20-4238

United States Court of Appeals
for the Second Circuit

MARCIA MELENDEZ, JARICAN REALTY INC., 1025 PACIFIC LLC, LING YANG, TOP EAST REALTY LLC, HAIGHT TRADE LLC, ELIAS BOCHNER, and 287 7TH AVENUE REALTY LLC,

Plaintiffs-Appellants,

against

CITY OF NEW YORK, a municipal entity, BILL DE BLASIO, as Mayor of the City of New York, LOUISE CARROLL, Commissioner of New York City Department of Housing Preservation & Development, and JONNEL DORIS, Commissioner of New York City Department of Small Business Services,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF FOR APPELLEES

JAMES E. JOHNSON
Corporation Counsel
of the City of New York
Attorney for Appellees
100 Church Street
New York, New York 10007
212-356-2490 or -2502
jdavies@law.nyc.gov

RICHARD DEARING
DEVIN SLACK
JAMISON DAVIES
of Counsel

March 18, 2021

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (cont'd)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (cont'd)

Page(s)

TABLE OF AUTHORITIES (cont'd)

Page(s)

Constitution

TABLE OF AUTHORITIES (cont'd)

Page(s)

Statutes

Other Authorities

PRELIMINARY STATEMENT

In this action, a handful of residential and commercial landlords challenge three laws adopted by the City of New York to confront the social and economic fallout from our ongoing public health emergency. The United States District Court for the Southern District of New York (Abrams, J.) dismissed the action for failure to state a claim.

This Court should affirm. Facing an unprecedented public health crisis, New York State sharply restricted the operation of many businesses to stem the spread of the disease. While limiting illness and death, these restrictions also threw countless businesses into turmoil, threatening to shut them down for good—leading their owners to personal financial ruin and depriving New Yorkers of key services when needed most. With the problem slicing so deep into the City's economic foundations, inaction was a recipe for exacerbating drastic unemployment levels, widespread housing instability, and a spiraling economic crisis that could take decades to escape from.

Recognizing this, the City of New York acted, passing laws that (a) barred enforcing certain personal guaranties backing commercial leases for a limited time and (b) extended preexisting tenant

harassment laws to cover harassment of lawful tenants affected by COVID-19. Plaintiffs challenge the personal guaranty law under the Constitution's Contracts Clause and challenge the anti-harassment laws under the First Amendment and Due Process Clause. These challenges have no merit.

The City's personal guaranty law is within the Contracts Clause's limits by a wide margin. The Supreme Court and this Court have been clear: legislatures are afforded wide discretion to enact laws in the public interest, even if they significantly diminish—or even eliminate—private contractual rights. That discretion is at an apex where, as here, a legislature confronts an emergency. It is doubtful that the plaintiff-landlords can show—as part of their facial challenge—that the personal guaranty law substantially impairs all guaranties to commercial leases covered by the law. But even setting that to one side, with economic and social disaster looming, the City plainly had a legitimate public purpose in enacting the law and it was appropriate and reasonable to that purpose. Plaintiffs may disagree with the City's policy judgment—or wish the City had been more accommodating to their interests—but neither is a basis to second-guess the law's rational basis.

Plaintiffs' First Amendment and Due Process Clause challenges to the City's tenant anti-harassment laws founder from the get-go. The laws simply add a protected status to a longstanding and uncontroversial tenant anti-harassment framework. Nothing about them implicates lawful speech because, despite plaintiffs' tortured and acontextual reading, they do not proscribe the routine and lawful rent-collection efforts that plaintiffs wish to engage in. Even if the laws incidentally implicated protected speech, they would be sufficiently tailored to meet the City's legitimate interest in preventing harassment of lawful tenants affected by the pandemic.

ISSUES PRESENTED FOR REVIEW

1. Did the district court correctly conclude that the City's law rendering certain personal guaranties—fallback remedies to covered commercial lease defaults—unenforceable for a limited time complies with the Contracts Clause?

2. Did the district court correctly conclude that the City's laws prohibiting harassment of lawful tenants affected by COVID-19 comply with the First Amendment and the Due Process Clause?

STATEMENT OF THE CASE

A. The global pandemic

While there is hope on the horizon, the COVID-19 pandemic continues to grip the world. The death toll stands at more than half a million Americans, millions more have been hospitalized, and nearly 30 million documented cases span the country.[1] All levels of government took drastic measures to limit the spread of the disease, including implementing stay-at-home orders, mandating closure of businesses and restaurants, and restricting public and private gatherings.

---

[1] *See* Centers for Disease Control and Prevention, *United States COVID-19 Cases and Deaths by State*, https://covid.cdc.gov/covid-data-tracker/#cases_totalcases (March 18, 2021).

These crucial measures limited the spread of the disease and averted an even more severe public health catastrophe, but they also had profound costs. The City's Comptroller, as the pandemic was just beginning to take hold, warned of "significant projected losses in the entertainment, hotel, restaurant, travel, and tourism sectors," the industries most affected by stay-at-home orders (Joint Appendix ("A") A1986). Restaurant revenues were projected to fall by 80% (A1987). Business downturns had the potential to cost the City $3.2 billion in lost tax revenues (*id.*).

Those predictions soon became a stark reality. A month into the pandemic, unemployment claims in the City had increased 2,637% (A1644). Approximately 80% of restaurant employees had lost their jobs (A1992). Nearly ten months into the pandemic, citywide unemployment was still a staggering 12%, and millions remained unemployed.[2]

B. New York State's response to the pandemic

New York State reacted to the twin public health and economic emergencies caused by the pandemic. In early March of last year, the

[2] Federal Reserve Bank of New York, *New York City Economic Indicators* 2–3 (March 13, 2021), *available at* https://perma.cc/Q9NU-W3QJ.

Governor was empowered to issue directives necessary to cope with the emergency and to temporarily suspend laws, rules, or orders (A1368–69). The Governor soon declared a state of emergency and has since issued dozens of executive orders under his authority (*see* A1370–1453).

Among other measures, the Governor directed the closure of non-essential businesses and the complete or partial suspensions of others. On March 16, 2020, the Governor closed gyms, fitness centers, and movie theaters, and stopped on-site service at restaurants and bars (A1375–76). A week later, the Governor required all non-essential businesses to send their in-person workforce home (A1388–89).

Beginning June 22, 2020, restaurants and bars were allowed to operate outdoors (A1426–30). Restaurants briefly opened for indoor dining with a capacity limit of 25%, but when COVID cases began to surge, Exec. Order 202.61, indoor dining was again stopped until February 12, 2021, Exec. Order 202.81. Gyms, fitness centers, and movie theaters remained subject to closure orders until recently. The capacity of restaurants and most service businesses remains constrained, and a return to full capacity is not yet in sight.

C. New York City's response to the pandemic

The City also took substantial measures to alleviate the impact of the pandemic on New Yorkers, proposing a suite of laws to promote public health, protect essential workers, and assist small businesses (*see* A519–21). Among other measures, the New York City Council, by overwhelming majorities, passed the laws that the plaintiffs-landlords challenge here (*see* A1362; 3517–18). Despite the need to act quickly, in considering the package of laws passed to address the COVID crisis, the Council still managed to collect thousands of pages of written testimony; review surveys, articles, and reports; hold six public hearings; and hear hours of oral testimony from small business regulators and advocates, real estate interest groups, chambers of commerce, community organizations, and others (*see* A1355–62 (summarizing legislative history)).

The laws are described in detail below.

1. The personal guaranty law

While commercial leases are often signed by a corporate tenant, to guard against the tenant's insolvency, landlords typically require a guaranty that can be enforced against a natural person, such as the

corporate tenant's owner. The State-mandated closures reduced or eliminated the ability of many commercial businesses to generate revenue in the short term, affecting their ability to pay rent. Business owners who had executed personal guaranties thus faced "personal financial ruin or bankruptcy" not because their business was failing, but because they were legally prohibited from operating (A521).

The Council responded by enacting Local Law No. 55-2020. The law covers personal guaranties for the payment of rent, made by natural persons who are not themselves the tenant, in commercial leases in New York City. N.Y.C. Admin. Code § 22-1005. The law made such guaranties unenforceable if two conditions are met. First, setting a temporal limitation on the law's reach, the tenant default that would otherwise trigger the guaranty must arise between March 7, 2020 and March 31, 2021. *Id.* § 22-1005(2).[3] Second, setting a limitation on the businesses protected, the tenant must either: (1) have been "required to cease serving patrons food or beverage for on-premises consumption or

[3] The original end date was September 30, 2020, which was extended to March 31, 2021. On March 10, 2021, a proposal was introduced in the Council to extend the covered period to June 30, 2021. *See* Intro. 2243-2021, *available at* https://perma.cc/9FJV-YC52.

to cease operation" under Executive Order 202.3; (2) be "a non-essential retail establishment subject to in-person limitations under" Executive Order 202.6; or (3) have been "required to close to members of the public under" Executive Order 202.7. N.Y.C. Admin. Code § 22-1005(1). The law did not alter any other remedy available to landlords to seek payment of rent under a commercial lease or retake possession of the premises.

The law's final form was substantially reduced in scope from the original proposal. The initial proposal would have suspended the enforcement of guaranties for commercial tenants who (1) were subject to any seating, occupancy, or on-premises limitations pursuant to any order issued by the Governor or the Mayor; or (2) suffered a 50% or more decline in revenues compared to its pre-COVID revenues (A1042–43).

The final law received broad support. A representative of the local hospitality sector testified that nothing "is keeping small business owners awake at night more than … personal guaranties on commercial leases" (A822). As he explained, "no one ever contemplated this situation where [tenants] are technically in possession but the

government says we cannot operate or only minimally operate" (*id.*). When the Council was considering the law, business owners were facing a stark choice: close their doors or risk another month of personal liability (A823). With more and more choosing the first option, "commercial strips in every neighborhood" would "turn into ghost towns" (A821).

Many business owners submitted letters explaining well-founded fears that enforcement of personal guaranties could cause them to "not only lose our business, our livelihoods and our investments in the business, but also spend every other dollar we have on commercial rent on a space that is unusable" (A1812). One owner described the risk of "not only losing my restaurants and my income," but also the "risk of losing the entirety of my life savings and any and all assets I have until I am personally bankrupt" (A2488; *see also* A1824–25, 1837, 2492). Business groups and community organizations also supported the law (A1854–55, 2422–23).

The legislative record reflects concern not only with unconditional personal guaranties, but also so-called "good guy" guaranties (A822). Good guy guaranties ostensibly "prevent someone from operating while

not paying the rent" by allowing the guarantor to give up possession of the leased premises in return for extinguishing ongoing personal liabilities (*id.*). But it is not as simple as giving up the keys and walking away. To avoid future liability, the guarantor must ordinarily provide at least two months' notice—and sometimes as much as six months—racking up personal liability during that entire period (A2084 (describing a standard notice period of two months); A4247 (six-month notice period)). The guarantor is also generally required to cover rent already in arrears and forfeit their security deposit (A1084, 2488).

2. The tenant anti-harassment laws

The Council also amended a longstanding framework governing tenant harassment to prohibit harassment based on a tenant's actual or perceived status as a person or business impacted by COVID.

The residential tenant law, which predates the pandemic, provides that the "owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling." N.Y.C. Admin. Code § 27-2005(d). "Harassment" is defined generally as an act or omission that "causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate … or to surrender or

waive any rights in relation to such occupancy." *Id.* § 27-2004(a)(48). But the conduct must also take a specific form from a defined list. For example, prohibited acts include "threatening any person lawfully entitled to occupancy" based on things like "actual or perceived age, race, creed, color, national origin, gender" or other characteristics. *Id.* § 27-2004(a)(48)(f-5). Building on this preexisting framework, the City added a new category of prohibited threats: those based on "actual or perceived status as an essential employee, status as a person impacted by COVID-19, or receipt of a rent concession or forbearance for any rent owed during the COVID-19 period." *Id.* § 27-2004(a)(48)(f-7).

The preexisting law governing commercial tenant harassment was also amended. The law has long prohibited landlords from engaging in "commercial tenant harassment." N.Y.C. Admin. Code § 22-902(a). And it, too, has barred an act or omission that "would reasonably cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law" provided that the act or omission is one on a defined list. *Id.* § 22-902(a). Again building on the preexisting framework, the City simply proscribed "threatening a commercial tenant based on … the

commercial tenant's status as a person or business impacted by COVID-19, or the commercial tenant's receipt of a rent concession or forbearance for any rent owed during the COVID-19 period." *Id.* § 22-902(a)(11).

The law explicitly exempts "[a] landlord's lawful termination of a tenancy, lawful refusal to renew or extend a lease or other rental agreement, or lawful reentry and repossession" from the definition of "commercial tenant harassment." *Id.* § 22-902(b). Likewise, it specifies that the commercial tenant "shall not be relieved of the obligation to pay any rent" and that any penalty awarded for harassment "shall be reduced by any amount of delinquent rent or other sum for which a court finds such commercial tenant is liable." *Id.* § 22-903(b)

D. This suit and its dismissal

Plaintiffs, a small group of residential and commercial property owners, filed suit challenging the City's personal guaranty law and the anti-harassment laws (A14–77). In a thorough opinion, the district court denied plaintiffs' motion for a preliminary injunction and granted the City's cross-motion to dismiss (Special Appendix ("SPA") 38).

The district court held that the personal guaranty law was consistent with the Contracts Clause. In the court's view, plaintiffs plausibly alleged that the law substantially impaired their reasonable expectations under commercial leases (SPA26–27). But the court went on to find that the law advanced a legitimate public purpose in supporting commercial tenants and their employees and, applying the substantial deference owed to the City Council, that it was reasonable and appropriate to that purpose (SPA27–33).

The district court also rejected plaintiffs' claim that the anti-harassment laws violate their First Amendment rights. The court explained that nothing in either law prevents plaintiffs from "communicating with delinquent tenants about past-due rent and pursuing available remedies to either collect that rent or to repossess their property" (SPA18). In context, a routine rent demand is not a "threat," and a request to pay the rent because it is due would not be "based on" an individual status as someone affected by COVID (SPA20–

22). The court also held that the harassment laws were not void for vagueness under the Due Process Clause (SPA22–24).[4]

SUMMARY OF ARGUMENT AND STANDARD OF REVIEW

On de novo review, *Singh v. Cigna Corp.*, 918 F.3d 57, 62 (2d Cir. 2019), this Court should affirm. The district court correctly dismissed plaintiffs' challenges to the personal guaranty law because the law is a valid exercise of the Council's power to safeguard the public interest, despite the effect on existing contracts. The law advances the legitimate public purpose of helping to prevent the personal financial ruin of tens of thousands of small business owners and the dire attendant economic consequences of their businesses closing in the midst of the pandemic. And the law is reasonable and appropriate to those ends. It prevents the enforcement of personal guaranties—already a fallback option for rent collection—and only for tenants who have been directly affected by mandated shutdowns, and only for a limited time. It does not affect any other remedies under the lease.

---

[4] The court also rejected plaintiffs' claims that the laws are preempted by New York State law and declined to exercise supplemental jurisdiction over plaintiffs' state-law claims (SPA17 n.8, 33–37). Plaintiffs do not contest those rulings on appeal.

The anti-harassment laws do not violate the Constitution either. Plaintiffs' challenge to the laws requires an implausible and untenable reading whereby they would restrict lawful, routine rent collection activities. Nothing in the text of either law gives the slightest indication that routine rent demands are prohibited. Because the laws do not implicate the lawful speech in which plaintiffs seek to engage, plaintiffs' First Amendment rights are not implicated. And even if the laws incidentally chill some protected speech (and they do not), they would still be constitutional because they would be narrowly tailored to advance a substantial government interest in ensuring that tenants affected by COVID-19 are not threatened into giving up lawful tenancies at a time when stability is critical.

ARGUMENT

POINT I

THE CONTRACTS CLAUSE IS NO BAR TO THE PERSONAL GUARANTY LAW

The Contracts Clause restricts the power of the States to disrupt contractual arrangement by forbidding the passage of "any … Law impairing the Obligation of Contracts." U.S. Const., Art. I, § 10, cl. 1. But the prohibition on contractual impairment is "not an absolute one

and is not to be read with literal exactness like a mathematical formula." *U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 21 (1977) (quotation marks omitted). Legislatures retain "broad power" to adopt generally applicable laws "without being concerned that private contracts will be impaired, or even destroyed, as a result." *Id.* at 22. This is especially true where the government is acting to "safeguard the vital interests of its people," and to "protect the public health." *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 434, 436 (1934).

Analysis of a claim under the Contracts Clause proceeds in three parts. First, the challenged law must substantially impair an existing contract. *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411 (1983). Second, if there is a substantial impairment, courts consider if the challenged law serves a legitimate public purpose. *Id.* If the law serves a legitimate public purpose, courts then consider if the law is appropriate and reasonable to achieve that purpose. *Id.* at 412.

Here, it is doubtful that plaintiffs can establish—as part of what is evidently a facial challenge—that the personal guaranty law

substantially impairs covered commercial leases.[5] Even "a significant change" to existing contractual relationships does not necessarily cause a substantial impairment. *Sveen v. Melin*, 138 S. Ct. 1815, 1821 (2018). And while plaintiffs imply otherwise (Brief for Appellants ("App. Br.") 23–24), guaranties are not landlords' only remedy and the law has no effect on leases generally, only a backstop agreement.[6] All other remedies survive, including the right to the tenant's rental payments, the ability to apply security deposits towards unpaid rent, and the right to enforce the tenant's rental obligation in court—which could be pursued through nonpayment proceedings or breach of contract actions immediately and through eviction proceedings as soon as a separate executive order lifts (*see* SPA32).[7]

---

[5] This brief refers here to plaintiffs for ease of reference, but only Elias Bochner and his associated LLC press a Contracts Clause claim (*see* SPA24 n.11).

[6] The fact that the lease agreement and the guaranty are two separate documents is of no moment, because they are "part of the same transaction." *Michelin Mgmt. Co. v. Mayaud*, 307 A.D.2d 280, 281 (2d Dep't 2003). The guaranty would not exist without the lease and vice versa, so they should be considered together.

[7] While the guaranty law does not affect commercial landlords' right to evict tenants, commercial evictions have been separately suspended by Executive Order (A1389). However, landlords may still commence holdover proceedings. *See SRI Eleven 1407 Broadway Operator LLC v. Mega Wear Inc.*, 2021 N.Y. Misc. LEXIS 855, at *30 (Civ. Ct. N.Y. Cnty. March 3, 2021).

At most, commercial landlords are unable to exercise a fallback option to recover rent from a party distinct from the named tenant for a limited time; they do not lose the ability to safeguard their rights. *Sveen*, 138 S. Ct. at 1822. More is required to establish a substantial impairment of contractual rights, especially on a facial challenge. But in any case, even assuming substantial impairment, plaintiffs have not come within a mile of showing that the personal guaranty law lacks a legitimate public purpose or is fundamentally unreasonable.

A. The personal guaranty law serves a variety of legitimate public purposes.

If a law does substantially impair a contract, the next step is to determine if it has a legitimate public purpose. *Energy Reserves*, 459 U.S. at 411. The "remedying of a broad and general social or economic problem" constitutes such a purpose. *Id.* at 412. The array of legitimate purposes is wide, and "extends to economic needs." *Veix v. Sixth Ward Bldg. & Loan Ass'n*, 310 U.S. 32, 39 (1940).

1. The personal guaranty law was passed to prevent a wave of personal bankruptcies and an increase in citywide unemployment.

The personal guaranty law easily meets the public-purpose test because it is designed to prevent the bankruptcies of small business owners, the firing of their employees, and the inability of residents to benefit from their services when most needed—all in the midst of a public health emergency causing social and economic trauma.

As the district court found, "on its face the law directly benefits only commercial tenants," but those businesses employ hundreds of thousands of residents and serve millions (SPA27–28). As the Councilmember who introduced the bill explained, "countless small business owners" had very real concerns about "going belly up" and the potential to lose "their personal life savings and asset[s] because of a disaster no one saw coming" (A467–68). And, as the Council elaborated in extending the law, individuals "risk losing their personal assets, including their possessions and even their own homes, transforming a business loss into a devastating personal loss." Local Law 98-2020 § 1(a)(5); SDNY ECF No. 68 at 3–4. And the other side of that coin is no better: if business owners opt to close their doors to avoid personal

liability, "the economic and social damage caused to the city will be greatly exacerbated." *Id.* § 1(a)(6). That's where the law steps in, providing businesses with "an opportunity to not only survive but also to generate sufficient revenues to defray owed financial obligations," including—it bears noting—rent that may be owed to landlords. *Id.* § 1(a)(9).

The personal guaranty law's purpose in keeping businesses alive dovetails with other efforts to address the COVID-19 crisis. For example, federal Paycheck Protection Program loans available to small businesses, whose "overarching focus" was on "keeping workers paid and employed" required that at least 75% of loans be used for payroll. *Business Loan Program Temporary Changes; Paycheck Protection Program*, 85 Fed. Reg. 20811, 20814 (Apr. 15, 2020). In supporting the personal guaranty law, business owners indicated that these loans could "provide enough funds to pay … workers" but the remaining 25% would not even be sufficient to cover any arrears in rent, let alone ongoing rent (A1084–85; 2489). But if the businesses close, the workers go down with them. By helping keep small businesses open, the

personal guaranty law limits job loss and serves to remedy broad social and economic problems. *Energy Reserves*, 459 U.S. at 411–12.

2. Plaintiffs ignore the law's purpose and misconstrue the public-purpose test.

Plaintiffs primarily argue that the personal guaranty law does not serve a legitimate public interest because it solely benefits commercial tenants at the expense of landlords (App. Br. 27–30). While they are incorrect, the more fundamental point is that it does not matter whether the law benefits a particular class of people. Most of the cases that reached the Supreme Court during the Great Depression involved relief to renters or mortgagors, usually at the expense of landlords and mortgagees. *See*, *e.g.*, *East New York Sav. Bank v. Hahn*, 326 U.S. 230, 231 (1945); *Blaisdell*, 290 U.S. at 447–48; *Block v. Hirsh*, 256 U.S. 135, 153 (1921). Indeed, every case implicating the Contracts Clause that meets the substantial-impairment prong necessarily involves the diminution of one party's rights relative to another's. *See*, *e.g.*, *Energy Reserves Group*, 459 U.S. at 417 (natural gas producers versus consumers); *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 506 (1987) (coal miners versus landowners). There is nothing

suspect about a legislature targeting a law to help those whom it sees as most in need: that is what often drives governmental response to an emergency.

It is telling that plaintiffs rely entirely on a single, out-of-circuit case to support their public-purpose argument (App. Br. 29–30). There, a state law obligated an insurance association to return excess premiums that had already been distributed and altered the allocation of a future distribution. *W. Nat'l Mut. Ins. Co. v. Lennes*, 46 F.3d 813, 816–17 (8th Cir. 1995). One can ask whether the case was even correctly decided, but the problem there was that it was clear who were the "worthy recipients" of "windfall" profits, and the law only aided a slice of them: it provided benefits solely to those who paid premiums in 1992, even though the windfall that was the subject of concern started in 1979. *Id.* at 821.

By contrast, it cannot be credibly disputed here that the personal guaranty law is "aimed at remedying an important general social or economic problem." *Sanitation & Recycling Indus. v. City of New York*, 107 F.3d 985, 993 (2d Cir. 1997) (quotation marks omitted). By preventing the personal bankruptcies of thousands of business owners

who had been forced by the government to halt or sharply reduce their operations, the law was designed to increase the likelihood that their businesses survive and continue to employ and serve New Yorkers in a time of profound social and economic stress. This is not a judgment about who is more worthy of reaping the benefits of windfall profits, *Lennes*, 46 F.3d at 821, but an effort to safeguard individuals from dramatic and unexpected losses and to keep their employees working during an unprecedented crisis—all to the ultimate benefit of their broader communities and the City as a whole.

Plaintiffs also engage in an extended discussion of the effects of the personal guaranty law, the impact of the pandemic on landlords and tenants, and the law's effect on tax collection (App. Br. 30–33). But none of this has anything to do with whether the law's purpose is legitimate, and plaintiffs cite no authority to the contrary. Plaintiffs' dispute is with the Council's weighing of competing interests and predictive judgments in the midst of an emergency that had catastrophic effects for a wide range of people. The Contracts Clause does not empower courts to second-guess legislatures by undertaking a de novo economic and sociological analysis of whether the law strikes the right balance in

advancing the public interest.[8] The only question is whether the legislature had a legitimate public purpose. *See El Paso v. Simmons*, 379 U.S. 497, 509 (1965) (explaining that the relevant factor is the object of the legislation). There is no question that the City Council did.

B. The personal guaranty law is reasonable and appropriate to achieve its purpose.

The personal guaranty law satisfies the final prong of the Contracts Clause test because it is reasonable and appropriate to address the legitimate public interest. At the outset, plaintiffs skip over the deference owed to legislatures on whether laws are reasonable and appropriate. But the Supreme Court has "repeatedly held that unless the State is itself a contracting party, courts should properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *DeBenedictis*, 480 U.S. at 505. Thus, courts apply "a rational-basis test" to the legislation. *Ass'n of Surrogates & Supreme*

[8] Plaintiffs' objections are also built on sand. The budget projections they point to were published in July, months after the law was enacted, and they identify no nexus between a budget shortfall and the personal guaranty law (A86, 311). Their allegations regarding purported perverse incentives rely entirely on a single news article, again published after the law was enacted, that makes no mention of personal guaranties of commercial leases (*see* A283–88).

Court Reporters v. New York, 940 F.2d 766, 771 (2d Cir. 1991). On rational basis review, the "burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." *Armour v. City of Indianapolis*, 566 U.S. 673, 685 (2012) (quotation marks omitted). That burden is especially heavy where, as here, the "existence of an emergency" further counsels in favor of deference. *U.S. Trust Co.*, 431 U.S. at 22 n.19.[9]

1. The law is a reasonable and appropriate means to avoid the cascading economic consequences of enforcing personal guaranties.

Here, the Council properly judged that the personal guaranty law was a reasonable and appropriate means to address the potential for a mass, permanent closure of small businesses, taking with them the livelihoods of all the employees who depend on those businesses reopening in some capacity. The Council made a considered judgment,

[9] Plaintiffs argue that the level of scrutiny as to reasonableness varies with the degree of contractual impairment, citing *Energy Reserves* and *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978) (App. Br. 25, 33). But they misread those cases. The Supreme Court held that the "severity of the impairment" was relevant only to the substantial impairment prong of the test, as "[m]inimal alteration of contractual obligations may end the inquiry at its first stage." *Spannaus*, 438 U.S. at 245; *see also Energy Reserves*, 459 U.S. at 411. But, if the impairment is severe, court continues on to the remaining elements of the test. *Spannaus*, 438 U.S. at 245.

based on its own experience and a substantial legislative record, that the personal guaranty law would accomplish its goals. Plaintiffs give short shrift to the legislative record, but there was testimony from interested parties, letters from small businesses owners and community groups, and reports outlining the extent of small business employment in the City (*see* A1355–62). And when it extended the term of the law, the Council made additional findings buttressing its conclusions. *See* Local Law 98-2020 § 1; SDNY ECF No. 68 at 3–4.

The personal guaranty law's built-in limitations further demonstrate that it is a reasonable and appropriate means to serve the public interest. The law is tailored in four material respects.

- It affects only guaranties signed by a "natural person," excluding corporate guarantors, and has no effect on the terms of the actual lease. It does not affect guarantors who are also tenants, the situation faced by plaintiff Top East Realty (A3596, 3601). Indeed, the law did not apply to any of the original plaintiffs, and the complaint had to be amended to add a plaintiff who was affected by the law (*see* A4268; SDNY ECF No. 59).

- It does not deprive landlords of any other remedies under their leases, including recovering unpaid rent and interest from tenants, charging late payment fees, applying security deposit funds, terminating a tenant's right to possession, recovering damages, evicting persons and property, and selling property in the premises and applying proceeds to unpaid rent (A3551–52, 3561, 3598–99, 3605–06).
- It applies only to commercial tenants who were forced to close or reduce capacity under a subset of executive orders. N.Y.C. Admin. Code § 22-1005(1).
- It is limited in duration. *Id.* § 22-1005(2).

The Supreme Court and this Court have found more drastic measures to be reasonable and appropriate. The Supreme Court upheld a law that, among other things, permanently voided liability waivers obtained by coal mining companies exempting them from damage for sinkholes and other subsidence caused by mining. *DeBenedictis*, 480 U.S. at 506. Likewise, the Court upheld a moratorium on mortgage foreclosures that lasted eleven years. *Hahn*, 326 U.S. at 235. And this Court upheld a law that capped the term of existing carting contracts at

two years and allowed for their immediate termination, regardless of how much time remained in the contract as agreed by the parties. *Sanitation & Recycling*, 107 F.3d at 994. These examples show that even drastic alterations in parties' rights and remedies are nonetheless reasonable and appropriate means to achieve a public purpose.

2. Plaintiffs' objections do not overcome the deference owed to the Council to determine what is reasonable and appropriate.

Plaintiffs' objections to the personal guaranty law are, fundamentally, policy disagreements and none overcomes the "healthy degree of deference" owed to the Council in enacting the law. *Sanitation & Recycling*, 107 F.3d at 994. Plaintiffs first object that the law covers a large number of leases and, therefore, could not possibly be "sufficiently circumscribed" (App. Br. 35–36). But the goal of the law was to help those affected by shutdown orders—the fact that the pandemic impacted an enormous number of people is no reason to invalidate the law. The Council also narrowed the law's ambit—the initial proposal would have covered thousands of additional commercial tenants—reflecting a reasoned balancing of the law's costs and benefits. And the caselaw shows that laws enacted for a public purpose need not be so

tightly drawn. To give just one example, the Supreme Court upheld a foreclosure moratorium for all mortgages in the State of New York for eleven years, regardless of the mortgagor's financial condition. *Hahn*, 326 U.S. at 230; *see also Blaisdell*, 290 U.S. at 416 (same); *Block*, 256 U.S. at 153–54 (applying to all renters).

Next, plaintiffs contend that the law retroactively deprives them of money and that their inability to ever recover for the period the law is in effect renders the law invalid (App. Br. 36–39). As the district court explained (SPA31–32), the law is similar to those that were upheld by this court in *Buffalo Teachers Federation v. Tobe*, 464 F.3d 362 (2d Cir. 2006), and *Sullivan v. Nassau County Interim Finance Authority*, 959 F.3d 54 (2d Cir. 2020). In those cases, the plaintiffs' permanently lost benefits for which they had contracted because of a wage freeze, and they were not eligible for retroactive back pay once the freeze was lifted. *Buffalo Teachers*, 464 F.3d at 377–67, 371; *Sullivan*, 59 F.3d at 58–60.

Plaintiffs attempt to distinguish *Buffalo Teachers*, arguing that the personal guaranty law retroactively prohibits their recovery of rent. But the law was enacted in May 2020 with an effective date of March 7,

2020, meaning, at most, two months of rent covered by a guaranty could have been retroactively affected (and even then, only with respect to a fallback remedy). Thus, plaintiffs' analogy to recovering "earned wages" is misplaced—just as employees in *Buffalo Teachers* and *Sullivan* had not earned wages for work that hadn't happened yet, plaintiffs had not "earned" rent for future months at the time of the law's enactment. And, in any event, retroactive voiding of obligations is constitutional. *See*, *e.g.*, *Blaisdell*, 290 U.S. at 434–35 (holding that the government can "abrogat[e] contracts already in effect"); *DeBenedictis*, 480 U.S. at 506 (upholding law abrogating existing liability waivers).

Next, plaintiffs argue that the permanent invalidation of personal guaranties for the law's duration precludes them from "ever recovering rent lost during this time period" (App. Br. 37). First, the law does not bar them from ever recovering rent lost—they are still entitled to recover rent from the actual tenant who signed the lease. Where businesses have been able to reopen or continue to operate, they have an opportunity to not only survive but also to generate "sufficient revenues to defray owed financial obligations," including rent. *See* Local Law 98-2020 § 1(a)(9); SDNY ECF No. 68 at 3–4. And plaintiffs have

other means to recover at least some of their losses (*see* SPA31–32). While they point to the fact that some of their other remedies have been suspended by State law—which they do not challenge—that does not factor into the analysis of whether the personal guaranty law itself is reasonable and appropriate. Plus, those remedies will be reinstated when the State moratoria expire and their application will at that point be unaffected by the personal guaranty law.

Second, courts have upheld similar permanent bars to recovery. In *Sullivan* and *Buffalo Teachers*, public employees subject to the wage freeze were permanently deprived of a contractually mandated wage increase, as there was no provision for retroactively repaying the lost wages, and this Court upheld the laws despite this application of the lesser deference owed to laws affecting public contracts than is owed to the Council's actions regarding private contracts here. *Sullivan*, 959 F.3d at 65; *Buffalo Teachers*, 464 F.3d at 369–70. In *DeBenedictis*, the Supreme Court upheld the permanent deprivation of enormously valuable waivers secured by mining companies that would have exempted them from having to repair land damaged by their operations. *DeBenedictis*, 480 U.S. at 506. And in *Sanitation & Recycling*, this

Court upheld the permanent deprivation of years of contractual exclusivity. *Sanitation & Recycling*, 107 F.3d at 994.[10]

Plaintiffs also complain about the Council's purported lack of consideration of "good guy" guaranties (App. Br. 40), but they fail to explain how that consideration has any legal relevance, citing no case for the requirement that the Council was obligated to explain the law's operation on every permutation of guaranty in the commercial world. And it was not, because the "legislature [is] entitled to deal with the general or typical situation." *Blaisdell*, 290 U.S. at 446.

In any event, the legislative history shows that the Council considered the operation of good-guy guaranties, hearing testimony and receiving letters about their operation (*see*, *e.g.*, A822–23, 1837, 2083–84, 2488). And the record shows that plaintiffs' characterization of the guaranty as allowing "the tenant to simply walk away from its obligations if its business fails" (App. 40) is decidedly incorrect. Good-

[10] Plaintiffs analogize this case to *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56 (1934), but that case involved much more burdensome restrictions. The law there, among other things, barred the initiation of foreclosure proceedings for two-and-a-half years after default and permitted the debtor to remain in possession of the property for four years after foreclosure with no interim protections for the lender. *See Kavanaugh*, 295 U.S. at 60–61.

guy guaranties provide that tenants must give months of advance notice and personally pay anything that is in arrears (*see* A1084–85, 2488). Indeed, the only guaranty at issue here requires *six months'* notice and full payment of rent during the notice period to avoid personal liability for the entire amount of the guaranty (*see* A4247–48).

Next, plaintiffs argue that the personal guaranty law was not necessary, and that the Council failed to consider alternatives (App. Br. 41–45). Despite the need to promptly address what was clearly an economic and public health emergency, the Council held multiple hearings on the law and considered volumes of testimony and written submissions. *Cf. Agudath Isr. v. Cuomo*, 983 F.3d 620, 635 (2d Cir. 2020) (explaining that the "uncertainties that accompany many novel emergencies" make alternatives "difficult to assess"). And the law was, in fact, narrowed from one that would have covered thousands more commercial tenants (A1042–43).

While plaintiffs suggest several alternatives that the Council could have enacted, courts should "defer to legislative judgment as to the necessity and reasonableness of a particular measure." *U.S. Trust. Co.*, 431 U.S. at 23. The lone case plaintiffs cite for the proposition that

the personal guaranty law violates the Contracts Clause for failing to consider every possible alternative and choosing a "drastic impairment when an evident and more moderate course would serve its purpose equally well" does not support their claim (App. Br. 42–43). Whether the government considered other alternatives or imposed a "drastic impairment when an evident and more moderate course would serve its purpose equally well" only comes into play when considering what is "reasonable and necessary under *less deference scrutiny*," which applies where "the state itself is a party to a contract." *Buffalo Teachers*, 464 F.3d at 369, 371. Here, the law affects only private parties, and the more deferential "rational-basis" test applies. *Supreme Court Reporters*, 940 F.2d at 771.

Even assuming *U.S. Trust*'s heightened scrutiny did apply, it "does not require courts to reexamine all of the factors underlying the legislation at issue and to make a *de novo* determination whether another alternative would have constituted a better statutory solution to a given problem." *Buffalo Teachers*, 464 F.3d at 370. Instead, the alternative must be "evident" and serve the legislative purpose "equally well." *U.S. Trust. Co.*, 431 U.S. at 31. Here, plaintiffs provide some

alternatives but offer little explanation as to how they would serve the Council's purposes equally well, nor do they grapple with the potential downsides of those actions as opposed to the action the Council took (App. Br. 41–43). Strong deference applies here, but even if it didn't, as in *Buffalo Teachers* this Court should not "second-guess the wisdom of picking the [personal guaranty law] over other policy alternatives." 464 F.3d at 372.

Finally, plaintiffs object that the law was not necessary because the State provided other relief to those affected by the pandemic (App. Br. 44–45). Setting aside whether the existence of other relief is relevant to the question of whether the personal guaranty law violates the Contracts Clause, none of those other measures address the precise problem at which the personal guaranty law was aimed. The State's commercial eviction moratorium, for instance, does nothing to reduce the risk that small businesses will close to avoid additional risk to owners' personal assets, taking jobs with them. And the other two protections plaintiffs cite apply only to *residential* tenants (*see* A91–93, A411).

In sum, the guaranty law was within the Council's "wide discretion" to determine "what is and what is not necessary to safeguard the welfare of its citizens." *De Mejias v. Lamont*, 963 F.3d 196, 202 (2d Cir. 2020) (quotation marks omitted). Plaintiffs' challenge should be rejected.

POINT II

NEITHER THE FIRST AMENDMENT NOR THE DUE PROCESS CLAUSE BAR THE ANTI-HARASSMENT LAWS

Plaintiffs' First Amendment claim fails for the simple reason that the anti-harassment laws do not restrict lawful rent collection activity and, therefore, do not restrict any speech in which they intend to engage. Their arguments to the contrary amount to disparagement of state courts' ability to interpret statutes and of the district court's failure to issue an advisory opinion. Moreover, even assuming that the laws incidentally affect some protected speech, they pass constitutional scrutiny because they are narrowly drawn to directly and materially advance a substantial government interest.

A. The anti-harassment laws do not restrict lawful rent collection activity.

The anti-harassment laws do not violate the First Amendment for the simple reason that they do not restrict plaintiffs' lawful speech. To violate the anti-harassment laws, a landlord must (1) threaten a tenant (2) "based on" the tenant's real or perceived status as a person impacted by COVID-19. N.Y.C. Admin. Code §§ 22-902(a)(11), 27-2004(a)(48)(f-5). The statutes' plain language does nothing to prohibit lawful rent collection activities, such as notifying a tenant of overdue rent or informing a tenant of the lawful consequences of not paying rent.

Moreover, the commercial anti-harassment law provides that "lawful termination of a tenancy, lawful refusal to renew or extend a lease or other rental agreement, [and] lawful reentry and repossession … shall not constitute commercial tenant harassment," *id.* § 22-902(b), and also makes clear that no provision of the law relieves tenants of the obligation to pay rent. *Id.* § 22-903(b). These provisions, which were explicitly referenced by the City Council when considering the anti-harassment laws (A1361–62, 3403), demonstrate that routine communications with tenants about their rent obligations do not constitute a threat.

Likewise, the stated purpose of the residential anti-harassment law is to prevent landlords from harassing tenants "lawfully entitled to occupancy" into vacating their units. N.Y.C. Admin. Code § 27-2004(a)(48). Although the statutes do not explicitly exclude ordinary rent collection activities from the definition of "threatening," the district court correctly recognized that their text permits routine rent demands and discussion of the consequences of unpaid rent (SPA19).

Plaintiffs' argument that the plain meaning of "threatening" necessarily includes "communication that [the landlord] intends on pursuing eviction proceedings" (App. Br. 47) is unavailing for two reasons. First, courts have repeatedly stressed the importance of "distinguish[ing] between improper threats or coercion and permissible warnings of adverse but legitimate consequences." *Walia v. Veritas Healthcare Solutions, L.L.C.*, 2015 U.S. Dist. LEXIS 105429, at *14–15 (S.D.N.Y. Aug. 11, 2015) (quotation marks omitted). Here, a landlord's statement that it will commence a lawful eviction if the rent is unpaid is a permissible warning of a legitimate consequence.

The context of the anti-harassment laws reinforces this conclusion. Beyond prohibiting threats based on a variety of protected

characteristics such as age, race, and gender, other prohibited activities contemplate situations where the property owner is acting unlawfully, such as removing a lawful occupant's possessions, N.Y.C. Admin. Code § 27-2004(a)(48)(e); 22-902(a)(6), or removing the door or changing the lock on a property, *id.* § 27-2004(a)(48)(f); 22-902(7). These provisions show that the law is intended to cover improprieties committed by property owners, not legal activities. Plaintiffs' focus on a single word "in isolation" ignores the statute as a whole and violates the "cardinal rule that statutory language must be read in context." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (quotation marks omitted).

Second, both statutes make clear that, to constitute a threat under the anti-harassment laws, the landlord's actions must be of the type that would reasonably cause the tenant to vacate the property or waive their legitimate occupancy rights. N.Y.C. Admin Code § 27-2004(a)(48); *id.* § 22-902(a). A routine rent demand or warning about the possibility of eviction based on non-payment is unlikely to cause a tenant who is "lawfully entitled to occupancy" to vacate the property. *Id.* § 27-2004(a)(48). If a tenant does vacate a property because of a routine

rent demand or eviction warning, it would not be harassment but the natural consequence of the failure to pay rent.

Although plaintiffs suggest that the anti-harassment laws make sweeping changes to their ability to conduct routine rent collection activities (App. Br. 52–54), the reality is that these laws make only minimal changes to the existing legal framework regulating landlord-tenant communications. Threatening a residential or commercial tenant based on a variety of characteristics was already prohibited. New York courts have interpreted these laws to permit routine rent demands and communications about the possibility of eviction. *See, e.g., 138-77 Queens Blvd. LLC v. QB Wash LLC*, Index No. 715071/2020, Slip Op. 3 (Sup. Ct. Queens Cnty. Jan. 15, 2021), *available at* https://perma.cc/5Z8F-L64V (explaining that "a landlord's lawful termination of a lease shall not constitute harassment"); *Dunn v. 583 Riverside Dr. LP*, 66 Misc. 3d 667, 669 (Civ. Ct. N.Y. Cnty. Dec. 30, 2019) (finding that "service of a rent demand" does not constitute harassment). Rather than proscribing any new activity, the anti-harassment laws simply extended the existing prohibition on landlord threats to a new category of tenants: those impacted by COVID-19.

Furthermore, the anti-harassment laws limit the definition of harassment to actions taken "based on" a protected characteristic. N.Y.C. Admin. Code §§ 22-902(a)(11), 27-2004(a)(48)(f-7). Thus, as the district court correctly found, even if a landlord's routine rent demand were considered a "threat" under the anti-harassment laws, the action would not violate the statute unless the impact of the pandemic on that particular tenant is the but-for cause of the landlord's action (SPA20-22). *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 63–64 (2007). Although plaintiffs argue that the but-for causation standard would bar landlords from issuing routine rent demands when the tenant is unable to pay following pandemic-related employment loss (App. Br. 53–54), the district court correctly recognized that state courts are well-equipped to distinguish between rent demands issued "based on" the basis of a tenant's COVID-19 status and legitimate ones (SPA21–22).

Plaintiffs argue that it is impossible for a landlord to know whether their tenant falls into a protected category because the statutes implicate "tens of thousands of residential and commercial tenants" (App. Br. 53). This uncertainty is a nonissue. If a landlord is unaware that a tenant falls into a protected category, she cannot run afoul of the

statute by threatening that tenant "based on" membership in that protected category.

Plaintiffs also argue that the district court erred when it "left it up to state courts" to interpret state law and by failing to provide "meaningful guidance" on what is and isn't permissible under the anti-harassment laws (App. Br. 49–50, 52–54). Of course, "state courts [are] the final expositors of state law." *England v. La. State Bd. of Medical Examiners*, 375 U.S. 411, 415 (1964); *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 48 (1997) ("Federal courts lack competence to rule definitively on the meaning of state legislation[.]"). Thus, despite plaintiffs' doubts as to whether "state courts can distinguish between lawful and harassing rent demands" (App. Br. 50), federalism requires that they be trusted to do so.

Plaintiffs' related argument that the district court failed to provide "meaningful guidance" as to the application of the anti-harassment laws amounts to a complaint that the court did not issue an advisory opinion on state law. But this case only presents the question of whether routine rent collection activities plaintiffs seek to engage in are barred. The district court correctly declined to speculate as to the

permissibility of other activities. *See Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (explaining that a "federal court has neither the power to render advisory opinions nor to decide questions that cannot affect the rights of litigants in the case before them") (quotation marks omitted).

Finally, plaintiffs argue that the anti-harassment laws are unconstitutionally vague because they fail to apprise landlords of what conduct is prohibited (App. Br. 49–50). But it is unlikely that a person of ordinary intelligence "would understand the Harassment Laws to prohibit routine rent demands" (SPA24); *see also New York v. Griepp*, 2021 U.S. App. LEXIS 6942, at *102–03 (2d Cir. Mar. 10, 2021) (rejecting vagueness challenges to statutes prohibiting "harassment" and "interference"). The mere possibility that a tenant might allege harassment when no violation has occurred does not make the anti-harassment laws unconstitutionally vague.

B. Even if the anti-harassment laws incidentally chill some lawful speech, they do not violate First Amendment.

The Court need go no further than to recognize that plaintiffs' objections to the anti-harassment laws rest on a distortion of those laws. But even if the anti-harassment laws did incidentally chill some

lawful, routine rent demands, they would still be constitutional. Laws regulating lawful and non-misleading commercial speech must be upheld when (1) the government asserts a substantial interest in support of its regulation, (2) the restriction "directly and materially advances that interest," and (3) the regulation is narrowly drawn. *Fla. Bar v. Went for It*, 515 U.S. 618, 623 (1995). Here, the anti-harassment laws were specifically tailored to advance the City's significant interest in protecting COVID-19-impacted residents and businesses from harassment based on the effects of the pandemic, satisfying the First Amendment.

Plaintiffs have already conceded that the City had a substantial interest in passing the anti-harassment laws (SDNY ECF No. 28 at 19 n.10 ("Plaintiffs do not contend that Defendants are incapable of identifying a substantial government interest, given the impact of the Pandemic.")). And they were correct to do so. The City has a clear interest in protecting residents and businesses that have been impacted by the pandemic from related harassment. The legislative record includes robust evidence of the risk of tenant harassment (A1355–62). The anti-harassment laws directly and materially advance this interest

by specifically prohibiting such harassment and providing tenants with a private right of action for enforcement. N.Y.C. Admin. Code §§ 22-903, 27-2005(d). Furthermore, the City is not obligated to conclusively prove that the anti-harassment laws will accomplish their intended goal, so long as the City relied upon evidence it "reasonably believed to be relevant." *Renton v. Playtime Theatres*, 475 U.S. 41, 51–52 (1986).

And the laws were drawn with narrow, specific language to meet that goal. To satisfy the First Amendment, "the fit need not be perfect" so long as the restrictions are "tailored in a reasonable manner." *Alexander v. Cahill*, 598 F.3d 79, 95 (2d Cir. 2010) (quotation marks omitted). Plaintiffs repeatedly mischaracterize the anti-harassment laws as rent-relief legislation (App. Br. 56–58), when, in reality, the laws were intended to prevent tenant harassment based on several different COVID-related characteristics, including contracting COVID-19, working on the front lines, and financial hardship. Viewed in that light, the laws are closely tailored to provide protections to the residential and commercial tenants most likely to be affected by the pandemic and suffer landlord harassment as a result.

Plaintiffs are mistaken in arguing that the anti-harassment laws are unconstitutional because less restrictive alternatives exist (App. Br. 46). Each of their suggested alternatives provides only financial relief for tenants, rather than protecting them from harassment based on the impacts of the pandemic. Even if the laws are broader than is strictly necessary to effectuate their purpose, the anti-harassment laws would not be "invalid simply because there is some imaginable alternative that might be less burdensome on speech." *Turner Broad. Sys. v. FCC*, 520 U.S. 180, 217 (1997) (quotation marks omitted).

In sum, plaintiffs' challenges fail because the anti-harassment laws and the personal guaranty law are valid exercises of the legislature's power to address the ongoing economic and public health emergency.

CONCLUSION

The district court's judgment should be affirmed.

Dated: New York, NY
March 18, 2021

Respectfully submitted,

JAMES E. JOHNSON
Corporation Counsel
of the City of New York
Attorney for Appellees

By: s/ Jamison Davies
JAMISON DAVIES
Assistant Corporation Counsel

100 Church Street
New York, NY 10007
212-356-2490
jdavies@law.nyc.gov

RICHARD DEARING
DEVIN SLACK
JAMISON DAVIES
of Counsel

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word 2010, and according to that software, it contains 8,999 words, not including the table of contents, table of authorities, this certificate, and the cover.

s/ Jamison Davies
JAMISON DAVIES