In the
United States Court of Appeals
for the Second Circuit

August Term 2024
No. 23-7247-cv

ARTICLE 13 LLC,
Plaintiff-Appellee,

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL,
Intervenor,

v.

PONCE DE LEON FEDERAL BANK, ALLIANCE MORTGAGE BANKING CORP., VAN BUREN GROUP, INC.,
Defendants,

v.

LASALLE NATIONAL BANK ASSOCIATION,
Defendant-Appellant.

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

ARGUED: NOVEMBER 13, 2024
DECIDED: MAY 13, 2026

Before: KEARSE, RAGGI, and KAHN, *Circuit Judges*.

In 2020, Plaintiff-Appellee, Article 13 LLC, brought this quiet title action against Defendant-Appellant, LaSalle National Bank Association, the predecessor-in-interest to U.S. Bank National Association. Article 13 LLC, the holder of a junior mortgage, sought to discharge U.S. Bank's senior mortgage as time-barred under New York's six-year statute of limitations because an unsuccessful action to foreclose on the senior mortgage had been commenced in 2007 in New York state court. The district court found that there was a disputed issue of material fact regarding the validity of the 2007 foreclosure action and denied both parties' motions for summary judgment.

Days after the district court's ruling, New York enacted the Foreclosure Abuse Prevention Act ("FAPA"), which, in part, bars the defense of the invalidity of prior accelerations of mortgages in quiet title actions. Article 13 LLC moved for reconsideration of the district court's order denying summary judgment. The district court held that FAPA applied retroactively and that FAPA's retroactive effect did not violate the New York or U.S. Constitutions. U.S. Bank appealed.

After oral argument, we certified the following two questions to the New York Court of Appeals:

1. Whether, or to what extent does, Section 7 of the Foreclosure Abuse Prevention Act, codified at N.Y. C.P.L.R. § 213(4)(b), apply to foreclosure actions commenced before the statute's enactment?

2. Whether FAPA's retroactive application violates the right to substantive and procedural due process under the New York Constitution, N.Y. Const., art. I, § 6?

Article 13 LLC v. Ponce De Leon Fed. Bank, 132 F.4th 586, 594 (2d Cir. 2025).

The New York Court of Appeals held that FAPA applied retroactively and that its retroactive application did not violate the right to substantive and procedural due process secured by the New York Constitution. *See Article 13 LLC v. Ponce De Leon Fed. Bank*, No. 96, ___N.E.3d ___, 2025 WL 3272351, (N.Y. Nov. 25, 2025). We must now determine whether FAPA's retroactive application violates

the right to substantive and procedural due process, the Contracts Clause, or the Takings Clause under the U.S. Constitution. We hold that it does not and **AFFIRM** the judgment of the district court.

PATRICK G. BRODERICK (Steve Lazar, *on the reply brief*), Greenberg Traurig, LLP, New York, NY; (Kathleen M. Massimo, *on the opening brief*), Houser LLP, New York, NY, *for Defendant-Appellant*.

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MARK S. GRUBE, Senior Assistant Solicitor General (Barbara D. Underwood, Solicitor General, Ester Murdukhayeva, Deputy Solicitor General, *on the brief*), for Letitia James, Attorney General for the State of New York, New York, NY, *for Intervenor*.

Matthew A. Schwartz, Leonid Traps, Austin P. Mayron, Sullivan & Cromwell LLP, New York, NY, *for Amici Curiae New York Bankers Association, New York Mortgage Bankers Association, American Bankers Association, Mortgage Bankers Association, Housing Policy Council, and Independent Bankers Association of New York State, in support of Defendant-Appellant.*

MARIA ARAÚJO KAHN, *Circuit Judge*:

In 2020, Plaintiff-Appellee, Article 13 LLC, brought this quiet title action in the Eastern District of New York against Defendant-Appellant, LaSalle National Bank Association, the predecessor-in-interest to U.S. Bank National Association.

Article 13 LLC, the holder of a junior mortgage encumbering real property located in Brooklyn, sought to discharge and cancel U.S. Bank's senior mortgage on that property as time-barred. Article 13 LLC argued that the six-year statute of limitations for U.S. Bank (or its predecessors) to foreclose on the real property at issue expired in 2013 because LaSalle's loan servicer accelerated the debt by commencing a foreclosure action on the property in 2007. *See* N.Y. C.P.L.R. § 213(4); *53rd St., LLC v. U.S. Bank Nat'l Ass'n*, 8 F.4th 74, 78 (2d Cir. 2021). *See generally Van Dyke v. U.S. Bank, Nat'l Ass'n*, No. 97, ___ N.E.3d ___, 2025 WL 3272341, at *1–*2 (N.Y. Nov. 25, 2025) ("*Van Dyke*"), (explaining that prior to 2022, "an accelerated loan could in some circumstances be de-accelerated," *id.* at *1, and that under *Freedom Mortgage Corp. v. Engel*, 37 N.Y.3d 1 (2021), "if the borrower defaulted again, the noteholder could re-accelerate the loan," file a new foreclosure action, and thereby "cause[] the six-year limitations period to reset," *id.* at *2, *i.e.*, begin anew). The district court (Hector Gonzalez, *J.*) found that there was a disputed issue of material fact regarding the validity of the 2007 foreclosure action and denied both parties' motions for summary judgment. *See Article 13 LLC v. Ponce de Leon Fed. Bank*, No. 20-cv-3553, 2022 WL 17977493 (E.D.N.Y. Dec. 28, 2022) ("*Article 13 I*").

Days after the district court's ruling, New York enacted the Foreclosure Abuse Prevention Act ("FAPA"), which, in part, bars the defense of the invalidity of prior accelerations of mortgages in quiet title actions. Article 13 LLC moved for reconsideration of the district court's order denying summary judgment. In opposition, U.S. Bank argued that FAPA did not apply retroactively and, if it did, retroactivity would violate its substantive and procedural due process rights under the New York and U.S. Constitutions.

On reconsideration, the district court held that FAPA applied retroactively and that FAPA's retroactive effect did not violate U.S. Bank's due process rights. *See Article 13 LLC v. Ponce de Leon Fed. Bank*, 686 F. Supp. 3d 212 (E.D.N.Y. 2023) ("*Article 13 II*"). U.S. Bank promptly appealed, arguing that FAPA does not apply retroactively and, in the alternative, that FAPA's retroactive application violates: (1) the right to substantive due process guaranteed by the New York and U.S. Constitutions; (2) the right to procedural due process guaranteed by the New York and U.S. Constitutions; (3) the Contracts Clause of the U.S. Constitution; and/or (4) the Takings Clause of the U.S. Constitution.

After oral argument, we certified the following two questions to the New York Court of Appeals:

1. Whether, or to what extent does, Section 7 of the Foreclosure Abuse Prevention Act, codified at N.Y. C.P.L.R. § 213(4)(b), apply to foreclosure actions commenced before the statute's enactment?

2. Whether FAPA's retroactive application violates the right to substantive and procedural due process under the New York Constitution, N.Y. Const., art. I, § 6?

Article 13 LLC v. Ponce De Leon Fed. Bank, 132 F.4th 586, 594 (2d Cir. 2025) ("*Article 13 III*").

The New York Court of Appeals held that FAPA applied retroactively and that its retroactive application did not violate the right to substantive and procedural due process secured by the New York Constitution. *See Article 13 LLC v. Ponce De Leon Fed. Bank*, No. 96, ___N.E.3d ___, 2025 WL 3272351 (N.Y. Nov. 25, 2025) ("*Article 13 IV*").

We must now determine whether FAPA's retroactive application violates the right to substantive and procedural due process, the Takings Clause, or the Contracts Clause under the U.S. Constitution. We hold that it does not and affirm the judgment of the district court.

BACKGROUND

We summarize the relevant facts, which are set out more fully in this Court's certification opinion, *Article 13 III*, 132 F.4th 586, and the New York Court of

Appeals' opinion answering our certified questions, *Article 13 IV*, 2025 WL 3272351.

In 2006, Lisa Abbott held title to a residential property located in Brooklyn, New York. Through a series of transactions, Abbott obtained a consolidated loan in the amount of $645,000, secured by a mortgage (the "Senior Mortgage") on the property. Shortly thereafter, Abbott took out another mortgage (the "Junior Mortgage") on the property.

As of January 31, 2007, LaSalle was the trustee for the trust that held the consolidated loan, and, since 2011, U.S. Bank has served as the trustee and document custodian for that trust as the successor-in-interest to LaSalle. Through July 31, 2008, Central Mortgage Company ("CMC") serviced the consolidated loan on the trust's behalf.

On February 1, 2007, Abbott defaulted on the consolidated loan. On August 27, 2007, CMC brought a foreclosure action (the "Foreclosure Action") against Abbott in the New York State Supreme Court, Kings County. The complaint in the Foreclosure Action identified CMC as the holder of the consolidated loan. In May 2017, CMC moved to voluntarily discontinue the Foreclosure Action without prejudice. The state court granted that motion in June 2017.

In 2020, the Junior Mortgage was assigned to Article 13 LLC. Article 13 LLC filed this quiet title action seeking, *inter alia*, a judgment cancelling and discharging the Senior Mortgage as time-barred. After discovery, both Article 13 LLC and U.S. Bank, as successor-in-interest to LaSalle, moved for summary judgment. The district court denied both motions on December 28, 2022, holding in part that there was a dispute of material fact as to whether CMC had standing to bring the Foreclosure Action as a "holder" of the consolidated loan. *Article 13 I*, 2022 WL 17977493, at *7, *9. At the time, that dispute of fact was material because if CMC lacked standing, the statute of limitations on U.S. Bank's time to foreclose on the Senior Mortgage did not begin to run with CMC's initiation of the 2007 Foreclosure Action.

Days after the district court's ruling, New York enacted FAPA, *see* 2022 N.Y. Laws at 2180, which took "effect immediately" and applied "to all actions . . . in which a final judgment of foreclosure and sale has not been enforced." FAPA § 10, 2022 N.Y. Laws at 2182. Section 7(b) of FAPA provides that:

> In any action seeking cancellation and discharge of record of an instrument . . ., a defendant shall be estopped from asserting that the period allowed by the applicable statute of limitation for the commencement of an action upon the instrument has not expired because the instrument was not validly accelerated prior to, or by way of commencement of a prior action, unless the prior action was

> dismissed based on an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated.

FAPA § 7(b), 2022 N.Y. Laws at 2181–82 (codified at N.Y. C.P.L.R. § 213(4)(b)).

On January 11, 2023, Article 13 LLC filed a motion for reconsideration of the district court's denial of its motion for summary judgment, arguing that FAPA was an intervening change in controlling law. In response, U.S. Bank argued that FAPA should not be applied retroactively and that retroactive application of FAPA would violate its right to substantive and procedural due process. On August 11, 2023, the district court granted Article 13 LLC's motion for reconsideration and held that U.S. Bank was estopped from arguing that the acceleration of the mortgage debt was invalid. *See Article 13 II*, 686 F. Supp. 3d at 220. Because U.S. Bank could not argue that CMC's initiation of the 2007 Foreclosure Action was invalid, the district court ruled that the six-year statute of limitations for U.S. Bank to foreclose on the Senior Mortgage had expired. *See id.* Accordingly, the district court granted summary judgment in Article 13 LLC's favor. *See id.*

U.S. Bank appealed, and after oral argument, we certified the following two questions to the New York Court of Appeals:

> 1. Whether, or to what extent does, Section 7 of the Foreclosure Abuse Prevention Act, codified at N.Y. C.P.L.R. § 213(4)(b), apply to foreclosure actions commenced before the statute's enactment?
>
> 2. Whether FAPA's retroactive application violates the right to substantive and procedural due process under the New York Constitution, N.Y. Const., art. I, § 6?

Article 13 III, 132 F.4th at 594.

The New York Court of Appeals answered the first question in the affirmative. *See Article 13 IV*, 2025 WL 3272351, at *5. It held that

> even if a prior foreclosure action was commenced by another party not in possession of the underlying note, and that action was discontinued without an express determination by the court that the instrument was not validly accelerated, the six-year statute of limitations accrued on the date that action was commenced and continued to run from that date.

Id.

As to the second certified question, the New York Court of Appeals concluded that FAPA's retroactive application did not violate U.S. Bank's due process rights under the New York Constitution. *See id.* at *8. The New York Court of Appeals ruled that U.S. Bank's substantive due process challenge was unavailing because U.S. Bank did not have a protectable interest in "the right to challenge collaterally the validity of the prior foreclosure action," *id.* at *7, and, even if it did, FAPA was rationally related to a legitimate legislative purpose, *id.* at *7–*8. The New York Court of Appeals likewise rejected U.S. Bank's contention

that procedural due process required that it be given a "reasonable time in which to file foreclosure actions that would be timely but for FAPA's application." *Id.* at *8 (alterations adopted and internal quotation marks omitted).

The same day that the New York Court of Appeals answered the certified questions in this case, it also issued its ruling in *Van Dyke*, 2025 WL 3272341, in which it held, *inter alia*, that FAPA's retroactive application did not violate the Contracts Clause of the U.S. Constitution, *see id.* at *6.

DISCUSSION

"We review de novo a district court's decision to grant summary judgment, construing the evidence in the light most favorable to the party against whom summary judgment was granted and drawing all reasonable inferences in that party's favor." *Covington Specialty Ins. Co. v. Indian Lookout Country Club, Inc.*, 62 F.4th 748, 752 (2d Cir. 2023). We generally review a district court's decision on a motion for reconsideration for abuse of discretion, *see L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 435 (2d Cir. 2011), but "we also review *de novo* the [district] judge's reconsideration, on a motion for reconsideration, of the merits of the summary judgment motion," *Lowrance v. Achtyl*, 20 F.3d 529, 534 (2d Cir. 1994).

It is well-established that "when applying state law," federal courts "are bound to apply the law as established by the state's highest court." *Donohue v. Cuomo*, 980 F.3d 53, 65 (2d Cir. 2020). The New York Court of Appeals' answers to our certified questions in *Article 13 IV* are authoritative, leaving only U.S. Bank's claims under federal law for this Court to resolve. Our task is therefore limited to determining whether retroactive application of § 7 of FAPA violates the right to substantive and procedural due process, the Contracts Clause, and the Takings Clause under the U.S. Constitution. We conclude that it does not.

I. Substantive Due Process

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The substantive component of the Due Process Clause "prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987) (internal quotation marks and citations omitted). "To establish a substantive due process violation, a plaintiff must show both (1) that [it] has an interest protected by the Fourteenth Amendment, and (2) that the statute, ordinance, or regulation in question is not rationally related to a legitimate

government interest." *Principle Homecare, LLC v. McDonald*, 158 F.4th 326, 333 (2d Cir. 2025).[1]

Not all rights are entitled to protection by the Fourteenth Amendment. Only two categories of substantive rights are protected: rights guaranteed by the first eight Amendments and those that are "deeply rooted in [our] history and tradition" and "essential to our Nation's scheme of ordered liberty." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237 (2022) (internal quotation marks omitted).

At the outset, U.S. Bank is unable to demonstrate that it had a "deeply-rooted" right to wait until after the limitations period expired to challenge the validity of an earlier foreclosure action. U.S. Bank only relies on recent New York

[1] U.S. Bank frames its substantive due process challenge as arising out of *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) and New York state court decisions applying *Landgraf*. Pursuant to these cases, U.S. Bank argues that the presumption against retroactivity precludes FAPA's application to the instant suit. U.S. Bank's reliance on *Landgraf* and the presumption against retroactive application is misplaced. *Landgraf* relied on the presumption to address the interpretive question of whether the Civil Rights Act of 1991 applied to conduct occurring before the law's enactment. *See id.* at 247. The Court relied on the presumption only because the law did "not evince any clear expression of intent on § 102's application to cases arising before the Act's enactment." *Id.* at 264; *see also id. at* 280 ("When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules."). Here, the antecedent question of whether FAPA applies retroactively is not before us because the New York Court of Appeals has already determined that it does. *See Article 13 IV*, 2025 WL 3272351, at *4–*5. We therefore consider U.S. Bank's substantive due process challenge under traditional substantive due process principles.

state court decisions in urging us to accept that the right at issue was "well-settled." Appellant's Br. at 9–10, 33 (first citing *MLB Sub I, LLC v. Grimes*, 170 A.D.3d 992 (N.Y. App. Div. 2019); then citing *Wells Fargo Bank, N.A. v. Burke*, 94 A.D.3d 980 (N.Y. App. Div. 2012); and then citing *Pryce v. Nationstar Mortg. LLC*, 131 N.Y.S.3d 832 (Sup. Ct. 2020)). In those cases, the New York courts held that because the plaintiffs in earlier foreclosure actions lacked authority to commence those actions, the statute of limitations to foreclose on the notes did not begin to run when those earlier foreclosure actions were filed. *MLB Sub I*, 170 A.D.3d at 993–94; *Wells Fargo*, 94 A.D.3d at 983–84; *Pryce*, 131 N.Y.S.3d at 839, 844.

The decisions on which U.S. Bank relies were issued within the last twenty years and, as such, do not support a longstanding historical recognition of a deeply-rooted right. Importantly, other New York courts have failed to recognize such a right exists. *See Secured Equities Invs., Inc. v. McFarland*, 300 A.D.2d 1137, 1138–39 (N.Y. App. Div. 2002) (successor-in-interest estopped from taking a position that "there was never a proper acceleration of the mortgage, for purposes of avoiding the statute of limitations"); *Bank of New York Mellon v. Cort*, 171 A.D.3d 1275, 1276 (N.Y. App. Div. 2019) (noteholder unable to challenge earlier foreclosure action as invalid); *Cap. One, N.A. v. Saglimbeni*, 170 A.D.3d 508, 509

(N.Y. App. Div. 2019) ("Because there was no finding in the prior action that plaintiff's assignor did not have the authority or standing to accelerate the mortgage debt, [the New York] Supreme Court had no basis to nullify the prior assignor's acceleration." (citations omitted)). As the New York Court of Appeals noted, U.S. Bank has, in essence, "failed to identify any caselaw recognizing a vested right in one's ability to collaterally challenge another's prior conduct where the party in question (or its predecessor) chose to sit on its rights." *Article 13 IV*, 2025 WL 3272351, at *6.

Even if a protected right were implicated, that is not the end of our inquiry. For U.S. Bank to succeed on its substantive due process challenge, it "would be required to establish" that FAPA's retroactivity is "arbitrary and irrational." *E. Enters. v. Apfel*, 524 U.S. 498, 537 (1998) (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976)). This is a high burden for a party challenging the constitutionality of an economic statute, as "[i]t is by now well established that legislative Acts adjusting the burdens and benefits of economic life [carry] a presumption of constitutionality." *Usery*, 428 U.S. at 15. Retroactive legislation is constitutional if the legislation "is supported by a legitimate legislative purpose furthered by rational means." *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S.

717, 729 (1984). To uphold FAPA's retroactive effect, we "need only find some reasonably conceivable state of facts that could provide a rational basis for the legislative action." *Molinari v. Bloomberg*, 564 F.3d 587, 608 (2d Cir. 2009) (internal quotation marks omitted).

FAPA is "justified by a rational legislative purpose." *Pension Ben. Guar.*, 467 U.S. at 730. As noted by the New York Court of Appeals, FAPA's legislative history "identifies certain abusive litigation practices engaged in by mortgage lenders and noteholders as the animating force behind FAPA's enactment." *Article 13 IV*, 2025 WL 3272351, at *7 (alteration adopted and internal quotation marks omitted). By estopping noteholders from asserting the invalidity of "long-outdated claims" tied to the spike of foreclosure actions associated with the 2007 mortgage crisis, *Article 13 IV*, 2025 WL 3272351, at *2, *8, FAPA adjusts "the burdens and benefits of economic life," *Usery*, 428 U.S. at 15. These purposes are, at minimum, legitimate, and rationally related to FAPA's substantive provisions. *See Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 639 (1993) ("[U]nder the deferential standard of review applied in substantive due process challenges to economic legislation there is no need for mathematical precision in the fit between justification and means."). We discern no reason to find that

FAPA's retroactivity is "arbitrary" or "irrational." *E. Enters.*, 524 U.S. at 537. We therefore hold that FAPA does not violate U.S. Bank's right to substantive due process.

II. Procedural Due Process

The procedural and substantive components of the Due Process Clause confer distinct rights. *See Albright v. Oliver*, 510 U.S. 266, 272 (1994). Substantive due process protects only rights born out of the federal constitution and rights deeply rooted in our nation's history, *see Dobbs*, 597 U.S. at 327, but procedural due process protects liberty and property interests "that stem from an independent source such as state law," *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). "An essential principle" of procedural due process "is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Chase Grp. All. LLC v. City of New York Dep't of Fin.*, 620 F.3d 146, 150 (2d Cir. 2010). To establish that it holds a protectable property right, U.S. Bank "must demonstrate more than an 'abstract need or desire' for the matter at issue, or a 'unilateral expectation' as to its [ability to exercise that right]." *Ace Partners, LLC v. Town of E. Hartford*, 883 F.3d 190, 195 (2d Cir. 2018) (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)). Rather, U.S. Bank must

show that it has a protected property interest—recognized by New York law and subject to federal constitutional protection, *see Castle Rock*, 545 U.S. at 757—such that it was entitled to notice and an opportunity to be heard. For the reasons set forth below, U.S. Bank fails to do so.

U.S. Bank claims that retroactive application of § 7 of FAPA deprives it of its property interest as a lienholder and its vested right to "pursue a legal cause of action in foreclosure or otherwise." Appellant's Br. at 34. Like the New York Court of Appeals, we disagree with that characterization. Although U.S. Bank holds a property interest in the Senior Mortgage, *see Permanent Mission of India to the United Nations v. City of New York*, 551 U.S. 193, 198–99 (2007), and "assuming, without deciding," that U.S. Bank holds a vested right to pursue a "timely commenced" cause of action, *Van Dyke*, 2025 WL 3272341, at *5, those rights are not impaired by retroactive application of FAPA § 7. Rather, "it is the six-year statute of limitations, not FAPA itself, that has extinguished that interest." *Id.* By its terms, FAPA does not necessarily extinguish a noteholder's lien or prevent a noteholder from instituting a foreclosure action. Indeed, the statutory text makes plain that aggrieved noteholders can, in an initial foreclosure action, seek "an express[] judicial determination . . . that [a mortgage] was not validly accelerated." N.Y.

C.P.L.R. § 213(4)(b). FAPA accordingly implicates only a noteholder's right to "wait long past the limitations period to challenge the validity of a foreclosure action that could have been challenged and refiled by the actual holder of the note and mortgage at any time during the six-year limitations period." *Article 13 IV*, 2025 WL 3272351, at *6. U.S. Bank cannot establish that it has a right protected by the procedural component of the Due Process Clause.

Even if the right at issue were constitutionally protected, U.S. Bank was not deprived of notice and an opportunity to be heard. Relying on New York cases citing to *Terry v. Anderson*, 95 U.S. 628 (1877), U.S. Bank contends that it was denied due process because it should have been afforded a grace period to raise its affirmative defense or otherwise challenge the validity of the Foreclosure Action prior to the time that FAPA took effect. *See* Appellant's Br. at 35 (citing *Bros. v. Florence*, 739 N.E.2d 733 (N.Y. 2000)). U.S. Bank's reliance on *Terry* and its progeny is misplaced.

In *Terry*, the plaintiffs brought suit to enforce the liability of the stockholders of a bank. *See Terry*, 95 U.S. at 632. The applicable statute of limitations for that action was twenty years. *See id.* The Georgia legislature enacted a new statute of limitations that had the effect of rendering the plaintiffs' claims untimely before

the twenty years allotted under the original statute had expired. *See id.* The Supreme Court noted that statutes of limitation affecting existing rights are constitutional "if a reasonable time is given for the commencement of an action before the bar takes effect" and held that the legislature's enactment of the new statute of limitations was constitutional due in part to the nine-month grace period the statute provided for potential plaintiffs. *Id.* at 632–33.

Unlike the statute at issue in *Terry*, FAPA did not alter the existing six-year statute of limitations applicable under New York law. *See id.* at 633; *see also Article 13 IV*, 2025 WL 3272351, at *8. This alone places FAPA outside *Terry's* scope. In addition, U.S. Bank and its predecessors had an opportunity to be heard in the prior Foreclosure Action or "commence a new one lacking the prior infirmity" before the expiration of the statute of limitations. *Article 13 IV*, 2025 WL 3272351, at *8. U.S. Bank does not contend that it and its predecessors were unaware of the action that CMC commenced or that it was otherwise unable to intervene in that action to protect its rights. U.S. Bank and its predecessors chose not to act, and the consequences of their willful inaction while the limitations period ran do not amount to a deprivation of the procedures guaranteed by the Due Process Clause.

III. Contracts Clause

U.S. Bank argues that retroactive application of FAPA violates the Contracts Clause because it "destroy[s]" U.S. Bank's means of enforcing the Senior Mortgage contract and "discharge[s]" Article 13 LLC's contractual obligations. Appellant's Br. at 22. We are unpersuaded.[2]

The Contracts Clause provides that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. Although "[t]he Contract Clause prohibits the impairment by the state of existing contracts," *Fabri v. United Techs. Int'l, Inc.*, 387 F.3d 109, 124 (2d Cir. 2004) (emphasis omitted), "not all laws affecting pre-existing contracts violate the Clause," *Sveen v. Melin*, 584 U.S. 811, 819 (2018). To ascertain whether a law violates the Contracts Clause, we must determine "(1) whether the contractual impairment is substantial and, if so, (2) whether the law serves a legitimate public purpose such as remedying a general social or economic problem and, if such purpose is demonstrated, (3)

[2] Article 13 LLC correctly argues that U.S. Bank did not raise its Contracts and Takings Clause challenges below. "It is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal." *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 132 (2d Cir. 2008) (internal quotation marks omitted and alteration adopted). "Nevertheless, the rule against entertaining arguments raised for the first time on appeal . . . is prudential, not jurisdictional, and we therefore have discretion to consider them." *Lenzi v. Systemax, Inc.*, 944 F.3d 97, 109 (2d Cir. 2019) (internal quotation marks omitted). Because the challenges arising from the Contracts and Takings Clauses "present[] question[s] of law" that do not "require additional fact finding," we exercise our discretion to reach the merits of those challenges. *Id.*

whether the means chosen to accomplish this purpose are reasonable and necessary." *Sullivan v. Nassau Cnty. Interim Fin. Auth.*, 959 F.3d 54, 64 (2d Cir. 2020) (alterations adopted and internal quotation marks omitted). "If the impairment is insubstantial, or the law is a reasonable and necessary means to remedy a legitimate public purpose, the Contracts Clause is not violated." *Id.*

As to the first prong, U.S. Bank claims that retroactive application of FAPA deprives it of its "validly established, contractual remedy of foreclosure." Appellant's Br. at 25. But as with U.S. Bank's due process challenges, it is not FAPA's retroactive application that deprived it of a guaranteed right. Rather, the inaction of U.S. Bank and its predecessors allowed its right to foreclose on the Senior Mortgage to expire. Because it is U.S. Bank's own inaction that deprived it of the right it seeks to enforce, we cannot conclude that FAPA's retroactivity resulted in a substantial contractual impairment.

As to the second prong, it provides no support for U.S. Bank's Contracts Clause challenge. FAPA serves a legitimate public purpose because it addresses "ongoing . . . abuses of the judicial foreclosure process and lenders' attempts to manipulate statutes of limitations." *Article 13 IV*, 2025 WL 3272351, at *3 (quoting N.Y. Assembly Introducer's Mem. in Support, Bill Jacket, L. 2022, ch. 821 at 8); *see*

also Sanitation & Recycling Indus., Inc. v. City of New York, 107 F.3d 985, 993 (2d Cir. 1997) (redressing "a general social or economic problem" is a legitimate purpose under the Contracts Clause); *Melendez v. City of New York*, 16 F.4th 992, 1036 (2d Cir. 2021) ("[C]ontrolling precedent recognizes the mitigation of economic emergencies as a public purpose that can support contract impairment.").[3]

"[T]he final inquiry is whether the means chosen to achieve those purposes are reasonable and necessary." *Sal Tinnerello & Sons, Inc. v. Town of Stonington*, 141 F.3d 46, 54 (2d Cir. 1998). In addressing this inquiry, "[u]nless the State itself is a contracting party, . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 412–13 (1983) (citation and internal quotation marks omitted); *see also Buffalo Tchrs. Fed'n v. Tobe*, 464 F.3d 362, 369 (2d Cir. 2006).[4] The New York legislature's means of addressing the societal harms it identified are "sensibly tailored to the specific litigation practices that the legislature saw fit

[3] FAPA's additional purpose of ending manipulation of the statute of limitations—which "provide security and stability to human affairs" and are "vital to the welfare of society," *Gabelli v. S.E.C.*, 568 U.S. 442, 448–49 (2013) (internal quotation marks omitted)—is also a legitimate legislative purpose under the Contracts Clause.

[4] In *Melendez*, we identified five non-exhaustive factors relevant in determining whether a challenged law survives the third prong of the Contracts Clause's test. *See* 16 F.4th at 1038–46. Because the parties do not invite us to weigh those factors and we think it clear that FAPA is reasonably tailored to achieve its stated goals, we do not address the *Melendez* factors here.

to curb" because FAPA's provisions "narrowly bar successive, collateral challenges to certain prior loan accelerations and curtail noteholders' ability to unilaterally reset the limitations period to foreclose." *Van Dyke*, 2025 WL 3272341, at *6. Because FAPA's provisions are "sensibly" tailored, and in light of the deference owed to the legislature's determination, we conclude that the means chosen to achieve the legislature's stated purposes are reasonable and necessary.

IV. Takings Clause

U.S. Bank's final constitutional challenge runs into the same obstacles as its preceding ones. The interest that FAPA infringes on is not a protected property interest, and even if it were, FAPA's retroactive application does not constitute a regulatory taking.

Under the Takings Clause, private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V. The possession of a property interest and the government's interference with that interest are necessary predicates to a Takings Clause claim. *See 1256 Hertel Ave. Assocs., LLC v. Calloway*, 761 F.3d 252, 261 (2d Cir. 2014). Although a mortgagee's lien is a protected property interest within the meaning of the Takings Clause, *see, e.g.*, *United States v. Sec. Indus. Bank*, 459 U.S. 70, 75–78 (1982) (secured creditor's lien);

Armstrong v. United States, 364 U.S. 40, 48–49 (1960) (mechanic's lien); *1256 Hertel Ave. Assocs.*, 761 F.3d at 263 (judgment lien), FAPA does not interfere with that property interest. As noted above, FAPA's retroactive application implicates only U.S. Bank's right to collaterally challenge the invalidity of a prior foreclosure action years after the limitations period expired, which is not a protected right under the Takings Clause.

Even if FAPA could be characterized as affecting U.S. Bank's mortgagee's lien, it would still withstand Takings Clause scrutiny. Generally, there are "two branches of Takings Clause cases: physical takings and regulatory takings." *1256 Hertel Ave. Assocs.*, 761 F.3d at 263. "Because application" of FAPA "to pre-existing liens does not present the classi[c] taking in which the government directly appropriates private property for its own use, any taking in this case would be regulatory in nature." *Id.* at 263–64 (internal quotation marks and citation omitted); *see also id.* at 263 n.7; *Sec. Indus. Bank*, 459 U.S. at 75–76.

A regulatory taking occurs when government regulation on private property "goes too far." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005) (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)). "The rub, of course, has been—and remains—how to discern how far is 'too far.'" *Id.* at 538. The Supreme

Court has "generally eschewed any set formula" for determining "how far is too far" in favor of "ad hoc, factual inquiries." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992) (internal quotation marks omitted). In the ordinary case, however, regulatory takings are analyzed according to the considerations set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).[5] Under *Penn Central*, courts are to consider (1) "[t]he economic impact of the regulation on the claimant"; (2) "particularly, the extent to which the regulation has interfered with distinct investment-backed expectations"; and (3) "the character of the governmental action," including whether that action relates to "some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central*, 438 U.S. at 124.

To the extent that FAPA's retroactivity creates a negative economic impact for U.S. Bank, we find that such was the result of its own inaction. FAPA has not interfered with U.S. Bank's investment-backed expectations. In the years

[5] The Supreme Court has identified "two relatively narrow categories" in which regulatory takings will be deemed "*per se* takings for Fifth Amendment purposes." *Lingle*, 544 U.S. at 538. Relevant here is the categorical rule prohibiting the deprivation of "all economically beneficial or productive use" of the property. *Lucas*, 505 U.S. at 1015. U.S. Bank does not explicitly contend that this categorical rule applies. Instead, it argues that we must examine the "justice and fairness" of the government's regulation. Reply Br. at 19 (citing *E. Enters.*, 524 U.S. at 523). We accordingly decline to consider whether FAPA's retroactive application constitutes a *per se* regulatory taking.

preceding FAPA's enactment, "the laws and rules were repeatedly changed to mitigate certain recurring problems in residential foreclosure litigation." *Article 13 IV*, 2025 WL 3272351, at *6. This is not a case in which a legislative act destabilized a settled area of law that U.S. Bank and its predecessors detrimentally relied upon. Rather, U.S. Bank invested in an area "that has long been the source of public concern and government regulation." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1007 (1984). In such cases, a subsequent regulation clarifying the rules of estoppel and accrual "can hardly be called a taking." *Id.* Finally, FAPA is a "public program" that adjusts "the benefits and burdens of economic life to promote the common good." *Connolly v. Pension Ben. Guar. Corp.*, 475 U.S. 211, 225 (1986). Specifically, FAPA seeks to redress abusive tactics in real property litigation that negatively impact New York homeowners and to end manipulation of the statute of limitations. As discussed previously, both of those interests are beneficial to society. *See Buffalo Tchrs.*, 464 F.3d at 374; *Gabelli*, 568 U.S. at 448–49.

In the aggregate, the *Penn Central* factors weigh against U.S. Bank. We therefore hold that FAPA's retroactivity does not constitute a regulatory taking.

CONCLUSION

Accordingly, the judgment of the district court is **AFFIRMED**.