing reasons and for the reasons provided in opposition by
11 Defendants the City of Los Angeles, Eric Garcetti, and the City Council of the City of
12 Los Angeles, *Amici* Cities and County respectfully request that the motion for
13 preliminary injunction be denied.

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