

In the  
**Supreme Court of Ohio**

ASHLAND GLOBAL HOLDINGS, INC.,  
*et al.*,

Appellees,

vs.

SUPERASH REMAINDERMAN  
LIMITED PARTNERSHIP,

Appellant.

Case No. 2023-1448

On Appeal from  
the Franklin County Court of Appeals,  
Tenth Appellate District,  
Case No. 22AP00063

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**BRIEF OF AMICUS CURIAE NETWORKS USA I, LLC**

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## INTRODUCTION

This case presents the question whether courts have equitable authority to re-write the terms of a lease. They do not. The Tenth District erred in holding otherwise. It did so in reliance on an equitable-renewal doctrine recognized in *Ward v. Washington Distributors, Inc.*, 67 Ohio App.2d 49, 425 N.E.2d 420 (6th Dist. 1980). *Ward*, however, was wrongly decided. And over the years, this erroneous decision has metastasized. This Court should take this opportunity to reject *Ward*, restoring the freedom of contract and averting the constitutional problems that *Ward* creates.

## STATEMENT OF AMICUS INTEREST

The Tenth District ruling exposes lessors to the risk of being bound by leases containing terms to which they did not agree. The *amicus*, Networks USA I, LLC, is an owner and lessor of property in Ohio. The Tenth District's ruling thus directly affects its business, and negatively so. For that reason, Networks USA I is filing this brief to urge reversal.

## STATEMENT

This case began when a lessee failed to properly renew twenty-four ground leases. Each lease included provisions that empowered the lessee—Ashland Global Holdings, Inc., or “Ashland” for short—to renew the lease for a one-year term beginning on December 31, 2021. To exercise that renewal right, Ashland needed to notify its lessor—SuperAsh Remainderman Limited Partnership, which this brief calls “SuperAsh”—of its intent

to renew. More precisely, Ashland had to notify SuperAsh “in writing of its election to extend the Term on or before the date which [was] one hundred twenty (120) days prior to the expiration.” *Ashland Glob. Holdings Inc. v. SuperAsh Remainderman Ltd. P’ship*, 225 N.E.3d 1177, 2023-Ohio-3556, ¶7 (10th Dist.) (“App.Op.”) (alteration in original) (quoting the Ground Lease § 3.2(c)). Thus, “to comply with the 120-day requirement,” Ashland “had to submit a renewal notice to SuperAsh ... on or before September 3, 2021 for the 2022 term.” *Id.*

Ashland failed to submit the required notice. In August of 2021, Ashland’s external litigation counsel emailed a signed renewal notice for 2022 to a third-party entity. *Id.* ¶13. But Ashland failed to send the 2022 renewal notice to SuperAsh. *Id.* And on November 3, 2021, SuperAsh notified Ashland that, “because Ashland had not exercised its option to renew the ground leases for the 2022 term,” those “leases would expire” at the end of 2021. *Id.* ¶14. Ashland responded, attempting to untimely renew the leases by forwarding the notice that was never delivered to SuperAsh. SuperAsh refused to recognize these untimely efforts. SuperAsh did, though, attempt to negotiate a new agreement with Ashland. And it executed several “tolling agreements” to preserve the status quo during the negotiations. *Id.* ¶16. But those negotiations bore no fruit, and SuperAsh walked away, considering the lease expired. *Id.* ¶17.

At this point, Ashland filed a complaint seeking a declaratory judgment and specific performance. *Id.* ¶19. Relevant here, Ashland argued that the trial court had

equitable authority to excuse Ashland's non-compliance with the renewal provision. The trial court agreed. It determined that "'equity [could] come to the aid of someone making an innocent, unintended error under a lease.'" *Id.* ¶25 (alteration in original) (quoting Tr. Ct. Op. at 12). And it decided to exercise that power here. It reasoned that this was the just result because Ashland *intended* to renew the lease, because its delay was "slight" when viewed against the parties' entire relationship, and because both Ashland and its sublessee (Speedway LLC) would lose their investments in the properties if Ashland were not permitted to renew. *Id.* The court further determined that "SuperAsh would suffer no harm if the court granted equitable relief." *Id.*

The Tenth District affirmed. Relevant here, it rejected SuperAsh's argument that "the trial court erred by relying on equity to resolve" this dispute in contravention of clear contractual language. *Id.* ¶32. The Tenth District observed that many "appellate courts of this state, including" the Tenth District, "have held that a court may grant a tenant equitable relief from the tenant's failure to submit a notice at the time, or in the form and manner, required as a condition precedent to the renewal of a lease." *Id.* ¶34. The Court placed particular reliance on *Ward*, 67 Ohio App.2d 49, which appears to have been the first Ohio appellate decision adopting what this brief calls the equitable-renewal doctrine. App.Op. ¶¶34–38. The Tenth District followed *Ward's* lead. App.Op. ¶38. The court acknowledged a Second District decision holding that courts lack any such equitable power. *Id.* ¶¶39–40 (citing *Fifth Third Bank W. Ohio v. Carroll Bldg. Co.*, 180 Ohio App.3d

490, 2009-Ohio-57 (2d Dist.)). But this out-of-district decision, the Tenth District held, did not permit it to ignore its own precedent endorsing the equitable-renewal doctrine. *Id.* ¶40 (citing *Capuano v. Epic Properties*, 10th Dist. No. 94APE03-311, 1994 WL 505127 (Sept. 15, 1994)).

The Tenth District acknowledged this Court’s decisions holding that courts may not apply equity to avoid application of express contractual terms. *Id.* ¶32 (collecting cases). But those cases, the court determined, arose in different contexts—each “arose in the context of unjust enrichment or *quantum meruit* claims where one party sought to recover more than it had previously bargained for during the contract negotiations.” *Id.* ¶33 (quoting *Sierra 76, Inc. v. TA Operating, LLC*, 848 F. Supp. 2d 812, 815 (N.D. Ohio 2012)). Because this case involved neither an “unjust enrichment or *quantum meruit*” claim,” *id.*, the Tenth District deemed this Court’s limitations on the scope of equity inapplicable.

After the Tenth District issued its judgment, SuperAsh sought certification of a conflict and timely appealed.

## ARGUMENT

Well-settled law prohibits courts from invoking equity to alter the terms of a lease between sophisticated parties. *See generally* Br. of SuperAsh. Sound economic policy requires the same. Not long ago, Ohio’s courts created a legal environment hostile to Ohio businesses. *See Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St. 3d 77 (2002); *State ex rel. Ohio Acad. of Trial Laws. v. Sheward*, 86 Ohio St. 3d 451 (1999); *Scott-Pontzer v. Liberty*

*Mut. Fire Ins. Co.*, 85 Ohio St. 3d 660 (1999); *Johnson v. BP Chemicals, Inc.*, 85 Ohio St. 3d 298 (1999). Over time, this Court and the General Assembly overruled or overrode some of the *ancien régime's* worst excesses. To avoid backsliding, however, Ohio's courts must diligently avoid creating rules that undermine the ability of businesses and investors to plan for their futures. That means rejecting doctrines, like the equitable-renewal doctrine, that permit courts to alter contractual agreements in the name of equity. Businesses and investors order their affairs through contracts, including leases. But contracts can serve that role only if courts enforce contracts according to their terms. The equitable-renewal doctrine that the Tenth District embraced below permits courts to *ignore* contractual terms. This Court should unequivocally reject it.

**Proposition of Law:**

*A court may not equitably renew a written lease in contradiction to the express, unambiguous renewal conditions of the lease.*

**Certified Conflict Question:**

*May a court apply the equitable principles announced in *Ward v. Washington Distributors, Inc.*, 67 Ohio App.2d 49 (6th Dist. 1980), to relieve a tenant from their failure to submit a notice to renew a lease at the time required by the lease agreement?*

The Proposition of Law and Certified Conflict Question present the same issue.

This brief addresses them together.

Recall the facts of this case. Ashland, by its own admission, failed to renew its leases with SuperAsh in the time and manner those leases required. Ashland hoped to renew the leases anyway. SuperAsh proved willing to negotiate. But the parties were

unable to strike a deal. So Ashland sued. In its suit, Ashland argued that the trial court had “equitable” power to force SuperAsh to accept Ashland’s untimely renewal. By advancing that argument, Ashland sought to eliminate both SuperAsh’s ability to rely on the unambiguous terms of the contract *and* SuperAsh’s power to choose whether to enter a new bargain with Ashland. The trial court agreed with Ashland. And the Tenth District affirmed, holding that courts may “grant a tenant equitable relief from the tenant’s failure to submit a notice at the time, or in the form and manner, required as a condition precedent to the renewal of a lease.” App.Op. ¶34.

This Court should reverse the Tenth District’s judgment. “It is not the responsibility or function of” a court “to rewrite the parties’ contract in order to provide for a more equitable result.” *Foster Wheeler Enviresponse, Inc. v. Franklin Cnty. Convention Facilities Auth.*, 78 Ohio St. 3d 353, 362 (1997). And while courts have equitable authority, that authority consists of only the power to apply equitable doctrines; courts cannot, by invoking “equity,” “depart from all precedent and assume an unregulated power of administering abstract justice at the expense of well-settled principles.” *Heine v. Bd. of Levee Comm’rs*, 86 U.S. 655, 658 (1873). Here, the governing, well-settled principle is that parties are bound by the terms of their contracts. *See Shifrin v. Forest City Enterprises, Inc.*, 64 Ohio St. 3d 635, 638 (1992). No equitable doctrine this Court has ever recognized permits forgiving lessees’ non-compliance with the terms governing renewal. Thus, courts have no equitable authority to forgive such non-compliance by ordering lessors to accept an improper

renewal.

Principles of constitutional doubt and avoidance further support reversal. Courts construe statutes in ways that avoid “serious questions as to [their] constitutionality.” *Co-op. Legis. Comm. of Transp. Bhd. & Bhd. of Maint. of Way Emps. v. Pub. Utils. Comm’n*, 177 Ohio St. 101, 103 (1964). They should construe their own equitable authority the same way: courts should narrowly construe that authority where necessary to avoid serious constitutional questions. That principle applies here. As discussed later, the reservation of power in Ohio’s Contracts Clause implies that courts lack broad equitable authority to rewrite the terms of parties’ contracts. The equitable-renewal theory embraced confers precisely that sort of broad equitable authority, conflicting with the Contracts Clause.

#### **I. Invoking equity in a lease renewal undermines the freedom of contract.**

“The right to contract freely with the expectation that the contract shall endure according to its terms is as fundamental to our society as the right to write and to speak without restraint.” *Blount v. Smith*, 12 Ohio St. 2d 41, 47 (1967). In our less-than-perfect world, there are scarce resources available to satisfy endless, ever-changing needs and wants. Absent omniscience—a trait no mortal policymaker ever possessed—those needs and wants are unknowable to any one person. But every individual is well-suited to understand *his own* needs and wants. In that respect, “practically every individual has some advantage over all others in that he possesses unique information of which beneficial use might be made, but of which use can be made only if the decisions depending on it are

left to him or are made with his active cooperation.” F. A. Hayek, *The Use of Knowledge in Society*, 1 NYU J.L. & Liberty 5, 7–8 (2005).

One way that people make “beneficial use” of the “unique information” they possess is by entering voluntary transactions; parties can pursue mutual gain by agreeing to transact. And they will agree to transact when both sides value what they get more than what they give. Contracts make these transactions possible. Specifically, the legal enforceability of contracts enables parties to move forward confident in the expectation that they will receive what they bargained for: the other side will either perform or pay damages sufficient to make whole the non-breaching party. The availability of courts that will enforce contractual arrangements thus eliminates the need to take “costly self-protective measures” to ensure performance. Richard A. Posner, *Economic Analysis of Law* 95 (6th ed. 2003).

The fundamental function of contract law is thus to enable parties to pursue mutual gain through voluntary agreements. That is why, “[u]nder well-established contract law, ... contracts entered into freely and ‘fairly made will be held valid and enforced in the courts.’” *Cincinnati City Sch. Dist. Bd. of Ed. v. Conners*, 132 Ohio St. 3d 468, 2012-Ohio-2447, ¶15 (quoting *Lamont Bldg. Co. v. Court*, 147 Ohio St. 183, 184 (1946)).

Enforcing contracts means enforcing the terms to which the parties agreed. Those terms, after all, reflect the parties’ agreement, which both sides predicted would inure to their benefit. Refusing to enforce contracts as written would subject contracting parties to

the risk that they may be held responsible for any number of things to which they did not agree. That risk will deter the formation of some mutually beneficial contracts. And it will motivate parties to take “costly self-protective measures,” such as self-insurance or other means of preventing or protecting against non-performance. Posner, *Economic Analysis of Law* at 95. As discussed above, those are precisely the sorts of measures contract law is supposed to obviate.

The law embeds these basic economic insights. “When the terms in a contract are unambiguous, courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties.” *Shifrin*, 64 Ohio St. 3d at 638. And courts cannot evade this limit through the invocation of “equity.” Equitable authority consists of the “power to hear certain kinds and classes of civil causes ... and to decide them in accordance with the doctrines and rules of equitable jurisprudence.” John Norton Pomeroy, *A Treatise on Equity Jurisprudence*, Vol I, §130, at 113 (1881). Equity, in other words, is a collection of doctrines, not an invitation to pursue abstract fairness. That proves critical, because no equitable doctrine empowers courts in contract disputes to “apply rules—even if they would be ‘equitable’ in a contract’s absence—at odds with the parties’ expressed commitments.” *U.S. Airways, Inc. v. McCutchen*, 569 U.S. 88, 98 (2013). Accordingly, it “is not the responsibility or function of” the court “to rewrite the parties’ contract in order to provide for a more equitable result.” *Foster Wheeler Enviresponse, Inc.*, 78 Ohio St. 3d at 362.

The equitable-renewal doctrine contravenes these principles. The Tenth District's decision shows why. Faced with Ashland's admitted failure to comply with the contractual terms governing renewal, the Tenth District ordered the lessor, SuperAsh, to renew the lease anyway. Invoking principles of equity, the court claimed a power to rewrite the leases to which the parties agreed so as to better suit its (perceived) sense of fairness. App.Op. ¶¶34–60. And while the court tried to limit its ruling to the leasing context, that limitation has no principled basis and will not hold. *See id.* ¶49. If courts can invoke equity to “cure” admitted failures to comply with clear terms in contracts between two sophisticated businesses, nothing stops them from doing the same in other contexts. Any such expansion would threaten the predictability on which the freedom of contract depends. The Court should nip this expansion in the bud by squarely rejecting the equitable-renewal doctrine.

## **II. The equitable-renewal doctrine contradicts long-settled rules governing the interpretation of option contracts.**

In an option contract, the party selling the option (the “optioner”) assumes greater risk going forward than does the party buying the option (the “optionee”). This follows from the fact that, while the optionee may decide whether to exercise the option, the optioner is bound to respect the optionee's choice. But option contracts can be economically desirable; they permit parties to hedge against risk, for example. So, Ohio law facilitates their formation with a rule of construction: option contracts are strictly construed in favor of the optioner. In other words, optioners will be bound by only those options to which

they have clearly assented. This enables optioners to enter options contracts with a clear understanding of the risks they are assuming.

This strict-construction principle shows up repeatedly in the context of timing provisions. “If a time limit is given for exercising an option, the option may not be exercised after that time has passed.” *Lake Ridge Acad. v. Carney*, 66 Ohio St. 3d 376, 380 (1993) (citing *Longworth v. Mitchell*, 26 Ohio St. 334, 342 (1875)). Stated differently, “for an exercise of an option to be binding upon the optionor, it must be exercised in the manner provided for in the instrument creating the option on or before the time specified.” *Mother Ruckers Inc. v. Viking Acceptance, Inc.*, 2d Dist. Montgomery No. 7980, 1983 WL 5020, \*3 (Jan. 13, 1983). Generally speaking, “where an offer prescribes the place, time, or manner of acceptance, those terms must be strictly complied with by the offeree.” *Ritchie v. Cordray*, 10 Ohio App.3d 213, 215 (10th Dist. 1983).

This rule is not limited to Ohio; courts across the country embrace it. *See, e.g., Brent Liquid Transp., Inc. v. GATX Leasing Corp.*, 650 F.Supp. 467, 472 (N.D. Miss. 1986) (“Option contracts do not come within the equitable rule against forfeiture, inasmuch as failure to comply strictly with the conditions of the option deprives no party of any right and abrogates no contract.”) (quotation omitted); *SDG Macerich Props., LP v. Stanek Inc.*, 648 N.W.2d 581, 586 (Iowa 2002) (option provision in lease agreement “will be strictly construed if its words are clear and unambiguous”); *Guy Dean’s Lake Shore Marina, Inc. v. Ramey*, 246 Neb. 258, 260 (1994) (“[A]cceptance of an option to extend a lease must be

strictly in accordance with the terms of the option.”); *Utah Coal & Lumber Rest., Inc. v. Outdoor Endeavors Unlimited*, 40 P.3d 581, ¶ 11 (Utah 2001) (“[T]o exercise an option to renew a lease, a lessee must strictly comply with the terms of the lease’s option renewal provisions.”).

Notwithstanding the general rule for the interpretation of options in contracts, the trial court invoked the equitable-renewal doctrine and ordered SuperAsh to accept Ashland’s untimely notice to extend the ground lease. In so ruling, the trial court adopted and applied the equitable test set forth in *Ward*. That rule apparently stems from the Connecticut Supreme Court’s decision in *F.B. Fountain Company v. Stein*, 97 Conn. 619 (1922). The court there denied equitable relief to an optionee who failed to timely exercise an option due to willful or gross negligence. But the court also offered the following dicta:

[I]n cases of mere neglect in fulfilling a condition precedent of a lease [for exercising a lease renewal option], which do not fall within accident or mistake, equity will relieve when the delay has been slight, the loss to the lessor small, and when not to grant relief would result in such hardship to the tenant as to make it unconscionable to enforce literally the condition precedent [the option] of the lease.

*Id.* at 50. In the hundred-plus years since *F.B. Fountain*, courts across the country have split over whether equitable relief is potentially available to an optionee who negligently failed to timely or properly exercise an option to renew a lease or to purchase the leased property. *See generally*, William B. Johnson, Annotation, *Circumstances Excusing Lessee’s Failure to Give Timely Notice of Exercise of Option to Renew or Extend Lease*, 27 A.L.R.4th 266 (1984). But the equitable principle announced in *Ward* and adopted by the Tenth District

is the minority position.

Rightly so. As addressed above, Ohio contract law and sound economic policy require that contracts be enforced according to their terms, not according to abstract principles of fairness. Any other rule destroys the predictability that contract law, including the strict-construction principle applicable to option contracts, is meant to foster. After all, a “broad exception that grants relief from a [negligent] failure to comply with the lease anytime the delay is slight, the lessor’s loss is small, and the lessee would suffer a hardship comes close to swallowing the general rule of strict compliance. Such an exception would apply equitable excuse in almost all cases.” *Utah Coal & Lumber Rest.*, 40 P.3d 581 at ¶16. And an equitable doctrine that applies in almost all cases is little more than an invitation to override the terms of contractual agreements based on abstract principles of fairness. “Limiting equitable relief” by refusing to excuse negligent failures to renew thus “serves the important goal of giving finality and predictability to a contract’s meaning. In contrast, permitting equitable relief in cases of mere negligence would frustrate that objective.” *Andrews v. Blake*, 205 Ariz. 236, 247 (2003).

The Iowa Supreme Court’s rejection of the equitable-renewal doctrine in cases of mere negligence is especially telling. In the Hawkeye State, “equitable relief is not available for a commercial party who, through its own carelessness, failed to timely exercise its option to renew a lease agreement.” *SDG Macerich Props.*, 648 N.W.2d at 589. “To hold otherwise would do nothing more than create instability in business transactions and

disregard commercial realities,” for when “the terms of options involving property rights are not strictly construed, Pandora’s Box is opened for serious property title problems to develop.” *Id.* at 588 (quoting *Robinson v. Martel Enters., Inc.*, 337 So.2d 698, 704 (Miss. 1976)). To avoid such problems, and to “preserve not only sanctity of contract but also protect the integrity of the fundamental grounds upon which the rules of equitable relief are founded,” the court “decline[d] to jeopardize freedom of contract by stepping in and rewriting the parties’ agreement to relieve the consequences of [the tardy optionee’s] mere forgetfulness.” *Id.* at 589.

The Tenth District’s decision here jeopardizes freedom of contract by stepping in and rewriting the parties’ agreement to relieve Ashland from the consequences of its failure to renew. The lease-renewal option that Ashland failed to exercise is a material term. SuperAsh agreed to the below-market rents for the ground lease at least in part because of the reversionary interest. Specifically, SuperAsh agreed to reduced cashflows in the short and medium term knowing that, upon the lease’s expiration, it would be in a strong bargaining position to either sign a renewal with increased market-rate rents or to sell the improved properties. Under the Tenth District’s decision and *Ward*’s equitable-renewal doctrine, these economic expectations are null and void. And if this reasoning prevails, future Ohio businesses will pay a premium for similar leaseback transactions because the investors who will hold the remainder and reversionary rights in the ground lease will demand higher rents to compensate them for the risk of being unable to exit the

arrangement. That would be unfortunate. Leasebacks provide operating businesses with needed capital infusions and provide investors with stable future cash flows. This market relies on predictability in the enforcement of contracts (which are negotiated between sophisticated parties). Without predictable outcomes, this efficient market breaks down as investors demand premiums, in the form of higher rents, to compensate them for litigation risks. When courts fail to enforce unambiguous conditions in contracts, landlords and tenants suffer equally; landlords lose certainty and tenants pay higher rents as a result.

**III. The Court should reject the equitable-renewal doctrine to avoid grave constitutional questions.**

Even if the question whether to recognize the equitable-renewal doctrine were close, constitutional-doubt principles would break the tie in SuperAsh's favor. That is because the doctrine is subject to grave constitutional doubt.

By way of background, the Contracts Clause states as follows:

The general assembly shall have no power to pass ... laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

Ohio Const., art. II, §28,

At first, the Clause might seem to limit only the power of the "general assembly" to pass "laws," making it irrelevant to judge-made doctrines. This Court, however, has

not interpreted the Clause to be so limited. See *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216, 2003-Ohio-5849, ¶¶9–10; cf. *Acuity, A Mut. Ins. Co. v. Progressive Specialty Ins. Co.*, 173 Ohio St. 3d 178, 2023-Ohio-3780, ¶11 (reasoning courts must take contract language seriously because the United States and the Ohio Constitutions prohibit the enactment of laws “impairing the obligation of contracts”).

The Court has not explained why the Clause applies to judge-made doctrines. But the Clause’s reservation of power offers one basis for so holding, especially when read in light of the principle that “[n]o part” of the Constitution “should be treated as superfluous unless that is manifestly required,” *State ex rel. Myers v. Bd. of Ed. of Rural Sch. Dist. of Spencer Tp. Lucas Cnty*, 95 Ohio St. 367, 373 (1917). The reservation of power says that “[t]he general assembly ... may ... authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties” to contracts by curing “omissions, defects, and errors, in instruments” (such as contracts), “arising out of their want of conformity with laws of this state.” Ohio Const., art. II, §28. Simplified, the reservation of power authorizes the General Assembly to empower courts to correct mistakes in contracts on terms that are just and equitable. This reservation of power, at least in its application to contracts, is surplusage unless courts *lack* a broad equitable power to rewrite parties’ contracts in the interests of equity. After all, if that broad equitable authority inhered in the judicial power, there would be no point in empowering the legislature to “authorize” courts to exercise it—the clause would do nothing, since it would empower

the General Assembly only to pass laws allowing courts to do what they can do already.

“There is,” admittedly, “little case law construing this provision.” Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution: A Reference Guide* 149 (2004); see, e.g., *Hout v. Hout*, 20 Ohio St. 119, 126–27 (1870); *Goshorn v. Purcell*, 11 Ohio St. 641, 646–47 (1860). But what little exists supports the proposed reading explained above and would seem to conflict with the Tenth District’s rule. For example, in *Hout*, this Court noted that “the powers of the legislature to authorize, and of the courts to act upon the authorization, would seem, by implication at least, to be *limited to cases* where it can be done ‘upon such terms as shall be just and equitable.’” 20 Ohio St. at 127 (emphasis altered). *Hout* thus interpreted the reservation of power to limit judicial authority—something the reservation of power could not do if it limited only legislative grants of authority.

To be sure, this Court has said that the Ohio Constitution’s “protection of contracts is coextensive with that of the federal Constitution.” *Galatis*, 100 Ohio St. 3d 216 ¶10; compare Ohio Const., art. II, §28, with U.S. Const., art. I, §10, cl.1. But it has said that only with respect to the Clause’s opening provision prohibiting laws impairing the obligation of contracts. It has never addressed whether the reservation of power, which has no analogue in the U.S. Constitution, implies a limit on the judicial power to impair contracts. Because the Ohio Contract Clause’s limits on judicial authority come from the reservation of power, the U.S. Supreme Court’s interpretation of the federal Contracts Clause is irrelevant to the question whether Ohio’s analogue applies to judicial doctrines.

Why does all this matter here? Because the equitable-renewal doctrine presumes that courts have precisely the sort of broad equitable authority to rewrite contracts that the reservation of power suggests they lack. Put differently, the equitable-renewal provision assumes that courts may impair contractual obligations by refusing to enforce contracts according to their terms. This creates, at the very least, grave doubts about the equitable-renewal doctrine's constitutionality.

Those grave doubts counsel against embracing the doctrine. "It has long been recognized that a statute or other rule of law "must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score." *In re Jud. Campaign Complaint Against Stormer*, 137 Ohio St. 3d 449, 2013-Ohio-4584, ¶20 (quotation omitted). What is true of statutes is equally true of this Court's equitable powers: neither should be construed to create grave constitutional doubts. In the interest of avoiding such doubts, this courts' equitable authority should not be construed to include an equitable power that the Contracts Clause suggests they lack.

## CONCLUSION

This Court should reverse the Tenth District's judgment.

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