Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 10/17/2022 2:56:59 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 10/19/2022 by Robert Toy, Deputy Clerk

Case No. S271869

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHEVRON U.S.A., INC., et al.
Plaintiffs and Respondents,

v.

COUNTY OF MONTEREY, et al.
Defendants;

PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO
Intervenors and Appellants.

After a Decision by the Court of Appeal, Sixth Appellate District,
Case No. H045791
Appeal from a Judgment Entered in Favor of Plaintiffs
Monterey County Superior Court Case No. 16-CV-3978 &
consolidated cases
The Honorable Thomas W. Wills, Judge

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF INTERVENORS AND APPELLANTS; PROPOSED BRIEF OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES & COUNTY OF LOS ANGELES

---

*Sean B. Hecht (SBN 181502)
Gabriel F. Greif (SBN 341537)
Frank G. Wells Environmental Law Clinic
UCLA School of Law
405 Hilgard Avenue
Los Angeles, CA 90095
Telephone: (310) 794-5272 | Facsimile: (310) 206-1234
Email: hecht@law.ucla.edu
Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

CALIFORNIA CASES

STATUTES

RULES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

TO THE HONORABLE CHIEF JUSTICE:

Proposed amici curiae League of California Cities, California State Association of Counties, and County of Los Angeles respectfully request leave to file the accompanying brief in this case pursuant to California Rules of Court, Rule 8.520, subd. (f).

The League of California Cities ("Cal Cities") is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The California State Association of Counties ("CSAC") is a non-profit corporation. Its membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee

monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The County of Los Angeles (Los Angeles County) is one of the nation's largest counties with 4,084 square miles and has the largest population of any county in the nation, roughly 10 million residents. There are 1,547 active or idle oil wells in the unincorporated areas of Los Angeles County and is home to the largest oil field in the nation. The Los Angeles County Board of Supervisors has an interest in protecting the public health, safety and welfare of residents living near oil wells in Los Angeles County and has identified this case as a case of interest and concern.

The Court's decision in this matter will significantly impact the interests of amici and their members because the novel legal theories raised by Plaintiffs have the potential to limit inappropriately the enactment of ordinances, general plan amendments, and voter initiatives authorized under local government police powers. If adopted, Plaintiffs' interpretation of preemption doctrine would undermine well-settled legal principles, create confusion and litigation risk, and chill rightful exercises of local authority.

As amici Cal Cities and CSAC represent hundreds of cities and counties throughout the state, and amicus Los Angeles County is a populous county with numerous active or idle oil wells, amici are uniquely situated to offer context for the Court

and provide insight into the practical ramifications of the Court of Appeal's reasoning.

Pursuant to California Rules of Court, Rule 8.520, subd. (f)(4), amici confirm that no party or counsel for any party in this appeal authored this brief in whole or in part. No one other than amici, and their counsel of record, made any monetary contribution intended to fund the preparation or submission of the brief.

Because amici will be affected by this Court's decision and may assist the Court through their unique perspectives, amici respectfully request that this Court grant this application for leave to file an amicus curiae brief.

Dated: October 17, 2022

By: /s/ Sean B. Hecht
Sean B. Hecht
Counsel for *Amici*
League of California Cities
California State Association of Counties and County of Los Angeles

AMICI CURIAE BRIEF

I. Introduction

For over a century, the regulation of oil and gas operations has been the shared domain of state and local authorities. Local governments have regulated whether and where oil and gas operations may take place, while the State, through the California Geologic Energy Management Division ("CalGEM"), has exercised concurrent authority to permit operations and promulgate technical standards regulating how operations proceed after they have commenced. This division of authority has, for at least 100 years, empowered local governments to determine whether to limit oil and gas development within their jurisdictions through their inherent land use authority and general police powers.

Despite this history, Plaintiffs urge this Court to adopt a novel reading of preemption doctrine and the Public Resources Code that usurps long-standing local police powers to regulate where and whether oil and gas operations may take place within local governments' jurisdictions. For over a century, this application of inherent police power has allowed local governments to ensure any oil and gas operations within their borders meet unique local needs, whether those needs are related to economic welfare, environmental preservation, safety, or otherwise. And for over a century, California courts have upheld their right to do so.

Monterey County's Measure Z is no different. Although Plaintiffs attempt to characterize Measure Z as a veiled effort to

regulate methods and practices of oil extraction, the ordinance does exactly what it purports to do: it prohibits specific land uses relating to oil and gas. This exercise of traditional land use authority represents a routine deployment of the local police power afforded by the California Constitution; Measure Z is entitled to a strong presumption against preemption, and application of settled legal principles compels the conclusion that it is not preempted by state law.

To support the Court of Appeal's Opinion ("Opinion") below, Plaintiffs attempt to rewrite well-settled legal principles, the history and text of the Public Resources Code, and Measure Z itself. In doing so, Plaintiffs threaten to generate confusion, uneven application by lower courts, and increased risk of litigation, which may have a chilling effect on lawful exercises of local land use authority.

This threat is not merely hypothetical. As Intervenors point out, several of the Plaintiffs in this litigation are "already raising [arguments for preemption under] section 3106 in challenges to zoning laws creating buffers between oilfields and homes or schools." (Reply Br. at p.14.)[1] These claims—which overlap with those raised before this Court—would interfere with local governments' critical authority to ensure that their most vulnerable residents are insulated from potential health impacts related to oil drilling.

---

[1] Intervenors cite to Petitioners' Phase 1 Joint Opening Brief at pp. 21-29, *Aera Energy LLC. v. County of Ventura* (Super. Ct. Ventura County, filed Oct. 15, 2020, No. 56-2020-00546180.)

Moreover, Plaintiffs cannot agree amongst themselves as to the scope or nature of their preemption arguments. Their arguments span various preemption theories, and some even strike at the heart of the local police power itself, despite the state constitutional basis for the police power. As one illustration, the National Association of Royalty Owners ("NARO"), in its brief, suggests the possibility that *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, a foundational decision from this Court acknowledging cities' broad authority to regulate—one that has been cited in court decisions upholding local police power over oil operations all the way to present day—"is no longer good law." (NARO Br. at p. 16.)

These arguments highlight the analytical flaws with Plaintiffs' approaches to preemption doctrine. Their claims rest largely upon language in section 3106 that falls well short of the clear indication of preemptive intent that the California Constitution demands in order to displace inherent local authority. This is especially true in light of both the overall statutory context and the long history of courts upholding local police power over oil and gas-related land uses.

Amici Cal Cities and CSAC represent cities and counties throughout California whose interests lie in maintaining their clear authority to govern oil and gas-related land uses throughout their jurisdictions. Los Angeles County is one of those interested counties. Plaintiffs in this case attempt to recast a long history of concurrent regulatory power between local governments and the State, one that California courts and the

Legislature have consistently affirmed. As such, amici find it especially important to express their support for Intervenors, as Cal Cities and CSAC did through their letter in support of Intervenors' petition for review and through their amicus brief to the Court of Appeal below.

II. Local Government Police Power Is Broad, Particularly for Land Use Measures Like Measure Z, and Clearly Encompasses the Authority to Regulate Oil and Gas Development Activities.

Monterey County, like all counties and municipalities across California, has extensive authority under its general police power to adopt regulations preserving public health, safety, and welfare. The police power is especially strong in areas where local governments have "traditionally regulated," which includes both oil and gas development and—more broadly—land use. (*T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1116; *Beverly Oil Co.*, *supra*, 40 Cal.2d 552.) Based on this clear authority, local governments have developed diverse land use regulations intended to guide oil and gas development within their borders to meet local needs. Nonetheless, the exercise of local authority over oil and gas development is not limited to land use measures. Rather, the traditional authority to regulate oil and gas operations derives from local governments' general police power granted by the California Constitution.

A. The Police Power of Cities and Counties Is As Broad As the Police Power Exercisable by the Legislature Itself, Particularly in Areas Where Local Governments Have Traditionally Exercised Control.

As a general matter, California cities and counties possess broad authority to regulate and govern for the general welfare. Local governments' police power, including the authority to promulgate land use regulations like Measure Z, stems directly from the California Constitution. Article XI, section 7 of the California Constitution states that "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." The police power is "elastic" and "capable of expansion to meet existing conditions of modern life," rather than a "circumscribed prerogative." (*Miller v. Bd. of Public Works of City of Los Angeles* (1925) 195 Cal. 477, 484.) To meet these needs, the police power of a county or city within its territorial jurisdiction is "as broad as the police power exercisable by the Legislature itself." (*Candid Enters., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885.)

The "general power of governing" reserved in the police power applies well beyond land use controls. (*Nat'l Fed'n of Indep. Bus. v. Sebelius* (2012) 567 U.S. 519, 535-36.) However, localities' exercise of police power to adopt and implement local regulations is entitled to even greater deference in the context of land use controls, "with every intendment in its favor." (*Cal. Building Indus. Ass'n v. City of San Jose* (2015) 61 Cal.4th 435,

455 [quoting *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604-05].) "As a general matter, so long as a land use restriction or regulation bears a reasonable relationship to the public welfare, the restriction or regulation is constitutionally permissible." (*Ibid.*)

A fundamental application of the police power is the authority of local governments to implement zoning and other land use controls. (See, e.g., *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1181; see also *Berman v. Parker* (1954) 348 U.S. 26, 32-33.) For example, this Court recently considered a local ordinance that utilized local land use authority to condition construction of telephone lines based on local aesthetic concerns. (*T-Mobile*, *supra*, 6 Cal.5th at p. 1116.) In its holding, this Court emphasized that local government "traditionally has exercised control" over land use under the police power to protect public health, safety, and welfare. (*Id.* at p. 1116.)

B. California Jurisdictions Have Exercised Their Police Power to Adopt Land Use Controls Regulating Oil and Gas Development in Myriad Ways.

Local land use authority encompasses the power to determine acceptable uses of land within a jurisdiction's borders. Local governments have frequently exercised this authority to balance the unique local needs and tradeoffs that arise in the context of oil and gas development. In the case of Measure Z, Monterey County's voters unambiguously declared, through an amendment to the County's General Plan, that wastewater disposal and the drilling of new wells should not occur in

Monterey County. The voters' clear purpose in enacting these prohibitions was to "protect Monterey County's water, agricultural lands, air quality, scenic vistas, and quality of life." (AR[1]121.) These goals fit squarely within the local police power to "determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders." (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729; see also *T-Mobile*, *supra*, 6 Cal.5th at p. 1107 [upholding local ordinance conditioning the construction of phone lines based on aesthetic concerns].) Much as Monterey County has enacted its policy through Measure Z, other California local governments have enacted their own diverse policies, for over a century, regulating where and whether oil extraction activities can take place within their jurisdictional boundaries.

As an amendment to Monterey County's General Plan, Measure Z effectuates a vision for future development of oil resources within the County. The general plan is the "constitution for future development," located at the top of "the hierarchy of local government law regulating land use." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540; *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183.) Intervenors note that Monterey County is a center for agriculture and tourism, its two largest industries. (Opening Br. at p. 22-23.) Against this backdrop, Measure Z reflects the voters' intent to amend its highest-level land-use planning document to help protect these

industries—and the County's aesthetic and environmental qualities—against potential harms related to the drilling of new wells and land uses supporting wastewater disposal. In support of these priorities, Measure Z provided extensive findings articulating the health, welfare, and safety benefits of the new amendments. (AR[1]121-27.)

While Measure Z clearly lies within the broadly defined boundaries of the County's land use authority, it is by no means the only approach that local governments have taken to regulate oil and gas development to meet local conditions and priorities. In 1953, in *Beverly Oil Co.*, this Court concluded that it was well-settled that the "enactment of an ordinance which limits the owner's property interest in oil bearing lands located within the city is not of itself an unreasonable means of accomplishing a legitimate objective within the police power of the city." (*Beverly Oil Co.*, *supra*, 40 Cal.2d at p. 558.) Although *Beverly Oil Co.* considered a zoning regulation that prohibited the drilling of new wells or deepening of existing wells in specific areas (*id.* at pp. 554-55), subsequent cases have affirmed that this same authority permits localities to entirely prohibit oil and gas locations within their jurisdictions, should they choose to do so. (See, e.g., *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 28 [holding that an ordinance prohibiting all oil drilling on submerged lands "amounts to a determination that the city does not desire to subject the public to the inconvenience, noisome effects, and potential dangers that may accompany and follow the exploration for, and production of, oil," finding it both a valid exercise of the

police power and not preempted]; *Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 555-56 [noting that a total ban on oil drilling within a local government's jurisdiction is "presumptively a justifiable exercise of the City's police power"].)

Nor is this power limited to rigid determinations of where, if at all, oil and gas operations may take place within a jurisdiction. Local governments have frequently utilized their land use powers to issue regulations that may impact specific operational aspects of oil drilling based on aesthetic, environmental, economic, or safety concerns. Indeed, almost 70 years ago, *Beverly Oil Co.* affirmed that land use regulations may limit the depth of existing oil wells to meet local needs. (*Beverly Oil Co.*, *supra*, 40 Cal.2d 552.) More recently, cities and counties have enacted bans on oil and gas operations or even specific production techniques. (See, e.g., 1994 General Plan and Local Coastal Program for the County of Santa Cruz, California, section 5.18.4 [as amended by Res. No. 142-2014] [prohibiting the development or use of any facility necessary for or intended to support oil or gas exploration, where any portion of the surface or subsurface operations are within the County of Santa Cruz]; County of San Benito Measure J (2014)[2] [amending the general plan to "prohibit[] the use of any land within the County's unincorporated area for fracking, acid fracking, acid matrix

[2] Available at <http://sbcvote.us/pdf/forms/registrar/2014NovElection/Measure_J_Web-Post.pdf>, at p. 28.

stimulation, steam injection and other types of oil and gas development with advanced well stimulation technologies"].)

In many instances, local government regulations have *facilitated* significant oil and gas development by supporting various production techniques while conditioning their approval on meeting locally-developed standards. For example, Kern County adopted zoning regulations that provide special review procedures and development standards for all future oil and gas exploration, extraction, operations, and production activities in the unincorporated areas of Kern County. (See Kern County Zoning Ordinance, chapter 19.50, section 130, chapter 19.98, section 050.)[3] Under these regulations, Kern County may issue, or deny, conditional use permits for operators to lawfully drill a well for underground injection techniques. (*Id.* at chapter 19.98, section 050 [requiring that "no well for use as an injection well and no well for the exploration for or development or production of oil, gas, or other hydrocarbon substances may be drilled, and no related accessory equipment, structure, facility or use may be installed" without an approved conditional use permit, in various parts of the county].)

The 1976 Attorney General Opinion ("AG Opinion"), on which Plaintiffs rely, further supports local governments' broad authority to authorize, condition, or entirely prohibit specific types of oil and gas operations, even where local requirements

[3] Available at <https://psbweb.co.kern.ca.us/planning/pdfs/KCZOApr2021.pdf>, at pp. 507-09.

"deal with subsurface operations." (See 59 Ops.Cal.Atty.Gen. (1976) 461, 483; Reply Br. at 41-42.) Indeed, the AG Opinion recognized that, as a derivative of local authority to restrict the location of—or even entirely prohibit—oil and gas operations within their jurisdictions, local governments may regulate aspects of oil and gas operations related to land use, environmental protection, aesthetics, and public safety. (59 Ops.Cal.Atty.Gen., *supra*, at p. 479.) As one example, the AG Opinion expressly endorsed a local ordinance regulating the depth of slant-drilled wells surfaced outside of the city, concluding that the regulation was "within the local authority to prohibit operations." (*Id.* at p. 483.) The AG Opinion's conclusion harmonizes with the provisions of the Public Resources Code identified by Intervenors that expressly acknowledge the diverse methods by which local governments may regulate oil and gas operations, including by authorizing these operations or even prohibiting them outright. (Opening Br. at pp. 20-22; Pub. Res. Code § 3012, 3203.5, 3690.)

Plaintiffs' contention that Measure Z's focus on land use is "pretextual," and that it is therefore not a "traditional" land use measure, is necessarily incorrect. (See Aera Br. at p. 67; Chevron Br. at pp. 54-58; NARO Br. at 20-21.) As demonstrated by the wide range of local measures regulating oil and gas operations, permissible land use ordinances may direct the development of land while impacting—or even making impossible—the operations of facilities of all types, including those used to support oil drilling. (See Reply Br. at 23-25.) As an amendment to

the Monterey County General Plan, Measure Z guides the "general location and extent of the uses of [] land" in the County in accordance with its land use authority. (Gov. Code § 65302, subd. (a).)

C. The Police Power Extends Beyond the Authority to Regulate Uses of Land; Local Governments May Regulate Oil and Gas Operations Under Their General Police Power.

While Plaintiffs' contention that Measure Z is anything other than a land use ordinance is plainly incorrect, Monterey County's authority to prohibit land uses supporting wastewater disposal and the drilling of new wells does not rest solely on its authority to govern land use. Rather, local governments' ability to regulate land uses derives from their constitutional police powers (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782), which are "as broad as the police power exercisable by the Legislature itself." (*Candid Enters., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885.) This authority empowers cities and counties to protect the public health, safety, and welfare of their residents. (See *Berman v. Parker* (1954) 348 U.S. 26, 32-33.)

In *Sherwin-Williams Co. v. City of Los Angeles*, this Court upheld a local ordinance generally requiring "retailers of aerosol paint and broad-tipped marker pens to display such items out of the public's reach" as a valid use of the police power, against a claim of state law preemption. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 901.) Other cases considering challenges—including preemption challenges—to prohibitions of

activities impacting the use of land have, at times, analyzed the question in terms of traditional police power to protect public health, welfare, and safety, rather than the narrower subset of land use controls. (See, e.g., *Ex Parte Hadacheck* (1913) 165 Cal. 416 [upholding city-wide ordinance prohibiting establishment or operation of brickyards based on the general police power to regulate public health or morals]; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264 [finding countywide initiative prohibiting operation of waste incinerators was a lawful exercise of the general police power, and not preempted].)

Indeed, the Ninth Circuit explicitly recognized almost a century ago that under California state constitutional principles, land use controls are not the only vehicle by which local governments can regulate oil and gas development. In *Marblehead Land Co. v. City of Los Angeles*, plaintiffs challenged an ordinance prohibiting oil and gas development in certain areas of a city. (*Marblehead Land Co. v. City of Los Angeles* (9th Cir. 1931) 47 F.2d 528, 529.) The Ninth Circuit concluded that public safety provided an alternative rationale for empowering local governments to regulate the location of oil and gas operations:

> [T]he right of the appellee city to pass the ordinance in question need not be confined to the more recently developed phase of police power involved in zoning ordinances which undertake in a measure to direct the future growth of the city, but may also be predicated upon the power of the city to protect its inhabitants from fire hazard and from noxious gases; that is to say, the power exercised by the city authorities in enacting the ordinance may be based upon that branch of the police power which deals with the public safety. It

> cannot be doubted under the authorities that, if there is a menace to the health and property of its citizens from the proposed drilling operations, under the police power as long established and exercised the ordinance would be a valid exercise of such police power.
>
> (*Id.* at p. 531 [citations omitted].)

The Ninth Circuit's conclusion that the regulation of oil and gas "need not be confined to the more recently developed phase of police power involved in zoning ordinances" aligns with Section 3690 of the Public Resources Code, which recognizes the "existing" right of cities and counties to "regulat[e] the *conduct* and location of oil production activities." (*Ibid.*; § 3690 [emphasis added].) Similarly, the AG Opinion states that the Public Resources Code does not generally preempt local regulations of oil and gas development that address "land use, environmental protection, aesthetics, public safety, and fire and noise prevention." (59 Ops.Cal.Atty.Gen., *supra*, at p. 479.) The AG Opinion's deliberate recognition of land use as a separate permissible form of regulation from environmental protection, aesthetics, and public safety supports the diverse methods by which local governments may regulate oil and gas operations under their general police power.

III. Total Bans on Land Uses or Other Activities Are Valid Exercises of Local Government Authority and Are No Different From the Use of Locational Zoning to Control Where and Whether Certain Activities Occur.

At various points in their briefs, and through varying theories of preemption, Plaintiffs insist that this Court must

scrutinize a jurisdiction-wide prohibition on land uses in support of oil and gas activities more stringently than a regulation that is smaller in geographic scope. (See Chevron Br. at pp. 33-34, 54-55 [arguing in the context of obstacle preemption and against the notion that Measure Z is a traditional land use measure]; Aera Br. at pp. 38-40 [arguing in the context of "contradictory and inimical" preemption]; NARO Br. at p. 19 [arguing in the context of obstacle preemption and "contradictory and inimical" preemption].) Not so.

Local governments' land use and general authority to regulate oil and gas operations necessarily encompasses the power to determine where and *whether* an activity occurs. Both the authority to adopt locational zoning regulations and the authority to prohibit specific land uses within local governments' jurisdictions stem from local governments' constitutionally derived power to determine appropriate uses of land within their borders. (*City of Riverside*, *supra*, 56 Cal.4th at p. 761 [upholding complete local prohibition of medical marijuana facilities against preemption challenge on the basis that a city or county may determine the appropriate use of land within its borders unless in clear conflict with general law].) The AG Opinion on which Plaintiffs rely supports this, endorsing—in the context of state preemption—local "authority to *prohibit all drilling* within the city limits." (59 Ops.Cal.Atty.Gen., *supra*, at pp. 488-89 [emphasis added].)

Conflict preemption cases that have considered whether a state law preempts local governments' total bans on specific land uses—both in the context of oil drilling and otherwise—analyze the question in terms of traditional police power, without distinguishing between total prohibitions and more limited land use controls. These cases have generally resulted in California appellate courts upholding these bans. (See, e.g., *City of Dublin v. County of Alameda*, *supra*, 14 Cal.App.4th 264 [finding countywide initiative prohibiting operation of waste incinerators throughout entire county was a lawful exercise of the police power, and not preempted]; *City of Riverside*, *supra*, 56 Cal.4th at pp. 744-63 [rejecting the argument that a countywide ordinance designating marijuana dispensaries as a prohibited use and a public nuisance was preempted by a state statutory scheme enabling the possession and cultivation of marijuana for authorized medicinal purposes]; *Hermosa Beach Stop Oil Coal.*, *supra*, 86 Cal.App.4th at pp. 555-56 [calling a total ban on oil drilling within the jurisdiction "presumptively a justifiable exercise of the City's police power"].) Indeed, at least one Plaintiff here concedes that local governments may use their zoning authority to prohibit oil and gas operations altogether. (See NARO Br. at pp. 12-13 ["[Public Resources Code] Section 3106(b) does not prohibit counties from exercising their zoning powers to decide where, if at all, oil and gas operations within their boundaries may be conducted."].)

Local governments' clear and well-settled authority to enact complete prohibitions on oil and gas operations

undoubtedly includes the authority to prohibit *narrower* subsets of oil and gas-related land uses. (See 59 Ops.Cal.Atty.Gen., *supra*, at pp. 488-89 [endorsing local ordinances requiring conditional use permits and regulating wells depths "[u]nder [their] authority to prohibit all drilling"].) Thus, Plaintiffs' assertion that a prohibition on these land uses is necessarily "pretextual," or somehow justifies greater scrutiny, must fail.

IV. Measure Z Is Entitled to a Strong Presumption Against Preemption.

As a corollary to the broad police power and land use authority outlined above, local governments are entitled to a strong presumption against preemption, particularly in areas where local government "traditionally has exercised control." (*T-Mobile*, *supra*, 6 Cal.5th at p. 1116 [quoting *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149].) The "inherent local police power includes broad authority to determine . . . the appropriate uses of land within a local jurisdiction's borders, and preemption by state law is not lightly presumed." (*City of Riverside*, *supra*, 56 Cal.4th at p. 738.)

Plaintiffs rely upon language in the Court of Appeal's Opinion, which analyzes whether the Legislature intended to "*reserve* all or part of the authority" to regulate oil and gas operations. (See Opinion at p. 9; Chevron Br. at p. 49 [emphasis added].) This reflects a fundamental misstatement of preemption doctrine. As Intervenors note, "the question is whether the Legislature has clearly stated its intent to *divest* local governments of their inherent constitutional power." (Reply Br.

at 16 [citing *T-Mobile*, *supra*, 6 Cal.5th at p. 1118] [emphasis in original].)

Several Plaintiffs attempt to distinguish the body of case law affirming that, in the context of land use controls, the presumption against preemption is particularly strong, with the argument that Measure Z is not a land use measure because it does not "regulate the location of particular land uses." (See Chevron Br. at p. 59 [quoting *Big Creek Lumber Co.*, *supra*, (2006) 38 Cal.4th at p. 1149]; NARO Br. at pp. 19-20.) However, as demonstrated above, local land use authority includes the power to entirely prohibit specific uses of land—such as wastewater disposal and the drilling of new wells—within counties' and municipalities' jurisdictions. As an amendment to Monterey County's General Plan, Measure Z guides the future development of land uses within the County and is, by definition, a land use measure. (See Part II.B, *supra*.)

More fundamentally, however, the presumption against preemption is not limited to land use controls. Rather, the presumption against preemption applies to areas over which local government "traditionally has exercised control." (*Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1149.) While this certainly applies to local land use measures, it also applies to local regulations enacted under the general police power to protect public health, safety, and welfare, particularly in areas where local governments have traditionally regulated. (See, e.g., *Cal. Grocers Ass'n v. City of Los Angeles* (2011) 52 Cal.4th 177, 186,

197 [applying the presumption against preemption in a challenge to worker protection ordinance and noting that the presumption against preemption is "particularly heavy" where the subject matter is "traditionally regulated by . . . local governments under their police powers"].) Even outside the area of land use, this Court has noted that it is "reluctant" to infer preemptive intent when there is a "significant local interest to be served that may differ from one locality to another." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707 [upholding local rent control ordinance against preemption challenge].)

As demonstrated above, the traditional use of local police power to regulate oil and gas operations in the interest of public health, safety, and welfare is well-established, even outside the context of land use regulations. (See Part II, *supra*; *Marblehead Land Co.*, *supra*, 47 F.2d at p. 531.) Moreover, the development of oil and gas operations within local governments' jurisdictions implicates significant and varying local interests. These local interests reflect a range of local concerns, including safety, community character, public health, environmental preservation, economic development, and aesthetics. Because Measure Z is a land use ordinance and regulates to address health, safety, and welfare concerns and interests traditionally regulated by local governments, a strong presumption against preemption must apply.

V. There Is No Conflict Between Measure Z and State Law Because Measure Z Is Neither Contradictory nor Inimical to State Law.

Plaintiffs claim that Measure Z is preempted because it is "contradictory or inimical" to state law, arguing this standard is satisfied because the ordinance frustrates the purposes of section 3106. (Chevron Br. at p. 35; Eagle Br. at p. 25; Aera Br. at pp. 38-39.) Plaintiffs misstate the applicable legal standard, and come to the wrong conclusion. This Court has held that "local legislation that conflicts with state law is void." (*T-Mobile*, *supra*, 6 Cal.5th at p. 1116 [citing *City of Riverside*, *supra*, 56 Cal.4th at p. 743].) "A conflict exists when the local legislation 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication . . . [l]ocal legislation is contradictory when it is inimical to general law.'" (*Ibid.* [quoting *Sherwin-Williams*, *supra*, 4 Cal.4th at pp. 897-98].) Here, Measure Z neither contradicts nor is inimical to state law governing oil and gas exploration and production.

Although Plaintiffs attempt to obscure and confuse the standard this Court has articulated, this Court's precedent is clear. As this Court explained in *Big Creek Lumber Co. v. County of Santa Cruz*:

> We previously have explained that a local ordinance is not impliedly preempted by conflict with state law unless it "mandate[s] what state law expressly forbids, [or] forbid[s] what state law expressly mandates." (*Great Western Shows, Inc. v. County of Los Angeles* [2002] 27 Cal. 4th [853,] 866.) That is because, when a local ordinance "does not prohibit

> what the statute commands or command what it prohibits," the ordinance is not "inimical to" the statute. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893, 902.)

(*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) The state statute at issue in *Big Creek Lumber*, unlike any California law addressing oil and gas production, expressly preempted certain local regulations by stating that, with limited exceptions, "individual counties shall not otherwise regulate the conduct of timber operations . . . or require the issuance of any permit or license for those operations." (Pub. Res. Code § 4516.5, subd. (b).) Thus, the statute at issue in *Big Creek* expressly and exclusively assigned permitting authority to the California Department of Forestry. (*Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1147.) Moreover, the statute in *Big Creek* included a policy "to achieve the maximum sustained production of high-quality timber products." (*Big Creek Lumber*, *supra*, 38 Cal.4th at p. 1147 [citing *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1226; Pub. Res. Code § 4513].) Yet despite the statute's express preemption provisions, encouragement of timber production, and the State's exclusive permitting authority over timber operations, this Court held the local ordinance not preempted because "the zone district ordinance does not mandate what general forestry law forbids or forbid what general forestry law mandates." (*Id.* at p. 1161.) This Court's decision in *Big Creek*, finding no preemption despite much more strongly preemptive language in the statute, establishes beyond question that Measure Z is not preempted by a state statutory scheme that

leaves far more room for local regulation. (See Reply Br. at pp. 32-35 [describing provisions of the Public Resources Code recognizing existing local authority to regulate the conduct and location of drilling entirely, or even to prohibit drilling altogether].)

Plaintiffs ask this Court to expand dramatically the clear boundaries of "contradictory or inimical" preemption set out in *Big Creek*. For example, Aera asserts that as "part of th[is] inquiry," local regulations may not ban an activity where a state law seeks to promote that activity. (See Aera Br. at pp. 38-39; NARO Br. at 2 ["local law is contradictory where it obstructs or harms state law"].) None of these arguments is consistent with the analysis and holding in *Big Creek*. Rather, these arguments sound, at most, in obstacle preemption, which this brief addresses more fully in Part VII.A, VII.B, *infra*. Notably, however, this Court considered parallel arguments in *Big Creek*, finding that even though state law *encouraged* maximum production of timber, it "do[es] not require that every tree be cut." (*Big Creek*, *supra*, 38 Cal.4th at p. 1147.) Similarly, as Intervenors point out, "section 3106 does not require that every drop of oil be extracted." (Reply Br. at p. 44.)

Plaintiffs further contend that Measure Z is unlike the ordinance in *Big Creek* because it has the effect of prohibiting certain "operational technique[s]" regulated by the state. (See Chevron Br. at pp. 46-47; Aera Br. at p. 47; Eagle Br. at p. 51.) This argument fails because Measure Z solely limits the location

of a subset of oil and gas activities. This is true even where the practical effect of limiting these locations may also limit conduct. (See Part II.A, *supra*.) Thus, the prohibition of wastewater disposal and the drilling of new wells no more limits the operational techniques of oil and gas operators than does the prohibition of these uses through locational zoning.

Plaintiffs also cite to the Court of Appeal opinion in *Fiscal v. City and County of San Francisco*, in which the court held as preempted a local ordinance preventing virtually all residents within a city from possessing or selling firearms. (*Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 914-15.) In *Fiscal*, the Fifth District Court of Appeal stated that "a local entity may not pass an ordinance, the effect of which is to completely frustrate a broad, evolutional statutory regime enacted by the Legislature." (*Id*. at p. 911.) Although *Fiscal* framed its decision in the language of obstacle preemption, it cites only to *Sherwin-Williams Co. v. City of Los Angeles* for the prospect that local legislation is "preempted if it is 'inimical' to the state law's *policies*." (*Ibid.*; *Sherwin-Williams Co. v. City of Los Angeles, supra,* 4 Cal.4th at p. 898 [emphasis added].) The Fifth District's holding, however, misstated the preemption analysis that this Court set forth in *Sherwin-Williams*. Indeed, *Sherwin-Williams* makes no mention of the State's policy goals; it merely notes that "local legislation is 'contradictory' to general law when it is inimical thereto." (*Sherwin-Williams*, *supra*, 4 Cal.4th at p. 898.) This Court went on to explain that the ordinance at issue in *Sherwin-Williams* was not 'inimical' to state

law, as "it did not prohibit what the statute commands or command what it prohibits." (*Id*. at p. 902.) Thus, despite Plaintiffs' reliance on the language employed by the Court of Appeal in *Fiscal*, this Court's straightforward test for "contradictory and inimical" preemption remains unchanged.

VI. The State Has Not Fully Occupied the Field of Oil and Gas Operations, nor Does Measure Z Implicate Any of the Specific Technical Standards Covered by the Public Resources Code.

Plaintiffs next turn to the second and final iteration of implied preemption that this Court has formally adopted: field preemption.[4] A local ordinance may be impliedly preempted when it (1) enters a field "so fully and completely covered" by state law that there is no room for local regulation; or (2) the subject of the local ordinance is partially covered by state law, "couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action." (*Sherwin-Williams*, *supra*, 4 Cal.4th at p. 898.) Although Plaintiffs attempt to describe the purportedly preempted field in various and nebulous terms (see Reply Br. at p. 37), they primarily argue that, despite the long background of local regulation of oil drilling through land use controls and other regulatory tools, the entire field of "oil and gas operations" is preempted, and that this field

[4] This Court has also held that a state law may preempt a local regulation when that regulation 'duplicates' the state law. No Plaintiff has attempted to argue that Measure Z duplicates any provision of the Public Resources Code.

is so broad as to include Measure Z. (Chevron Br. at pp. 61-70; Eagle Br. at pp. 38-48; Aera Br. at pp. 65-69; NARO Br. at p. 7.)

But this cannot possibly be the case. Measure Z, in all relevant respects, has the same relationship to "oil and gas operations" as numerous other ordinances that local governments have enacted and enforced for the past century under their constitutional police power. As discussed above, these regulations, even when they have the secondary effect of impacting oil and gas operations permitted by the state, have regularly been upheld as valid exercises of local authority against preemption challenges. (See, e.g., *Higgins*, *supra*, 62 Cal.2d at p. 28 [upholding ordinance prohibiting oil drilling on submerged lands against preemption challenge].)

Plaintiffs' claim that this purported field preempts even routine local land use measures, like Measure Z, reveals their muddled conception of the "field of oil and gas operations." (Chevron Br. at p. 61.) The basis of this field preemption argument rests largely on various statutory provisions regulating technical aspects of oil drilling operations, which become relevant only after both the Supervisor and local authorities have authorized those operations. (Chevron Br. at pp. 64-66; Eagle Br. at pp. 39-45; Aera Br. at pp. 65-69; see Pub. Res. Code § 3203.5 [requiring operators to submit a notice of intent to drill to the State that includes "a copy of the local land use authorization that supports the installation of a well"].) Tellingly, none of the statutory sections that Plaintiffs point to evinces an intent to

regulate where or whether oil and gas operations take place within a jurisdiction's borders.

The Legislature's persistent recognition of the diverse and judicially recognized methods by which local governments have regulated oil and gas operations undermines these arguments. For instance, Public Resource Code section 3690 expressly recognizes local governments' pre-existing constitutional authority to regulate both the "conduct and location of oil production activities." (Pub. Res. Code § 3690.) This Court has further upheld—including against preemption challenges—local ordinances having an impact on oil and gas operations, including those outright banning oil and gas activities. (See Part II, *supra*; see, e.g., *Higgins*, *supra*, 62 Cal.2d at p. 28 [holding local ordinance not preempted where it prohibited oil and gas operations on submerged lands]; *Hermosa Beach Stop Oil Coal.*, *supra*, 86 Cal.App.4th at pp. 555-56 [upholding a total ban on oil drilling against challenge that it unconstitutionally impaired a lease agreement].) Considering the Legislature's recognition of local authority to limit oil and gas operations, and against the judicial backdrop upholding this right, the provisions to which Plaintiffs cite do not "indicate clearly"—or at all—that concurrent state and local regulation of oil and gas activities conflicts with the legislative scheme. (*Sherwin-Williams Co.*, *supra*, 4 Cal.4th at p. 898; *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485 [implied preemption "should not be found when the statutory scheme recognizes local regulations.")

Even assuming, for the sake of argument, that state law does preempt some field of "oil and gas regulation" or "subsurface production," Measure Z does not come close to intruding on this field. The statutes to which Plaintiffs cite prescribe specific standards for various technical aspects of oil and gas production, ranging from facility maintenance standards to operational requirements that pertain to specific aspects of oil and gas production, including well casings, blowout prevention, or geothermal resources. (See, e.g., Chevron Br. at pp. 62-65.) Plaintiffs' perfunctory recital of these statutory provisions serves only to demonstrate that these provisions do not preempt Measure Z. Land use policies, including Measure Z, make no attempt to regulate any of the technical standards listed by Plaintiffs; they do not dictate *how* these operations proceed, but rather where, if at all, they may occur.

Recognizing this, Plaintiffs attempt to distinguish Measure Z from other local ordinances regulating the location of drilling operations. For example, Chevron claims that "Measure Z's impact would go beyond a typical zoning ordinance" because it "would prohibit the specific enhanced recovery techniques that Chevron relies upon to operate the field." (*Id.* at pp. 46-47; see also NARO Br. at pp. 19-20 [attempting to distinguish the use of zoning ordinances to ban oil and gas development from the power to prohibit certain "methods and practices"].) In practice, however, these semantic distinctions make no difference. Valid local regulations regularly have the effect of placing geographic

restrictions on oil and gas development at local governments' discretion.

Indeed, if—as Plaintiffs assert—underground wastewater disposal and drilling new wells are types of production techniques, and state law preempts any local regulation that prohibits or impacts these operations, the legal authority of local governments to condition drilling of new wells on discretionary local permit decisions, or even local zoning limiting the locations of related land uses, may be called into question.

In *Beverly Oil*, this Court concluded, as the basis of its entire analysis, that it was "well settled" that an ordinance that "expressly provide[d] that no new well for the production of hydrocarbon substances . . . shall be drilled nor shall existing wells be deepened" was within the power of a local government to enact. (*Beverly Oil*, *supra*, 40 Cal.2d at pp. 555, 558.) Local governments thus necessarily retain the authority to regulate the location of oil wells and related infrastructure, whether through the mechanism of conditioning them through a discretionary permitting process, or by prohibiting some or all land uses that support drilling in some or all areas within their jurisdiction. And because local governments retain that authority, Measure Z does not intrude upon any purportedly preempted field of oil and gas regulation.

VII. Although this Court Need Not Adopt an Obstacle Preemption Test Here, Measure Z is Valid Under Any Plausible Articulation of Obstacle Preemption.

Failing to find support for their arguments in California's "contradictory or inimical" and field preemption doctrines, Plaintiffs invoke the principles of federal obstacle preemption. Plaintiffs claim that Measure Z frustrates the policies set forth in section 3106 by prohibiting activities that state law allegedly intends to promote. (Aera Br. at pp. 36, 38-39, 45-46; Chevron Br. at p. 33; Eagle Br. at p. 26.) As Intervenors correctly note, "[t]hese are obstacle preemption arguments." (Reply Br. at p. 48.)

This Court has never formally adopted obstacle preemption, and it need not do so to resolve this case. (*T-Mobile*, *supra*, 6 Cal.5th at p. 1123 ["[t]his court has never said explicitly whether state preemption principles are coextensive with the developed federal conception of obstacle preemption."] [citing *Great Western Shows, Inc. v. County of Los Angeles* (2002) Cal.4th 853, 867]; see also *City of Riverside*, *supra*, 56 Cal.4th at pp. 763-65 (Liu, J., concurring)].) Plaintiffs nonetheless insist that these obstacle preemption principles already exist within California law as a strain of "contradictory or inimical" preemption and, alternatively, advocate for the formal adoption of obstacle preemption here.

No matter how Plaintiffs characterize these arguments, they advocate for a radical test that is not grounded in California or federal law. In doing so, Plaintiffs rely on extreme and overbroad statements of preemption doctrine that would bring

confusion and litigation threats to local governments across California. As such, if this Court chooses to apply an obstacle preemption test, it should take this opportunity to reiterate its restrained approach to obstacle preemption, as it has consistently done in challenges to laws under federal obstacle preemption.

A. Plaintiffs Suggest an Extreme and Unprecedented Test for Obstacle Preemption in California.

Less than two months ago, this Court explained the bounds of federal obstacle preemption. (*County of Butte v. Department of Water Resources* (2022) 13 Cal.5th 612, 628-29.) An obstacle exists in federal preemption challenges where:

> [t]he state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." [Citations] "[T]he threshold for establishing" such an obstacle "is demanding: 'It requires proof Congress had particular purposes and objectives in mind [and] a demonstration that leaving state law in place would compromise those objectives . . .'" *(People v. Rinehart* (2016) 1 Cal.5th 652, 661[]; see *Chamber of Commerce of the United States of America v. Whiting* (2011) 563 U.S. 582, 607[] (plur. opn. of Roberts, C. J.) [a "high threshold must be met if a state law is to be pre-empted for conflicting with the purposes of a federal Act"].) "[P]reemption analysis is not "[a] freewheeling judicial inquiry into whether a state statute is in tension with federal objectives" (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 939[]), but a focused inquiry into "whether there exists an irreconcilable conflict between the federal and state regulatory schemes."

(*Ibid.*) *County of Butte* further reaffirmed that a finding of implied preemption under federal law requires a showing of

"unmistakably clear language" demonstrating preemptive intent. (*Id*. at p. 630.)

Plaintiffs' obstacle preemption arguments do not meet the "demanding" threshold set forth in *County of Butte*. (*Id.* at pp. 628-29.) One version of these arguments appears in Plaintiffs' contention that the Public Resources Code preempts Measure Z because it "frustrate[s] the purpose" of the State's statutory scheme. (Chevron Br. at pp. 45-49; Eagle Br. at p. 36; Aera Br. at pp. 50-54.) Under Plaintiffs' formulation, the purpose of this statutory scheme is either to "promote and increase the ultimate recovery of hydrocarbons," (Chevron Br. at p. 48), or to provide the Supervisor exclusive authority to "balance between the two objectives of oil production and environmental protection." (Aera Br. at 56.) As Intervenors point out, these statements do not articulate, at all, the full legislative purpose of state regulation of oil and gas operations, as demonstrated by the statutory scheme's emphasis on environmental protection and local authority. (Reply Br. at pp. 55-58.)

More fundamentally, Plaintiffs' version of the "frustration of purpose" test demands that this Court find an intent to displace inherent and well-settled land use authority based merely on the existence of state regulation and permitting authority over an activity, coupled with the statute's tepid encouragement of the "wise development of oil and gas." (Pub. Res. Code § 3106, subd. (b).) This test subverts this Court's requirement to "examine the statute as a whole and identify[] its

purpose and intended effects." (See, e.g., *Bronco Wine Co. v. Jolly* (2004) 33 Cal.4th 943, 955 [quoting *Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 372].) Although Plaintiffs cite to statutory provisions regulating how operations take place after they have commenced, they ignore numerous provisions acknowledging constitutional local authority over where and whether those operations take place. (See, e.g., Pub. Res. Code § 3012 [recognizing the right of local governments to entirely prohibit oil and gas operations]; *Id*. at § 3690 [recognizing the "existing" right of cities to regulate the "location and conduct" of oil and gas operators].) Plaintiffs' formulation of this test precludes the necessary "focused inquiry into whether there exists an irreconcilable conflict" between the two regulatory schemes. (*County of Butte*, *supra*, 13 Cal.5th at p. 629 [quoting *Rice v. Norman Williams Co.* (1982) 458 U.S. 654, 659].)

Aera and Eagle go a step further. They argue that a statutory scheme is frustrated whenever (1) the Legislature promotes or authorizes a particular action "by placing the power to regulate the activity into the hands of the State" and (2) a local ordinance forbids the "state-promoted" activity. (Aera Br. at pp. 39-40; Eagle Br. at pp. 26-27.) This test does not align with any version of preemption doctrine. It seemingly asserts that any local control over where state-permitted operations occur must be preempted. Even to the extent that this test refers only to jurisdiction-wide bans—a limitation that does not seem to feature in the briefs—jurisdiction-wide bans fall well within a

local government's land use authority and are analyzed in terms of traditional police powers. (See Part III, *supra*.)

Aera's own application of this test demonstrates its radical scope. Aera asserts that geographic prohibitions on specific oil and gas operations, like Measure Z, would render the State's statutory scheme "unworkable" and "eliminat[e] [CalGEM's permitting] tools specified by the Legislature." (Aera Br. at pp. 54-55.) This framing fails to distinguish between Measure Z and any other local regulation that would impact oil and gas operations. The preemption test favored by Aera clearly conflicts with over a century of local regulation over oil and gas, and could be interpreted to preclude local regulation of any other use of land concurrently regulated by the state—including zoning ordinances, requirements for conditional use permits, or outright prohibitions. (See Part II.A, *supra*.) In light of the Public Resources Code's express preservation of local authority over public health, safety, and welfare, this cannot possibly be the law.

These concerns are not mere hypotheticals. Aera is already testing its novel theory of obstacle preemption in other courts. In Ventura County, Aera has challenged a local regulation establishing setbacks between oil operations and residences or schools arguing, in part, that such a regulation "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of [the Legislature]."[5] This challenge demonstrates

[5] Petitioners' Phase 1 Joint Opening Brief at 21-29, *Aera Energy LLC. V. County of Ventura* (Super. Ct. Ventura County, filed Oct. 15, 2020, No. 56-2020-00546180.)

that Aera's extreme obstacle preemption test would invite challenges to even the most basic aspects of land use authority over oil and gas operations, approved consistently by courts over the past century. (See Part II.B, *supra*.)

Plaintiffs' framing of the preemption issue misunderstands the fundamental nature of obstacle preemption. Both the U.S. Supreme Court and this Court have grounded their analyses of federal obstacle preemption on the "demanding" threshold for establishing obstacle preemption, based on a focused inquiry into whether an irreconcilable conflict exists between regulatory schemes. (*County of Butte*, *supra*, 13 Cal.5th at p. 629.) Plaintiffs' analysis does not apply these principles, but instead invents a new preemption doctrine out of whole cloth.

B. Under Any Rational Test for Obstacle Preemption, Measure Z Does Not Frustrate or Obstruct the Objectives of the Statutory Scheme.

Based on the obstacle preemption test articulated by this Court and the U.S. Supreme Court, Plaintiffs' frustration of purpose claims must fail. Plaintiffs' arguments rely on their assertions that the statutory scheme, to the exclusion of local authority, either (1) promotes the recovery of hydrocarbons, or (2) vests in the Supervisor the authority to balance increased oil production with environmental preservation. (Chevron Br. at pp. 11, 30-31; Eagle Br. at p. 9; Aera Br. at pp. 45-46.) As Intervenors point out, the statutory scheme's emphasis on environmental protection and the reach of local authority contradicts these arguments. (Reply Br. at pp. 55-58.)

Moreover, Plaintiffs cite to no judicial authority suggesting that when a statutory scheme requires a state agency to balance competing values, local regulation presents an obstacle to, or frustrates, the statutory scheme. (See Aera Br. at pp. 61-64 [arguing that Measure Z stands as an obstacle to the statutory scheme because it "eliminat[es] the ability of [CalGEM] to permit *all* practices as [CalGEM] seeks to balance and carry out the dual objectives of the statute"].) In fact, *Big Creek* considered this very scenario, recognizing that "[w]hile the forestry laws generally encourage 'maximum sustained production of high-quality timber . . . while giving consideration to *competing values*, they do not require that every harvestable tree be cut." (*Big Creek*, *supra*, 38 Cal.4th at p. 1147 [emphasis added].) Based on this, the mere consideration of competing values by the State does not indicate that the authority to balance these values is somehow exclusive.

Plaintiffs further argue that this Court must scrutinize Measure Z more stringently than a local measure designating specific locations where oil and gas operations may occur. (See Chevron Br. at pp. 54-55.) As noted in Part III, *supra*, local governments have the clear authority to enact land use measures prohibiting certain land uses, and courts analyzing preemption issues related to jurisdiction-wide bans have not distinguished them from locational zoning ordinances. Nonetheless, Plaintiffs rely on *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853 and *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, to argue that a local law frustrates

the purpose of a state law when it bans an activity that state law intends to promote. A closer read of these cases reveals that they are inapposite.

In *Fiscal*, the Court of Appeal considered a preemption challenge against a local prohibition on handguns, noting that "[t]otal bans are not viewed in the same manner as added regulations and justify greater scrutiny." (*Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 914-15 [citing *Great Western Shows*, *supra*, 56 Cal.4th at pp. 867-88].) However, *Fiscal* addressed only whether a total ban on an activity conflicted with a state statute that conferred a right to engage in that activity. Unlike the state law at issue in *Fiscal*, section 3106 confers no right to conduct oil and operations. (*Id*. at p. 911; Reply Br. at pp. 63-64.) Moreover, the statute considered in *Fiscal* expressly limited local authority relating to the licensing or registration of firearms. (*Fiscal*, *supra*, 158 Cal.App.4th at pp. 911-12.) Thus, *Fiscal* did not consider any argument that prohibiting certain land uses, or banning an activity to which the State confers no rights or obligations, justifies greater scrutiny in preemption challenges. Here, the Legislature has expressly recognized local authority over oil and gas operations in light of nearly a century of judicial decisions upholding this authority. (See Part V, Part VI, *supra*.)

Similarly, in *Great Western Shows*, this Court analyzed whether statewide firearm regulations preempted a local ban on gun shows on County property. (*Great Western Shows*, *supra*, 56

Cal.4th at p. 859.) In holding that it did not, *Great Western Shows* distinguished a line of obstacle preemption cases under the federal Resource Conservation and Recovery Act ("RCRA"), which held that where a law seeks to promote a certain activity, local regulation cannot completely ban the activity or otherwise frustrate the statute's purpose. (*Id.* at pp. 867-88.) These cases found that one of the main purposes of RCRA was to "enlist[] the states and municipalities to participate in a 'cooperative effort' with the federal government to develop waste management practices." (*Id*. at p. 868 [citing *Blue Circle Cement v. Board of County Commissioners* (10th Cir. 1994) 27 F.3d 1499, 1506].) Thus, by imposing explicit or de facto bans on all hazardous waste operations, the regulations at issue in those cases directly conflicted with a core purpose of RCRA—the recruitment of states and local bodies in developing waste management practices.

The statutory scheme at issue here does not impose any similar requirements on local governments to cooperate with the state in promoting oil and gas development. Rather, *City of Riverside* offers a more applicable comparison. (*City of Riverside*, *supra*, 56 Cal.4th 729.) In *City of Riverside*, this Court upheld a local prohibition on medical marijuana facilities where a state statute conveyed a "right of access to obtain and use marijuana for medical purposes." (*Id.* at p. 750.) In that case involving a complete, jurisdiction-wide ban, this Court analyzed the ordinance in terms of traditional land use and police powers. (*Id.* at p. 756.)

City of Riverside distinguished the line of RCRA cases analyzed in *Great Western Shows*, stating that the statute at issue—despite declaring a right to obtain and use marijuana—"creates no comprehensive scheme for the protection or promotion of facilities that dispense medical marijuana," because "[t]hese provisions do not mandate that local jurisdictions permit such activities." (*Id.* at p. 760-61.) Much like the statutes in *City of Riverside*, neither section 3106 nor the statutory scheme as a whole mandate that local governments promote or permit such activities.

As such, none of the cases relied on by Plaintiffs displace the requirement under federal obstacle preemption to determine whether an "irreconcilable conflict" exists between a local and state law. (*County of Butte*, *supra*, 13 Cal.5th at p. 629) Nor do Plaintiffs point to any authority or section of the Public Resources Code that would demonstrate the Legislature's "unmistakably clear language" indicating preemptive intent. (*Ibid.*) Thus, even if this Court were to apply a federal obstacle preemption test here, this Court should find that state law does not preempt Measure Z.

C. This Court Should Not Use This Case to Articulate New Law on Obstacle Preemption.

This Court may resolve this case without formally adopting or applying the principles underlying federal obstacle preemption. As demonstrated above, under any plausible framing of obstacle preemption, Measure Z does not frustrate the statutory scheme at issue here. Consequently, this Court need

not take on the question of whether, or to what extent, California law is "coextensive with developed federal obstacle preemption principles." (*T-Mobile*, *supra*, 6 Cal.5th at p. 1123.)

If this Court chooses to consider this question, it should take stock of the fundamental risks involved in mandating that courts divine the Legislature's statutory objectives to evaluate preemption claims. Obstacle preemption doctrine necessarily requires judges to distill complex and multi-faceted legislation into a singular purpose. (Opening Br. at pp. 63-64.) This Court itself has recognized these dangers in the federal preemption context, noting that obstacle preemption can lead "to the overzealous displacement of state law to a degree never contemplated by Congress." (*People v. Rinehart* (2016) 1 Cal.5th 652, 661.) In evaluating state law preemption of local ordinances, this Court should be mindful of the same concern.

This Court's endorsement of obstacle preemption would create a new vehicle by which regulated parties could challenge rightful exercises of constitutional local authority, requiring courts to insert themselves into legislative processes through the "potentially boundless" lens of obstacle preemption. (*Geier v. American Honda Motor Co., Inc.* (2009) 529 U.S. 861, 907.) The mere threat of litigation and the potentially uneven application of the doctrine by lower courts could, by itself, chill local governments' exercise of their police power to protect public safety, health, and welfare. This case does not present a

sufficiently compelling legal argument to justify such a change in California's preemption jurisprudence.

Nonetheless, if this Court expressly endorses obstacle preemption here, it should take care to mitigate these risks by emphasizing the boundaries of obstacle preemption. As explained above, Justice Liu's opinion in *County of Butte* provides a strong starting point for analyzing obstacle preemption questions. *County of Butte* emphasized the "demanding" threshold necessary to support a finding of federal obstacle preemption, requiring (1) "proof" that "Congress had particular purposes and objectives in mind," and (2) a demonstration that state law would compromise those objectives. (*County of Butte*, *supra*, 13 Cal.5th at pp. 628-29 [quoting *People v. Rinehart*, *supra*, 1 Cal.5th at p. 661].)

The foundational principles of preemption require "a clear indication of preemptive intent" to displace the constitutional authority afforded to local governments, particularly in areas where local governments have traditionally exercised authority. (*Big Creek*, *supra*, 38 Cal.4th at p. 1149.) This Court should make clear that future plaintiffs cannot use obstacle preemption as a strategic cudgel to undermine these fundamental purposes, as Plaintiffs seek to do here.

VIII. Conclusion

The Court of Appeal's Opinion, endorsed here by Plaintiffs, cuts directly against California cities' and counties' broad and well-established authority to govern land use for the general welfare under their police powers. Plaintiffs' overbroad

preemption arguments risk generating confusion and litigation threats, potentially chilling rightful exercises of local police power. For all the foregoing reasons, amici urge this Court to reverse the judgment below and remand for consideration of issues not yet addressed.

Dated: October 17, 2022

By: /s/ Sean B. Hecht

Sean B. Hecht
Counsel for *Amici*
League of California Cities
California State Association of Counties and County of Los Angeles

CERTIFICATE OF COMPLIANCE

(California Rules of Court 8.204(c)(1))

I hereby certify, pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed brief of a*mici curiae* League of California Cities, California State Association of Counties and County of Los Angeles contains 9,842 words, not including tables of contents and authorities, the signature block, and this certificate, as counted by Microsoft Word, the computer program used to prepare this brief.

Dated: October 17, 2022

By: /s/ Sean B. Hecht

Sean B. Hecht
Counsel for *Amici*
League of California Cities
California State Association
of Counties and County of
Los Angeles

PROOF OF SERVICE

CHEVRON U.S.A., INC., ET AL,. Plaintiffs and Cross-Appellants, vs. COUNTY OF MONTEREY, ET AL. Defendants and Cross-Respondents; PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO, Intervenors, Appellants, and Cross-Respondents.

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and am not a party to the within action; my business address is 405 Hilgard Avenue, Los Angeles, California 90095. On October 17, 2022, I served true copies of the following document(s) described as:

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS; PROPOSED BRIEF OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA ASSOCIATION OF COUNTIES & COUNTY OF LOS ANGELES

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Mailing Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the next business day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 17, 2022 at Los Angeles, California.

_____

Sean B. Hecht

SERVICE LIST

TRUEFILING SERVICE LIST

Chevron U.S.A., Inc., et al. v. County of Monterey, et al.
Supreme Court Case No. S271869

Jeffrey D. Dintzer
Matthew C. Wickersham
Alston & Bird LLP
333 South Hope Street, 16th Floor
Los Angeles, California 90071-3004
Telephone: (213) 576-1063
Facsimile: (213) 576-1100
jeffrey.dintzer@alston.com
matt.wickersham@alston.com

Attorneys for Plaintiffs, Respondents, and Cross-Appellants
CHEVRON U.S.A. INC.; KEY ENERGY SERVICES, LLC; ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC.; MAUREEN WRUCK; GAZELLE TRANSPORTATION, LLC; PETER ORRADRE; MARTIN ORRADRE; JAMES ORRADRE; THOMAS ORRADRE; JOHN ORRADRE; STEPHEN MAURICE BOYUM; and SAN ARDO UNION ELEMENTARY SCHOOL DISTRICT

Theodore J. Boutrous, Jr.
Dione Garlick
Gibson, Dunn & Crutcher LLP
333 So. Grand Ave., 54th Floor
Los Angeles, California 90071-3197
Telephone: (213) 229-7804
Facsimile: (213) 229-6804
tboutrous@gibsondunn.com
dgarlick@gibsondunn.com

Attorneys for Plaintiffs, Respondents, and Cross-Appellants
CHEVRON U.S.A. INC.; KEY ENERGY SERVICES, LLC; ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC.; MAUREEN WRUCK; GAZELLE TRANSPORTATION, LLC; PETER ORRADRE; MARTIN ORRADRE; JAMES ORRADRE; THOMAS ORRADRE; JOHN ORRADRE; STEPHEN MAURICE BOYUM; and SAN ARDO UNION ELEMENTARY SCHOOL DISTRICT

Todd W. Smith
Ragghianti | Freitas LLP
1101 5th Avenue, Suite 100
San Rafael, California 94901
Telephone: (415) 453-9433, ext. 115
Facsimile: (415) 453-8269
tsmith@rflawllp.com

Attorneys for Plaintiffs, Respondents, and Cross-Appellants
CHEVRON U.S.A. INC.; KEY ENERGY SERVICES, LLC; ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC.; MAUREEN WRUCK; GAZELLE TRANSPORTATION, LLC; and SAN ARDO UNION ELEMENTARY SCHOOL DISTRICT

Hollin N. Kretzmann
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, California 94612
Telephone: (510) 844-7100
Facsimile: (510) 844-7150
hkretzmann@biologicaldiversity.org

Catherine Engberg
Kevin P. Bundy
Aaron M. Stanton
Shute, Mihaly & Weinberger LLP
396 Hayes Street San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Engberg@smwlaw.com
Bundy@smwlaw.com
Stanton@smwlaw.com

Attorneys for Intervenors, Appellants, and Cross-Respondents
PROTECT MONTEREY COUNTY

Deborah A. Sivas
Environmental Law Clinic
Mills Legal Clinic at
Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426
dsivas@stanford.edu

Attorneys for Intervenors,
Appellants, and
Cross-Respondents
PROTECT MONTEREY COUNTY
and DR. LAURA SOLORIO

Jason Retterer
JRG Attorneys At Law
318 Cayuga Street
Salinas, CA 93901
Jason@jrgattorneys.com

Attorney for Plaintiff, Respondent,
and Cross-Appellant
TRIO PETROLEUM, LLC, et al.

Leslie Girard
County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, California 93901-2439
Telephone: (831) 755-5045
girardlj@co.monterey.ca.us

Gene Tanaka
Best Best & Krieger
2001 North Main Street, Suite 390
Walnut Creek, California 94596
Telephone: (925) 977-3300
Facsimile: (925) 977-1870
gene.tanaka@bbklaw.com

Attorneys for Defendant
COUNTY OF MONTEREY

Jacqueline M. Zischke
A Professional Corporation
P.O. Box 1115
Salinas, California 93902
Telephone: (831) 761-8714
Facsimile: (888) 385-9198
E-mail: jzischkelaw@charter.net

Attorneys for Plaintiff,
Respondent, and Cross-Appellant
NATIONAL ASSOCIATION OF
ROYALTY OWNERS-
CALIFORNIA, INC., et al.

Michael A. Geibelson
Bernice Conn
Robins Kaplan LLP
2049 Century Park East, Suite
3400
Los Angeles, CA 90067-3208
MGeibelson@robinskaplan.com
BConn@robinskaplan.com

Attorneys for Intervenors,
Appellants, and Cross-
Respondents
PROTECT MONTEREY
COUNTY and DR. LAURA
SOLORIO

Andrew A. Bassak
Christopher A. Rheinheimer
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, California 94111
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
abassak@hansonbridgett.com
crheinheimer@hansonbridgett.com

Attorneys for Plaintiff,
Respondent, and Cross-Appellant
AERA ENERGY, LLC

Donald C. Oldaker
Clifford & Brown
A Professional Corporation
Attorneys at Law
1430 Truxtun Avenue, Suite 900
Bakersfield, California 93301
Telephone: (661) 322-6023
Facsimile: (661) 322-3508
doldaker@clifford-brownlaw.com

Attorneys for Plaintiff,
Respondent, and Cross-Appellant
EAGLE PETROLEUM, LLC

Barton H. Thompson
Matt Kline
Heather A. Welles
O'Melveny & Myers LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067-6035
Telephone: (310) 246-6840
Facsimile: (310) 246-6779
bthompson@omm.com
mkline@omm.com
hwelles@omm.com

Attorneys for Plaintiff, Respondent, and Cross-Appellant CALIFORNIA RESOURCES CORPORATION

Edward S. Renwick
Hanna & Morton LLP
444 South Flower St., Suite 2530
Los Angeles, California 90071
Telephone: (213) 628-7131
Facsimile: (213) 623-3379
erenwick@hanmor.com

Attorneys for Plaintiff, Respondent, and Cross-Appellant NATIONAL ASSOCIATION OF ROYALTY OWNERS-CALIFORNIA, INC.

Julia K. Forgie
Natural Resources Defense Council
1314 2nd Street
Santa Monica, CA 90401-1103
Telephone: (310) 434-2300
jforgie@nrdc.org

Attorneys for Amicus Curiae NATURAL RESOURCES DEFENSE COUNCIL

Alison Hahm
Communities for a Better Environment
6325 Pacific Boulevard
Huntington Park, California 90255
Telephone: (323) 826-9771
Facsimile: (323) 588-7079
ahahm@cbecal.org

Attorney for Amicus Curiae COMMUNITIES FOR A BETTER ENVIRONMENT

James R. Williams
County Counsel
Elizabeth Vissers
Deputy County Counsel
County of Santa Clara
70 West Hedding Street
East Wing, 9th Floor
San Jose, CA 95110
Telephone: (408) 299-5900
Elizabeth.visser@cco.sccgov.org

Attorneys for Amicus Curiae
COUNTY OF SANTA CLARA

Michael M. Berger
Manatt, Phelps & Phillips, LLP
2049 Century Park East, 17th Floor
Los Angeles, CA 90067
Telephone: (310) 312-4000
Fax: (310) 312-4224
mmberger@manatt.com

Benjamin J. Horwich
Dila Mignouna
Munger Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105-2907
Telephone: (415) 512-4000
Ben.Horwich@mto.com

Attorney for Amicus Curiae
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, et al.

California Court of Appeal
Sixth Appellate District
333 West Santa Clara St., #1060
San Jose, CA 95113

U.S. MAIL SERVICE LIST

The Honorable Thomas W. Wills
c/o Clerk of the Court
Courtroom 8
Monterey County Superior Court
240 Church Street
Salinas, California 93901